

1 GRAHAMHOLLIS APC
Vilmarie Cordero (SBN 268860)
2 vcordero@grahamhollis.com
Dawn M. Berry (SBN 292335)
3 dberry@grahamhollis.com
3555 Fifth Avenue, Suite 200
4 San Diego, California 92103
Telephone: 619.692.0800
5 Facsimile: 619.692.0822

6 Attorneys for Plaintiffs Ramon Gomez and Brock Loucks
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10 RAMON GOMEZ and BROCK LOUCKS, on
behalf of themselves and other similarly situated
11 employees in the State of California,

12 Plaintiffs,

13 v.

14 RD ENGINEERING & CONSTRUCTION,
INC.; ROBERT DAVISON, JR., an individual;
15 and DOES 1 through 50, inclusive,

16 Defendants.
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Case No.: 37-2022-00025793-CU-OE-CTL

[Assigned for All Purposes to the Honorable Judy S.
Bae, Dept. C-62]

CLASS AND PAGA ACTION

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

[IMAGED FILE]

[Filed concurrently with Notice of Motion, the
Declaration of Vilmarie Cordero, and [Proposed]
Order]

Date: November 7, 2025
Time: 9:10 a.m.
Dept: C-62
Judge: Hon. Judy S. Bae

Complaint Filed: June 30, 2022
Trial Date: None Set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Named Plaintiffs and proposed Class Representatives Ramon Gomez and Brock Loucks
4 (“Plaintiffs”) seek preliminary approval of a wage and hour class and representative action settlement
5 achieved on behalf of a Class of all current and former nonexempt employees of Defendants R.D.
6 Engineering & Construction, Inc. and Robert Davison, Jr. (“Defendants”) who worked in California at
7 any time between April 1, 2018 and the date of preliminary approval. Defendants’ records indicate that
8 there are approximately 210 Class Members.¹

9 After engaging in substantial independent investigation, a full-day mediation before well-
10 respected and highly experienced mediator Hon. Eddie C. Sturgeon (Ret.), and hard-fought negotiations,
11 the parties agreed to a non-reversionary gross settlement amount of \$650,000, exclusive of employer-side
12 payroll taxes. The settlement is strongly supported by experienced counsel, who carefully considered the
13 strength of the claims and Defendants’ potential defenses, as well as the expense, complexity, risks, and
14 likely duration of continued litigation.

15 Subject to Court-approval, and after deductions for a payment to the Labor Workforce and
16 Development Agency pursuant to the Private Attorneys General Act of 2004 (“PAGA”), settlement
17 administration expenses, Class Representative Service Awards to Plaintiffs, and attorneys’ fees and costs
18 to Class Counsel, the remaining amount will be distributed to Class Members who did not opt-out of the
19 Settlement as follows:

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Gross Settlement Amount	\$650,000
LWDA Payment	\$15,000
Administration Expenses Payment	\$5,500
Class Representative Service Awards	Up to \$20,000 total
Class Counsel’s Fees	Up to \$227,500
Class Counsel’s Costs	Up to \$16,000
Net Settlement Amount	At least \$366,000

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25 Through this motion, Plaintiffs respectfully request that the Court enter an order: (1) provisionally
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27 ¹ To the extent the terms used in this declaration are defined in the Class Action and PAGA Settlement
28 Agreement (“Settlement Agreement”), the defined terms contained herein shall have the same meaning as
set forth in the Settlement Agreement.

certifying the proposed Class and Travel Time Subclass under Code of Civil Procedure section 382 and California Rule of Court 3.769(c) for settlement purposes only; (2) preliminarily approving the Settlement; (3) approving as to form the Notice of Class Action Settlement and ordering that the Notice of Class Action Settlement be distributed to all Class Members; (4) appointing Plaintiffs Ramon Gomez and Brock Loucks as the Class Representatives; (5) appointing Apex Class Action Administration as the Administrator; (6) appointing Graham Hollis APC as Class Counsel; and (7) setting this matter for a hearing on the issues of final approval of the proposed Settlement, approval of the Class Representative Service Awards, approval of Class Counsel's fees and costs, and approval of the Administration Expenses Payment.

II. PROCEDURAL AND FACTUAL BACKGROUND

A. Plaintiffs' Claims And Relevant Background

Defendant R.D. Engineering & Construction is a general contracting company that specializes in engineering and telecommunication projects. (See <https://www.rdconstruction.com/about-us/>.) The company is headquartered in El Cajon, California and maintains an office and warehouse in Corona, California. (Declaration of Vilmarie Cordero ["Cordero Decl."] ¶ 6.) The majority of Defendants' nonexempt employees are considered field construction employees, who are tasked with installing and repairing cell towers. (*Id.*, ¶ 7.)

Plaintiff Gomez was employed by Defendants as a nonexempt field construction employee on several occasions, most recently from May 2020 to December 2021. (Cordero Decl., ¶ 7.) Plaintiff Loucks was employed by Defendants from July 2016 to January 2021, both as a nonexempt field construction employee and later as a nonexempt tower foreman or "lead". (*Ibid.*) As a lead, Plaintiff Loucks was assigned a company truck and was tasked with driving his crew to their assigned worksite each day. (*Ibid.*) Plaintiffs were assigned to work at cell tower sites throughout the state. (*Ibid.*) At all times, Plaintiffs were classified as nonexempt employees and were paid on a weekly basis. (*Ibid.*)

Plaintiffs contend that over the course of their employment, Defendants failed to pay them and other nonexempt employees all wages owed to them, including overtime and double time, failed to provide uninterrupted, off-duty meal and rest periods, required them to purchase and use their own tools, failed to provide accurate, itemized wage statements, and failed to pay all wages owed upon separation. (Cordero

Decl., ¶ 8.) Notably, while Plaintiffs and other field construction employees were required to travel up to six hours to each job site, under Defendants’ travel time policy, employees who traveled more than 25 miles were not paid by the hour, but rather “reimbursed” by the mile. (*Ibid.*) This resulted in many hours of unpaid overtime and double time.² (*Ibid.*) It also resulted in Class Members receiving fewer meal and rest periods than they were entitled to. (*Ibid.*)

On April 25, 2022, Plaintiff Gomez provided written notice to the Labor and Workforce Development Agency and Defendants, notifying them of his intent to assert the rights granted to him under PAGA. (Cordero Decl., ¶ 9.) Following the 65-day notice period, on June 30, 2022, Plaintiff Gomez filed a class and representative action in this Court. (*Ibid.*) On August 16, 2022, Plaintiff Gomez filed a First Amended Complaint to include additional allegations supporting his claim for failure to indemnify all necessary expenditures. (*Ibid.*)

