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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 JUSTIN BRAUN, on behalf of himself and all
13 others similarly situated,

14 Plaintiff,

15 v.
16

17 AV DECKING, INC. doing business in
California as AV METAL DECKING; and
18 DOES 1 through 100, inclusive,

19 Defendants.
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Case No. 25STCV01069

*Assigned for all Purposes to the Hon. Laura
A. Seigle, Dept. SSC-17*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: October 6, 2026
Time: 9:00 a.m.
Department: SSC-17

Complaint Filed: January 15, 2025
FAC Filed: March 26, 2025
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on October 6, 2026 at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 17 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Justin Braun (“Plaintiff”) will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement (“Settlement”) between Plaintiff and Defendant AV Decking, Inc. dba AV Metal Decking (“Defendant” or “AV Decking”);
2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification, for settlement purposes only, of the following Settlement Class:
All current and former non-exempt employees who worked for AV Decking in California at any time from January 15, 2021 through March 23, 2026 (the “Class Release Period”).
3. Preliminary appointment of Plaintiff as the Class Representative;
4. Preliminary appointment of Tuvia Korobkin, F. Shawn Azizollahi, and Nancy Goodes of Marquee Law Group, APC as Class Counsel;
5. Appointment of Phoenix Settlement Administrators (“Phoenix”) as Settlement Administrator;
6. Approval of the proposed Notice of Proposed Class Action Settlement and Notice of Estimated Settlement Award (the “Notice Packet”), and an order that the Notice Packet be disseminated to the Settlement Class as provided in the Settlement; and
7. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award a Class Representative Service Payment to Plaintiff, attorneys’ fees and costs to Class Counsel, administration costs to the Settlement Administrator, and PAGA civil penalties to the Labor & Workforce Development Agency.

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1 This motion is based on this notice of motion; the attached memorandum of points and
2 authorities; the declaration of counsel and exhibits attached thereto; the declaration of Plaintiff;
3 the declaration of Jodey Lawrence and exhibits attached thereto; the pleadings and other papers
4 filed in this action; and any further oral or documentary evidence or argument presented at the
5 time of hearing.

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7 Dated: August 24, 2026

MARQUEE LAW GROUP, APC



Tuvia Korobkin
Attorneys for Plaintiff

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Williams v. Brinderson Constructors

No. CV-15-02474 MWF (AGRx), 2017 WL 490901 (C.D. Cal. Feb. 6, 2017)10

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Justin Braun (“Plaintiff”) seeks preliminary approval of a class action settlement
4 (“Settlement”) with Defendant AV Decking, Inc. (“Defendant” or “AV Decking”) (together with
5 Plaintiff, the “Parties”). The Settlement resolves a class and representative action pending before
6 this Court (the “Action”), in which Plaintiff alleges that AV Decking failed to pay employees for
7 all hours worked; took unlawful deductions from wages; failed to provide all meal periods; failed
8 to authorize and permit all rest periods; and failed to reimburse business expenses. Plaintiff further
9 alleges that as a result of these violations, AV Decking failed to issue accurate itemized wage
10 statements, failed to pay all wages on termination, engaged in unfair competition, and is liable for
11 civil penalties under the Private Attorneys General act (“PAGA”).

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-
13 reversionary class action Settlement,¹ in which AV Decking has agreed to pay **\$500,000.00** to the
14 following Settlement Class, which is estimated to consist of 337 individuals:

15 All individuals who worked for AV Decking in California in a non-exempt position
16 at any time from June 26, 2020 through the date of Preliminary Approval (the
“Class Period”).

17 The Settlement was reached after the Parties engaged in a full-day mediation with Tagore
18 Subramaniam, Esq., an experienced and respected class action mediator. In connection with
19 mediation, Defendant produced extensive informal discovery, including timekeeping and payroll
20 records for putative class members, AV Decking’s relevant written policies, and other documents
21 and information.

22 After extensive research and investigation, including a detailed analysis of AV Decking’s
23 potential exposure made with the assistance of an expert data analyst, the full-day mediation
24 session was held with Mr. Subramaniam on January 22, 2026. At the conclusion of mediation,
25 Mr. Subramaniam made a mediator’s proposal to resolve the Action, which was eventually
26 accepted by the Parties. Over the following weeks, the Parties negotiated the finer terms of their
27 settlement, ultimately resulting in the Settlement.

28 ¹ The Settlement is attached as Exhibit 1 to the Korobkin Declaration. The Class Notice and Notice
of Estimated Settlement Award are attached as Exhibits A and B, respectively, to the Settlement.

