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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ANGEL GARCIA, individually, and on behalf of
other members of the public similarly situated;

Plaintiff,

vs.

J&B INVESTMENTS, INC. dba J&B
MATERIALS, INC., a California corporation;
PACIFIC GYPSUM SUPPLY, INC., a Georgia
Corporation; GYPSUM MANAGEMENT AND
SUPPLY, INC., a Georgia Corporation; and
DOES 1 through 25, inclusive.

Defendants.

Case No. CIVSB2208601
Honorable Joseph T. Ortiz
Department 17

**PLAINTIFFS' AMENDED UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION,
REPRESENTATIVE ACTION AND
COLLECTIVE ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: March 21, 2023
Time: 1:30 p.m.
Dept.: S-17

Complaint Filed: April 25, 2022
Trial Date: Not Set

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on March 21, 2023 at 1:30 p.m. in Department 17 of the above-captioned Court located at 247 West 3rd Street, San Bernardino, California 92415, pursuant to California Code of Civil Procedure section 382, Rule 3.769 of the California Rules of Court, and California Labor Code section 2699(l), Plaintiffs Angel Garcia, Christian Melendez, Jack Mahan, Athena Neri, and Eduardo Lopez Lopez (“Plaintiffs”) will and hereby do move the Court for an Order granting preliminary approval of the class action, representative action, and collective action settlement between Plaintiffs and Defendants J&B Investments, Inc. d/b/a J&B Materials, Inc., Pacific Gypsum Supply, Inc., Gypsum Management and Supply, Inc. (“Defendants”).

Plaintiffs request that the Court enter an Order:

1. Preliminarily approving the Joint Stipulation and Settlement Agreement of Class Action and Representative Action Claims (“Settlement” or “Settlement Agreement”) attached as Exhibit A to the Declaration of Jonathan M. Genish (“Genish Decl.”) in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement;

3. Certifying the Class for Settlement purposes only;

4. Appointing Plaintiffs Angel Garcia, Christian Melendez, Jack Mahan, Athena Neri, and Eduardo Lopez Lopez as the Class Representatives for Settlement purposes;

5. Appointing Jonathan M. Genish of Blackstone Law, APC, Jordan Esensten of Esensten Law, Ian Silvers of Bisnar | Chase, and Joseph Lavi of Lavi & Ebrahmanian, LLP, as Class Counsel for Settlement purposes;

6. Approving the proposed Notice of Class Action Settlement attached as Exhibit 1 to the Settlement Agreement (“Class Notice”) to be mailed to the Class;

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

8. For each Class Member, directing Defendants to furnish their full names, last known home addresses, last known telephone numbers, social security numbers, start and end dates of employment, total workweeks worked during the Class Period, total workweeks worked during the PAGA Period, and any other information the Settlement Administrator may reasonably need to

1 administer this Settlement, to the Settlement Administrator within thirty (30) calendar days after the
2 Court grants preliminary approval of the Settlement;

3 9. Approving the proposed deadlines for the settlement administration process; and

4 10. Setting a Final Approval Hearing.

5 Pursuant to California Labor Code section 2699(1)(2) and concurrently with the filing of this
6 motion, a copy of the proposed Settlement, as well as information regarding the preliminary approval
7 hearing on this matter, were submitted to the California Labor and Workforce Development Agency
8 (“LWDA”) via online submission through the LWDA’s website. (Genish Decl. ¶ 48).

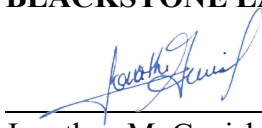
9 This motion is based upon this notice, the attached memorandum of points and authorities, the
10 Declarations of Jonathan M. Genish, Jordan Esensten, Ian Silvers, and Melissa Huether in Support of
11 Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement, the Declarations
12 of Angel Garcia, Christian Melendez, Jack Mahan, Athena Neri, and Eduardo Lopez Lopez in Support
13 of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement, the pleadings
14 and other records on file with the Court in this matter, and any other further evidence or argument that
15 the Court may properly receive at or before the hearing.

16 Respectfully submitted,

17 Dated: February 27, 2023

BLACKSTONE LAW, APC

18
19 By:


Jonathan M. Genish
Miriam L. Schimmel
Attorneys for Plaintiff ANGEL GARCIA

21 Dated: February 27, 2023

ESENSTEN LAW

23 By:

/s/ Jordan S. Esensten
Jordan S. Esensten
Attorneys for Plaintiffs CHRISTIAN
MELENDEZ, JACK MAHAN and ATHENA
NERI

27 [SIGNATURES CONTINUE ON NEXT PAGE]

1 Dated: February 27, 2023

BISNAR | CHASE LLP

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3 By: /s/ Ian Silvers
4 Ian Silvers
Attorneys for Plaintiffs JACK MAHAN and
ATHENA NERI

5 Dated: February 27, 2023

LAVI & EBRAHAMIAN, LLP

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Attorneys for Plaintiff EDUARDO LOPEZ
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10 Dated: February 27, 2023

LAW OFFICES OF SAHAG MAJARIAN II

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12 By: /s/ Sahag Majarian II
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14 Attorneys for Plaintiff EDUARDO LOPEZ
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Angel Garcia, Christian Melendez, Jack Mahan, Athena Neri, and Eduardo Lopez Lopez (“Plaintiffs”) seek preliminary approval of the Joint Stipulation and Settlement Agreement of Class Action and Representative Action¹ (“Settlement” or “Settlement Agreement”) entered into on behalf of all current and former hourly-paid, non-exempt employees employed by Defendants J&B Investments, Inc. d/b/a J&B Materials, Inc., Pacific Gypsum Supply, Inc., Gypsum Management and Supply, Inc. (“Defendants”) in the State of California at any time during the Class Period. (Declaration of Jonathan M. Genish in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement [“Genish Decl.”], Exh. A). The Settlement terms are outlined as follows:

- Class Size: Approximately 621 individuals.
- Estimated Aggregate Workweeks in Class Period: 55,259
- Gross Settlement Amount: One Million Seven Hundred Fifty Thousand Dollars and Zero Cents (\$1,750,000.00), exclusive of employer-side payroll taxes.
- Settlement Administration Costs: Not to exceed Eleven Thousand Five Hundred Dollars and Zero Cents (\$11,500.00).
- Class Representative Enhancement Awards totalling Twenty Seven Thousand Five Hundred Dollars and Zero Cents (\$27,500.00) to be divided among the Plaintiffs as follows: \$7,500.00 to Christian Melendez; \$5,000 to Athena Neri; \$5,000.00 to Jack Mahan; \$5,000.00 to Angel Garcia; \$5,000.00 to Eduardo Lopez Lopez.
- PAGA Penalties: Two Hundred Thousand Dollars and Zero Cents (\$200,000.00), 75% of which will be paid to the California Labor and Workforce Development Agency (“LWDA”) and the remaining 25% to be paid to the PAGA Members.

¹ Pursuant to the Parties’ settlement agreement, Plaintiff Garcia filed a First Amended Complaint (“FAC”) on June 3, 2022, adding a cause of action under the Fair Labor Standards Act (“FLSA”) and a cause of action pursuant to the Labor Code Private Attorneys General Act of 2004, Cal. Labor Code §§ 2698, *et seq.* (“PAGA”) See Section II below. Further to the settlement agreement, Plaintiffs filed a Joint Stipulation to Permit Filing of Second Amended Complaint (“SAC”) on February 23, 2023. Once leave is granted, the SAC which adds all Plaintiffs and claims to this action will be filed and become the operative complaint.

- Requested Attorneys' Fees and Costs: Attorneys' fees of Five Hundred Eighty-Three Thousand Two Hundred Seventy-Five Dollars and Zero Cents (\$583,333.33) (one-third of the Gross Settlement Amount) plus litigation costs and expenses not to exceed Ninety-Five Thousand Dollars and Zero Cents (\$95,000).
- Estimated Net Settlement Amount: The estimated Net Settlement Amount of Eight Hundred Thirty-Two Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$832,666.67) to be distributed to Settlement Class Members.
- Average Estimated Individual Settlement Payment, including the 25% of the PAGA Penalties allocated for PAGA Members: \$1,340.85.

As set forth herein, the Settlement is the product of informed discovery, arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiffs therefore respectfully request that the Court grant preliminary approval of the proposed Settlement, conditionally certify the Class, approve the proposed Class Notice, and set a hearing date for final settlement approval, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants J&B Investments, Inc. d/b/a J&B Materials Inc. and Pacific Gypsum Supply, Inc. are subsidiaries of Gypsum Management and Supply, Inc. Defendants are a supplier of construction materials to both commercial and residential customers. Defendants represent that they offer the largest inventory of construction supplies in California, with seven locations in the state, and hold themselves out as the largest nationwide distributor of drywall products in the United States.

Plaintiff Garcia worked for Defendants as a non-exempt, hourly-paid Drywall Stocker and Driver at its Paramount, California location from approximately August 5, 2019 to September 29, 2021. (Declaration of Angel Garcia in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ["Garcia Decl."] ¶ 3).

Plaintiff Christian Melendez was employed by Defendants as a non-exempt, hourly paid employee from approximately July 2013 to June 2018. (Declaration of Christian Melendez in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ["Melendez Decl."].) Plaintiff Melendez filed his class action complaint against Defendants in the Riverside

County Superior Court, Case No. RIC 1806564, on April 5, 2018. Plaintiff Melendez amended his class action complaint with his operative First Amended Complaint being filed on December 20, 2018.

Plaintiff Jack Mahan was employed by Defendants as a non-exempt, hourly-paid employee from approximately March 2018 to approximately December 2018. (Declaration of Jack Mahan in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ["Mahan Decl."] ¶ 3.) Plaintiff Athena Neri was employed by Defendants as a non-exempt, hourly-paid employee from approximately March 2014 to approximately July 2017. (Declaration of Athena Neri in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ["Neri Decl."] ¶ 3.) Together, Plaintiffs Mahan and Neri filed a class action complaint against Defendants in the San Bernardino County Superior Court, Case No. CIV SB2113372, on May 7, 2021. Plaintiffs Mahan and Neri amended their class action complaint twice thereafter, with the operative Second Amended complaint being filed on November 29, 2021.

Plaintiff Eduard Lopez Lopez was employed by Defendants as a non-exempt, hourly-paid employee from approximately October 2016 to approximately June 2018. (Declaration of Eduardo Lopez Lopez in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ["Lopez Lopez Decl."] ¶ 3.) Plaintiff Lopez Lopez filed a class action complaint against Defendants in the Contra Costa County Superior Court, Case No. C18-02320, on November 19, 2018 and a separate representative action pursuant to the Private Attorneys' General Act on May 13, 2019.

