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

RODRIGO LOPEZ ROJAS and
ENRIQUE GUZMAN OROZCO,
individually, and on behalf of other
members of the general public similarly
situated, and on behalf of other aggrieved
employees pursuant to the California
Private Attorneys General Act;

Plaintiffs,

vs.

HALE CONSTRUCTION, INC., a
California corporation; and DOES 1-50,
inclusive,

Defendants.

Case No. STK-CV-UOE-2022-0003667
Consolidated with Case No. STK-CV-UOE-2023-
0008042

Assigned to Hon. Robert T. Waters, Dept. 11B

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

Date: October 28, 2026 / November 3, 2026 /
November 4, 2026 / November 5, 2026 /
November 11, 2026

Time: 9:00 a.m.

Dept: 11B

Complaint Filed: May 11, 2022

SAC Filed: June 22, 2026

Trial Date: September 28, 2026

**TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF
RECORD:**

PLEASE TAKE NOTICE that on October 28, 2026 / November 3, 2026 / November 4, 2026 / November 5, 2026 / November 11, 2026 at 9:00 a.m., or as soon thereafter as counsel may be heard, in Department 11B of the above-captioned court, located at 180 E. Weber Ave., Stockton, California 95202, the Honorable Robert T. Waters presiding, Plaintiffs Rodrigo Lopez Rojas and Enrique Guzman Orozco will, and hereby do, move this Court to:

1. Preliminarily approve the settlement set forth in the Class Action and PAGA Settlement Agreement, attached as Exhibit 1 to the Declaration of Joseph D. Parsons;
2. Conditionally certify the proposed Settlement Class;
3. Appoint Rodrigo Lopez Rojas and Enrique Guzman Orozco as the Class Representatives for the Settlement Class;
4. Appoint Brock & Gonzales, LLP and E&L, LLP as Class Counsel;
5. Approve distribution of the proposed Notice of Class Action Settlement to the Settlement Class;
6. Appoint Phoenix Settlement Administrators as the Settlement Administrator; and
7. Set a hearing date for final approval of the settlement.

This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of Points and Authorities in support of Motion for Preliminary Approval of Class Action and PAGA Settlement; (3) the Declaration of Joseph D. Parsons; (4) the Class Action and PAGA Settlement Agreement; (5) the Notice of Class Action Settlement; (6) the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement; (7) the records, pleadings, and papers filed in this action; and (8) upon such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of this Motion. As this Motion is unopposed, the Parties respectfully request relief from the page limit requirement set by California Rules of Court, Rule 3.1113(d).

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2 Dated: August 28, 2026

BROCK & GONZALES, LLP
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4 By: 

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Erica A. Gonzales
Joseph D. Parsons
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27
28

TABLE OF CONTENTS

I.	INTRODUCTION	9
II.	FACTS AND PROCEDURE.....	10
A.	Brief Overview of the Litigation and Settlement Negotiations	10
B.	The Proposed Settlement Fully Resolves Plaintiff’s Claims	12
1.	Composition of the Settlement Class.....	12
2.	Settlement Consideration	12
3.	Release by the Settlement Class	13
III.	ARGUMENT	14
A.	The Court Should Preliminarily Approve the Proposed Class Action Settlement	14
1.	Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable	14
2.	The Investigation and Discovery Are “Sufficient To Allow Counsel and The Court To Act Intelligently”	15
3.	The Settlement Was Reached Through Arm’s-Length Bargaining in which All Parties Were Represented by Experienced Counsel	15
B.	The Consideration Provided for the Class Claims Is Fair and Reasonable in Light of the Amount in Controversy Discounted by the Risks of Continued Litigation.....	16
C.	The Court Should Preliminarily Approve the Negotiated Class Representative Enhancement Payment.....	21
D.	The Court Should Preliminarily Approve the Negotiated Attorneys’ Fees and Costs .. 22	
E.	California Law Authorizes Provisional Certification for Settlement Purposes	22
1.	The California Standard for Class Certification	22
2.	The Proposed Settlement Class Is Ascertainable and There Is a Well-Defined Community of Interest Among Class Members	23
IV.	CONCLUSION.....	25