On March 1, 2023, Plaintiff Gomez filed a Second Amended Complaint, adding Plaintiff Loucks as a named plaintiff, adding Robert Davison, Jr. as a named defendant, and including additional allegations regarding Defendants’ travel time policy. (Cordero Decl., ¶ 10.) The operative Complaint asserts the following causes of action: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to provide heat recovery periods; (4) failure to pay minimum, regular, and overtime wages; (5) failure to indemnify all necessary expenditures; (6) illegal deductions from wages; (7) failure to provide accurate itemized wage statements; (8) failure to timely pay all wages due upon separation of employment; (9) violation of Business & Professions Code § 17200 et seq.; and (10) civil penalties pursuant to PAGA. (*Ibid.*) Defendants filed their answer to Plaintiffs’ Second Amended Complaint on April 13, 2023, generally denying all liability and asserting various affirmative defenses. (*Ibid.*)

On April 19, 2024, Plaintiff Gomez amended his notice to the LWDA to include a claim for civil penalties based on Defendants’ failure to pay overtime at the correct regular rate of pay for work performed on a public works project. (Cordero Decl., ¶ 11.) Because neither of the named plaintiffs performed work on a public works project, and therefore could not represent a class based on that claim,

² Documents produced in discovery show that Defendants changed their travel time policy in January 2023, and now pay travel time, including any overtime, on an hourly basis. (Cordero Decl., ¶ 8, n.2.)

Defendants' liability is limited to civil penalties under PAGA. (*Ibid.*)

B. Investigation And Evaluation Of The Claims

Prior to filing the lawsuit, Class Counsel thoroughly investigated the facts and circumstances underlying the potential claims. (Cordero Decl., ¶ 12.) This required, among other things, numerous telephonic conferences with Plaintiffs, requesting and analyzing Plaintiffs' timekeeping and payroll records, conducting an investigation into the viability of class treatment of the potential claims, and researching the applicable law. (*Ibid.*) After conducting their initial investigation, Class Counsel determined that Plaintiffs' claims were well suited for class adjudication based on what appeared to be a common course of conduct affecting a similarly-situated group of employees. (*Ibid.*)

After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including: (1) conducting extensive informal and formal discovery, including propounding multiple sets of interrogatories and requests for production of documents, and taking the depositions of Defendants' Persons Most Qualified; (2) reviewing and analyzing thousands of timekeeping and payroll records, Plaintiffs' personnel files, and Defendants' written policies and procedures; (3) researching the applicable law and potential defenses; (4) obtaining Class Members' contact information and conducting detailed interviews with more than 10-percent of the Class; and (5) analyzing and calculating Defendants' potential liability. (Cordero Decl., ¶ 13.) After analyzing the relevant documents and data, Class Counsel determined that this case was likely suitable for resolution via mediation. (*Ibid.*) Given the high degree of risk for both sides, the parties elected to mediate Plaintiffs' claims and explore the possibility of settlement. (*Ibid.*)

C. Mediation And Settlement Efforts

On April 9, 2025, the parties participated in a full-day mediation with Hon. Eddie C. Sturgeon (Ret.), a well-respected and experienced mediator. (Cordero Decl., ¶ 19.) During mediation, the parties discussed all aspects of the case, including the relative strengths and weaknesses of Plaintiffs' claims, the risks and delays further litigation would present, the current state of the law as it related to Plaintiffs' claims, and the difficulty Plaintiffs would likely have in obtaining and maintaining class certification of each claim. (*Ibid.*) Judge Sturgeon's role in mediating this case was extremely helpful in managing the parties' expectations and providing a useful and neutral analysis of the issues and risks to both parties.

(*Id.*, ¶ 20.) The parties ultimately agreed to settle the claims for a total of \$650,000. (*Id.*, ¶ 19.)

Class Counsel believes the Settlement is fair and reasonable, taking into consideration the strengths and weaknesses of the claims asserted, the amounts received in other wage and hour class actions, the risks inherent in complex litigation, and the defenses asserted. (Cordero Decl., ¶¶ 19-20.) At all times, the parties' negotiations were hard-fought and conducted at arm's-length between attorneys who are highly experienced in wage and hour litigation, and the Settlement is evidence of the parties' substantial efforts to reach a mutually agreeable compromise. (*Id.*, ¶ 20.)

III. THE TERMS OF THE PROPOSED SETTLEMENT

Subject to Court approval, and pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 et seq., the parties have agreed to settle the claims in the operative complaint upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached as Exhibit 1 to the Declaration of Vilmarie Cordero and is incorporated herein by reference in its entirety. The following is a summary of the principal terms of the Settlement Agreement:

A. Class Definition

The Class is defined as all current and former nonexempt employees of Defendants who performed work in California at any time between April 1, 2018 and the date of preliminary approval ("Class Period"). (Settlement Agreement, § 1.5.) Class Members who worked out of Defendants' San Luis Obispo and/or Los Angeles facilities will also be members of a proposed Travel Time Subclass, and should the Court approve the Settlement, will have an additional 0.4 multiplier applied to their total Workweek count for purposes of determining their Individual Settlement Payment.³ (*Id.*, §§ 1.45, 3.2.4.)

In addition, the Settlement Agreement defines Aggrieved Employees as all current and former nonexempt employees of Defendants who worked in California at any time between June 30, 2021 and the date of preliminary approval. (Settlement Agreement, § 1.4.) As set forth below, any Class Member who opts out of the Settlement will nonetheless remain eligible for an Individual PAGA Payment and will

³ As set forth in the Declaration of Vilmarie Cordero, the evidence in this matter shows that a significant portion of Defendants' potential liability stems from their travel time policy. (Cordero Decl., ¶ 30.) The evidence also shows that employees who worked out of Defendants' San Luis Obispo facility, which was later moved to Los Angeles County, were primarily assigned to the remote worksites that required significant travel time. (*Ibid.*)

be bound by the Release of PAGA Claims. (*Id.*, § 7.5.4.)

B. The Gross Settlement Amount And Allocation Of Settlement Funds

The non-reversionary Gross Settlement Amount is the \$650,000 that Defendants have agreed to pay to settle the claims asserted in the operative complaint. (Settlement Agreement, § 3.1.) In addition to payments to Class Members and Aggrieved Employees for their portion of the Net Settlement Amount, the Gross Settlement Amount includes: (1) Class Counsel’s attorneys’ fees of up to \$227,500 (35-percent of the Gross Settlement Amount); (2) Class Counsel’s costs of up to \$16,000; (3) an Administration Expenses Payment of up to \$5,500; (4) Class Representative Service Awards to Plaintiffs of up to \$10,000 each (\$20,000 in total); and (5) payment to the LWDA in the amount of \$15,000 for its share of the PAGA Penalties. (*Id.*, §§ 3.2.1-3.2.5.) In addition, Defendants will separately pay the applicable employer-side payroll taxes owed on the wage portions of the Individual Class Payments. (*Id.*, § 3.1.)