1 Notably, Settlement Class members do not need to submit a claim form to receive a
2 payment (“Settlement Award”). After deductions for proposed administration costs, attorney fees
3 and costs, Plaintiff’s service payment, and the Labor & Workforce Development Agency’s
4 (“LWDA”) share of PAGA civil penalties, the average individual payment to Settlement Class
5 members is estimated at **\$745.80**. For the reasons discussed herein, Plaintiff respectfully submits
6 the Settlement is fair, reasonable, and adequate, and requests that the Court grant preliminary
7 approval of the Settlement.

8 **II. SUMMARY OF THE LITIGATION**

9 **A. FACTUAL AND PROCEDURAL BACKGROUND**

10 AV Decking offers decking construction services in Southern California and parts of
11 Arizona. *See* Declaration of Tuvia Korobkin (“Korobkin Decl.”), ¶ 10. Plaintiff is a former AV
12 Decking employee who worked as a non-exempt laborer in California for several months
13 beginning November 2024. *Id.*

14 On January 15, 2025, Plaintiff filed this Action, alleging claims for failure to pay
15 minimum wages and overtime wages, rest period violations, wage statement violations, unlawful
16 wage deductions, failure to reimburse business expenses, and unfair competition. Korobkin Decl.,
17 ¶ 11. Plaintiff also submitted a PAGA notice letter to the LWDA and to AV Decking on January
18 15, 2025, based on the same violations. *Id.*

19 On March 26, 2025, Plaintiff filed a First Amended Complaint adding a cause of action
20 for PAGA civil penalties. Korobkin Dec., ¶ 11. As part of the Settlement, on June 11, 2026,
21 Plaintiff filed a Second Amended Complaint (SAC) adding causes of action for failure to provide
22 meal periods and waiting time penalties. *Id.*, ¶ 12. Plaintiff’s PAGA notice letter was amended
23 prior to filing the SAC, to include additional facts and theories supporting those claims. *Id.*

24 **B. PLAINTIFF’S CLAIMS AND AV DECKING’S DEFENSES**

25 **1. Unpaid Wages Claim**

26 Plaintiff alleges that AV Decking failed to pay Plaintiff and other employees for all hours
27 worked. Specifically, Plaintiff alleges that AV Decking did not allow employees to clock-in for
28 work until they put on all required gear and tools and arrive “on-deck” to a specific section of the

1 worksite. Typically, Plaintiff alleges it would take approximately 10 to 20 minutes to put on work
2 gear after arriving at the employee parking lot. Then, Plaintiff alleges he and other employees
3 would need to walk from the employee parking lot to the deck. Korobkin Decl., ¶ 13. In addition,
4 Plaintiff alleges that employees were sometimes required to transport materials in their vehicles
5 on their way to distant jobsites and were not paid for this time. *Id.*

6 AV Decking contends it has always paid employees for all hours worked, that its policies
7 prohibit off-the-clock work, and that employees were expected to don any work gear after
8 clocking in. Korobkin Decl., ¶ 13. To the extent there is any alleged off-the-clock work, AV
9 Decking contends that it had no knowledge of any employees working off-the-clock, nor any
10 reason to suspect such work was occurring. AV Decking further argues that differences among
11 employees' job duties and working conditions, as well as issues with proving whether each
12 employee worked unpaid wages on each individual shift, would present a plethora of
13 individualized issues that would preclude class certification. *Id.*

14 **2. Overtime Claim**

15 Plaintiff also alleges that AV Decking failed to pay overtime at 1.5 times the "regular
16 rate" of pay by failing to incorporate the value of per diem payments, "on-call" pay, and
17 prevailing wage rates into the regular rate, thereby under-paying overtime wages, and that AV
18 Decking also failed to pay daily overtime on some shifts. Korobkin Decl., ¶ 14. AV Decking
19 argues that per diem payments were meant as reimbursements for the cost of meals when
20 traveling to distant job sites, not part of regular wages, and did not need to be included in the
21 regular rate. *Id.* As for on-call payments, AV Decking contends these payments were mislabeled
22 as "on call" time. Instead, AV Decking contends that this time was meant to compensate
23 employees for costs incurred traveling to and from a job site. *Id.* AV Decking contends that per
24 diem and travel pay are not required to be included in the regular rate of pay. AV Decking further
25 argues it always paid overtime wages and prevailing wages as required under the relevant statutes
26 and contracts. *Id.* Finally, AV Decking argues that differences in individual employees' particular
27 payments, job sites, issues with proving liability and damages as to each employee, and other
28 individualized circumstances would preclude class certification of this claim. *Id.*

