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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF LOS ANGELES**

15 MARTHA D. JIMENEZ, an individual, on
16 behalf of herself, the State of California, as a
17 private attorney general, and on behalf of all
18 others similarly situated,

19 Plaintiff,

20 v.

21 HOLLEY PERFORMANCE PRODUCTS INC.,
22 a Delaware Corporation; and DOES 1 TO 50,

23 Defendants.

Case Number: 25STCV00770

**Plaintiff's Notice of Motion and Motion for
Preliminary Approval of Class Action and
PAGA Settlement**

Complaint Filed: January 13, 2025

Trial Date: None Set

Hearing Date: June 29, 2026

Hearing Time: 10:00 a.m.

Dept.: 15

Judge: Hon. Timothy Patrick Dillon

1 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on June 29, 2026, at 10:00 a.m., or as soon thereafter as the
4 matter may be heard, in Department 15 of the Los Angeles County Superior Court for the State of
5 California, located at the Spring Street Courthouse, 312 North Spring Street, Los Angeles, California
6 90012, before the Honorable Timothy Patrick Dillon, Plaintiff Martha D. Jimenez (“Plaintiff”), on
7 behalf of herself, the State of California, as a private attorney general, and on behalf of all others
8 similarly situated, will and hereby does move this court for entry of an order:

9 1. Preliminarily certifying the settlement class for purposes of settlement pursuant to
10 California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769;

11 2. Preliminarily appointing Plaintiff as class representative for purposes of settlement;

12 3. Preliminarily appointing Jonathan Melmed, Kyle D. Smith, and Rachel Jo of Melmed
13 Law Group P.C. as class counsel for purposes of settlement;

14 4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the
15 terms set forth in the parties’ *Class Action and PAGA Settlement Agreement and Class Notice* (the
16 “Initial Agreement”) and *Amendment to Class Action and PAGA Settlement Agreement and Class*
17 *Notice* (the “Amendment”) (the Initial Agreement and Amendment are hereafter referred to together as
18 the “Settlement Agreement”), including payment by Defendant Holley Performance Products Inc.
19 (“Defendant”) of the non-reversionary gross settlement amount of \$400,000.00 (“Gross Settlement
20 Amount”);

21 5. Preliminarily approving payment of reasonable attorneys’ fees from the Gross
22 Settlement Amount in an amount not to exceed one-third of the Gross Settlement Amount (i.e., up to
23 \$133,333.33), plus necessary litigation costs not to exceed \$27,500.00;

24 6. Preliminarily approving a class representative service payment in an amount of up to
25 \$10,000.00 for Martha D. Jimenez from the Gross Settlement Amount to compensate her for the
26 responsibilities, time, effort, and risks involved in coming forward on behalf of the proposed class;

27 7. Preliminarily approving the allocation of \$40,000.00 for penalties pursuant to the
28 California Labor Code Private Attorneys General Act of 2004, of which 65% (i.e., \$26,000.00) shall

1 be paid to the California Labor and Workforce Development Agency (“LWDA”) from the Gross
2 Settlement Amount, with the remaining 35% (i.e., \$14,000.00) payable to the aggrieved employees;

3 8. Appointing Apex Class Action Administration (the “Settlement Administrator”) as the
4 settlement administrator to handle the notice and administration process and preliminarily approving
5 settlement administration costs estimated to be \$4,490.00;

6 9. Approving the proposed class notice and ordering it be disseminated to the class
7 members as provided in the Settlement Agreement;

8 10. Directing the Settlement Administrator to mail the class notice to the proposed class;

9 11. Approving the proposed deadlines for the notice and administration process as reflected
10 in this motion and in the Settlement Agreement;

11 12. Setting a date for a final fairness hearing to determine, following dissemination of the
12 proposed class notice packet, whether to grant final approval of the settlement; and

13 13. Granting Plaintiff leave to file the overlength brief included with this motion, due to the
14 complex nature of this motion.

15 Pursuant to California Rules of Court, Rule 3.769(d) and (e), this motion is made on the grounds
16 that the proposed Settlement Agreement satisfies all criteria for preliminary approval and falls well
17 within the range of reasonableness. The Settlement Agreement was reached through informed, arm’s
18 length bargaining between experienced attorneys with the assistance of an experienced neutral, and
19 Plaintiff and Plaintiff’s counsel will fairly and adequately represent the Class.

20 This motion is based on this Notice of Motion and Motion for Preliminary Approval of Class
21 Action Settlement; the Memorandum of Points and Authorities in support thereof; the declaration of
22 Plaintiff’s counsel Kyle D. Smith; the declaration of Plaintiff; the Settlement Agreement; the proposed
23 class notice; the proposed order granting preliminary approval of the Settlement Agreement and setting
24 a settlement fairness hearing; the other records, pleadings, and papers filed in this action; and upon
25 such other evidence or argument as may be presented to the court at the hearing of this motion.
26
27
28

1 Dated: May 6, 2026

MELMED LAW GROUP P.C.

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4 **KYLE D. SMITH**

5 Attorneys for Plaintiff, the Putative Class, and the
6 Aggrieved Employees
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion seeks preliminary approval of a wage-and-hour class action and PAGA settlement between Plaintiff Martha D. Jimenez (“Plaintiff”) and Defendant Holley Performance Products Inc. (“Defendant”) (collectively, the “Parties”) for the Gross Settlement Amount of \$400,000.00. A true and correct copy of the *Class Action and PAGA Settlement Agreement and Class Notice* (the “Initial Agreement”), is attached as **Exhibit 1** to the concurrently filed *Declaration of Kyle D. Smith in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement* (“Declaration of Kyle D. Smith” or “Smith Decl.”). A true and correct copy of the *Amendment to Class Action and PAGA Settlement Agreement and Class Notice* (the “Amendment”) is attached to the Declaration of Kyle D. Smith as **Exhibit 2**. The Initial Agreement and Amendment are hereafter referred to together as the “Settlement Agreement.” The Settlement Agreement, in its entirety, is incorporated herein by reference.

