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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

VICTOR DE LA CRUZ, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

vs.

NORTHWEST PIPE COMPANY, an Oregon
corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No. CIVSB2211140

Honorable Joseph T. Ortiz
Department S17

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

Date: June 5, 2024
Time: 8:30 a.m.
Dept.: S17

Complaint Filed: May 25, 2022
FAC Filed: February 2, 2023
Trial Date: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on **June 5, 2024** at **8:30 a.m.** in **Department S17** of the above-captioned Court located at 247 West Third Street, San Bernardino, California 92415, pursuant to California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiff Victor De La Cruz (“Plaintiff”) will and hereby does move the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiff and Defendant Northwest Pipe Company (“Defendant”).

Plaintiff requests that the Court enter an Order:

1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”) attached as Exhibit 2 to the Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement (“Genish Decl.”);

2. Certifying the Class for Settlement purposes;

3. Appointing Plaintiff Victor De La Cruz as the Class Representative;

4. Appointing Jonathan M. Genish, Miriam L. Schimmel, Joana Fang, and Alexandra Rose of Blackstone Law, APC as Class Counsel;

5. Appointing Apex Class Action LLC as the Settlement Administrator;

5. Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as Exhibit 1 to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement, to be mailed to the Class;

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

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

8. Approving the proposed deadlines for the settlement administration process; and

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Victor De La Cruz (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of
4 Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”) entered into between
5 Plaintiff and Defendant Northwest Pipe Company (“Defendant”) (together, with Plaintiff, the “Parties”).
6 (Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for Preliminary Approval of Class
7 Action and PAGA Settlement [“Genish Decl.”], Exh. 2). The Settlement terms are outlined as follows:

- 8
- Class Size: Approximately 351 individuals.
 - 9 • Gross Settlement Amount: Six Hundred Fifty-One Thousand Dollars and Zero Cents
10 (\$651,000.00).
 - 11 • Attorneys’ Fees and Costs: Attorneys’ fees of one-third (1/3) of the Gross Settlement Amount
12 (\$217,000.00 if the Gross Settlement Amount is \$651,000.00) plus actual litigation costs and
13 expenses not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), to be
14 paid from the Gross Settlement Amount.
 - 15 • Enhancement Payment: Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00),
16 to be paid from the Gross Settlement Amount.
 - 17 • PAGA Amount: Forty Thousand Dollars and Zero Cents (\$40,000.00) from the Gross
18 Settlement Amount, 75% of which will be paid to the Labor and Workforce Development
19 Agency (“LWDA”) and the remaining 25% to be paid to the PAGA Employees.
 - 20 • Settlement Administration Costs: Not to exceed Ten Thousand Dollars and Zero Cents
21 (\$10,000.00), to be paid from the Gross Settlement Amount.
 - 22 • Estimated Net Settlement Amount: Three Hundred Fifty-One Thousand Five Hundred
23 Dollars and Zero Cents to be distributed to Settlement Class Members.

24 As set forth herein, the Settlement is the product of informed discovery and arms-length
25 negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore
26 respectfully requests that the Court grant preliminary approval of the Settlement, conditionally certify the
27 Class, approve the proposed Notice of Class Action Settlement (“Class Notice”), and set a hearing date
28 for final settlement approval, among other requested relief.

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II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a steel water pipe systems manufacturer. Plaintiff was employed by Defendant as an hourly-paid, non-exempt Laborer II from approximately December 2021 to approximately February 2022. (Declaration of Victor De La Cruz in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement [“De La Cruz Decl.”], ¶ 2).

On May 25, 2022, Plaintiff provided written notice to the LWDA by online submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendant (“PAGA Letter”). (Genish Decl., ¶ 9, Exh. 1 thereto).

On May 25, 2022, Plaintiff filed a Class Action Complaint for Damages in the action entitled *Victor De La Cruz v. Northwest Pipe Company*, San Bernardino County Superior Court Case No. CIVSB2211140 (“Action”), thereby commencing a putative class action against Defendant. (*Id.*, ¶ 10).

On October 27, 2022, Plaintiff propounded written formal discovery onto Defendant (specifically, Form Interrogatories – General (Set One), Special Interrogatories (Set One), Requests for Admission (Set One), and Requests for Production of Documents (Set One)). (*Id.*, ¶ 11).

On November 7, 2022, Defendant propounded written formal discovery onto Plaintiff (specifically, Form Interrogatories – General (Set One), Form Interrogatories – Employment (Set One), Special Interrogatories (Set One), Requests for Admission (Set One), and Request for Production of Documents (Set One)). (*Id.*, ¶ 12).

On November 8, 2022, Plaintiff served a notice of deposition of Defendant’s Person Most Knowledgeable along with request for production of documents. (*Id.*, ¶ 13).