C. Net Funds Available To Class Members

After all Court-approved deductions from the Gross Settlement Amount, Class Counsel estimates that at least \$366,000 (the “Net Settlement Amount”) will be distributed to Class Members. (Cordero Decl., ¶ 27.) Under the terms of the Settlement, the Net Settlement Amount will be distributed on a pro rata basis based on the number of Workweeks a Class Member worked during the Class Period. (Settlement Agreement, §§ 3.2.4.) An additional 0.4 multiplier will be applied to the total Workweek count for Class Members who are also members of the Travel Time Subclass, which is defined as all nonexempt employees of Defendants who worked out of the company’s San Luis Obispo and/or Los Angeles facilities.⁴ (*Ibid.*) For example, if a Class Member who is also a member of the Travel Time Subclass worked 120 Workweeks during the Class Period, they would be credited with an additional 48 Workweeks [120 x 0.4 = 48], or a total of 168 Workweeks, for purposes of calculating their Individual Class Payment. (*Ibid.*) These additional Workweeks shall not be counted as workweeks for purposes of

⁴ As set forth above, Plaintiffs and Class Counsel believe this allocation is fair and equitable because an analysis of timekeeping and payroll records performed in advance of mediation showed that more than half of Defendants’ total potential liability in this matter was based on the company’s practice of compensating nonexempt employees for time spent travelling to remote worksites on a per mile basis. (Cordero Decl., ¶ 30.) The evidence also showed that employees who worked out of the company’s San Luis Obispo and/or Los Angeles facilities were primarily tasked with travelling to these remote worksites, and thus would have been disproportionately impacted by the policy and practices. (*Id.*, ¶ 30 n.4.)

1 the Pro Rata Increase clause in Paragraph 8 for the Settlement Agreement. (*Ibid.*) Class Counsel estimates
2 that the average payment for Class Members who are also members of the Travel Time Subclass will be
3 approximately \$2,095.85, and \$1,496.97 for those who are not members of the Travel Time Subclass.
4 (Cordero Decl., ¶ 27.) Class Members will be provided with notice of the Settlement and its terms, their
5 estimated payment, their right to opt-out or object to the Settlement, and their right to appear at the fairness
6 hearing. (Settlement Agreement, § 7.4.1, Ex. A.)

7 **D. Release**

8 Upon the Effective Date, each Participating Class Member will release Defendants R.D.
9 Engineering & Construction, Inc. and Robert Davison, Jr. and each of their past, present, and future
10 officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners,
11 investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors,
12 successors, assigns, and joint ventures of all claims, actions, demands, causes of action, suits, debts,
13 obligations, demands, rights, liabilities, or legal theories of relief, that were or could have been pleaded
14 under local, state or federal law arising out of or reasonably related to any facts, transactions, events,
15 policies, occurrences, acts, disclosures, statements, omissions, or failures to act pleaded in the Operative
16 Complaint, including but not limited to, claims for (1) failure to provide legally compliant meal periods
17 in violation of Labor Code §§ 226.7, 512, 1198, and IWC Wage Order No. 16-2001; (2) failure to provide
18 legally compliant rest periods in violation of Labor Code §§ 226.7, 1198, and IWC Wage Order No. 16-
19 2001; (3) failure to provide recovery periods in violation of Labor Code § 226.7 and California Code of
20 Regulations, Title 8, section 3395(d); (4) failure to timely pay minimum, regular, and overtime wages in
21 violation of Labor Code §§ 510, 1194, 1194.2, 1197, 1198, 1199, and IWC Wage Order No. 16-2001; (5)
22 failure to reimburse necessary business expenses in violation of Labor Code § 2802; (6) illegal deduction
23 of wages in violation of Labor Code §§ 221, 222, 223, and 224; (7) failure to furnish accurate itemized
24 wage statements in violation of Labor Code §§ 226 and 1198; (8) failure to timely pay all wages owed
25 upon separation of employment in violation of Labor Code §§ 201, 202, and 203; and (9) violation of
26 Business and Professions Code § 17200 based solely on the facts alleged in the Operative Complaint. The
27 proposed Settlement also resolves all Aggrieved Employees' claims arising under PAGA that were or
28 could have been alleged in the Operative Complaint based upon the allegations, facts, legal theories or

1 causes of action alleged in the Operative Complaint for the PAGA Period. (Settlement Agreement, § 5.2.)

2 In addition to the release given by each Participating Class Member and Aggrieved Employee, and
3 in exchange for the proposed Class Representative Service Awards, Plaintiffs will release any and all
4 charges, complaints, claims, causes of action, demands, disputes, damages, business expenses, attorneys'
5 fees, costs, losses, and liabilities of any kind or nature whatsoever, known or unknown, suspected or
6 unsuspected, asserted or unasserted, which Plaintiffs, at any time had, claimed to have, or may have
7 against the Released Parties, including waiving their rights under Civil Code section 1542. (Settlement
8 Agreement, § 5.3.)

9 **E. Class Notice And Settlement Administration**

10 Subject to Court approval, the parties agreed to retain Apex Class Action Administration as the
11 third-party Settlement Administrator ("Administrator"), who will be responsible for mailing the Class
12 Notice to Class Members, handling inquiries from Class Members, determining Individual Class
13 Payments and Individual PAGA Payments, maintaining the settlement funds in an appropriate account,
14 distributing all Court-approved payments under the Settlement, handling all tax document preparation and
15 reporting, issuing a final report on the disbursement of funds, and performing such other duties as the
16 parties may direct. (Settlement Agreement, §§ 7.1-7.8.)

17 On a weekly basis, the Administrator will provide reports to Class Counsel and Defense Counsel
18 with summary information updating them as to the number of validated and timely objections and requests
19 for exclusion. (Settlement Agreement, § 7.8.2.) Not later than ten days before the date by which Plaintiffs
20 are required to file their Motion for Final Approval of the Settlement, the Administrator will provide to
21 Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due
22 diligence and compliance with all of its obligations under the Settlement. (*Id.*, § 7.8.4.)