On April 25, 2022, Plaintiff Garcia filed a Class Action Complaint ("Complaint") alleging the following causes of action: (1) Failure to Pay Overtime Wages; (2) Failure to pay Minimum Wages; (3) Failure to Pay Prevailing Wage; (4) Failure to Pay Vacation Wages; (5) Failure to Provide Meal Periods (or pay premiums in lieu thereof); (6) Failure to Provide Rest Periods (or pay premiums in lieu thereof); (7) Failure to Provide Accurate Itemized Wage Statements; (8) Failure to Maintain Requisite Payroll Records; (9) Failure to Timely Pay Wages During Employment; (10) Failure to Timely Pay Wages Upon Termination; (11) Failure to Reimburse Business Expenses; and (12) Violation of Business and Professions Code §§ 17200, et seq. (Genish Decl. ¶ 9). On April 25, 2022, Plaintiff Garcia provided notice to the LWDA and to Defendants of his intent to seek civil penalties pursuant to the Private Attorneys General Act, Labor Code section 2698, et seq. ("PAGA"). (Genish

Decl. ¶ 9).

Plaintiff Garcia met and conferred with Defendants regarding the potential resolution of this action by means of a private mediation and agreed to exchange informal discovery as part of that process. (Genish Decl., ¶ 10). Pursuant to the Parties' decision to mediate, Defendants produced the Class Members' time and pay records, as well as information and documents concerning the claims set forth in this action, such as Defendants' employee handbook(s), relevant wage and hour policies, information regarding the number of putative class members, the number of current versus former employees, the total workweeks worked by the Class, the dates of employment of the Class Members, the rates of pay for each Class Member, and the number of Class Members who had executed arbitration agreements and settlement agreements. (Genish Decl. ¶ 11).

After a thorough investigation and analysis of these documents and data, on May 4, 2022, the parties attended a formal mediation with Tripper Ortman, Esq., a neutral and respected mediator with extensive experience in complex wage and hour matters. (Genish Decl., ¶ 12). At the mediation, the Parties engaged in intensive settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims. (Genish Decl., ¶ 13). After a full day of mediation, and with the help of the mediator, the Parties were able to reach an agreement to resolve this dispute on a class and representative basis, and shortly thereafter executed a memorandum of understanding memorializing the key settlement terms. (Genish Decl. ¶ 13). Following mediation, Plaintiff Garcia and Defendants worked diligently to negotiate and memorialize the terms in a long form settlement agreement. (Genish Decl. ¶ 14). As of June 2, 2022, after multiple discussions and revisions to the agreement, the Settlement Agreement was fully executed. (Genish Decl. ¶ 14, **Exhibit A** thereto).

Pursuant to the Parties' Settlement Agreement, Plaintiff Garcia filed a First Amended Complaint ("FAC") on June 3, 2022, adding a cause of action under the FLSA and a cause of action pursuant to PAGA.) (Genish Decl. ¶ 14).

Subsequent thereto, counsel for Plaintiff Garcia reached an agreement with counsel for Plaintiffs Melendez, Mahan, Neri and Lopez Lopez to resolve all class and PAGA claims in their cases as part of the Class and PAGA settlement already reached at the mediation between Garcia and

Defendants. (Genish Decl. ¶ 15). In accordance with the global settlement reached, Plaintiff Garcia filed a Joint Stipulation to Permit Filing of Second Amended Complaint (“SAC”) on February 23, 2023. Once leave is granted, the SAC which adds all Plaintiffs and claims to this action will be filed and become the operative complaint. (Genish Decl. ¶ 15).

Plaintiffs now seek preliminary approval of the proposed settlement, which will resolve all class, representative and collective claims alleged in the SAC.

In accordance with Labor Code sections 2699 et. seq., Plaintiffs’ counsel provided notice of the proposed settlement to the LWDA concurrently with the filing of this motion via online submission through the LWDA’s website. (Genish Decl. ¶ 49).

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, hourly-paid employees of Defendants employed in California at any time during the Class Period.” (“Class Members” or “Class”). (Genish Decl. ¶ 16; Settlement Agreement, ¶ 3). The Class Period and release of claims period both begin on April 5, 2014 and end on the date of Preliminary Approval of the Class Settlement. (Genish Decl. ¶ 16; Settlement Agreement, ¶ 4). It is estimated that there are 621 Class Members. (Genish Decl. ¶ 16).

B. Amount of Settlement

The parties have agreed to settle the Class and PAGA claims at issue in the SAC for a non-reversionary Gross Settlement Amount of One Million Seven Hundred Fifty Thousand Dollars and Zero Cents (\$1,750,000.00), exclusive of employer-side payroll taxes. (Genish Decl. ¶ 17; Settlement Agreement ¶ 26, 39).

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. As stated above, the Gross Settlement Amount includes: (1) Class Counsel’s fees in the amount of one-third of the Gross Settlement Amount, equaling Five Hundred Eighty-Three Thousand Two Hundred Seventy-Five Dollars and Zero Cents (\$583,275.00); (2) Class Counsel’s actual litigation costs, not to exceed Ninety-Five Thousand Dollars (\$95,000); (3)

1 Settlement Administration Costs, capped at Eleven Thousand Five Hundred Dollars and Zero Cents
2 (\$11,500.00); (4) Class Representative Incentive Payments to Plaintiffs in the aggregate amount of
3 Twenty Seven Thousand Five Hundred Dollars and Zero Cents (\$27,500.00); and (5) PAGA Penalties
4 of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00). (Genish Decl. ¶ 17; Settlement
5 Agreement ¶¶ 26, 39, 43, 45-47). After the above-estimated amounts are deducted from the Gross
6 Settlement Amount, approximately 621 Class Members will share in a Net Settlement Amount of
7 approximately Eight Hundred Thirty-Two Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven
8 Cents (\$832,666.67) (Genish Decl. ¶ 17).