On February 2, 2023, Plaintiff filed a First Amended Class Action Complaint for Damages and Enforcement Action Under the Private Attorneys General Act, California Labor Code §§ 2698, *Et Seq.* (“Operative Complaint”) in the Action, which added a cause of action under PAGA. (*Id.*, ¶ 14).

On July 21, 2023, Plaintiff propounded additional written formal discovery onto Defendant (specifically, Special Interrogatories (Set Two) and Requests for Production of Documents (Set Two)) and served an amended notice of deposition of Defendant’s Person Most Knowledgeable along with request for production of documents and a proposed Belaire-West notice. (*Id.*, ¶ 15). On August 21,

2023, Plaintiff served a second amended notice of deposition of Defendant's Person Most Knowledgeable along with request for production of documents. (Ibid). On September 5, 2023, Plaintiff served a third amended notice of deposition of Defendant's Person Most Knowledgeable along with request for production of documents. (Ibid). On September 18, 2023, Plaintiff served a fourth amended notice of deposition of Defendant's Person Most Knowledgeable along with request for production of documents. (Ibid).

On September 26, 2023, Plaintiff served responses to Defendant's discovery requests (specifically, Form Interrogatories – General (Set One), Form Interrogatories – Employment (Set One), Special Interrogatories (Set One), Requests for Admission (Set One), and Request for Production of Documents (Set One)). (*Id.*, ¶ 16).

On September 26, 2023, Defendant served responses to Plaintiff's discovery requests (specifically, Form Interrogatories – General (Set One), Special Interrogatories (Sets One and Two), Requests for Admission (Set One), and Requests for Production of Documents (Sets One and Two)) along with a production of documents. (*Id.*, ¶ 17). On October 11, 2023, Defendant noticed the deposition of Plaintiff and served a production of documents in response to Plaintiff's discovery requests. (Ibid). On October 12, 2023, Defendant served a response and objections to Plaintiff's fourth amended notice of deposition. (Ibid).

On October 18, 2023, Blackstone Law, APC took the deposition of Defendant's Person Most Knowledgeable (Vice President of Human Resources). (*Id.*, ¶ 18).

On October 31, 2023, a Belaire-West notice was mailed to three hundred and fifty-six (356) putative class members by a third-party administrator. (*Id.*, ¶ 19). Thirteen (13) putative class members timely opted out by the response deadline. (Ibid).

On November 9, 2023, Blackstone Law, APC defended the deposition of Plaintiff. (*Id.*, ¶ 20).

On November 15, 2023, Plaintiff propounded additional written formal discovery onto Defendant (specifically, Requests for Production of Documents (Set Three)). (*Id.*, ¶ 21).

On November 17, 2023, Defendant served a notice of continued deposition of Plaintiff. (*Id.*, ¶ 22).

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1 The Operative Complaint alleges nine (9) causes of action for violations of the California Labor
2 Code for failure to pay overtime wages, failure to pay minimum wages, failure to provide compliant meal
3 periods and premium payments in lieu thereof, failure to provide compliant rest periods and premiums
4 payments in lieu thereof, failure to provide accurate wage statements, failure to timely pay wages upon
5 termination, and failure to reimburse necessary business expenses, for violations of California Business
6 & Professions Code Section 17200, *et seq.* based on the aforementioned California Labor Code
7 violations, and for civil penalties under PAGA based on the aforementioned California Labor Code
8 violations. (*Id.*, ¶ 23).

9 On July 17, 2023, the Parties participated in a formal mediation conducted by Todd Smith, Esq.
10 (“Mediator”), a neutral and respected mediator with extensive experience in complex wage and hour
11 matters, which did not result in a settlement at that time. (*Id.*, ¶ 24). After continued negotiations, and
12 with the assistance of the Mediator, the Parties were able to reach an agreement to resolve this dispute
13 on a class and representative basis, and shortly thereafter executed a memorandum of understanding
14 memorializing the key settlement terms. (*Ibid.*). The Parties worked diligently to negotiate and
15 memorialize the terms in a long form settlement agreement. (*Ibid.*).

16 On March 13, 2024, the Parties executed the Settlement Agreement. (*Id.*, ¶ 25; Exh. 2 thereto).

17 **III. THE SETTLEMENT TERMS**

18 **A. Class Definition**

19 For purposes of settlement only, the Parties have agreed that the Class shall be defined as: “all
20 current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of
21 California at any time during the Class Period. This shall include both individuals employed pursuant to
22 a collective bargaining agreement and individuals not employed pursuant to a collective bargaining
23 agreement.” (“Class Members” or “Class”). (Genish Decl., ¶ 26; Settlement Agreement, ¶ 6.b). The
24 Class Period is defined as the period from May 25, 2018 through July 17, 2023. (Genish Decl., ¶ 26;
25 Settlement Agreement, ¶ 6.f). Based on information provided by Defendant, it is estimated that there are
26 a total of three hundred and fifty-one (351) Class Members. (Genish Decl., ¶ 26).