Under the Settlement Agreement, the Gross Settlement Amount is to be distributed to approximately 64 individuals defined as: *all individuals who are or were employed by Defendant as non-exempt employees in California during the Class Period*. The “Class Period” for these purposes is defined as the period from January 13, 2021, through January 4, 2026. These employees are referred to herein individually as the “Class Members” or collectively as the “Class.” (Initial Agreement, at pp. 1–2, 8.)

Plaintiff also represents a group of approximately 42 aggrieved employees on behalf of the State of California as a private attorney general pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698 through 2699.6 (“PAGA”). The “Aggrieved Employees,” for these purposes, are defined as: *all individuals who are or were employed by Defendant as non-exempt employees in California during the PAGA Period*. The “PAGA Period” for these purposes is defined as the period from January 13, 2024, through January 4, 2026. (Initial Agreement, at pp. 4, 8.)

The Settlement Agreement is a non-reversionary settlement, meaning that none of the Gross Settlement Amount will revert to Defendant. (Initial Agreement, at p. 6.) Class Members are not

required to submit a claim form to receive their settlement share. (Initial Agreement, at p. 6.) Subject to court approval, the “Net Settlement Amount” of at least **\$198,676.67**, will be distributed to Class Members who do not request exclusion from the settlement and the Aggrieved Employees, less applicable taxes.

Gross Settlement Amount	\$400,000.00
Attorneys’ Fees	(up to \$133,333.33)
Litigation Costs	(up to \$27,500.00)
Settlement Administration Costs	(up to \$4,490.00)
Service Award to Plaintiff	(up to \$10,000.00)
PAGA Payment to LWDA	(\$26,000.00)
Net Settlement Amount	\$198,676.67

Because the settlement is fair and reasonable, was negotiated at arm’s length between counsel following extensive investigation and discovery, was reached after participation in a full-day mediation, it should be preliminarily approved. (Smith Decl., ¶ 6.)

This settlement is an excellent result considering the number of Class Members affected. Because the Settlement is well within the zone of reasonableness, Plaintiff requests entry of an order: (1) preliminarily certifying the Settlement Class under California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769(c), for settlement purposes and preliminarily approving the settlement; (2) preliminarily appointing Plaintiff as class representative for purposes of settlement; (3) preliminarily appointing Plaintiff’s counsel as class counsel for the purposes of settlement; (4) preliminarily approving the settlement as fair, adequate, and reasonable; (5) preliminarily approving the proposed deductions from the Gross Settlement Amount, including the proposed allocation of PAGA penalties, the attorneys’ fees, litigation costs, service award to the named Plaintiff, and administration costs; (6) approving the proposed class notice attached as **Exhibit A** to the Initial Agreement; (7) appointing Apex Class Action Administration to administer the settlement (“Settlement

Administrator”) and directing the Settlement Administrator to distribute the Class Notice; and (8) scheduling a hearing for final approval after the completion of the settlement notice process.

II. **BACKGROUND**

A. **THE PARTIES**

Defendant Holley Performance Products Inc. is a fuel-system design and performance automotive products company that has been in operation for more than a century. Defendant is headquartered in Bowling Green, Kentucky, and first began operating in California in 2000. Defendant employed non-exempt workers in California during the Class Period and PAGA Period. (Smith Decl., ¶ 18.) Plaintiff Martha D. Jimenez worked for Defendant in California as an hourly, non-exempt embroiderer for approximately twelve years, from December 27, 2011, through approximately March 3, 2024. Plaintiff alleges that Defendant’s employees—including Plaintiff, the Class Members, and the Aggrieved Employees—experienced various violations of California’s wage-and-hour laws. (Smith Decl., ¶ 19.)

B. **PROCEDURAL SUMMARY**

On January 13, 2025, Plaintiff submitted a letter to the California Labor and Workforce Development Agency (“LWDA”) to notify the LWDA, pursuant to PAGA, of Plaintiff’s intent to seek civil penalties against Defendant for violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and others that may be applicable; and California Industrial Welfare Commission (“IWC”) Wage Orders 2-2001, 4-2001, and/or 6-2001 (the “Applicable Wage Orders”). (Cal. Code Regs., tit. 8, §§ 11020, 11040, 11060; Smith Decl., ¶ 20.) The letter attached Plaintiff’s original complaint, and incorporated the original complaint by reference, and thus sought penalties for claims identical to those alleged in the case. For the Court’s reference, a copy of Plaintiff’s letter to the LWDA is attached as **Exhibit 3** to the concurrently filed Declaration of Kyle D. Smith.

On January 13, 2025, Plaintiff commenced this action by filing a class action complaint alleging causes of action against Defendant for (1) failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order; (2) failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable

1 Wage Order; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in
2 violation of Labor Code section 226.7 and the Applicable Wage Order; **(4)** failure to provide compliant
3 meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512,
4 and the Applicable Wage Order; **(5)** failure to maintain accurate employment records in violation of
5 Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor
6 Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor
7 Code sections 201, 202, and 203; **(8)** failure to provide complete and accurate wage statements in
8 violation of Labor Code sections 226 and 226.3; and **(9)** deceptive, fraudulent, or otherwise unlawful
9 business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. &
10 Prof. Code, §§ 17200–17210) (the “Class Complaint”) (Smith Decl., ¶ 21.)

11 On April 7, 2025, Plaintiff filed a separate PAGA action against Defendant, *Jimenez v. Holley*
12 *Performance Products Inc.* (L.A. Sup. Ct., Case No. 25STCV10232) (the “PAGA Complaint”) (the
13 Class Complaint and PAGA Complaint are hereafter collectively referred to as the “Operative
14 Complaints”). The PAGA Complaint brought one cause of action pursuant to PAGA for penalties on
15 the claims as described in the Class Complaint. (Lab. Code, §§ 2698–2699.6). (Smith Decl., ¶ 22.)