9 The Net Settlement Amount will be distributed and paid to Settlement Class Members on a
10 pro-rata basis based on the number of workweeks worked during the Class Period. (Genish Decl. ¶ 18;
11 Settlement Agreement ¶ 42(a)-(f)). This will provide Settlement Class Members with an average
12 estimated payment of \$1,340.85. (Genish Decl. ¶ 18). The actual payments to Settlement Class
13 Members will vary based on the actual weeks worked by Settlement Class Members and shall be
14 confirmed by the Settlement Administrator in advance of the final approval hearing. (Genish Decl. ¶
15 18). Additionally, employees who worked during the PAGA Period shall receive a share of the 25%
16 portion of the PAGA Penalties designated for distribution to PAGA Members. (Genish Decl., ¶ 19,
17 Settlement Agreement ¶ 18, 20, 43). These payments will be distributed on a pro rata basis based on
18 the number of pay periods worked during the PAGA Period. (Genish Decl. ¶ 19; Settlement Agreement
19 ¶ 43.)

20 Payments to Settlement Class Members will be allocated as 20% wages, 40% interest, and 40%
21 penalties. (Genish Decl. ¶ 20; Settlement Agreement ¶ 43(d)). The employee share of any applicable
22 payroll taxes on wages will be deducted from the wage portion of each Settlement Class Member's
23 Individual Settlement Payment. (Genish Decl. ¶ 20; Settlement Agreement ¶ 42). Employer-side
24 payroll taxes shall be paid by Defendants separately from and in addition to the Gross Settlement
25 Amount. (Genish Decl. ¶ 20; Settlement Agreement ¶¶ 26, 39).

26 The Settlement Agreement is a non-reversionary and non-claims made settlement. (Genish
27 Decl. ¶ 21; Settlement Agreement ¶ 39). All money from the Net Settlement Amount will be
28 distributed to Settlement Class Members. (Genish Decl. ¶ 21; Settlement Agreement ¶ 39, 42). No
money will revert to Defendants. (Genish Decl. ¶ 21; Settlement Agreement ¶¶ 39, 42). Any Individual

1 Settlement Payment checks remaining uncashed after 180 days will be transferred to the California
2 State Controller's Office and held in trust for such Settlement Class Members and PAGA Members.
3 (Genish Decl. ¶ 22; Settlement Agreement, ¶ 42(f)). As such, no "unpaid residue" under California
4 Code of Civil Procedure section 384 will result from the Settlement. (Genish Decl. ¶ 22; Settlement
5 Agreement ¶ 42(f)).

6 **D. Release of Wage and Hour Claims**

7 In exchange for participating in the settlement, Settlement Class Members will release their
8 wage and hour claims against Defendants, and the release given by Settlement Class Members is
9 properly and narrowly tailored to release only claims pleaded in the SAC or which could have been
10 alleged based upon the facts, allegations and/or claims pleaded in the SAC during the Class Period.
11 (Genish Decl. ¶ 23; Settlement Agreement ¶¶ 62, 63).

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

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

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

24 The initial evaluation of the settlement at the preliminary approval step "is not a fairness
25 hearing." *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir.
26 1980). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only
27 whether the proposed settlement is within the range of possible approval and, as a result, "whether
28

1 there is any reason to notify the class members of the proposed settlement and to proceed with a
2 fairness hearing.” A presumption of fairness exists where: (1) the settlement is reached through arm’s
3 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
4 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
5 small. *See In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006).

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

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

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

15 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
16 reached through arm’s-length bargaining.” *Wershba*, 91 Cal. App. 4th at 245; *see also Clark v. Am.*
17 *Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009). Here, the Parties’ settlement negotiations
18 were at all times made at arm’s-length and were adversarial. (Genish Decl., ¶ 24). The Settlement
19 was reached following a full day of mediation with a highly respected mediator with substantial
20 experience mediating wage and hour cases. (Genish Decl., ¶ 24). Moreover, Plaintiffs engaged in
21 additional negotiations in order to finalize the long-form global settlement agreement presently before
22 the Court. (Genish Decl., ¶ 24). At all times, Plaintiffs were willing and prepared to litigate this matter
23 through class certification and trial if the Parties had been unable to reach a favorable resolution.
24 (Genish Decl. ¶ 24).

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

26 Courts typically assess the status of discovery in determining whether a class action settlement
27 agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. As discussed above, the
28 Parties engaged in extensive informal discovery prior to reaching a settlement at the mediation. Prior

1 to mediation, Defendants produced the Class Members' time and pay records, Defendants' employee
2 handbooks and relevant wage and hour policies and procedures; information regarding the number of
3 putative class members; the total workweeks and pay periods worked by the Class Members; the
4 number of Class Members who executed arbitration agreements and settlement agreement; and the
5 rates of pay for each Class Member. (Genish Decl., ¶ 25). This allowed Plaintiffs' counsel to conduct
6 an informed assessment and analysis of the strengths and weaknesses of the claims and the potential
7 class-wide damages. (Genish Decl., ¶ 25). The Parties extensively briefed issues regarding class
8 certification and liability and provided their analyses to the mediator who helped the Parties debate
9 the strengths and weakness of their respective positions. (Genish Decl. ¶ 26). Additionally, settlement
10 negotiations were conducted by highly capable and experienced counsel. Class Counsel are respected
11 members of the bar with strong records of vigorous and effective advocacy and are experienced in
12 handling complex wage and hour class action litigation. (Genish Decl., ¶¶ 2-6; Declaration of Jordan
13 Esensten ["Esensten Decl."], ¶¶ 3-8, Declaration of Melissa Huether ["Huether Decl."], ¶¶ 6-8;
14 Declaration of Ian Silvers ["Silvers Decl."], ¶¶ 3-7). Accordingly, Class Counsel had sufficient
15 information and experience to act intelligently in negotiating the Settlement.