27 ///

28 ///

1 **B. Amount of Settlement**

2 The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint
3 for a non-reversionary Gross Settlement Amount of Six Hundred Fifty-One Thousand Dollars and Zero
4 Cents (\$651,000.00), exclusive of employer-side payroll taxes. (Genish Decl., ¶ 27; Settlement
5 Agreement, ¶ 6.p).

6 **C. Allocation and Funding of the Gross Settlement Amount**

7 The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees,
8 and other allocations. (Genish Decl., ¶ 27; Settlement Agreement, ¶ 6.p). The Gross Settlement Amount
9 includes: (1) Class Counsel’s fees in the amount of one-third (1/3) of the Gross Settlement Amount (i.e.,
10 \$217,000.00 if the Gross Settlement Amount is \$651,000.00); (2) Class Counsel’s actual litigation costs
11 and expenses, not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00); (3) Settlement
12 Administration Costs, not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00); (4)
13 Enhancement Payment in the amount of Seven Thousand Five Hundred Dollars and Zero Cents
14 (\$7,500.00); and (5) PAGA Amount in the amount of Forty Thousand Dollars and Zero Cents
15 (\$40,000.00). (Genish Decl., ¶ 27; Settlement Agreement, ¶¶ 6.p, 9, 10, 11, and 12). After the above-
16 estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount that will
17 be available for Class Members is currently estimated to be Three Hundred Fifty-One Thousand Five
18 Hundred Dollars and Zero Cents (\$351,500.00). (Genish Decl., ¶ 27). Additionally, 25% of the PAGA
19 Amount (“PAGA Employee Amount”), which is \$10,000.00 out of \$40,000.00 will be fully distributed
20 to: “all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the
21 State of California at any time during the PAGA Period. This shall include both individuals employed
22 pursuant to a collective bargaining agreement and individuals not employed pursuant to a collective
23 bargaining agreement.” (“PAGA Employees”). (Genish Decl., ¶ 27; Settlement Agreement, ¶¶ 6.p, 6.x,
24 6.y, and 11). The “PAGA Period” is defined as the period from May 25, 2021 through July 17, 2023.
25 (Genish Decl., ¶ 27; Settlement Agreement, ¶ 6.z).

26 Defendant has represented that the Class Members worked a total of 46,500 Workweeks during
27 the Class Period. (Genish Decl., ¶ 28; Settlement Agreement, ¶ 13). If it is determined by the Settlement
28 Administrator that the total number of Workweeks worked by the Class Members during the Class Period

1 actually exceeds 46,500 by more than 10% (i.e., by more than 51,150 Workweeks), then the Gross
2 Settlement Amount will be increased on a *pro rata* basis equal to the percentage increase in the number
3 of Workweeks worked by the Class Members above 10%. (Genish Decl., ¶ 28; Settlement Agreement,
4 ¶ 13). For example, if the number of Workweeks increases by 11% to 51,615 Workweeks, then the Gross
5 Settlement Amount will increase by 1%. (Genish Decl., ¶ 28; Settlement Agreement, ¶ 13).

6 The Net Settlement Amount will be distributed and paid to all Class Members who do not submit
7 a timely and valid Request for Exclusion (“Settlement Class Members”) on a *pro rata* basis based on the
8 number of weeks each Class Member worked for Defendant as an hourly-paid and/or non-exempt
9 employee in California during the Class Period (“Workweeks”). (Genish Decl., ¶ 29; Settlement
10 Agreement, ¶¶ 6.ll and 6.mm). The *pro rata* share of the Net Settlement Amount that a Class Member
11 may be eligible to receive under the Class Settlement (“Individual Settlement Share”) will be calculated
12 by the Settlement Administrator, in accordance with the Settlement Agreement. (Genish Decl., ¶ 29;
13 Settlement Agreement, ¶¶ 6.s and 14).

14 The PAGA Employee Amount will be distributed and paid to all PAGA Employees on a *pro rata*
15 basis based on the number of weeks each PAGA Employee worked for Defendant as an hourly-paid
16 and/or non-exempt employee in California during the PAGA Period (“PAGA Workweeks”). (Genish
17 Decl., ¶ 30; Settlement Agreement, ¶¶ 6.bb and 11). The *pro rata* share of the PAGA Employee Amount
18 that a PAGA Employee may be eligible to receive under the PAGA Settlement (“Individual PAGA
19 Payment”) will be calculated by the Settlement Administrator, in accordance with the Settlement
20 Agreement. (Genish Decl., ¶ 30; Settlement Agreement, ¶¶ 6.q and 15).