1 **3. Meal Period Claim**

2 Plaintiff alleges that AV Decking failed to provide their non-exempt employees with
3 uninterrupted off-duty 30-minute meal periods. Korobkin Decl., ¶ 15. Specifically, meal periods
4 were sometimes not provided until after 5 hours of work, as Plaintiff and other non-exempt
5 employees needed to finish specific projects or job duties before they were allowed to take meal
6 periods. In addition, Plaintiff and other non-exempt employees were not always provided second
7 meal periods on shifts over 10 hours. For its part, AV Decking argues that it has always
8 maintained lawful meal period policies, and that employees are provided a full 30-minute meal
9 period on each shift in accordance with those policies. *Id.* Any missed or non-compliant meal
10 periods are the result of employee choice, AV Decking argues, rather than an employer policy or
11 practice. *Id.* AV Decking also argues that employees waived their second meal periods, thereby
12 absolving any liability for second meal periods. *Id.* Finally, AV Decking argues that differences
13 among employees as to whether and why they did not take compliant meal periods, whether they
14 waived meal periods, and other individualized issues would defeat certification. *Id.*

15 **4. Rest Period Claim**

16 Plaintiff alleges that AV Decking often required employees to take rest periods “on deck”
17 and that employees could not leave the worksite for rest periods. Korobkin Decl., ¶ 16. For its
18 part, AV Decking contends that it has always maintained lawful rest periods policies and has
19 consistently authorized and permitted legally compliant 10-minute rest periods without
20 interruption. *Id.* Moreover, AV Decking points to Section 11 of Wage Order 16 (applicable to
21 the construction industry), which provides that rest periods “shall take place at employer
22 designated areas, which may include or be limited to the employees’ immediate work area.” *Id.*
23 AV Decking further argues that differences among employees as to whether they were provided
24 rest breaks, or required to miss a rest break or voluntarily did so on each shift, would create
25 individualized issues. *Id.* These individualized issues are particularly present for rest periods, AV
26 Decking argues, since rest periods are not (and need not be) recorded. *Id.*

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1 **5. Expense Reimbursement and Unlawful Deduction Claims**

2 Plaintiff alleges that AV Decking required employees to use their personal cell phones for
3 work purposes, including to clock in and out for work every day on the Workyard app. Korobkin
4 Decl., ¶ 17. Plaintiff further alleges that AV Decking would take deductions from employee
5 wages for tools, rather than providing necessary tools to employees at AV Decking’s expense. *Id.*
6 AV Decking argues that employees did not need to use personal cell phones for work and if they
7 did, there are procedures in place for employees to request reimbursement of work-related
8 expenses. *Id.* In addition, AV Decking argues that any tools deductions were rare and minimal,
9 and affected a small sub-set of employees rather than a class-wide practice. *Id.* AV Decking
10 further argues that these claims would not be manageable on a class basis, given differences
11 among employees as to whether they incurred business expenses, whether AV Decking knew
12 about such expenses, and whether such expenses were reasonable and therefore requiring
13 reimbursement. *Id.*

14 **6. Claims Under Lab. Code §§ 203, 226, and the PAGA**

15 As a result of AV Decking’s alleged failures described above, Plaintiff asserts that AV
16 Decking failed to comply with its final payment and wage statement obligations, in violation of
17 Cal. Labor Code §§ 203 and 226, respectively. Korobkin Decl., ¶ 18. Plaintiff further alleges AV
18 Decking’s wage statements did not include AV Decking’s address. *Id.* Finally, Plaintiff seeks
19 PAGA civil penalties based on the above claims. *Id.*

20 AV Decking argues Plaintiff’s derivative claims fail for the same reasons his underlying
21 claims fail. Korobkin Decl., ¶ 19. AV Decking further asserts it has strong, good-faith defenses
22 to the underlying claims, precluding imposition of penalties. *See* 8 Cal. Code Regs. § 13520 (a
23 “good faith dispute that any wages are due will preclude imposition of waiting time penalties”);
24 *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded
25 imposition of waiting time penalties); *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal.5th
26 1056 (2024) (holding good faith defense precluded imposition of wage statement penalties). AV
27 Decking further contends its wage statements always accurately reflect amounts *paid* to
28 employees and thus no wage statement violations occurred. Korobkin Decl., ¶ 19; *see also*

1 *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (“The purpose
2 of section 226 is to ‘document the paid wages to ensure the employee is fully informed regarding
3 the calculation of those wages.’”) (citing *Soto v. Motel 6 Operating, L.P.*, 4 Cal.App.5th 385, 392
4 (2016)). AV Decking also argues wage statements contained AV Decking’s name and the address
5 for its Professional Employer Organization and payroll processor, which would allow employees
6 to identify the employer. *Id.*