TABLE OF AUTHORITIES

STATE CASES

<i>Amaro v. Anaheim Arena Mgmt., LLC</i> , 69 Cal. App. 5th 521 (2021).....	22
<i>Armenta v. Osmose, Inc.</i> , 135 Cal. App. 4th 314, 325 (2005)	20
<i>Augustus v. ABM Security Services, Inc.</i> , 2 Cal. 5th 257 (2016).....	19
<i>Brinker Rest. Corp. v. Super. Ct.</i> , 53 Cal. 4th 1004 (2012).....	18, 19, 24
<i>Bufl v. Dollar Financial Group, Inc.</i> , 162 Cal. App. 4th 1193 (2008).....	22
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504, 528 (2018).....	20
<i>Cellphone Termination Fee Cases</i> , 180 Cal. App. 4th 1110 (2010)	14
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008).....	22
<i>Contreras v. United Food Group, LLC</i> , Case No. BC389253 (L.A. County Super. Ct. Sept. 10, 2009)	13
<i>Dailey v. Sears, Roebuck & Co.</i> , 214 Cal. App. 4th 974, 1000-02 (2013)	19
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996).....	15, 23
<i>Forrester v. Roth's I.G.A. Foodliner, Inc.</i> , 646 F.2d 413, 414 (9th Cir. 1981).....	19
<i>Fukuchi v. Pizza Hut</i> , Case No. BC302589 (L.A. County Super. Ct. Sept. 29, 2006).....	13
<i>Gomez v. Amadeus Salon, Inc.</i> , Case No. BC392297 (L.A. Super. Ct. July 23, 2010).....	13
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008)	16
<i>Laffitte v. Robert Half Internat. Inc.</i> , 231 Cal. App. 4th 860 (2016)	22
<i>Lee v. Dynamex, Inc.</i> , 166 Cal. App. 4th 1325 (2008).....	22, 23
<i>Lim v. Victoria's Secret Stores, Inc.</i> , Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006)	13
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal. App. 4th 399 (2010).....	16
<i>Naranjo v. Spectrum Security Services, Inc.</i> , 13 Cal. 5th 93 (2022).....	20
<i>Nordstrom Comm'n Cases</i> , 186 Cal. App. 4th 576, 584 (2010)	20
<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i> , 27 Cal. App. 4th 1085 (1994).....	14
<i>Palencia v. 99 Cents Only Stores</i> , No. 34-2010-00079619 (Sacramento County Super. Ct.	

1	Oct. 11, 2012).....	13
2	<i>Ressler v. Federated Department Stores, Inc.</i> , Case No. BC335018 (L.A. County Super.	
3	Ct. Jan. 27, 2009)	13
4	<i>Rodriguez v. E.M.E., Inc.</i> , 246 Cal. App. 4th 1027 (2016).....	19
5	<i>Sandoval v. Nissho of Cal., Inc.</i> , Case No. 37-2009-00091861 (San Diego County Super.	
6	Ct. Dec. 7, 2010).....	13
7	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004).....	22
8	<i>State of Cal. v. Levi Strauss</i> , 41 Cal. 3d 460 (1986).....	15
9	FEDERAL CASES	
10	<i>Amey v. Cinemark USA Inc.</i> , No. 13-CV-05669-WHO, 2015 WL 2251504, at *12 (N.D.	
11	Cal. May 13, 2015).....	18
12	<i>Balderas v. Massage Envy Franchising, LLP</i> , 2014 WL 3610945. (N.D. Cal. July 21,	
13	2014).....	21
14	<i>Brewer v. Gen. Nutrition Corp.</i> , No. 11-CV-3587 YGR, 2014 WL 5877695, at *12 (N.D.	
15	Cal. Nov. 12, 2014).....	18
16	<i>Clemens v. Hair Club for Men, LLC</i> , No. C 15-01431 WHA, 2016 WL 1461944, at **5-6	
17	(N.D. Cal. Apr. 14, 2016).....	19
18	<i>Cotter v. Lyft, Inc.</i> , 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016)	20
19	<i>D'Amato v. Deutsche Bank</i> , 236 F.3d 78, 85 (2d Cir. 2001)	16
20	<i>Doty v. Costco Wholesale Corp.</i> , Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14,	
21	2007)	13
22	<i>Fleming v. Covidien Inc.</i> , No. ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4	
23	(C.D. Cal. Aug. 12, 2011).....	20
24	<i>In re Amtrak Train Derailment in Philadelphia, Pennsylvania</i> , No. 15-MD-2654, 2016	
25	WL 1359725 (E.D. Pa. Apr. 6, 2016).....	23
26	<i>In re Apple Computer, Inc. Derivative Litig.</i> , No. C 06-4128 JF (HRL), 2008 WL	
27	4820784 (N.D. Cal. Nov. 5, 2008).....	16
28	<i>In re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979).....	21