21 Each Individual Settlement Share will be allocated as twenty percent (20%) wages and eighty
22 percent (80%) penalties, interest, and non-wage damages. (Genish Decl., ¶ 31; Settlement Agreement, ¶
23 16). The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to
24 penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the
25 Settlement Administrator. (Genish Decl., ¶ 31; Settlement Agreement, ¶ 16). The Settlement
26 Administrator will withhold the employee’s share of taxes and withholdings with respect to the wages
27 portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their net
28 payment of their Individual Settlement Share (“Individual Settlement Payment”). (Genish Decl., ¶ 31;

1 Settlement Agreement, ¶¶ 6.r and 16). The employer's share of taxes and contributions in connection
2 with the wages portion of Individual Settlement Shares shall be paid by Defendant separately and in
3 addition to the Gross Settlement Amount. (Genish Decl., ¶ 31; Settlement Agreement, ¶¶ 6.k, 6.p, and
4 16). Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will
5 be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Genish Decl., ¶ 19;
6 Settlement Agreement, ¶ 16).

7 The Settlement Agreement is a non-reversionary and non-claims made settlement. (Genish Decl.,
8 ¶ 32; Settlement Agreement, ¶¶ 6.p and 34). The Net Settlement Amount will be fully distributed to
9 Settlement Class Members and the PAGA Amount will be fully distributed to the LWDA and PAGA
10 Employees, in accordance with the Settlement Agreement. (Genish Decl., ¶ 32; Settlement Agreement,
11 ¶¶ 14 and 15). No money will revert to Defendant. (Genish Decl., ¶ 32; Settlement Agreement, ¶ 6.p).

12 Each Individual Settlement Payment and Individual PAGA Payment check will be valid and
13 negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
14 thereafter, shall be canceled. (Genish Decl., ¶ 33; Settlement Agreement, ¶ 34). Any funds associated
15 with such canceled checks will be distributed by the Settlement Administrator to the State of California's
16 Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Employee.
17 (Genish Decl., ¶ 33; Settlement Agreement, ¶ 34).

18 **D. Released Claims**

19 Upon the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class
20 Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished,
21 and discharged the Released Parties of all Released Class Claims. (Settlement Agreement, ¶ 35).
22 Settlement Class Members further covenant not to sue concerning the Released Class Claims. (Ibid). It
23 is the intent of the Parties that the Final Approval Order and Judgment when entered by the Court shall
24 have full res judicata effect and be final and binding upon Settlement Class Members regarding the
25 Released Class Claims. (Ibid).

26 Upon the full funding of the Gross Settlement Amount, Plaintiff, the State of California with
27 respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and
28 forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released

1 PAGA Claims. (*Id.*, ¶ 36).

2 “Released Class Claims” means any and all claims, debts, liabilities, demands, obligations,
3 guarantees, costs, expenses, attorneys’ fees, damages, or causes of action which were alleged or which
4 could have been alleged based on the factual allegations in the Operative Complaint, arising during the
5 Class Period, under any federal, state, or local law, and shall specifically include claims for Defendant’s
6 alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and
7 associated premium payments, timely pay wages upon termination, provide accurate wage statements,
8 and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202,
9 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare
10 Commission Wage Orders, and all claims for attorneys’ fees and costs and statutory interest in connection
11 therewith, California Business and Professions Code sections 17200, *et seq.*, and any other claims,
12 including claims for statutory penalties, pertaining to the Class Members. (*Id.*, ¶ 6.ee).

13 “Released PAGA Claims” means any and all claims arising from any of the factual allegations in
14 the Operative Complaint and PAGA Letter, arising during the PAGA Period, for civil penalties under the
15 Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*, including all claims
16 for attorneys’ fees and costs related thereto, for Defendant’s alleged failure to pay overtime and minimum
17 wages, provide compliant meal and rest periods and associated premium payments, timely pay wages
18 during employment and upon termination, provide complaint wage statements, maintain complete and
19 accurate payroll records, and reimburse necessary business-related expenses in violation of California
20 Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800,
21 and 2802, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Order 16-2001.
22 (*Id.*, ¶ 6.ff).

23 “Released Parties” means Defendant and its current and former officers, directors, management-
24 level employees, members, insurers, shareholders, subsidiaries, affiliates, predecessors, successors, and
25 assigns. (*Id.*, ¶ 6.gg).

26 ///

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IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

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

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

The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.” *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed settlement is within the range of possible approval and, as a result, “whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing.” 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. *See In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006).

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

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

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

3 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
4 reached through arm’s-length bargaining.” *Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
5 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). Here, the Parties’ settlement negotiations
6 were at all times made at arm’s-length and were adversarial. (Genish Decl., ¶ 34). The Settlement was
7 reached following a full day of mediation with a highly respected mediator with substantial experience
8 mediating wage and hour cases and continued negotiations. (Ibid). At all times, Plaintiff was willing
9 and prepared to litigate this matter through class certification and trial if the Parties had been unable to
10 reach a favorable resolution. (*Id.*, ¶ 54).