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

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

26 Here, the reasonableness of the Settlement is underscored by the fact that Defendants have
27 legal and factual grounds for defending the action. Based upon Class Counsel's experience litigating
28 similar complex matters, Plaintiffs reasonably expected a vigorous and lengthy defense to both class

1 certification and the merits of the action absent a settlement. (Genish Decl. ¶¶ 28-40; Esensten Decl.,
2 ¶¶ 3-8, Huether Decl., ¶10; Silvers Decl., ¶¶ 3-7).

3 **1. Class Counsel's Analysis of the Maximum Available Liability and Damages**

4 Prior to mediation, Class Counsel analyzed the time and payroll records provided by
5 Defendants and other relevant documents and discovery. (Genish Decl., ¶ 25). Based on the data and
6 documents provided, Class Counsel estimated with respect to the class claims, with all claims
7 adjudicated in favor of the Class, that Defendants faced a maximum potential liability of
8 approximately \$16,621,564.88. (Genish Decl., ¶ 27). This estimate is based off an estimated maximum
9 liability for all claims at issue and the total aggregate workweeks during the Class Period, based on
10 the analysis of the sampled data as follows: \$2,834,272.79 for meal period violations, \$5,307,626.95
11 for rest period violations, \$4,777,693.14 for unpaid overtime wages, waiting time penalties of
12 \$1,982,472.00, and wage statement penalties of \$1,719,500.00. (Genish Decl. ¶ 27). Plaintiffs further
13 estimated that Defendants faced an additional exposure of \$1,743,200.00 in potential, non-stacked
14 (i.e., one penalty, per employee, per pay period during the PAGA Period) PAGA penalties. (Genish
15 Decl., ¶ 27).

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

17 While Plaintiffs believe that Defendants faced significant exposure, substantial barriers to a
18 recovery existed. Defendants strongly contended that Plaintiffs' claims are not suitable for class
19 certification because individual issues and affirmative defenses would predominate should this case
20 go to trial. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S.*
21 *Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541,
22 2551(2011). While Plaintiffs and Class Counsel disagree with Defendants' predictions, they also
23 recognize that there is a significant risk that the Court may deny class certification. (Genish Decl. ¶¶
24 28-30); *see also, Findings of the Study of California Class Action Litigation*, 2000-2006, available at
25 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class
26 actions were certified either as part of a settlement or as part of a contested certification motion).

27 For example, a large portion of Defendants' overall liabilities lie in Plaintiffs' meal period
28 claims. These claims have been increasingly difficult to certify in recent years, and Defendants
contended their written policies and practices were lawful. *See Brinker*, 53 Cal. 4th at 1034-35.

1 Plaintiffs' theory of liability for meal period violations was based on allegations that Defendants had
2 failed to implement policies and practices that allowed Class Members to take meal breaks in the
3 manner required under California law. *See Bradley v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129
4 (2012) (holding that "the lack of a meal/rest break policy and uniform failure to authorize such breaks
5 are matters of common proof."). In contrast, Defendants argued that their practices at all times during
6 the class period were lawful. Defendants further argued that the rate of purported meal period
7 violations reflected in the data would require individualized inquiry and that such inquiry would
8 prohibit a class from being certified. Plaintiffs disagreed with Defendants' assessment but had to
9 consider the risk that the Court would find validity in an individualized proof defense to certification
10 of Plaintiffs' meal period claim, given what appeared to be a lawful written policy. (Genish Decl. ¶
11 31).

12 Plaintiffs' rest period allegations were based on a similar failure to provide employees with
13 timely, full, and uninterrupted rest periods. As with the meal period allegations, Defendants contended
14 that they had a lawful written rest period policy, provided compliant rest breaks and relieved Class
15 Members of all duties as required under California law. Additionally, this claim was even more
16 uncertain given the difficulties associated with proving the alleged rest period violations, as
17 Defendants were not required to record these breaks. Given the lack of records demonstrating rest
18 period violations, there were legitimate concerns Plaintiffs would not be able to certify these claims
19 or prove substantial damages with requisite certainty. (Genish Decl. ¶ 32).

20 Plaintiffs also faced challenges certifying and proving liability for his minimum wage and
21 overtime claims. These claims were largely based on unrecorded, off-the-clock work performed by
22 the Class Members such as donning and doffing uniforms and Personal Protective Equipment both
23 before and after their shifts, as well as waiting in line in order to submit to COVID-19 screening prior
24 to clocking-in. Employees also receive phone calls and text messages on their personal phones when
25 they are not at work about topics such as scheduling, checking up on the status of a project, and
26 questions about deliveries. However, the individualized nature of why this work was performed and
27 the individualized nature of damages presented substantial concerns regarding the manageability of
28 the case and the risk the Court could find these issues prevented certification. (Genish Decl. ¶ 33).