7 As for the PAGA claim specifically, AV Decking contends Plaintiff’s PAGA claim fails
8 because the underlying claims fail. *See, e.g., Price v. Starbucks Corp.*, 192 Cal.App.4th 1136,
9 1147 (2011) (“Because the underlying causes of action fail, the derivative UCL and PAGA claims
10 also fail.”). AV Decking further maintains that given its good-faith defenses and honest attempts
11 to comply with the law, the Court would substantially reduce PAGA civil penalties even if it were
12 to find in Plaintiff’s favor on underlying claims. Korobkin Decl., ¶ 20; *see also* Lab. Code §
13 2699(e)(2) (authorizing discretionary reduction in PAGA penalties); *Thurman v. Bayshore Transit*
14 *Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties, in part
15 because “the evidence showed...defendants took their obligations...seriously and attempted to
16 comply with the law”); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL
17 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82%); *Carrington v. Starbucks*
18 *Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period
19 where employer made “good faith attempts” to comply); *Taduran v. Glidewell*, 121 Cal.App.5th
20 197 (2026) (affirming PAGA penalty reduction of more than 99%).

21 **C. DISCOVERY AND MEDIATION**

22 The Parties engaged in extensive informal discovery. AV Decking produced timekeeping
23 and payroll records for all putative class members for the majority of the putative class period; its
24 written policies; a class list with each employee’s hire date, number of workweeks, employment
25 status, and other data; and other relevant information. Korobkin Decl., ¶ 21. Plaintiff’s counsel
26 hired an expert data analyst to analyze and extrapolate the data. *Id.* This discovery allowed the
27 Parties to assess the merits and value of Plaintiff’s claims and AV Decking’s defenses. *Id.*

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The Parties attended a full-day mediation with Tagore Subramaniam on January 22, 2026, during which they vigorously debated Plaintiff’s claims and AV Decking’s defenses, the Parties’ respective damages models, the chances of certification, as well as AV Decking’s financial condition and ability to pay. Korobkin Decl., ¶ 22. At the conclusion of the mediation, Mr. Subramaniam made a mediator’s proposal, which was eventually accepted by the Parties. Over the following months, the Parties negotiated the finer terms of the settlement, ultimately resulting in the Settlement that was fully executed in June 2026. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, AV Decking will pay a non-reversionary Gross Settlement Amount (“GSA”) of \$500,000.00. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$500,000.00
• Minus Court-approved attorneys’ fees (up to 33.33%):	\$166,666.67
• Minus Court-approved costs (up to):	\$35,000.00
• Minus Court-approved Service Payment (up to):	\$10,000.00
• Minus Amount Set Aside as PAGA penalties:	\$40,000.00
• <u>Minus settlement administration costs (up to):</u>	<u>\$11,000.00</u>
Net Settlement Amount (“NSA”):	\$237,333.33
PLUS 35% of PAGA penalties (“PAGA Amount”):	\$14,000.00
Total Amount Paid to Settlement Class:	\$251,333.33

1. The Settlement Provides for Significant Monetary Payments

As noted above, after deducting amounts for court-approved service payments, administration costs, attorneys’ fees and costs, and PAGA payment to the LWDA, Settlement Class members will receive at least \$251,333.33. *See* Settlement, § 6(A) and (C). AV Decking represents there are approximately 337 Settlement Class members. *Id.*, § 1. Thus, the average payment to Settlement Class members is estimated to be **\$745.80**. Korobkin Decl., ¶ 24.

The NSA will be distributed to Participating Class Members (those Settlement Class members who do not opt out) proportionally based on the number of workweeks worked as non-exempt employees in California during the Class Period. *See* Settlement, § 8(B). Additionally, all Settlement Class members (even those who opt out) who were employed by AV Decking as non-exempt employees in California at any time from January 15, 2024 through March 23, 2026 (the “PAGA Period”), known as the “PAGA Group,” will each receive a portion of the \$14,000 PAGA

Amount, based on their proportionate number of pay periods worked for AV Decking as a non-exempt employee in California during the PAGA Period. *Id.*, §§ 2, 8(C).

Payments from the NSA will be treated as 33.33% wages reported on a Form W-2, with the remaining 66.67% treated as interest and penalties and reported on a Form 1099. *See* Settlement, § 8(E). Payments from the PAGA Amount will be treated as 100% penalties. *Id.* AV Decking will separately pay the employer's share of payroll taxes on the amount designated as "wages," in addition to the GSA. *Id.*, §§ 6(D), 8(E).