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

12 Courts typically assess the status of discovery in determining whether a class action settlement
13 agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. Prior to mediation,
14 Defendant produced a random sampling of putative class members’ time and pay data, as well as
15 Defendant’s employee handbooks, relevant wage and hour policies, collective bargaining agreements,
16 and information regarding the total number of putative class members, the total number of former putative
17 class members, the average rate of pay of the putative class members, and the number of workweeks and
18 pay periods of the putative class members. (Genish Decl., ¶ 35).

19 This allowed Plaintiff’s counsel to conduct an informed assessment and analysis of the strengths
20 and weaknesses of the claims and the potential class-wide damages. (*Id.*, ¶ 36). Based on information
21 exchanged, the Parties extensively briefed issues regarding class certification and liability and provided
22 their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective
23 positions. (*Id.*, ¶ 37). Additionally, settlement negotiations were conducted by highly capable and
24 experienced counsel. (Genish Decl., ¶¶ 1-8). Accordingly, Class Counsel had sufficient information and
25 experience to act intelligently in negotiating the Settlement.

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1 **C. The Settlement is Fair and Reasonable in Light of the Parties’ Respective Legal Positions**
2 **and Recovery Risks**

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

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

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

16 Class Counsel analyzed all available data and estimated Defendant’s maximum potential exposure
17 to be approximately \$9,066,343, assuming the litigation was successful at trial on all claims at issue and
18 every employee had a violation for each claim on every shift worked, and then reduced this exposure
19 analysis based on the challenges facing the likelihood of obtaining class certification, prevailing at trial,
20 and other attendant risks. (Genish Decl., ¶ 38). This estimate is based off an estimated maximum liability
21 for all claims at issue and the total aggregate workweeks during the relevant time period, less interest,
22 and based on the analysis of the data which was extrapolated out for all class members across the entire
23 putative class period, which included: \$348,125 for meal period violations (the damages assuming a
24 100% violation is \$1,702,048, however, Defendant asserted that Class Members entered into valid meal
25 period waivers and based thereon, the damages are \$348,125); \$4,483,576 for rest period violations at a
26 100% violation rate; \$1,983,376 for unpaid overtime wages; \$852,016 for waiting time penalties;
27 \$1,136,000 in wage statement penalties; and \$263,250 for unreimbursed business expenses (based on
28 unreimbursed purchase of one pair of steel-toed boots per employee per year during the Class Period).

(Ibid). Plaintiff further estimated that Defendant faced an additional exposure of \$2,046,300 in potential, non-stacked (i.e., one penalty, per employee, per pay period during the PAGA statutory period) PAGA penalties. (Ibid). Together with the PAGA penalties, Defendant's maximum potential exposure totaled \$11,112,643 in damages. (Ibid).

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

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

For example, Plaintiff's meal period claims, which were based on Defendant's alleged failure to provide lawful meal periods, have been increasingly difficult to certify in recent years. (Genish Decl., ¶ 42; *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiff's theory of liability for meal period violations was based on allegations that Defendant had failed to implement its policies and that its practices failed to allow Class Members to take meal breaks in the manner required under California law. (Genish Decl., ¶ 42; *See Bradley v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129, 1150 (2012) (holding that "the lack of a meal/rest break policy and uniform failure to authorize such breaks are matters of common proof.")). In contrast, Defendant contended that its practices at all times during the Class Period were lawful and asserted valid meal period waivers. (Genish Decl., ¶ 42). More specifically, Defendant asserted that its company-wide practice was to have each department take their meal breaks at the same time each day, and as such, the majority of employees received timely and complete meal breaks. (Ibid). Defendant further argued that the rate of purported meal period violations reflected in the data would require

1 individualized inquiry and that such inquiry would prohibit a class from being certified. (Ibid). Class
2 Counsel also had to consider the risk that the Court would find validity in an individualized proof defense
3 to certification of Plaintiff's meal period claim. (Ibid).

4 Additionally, a large portion of Defendant's overall liability lies in Plaintiff's rest period
5 allegations. (*Id.*, ¶ 43). As with the meal period allegations, Defendant contended that it had a lawful
6 written rest period policy, provided compliant rest breaks and relieved Class Members of all duties as
7 required under California law. (Ibid). Defendant contended that, as with meal breaks, employees took
8 rest breaks consistently and timely. (Ibid). Additionally, this claim was even more uncertain given the
9 difficulties associated with proving the alleged rest period violations, as Defendant was not required to
10 record these breaks. (Ibid). Given the lack of records demonstrating rest period violations, there were
11 legitimate concerns Plaintiff would not be able to certify these claims or prove substantial damages with
12 requisite certainty, which made the estimated value of this claim subject to much challenge. (Ibid).