23 The Class Notice will inform Class Members of their estimated Individual Class Payment, their
24 estimated Individual PAGA Payment, and the number of workweeks and pay periods they worked during
25 the Class Period and PAGA Period. (Settlement Agreement, § 7.4.1, Ex. A.) Class Members may
26 challenge the number of workweeks and pay periods allocated to them in the Class Notice by contacting
27 the Administrator no later than 60 days after being mailed the Class Notice. (*Id.*, § 7.6.) Challenges will
28 be resolved without hearing by the Administrator, who will make a decision based on Defendants' records

1 and any documents or other information presented by the Class Member making the challenge. (*Ibid.*)
2 The Administrator's determination of each Class Member's allocation of pay periods worked shall be final
3 and not appealable. (*Ibid.*) The Administrator shall promptly provide copies of all challenges to the
4 calculation of pay periods worked to Defense Counsel and Class Counsel, along with the Administrator's
5 determination of the challenges. (*Ibid.*)

6 **F. Notice Process**

7 Class Members who wish to exclude themselves from the Settlement must send the Administrator,
8 by mail, a signed written Request for Exclusion not later than 60 calendar days after the Administrator
9 mails the Class Notice (plus an additional 10 calendar days for Class Members whose Class Notice is re-
10 mailed). (Settlement Agreement, § 7.5.1.) To be valid, a request for exclusion must be timely postmarked
11 by the response deadline. (*Ibid.*) Every Class Member who does not submit a timely and valid Request for
12 Exclusion will be entitled to all benefits and bound by all terms and conditions of the Settlement. (*Id.*, §
13 7.5.4.) Any Class Member who submits a valid and timely request for exclusion will not receive an
14 Individual Class Payment or have the right to object to the class action components of the Settlement, but
15 will nonetheless be entitled to an Individual PAGA Payment and will be bound by the Release of PAGA
16 Claims. (*Id.*, § 7.5.3.)

17 Class Members may send written objections to the Administrator by mail. (Settlement Agreement,
18 § 7.7.2.) Class Members may also appear in Court (or retain an attorney to appear on their behalf) to present
19 verbal objections at the Final Approval Hearing. (*Ibid.*) A Class Member who elects to send a written
20 objection to the Administrator must do so not later than 60 calendar days after the Administrator's mailing
21 of the Class Notice (plus an additional 10 calendar days for Class Members whose Class Notice was re-
22 mailed). (*Ibid.*)

23 Upon completion of administration of the Settlement, the Administrator shall provide written
24 certification of such completion to the Court, Class Counsel and Defense Counsel. (Settlement Agreement,
25 § 7.8.5.) Any funds associated with checks that have not been cashed within 180 days will be sent to the
26 California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no
27 "unpaid residue," subject to the requirements of Code of Civil Procedure section 384. (*Id.*, § 4.3.3.)

28 ///

G. Tax Treatment Of Individual Payments

Under the terms of the Settlement, 20-percent of each Class Member’s Settlement Payment will be allocated to the settlement of wage claims, and will be subject to tax withholding and reported on an IRS Form W-2. (Settlement Agreement, § 3.2.4.1.) The remaining 80-percent of each Settlement Payment shall constitute interest and penalties, and each Class Member will be issued an IRS Form 1099 for such payment. (*Ibid.*) PAGA Payments will be treated as penalties for tax purposes, and if applicable, the Administrator will issue each recipient an IRS Form 1099. (*Ibid.*)

IV. PROVISIONAL CERTIFICATION IS APPROPRIATE

Courts have generally found that class action suits are appropriate “when the question is one of a common or general interest . . . or when the parties are numerous, and it is impracticable to bring them all before the court.” (Code Civ. Proc. § 382; see *Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469-475.) In order to sustain a class action, two requirements must be met: (1) there must be an ascertainable class; and (2) there must be a “well-defined community of interest in the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow Cab. Co.* (1967) 67 Cal.2d 695, 704.)

To ensure efficient use of judicial resources, California law and policy favor the fullest and most flexible use of the class action device. (*Richmond, supra*, 29 Cal.3d at pp. 469-475.) Indeed, courts have acknowledged “the importance of class actions as a means to prevent a failure of justice in our judicial system” particularly where the rights of numerous “small claimants” are at issue. (See *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434-435, 445.) Any doubt as to the appropriateness of class treatment should be resolved in favor of certification. (*Richmond, supra*, 29 Cal.3d at pp. 473-475.)

A. There Is A Numerous And Ascertainable Class

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. (See Code Civ. Proc. § 382.) Whether a class is ascertainable is determined by examining the class definition, the size of the class and the reasonable means available for identifying members of the class. (See *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263, 1271.) Class members are “ascertainable” where they may be readily identified without unreasonable expense or time. (*Id.* at p. 1275 [citing *Hypolite v. Carleson* (1975) 52 Cal.App.3d 566, 578-579].)

Plaintiffs contend, and Defendants do not dispute, that for settlement purposes only, there is a

1 numerous and ascertainable class. (Settlement Agreement, § 12.1.) Class Members are all current and
2 former nonexempt employees of Defendants who worked in California at any time during the Class Period,
3 other than those who timely opt-out. (*Id.*, §§ 1.9, 1.35.) Documents and information exchanged between
4 the parties reflect a Class of approximately 210 Class Members. (Cordero Decl., ¶ 26.) The class is clearly
5 ascertainable because Class Members have already been identified by reference to Defendants’ payroll
6 and personnel records. (*Ibid.*)

7 Because joinder of more than 200 employees would be impracticable, and Class Members can
8 readily be determined by Defendants’ personnel records, there is a numerous and ascertainable class that
9 is suitable for provisional certification.

10 **B. There Is A Well-Defined Community Of Interest**

11 As a general rule, a community of interest is established where (1) there are predominant common
12 questions of law or fact; (2) the named plaintiff has “claims or defenses typical of the class”; and (3) the
13 named plaintiff is able to adequately represent the class. (See *Dunk v. Ford Motor. Co.* (1996) 48
14 Cal.App.4th 1794, 1806.)

15 **1. Common Questions Of Law And Fact Exist**

16 Whether a class action is the appropriate mechanism will depend largely upon “whether the
17 common questions are sufficiently pervasive to permit adjudication in a class action rather than in a
18 multiplicity of suits.” (*Richmond, supra*, 29 Cal.3d at pp. 477-478.) In determining whether common
19 questions of law and fact exist, courts generally look at the allegations in the complaint, as well as the
20 declarations of class counsel. (*Id.* at p. 478.) The primary purpose of this inquiry is to ascertain whether
21 the proposed class is sufficiently cohesive to warrant adjudication by representation. (See, e.g.,
22 *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 612; *Lazar v. Hertz Corp.* (1983) 143
23 Cal.App.3d 128, 138-139; *Hogya v. Superior Court* (1977) 75 Cal.App.3d 122, 142.) Simply because
24 class members must prove their own damages does not mean that individual questions predominate.
25 (*Clothesrigger, Inc., supra*, 191 Cal.App.3d at p. 617.)