2. Notice Period and Release of Claims

Settlement Class members will have 60 days from the Notice mailing to opt out of or object to the Settlement or submit disputes, thereby providing ample time to review the Notice without unduly delaying the Settlement. *See* Settlement, § 13(C)-(E).

Participating Class Members will be bound by the Settlement and shall release all wage and hour claims that were pled in the Action, or that could have been pled based on the facts alleged in the Action, during the Class Period ("California Released Claims"). *See* Settlement, § 3. In addition, all PAGA Group members will release all claims against AV Decking for PAGA penalties based on the facts alleged in the PAGA letters submitted by the Plaintiff, that arose during the PAGA Period ("PAGA Released Claims"). *Id.*, § 4.

3. Funding of the Settlement

The Gross Settlement Amount will be funded in twenty-four (24) monthly installments as follows: (1) First Ten Payments: Defendant shall deposit \$100,000.00 of the GSA in ten (10) monthly installments of \$10,000.00 each by the last day of each calendar month, beginning with February 28, 2026 and ending on November 30, 2026; (2) Eleventh through Twenty-Third Payments: Defendant shall deposit \$390,000.00 of the GSA in thirteen (13) equal monthly installments of \$30,000.00 each by the last day of each calendar month, beginning with December 31, 2026 and ending on December 31, 2027; (3) Final Payment: Defendant shall deposit the final \$10,000.00 of the GSA no later than January 31, 2028, so that the GSA is fully funded no later than January 31, 2028. *See* Settlement, § 6(B). To date, Defendant has funded each required payment. *See* Declaration of Jodey Lawrence ("Lawrence Decl."), ¶ 23.

1 This payment plan was warranted due to AV Decking's financial condition, as attested to
2 in the accompanying declaration of Defendant's President, Anthony Velez. Mr. Velez attests that
3 "AV Decking operates in the construction field with tight margins due to high overhead, including
4 material and labor costs." (Declaration of Anthony Velez, ¶ 4.) "As a subcontractor, AV Decking
5 is often paid at the completion of a job, requiring the company to pay material and labor costs
6 before AV Decking is paid for a job. Because of this, AV Decking's cash flow requires the
7 settlement payment to be made in installments over the full twenty-four month period." *Id.*

8 **4. Attorneys' Fees and Costs, Enhancement Award, and PAGA Payment**

9 At final approval, Plaintiff will apply for a Service Payment of up to \$10,000. *See*
10 Settlement, §§ 6(C)(iii). "[I]ncentive awards are fairly typical in class action cases...and are
11 intended to compensate class representatives for work done on behalf of the class, to make up for
12 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
13 willingness to act as a private attorney general." *Cellphone Fee Termination Cases*, 186
14 Cal.App.4th 1380, 1393-94 (2010). As will be briefed at final approval, Plaintiff's requested
15 payment is in recognition of the time and effort he expended on behalf of the Settlement Class,
16 including providing factual information and documents to counsel, discussing with counsel the
17 claims and theories at issue in the litigation, reviewing the settlement agreement and other
18 documents, and otherwise actively participating in the prosecution of this case. Korobkin Decl.,
19 ¶ 37. Plaintiff respectfully submits the requested payment is well within the range of permissible
20 approval. *See, e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188
21 at *10 (E.D. Cal. May 17, 2011) (approving \$7,500 award to each of five named plaintiffs
22 (\$37,500 total) from roughly \$500,000 settlement); *Martinez v. Knight Transportation, Inc.*, No.
23 1:16-cv-01730-SKO, 2023 WL 5917989 (E.D. Cal. Sept. 11, 2023) (awarding \$10,000 incentive
24 award from \$400,000 claims-made settlement with average settlement payment of just \$127.61).

25 The parties have also designated \$40,000.00 of the GSA as PAGA penalties, of which
26 \$26,000 (65%) will be paid to the LWDA, with the remaining \$14,000 (35%) distributed to PAGA
27 Group members as described above, consistent with Labor Code § 2699(m)). Plaintiff submits
28 this allocation to PAGA is reasonable from the overall settlement. *See, e.g., Chu v. Wells Fargo*

1 *Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011) (approving \$10,000
2 PAGA payment from \$6.9 million settlement); *Williams v. Brinderson Constructors*, No. CV-15-
3 02474 MWF (AGRx), 2017 WL 490901 at *5 (C.D. Cal. Feb. 6, 2017) (approving \$10,000 PAGA
4 payment in \$300,000 settlement); *Lagunas v. Young Adult Institute, Inc.*, No. 23-cv-00654-RS,
5 2024 WL 1025121 (N.D. Cal. Mar. 8, 2024) (preliminarily approving \$20,000 PAGA allocation
6 from \$850,000 settlement).