13 Plaintiff also faced challenges certifying and proving liability for his minimum wage and overtime
14 claims. (*Id.*, ¶ 44). These claims were largely based on unrecorded, off-the-clock work performed by
15 the Class Members both before and after their shifts and during purported meal and rest periods. (Ibid).
16 However, the individualized nature of why this work was performed and the individualized nature of
17 damages presented substantial concerns regarding the manageability of the case and the risk the Court
18 could find these issues prevented certification, and the estimated damages for this claim were based on
19 an assumption that all class members worked off the clock for at least one hour per week. (Ibid).

20 There are also substantial risks associated with Plaintiff's waiting time penalties and wage
21 statement claims. (*Id.*, ¶ 45). First, these claims were derivative of Plaintiff's claims for unpaid meal
22 period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages,
23 and if certification was denied on those underlying claims, these derivative claims for penalties would
24 also likely fail. (Ibid). Further, even if Plaintiff prevailed on his underlying claims, he would still be
25 required to demonstrate that Defendant's violations of California Labor Code section 203 were *willful*
26 violations. (Genish Decl., ¶ 45; *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013)
27 (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding
28 of willfulness")). Wage statement claims have also seen varying treatment at the appellate level because

1 such claims have an element of discretion attached to them rather than a pure calculation of damages after
2 liability is proven. (Genish Decl. ¶ 45; *Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) with
3 *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which
4 comprised a substantial portion of Defendant’s estimated liability, were therefore uncertain. (Genish
5 Decl., ¶ 45).

6 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the
7 amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
8 proposition. (*Id.*, ¶ 46). In order to prove liability and damages, Class Counsel would need to request
9 and analyze thousands of pages of documents, contact the Class Members, and obtain their declarations.
10 (*Ibid.*). Obtaining the cooperation of current employees would also be difficult, given the likely reluctance
11 to aid prosecution of a lawsuit against a current employer. (*Ibid.*). On the other hand, Defendant would
12 likely be able to obtain the cooperation of their employees. (*Ibid.*). Moreover, even if Plaintiff prevailed
13 at class certification and trial, possible appeals would substantially delay any recovery by the Class.
14 (*Ibid.*).

15 Therefore, taking into account how each of the above risks potentially effected Plaintiff’s ability
16 to first obtain class certification, and then prove the underlying violations, as well as the cost and delay
17 in recovering the alleged potential damages, Class Counsel discounted Defendant’s estimated liability by
18 80% to \$2,222,529. (*Id.*, ¶ 46). The merits-based risk factors further reduced Defendant’s estimated
19 liability by an additional 60%. (*Ibid.*). This resulted in an adjusted estimated liability of \$889,012. (*Ibid.*).
20 In light thereof, the settlement amount of \$651,000 is a significant settlement. (*Ibid.*).

21 Class Counsel also contemplated the risks of proceeding with the PAGA action and potential
22 liability Defendant could face from this claim as part of the global resolution. (*Id.*, ¶ 48). Existing case
23 law makes PAGA claims subject to the same defenses and risks as Plaintiff’s underlying wage claims.
24 (Genish Decl., ¶ 48; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal.
25 2008) (“Plaintiff’s claim under [PAGA] is wholly dependent upon her other claims. Because all of
26 Plaintiff’s other claims fail as a matter of law, so does her PAGA claim”). Moreover, although California
27 case law clearly states that PAGA actions need not satisfy class action requirements, Class Counsel
28 remained mindful of the fact that some courts have nevertheless held that PAGA claims must meet a

1 threshold “manageability” requirement. (Genish Decl., ¶ 48; *See, e.g., Wesson v. Staples the Office*
2 *Superstore, LLC*, 68 Cal.App.5th 746 (2021)). Class Counsel also anticipated that even if successful on
3 the merits at trial, the imposition of cumulative civil penalties based on the alleged wage and hour
4 violations could be considered unjust, arbitrary and oppressive, or confiscatory, and that Defendant would
5 argue that it made a good faith attempt to comply with its legal obligations warranting a reduction in
6 penalties. (Genish Decl., ¶ 48).¹ Class Counsel also anticipated Defendant would argue that it made a
7 good faith attempt to comply with its legal obligations and that the violations per pay period were low,
8 warranting an additional reduction in civil penalties. (Ibid). Finally, Class Counsel was also mindful of
9 the fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended to
10 facilitate enforcement of California’s labor laws by financing state activities and educating and deterring
11 non-compliance. (Ibid).