26 Common questions of law and fact exist among Class Members in this case. The operative
27 complaint asserts causes of action for: (1) failure to provide meal periods; (2) failure to provide rest
28 periods; (3) failure to provide heat recovery periods; (4) failure to pay minimum, regular, and overtime

wages; (5) failure to indemnify all necessary expenditures; (6) illegal deductions from wages; (7) failure to provide accurate itemized wage statements; (8) failure to timely pay all wages due upon separation of employment; (9) violation of Business & Professions Code § 17200 et seq.; and (10) civil penalties pursuant to PAGA. (Cordero Decl., ¶ 10.) Thus, at minimum, some of the common questions of law and fact that affect the Class are whether Class Members were provided compliant meal and rest periods; whether Defendants adequately compensated Class Members for all hours worked; whether the wage statements provided to Class Members complied with California law; whether Defendants violated Labor Code section 2802 by requiring Class Members to purchase and use their own tools; and whether Defendants' policies and practices constitute unfair business practices for purposes of Business and Professions Code section 17200 et seq. (*Id.*, ¶¶ 70-71.)

Here, the required commonality element is satisfied because there are questions of law and fact common to Plaintiffs and the Class, and those questions predominate over any such questions affecting only Plaintiff or individual Class Members.⁵ As such, the underlying claims are sufficiently cohesive to warrant adjudication by representation. (See *Clothesrigger, Inc.*, *supra*, 191 Cal.App.3d at p. 612.)

2. Plaintiffs' Claims Are Typical Of Class Members' Claims

The typicality requirement for purposes of class certification focuses on the typicality of the named plaintiff's claims as they relate to the defendant's policies and practices. (See *Medraza v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 99 [typicality met where plaintiff alleged that defendant subjected her to the same unlawful conduct that other putative class members were subjected to].) Indeed, the mere fact that a defendant may raise defenses against some members of the class does not negate the typicality of the plaintiff's claims. (*Ibid.*)

Here, Plaintiffs' claims are typical of the claims of the Class. As detailed in the operative complaint, Class Members were all subject to the same policies and practices while working for Defendants, including the company's payroll, timekeeping, and meal and rest period policies. (Cordero

⁵ Courts have also found that commonality may be satisfied when the class is divided into subclasses. (Fed. R. Civ. P. 23(c)(5); see also, e.g., *Dilts v. Penske Logistics, LLC* (S.D. Cal. 2010) 267 F.R.D. 625, 635-640 [finding, in an employment action, that commonality was satisfied within wage-forfeiture, meal-and-rest-period, reimbursement, and derivative-claims subclasses].)

Decl., ¶¶ 70-72.) As such, all sustained the same or similar damages resulting from Defendants’ alleged violations of California wage-and-hour laws, including unpaid or underpaid wages, noncompliant meal and rest periods, and inaccurate wage statements. (*Ibid.*) Because each Class Member would be required to demonstrate the same elements in order to recover on their claims against Defendants, Class Members’ interests are sufficiently aligned with Plaintiffs’ so as to meet the typicality requirement. (See *Medrazo, supra*, 166 Cal.App.4th at p. 99.)

3. Plaintiffs And Class Counsel Have And Will Continue To Adequately Represent The Class

A class representative is an adequate representative of the class so long as his or her interests are not antagonistic or in conflict with the objectives that he or she purports to represent. (*Richmond, supra*, 29 Cal.3d at p. 470.) Additionally, Class Counsel “must be qualified, experienced and generally able to conduct the proposed litigation.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) Here, Plaintiffs meet both of the requirements necessary to adequately represent the Class.

First, Plaintiffs’ interests are not antagonistic to the interests of the Class. As previously explained, Plaintiffs allege that Class Members were all subject to the same unlawful policies and practices by Defendants, and thus suffered identical or similar harm. Consequently, Plaintiffs seek the same relief sought by every other member of the Class. (See *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 625-26 “[A] class representative must be part of the class and possess the same interest and suffer the same injury as the class members.”).) For more than three years, Plaintiffs have vigorously prosecuted this case on behalf of the other Class Members.⁶ (Cordero Decl., ¶ 54.) They have spent numerous hours reviewing documents, meeting and corresponding with Class Counsel, answering questions regarding their experiences while working for Defendants, responding to written discovery, appearing for full day depositions, and evaluating settlement options. (*Ibid.*)

In addition, Plaintiffs have retained counsel with extensive experience prosecuting complex wage and hour class actions, who have worked diligently to obtain the Settlement on behalf of the Class. (Cordero Decl., ¶¶ 74-77, Ex. 3.) Class Counsel thoroughly investigated the claims raised in this action,

⁶ Plaintiffs will provide declarations detailing the work they performed in bringing and prosecuting this case with their final approval motion.

the underlying case law, the merits of Defendants’ defenses, and meticulously reviewed the information and documents exchanged prior to attending mediation. (*Id.*, ¶¶ 12-18.) Thus, Class Counsel was sufficiently informed prior to engaging in settlement negotiations. (*Ibid.*) Moreover, the Settlement before the Court is the result of arm’s-length, non-collusive, and informed negotiations that were overseen by an experienced mediator, Hon. Eddie C. Sturgeon (Ret.). (*Id.*, ¶¶ 19-20.) Over the course of this litigation, Plaintiffs and Class Counsel have adequately represented the interests of the Class, and will continue to do so.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE

A. The Proposed Settlement Meets The Standards For Preliminary Approval

California Rules of Court, rule 3.769, requires court approval for class action settlements. “Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” (Cal. R. Ct. 3.769(g).) Courts act within their discretion in approving settlements that are fair, non-collusive, and take into account “all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.)

The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the range of reasonableness, and, therefore, whether notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235; *Newberg on Class Actions* (4th Ed.) § 11:25.) Courts have broad powers to determine whether a proposed settlement is fair under the circumstances of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-235; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) In determining whether a settlement meets the standards for preliminary approval, courts must consider several relevant factors, including “the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel” (*Dunk, supra*, 48 Cal.App.4th at 1801.) “The list of factors is not exclusive and the court is free to engage in a balancing and weighing, of the factors depending on the circumstances of each case.”