7 At final approval, Plaintiff’s counsel will request attorneys’ fees of one-third of the GSA
8 (currently estimated at \$166,666.67), and up to \$35,000 in litigation costs. (Settlement, §
9 6(C)(iv).) The requested fee is fair compensation for undertaking complex, risky, expensive, and
10 time-consuming litigation on a contingent basis. Plaintiff’s counsel have incurred substantial
11 attorneys’ fees, in, among other things, conducting pre-filing investigation and legal research;
12 analyzing timekeeping, payroll, and other data with Plaintiff’s data expert to create a
13 comprehensive damages model; preparing for and attending mediation; negotiating and preparing
14 the Settlement; preparing this Motion; and otherwise prosecuting this case. Korobkin Decl., ¶ 36.
15 Counsel will also incur future attorney fees in overseeing the Notice process, fielding phone calls
16 from Settlement Class members, preparing the Final Approval Motion and supporting documents,
17 appearing at the Final Approval Hearing, and overseeing the remaining funding and disbursement
18 of the Settlement. *Id.*

19 It is appropriate to award attorney fees as a percentage of the “common fund” created by
20 the settlement. *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480 (2016) (holding “the percentage of
21 fund method survives in California class action cases”). Counsel’s fee request is well within the
22 range of reasonableness and is typical for common fund settlements. *See, e.g., Chavez v. Netflix,*
23 *Inc.*, 162 Cal.App.4th 43, n.11 (2008) (“regardless whether the percentage method or the lodestar
24 method is used, fee awards in class actions average around one-third of the recovery”). As will
25 be briefed at final approval, the fee request is reasonable in light of the substantial risks and
26 significant work undertaken, the results obtained, and the efficiency with which counsel litigated.

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28 ///

1 **IV. ARGUMENT**

2 **A. PRELIMINARY APPROVAL IS WARRANTED**

3 California Rule of Court 3.769 conditions class action settlements on court approval,
4 which is generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United*
5 *Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine
6 “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*,
7 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine “whether a proposed
8 settlement is fundamentally fair, adequate, and reasonable”). Settlement is the preferred means of
9 dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*,
10 516 F.3d 1095, 1101 (9th Cir. 2008). There is a presumption of fairness when a settlement is
11 negotiated at arm’s length by experienced counsel after sufficient discovery. *See, e.g., Kullar v.*
12 *Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

13 **1. Standard for Preliminary Approval**

14 To make a fairness determination, the Court should consider several factors, including:
15 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
16 litigation, the risk of maintaining class action status through trial, the amount offered in
17 settlement, the extent of discovery completed and the stage of the proceedings, the experience
18 and views of counsel...” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). “The list
19 of factors is not exclusive and the Court is free to engage in a balancing and weighing of the
20 factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*, 91
21 Cal.App.4th 224, 245 (2001) (disapproved on other grounds in *Hernandez v. Restoration*
22 *Hardware, Inc.*, 4 Cal.5th 260 (2018)). As discussed below, the proposed Settlement is fair,
23 adequate, and reasonable in light of the overall balance of factors in this case.

24 **a. The Strength of Plaintiff’s Case**

25 While Plaintiff is confident in the merits of his claims, Plaintiff acknowledges there were
26 substantial risks and uncertainty in proceeding with class certification and eventual trial on the
27 merits. As described in section II.B., *supra*, AV Decking presented multiple defenses to Plaintiff’s
28 claims, both on the merits and to class certification, rendering success uncertain.

1 **b. Risk, Expense, Complexity, and Duration of Further Litigation**

2 Although the Parties engaged in significant informal discovery, they had not completed
3 formal written and deposition discovery, which would have required expenditure of substantial
4 time and resources. Korobkin Decl., ¶ 38. Plaintiff also still had to file for class certification. *Id.*
5 Even if Plaintiff obtained certification, the Parties would incur considerable attorneys' fees and
6 costs through a possible decertification motion, motions for summary judgment, trial, and
7 potential appeals. *Id.* The Settlement avoids those risks and the accompanying delay and expense.
8 *Id.* Thus, this factor supports preliminary approval.