12 Therefore, after considering this multitude of factors, Plaintiff and Class Counsel concluded that
13 it was in the best interest of the State of California and the PAGA Employees to enter into the Settlement,
14 and to allocate Forty Thousand Dollars and Zero Cents (\$40,000.00) of the Gross Settlement Amount
15 towards the PAGA claim, which represents approximately 6.14% of the Gross Settlement Amount. (*Id.*,
16 ¶ 49). This percentage of the settlement is well within the range of wage and hour settlements regularly
17 approved in both state and federal court for cases that include both a class and PAGA action. (Ibid).
18 Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and,
19 indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as
20 reasonable by courts. (Ibid). Moreover, the overall relief obtained by the Settlement is significant, not
21 only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to
22 promote enforcement of California’s labor laws, provide funds to the state, and deter future non-

23
24 ¹ *See, e.g., Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory
25 and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis*
26 *Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) (“duplicative effect” of penalties is a factor in favor of “reducing ...the
27 PAGA penalty”); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to
28 stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez*
v. McDonalds Restaurants of California, Inc., 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties
arising out of the same conduct); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing
PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is
warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018)
(approving reduction in penalties from \$50 per pay period to \$5 per pay period based on good faith attempts to comply with
obligations and minimal violations).

1 compliance by the employer. (Ibid).

2 The Settlement is in the best interest of the Class Members, the PAGA Employees, and the State
3 of California and is within the accepted range of recoveries for this type of litigation given the inherent
4 risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further
5 litigation. (*Id.*, ¶ 50).

6 VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

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

15 A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is 16 Impracticable

17 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
18 the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d 862,
19 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is
20 defined as: "all current and former hourly-paid and/or non-exempt employees who worked for Defendant
21 in the State of California at any time during the Class Period. This shall include both individuals
22 employed pursuant to a collective bargaining agreement and individuals not employed pursuant to a
23 collective bargaining agreement." (Genish Decl., ¶ 26; Settlement Agreement, ¶ 6.b). This provides a
24 clear and definite scope for the proposed class.

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

1 and fifty-one (351) individuals meets the numerosity requirement.

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

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

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

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

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

26 To satisfy the typicality requirement, California law does not require that plaintiffs’ claims be
27 identical to the other class members. Rather, the test of typicality for a class representative is whether
28 other members have the same or similar injury, whether the action is based on conduct which is not

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

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

9 Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney
10 qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of
11 the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations are
12 satisfied. Class Counsel is well-regarded and is qualified and experienced in employment-related, class-
13 action litigation. (Genish Decl., ¶¶ 1-8). Plaintiff will vigorously, adequately, and fairly represent the
14 interests of the Class. Plaintiff has, at all times, throughout the course of the litigation considered the
15 interests of the Class and understood that he must take steps to adequately represent the Class and their
16 interests. (De La Cruz Decl., ¶ 10). Because Plaintiff's claims are typical of other Class Members and
17 are not based on unique circumstances, there is no antagonism between the interests of Plaintiff and the
18 Class.

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

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

28 ///

1 **VII. THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE**

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

11 Plaintiff initiated this litigation on behalf of his former co-workers who will now be entitled to
12 receive payment from the Settlement. Plaintiff invested substantial time and effort into litigation,
13 including his own research, reviewing documents, and extensive discussions with Class Counsel. (De La
14 Cruz Decl., ¶¶ 3-5). Further, the requested amount for Plaintiff is also reasonable given the average
15 award and the benefit gained by other Class Members. For these reasons, Plaintiff requests that an
16 Enhancement Payment of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff
17 be preliminarily approved by the Court. (Genish Decl., ¶ 51; De La Cruz Decl., ¶ 12).

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

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

25 Here, the requested attorneys’ fees of one-third (1/3) the Gross Settlement Amount (i.e.,
26 \$217,000.00 if the Gross Settlement Amount is \$651,000.00) is disclosed to Class Members in the
27 proposed Class Notice. (Settlement Agreement, Exh. A). The requested fee was freely negotiated, is
28 common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will

1 elaborate on the nature of the legal services provided and will also support Class Counsel's request for
2 the reimbursement of litigation costs and expenses not to exceed Twenty-Five Thousand Dollars and Zero
3 Cents (\$25,000.00). (Genish Decl., ¶¶ 52 & 54). The Attorneys' Fees and Costs that are not ultimately
4 approved by the Court shall instead be included in the Net Settlement Amount to be distributed to
5 Settlement Class Members. (Settlement Agreement, ¶ 9).

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

8 The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members.
9 (*Id.*, Exh. A). The Class Notice will include information regarding the nature of the Action, a summary
10 of the terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the
11 Class Settlement and to dispute Workweeks and/or PAGA Workweeks, and the date of the Final Approval
12 Hearing. (*Ibid.*). The Class Notice will list each Class Member's total Workweeks and their estimated
13 Individual Settlement Share and each PAGA Employee's total PAGA Workweeks and their estimated
14 Individual PAGA Payment. (*Ibid.*).