(*Wershba, supra*, 91 Cal.App.4th at 245.) Furthermore, courts must give “proper deference to the private consensual decision of the parties” because “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

At the preliminary approval stage, the Court need only determine that the settlement falls within the “range of possible judicial approval,” so that notice to the class and the scheduling of the fairness hearing are worthwhile. (See *Newberg, supra*, § 11:25.) Indeed, the Court should grant preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement] appears to fall within the range of possible approval.” (*Manual For Complex Litigation* (Third) § 30.41 (1995); see *Dunk, supra*, 48 Cal.App.4th at p. 1802.) A “presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Dunk, supra*, 48 Cal.App.4th at p. 1802 [citing *Newberg* § 11:41].)

As shown below, the proposed Settlement in this case falls well within the range of possible approval and there are no grounds to doubt its fairness.

1. The Settlement Is The Result Of Serious, Informed, Non-Collusive Negotiations Overseen By An Experienced Mediator

The proposed Settlement was reached as a result of arm’s-length negotiations facilitated by an experienced mediator following significant investigation of the facts and law during, and in preparation for, mediation. (Cordero Decl., ¶¶ 19-20.) The settlement negotiations have been, at all times, adversarial and non-collusive in nature. While Plaintiffs believe in the merits of their case, they also recognize the inherent risks of litigation and understand the benefit of the Class receiving settlement funds immediately as opposed to delaying payment or risking an unfavorable decision on summary adjudication, motion for class certification, at trial or on appeal, all of which have the potential to eliminate any relief for Class Members. (*Id.*, ¶¶ 37-38.)

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2. The Extent Of The Information Provided Through Discovery And The Stage Of The Proceedings Support The Settlement

There is a presumption that a proposed settlement is fair and reasonable when there has been sufficient investigation and discovery to permit counsel and the court to act intelligently, and counsel are experienced in similar litigation. (*Dunk, supra*, 48 Cal.App.4th at 1802.)

Here, the parties thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the Settlement. (Cordero Decl., ¶¶ 12-18.) As described above, the Settlement was reached only after extensive investigation and research, thorough calculations and risk evaluation, substantial written discovery, including special interrogatories, form interrogatories, and requests for production of documents, and a thorough evaluation of timekeeping and payroll data for 15-percent of the Class. (*Ibid.*) Counsel for the parties have investigated the law as applied to the facts regarding the claims asserted and potential defenses thereto. (*Ibid.*)

The proposed Settlement came only after the case was fully investigated by experienced counsel. (Cordero Decl., ¶ 18.) This litigation had undoubtedly reached the stage where the parties had a clear view of the strengths and weaknesses of their cases, sufficient to support the Settlement. (See *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.)

3. Class Counsel Is Highly Experienced In Similar Litigation

Experienced counsel, operating at arm's-length, have weighed the strengths of the case and examined all of the issues and risks of litigation and endorse the proposed settlement. The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve a settlement. (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* (9th Cir. 1981) 661 F.2d 939.)

Throughout this litigation, Class Members have been represented by well-qualified counsel who have years of experience in wage and hour class action litigation. (Cordero Decl., ¶¶ 74-80.) Class Counsel has litigated hundreds of complex class and representative actions, the vast majority of which they served as plaintiffs' counsel. (*Ibid.*) In short, Class Counsel are experienced and qualified to evaluate the class claims, to evaluate the benefits of settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses asserted. (*Ibid.*) Counsel on both sides share the view – endorsed by an

experienced mediator – that this is a fair and reasonable settlement in light of the complexities of the case, the state of the law and uncertainties of litigation and trial, and the benefit the Settlement confers on the Class. Given the risks inherent in litigation, in class certification proceedings, and in the defenses asserted, this Settlement is fair, adequate, and reasonable and in the best interests of the Class. (*Id.*, ¶ 80.)

4. The Settlement Is Fair And Reasonable Based On The Strengths Of Plaintiffs’ Case And The Risks And Costs Of Further Litigation

Plaintiffs and their counsel have concluded that it was reasonable to enter into the proposed Settlement. (Cordero Decl., ¶ 52.) Defendants contested, and continue to contest, liability for the claims asserted in this action. (Settlement Agreement, § 12.1.) Although Defendants do not believe that Plaintiffs would succeed on the merits of their claims, the company nonetheless agreed to resolve this action through settlement to avoid the expense, delay, and uncertainty of protracted litigation. (*Ibid.*)

There are significant legal uncertainties associated with cases such as this, as they can be factually complex and require protracted litigation to resolve. (Cordero Decl., ¶¶ 46-52.) A settlement is not judged solely against what might have been recovered had the plaintiffs prevailed at trial, nor does the settlement have to provide 100 percent of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242; *Wershba, supra*, 91 Cal.App.4th at pp. 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139.) Instead, “[c]ompromise is inherent and necessary in the settlement process . . . even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” (*Wershba, supra*, 91 Cal.App.4th at p. 250.)

Based on information obtained through formal and informal discovery, Class Counsel were able to assess the strengths and weaknesses of the claims and the benefits of an early settlement. (Cordero Decl., ¶¶ 37-39.) As a result, Class Counsel believes that the Settlement before the Court represents a very favorable resolution for the Class. (*Id.*, ¶ 39.)

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1 **5. The Proposed Settlement Is A Reasonable Compromise Of Claims**

2 a. *The Settlement Provides Relief to Class Members in Light of the Significant*
3 *Risks and Expense of Further Litigation*

4 To evaluate a settlement, the trial court must receive “basic information about the nature and
5 magnitude of the claims in question and the basis for concluding that the consideration being paid for the
6 release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
7 168 Cal.App.4th 116, 133.) The record need not contain an explicit statement of the maximum theoretical
8 recovery, but rather evidence sufficient to allow “an understanding of the amount that is in controversy
9 and the realistic ranges of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los*
10 *Angeles* (2010) 186 Cal.App.4th 399, 409 [citing *Kullar, supra*, 168 Cal.App.4th at p. 120].)

11 Here, the Settlement results in a significant benefit to Class Members and the Gross Settlement
12 Amount of \$650,000 is a good result by any measure. (Cordero Decl., ¶ 80.) In reaching this Settlement,
13 Class Counsel carefully considered the strength of the case versus the amount offered in settlement; the
14 risk, expense, complexity, and likely duration of further litigation and maintaining class certification
15 through trial; the present state of the law as it applies to wage and hour class actions; and the burdens of
16 proof necessary to establish liability against Defendants. (*Id.*, ¶¶ 46-52.)