1	<i>In re Bluetooth Headset Prod. Liab. Litig.</i> , 654 F.3d 935 (9th Cir. 2011)	15
2	<i>In re Four Seasons Secs. Laws Litig.</i> , 58 F.R.D. 19 (W.D. Okla.1972).....	21
3	<i>In re Omnivision Tech., Inc.</i> , 559 F. Supp. 2d 1036 (N.D. Cal. 2008).....	21
4	<i>In re Processed Egg Prod. Antitrust Litig.</i> , No. 08-MD-2002, 2014 WL 828083 (E.D. Pa.	
5	Feb. 28, 2014)	23
6	<i>In re Warfarin Sodium Antitrust Litig.</i> , 212 F.R.D. 231 (D. Del. 2002)	21
7	<i>Jimenez v. Allstate Ins. Co.</i> , 2012 U.S. Dist. LEXIS 65328, 47 (C.D. Cal. Apr. 18, 2012).....	19
8	<i>Jones v. Bath & Body Works, Inc.</i> , No. 2:13-cv-05206-FMO-AJW (C.D. Cal. July 11,	
9	2016).....	13
10	<i>Nguyen v. Baxter Healthcare Corp.</i> , No. 8:10-CV-01436-CJC, 2011 WL 6018284, at *5	
11	(C.D. Cal. Nov. 28, 2011).....	19
12	<i>Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.</i> , 303 F.R.D. 337 (E.D. Cal.	
13	2014).....	16
14	<i>Pryor v. Aerotek Scientific, LLC</i> , 278 F.R.D. 516, 532-33 (C.D. Cal. 2011)	18
15	<i>Sorenson v. PetSmart, Inc.</i> , Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17,	
16	2008)	13
17	<i>Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.</i> ,	
18	295 F.R.D. 438, 453 (C.D. Cal. 2014).....	17
19	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. 09–00261, 2012 WL 5878390 (N.D. Cal.	
20	Nov.21, 2012)	16
21	STATUTES	
22	Cal. Civ. Proc. Code § 382	22, 23
23	Cal. R. Ct. 3.769	14
24	Cal. R. Ct. 3.769(c).....	14
25	Cal. R. Ct. 3.769(d).....	14
26	Cal. R. Ct. 3.769(e).....	14
27	Cal. R. Ct. 3.769(f)	14
28	Cal. R. Ct. 3.769(g).....	14

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Rodrigo Lopez Rojas and Enrique Guzman Orozco (“Plaintiffs”) seek preliminary approval of the Class Action and PAGA Settlement Agreement,¹ which if approved, would provide considerable monetary relief for approximately 404 current and former employees of Hale Construction, Inc. (“Defendant”) (collectively with Plaintiffs, the “Parties”). The principal terms of the Settlement provide for the following:

- (1) Conditional certification of a Settlement Class defined as: All current and former hourly-paid, non-exempt employees who worked for Defendant Hale Construction, Inc. within the State of California from May 11, 2018 through October 17, 2025.
- (2) A **non-reversionary** Gross Settlement Amount of \$994,000. The Gross Settlement Amount includes:
 - (a) A Net Settlement Amount of approximately \$542,666.67 (the Gross Settlement Amount minus the requested Attorneys’ Fees and Costs, PAGA Penalties, Settlement Administration Costs, and the Class Representative Service Payments), which will be allocated to all Class Members on a pro-rata basis according to the number of Workweeks each Class Member worked during the Class Period. **The Entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class, and without the need to submit claims for payment.**
 - (b) Attorneys’ fees in the amount of one-third of the Gross Settlement Amount (or \$331,333.33), and litigation costs and expenses not to exceed \$35,000, to Brock & Gonzales, LLP and E&L, LLP (collectively, “Plaintiffs’ Counsel”).
 - (c) Settlement administration costs not to exceed \$15,000, to be paid to the jointly selected Settlement Administrator, Phoenix Settlement Administrators.
 - (d) Class Representative Service Payments of not more than \$10,000 each to Rodrigo Lopez Rojas and Enrique Guzman Orozco for their service on behalf of the Settlement Class, the risks they took in bringing the action on behalf of the class, and for time and effort spent initiating and prosecuting the action.

¹ Hereinafter “Settlement Agreement” or “Settlement.” Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement Class's behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm's length, following three separate mediation sessions, with helpful guidance from Henry Bongiovi, Esq., an experienced and respected mediator of wage and hour actions, and the Settlement confers substantial benefits to Class Members. This relief—averaging approximately \$1,343 (plus individual PAGA payments) per Class Member from the Net Settlement Amount—is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases, including Defendant's disputed but non-trivial contention that it lacks the financial resources to satisfy a judgment approximating Plaintiffs' full exposure. Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied, of Defendant prevailing at trial, or of Plaintiffs prevailing at trial but losing on appeal.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. Accordingly, Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement Agreement.

II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation and Settlement Negotiations

Defendant is a California corporation that performs construction work at jobsites throughout the State of California, including in San Joaquin County. Defendant employed Plaintiff Rodrigo Lopez Rojas as an hourly-paid, non-exempt employee from approximately May 14, 2018 to approximately September 23, 2021, and employed Plaintiff Enrique Guzman Orozco as an hourly-paid, non-exempt employee during the Class Period. Plaintiffs' job duties included, without limitation, arriving at jobsites to load and prepare tools, equipment, and materials, operating construction machinery and equipment, and performing general construction labor under the direction of Defendant's supervisors and foremen. (Declaration of Joseph D. Parsons ["Parsons Decl."] ¶ 2.)

Plaintiff Lopez Rojas filed this wage and hour class action on May 11, 2022 (*Id.* at ¶ 3.).