15 Within fourteen (14) calendar days after entry of the preliminary approval order, Defendant will
16 provide a list in a formatted readable Microsoft Office Excel spreadsheet to the Settlement Administrator
17 containing the following information for each Class Member: full name; last known mailing address;
18 Social Security number; dates worked for Defendant during the Class Period; and such other information
19 as is necessary for the Settlement Administrator to calculate Workweeks and PAGA Workweeks (if
20 applicable) (collectively referred to as the "Class List"). (*Id.*, ¶¶ 6.d & 23). Within seven (7) calendar
21 days after receiving the Class List from Defendant, the Settlement Administrator will perform a search
22 based on the National Change of Address Database or other similar services available, such as provided
23 by Experian, for information to update and correct for any known or identifiable address changes, and
24 will mail a Class Notice in English and Spanish to all Class Members via First-Class U.S. Mail, using the
25 most current, known mailing addresses identified by the Settlement Administrator. (*Id.*, ¶ 24.a). The
26 Parties have agreed to use Apex Class Action LLC as the Settlement Administrator. (Genish Decl., ¶ 55;
27 Settlement Agreement, ¶ 6.jj).

28 ///

1 In determining whether to approve a settlement of a class action, a trial court has virtually
2 complete discretion as to the manner of giving notice to class members, and review on appeal is governed
3 by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380
4 (2010). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which
5 would result in a higher likelihood of actual notice. (Genish Decl., ¶ 56). The original source of the
6 mailing addresses is from Class Members, who provided the information to Defendant. (Ibid).

7 Class Members will have forty-five (45) calendar days after the initial mailing of the Class Notice
8 by the Settlement Administrator to submit a Request for Exclusion, Notice of Objection, and/or
9 Workweeks Dispute (“Response Deadline”). (Settlement Agreement, ¶ 6.ii).

10 Any Class Notice returned to the Settlement Administrator as undeliverable on or before the
11 Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed
12 thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.
13 (*Id.*, ¶ 24.b). If no forwarding address is provided, the Settlement Administrator will promptly attempt
14 to determine a correct address using a skip-trace or other search, using the name, address, and/or Social
15 Security number of the Class Member, and perform a single re-mailing within five (5) calendar days.
16 (Ibid). In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that
17 Class Member shall be extended fifteen (15) calendar days from the original Response Deadline. (*Id.*, ¶
18 6.jj).

19 Class Members will have an opportunity to dispute the number of Workweeks and/or PAGA
20 Workweeks to which they have been credited, as reflected in their respective Class Notices, by submitting
21 a timely and valid letter (“Workweeks Dispute”) to the Settlement Administrator, by mail, postmarked
22 on or before the Response Deadline. (*Id.*, ¶¶ 6.nn and 25). A Workweeks Dispute must: (a) contain the
23 case name and number of the Action; (b) contain the Class Member’s full name, signature, address,
24 telephone number, and the last four (4) digits of the Class Member’s Social Security number; (c) clearly
25 state that the Class Member disputes the number of Workweeks and/or PAGA Workweeks credited to
26 the Class Member and what the Class Member contends is the correct number; and (d) be returned by
27 mail to the Settlement Administrator at the specified address, postmarked on or before the Response
28 Deadline. (*Id.*, ¶ 6.nn).

1 Any Class Member wishing to be excluded from the Class Settlement must submit a timely and
2 valid letter (“Request for Exclusion”) to the Settlement Administrator, by mail, postmarked on or before
3 the Response Deadline. (*Id.*, ¶¶ 6.hh & 26). A Request for Exclusion must: (a) contain the case name
4 and number of the Action; (b) contain the Class Member’s full name, signature, address, telephone
5 number, and last four (4) digits of the Class Member’s Social Security number; (c) clearly state that the
6 Class Member does not wish to be included in the Class Settlement; and (d) be returned by mail to the
7 Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*,
8 ¶ 6.hh). Notwithstanding the above, all PAGA Employees will be bound to the PAGA Settlement and
9 will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for
10 Exclusion. (*Id.*, ¶ 26).

11 To object to the Class Settlement, Settlement Class Members must submit a timely and complete
12 written objection (“Notice of Objection”) to the Settlement Administrator, by mail, postmarked on or
13 before the Response Deadline. (*Id.*, ¶¶ 6.v & 27). A Notice of Objection must: (a) contain the case name
14 and number of the Action; (b) contain the objector’s full name, signature, address, telephone number, and
15 the last four (4) digits of the objector’s Social Security number; (c) contain a written statement of all
16 grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any
17 papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the
18 Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*,
19 6.v). Settlement Class Members, individually or through counsel, may also present their objection orally
20 at the Final Approval Hearing, regardless of whether they have submitted a Notice of Objection. (*Id.*, ¶
21 27).

22 X. CONCLUSION

23 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff’s
24 Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

25 Respectfully submitted,

26 Dated: March 15, 2024

BLACKSTONE LAW, APC

27 By:



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Attorneys for Plaintiff Victor De La Cruz