9 **c. Risk of Maintaining Class Action Status**

10 Plaintiff had not yet filed his class certification motion, and as such, the extent to which
11 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
12 was a risk there would not be a certified class at trial, or if there were, that it would consist of a
13 significantly smaller group of employees than the proposed Settlement Class, and the expected
14 recovery would be significantly reduced. Thus, this factor supports preliminary approval.

15 **d. Amount Offered in Settlement Given Realistic Value of Claims**

16 The Settlement provides a fair and reasonable recovery for the Settlement Class for
17 disputed claims. As detailed in the Korobkin Declaration, and after applying reasonable discounts
18 for risks of not obtaining class certification and risks of losing on the merits, Plaintiff estimated
19 his claims had a realistic potential value of up to \$750,332. Korobkin Decl., ¶¶ 26-35. The
20 proposed settlement of \$500,000 thus represents about 67% of Plaintiff's reasonably
21 forecasted classwide recovery. *Id.*, ¶ 35. Preliminary approval is appropriate, as the
22 Settlement and this litigation provide significant relief to the Settlement Class.

23 **e. The Experience and Views of Counsel**

24 In this case, Plaintiff's counsel have extensive experience litigating wage and hour class
25 actions, and have been appointed class counsel in numerous cases alleging similar claims. *See*
26 Korobkin Decl., ¶¶ 2-8, 39-40. Counsel conducted an in-depth review of Defendants' policies,
27 timekeeping and payroll records, and other relevant data, and drew on their extensive experience
28 to assess Plaintiff's claims. The Settlement was also reached after a mediation session with

mediator Tagore Subramaniam, Esq., an experienced wage and hour class action mediator. Korobkin Decl., ¶ 22. This strongly supports preliminary approval.

f. The Settlement Is Devoid of Obvious Deficiencies

The Settlement provides tangible monetary relief to the Settlement Class, and the amounts proposed for attorneys’ fees, costs, Plaintiff’s incentive award, and PAGA penalties are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this supports preliminary approval.

g. The PAGA Settlement is Fair and Reasonable

PAGA settlements require court approval. (Labor Code § 2699(s)(2)). PAGA penalties are intended to “remediate present violations and deter future ones, *not* to redress employees’ injuries.” *Amaro v. Anaheim Arena Management, LLC*, 69 Cal.App.5th 521, 542 (2021). The standard for evaluating a PAGA settlement is not whether the employees are fully compensated for their injuries, but “whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021), disapproved on other grounds by *Turrieta v. Lyft, Inc.*, 16 Cal. 5th 664 (2024).

Where, as here, the parties reach a substantial settlement providing employees with monetary compensation for underlying Labor Code violations, many of PAGA’s underlying policy objectives are satisfied. In addition, the amount allocated to the PAGA claims is fair to those affected because it accounts for a realistic assessment of the PAGA exposure on the claims as well as the significant possibility of the Court not awarding the PAGA penalties even if Plaintiff prevailed on the merits due to the Court’s discretion to substantially reduce PAGA penalties as noted above.

Here, the \$40,000.00 PAGA allocation is well within the range approved by California courts and therefore should be approved. As noted above, there was significant risk that the Court would either find against Plaintiff on his underlying claims or, if it found for Plaintiff, would have drastically reduced PAGA penalties. Thus, the PAGA allocation is fair and reasonable.

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1 **h. The Cy Pres Recipient is Appropriate.**

2 The Settlement provides that any settlement checks that remain uncashed after the void
3 date shall be distributed to a *cy pres* recipient, the National Alliance on Mental Illness – Greater
4 Los Angeles County (“NAMI”). *See* Settlement, § 8(F). NAMI is an appropriate *cy pres* recipient
5 as its mission bears a direct nexus to the Settlement Class, which consists of construction industry
6 workers. As NAMI has reported, one study found that construction workers experience elevated
7 rates of depression and other mental-health challenges. *See* National Alliance on Mental Illness,
8 *Study Shows Depression on the Rise Among Construction Workers*, [https://www.nami.org/in-the-](https://www.nami.org/in-the-news/study-shows-depression-on-the-rise-among-construction-workers/)
9 [news/study-shows-depression-on-the-rise-among-construction-workers/](https://www.nami.org/in-the-news/study-shows-depression-on-the-rise-among-construction-workers/). Because Settlement
10 Class members are construction workers who face disproportionate mental-health risks, directing
11 uncashed settlement funds to NAMI would directly benefit the Settlement Class or a population
12 with a sufficient nexus to the Settlement Class, consistent with the *cy pres* doctrine.