The Complaint alleged that Defendant violated the following sections of the California Labor Code² and Business and Professions Code: (1) sections 1194 and 1197 (failure to pay wages for all hours worked at the legal minimum wage rate); (2) sections 510, 1194, and 1198 (failure to pay proper overtime wages for daily overtime worked); (3) sections 512 and 226.7 (failure to authorize or permit meal periods); (4) section 226.7 (failure to authorize or permit rest periods); (5) section 2802 (failure to indemnify employees for employment-related losses and expenditures); (6) section 204 (failure to timely pay earned wages during employment); (7) sections 201, 202, and 203 (failure to timely pay all earned wages and final paychecks due at separation of employment); (8) section 226 (failure to provide complete and accurate wage statements); and (9) California Business & Professions Code section 17200, et seq. (unfair business practices) based on the preceding. (*Id.* at ¶ 3.)

On February 7, 2023, Plaintiff Lopez Rojas filed a First Amended Complaint adding a cause of action, and incorporating damages and civil penalties, under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, et. seq. (*Id.* at ¶ 4.) On July 28, 2023, Plaintiff Guzman Orozco filed a separate but related wage and hour class action against Defendant, alleging substantially similar Labor Code and Business and Professions Code violations. (*Id.* at ¶ 4.) The Court subsequently granted the Parties’ stipulation to consolidate the two actions, and on June 22, 2026, Plaintiffs filed the operative Second Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act (the “SAC”) in the consolidated action. (*Id.*)

On July 3, 2024, the Parties participated in a full-day mediation with Henry Bongiovi, Esq., an experienced mediator of wage and hour actions. (Parsons Decl. ¶ 5.) The Parties were unable to resolve the matter at that time. (*Id.*) On February 10, 2025, the Parties attended a second mediation session with Hon. Amy D. Hogue (Ret.), and again were unable to reach a resolution. (*Id.*) On October 16, 2025, the Parties participated in a half-day mediation, again presided over by Mr. Bongiovi, which ultimately led to a negotiated resolution of the Actions. (*Id.*) At all times,

² Unless indicated otherwise, further statutory references are to the California Labor Code.

the Parties' negotiations were adversarial and non-collusive. (*Id.*) The Settlement therefore constitutes a fair, adequate, and reasonable compromise of the claims at issue. (*Id.*) As set forth in the accompanying proof of service, the LWDA has been served with this motion and the Settlement Agreement. (*Id.* ¶ 6.)

B. The Proposed Settlement Fully Resolves Plaintiffs'

1. Composition of the Settlement Class

The proposed Settlement Class consists of all current and former hourly-paid, non-exempt employees who worked for Defendant within the State of California from May 11, 2018 through October 17, 2025. (Settlement Agreement ¶¶ 1.5, 1.45.) There are approximately 404 Class Members. (*Id.* at ¶ 4.1.)

2. Settlement Consideration

Plaintiffs and Defendant have agreed to settle the underlying class and PAGA claims in exchange for the Gross Settlement Amount of \$994,000. The Gross Settlement Amount includes: (1) automatic payments to all Participating Class Members—meaning, all Class Members except those who submit timely and valid Requests for Exclusion—from the Net Settlement Amount; (2) \$331,333.33 in attorneys' fees (i.e., one-third of the common fund) and up to \$35,000 in litigation costs to Plaintiffs' Counsel; (3) Settlement Administration Costs not to exceed \$15,000; and (4) Class Representative Service Payments of not more than \$10,000 each to Plaintiffs for their service on behalf of the Settlement Class, the risks they took in bringing the action on behalf of the class, and for time and effort spent initiating and prosecuting the action. (Settlement Agreement ¶¶ 1.6, 1.7, 3.2.1-3.2.3.)

Subject to the Court approving Attorneys' Fees and Costs, Settlement Administration Costs, and the Class Representative Service Payments, the Net Settlement Amount will be distributed to Participating Class Members in full. Payments to Class Members will be made from the Net Settlement Amount. (Settlement Agreement ¶ 1.28.) The individual allocations will be calculated on a pro-rata basis using the number of Workweeks worked by each Class Member during the Class Period. (*Id.* ¶ 3.2.4.) This is a fair and equitable means of apportioning the Net Settlement Amount to Class Members as Class Members who worked for a longer duration during

the Class Period will receive proportionally larger payments than those employees who worked for shorter durations. (*Id.*) Given that there are approximately 404 Class Members, the average net recovery will be approximately \$1,343 (plus individual PAGA payments). This average net recovery is significantly greater than many other wage and hour class action settlements approved by California state and federal courts.³

Payments to PAGA Members will be made from the PAGA Penalties allocated for in the Settlement Agreement. (Settlement Agreement ¶ 1.32.) These Individual PAGA Payments will be calculated on a pro-rata basis using the number of pay periods worked by each PAGA Member during the PAGA Period. (*Id.*) This is a fair and equitable means of apportioning PAGA Penalties to PAGA members.

3. Release by the Settlement Class

In exchange for the Gross Settlement Amount, Plaintiffs and Participating Class Members will agree to release the Released Class Claims during the Class Period, and Plaintiffs, Aggrieved Employees, and the LWDA will release the Released PAGA Claims. (Settlement Agreement ¶¶ 5.2, 5.3.)