16 Thereafter, the Parties agreed to attend a private mediation with Louis Marlin. Prior to the
17 mediation, Plaintiff’s counsel conducted significant informal discovery. Discovery, investigation, and
18 prosecution has included, among other things, numerous telephonic conferences with Plaintiff;
19 inspection and analysis of hundreds of pages of documents, including Defendant’s relevant policies,
20 onboarding paperwork, payroll records, and timesheets, and other information produced by Plaintiff
21 and Defendant; analysis of work-related data from the Class Members and Aggrieved Employees; an
22 analysis of the legal positions taken by Defendant; investigation into the viability of class treatment of
23 the claims asserted in the action; analysis of potential class-wide damages, including information
24 sufficient to understand Defendant’s potential defenses to Plaintiff’s claims; research of the applicable
25 law with respect to the claims asserted in the Operative Complaints and the potential defenses thereto;
26 and assembling and analyzing of data for calculating damages. (Smith Decl., ¶ 23.)

27 Among other key pieces of information, Plaintiff’s counsel requested in its informal discovery
28 letter the wage statements and time records for a statistically significant sample size of Class Members

1 during the Class Period. Defendant produced timekeeping and payroll records covering approximately
2 98.8% of putative class employees with payroll history during the Class Period, comprising 44,596
3 shifts (over 92% of all Class Period shifts), which Plaintiff's counsel determined would provide a
4 statistically significant sample size with a high degree of confidence for Plaintiff's expert's statistical
5 analysis. This sampling included payroll records and timesheets for the Class Members' shifts during
6 the Class Period. From these records, Plaintiff's expert was able to carefully craft a damages model for
7 each of the categories of alleged claims for which the data would reflect violations. (Smith Decl., ¶ 24.)

8 On November 5, 2025, the Parties participated in a full-day mediation with Louis Marlin who
9 is a full-time mediator with extensive experience in California wage-and-hour class action lawsuits.
10 (Smith Decl., ¶ 25.) The mediation negotiations were productive, and the Parties were able to reach the
11 broad terms of an agreement. After further negotiation, the Parties executed the longform Settlement
12 Agreement, now before the Court for approval. (Smith Decl., ¶ 25.)

13 On May 5, 2026, the Parties executed the Amendment, which corrected the PAGA allocation
14 (previously 75% to the LWDA and 25% to the Aggrieved Employees) to 65% to the LWDA and 35%
15 to the Aggrieved Employees to reflect changes under new PAGA. (See generally, Amendment; Lab.
16 Code, § 2699, subd. (m).)

17 Plaintiff now seeks the Court's preliminary approval of the Settlement Agreement.

18 **III. SUMMARY OF THE CLAIMS, DEFENSES, AND EXPOSURE**

19 Plaintiff alleges several categories of wage and hour violations on behalf of the Class Members
20 and Aggrieved Employees. Most importantly, Plaintiff has alleged that Defendant implemented
21 rounding and meal break practices that systematically resulted in underpayment to Class Members.
22 (Smith Decl., ¶ 28.) Defendant has persistently denied all liability of any kind associated with the
23 claims and allegations and further denied that the Class Members and Aggrieved Employees are
24 entitled to any relief. Defendant also denies that these allegations are appropriate for class or
25 representative treatment for any purpose other than the settlement. Defendant maintains, among other
26 things, that it has complied with California laws in all respects. (Smith Decl., ¶ 29.) These claims,
27 defenses, and potential damages are summarized in more detail below.
28

1 **A. UNLAWFUL ROUNDING PRACTICES ALLEGATIONS (MINIMUM WAGE**
2 **AND OVERTIME ALLEGATIONS)**

3 Labor Code section 1197 requires employees to be paid at least the minimum wage fixed by
4 the IWC, and any payment of less than the minimum wage is unlawful. (See also Cal. Code Regs., tit.
5 8, §§ 11020, 11040, 11060, subd. 4(B); Lab. Code, § 1198.) Similarly, Labor Code section 1194 entitles
6 “any employee receiving less than the legal minimum wage . . . to recover in a civil action the unpaid
7 balance of the full amount of this minimum wage.” (See also Lab. Code, §§ 1185 [giving the Applicable
8 Wage Order the force of law], 1198 [same].) These minimum wage standards apply to each hour that
9 employees work. Therefore, an employer’s failure to pay for any particular time worked by an
10 employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not,
11 results in an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135
12 Cal.App.4th 314, 324.)

13 Labor Code sections 1194 and 1194.2 provide that an employer who has failed to pay its
14 employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid
15 wages as well as liquidated damages in an amount equal to the wages due, plus interest, attorneys’ fees,
16 and costs. A rounding policy is in violation of California law if it “systematically undercompensate[s]
17 employees” such as where the rounding policy “encompasses only rounding down.” (*See’s Candy*
18 *Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 901–902.) More recently, the California
19 Court of Appeal has called into question **all** rounding practices when time rounding “results in the
20 failure to pay an employee for all time worked.” (*Camp v. Home Depot U.S.A., Inc.* (2022) 84
21 Cal.App.5th 638, 659.) “[I]f an employer, as in this case, can capture and has captured the exact amount
22 of time an employee has worked during a shift, the employer must pay the employee for ‘all the time’
23 worked.” (*Id.* at p. 660.)

24 Here, Plaintiff alleged that Defendant employed a uniform rounding policy that rounded the
25 Class Members’ clock-in and clock-out records, rather than paying the Class Members for all time
26 worked. Plaintiff further alleged that Defendant’s policy was not neutral in application because, even
27 though Defendant captured the precise time worked by each Class Member, its rounding practice
28 systematically underpaid wages to the Class Members—arguably resulting in both minimum wage and

1 overtime violations under Labor Code sections 510 and 1197. (Smith Decl., ¶ 31.) Plaintiff's expert
2 determined that 58.9% of all shifts (i.e., 28,129 shifts) were underpaid due to Defendant's rounding
3 practice while only 4.5% of shifts (i.e., 2,166 shifts) were overpaid, and that 85.4% of all employees
4 were underpaid due to rounding. Plaintiff's expert further calculated approximately 8.3 minutes of net
5 underpayment per rounded shift, amounting to 4,178 net unpaid hours, including unpaid overtime.
6 (Smith Decl., ¶ 31.)

7 Defendant countered that, assuming *arguendo* Defendant's timekeeping policy involved
8 rounding, its policy was facially neutral and not overly one-sided so as to not violate the *See's Candy*
9 rule. Even if rounding resulted in some underpayment, Defendant argued, exposure on the claim is
10 minimal. (Smith Decl., ¶ 32.) Defendant further contended that, upon receiving Plaintiff's PAGA
11 notice, it promptly investigated and corrected the timekeeping practices in good faith—including
12 adjusting its rounding practice—and that, in any event, the average net underpayment of approximately
13 8.3 minutes per affected shift was *de minimis* in value. (Smith Decl., ¶ 32.)