1 Plaintiffs' regular rate claim also presented challenges because, although the claim did not face
2 the same certification hurdles as Plaintiffs' meal and rest break claims, Plaintiffs' damage analysis
3 revealed that the total amount of alleged underpaid wages based on Defendants' alleged failure to pay
4 overtime at the lawful regular rate was low: only about \$29,820. (Genish Decl. ¶ 34).

5 There are also substantial risks associated with Plaintiffs' waiting time penalties and wage
6 statement claims. First, these claims were derivative of Plaintiffs' claims for unpaid meal period
7 premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages, and if
8 certification was denied on those underlying claims, these derivative claims for penalties would also
9 likely fail. Further, even if Plaintiffs prevailed on their underlying claims, they would still be required
10 to demonstrate that Defendants' violations of Labor Code section 203 were *willful* violations. *See,*
11 *e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013) (holding that "an employer's
12 reasonable, good faith belief that wages are not owed may negate a finding of willfulness"). Wage
13 statement claims have also seen varying treatment at the appellate level because such claims have an
14 element of discretion attached to them rather than a pure calculation of damages after liability is
15 proven. *Cf., Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp.*,
16 192 Cal.App.4th 1136 (2011). Accordingly, these derivative claims, which comprised a substantial
17 portion of Defendants' estimated liability, were therefore uncertain. (Genish Decl. ¶ 35).

18 Class Counsel also recognized that, even if Plaintiffs prevailed at class certification, proving
19 the amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
20 proposition. In order to prove liability and damages, Class Counsel will need to request and analyze
21 thousands of pages of documents, obtain the Class Members' contact information, contact them and
22 obtain declarations at great expense. Obtaining the cooperation of current employees would also be
23 difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. On the
24 other hand, Defendants would likely be able to obtain the cooperation of their employees. Moreover,
25 even if Plaintiffs prevailed at class certification and trial, possible appeals would substantially delay
26 any recovery by the Class. (Genish Decl. ¶ 36).

27 Perhaps most significant to Plaintiffs' analysis of both liability and damages is that of the 621
28 Class Members and Aggrieved Employees, Defendants revealed during mediation that only 99 Class

1 Members and Aggrieved Employees had not signed a release agreement or an arbitration agreement
2 which included a class action waiver. (Genish Decl. ¶ 37). Therefore, had this case proceeded, the
3 Class size (and accordingly, the alleged damages contemplated by Plaintiffs’ analysis) would have
4 been significantly less. (Genish Decl. ¶ 37).

5 Therefore, taking into account the risk of not obtaining class certification, the cost and delay
6 in recovering the alleged potential damages, and the significant impact of the release agreements and
7 arbitration agreements/class waivers signed by the majority of the potential Class Members, Class
8 Counsel discounted Defendants’ estimated liability by 50%. The merits-based risk factors also reduced
9 Defendants’ estimated liability by an additional 40%. This analysis resulted in an adjusted estimated
10 liability of \$1,750,000. (Genish Decl. ¶ 38).

11 Class Counsel also contemplated the risks of proceeding with the PAGA action and potential
12 liability Defendants could face from this claim as part of the global resolution. First, and most
13 significantly, as discussed above, only 99 out of 621 Class Members and Aggrieved Employees did
14 not sign a release agreement or an arbitration agreement. In the vast majority of the release agreements,
15 each alleged aggrieved employee acknowledged that they had not been aggrieved in the manner
16 alleged by Plaintiffs. In addition, at the time the parties mediated this case, there was ambiguity with
17 respect to U.S. Supreme Court’s forthcoming decision in *Viking River Cruises, Inc. v. Moriana* and
18 how the Court’s decision would impact Defendants’ arbitration agreements. Separate from that,
19 existing case law makes PAGA claims subject to the same defenses and risks as Plaintiffs’ underlying
20 wage claims. (Genish Decl. ¶ 39); see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-
21 82 (C.D. Cal. 2008) (“Plaintiff’s claim under [PAGA] is wholly dependent upon her other claims.
22 Because Plaintiff’s other claims fail as a matter of law, so does her PAGA claim”). Moreover, although
23 California case law clearly states that PAGA actions need not satisfy class action requirements, Class
24 Counsel remained mindful of the fact that some courts have nevertheless held that PAGA claims must
25 meet a threshold “manageability” requirement. See, e.g., *Wesson v. Staples the Office Superstore, LLC*,
26 68 Cal.App.5th 746 (2021). Class Counsel also anticipated that even if successful on the merits at trial,
27 the imposition of cumulative civil penalties based on the alleged wage and hour violations could be
28 considered unjust, arbitrary and oppressive, or confiscatory, and that Defendants would argue that they

1 made a good faith attempt to comply with their legal obligations warranting a reduction in penalties.
2 (Genish Decl. ¶ 39).² Class Counsel also anticipated Defendants would argue that they made a good
3 faith attempt to comply with their legal obligations and that the violations per pay period were low,
4 warranting an additional reduction in civil penalties. (Genish Decl. ¶ 39). Finally, Class Counsel was
5 also mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature, but is
6 instead intended to facilitate enforcement of California’s labor laws by financing state activities and
7 educating and deterring non-compliance. (Genish Decl., ¶ 39).