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³ See, e.g., *Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct. Dec. 7, 2010) (average net recovery of approximately \$145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct. Sept. 29, 2006) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct. Sept. 10, 2009) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct. Jan. 27, 2009) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct. July 23, 2010) (average net recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal. July 11, 2016) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct. Oct. 11, 2012) (average net recovery of approximately \$80).

III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement

1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable

California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of class action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and (2) a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”). The motion for preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3) the proposed order. *Id.* at 3.769(c). The motion must also identify any agreement concerning the payment of attorneys’ fees. *Id.* at 3.769(b).

If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to the class of the hearing and “an explanation of the proposed settlement.” The court must also approve a procedure for class members to file objections to the settlement. *Id.* at 3.769(f). At the final approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id.* at 3.769(g).

Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” *See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”). Reasonableness and fairness are presumed where, as here: (1) the settlement is reached through “arms-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” (collectively, “*Dunk Factors*”). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).

2. The Investigation and Discovery Are “Sufficient To Allow Counsel and The Court To Act Intelligently”

As set forth in greater detail in Plaintiffs’ Counsel’s declaration in support of this Motion, based on analysis of documents and class data produced by Defendant—including Defendant’s time and pay records, policies, procedures, manuals, job descriptions, and employee roster—Plaintiffs’ Counsel was able to realistically assess the value of Plaintiffs’ claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. (See Parsons Decl. ¶¶ 8-10.) By engaging in a thorough investigation and evaluation of Plaintiffs’ claims, Plaintiffs’ Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant. (*Id.* at ¶ 11.)

3. The Settlement Was Reached Through Arm’s-Length Bargaining in Which All Parties Were Represented by Experienced Counsel

“[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement’s fairness.” *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, § 11.51.

As explained above, the Parties participated in three mediation sessions, including with Henry Bongiovi, Esq. and the Hon. Amy D. Hogue (Ret.), each an experienced mediator of wage and hour class actions. Mr. Bongiovi and Judge Hogue helped manage the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides.⁴ At all times, the

⁴ See *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128

Parties' negotiations were adversarial and non-collusive. (Parsons Decl. ¶ 5.) The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiffs are represented by Brock & Gonzales, LLP and E&L, LLP. Plaintiffs' Counsel employ seasoned class action attorneys who regularly litigate wage and hour claims, and have considerable experience settling wage and hour class actions. (Parsons Decl. ¶¶ 25-37.) Defendant is represented by Buchalter, LLP, a respected defense firm.

B. The Consideration Provided for the Class Claims Is Fair and Reasonable in Light of the Amount in Controversy Discounted by the Risks of Continued Litigation

In seeking approval, a settling party must provide sufficient information to "enable the court to make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). Settling parties are not, however, required to partake in a hypothetical accounting exercise: "Kullar does not . . . require any such explicit statement of [maximum] value; it requires a record which allows 'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.'" *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, "the most important factor" in determining "whether a settlement is fair and reasonable" is the "strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement." *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As explained in detail below, the Gross Settlement Amount is within the range of reasonableness in light of the nature and magnitude of the claims being settled and the various potential impediments to recovery.

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JF (HRL), 2008 WL 4820784, at *3 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09-00261, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation "tends to support the conclusion that the settlement process was not collusive"); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (accord).

Defendant's Combined Exposure for the Class and PAGA Claims	
Claim	Damages/Penalties
Meal Periods ⁵	\$2,967,496.00
Rest Periods ⁶	\$7,418,740.00
Off-the-Clock Work (Unpaid Overtime and Minimum Wages) ⁷	\$927,342.50
Business Expenses ⁸	\$609,091.95
Waiting Time Penalties ⁹	\$1,370,880.00
Wage Statement Penalties ¹⁰	\$1,372,000.00
PAGA Penalties ¹¹	\$3,063,900.00
TOTAL	\$17,729,450.45

(Parsons Decl. ¶ 13.) This estimate assumes that each and every one of Plaintiffs' claims would have been certified for class-wide resolution, that Plaintiffs would have prevailed at trial, and that the jury's verdict would have been affirmed on appeal. Understandably, for purposes of evaluating the settlement's reasonableness, this estimate must be "tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). (Parsons Decl. ¶ 13.)

Ultimately, Plaintiffs' Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendant's maximum theoretical liability by: (a) the strength of the defenses to the merits of Plaintiffs' claims; (b) the risk of class certification being denied; (c) the risk of losing on any of a number of dispositive motions that could have been brought between certification and trial (e.g., motions to decertify the class, motions for summary judgment, and/or motions in limine) that might have eliminated all or some of Plaintiffs' claims, or barred

⁵ 52,991 workweeks x 2 meal period violations per week x \$28/avg hourly rate.

⁶ 52,991 workweeks x 5 rest period violations per week x \$28/avg hourly rate.

⁷ Based on approximately 30 minutes of unpaid pre-shift and post-shift work per week, approximately half of which should have been paid at an overtime rate; 52,991 workweeks x \$28/avg hourly rate x 0.5 x 1.25

⁸ Based on an estimated \$50.00 per month in unreimbursed business expenses (cell phone use, required clothing, and steel-toed work boots); 52,991 workweeks / 4.35 weeks = 12,181.84 months x \$50.