14 Based on the informal discovery produced and the allegations in the case and Plaintiff's expert
15 analysis, Plaintiff estimated that Defendant's alleged maximum exposure for rounding to be
16 approximately **\$111,587**, excluding considerations of interest, penalties, and attorneys' fees. (Smith
17 Decl., ¶ 33.)

18 **B. MEAL AND REST PERIOD ALLEGATIONS**

19 Employers are required to provide their nonexempt employees with a thirty-minute
20 uninterrupted and duty-free meal period within the first five hours of work. (Lab. Code, § 512, subd.
21 (a).) Additionally, an employee who works more than ten hours per day is entitled to receive a second
22 thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a).) Similarly, under
23 Labor Code section 226.7 and the Applicable Wage Order, employers are required to provide their non-
24 exempt employees with compensated, duty-free rest periods of not less than ten minutes for every
25 major fraction of four hours worked.

26 Labor Code section 226.7 provides that employers must pay their employees one additional
27 hour of pay at the employee's regular rate for each workday that a "meal or rest or recovery period is
28 not provided." (Lab. Code, § 226.7, subd. (c).) The "regular rate" for these purposes is synonymous

1 with the “regular rate” in the overtime context, which means that it must include “adjustments to the
2 straight time rate, reflecting, among other things, shift differentials and the per-hour value of any
3 nonhourly compensation the employee has earned.” (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11
4 Cal.5th 858, 869; *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.)

5 Plaintiff alleged that Defendant employed a policy of automatically deducting 30 minutes from
6 each shift over 5 hours for a meal period, regardless of whether the Class Member actually took the
7 meal period or whether the meal period taken was on time and of full duration. Plaintiff’s expert
8 determined that 81.5% of all shifts over 5 hours had an automatically-deducted meal period. Of the
9 meal periods that were actually tracked, 52.2% were short (i.e., shorter than 30 minutes) and 30.6%
10 were late (i.e., taken after the end of the fifth hour). Plaintiff’s expert further determined that, in shifts
11 longer than 10 hours, Defendant failed to provide a *second* meal period 100% of the time. In total,
12 Plaintiff’s expert determined that 95.2% of all shifts over 5 hours contain a unique meal period
13 violation. Plaintiff further alleged that her rest periods (and the rest periods of the other Class
14 Members), which were not tracked, were periodically interrupted with no corresponding rest period
15 premium being paid. (Smith Decl., ¶ 34.)

16 Defendant argued that it maintained a set schedule for meal and rest periods and that entire
17 departments were relieved for their meal and rest periods together, such that all operations in the Class
18 Members’ departments ceased. Defendant argued that the effect of this policy was that all meal and
19 rest periods were compliantly taken and that recording was not required under the relevant wage order.
20 (See, e.g., Cal. Code Regs., tit. 8, § 11040, subd. 7(A)(3) [“Meal periods during which operations cease
21 and authorized rest periods need not be recorded.”].) Defendant further argued that, even if some
22 periodic meal or rest periods did occur, Defendant had initially acquired the business from another
23 company and argued that any faulty pay practices (to the extent they existed, which Defendant denied)
24 were inherited rather than instituted by Defendant. Once Defendant received Plaintiff’s PAGA notice,
25 Defendant argued that it acted in good faith to investigate and remediate allegations of timekeeping or
26 break issues, including auto-deducting meal periods. (Smith Decl., ¶ 35.)

27 In addition, Defendant argued that Plaintiff’s meal and rest period claims were highly
28 individualized, such that Plaintiff would not be able to obtain class certification. The “reasons that

1 employees fail to take [meal and rest] breaks can be manifold: the employees could have forgotten,
2 wanted to finish assignments, were not hungry, did not want to leave the premises, wanted to leave
3 early or, possibly, were manipulating their timecards.” (*Sultan v. Medtronic, Inc.* (C.D. Cal., July 23,
4 2012, No. CV 11-4132-MWF PLAX) 2012 WL 3042212, at *2; see also *Sotelo v. MediaNews Group,*
5 *Inc.* (2012) 207 Cal.App.4th 639, 654–655.) Thus, even if Plaintiff succeeded in arguing that Defendant
6 did not sufficiently provide the Class Members with meal periods, the resulting inquiries were arguably
7 entirely individual and would overwhelm any class-wide questions. (Smith Decl., ¶ 36.) Separate mini-
8 trials would arguably have to determine both *liability* (i.e., whether Defendant prevented a particular
9 employee from taking meal breaks they knew they were entitled to take) and *damages* (i.e., how often
10 Defendant prevented a particular employee from taking a meal break). (Smith Decl., ¶ 36.)

11 Plaintiff estimates a roughly 47.6% violation rate for those violations that Plaintiff believed to
12 be documented, based on Plaintiff’s allegations of auto-deductions and the expert’s analysis of
13 Defendant’s timekeeping data, which equates to 44,936 unique break violations. Applying the average
14 base hourly rate of \$18.00, Plaintiff estimated Defendant’s maximum exposure to be approximately
15 \$808,850, excluding considerations of derivative penalties. Plaintiff then discounted this amount by
16 75% due to the very real risks that this Court would agree with Defendant’s good faith defenses and
17 Plaintiff’s anticipated difficulties in achieving class certification. Plaintiff estimates Defendant’s
18 realistic exposure for this claim to be approximately **\$202,212**. (Smith Decl., ¶ 37.)

19 **C. DERIVATIVE RECORDKEEPING ALLEGATIONS**

20 Labor Code section 226, subdivision (a), requires employers to keep an accurate record of,
21 among other things, all hours worked by employees, their gross wages earned, and all applicable hourly
22 rates in effect during the pay period. Labor Code section 226.3 provides that “in addition to any other
23 penalty provided by law” employers who fail to keep the records required by Labor Code section 226,
24 subdivision (a), are subject to a civil penalty of \$250 per employee per violation. (Lab. Code, § 226.3.)