17 Although Plaintiffs maintain that all claims are meritorious and believe they would have prevailed
18 had they taken their case to trial, they also acknowledge that Defendants have legitimate defenses to
19 liability, class certification, and manageability. (Cordero Decl., ¶¶ 48-50.) Defendants have consistently
20 denied all material allegations in the complaint, that they violated any applicable laws, that they are liable
21 for damages, penalties, interest, restitution, attorneys’ fees, or for any other remedy on account of the
22 claims asserted, and that class certification or representative treatment is appropriate as to any claim. (*Id.*,
23 ¶ 37; see also Settlement Agreement, § 12.1.) Such considerations pose a substantial obstacle for Plaintiffs
24 to maintain their claims, as well as establishing the full amount of Plaintiffs’ estimated damages and civil
25 penalties for such claims at trial. (Cordero Decl., ¶¶ 37-39.)

26 Under the terms of the Settlement, each Class Member will be entitled to receive a pro rata portion
27 of the Net Settlement Amount available for distribution based upon his or her respective number of
28 workweeks and pay periods worked during the Class Period and PAGA Period. (Settlement Agreement,

§§ 3.2.4., 3.2.5.1.) This means that Class Members who worked more pay periods during the Class Period will receive a larger portion of the Settlement. (Cordero Decl., ¶ 49.) All Class Members are therefore treated equitably and fairly, and no Class Member is granted improper preferential treatment, as distribution of the Net Settlement Amount takes into consideration the length of employment for each Class Member and the respective number of violations he or she presumably would have suffered during the Class Period. (*Ibid.*)

b. *The Amount Offered in Settlement Given the Estimated Value of the Claims
Favors Preliminary Approval of the Settlement*

As set forth in the accompanying Declaration of Vilmarie Cordero, Class Counsel estimated Defendants' maximum-possible exposure to be \$3,941,554.97,⁷ with a maximum of \$3,583,144.97 being available to Class Members. (Cordero Decl., ¶ 25.) This estimate assumed that class certification would be granted, and that Plaintiffs would prevail on all claims at trial, as well as recover the full amount of the estimated damages and the maximum amount of civil penalties under PAGA. (*Ibid.*) It also assumes PAGA penalties can be stacked – a question unsettled by California courts. (*Ibid.*) Accordingly, the estimated value of the class claims is premised on a likely inflated “everything goes right” scenario. (*Ibid.*)

With approximately 210 Class Members holding various positions over the course of more than four years, class certification is by no means a certainty. (Cordero Decl., ¶ 26.) As such, for purposes of settlement, Class Counsel assumes a 50 percent discount on the merits to account for the possibility that Plaintiffs will not prevail on all claims and the potential for a reduction in any PAGA penalties awarded. (*Ibid.*) Accordingly, Class Counsel believes a more realistic valuation of the claims in this case after incorporating discounts is \$1,970,777.48. (*Ibid.*)

While the \$650,000 Gross Settlement Amount represents a significant discount on Plaintiffs' estimate of Defendants' potential exposure in this matter, the reduction represents an extremely reasonable compromise considering the substantial risks that Plaintiffs and Class Members faced in this litigation. (Cordero Decl., ¶ 37.) As explained above, Defendants have legitimate defenses to class certification, manageability, and the merits of the underlying claims. (*Ibid.*) In negotiating the Settlement before the

⁷ This equates to \$3,445,294.97 for the class claims and \$551,400 for PAGA civil penalties. (Cordero Decl., ¶¶ 35-36.)

1 Court, Class Counsel considered the likelihood of obtaining and maintaining class certification of
2 Plaintiff's claims through trial, and obtaining 100-percent of the damages sought. (*Id.*, ¶ 38.) Moreover,
3 Plaintiffs considered the risk that the Court may deny class certification or reverse a favorable ruling on
4 the merits on appeal – risks that are obviated by the Settlement. (*Ibid.*) In addition, continued litigation
5 would likely be extremely expensive, reducing and substantially delaying any recovery by Class Members.
6 (*Id.*, ¶¶ 39, 46-48.) In contrast, the proposed Settlement will guarantee that Class Members receive timely
7 relief and avoid the risk of an unfavorable judgment. (*Id.*, ¶ 49.)

8 Finally, as it relates to the imposition of any penalties under PAGA, there was a very real risk that
9 the Court would exercise its discretion and reduce the award if it was determined to be unjust, arbitrary,
10 or confiscatory. (Cordero Decl., ¶ 36.) This is particularly true because throughout the Class and PAGA
11 Periods, Defendants maintained facially lawful written policies regarding many of the claims asserted.
12 (*Id.*, ¶ 37.) Given the risk and uncertainty of further litigation, the proposed Settlement is an extremely
13 fair and reasonable compromise of highly disputed claims.

14 **B. The PAGA Settlement Should Be Approved**

15 Where a settlement includes a good faith amount for PAGA penalties and “there is no indication
16 that this amount was the result of self-interest at the expense of other” class members, such amounts are
17 generally considered reasonable. (*Hopson v. Hanesbrands, Inc.* (N.D. Cal. Apr. 3, 2009) 2009 WL 928133
18 at *1, *9.) Courts routinely approve settlements where only a small portion of the gross settlement amount
19 is allocated to PAGA penalties. (See *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576
20 [approving a settlement where no portion was allocated to PAGA penalties; *Jack v. Hartford Fire Ins. Co.*
21 (S.D. Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v.*
22 *Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts
23 approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here, the
24 parties negotiated a good faith settlement of PAGA Penalties in the amount of \$20,000, 75% of which
25 (\$15,000) will be paid to the LWDA, with the remaining 25% (\$5,000) to be distributed to Aggrieved
26 Employees. (Settlement Agreement, § 3.2.5.) The \$20,000 allocated to PAGA Penalties equates to
27 approximately 3-percent of the Gross Settlement Amount, which is in line with amounts that are routinely
28 approved by courts in this state. Therefore, the settlement of the claim for penalties under PAGA is

1 reasonable because it was negotiated in good faith and was not the result of self-interest at the expense of
2 any Class Member. (Cordero Decl., ¶ 36.)

3 Had a higher amount been allocated to the PAGA claim, the burden to pay civil penalties would
4 have effectively shifted to the Aggrieved Employees as it would reduce the amount that they ultimately
5 receive under the Settlement. Although this burden shifting may achieve the enforcement objective of the
6 PAGA statute, it would do so at the expense of the very employees the statute was designed to protect.
7 The Settlement has been submitted to the LWDA as required under Labor Code section 2699(1)(2).
8 (Cordero Decl., ¶ 5, Ex. 2.) Accordingly, the proposed \$20,000 allocation to PAGA Penalties strikes a
9 balance between the interest of all parties, including the LWDA and the general public, by penalizing the
10 employer and providing relief to the Aggrieved Employees. As such, Plaintiffs respectfully request that
11 the Court approve the allocation of \$20,000 to PAGA Penalties.