⁹ 204 former employees x \$28.00 average hourly rate x 8 hours per day x 30 days of waiting-time penalties.

¹⁰ The lesser of 343 wage-statement subclass members x \$4,000, or 30,639 wage statements x \$100 (less \$50 for the initial violation), for \$1,372,000.00 in statutory penalties.

¹¹ 30,639 PAGA pay periods with a 100% violation rate.

evidence/testimony in support of the claims; (d) the risk of losing at trial; (e) the chances of a favorable verdict being reversed on appeal; (f) the difficulties attendant to collecting on a judgment; and (g) Defendant's disputed but non-trivial contention regarding its ability to satisfy a judgment approaching Plaintiffs' full exposure (collectively, the "Discount Factors"). With respect to these Discount Factors, Defendant would have raised the following defenses:

Defendant's Disputed Financial Condition: Prior to reaching the Settlement, the Parties attended three separate mediation sessions. During at least two of those sessions, Defendant represented that it lacked the financial resources to satisfy a judgment approximating Plaintiffs' full exposure. In connection with the second mediation, Defendant produced tax returns and other financial information, and the Parties jointly retained a forensic accountant to evaluate Defendant's financial condition and ability to fund a settlement. Although Plaintiffs do not concede that Defendant lacks the ability to pay a larger sum, the substantial risk that Defendant could not satisfy, or could satisfy only through protracted post-judgment collection proceedings, a judgment approaching Plaintiffs' full exposure is a legitimate and significant factor bearing on the reasonableness of the Settlement. (Parsons Decl. ¶ 15.)

Off-the-Clock and Overtime Claim: Defendant would have argued that its written policies prohibited off-the-clock work and required employees to accurately record all hours worked, and that determining whether and to what extent individual Class Members performed unrecorded pre-shift, post-shift, or screening-related work would require thousands of individualized inquiries precluding class certification. *See Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1051-52 (2012) (holding that in the absence of a uniform, companywide policy, proof of liability is individual); *Amey v. Cinemark USA Inc.*, No. 13-CV-05669-WHO, 2015 WL 2251504, at *12 (N.D. Cal. May 13, 2015); *Brewer v. Gen. Nutrition Corp.*, No. 11-CV-3587 YGR, 2014 WL 5877695, at *12 (N.D. Cal. Nov. 12, 2014); *Pryor v. Aerotek Scientific, LLC*, 278 F.R.D. 516, 532-33 (C.D. Cal. 2011) (denying certification of off-the-clock claims). (Parsons Decl. ¶ 16.)

Even if the Court had certified the off-the-clock claim, Defendant would have argued that Plaintiffs were required to prove Defendant knew, or should have known, that employees were

performing unpaid work. *Forrester v. Roth's I.G.A. Foodliner, Inc.*, 646 F.2d 413, 414 (9th Cir. 1981) (“where an employer has no knowledge that an employee is engaging in overtime work and that employee fails to notify the employer or deliberately prevents the employer from acquiring knowledge of the overtime work, the employer’s failure to pay for the overtime hours is not a violation”). (Parsons Decl. ¶ 17.) Further, the portion of Plaintiffs’ off-the-clock claim that was arguably the strongest—COVID-19 temperature checks—occurred for a relatively brief portion of the class period and for minimal amounts of actual time when they did happen.

Meal Period Claim: Defendant would have argued that it had no obligation to “guarantee” or “ensure” that meal periods were taken by all employees at all times, and that it satisfies its obligations by relieving employees of duty and providing a reasonable opportunity to take an uninterrupted 30-minute break. *Brinker*, 53 Cal. 4th at 1038-40. Defendant would have further argued that to prevail, Plaintiffs must show they were forced to forgo meal breaks, as opposed to merely showing they were sometimes shortened, late, or interrupted. *Nguyen v. Baxter Healthcare Corp.*, No. 8:10-CV-01436-CJC, 2011 WL 6018284, at *5 (C.D. Cal. Nov. 28, 2011); *Dailey v. Sears, Roebuck & Co.*, 214 Cal. App. 4th 974, 1000-02 (2013). (Parsons Decl. ¶ 18.)

Rest Period Claim: Plaintiff’s rest break claim was based on an allegation that Defendant combined meal meal breaks with rest breaks to create a 50-minute meal and rest period, of which 30 minutes was unpaid. Defendant would have argued that combining rest periods into a single break can be permissible depending on practicability, and that this fact-intensive inquiry is inappropriate for class-wide resolution. *See Rodriguez v. E.M.E., Inc.*, 246 Cal. App. 4th 1027 (2016). Defendant would have further argued, citing *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257 (2016), that employees must show Defendant affirmatively prevented them from taking breaks, and that the reasons any particular employee did not take a full rest period are inherently individualized. *Clemens v. Hair Club for Men, LLC*, No. C 15-01431 WHA, 2016 WL 1461944, at **5-6 (N.D. Cal. Apr. 14, 2016); *Jimenez v. Allstate Ins. Co.*, 2012 U.S. Dist. LEXIS 65328, 47 (C.D. Cal. Apr. 18, 2012). (Parsons Decl. ¶ 19.)