8 Therefore, after considering this multitude of factors, Plaintiffs and Class Counsel concluded
9 that it was in the best interest of the State of California and the Aggrieved Employees to enter into the
10 Settlement, and to allocate Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) of the
11 Settlement towards the PAGA claims, which represents approximately 11.43% of the Gross
12 Settlement Amount. This percentage of the settlement is well within the range of wage and hour
13 settlements regularly approved in both state and federal court for cases that include both a class and
14 PAGA action. Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve
15 PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement amount
16 have been approved as reasonable by courts. (Genish Decl., ¶ 40). Moreover, the overall relief obtained
17 by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the
18 public policy objectives of PAGA—to promote enforcement of California’s labor laws, provide funds
19 to the state, and deter future non-compliance by the employer. (Genish Decl., ¶ 40).

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21
22
23 ² See, e.g., *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both
24 statutory and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre*
25 *v. Genesis Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) (“duplicative effect” of penalties is a factor in favor of
26 “reducing ...the PAGA penalty”); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13,
27 2013) (declining to stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal.
28 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 In light of the Parties' respective legal positions and the risks of continued litigation, the Gross
2 Settlement Amount for resolution of the class and PAGA claims, is fair, adequate, and reasonable.
3 (Genish Decl., ¶ 41).

4 **VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

5 Code of Civil Procedure Section 382 provides that three basic requirements must be met in
6 order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-
7 defined community of interest in the question of law or fact affecting the parties to be represented; and
8 (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class
9 action is superior to other methods. *See Dunk*, 48 Cal.App.4th at 1806. Plaintiffs contend that this
10 action, which is based upon Defendants' wage and hour policies and practices, satisfies the class
11 certification requirements under California Code of Civil Procedure section 382. Defendants deny
12 Plaintiffs' allegations, but for purposes of this Settlement only, Defendants have stipulated to
13 certification of the proposed class action.

14 **A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members** 15 **is Impracticable**

16 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size
17 of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d
18 862, 873 (1983). In this case, all three considerations strongly favor class certification. Here, the
19 Class is defined as all current and former hourly-paid, non-exempt employees employed by
20 Defendants J&B Investments, Inc. d/b/a J&B Materials, Inc., Pacific Gypsum Supply, Inc., Gypsum
21 Management and Supply, Inc. in the State of California at any time during the Class Period. (Genish
22 Decl. ¶ 16; Settlement Agreement, ¶ 3). This provides a clear and definite scope for the proposed
23 Class.

24 Next, the class is sufficiently numerous. There is no magic number that satisfies the numerosity
25 requirement. Courts have certified classes with as few as ten or twenty-eight class members. *Rose v.*
26 *City of Hayward*, 126 Cal. App. 3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995);
27
28

1 *Hebbard v. Colgrove*, 28 Cal. App. 3d 1017, 1030 (1972). Here, the estimated Class size of 621
2 individuals meets the numerosity requirement.

3 Finally, the question of whether class members are easily identifiable turns on whether a
4 plaintiff can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal. 2d
5 695 at 706 (1967). The existence of an ascertainable class in this case can be established through
6 Defendants’ payroll records, and the class definition is sufficiently specific to enable the parties,
7 potential Class Members and the Court to determine the parameters of the Class. *See Clothesrigger,*
8 *Inc. v. GTE Corp.*, 191 Cal.App.3d 605, 617 (1987).

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

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

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

21 Here, Plaintiffs’ claims present common issues of law and fact that predominate and warrant
22 class certification. Plaintiffs allege that Defendants denied compliant meal and rest periods to
23 employees, required employees to perform work off-the-clock, and failed to fully compensate
24 employees for all time actually worked. These policies and practices meant that Defendants allegedly
25 failed to pay minimum and overtime wages, and other related claims. Plaintiffs allege that Defendants’
26 policies and practices were uniform as to all Class Members. Thus, class treatment is appropriate.

27 To satisfy the typicality requirement, California law does not require that Plaintiffs’ claims be
28 identical to the other class members. Rather, the test of typicality for a class representative is whether

1 other members have the same or similar injury, whether the action is based on conduct which is not
2 unique to the named plaintiff, and whether other class members have been injured by the same course
3 of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App. 4th 1496, 1502 (2007). The typicality
4 requirement for a class representative refers to the nature of the claim or defense of the representative,
5 and not to the specific facts from which it arose or the relief sought. *See id.*

6 Here, Plaintiffs allege that his claims are similar to that of the other Class Members and that
7 Plaintiffs' claims arise out of the same alleged course of conduct giving rise to the claims of the other
8 Class Members. Because Plaintiffs' claims are based upon the same alleged conduct and business
9 practices as those of Class Members, the typicality requirement has been satisfied.

10 Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney
11 qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests
12 of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations
13 are satisfied. Class Counsel are well-regarded and accomplished lawyers who are qualified and
14 experienced in employment-related, class-action litigation. (Genish Decl. ¶¶ 2-7; Esensten Decl., ¶¶
15 3-8, Huether Decl., ¶¶ 3-9; Silvers Decl. ¶¶ 3-7). Plaintiffs will vigorously, adequately and fairly
16 represent the interests of the class. Plaintiffs have, at all times throughout the course of the litigation,
17 considered the interests of the class and understood that they must take steps to adequately represent
18 the class and their interests. (Garcia Decl. ¶¶ 3-8). Because Plaintiffs' claims are typical of other Class
19 Members and are not based on unique circumstances, there is no antagonism between the interests of
20 Plaintiffs and the Class.

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

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

1 action proceedings are superior to individual litigation.