13 Furthermore, neither the parties nor their counsel have a relationship with NAMI that
14 could reasonably create the appearance of impropriety as between the selection of NAMI as the
15 recipient of uncashed funds and the interests of the class. *See* Korobkin Decl., ¶ 41; Declaration
16 of Alexis Sadakane, ¶ 4; Braun Decl., ¶ 8; Velez Decl., ¶ 6. Thus, Plaintiff respectfully requests
17 the Court approve NAMI as the *cy pres* recipient of uncashed funds. In the alternative, uncashed
18 funds will be deposited with the Unclaimed Property Fund. *See* Settlement, § 8(F).

19 **B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS**

20 The proposed Settlement Class satisfies the criteria for certification because: 1) the
21 Settlement Class is ascertainable and numerous; 2) common questions of law and fact
22 predominate; 3) Plaintiff’s claims are typical of the Settlement Class; and 4) Plaintiff and his
23 counsel will fairly and adequately represent the Settlement Class. Cal. Code Civ. Proc. § 382.

24 **1. The Proposed Class Is Ascertainable and Numerous**

25 A class is “ascertainable” where members “may be readily identified without unreason-
26 able expense or time by reference to official [or business] records.” *Sevidal v. Target Corp.*, 189
27 Cal.App.4th 905, 919 (2010). The Settlement Class includes non-exempt employees who worked
28 for AV Decking in California during the Class Period, and it thus can be readily identified from

AV Decking's records. AV Decking represents there are approximately 337 Settlement Class members, rendering it impracticable to bring them all before the Court. Numerosity is satisfied.

2. Common Issues of Law and Fact Predominate

The focus on certification is what types of questions, "common or individual," are likely to arise in the action. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff's claims are predicated largely on Defendant's overtime, meal and rest period, and expense reimbursement policies/practices. Such claims are commonly held proper for class certification. *Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (reversing denial of certification of meal/rest period claims); *Carlino v. CHG Medical Staffing, Inc.*, 2019 WL 1005070 (N.D. Cal. Oct. 20, 2019) (certifying regular rate claim); *Cochran v. Schwan's Home Service*, 228 Cal.App.4th 1137 (2014) (reversing denial of certification of reimbursement claim).

3. The Named Plaintiff's Claims Are Typical

Typicality is satisfied where class representatives have claims typical of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Here, Plaintiff's claims are typical of those held by Settlement Class members. Plaintiff was employed by Defendant as a non-exempt employee in California during the Class Period, and Plaintiff contends he was injured by the same challenged policies that allegedly injured the Settlement Class as a whole. *See* Declaration of Justin Braun, ¶ 3.

4. Plaintiff and Class Counsel Will Adequately Represent the Class

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.*, 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the Settlement Class, as there are no known conflicts between Plaintiff or his counsel and the Settlement Class. *See McGhee v. Bank of Am.*, 60 Cal.App.3d 442, 450 (1976) (finding adequacy satisfied where there was no indication that plaintiff's counsel was not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation, as noted above.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

1 The Court should order distribution of the proposed Notice by U.S. Mail, using last known
2 mailing addresses provided by AV Decking. This is the “best notice practicable” under the
3 circumstances as it provides “individual notice to all members who can be identified through
4 reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff proposes
5 the Settlement be administered by Phoenix Settlement Administrators, an experienced
6 administrator. *See* Lawrence Declaration and exhibits. Phoenix will run all addresses through the
7 USPS National Change of Address database and will perform “skip traces” to obtain current
8 addresses for Notices returned as undeliverable. *See* Settlement, § 13(B) & (F).

9 The proposed Notice satisfies Rule of Court 3.766(d) because it advises the Settlement
10 Class of the nature of the claims; the parties’ basic contentions; the key Settlement terms; the 60-
11 day deadline to opt out, object, or submit a dispute and how to do so; the payment formula and
12 expected payment amount for each Settlement Class member; and explains the releases of claims.
13 *See* Settlement, Exh. A. The Notice also includes the final approval hearing date and time and
14 provides contact information for Class Counsel. *Id.* The Notice will also be translated into
15 Spanish. *See* Settlement, § 12(F). The Notice satisfies Rule of Court 3.766(e) as the most reliable
16 and cost-effective method of reaching the Settlement Class.

17 **D. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

18 The Court should set a hearing for final approval on a date appropriately scheduled to
19 follow Settlement Class members’ response deadline. *See* Cal. Rule of Court 3.769.

20 **V. CONCLUSION**

21 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
22 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
23 Proposed Order submitted concurrently herewith.

24
25 Dated: August 24, 2026

Respectfully submitted,
MARQUEE LAW GROUP, APC

26
27 By:


Tuvia Korobkin
Attorneys for Plaintiff