Business Expense Claim: Defendant would have argued that Plaintiffs’ business expense theory, based on a flat monthly estimate for work clothing, footwear, and personal cell phone use,

1 is speculative and not uniformly applicable across the class, since not every Class Member
2 incurred the same equipment costs or used a personal phone for work purposes, raising
3 individualized issues that would complicate class-wide proof of damages. Defendant could have
4 further argued that cell phones were not a necessary tool for the job, and that the steel-toe boot
5 requirement allowed employees enough latitude to purchase boots that they could wear outside
6 of work with Defendant. (Parsons Decl. ¶ 20.)

7 **Waiting Time Penalty Claim:** Defendant would have argued that any delay in the
8 payment of final wages was based on a good faith dispute as to whether wages were owed,
9 precluding a finding of “willfulness” necessary for waiting time penalties under Section 203.
10 *Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 584 (2010); *Armenta v. Osmose, Inc.*, 135 Cal.
11 App. 4th 314, 325 (2005). (Parsons Decl. ¶ 21.)

12 **Wage Statement Claim:** Defendant would have argued that Plaintiffs must show any
13 wage statement violations were “knowing and intentional,” and that a good faith belief in
14 compliance can preclude penalties under Section 226. *Naranjo v. Spectrum Security Services,*
15 *Inc.*, 13 Cal. 5th 93 (2022). (Parsons Decl. ¶ 22.)

16 **PAGA Penalties:** Defendant would have argued that PAGA gives the Court wide latitude
17 to reduce civil penalties “based on the facts and circumstances of a particular case” where an
18 award would otherwise be “unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code §
19 2699(h). Courts have substantially reduced PAGA awards on comparable facts. *Carrington v.*
20 *Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of only 0.2% of
21 the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016); *Fleming*
22 *v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug.
23 12, 2011). (Parsons Decl. ¶ 23.)

24 **The Gross Settlement Amount Is Fair, Reasonable, and Adequate:** After taking into
25 account the Discount Factors—including the substantial risk that Plaintiffs’ claims would not be
26 certified, the risk of losing on the merits at trial or on dispositive motions, the risk of an
27 unfavorable verdict being reversed on appeal, the difficulties attendant to collecting on a
28 judgment, and, significantly, Defendant’s disputed but non-trivial claims regarding its ability to

satisfy a judgment approaching Plaintiffs' full exposure—Plaintiffs' Counsel determined that it would be reasonable to settle for a fraction of Defendant's estimated exposure for the class and PAGA claims, or approximately 5.6%. Such a discount is inherently reasonable given that Plaintiffs would have had to overcome multiple, dependent contingencies to prevail on their claims. If anything, the projected odds for each of the above contingencies is generous to the class's position, since plaintiffs in employment cases rarely prevail on all of the claims at any of these dispositive stages. Courts routinely approve settlements that provide a similar discounted range of the maximum potential recovery.¹² (Parsons Decl. ¶ 24.)

C. The Court Should Preliminarily Approve the Negotiated Class Representative Service Payments

Approximately 404 current and former employees will share a settlement fund due entirely to the effort and commitment of Rodrigo Lopez Rojas and Enrique Guzman Orozco. Subject to Court approval, therefore, the Settlement provides for Class Representative Service Payments of not more than \$10,000 each. The Class Representative Service Payments are fair and reasonable compensation for Plaintiffs' effort in pursuing the action, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status of the case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. Plaintiffs will file a formal motion for the negotiated Class Representative Service Payments once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Payments.

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¹² See, e.g., *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery "[fell] within the range of possible initial approval based on the strength of plaintiff's case and the risk and expense of continued litigation."); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).

D. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and Costs

The purpose of an attorneys' fee award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. "Fee awards in class actions average around one-third of the recovery regardless of whether the percentage method or the lodestar method is used." *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (quoting *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008)) (internal quotations omitted). Consistent with that observation, California state and federal courts routinely award attorneys' fees equaling one-third of the common fund.¹³ Notably, the California Supreme Court affirmed a fee award representing one-third of the fund. See *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480 (2016). At final approval, Plaintiffs will seek Court-approval of attorneys' fees of \$331,333.33 (one-third of the Gross Settlement Amount) and up to \$35,000 in litigation costs.

E. California Law Authorizes Provisional Certification for Settlement Purposes

1. The California Standard for Class Certification

Class actions are statutorily authorized "when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class certification is appropriate when there is an "ascertainable class and a well-defined community of interest among class members." *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. *Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.

¹³ See, e.g. *Laffitte v. Robert Half Internat. Inc.*, 231 Cal. App. 4th 860, 871 (2016) ("33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits"); *Chavez*, 162 Cal. App. 4th at 66 n.11 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates).