25 Likewise, Labor Code section 1174, subdivision (d), requires every employer to keep these
26 records for at least three years. Labor Code section 1174.5 provides for a civil penalty of \$500 for any
27 employer who willfully fails to maintain the records required by Labor Code section 1174. These
28 penalties are recoverable through PAGA. (Lab. Code, § 2699.5 [listing violations of Labor Code

1 section 1174, subdivision (d), as an applicable PAGA claim]; *Raines v. Coastal Pacific Food*
2 *Distributors, Inc.* (2018) 23 Cal.App.5th 667, 680 [claims under Labor Code section 226.3 recoverable
3 through PAGA].)

4 Here, Plaintiff alleged that Defendant both routinely rounded the Class Members' clock-in and
5 clock-out times, interrupted rest periods, and improperly auto-deducted meal periods. Consequently,
6 Plaintiff alleged that Defendant's time records do not reflect the true hours worked by the Class
7 Members, rather, they represent a systematic, fabricated version giving rise to numerous civil penalties.
8 (Smith Decl., ¶ 38.) As with Plaintiff's other claims, Defendant argued that such violations were rare
9 and nominal in value (if they occurred at all) and corrections were made where violations may have
10 occurred. (Smith Decl., ¶ 38.)

11 In ascertaining Defendant' realistic exposure, Plaintiff entirely discounted the amounts
12 attributable to penalties under Labor Code section 1174 and 1174.5 because, under the language of
13 1174.5, those penalties arguably represent *de minimus* one-time penalties per employee (rather than
14 repeated per-pay-period penalties) and because of the very real risk that Defendant would successfully
15 argue that its payroll records were, in fact, accurate and complete, as they reflected the true amount of
16 payroll wages issued to the Class Members. (Smith Decl., ¶ 39.)

17 Plaintiff further discounted the entire amounts attributable to penalties under Labor Code
18 section 226.3—which arguably apply only where Defendant has issued no wage statement at all—
19 based on the risk that Defendant's good faith argument would prevail, and that Courts have opted to
20 impose the base PAGA penalties (accounted for in the "PAGA Penalties" section below) in lieu of the
21 heightened penalties under 226.3. (*Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355
22 [heightened penalties under 226.3, rather than default PAGA penalties, apply only where the employer
23 fails altogether to provide wage statements or keep required records]; Smith Decl., ¶ 40.) Instead, for
24 this category of penalties, Plaintiff elected to focus on Plaintiff's default PAGA claims as the operative
25 derivative penalty award.

26 Discounting these amounts is particularly appropriate under PAGA's amendments, given the
27 Legislature's express intention to prevent duplicate penalty awards for the same underlying conduct:
28 "Nothing in this part or in paragraph (2) of subdivision (e) shall prevent a court, in awarding a civil

1 penalty, from reducing the penalty for any alleged violation **if the same conduct or omission resulted**
2 **in multiple violations of this code.**” (Lab. Code, § 2699, subd. (i).) Thus, Plaintiff was unlikely to
3 recover derivative recordkeeping penalties in addition to the default PAGA penalties described below.

4 **D. DERIVATIVE UNTIMELY WAGES ALLEGATIONS**

5 Labor Code section 204 expressly requires employers who pay employees on a weekly,
6 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
7 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
8 Labor Code section 204 subject to a penalty of \$100 for each initial violation, and \$200 for each
9 subsequent violation, plus 25% of the amount unlawfully withheld. (Lab. Code, § 210, subd. (a).) The
10 penalty provided by Labor Code section 210 is “[i]n addition to, and entirely independent and apart
11 from, any other penalty provided in this article” (Lab. Code, § 210, subd. (a).)

12 Plaintiff argued that Defendant’s alleged failure to pay applicable meal and rest period
13 premiums, along with Defendant’s rounding practices, as described above, resulted in a portion of the
14 wages earned by the Class Members not being paid within seven calendar days following the close of
15 the payroll period as required by Labor Code section 204, and thus triggering a right to penalties under
16 Labor Code section 210. (Smith Decl., ¶ 42.)

17 As with Plaintiff’s other claims, Defendant argued that the Class Members were not entitled to
18 meal and rest breaks, fully compensated, and that such violations were rare and nominal in value, if
19 they occurred at all. Defendant thus concluded that Plaintiff could not claim untimely wage penalties.
20 Defendant could also argue that Labor Code sections 204 and 210 are statutes aimed at the improper
21 scheduling of wages. Because Defendant’s wage payment schedule was correct, and because the wages
22 Defendant believed were owed were in fact paid on time, no penalty under Labor Code section 210
23 should therefore be imposed. (Smith Decl., ¶ 43.)

24 Labor Code section 210, subdivision (c), provides that “An employee is only entitled to either
25 recover the statutory penalty provided for in this section or to enforce a civil penalty as set forth in
26 subdivision (a) of Section 2699, **but not both**, for the same violation.” (Emphasis added.) Because of
27 Defendant’s strong defenses, and the high likelihood that a Court would opt to impose base PAGA
28

1 penalties in lieu of heightened penalties under section 204, Plaintiff entirely discounted these damages
2 for settlement purposes. (Smith Decl., ¶ 44.)

3 **E. DERIVATIVE WAGE STATEMENT ALLEGATIONS**

4 Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of
5 each payment to furnish an itemized wage statement. Employers that knowingly and intentionally fail
6 to provide their employees with accurate, itemized wage statements may be subject to penalties under
7 Labor Code section 226, subdivision (e). Plaintiff alleged that, by virtue of the allegations that
8 Defendant failed to properly pay the Class Members their wages as described above, Defendant had
9 likewise failed to provide them with compliant wage statements reflecting their gross wages earned
10 and their net wages earned. (Smith Decl., ¶ 45.)

11 As with Plaintiff's other claims, Defendant argued that the Class Members were fully
12 compensated and that such violations were rare and nominal in value, if they occurred at all. Defendant
13 thus concluded that Plaintiff could not claim wage statement penalties because there were no wage
14 statement violations. Moreover, even if inaccuracies existed, Defendant asserted that Plaintiff cannot
15 show any "knowing and intentional" violation, as required by Labor Code section 226, subdivision (e),
16 because Defendant was unaware of any issues and believed it was in compliance until receiving
17 Plaintiff's PAGA letter. (Smith Decl., ¶ 46.)