2 **VII. THE REQUESTED INCENTIVE PAYMENTS ARE REASONABLE**

3 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as
4 compensation “for the expense or risk they have incurred in conferring a benefit on other members of
5 the class.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely
6 grant approval of class action settlement agreements containing enhancements for the class
7 representative, which are necessary to provide incentive to represent the class and are appropriate
8 given the benefit the class representatives help to bring about for the class. *See In re Online DVD*
9 *Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times larger than
10 individual payments where incentive award made up a mere .17% of the settlement); *Gaudin v. Saxon*
11 *Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of
12 \$15,000 to be “fair and reasonable”).

13 Plaintiffs initiated this litigation on behalf of their former co-workers who will now be entitled
14 to receive payment from the Settlement. Plaintiffs invested substantial time and effort into litigation
15 including their own research, reviewing documents, contacting other putative class members to obtain
16 their participation in the action, and extensive discussions with Class Counsel. (Garcia Decl. ¶¶ 3-8).
17 Further, the requested amount is also reasonable given the average award and the benefit gained by
18 other Class Members. For these reasons, Plaintiffs request that the Court preliminarily approve a
19 requested incentive payment of \$5,000.00 each to Plaintiffs Garcia, Mahan, Neri and Lopez Lopez
20 and \$7,500 to Plaintiff Melendez, for a total of \$27,500 in incentive awards to the named Plaintiffs.
21 (Genish Decl. ¶ 42; Garcia Decl. ¶¶ 8, 9; Mahan Decl., ¶ 10; Neri Decl., ¶ 10; Lopez Lopez Decl. ¶¶
22 6-9; *see generally*, Esensten Decl. and Huether Decl.).

23 **VIII. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE**

24 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions
25 will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal, Inc.*,
26 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent
27 to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id.* at 47.
28 In cases where class members present claims against a common fund and the defendant agrees to a

percentage of the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

Here, the requested attorneys' fees of \$583,275.00, which is one-third of the common fund, are disclosed to Class Members in the proposed Class Notice. (Settlement Agreement, Exh. 1). The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendants. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel's request for the reimbursement of litigation costs not to exceed \$95,000. (Genish Decl., ¶¶ 44-45; Esensten Decl., ¶¶ 4-8; Huether Decl., ¶ 11; Silvers Decl., ¶¶3-7). Any costs and fees that are not ultimately approved by the Court shall instead be included in the Net Settlement Amount and distributed to Settlement Class Members. (Settlement Agreement, ¶ 46).

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

The Parties have jointly drafted a Class Notice which will be delivered to the Class Members. (Settlement Agreement, Exh. 1). The Class Notice will include information regarding the nature of the lawsuit, a summary of the terms of the Settlement, the Class definition, information on how to object and opt-out, and the date of the Final Approval Hearing. (Settlement Agreement, ¶¶ 50-54). It will list each Class Member's total Workweeks and the estimated Individual Settlement Payment to be paid to the Class Members. (Settlement Agreement, ¶ 54(e)). The Class Notice shall be provided to Class Members in both English and Spanish. (Settlement Agreement, ¶ 54(a)).

No later than 30 days after the Court grants preliminary approval of the Settlement, Defendants will provide the list to the Settlement Administrator containing the following information for each Class Member: full name, last known home address, last known telephone number, social security number, start and end dates of active employment as a non-exempt employee of Defendants in the State of California, total Workweeks during the Class Period, total workweeks worked during the PAGA Period, and any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement ("Class List"). (Settlement Agreement, ¶ 4). The Settlement Administrator shall perform any searches necessary to confirm Class Members' addresses, and within 14 days of receiving the Class List from Defendants, the Settlement Administrator shall mail the Class

1 Notice to all Class Members via first class mail. (Settlement Agreement, ¶ 52). The parties have
2 agreed to use CPT Group as the Settlement Administrator who has provided a settlement
3 administration bid capped at \$11,500. (Genish Decl. ¶ 47).

4 In determining whether to approve a settlement of a class action, a trial court has virtually
5 complete discretion as to the manner of giving notice to class members, and review on appeal is
6 governed by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186
7 Cal.App.4th 1380 (2010). Here, Class Counsel is not aware of an alternative method of providing
8 notice to the Class which would result in a higher likelihood of actual notice. (Genish Decl., ¶ 48).
9 The original source of the mailing addresses is from Class Members, who provided the information to
10 Defendants. (Genish Decl., ¶ 48). As a fail-safe, additional searches will be performed on any notice
11 returned as non-deliverable. (Genish Decl., ¶ 48, Settlement Agreement, ¶ 52). The Settlement
12 Administrator will report any and all opt outs, objections and disputes. (Settlement Agreement, ¶ 54).

13 Any Class Members who wish to object to the approval of this Settlement shall provide a
14 signed and dated written statement stating the specific reason for the objection as well as their full
15 name, address, telephone number, and the last 4 digits of their social security number or employee
16 identification number. (Settlement Agreement, ¶ 58). Objections must be mailed to the Settlement
17 Administrator within 60 days following the initial mailing of the Class Notice. (Settlement Agreement,
18 ¶ 58). Class Members may also appear and object at the final approval hearing, regardless of whether
19 they have submitted a written objection. (Settlement Agreement, ¶ 58).

20 Any Class Members who wish to be excluded from the Settlement must mail the Settlement
21 Administrator a signed and dated written request for exclusion including their name, address,
22 telephone number, and the last 4 digits of their social security number. The request for exclusion must
23 be postmarked no later than 60 days after mailing of the Class Notice. (Settlement Agreement, ¶ 55).

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X. CONCLUSION

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

Respectfully submitted,

DATED: February 27, 2023

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