Conditional certification of the proposed Settlement Class is particularly warranted here given the relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification in settlement cases).¹⁴ In *Dunk*, the California Court of Appeal specifically rejected the argument that the standard for certifying a class for purposes of settlement is identical to the standard for certifying the same class for purposes of litigation:

Geer argues the court must use the same standard under Federal Rules of Civil Procedure, rule 23 (28 U.S.C.) to determine the propriety of both settlement and litigation class certifications . . . That rule is contrary to the Ninth Circuit rule, stated in *Officers for Justice v. Civil Service Com. supra*, 688 F.2d at p. 633, and the position of the leading commentators (Newberg & Conte, *supra*, § 11.28 at p. 11–58), which allow a lesser standard of scrutiny for settlement cases . . . We agree with the latter.

Id. at n19.

2. The Proposed Settlement Class Is Ascertainable and There Is a Well-Defined Community of Interest Among Class Members

Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members.” *Lee*, 166 Cal. App. 4th at 1334. Class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records. *Id.*

The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a class representative and counsel who can adequately represent the class. Cal. Civ. Proc. Code § 382.

¹⁴ *See also* Newberg on Class Actions § 13:18 (5th ed.) (courts “declin[e] to treat formal class certification as a prerequisite for preliminary approval and undertak[e] a more cursory class certification analysis at the preliminary approval stage.”); *Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC, 2016 WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions in *Amchem* . . . , a cursory approach appears the norm.”); *In re Amtrak Train Derailment in Philadelphia, Pennsylvania*, No. 15-MD-2654, 2016 WL 1359725, at *4 (E.D. Pa. Apr. 6, 2016) (“[A] settlement class can be preliminarily certified based on a less rigorous analysis than that necessary for final certification.”); *In re Processed Egg Prod. Antitrust Litig.*, No. 08-MD-2002, 2014 WL 828083, at *2 (E.D. Pa. Feb. 28, 2014) (at the preliminary approval stage, “the Court must determine whether the proposed class should be conditionally certified, and leave the final certification decision for the Fairness Hearing.”).

1 In April of 2012, the California Supreme Court expounded on the element of
2 predominance: “The ‘ultimate question’ the element of predominance presents is whether ‘the
3 issues which may be jointly tried, when compared with those requiring separate adjudication, are
4 so numerous or substantial that the maintenance of a class action would be advantageous to the
5 judicial process and to the litigants.’” *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021
6 (2012) (citations omitted).

7 The proposed Settlement Class consists of current and former hourly-paid, non-exempt
8 employees who worked for Defendant Hale Construction, Inc. within the State of California from
9 May 11, 2018 through October 17, 2025. Because all class members are current or former
10 employees of Defendant, the class is readily ascertainable from Defendant’s regular business
11 records.

12 Here, common issues of fact and law predominate because the California statutes relating
13 to each of Plaintiffs’ claims, and Defendant’s defenses thereto, apply with equal force and effect
14 to all Class Members. Factually, Plaintiffs contend that Defendant’s policies and practices apply
15 class-wide and Defendant’s liability can be determined by facts common to all members of the
16 class. The wage and hour issues are both numerous and substantial, and a class action is the most
17 advantageous method of dealing with the claims of the Settlement Class Members.

18 Plaintiffs’ wage and hour claims are typical of the proposed Settlement Class because they
19 arise from the same factual bases and are based on the same legal theories applicable to the other
20 Class Members. Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the
21 Class. Plaintiffs maintain that they were injured by the same company-wide practices to which
22 the proposed Settlement Class was subject and seek the same relief. Plaintiffs have already
23 demonstrated their ability to advocate for the interests of the Class by initiating this litigation,
24 undertaking representative discovery, and evaluating the proposed settlement to assure that it is
25 fair.

26 Additionally, Plaintiffs are represented by competent counsel who have extensive
27 experience in litigating wage and hour class action cases. (See Parsons Decl. ¶¶ 25-37.) Plaintiffs’
28 Counsel’s wage and hour class action expertise establishes that they are well qualified to represent

1 the interests of this Class. Moreover, Plaintiffs' counsel is not aware of any actual or potential
2 conflict of interest with Class Members, Aggrieved Employees, and/or the Settlement
3 Administrator, nor is Plaintiffs' counsel aware of any other pending matter or action asserting
4 claims that will be extinguished or adversely affected by this Settlement. (*Id.* ¶¶ 39-40.)

5 A class action is superior to a multitude of individual lawsuits. Given the size and amount
6 of each individual Class Member's claim, Class Members likely have little incentive to litigate
7 their claims on an individual basis because the out-of-pocket expense and personal commitment
8 necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is
9 superior to individual, case-by-case adjudication.

10 IV. CONCLUSION

11 The Parties have negotiated a fair and reasonable settlement of claims. Having
12 appropriately presented the materials and information necessary for preliminarily approval, the
13 Parties request that the Court preliminarily approve the settlement.

14
15 Dated: August 28, 2026

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16
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