18 In terms of Defendant's exposure for this claim, Plaintiff calculated that approximately 42 Class
19 Members worked a total of approximately 2,006 pay periods with alleged violations during the
20 applicable statutory period for this claim. Thus, Plaintiff determined that Defendant's maximum
21 exposure for this claim was \$198,500.00. Plaintiff then ascribed an 80% discount based on the very
22 real risks that: **(1)** this court might find that Defendant's alleged wage statement errors were not made
23 knowingly and intentionally such that the penalties would not be triggered, **(2)** this court might find
24 that Defendant's alleged wage statement errors caused little or no injury to the Class Members, or
25 **(3)** that this court might find that there were no errors made on the wage statements. Plaintiff calculated
26 that Defendant's realistic exposure for this claim was **\$39,700.00**. (Smith Decl., ¶ 47.)
27
28

1 **F. DERIVATIVE WAITING TIME PENALTY ALLEGATIONS**

2 Labor Code section 203 provides that if an employer willfully fails to pay compensation
3 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the
4 employer is liable for penalties in the form of continued compensation up to thirty workdays. (See
5 *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

6 Plaintiff argued that Defendant’s alleged failure to pay full wages, including unpaid wages from
7 rounding and applicable meal and rest period premiums as described above, resulted in a portion of the
8 wages earned by the formerly-employed Class Members not being paid at the time of termination or
9 within 72 hours of their resignation. Defendant further failed to pay those sums for 30 days thereafter
10 as required by the Labor Code. Defendant countered that, because the underlying wage claims lack
11 merit, no waiting time penalties can attach as a derivative claim, and further argued that any failure to
12 pay was not willful. (Smith Decl., ¶ 48.)

13 From the informal discovery produced by Defendant, approximately 21 of the Class Members
14 terminated their employment during the waiting time penalty period. Thus, the maximum value of the
15 waiting time penalty claim was derived from the following formula: 21 employees × 30 days × 8.5
16 hours average per day × average rate of pay of \$18.00 per hour (or \$96,390). Plaintiff then ascribed a
17 50% discount due to the very real risks that this Court would agree with Defendant’s good faith
18 defenses and because the claim is derivative of the underlying claims, which may also fail to be certified
19 or win on the merits. Plaintiff estimates Defendant’s realistic exposure for this claim to be
20 approximately **\$48,195**. (Smith Decl., ¶ 49.)

21 **G. UNFAIR COMPETITION ALLEGATIONS**

22 California’s Unfair Competition Law (“UCL”) proscribes unlawful business practices, which
23 is defined broadly to include “any unlawful, unfair or fraudulent business act or practice.” (Bus. &
24 Prof. Code, § 17200.) Violations of California’s Labor Code are actionable under the UCL. (*Sullivan*
25 *v. Oracle Corp.* (2011) 51 Cal.4th 1191, 1206; *Hodge v. Superior Court* (2006) 145 Cal.App.4th 278,
26 283.) Under the UCL, damages cannot be recovered, and plaintiffs are generally limited to restitution
27 and injunctive relief. (Bus. & Prof. Code, § 17203.) Claims for “payment of wages unlawfully withheld
28

1 from an employee are . . . a restitutionary remedy authorized by section 17203.” (*Cortez v. Purolator*
2 *Air Filtration Products Co.* (2000) 23 Cal.4th 163, 177.)

3 Here, Plaintiff alleged that, by virtue of the allegations that Defendant failed to properly pay
4 the Class Members their wages as described above, Defendant was liable for restitution in the same
5 amount of the unlawfully withheld wages described above. Because the relief sought under Plaintiff’s
6 UCL claims—namely, in the form of restitution for unpaid wages—was coterminous with Plaintiff’s
7 other claims, Plaintiff’s UCL allegations did not materially change Plaintiff’s analysis of Defendant’s
8 exposure. (Smith Decl., ¶ 50.)

9 **H. PAGA ALLEGATIONS**

10 PAGA provides that the civil penalty for Defendant is \$100 for each aggrieved employee per
11 pay period, except for provisions where a civil penalty is specifically provided. (Lab. Code, § 2699,
12 subd. (f).) “New PAGA” for cases filed on or after June 19, 2024, limits stacking of penalties for
13 derivative claims that are “in addition to the civil penalty collected by that aggrieved employee for the
14 underlying unpaid wage violation” and allows courts to reduce penalties where “the same conduct or
15 omission resulted in multiple violations.” (Lab. Code, § 2699, subd. (i).) These penalties must be
16 allocated sixty-five percent (65%) to the LWDA and thirty-five percent (35%) to the affected
17 employees. (Lab. Code, § 2699, subd. (m).)

18 Plaintiff alleged that, because of the violations described above, Defendant was liable for these
19 penalties for each applicable pay period during the applicable PAGA Period. In ascertaining
20 Defendant’s exposure for this claim, Plaintiff considered that courts have refused to “stack” PAGA
21 penalties, severely limiting the recoverable PAGA penalties. (See *Carrington v. Starbucks Corp.*
22 (2018) 30 Cal.App.5th 504, 529 [approving PAGA penalty reduction to \$5 per pay period]; accord
23 *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809.) Plaintiff also considered that, given the nature of
24 the allegations and Defendant’s efforts at good faith compliance with the Labor code, there is a
25 likelihood that a further reduction of the penalty to \$5 per pay period as approved in *Carrington* would
26 apply. (Smith Decl., ¶ 51; *Carrington v. Starbucks Corp.*, *supra*, 30 Cal.App.5th at p. 529.) Courts
27 frequently use their discretion under Labor Code section 2699, subdivision (e)(2), to significantly
28 reduce PAGA penalties where such penalties would be unjust, arbitrary, and improper.

1 Here, there were approximately 2,006 pay periods within the applicable PAGA Period.
2 Applying PAGA's default penalties unstacked at \$100 per aggrieved employee per pay period would
3 yield a maximum exposure for Defendant of \$200,600. (Smith Decl., ¶ 52.) However, Plaintiff ascribed
4 an 80% discount in consideration of Defendant's defenses and the very real risk of a court reducing the
5 amount of awarded PAGA penalties. Plaintiff estimates Defendant's realistic exposure for this claim
6 to be approximately **\$40,120**. (Smith Decl., ¶ 52.)