12 **C. The Requested Class Representative Service Payment Is Fair And Reasonable**

13 Courts routinely approve class representative payments to compensate named plaintiffs for the
14 services they provide and the risks they incur during the course of class litigation. (See *Bell v. Farmers*
15 *Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 [upholding service payments to plaintiffs for their efforts in
16 bringing a class case]; *Manual for Complex Litigation* (Fourth) (2004) § 21.62 n. 971 [noting that service
17 awards are warranted].) In approving such payments, California courts frequently approve awards of
18 \$10,000 or more. (*In re Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-1395
19 [upholding \$10,000 service award to each of four class representatives]; *West v. Circle K Stores, Inc.* (E.D.
20 Cal. Oct. 19, 2006) 2006 U.S. Dist. LEXIS 76558, *28 [“the court finds plaintiffs’ enhancement payments
21 of \$ 15,000 each to be reasonable”]; *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) 2007 U.S. Dist.
22 LEXIS 8476, *52 [finding “requested payment of \$ 25,000 to each of the named plaintiffs is appropriate”
23 in wage and hour settlement].) The factors courts use in determining the amount of an award include: (1)
24 a comparison between the service awards and the range of monetary recovery available to the class; (2)
25 time and effort put into the litigation; (3) whether the litigation will further the public policy underlying
26 the statutory scheme; and (4) the risk of retaliation. (*Clark v. American Residential Services, LLC* (2009)
27 175 Cal.App.4th 608, 804.)

28 By being the named class representatives in this action, Plaintiffs put their names on the public

record at the risk of potential employers choosing not to hire them. (Cordero Decl., ¶ 55.) Plaintiffs also ran the risk of being liable for Defendants’ attorneys’ fees and costs as a result of the fee shifting provisions of the Labor Code. (See, e.g., Labor Code § 218.5.) Over the course of this litigation, Plaintiffs spent a significant amount of time reviewing documents, communicating with counsel, responding to written discovery, assisting with the preparation of the complaint, amended complaint and motion for class certification, and helping Class Counsel prepare for mediation. (Cordero Decl., ¶ 54.) Plaintiffs also appeared for full-day depositions. (*Ibid.*) As part of the proposed Settlement, Plaintiffs have agreed to a general release of any and all claims to the furthest extent permitted by law. (*Id.*, ¶ 56; Settlement Agreement, § 5.3.) The proposed Class Representative Service Award in the amount of \$10,000 each to Plaintiffs is fair and reasonable given the risk they took and the work they bore for the benefit of the Class. (Cordero Decl., ¶ 57.)

D. The Requested Class Counsel’s Fees And Expenses Are Fair And Reasonable

The California Supreme Court has unanimously held “that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.” (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503.) The Court further held that although trial courts have discretion to use a lodestar multiplier cross-check or to forego a lodestar multiplier cross-check if some other means to evaluate the reasonableness of a requested fee percentage exists, “the percentage method is a valuable tool that should not be denied our trial court.” (*Id.* at pp. 503-506.) California courts have awarded common fund fees calculated using a percentage-of-fund method that is not dependent on counsel’s lodestar amount. (Pearl, *California Attorney Fee Awards* (CEB 3d Ed. 2010) § 5.19 [citing *In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512]; *Bell, supra*, 115 Cal.App.4th at p. 726; *Apple Computer, Inc. v. Superior Ct.* (2005) 126 Cal.App.4th 1253, 1270.)

Here, the Settlement provides that Class Counsel may seek Attorneys’ Fees of up to \$227,500 (35-percent of the Gross Settlement Amount), in addition to reimbursement for actual litigation expenses in an amount not to exceed \$16,000. (Settlement Agreement, § 3.2.2.) As demonstrated in the Declaration of Vilmarie Cordero, Class Counsel performed a significant amount of work litigating this action,

1 including performing extensive legal and factual research, which counsel used to measure the relative
2 strengths and weaknesses of Plaintiffs' claims to better identify an appropriate range of settlement figures.
3 (Cordero Decl., ¶ 59.) Class Counsel committed, and continues to commit, significant financial and
4 staffing resources to this case, diverted many of their resources in order to contend with Defendants'
5 vigorous defense, and undertook this action on a contingency basis, thereby bearing all the costs of this
6 complex, risky, and time-consuming litigation. (*Id.*, ¶¶ 59, 62.) The requested Class Counsel's Fees and
7 Expenses payments are fair and reasonable, and should be preliminarily approved.

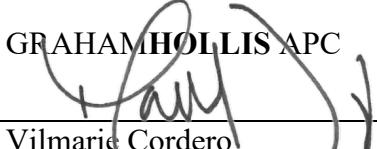
8 **V. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING**

9 The final step in the settlement approval process is a final approval hearing, at which time the
10 Court may hear all evidence and arguments necessary to conclusively evaluate the proposed Settlement.
11 Should the Court grant Plaintiffs' motion for preliminary approval, Plaintiffs request that a hearing on the
12 issues of final approval of the Settlement, approval of the Class Representative Service Awards to
13 Plaintiffs, approval of Class Counsel's Fees and Expenses, and approval of the Administration Expenses
14 Payment be scheduled approximately 120 days after preliminary approval.

15 **VI. CONCLUSION**

16 Plaintiffs respectfully request that this Court enter an Order: (1) provisionally certifying the
17 proposed Class and Subclass under Code of Civil Procedure section 382 and California Rule of Court
18 3.769(c) for settlement purposes only; (2) preliminarily approving the Settlement; (3) approving as to form
19 the Notice of Class Action Settlement and ordering that the Notice of Class Action Settlement be
20 distributed to all Class Members; (4) appointing Plaintiffs Ramon Gomez and Brock Loucks as the Class
21 Representatives; (5) appointing Apex Class Action Administration as the Administrator; (6) appointing
22 GrahamHollis APC as Class Counsel; and (7) setting this matter for a hearing on the issues of final
23 approval of the proposed Settlement, approval of the Class Representative Service Awards, approval of
24 Class Counsel's Fees and Expenses, and approval of the Administration Expenses Payment.

25 Dated: June 5, 2025

26 By: 
27 Vilmarie Cordero
28 Dawn M. Berry
Attorneys for Plaintiffs Ramon Gomez
and Brock Loucks