7 **IV. SUMMARY OF THE PROPOSED SETTLEMENT**

8 Under the terms of the Settlement Agreement, Defendant will be released of all claims asserted
9 in the Complaint in exchange for Defendant's agreement to pay a non-reversionary settlement Gross
10 Settlement Amount of \$400,000.00. (See generally, Settlement Agreement.)

11 **A. REASONABLENESS OF THE GROSS SETTLEMENT AMOUNT**

12 Plaintiff has applied appropriate discounts on the maximum settlement value as calculated
13 above to come to Defendant's realistic exposure of \$441,814. As explained above, the issues in this
14 case were hotly contested—both legally and factually. While Plaintiff continues to believe in the merits
15 of the case, Defendant argued that it fully complied with California's wage and hour laws, and thus
16 faced minimal exposure, if any. Therefore, the Gross Settlement Amount of \$400,000.00 is an excellent
17 result and within the zone of reasonableness for all parties. If preliminary approval is granted, Plaintiff
18 will have recovered **90.54%** of the estimated settlement value for the Class Members in this case—a
19 fair compromise of the claims, by any measure. (Smith Decl., ¶ 53.)

20 The Gross Settlement Amount in the Settlement Agreement was reached only after the case
21 was thoroughly investigated by Plaintiff's counsel. (Smith Decl., ¶ 54.) As explained above, Plaintiff's
22 counsel reviewed, among other key pieces of information, the records of 98.8% of all Class Members,
23 which Plaintiff's counsel determined would provide a statistically significant sample size with a high-
24 degree of confidence for Plaintiff's expert's statistical analysis. (Smith Decl., ¶ 54.) This sampling
25 included payroll records and timesheets for the Class Members' shifts during the Class Period. (Smith
26 Decl., ¶ 54.) Plaintiff's counsel also conducted a detailed examination of Defendant's relevant policies
27 to inform Plaintiff's counsel's analysis of Defendant's potential exposure. (Smith Decl., ¶ 54.) From
28 these records, Plaintiff's expert was able to carefully craft a damages model for each of the categories

1 of alleged claims for which the data would reflect violations. (Smith Decl., ¶ 54.) In total, Plaintiff's
2 counsel and Plaintiff's expert reviewed hundreds of pages of documents prior to agreeing to settle the
3 case. (Smith Decl., ¶ 55.)

4 These documents, along with the other investigation and discovery described above, were
5 sufficient to allow counsel to act intelligently in reaching the Settlement Agreement and determining
6 that the Gross Settlement Amount was adequate. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
7 1802.) Indeed, after a thorough review of all available evidence in the case, Plaintiff's counsel have
8 concluded that the Gross Settlement Amount represents an excellent result for the Class. (Smith Decl.,
9 ¶ 56.)

10 **B. SETTLEMENT CONSIDERATION AND ALLOCATION**

11 The Gross Settlement Amount includes: **(1)** the fees and expenses of the Settlement
12 Administrator, currently estimated to not exceed \$4,490.00; **(2)** Plaintiff's counsel's attorney fees not
13 to exceed one-third of the Gross Settlement Amount, i.e., \$133,333.33; **(3)** litigation expenses and costs
14 not to exceed \$27,500.00; **(4)** a service award to the named Plaintiff of up to \$10,000.00; and
15 **(5)** payment to the LWDA of \$26,000.00 for its 65% share of the settlement for civil penalties pursuant
16 to PAGA. (Initial Agreement, at pp. 6–7; Amendment, at p. 1.)

17 After all Court-approved deductions from the Gross Settlement Amount, the Net Settlement
18 Amount, which consists of at least \$198,676.67, will be distributed to all Class Members who do not
19 request exclusion from the settlement and the Aggrieved Employees. (Initial Agreement, at p. 15.)
20 Applicable employer-side payroll taxes will be paid by Defendant outside and separate from the Gross
21 Settlement Amount. (Initial Agreement, at pp. 6, 8.)

22 **C. THE RELEASE**

23 Under the Settlement Agreement, the “Released Claims” are divided into two categories: **(1)** the
24 released claims for the purposes of the class action portion of the Settlement Agreement, and **(2)** the
25 released claims for the purposes of the PAGA portion of the Settlement Agreement. (Initial Agreement,
26 at pp. 10–11.) The Released Claims for the purposes of the class action portion of the Settlement
27 Agreement include all claims arising out of or related to the allegations set forth in the Operative
28 Complaints. (Initial Agreement, at p. 10.) The Released Claims for the purposes of the PAGA portion

1 of the Settlement Agreement include all claims for civil penalties pursuant to PAGA that Plaintiff
2 asserted in Plaintiff's PAGA notice to the LWDA and in the Operative Complaints. (Initial Agreement,
3 at p. 11.) A true and correct copy of Plaintiff's PAGA letter to the LWDA in this case is attached as
4 **Exhibit 3** the concurrently filed Declaration of Kyle D. Smith. (Smith Decl., ¶ 20.)

5 **D. SETTLEMENT ALLOCATION FORMULA**

6 Individual payments to the Class Members from the class-portion of the settlement will be
7 calculated and apportioned based on the number of weeks worked as an eligible Class Member in
8 California by the participating Class Member during the Class Period (the "Individual Settlement
9 Payments"). (Initial Agreement, at p. 7.) Specific calculations of Individual Settlement Payments will
10 be determined by: **(a)** dividing the Net Settlement Amount by the total number of workweeks worked
11 by all participating Class Members during the Class Period, and **(b)** multiplying the result by each
12 participating Class Member's workweeks. (Initial Agreement, at p. 7.) If there are any timely submitted
13 requests for exclusion, the settlement administrator will proportionately increase the Individual
14 Settlement Payments for each participating Class Member so that the amount actually distributed to
15 participating Class Members equals 100% of the Net Settlement Amount. (Initial Agreement, at p. 7.)

16 Individual payments to the Aggrieved Employees from the PAGA-portion of the settlement
17 (i.e., the portion not being sent to the LWDA), will be calculated by: **(a)** dividing the amount of the
18 Aggrieved Employees' 35% share of PAGA Penalties (i.e., \$14,000.00) by the total number of PAGA
19 Period Pay Periods worked by all Aggrieved Employees during the PAGA Period, and **(b)** multiplying
20 the result by each Aggrieved Employee's PAGA Period Pay Periods. (Initial Agreement, at p. 8;
21 Amendment, at p. 1.)

22 **E. SELECTION OF THE SETTLEMENT ADMINISTRATOR**

23 Plaintiff, through counsel, has obtained bids from several settlement administration companies
24 for the settlement administration of this case. Of those, Apex Class Action Administration presented
25 the lowest qualified bid. Accordingly, the Parties propose to use Apex Class Action Administration as
26 the settlement administrator. (Smith Decl., ¶ 58; Initial Agreement, at p. 7.) The settlement
27 administrator will be responsible for processing the settlement payments and providing notice to the
28 Class Members as outlined in the Settlement Agreement. (Initial Agreement, at pp. 13–17.)

1 **F. NOTICE PROCEDURES**

2 Within 15 days of the Court granting preliminary approval of the Settlement Agreement,
3 Defendant shall provide the Settlement Administrator with the Class Data, in the form of a Microsoft
4 Excel spreadsheet, containing each Class Member's name, last-known mailing address, Social Security
5 number, and number of Class Period Workweeks and PAGA Pay Periods (the "Class Data"). (Initial
6 Agreement, at p. 8.)

7 Within 14 days after receiving the Class Data, the Settlement Administrator shall send the Class
8 Notice by bulk first class mail, forwarding requested, to the Class Members at the addresses identified
9 through the process described above. (Initial Agreement, at p. 13.)

10 The Class Notice will inform each Class Member of his or her estimated share of the settlement,
11 as well as an easily understood statement alerting the Class Members that, unless they elect to opt out
12 of the Settlement Agreement, the Class Member is releasing and waiving all "Released Claims" (as
13 that term is defined in the Settlement Agreement and explained in the Class Notice). (Initial Agreement,
14 Exh. A.) The Class Notice will also inform the Class Members of their right to object to the Settlement
15 Agreement. (Initial Agreement, Exh. A.) Any Class Member who wishes to object to the Class
16 Settlement may submit a written objection to the Settlement Administrator no later than 45 days
17 following the date on which the Settlement Administrator first mails the Class Notice to the Class
18 Members ("Response Deadline"). (Initial Agreement, at pp. 15–16.) Alternatively, Class Members may
19 also object to the Settlement Agreement by appearing at the final approval hearing, either on their own
20 or through an attorney. (Initial Agreement, at p. 16; Initial Agreement, Exh. A.)

21 Class Members who do not timely request exclusion from the Settlement Agreement will be
22 deemed to be a participating Class Member without having to submit a claim form or take any other
23 action. (Initial Agreement, at p. 15.) To request exclusion from the Settlement Agreement, the Class
24 Member must submit a written request for exclusion from the Settlement Agreement to the Settlement
25 Administrator ("Request for Exclusion"), postmarked no later than the Response Deadline. (Initial
26 Agreement, at p. 14.)

27 If any Class Notice mailed to a Class Member is returned as having been undelivered by the
28 U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address

1 correction for such Class Members, and a second Class Notice will be sent to any new or different
2 address obtained. (Initial Agreement, at p. 14.) Class Members to whom the Class Notice is re-mailed
3 are given an extension of up to 14 calendar days for disputes, objections, or to request exclusion. (Initial
4 Agreement, at p. 14.)

5 **G. TIMING OF SETTLEMENT DISBURSEMENTS**

6 Defendant will deposit the Gross Settlement Amount in a lump sum payment, plus the
7 employer-side payroll taxes, with the Settlement Administrator within 14 days of the “Effective Date,”
8 as that term is defined in the Settlement Agreement. (Initial Agreement, at p. 8.) At that time, the
9 settlement will be fully funded. The Settlement Administrator will then distribute the Individual
10 Settlement Payments no later than 14 days after the Effective Date. (Initial Agreement, at pp. 8–9.)

11 **H. *CY PRES* DISTRIBUTION**

12 Class Members will have 180 days to cash their settlement checks. (Initial Agreement, at p. 9.)
13 If a Class Member fails to cash their check by the deadline, then the Settlement Administrator shall
14 distribute such funds to the California State Controller for deposit in the Unclaimed Property Fund in
15 the name of the individual whose check was uncashed. (Initial Agreement, at p. 9.) Because all funds
16 and interest under the Settlement Agreement are to be completely distributed to the class participants,
17 or to the Unclaimed Property Fund in the name of the individual whose check was uncashed, the Parties
18 agree that this disposition results in no “unpaid residue” under Code of Civil Procedure Section 384.
19 (Initial Agreement, at p. 9.)

20 **I. TAX TREATMENT**

21 The Settlement Agreement provides that 20% of each individual settlement payment from the
22 class-portion of the Settlement Agreement shall constitute wages (for which each participating Class
23 Member will be issued an IRS Form W-2 for such payment), and the remaining 80% shall constitute
24 interest, reimbursement, and penalties (for which each participating Class Member will be issued an
25 IRS Form 1099 for the interest and penalty allocation). (Initial Agreement, at p. 7.)

26 With respect to the individual payments made under the PAGA-portion of the Settlement
27 Agreement, all such payments shall be treated as payments owing for penalties and interest (for which
28

1 each Aggrieved Employee will be issued an IRS Form 1099 for the interest and penalty allocation).
2 (Initial Agreement, at p. 8.)

3 Defendant will separately and additionally pay its share of employer payroll taxes on the sum
4 allocated to wages. (Initial Agreement, at p. 5.)

5 **V. THE CLASS SHOULD BE PRELIMINARILY CERTIFIED**

6 **A. THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**
7 **CONSIDERATION IS APPROPRIATE**

8 California Rules of Court, rule 3.769, subdivision (d), provides that the Court may make an
9 order approving certification of a provisional settlement class at the preliminary approval stage. It is
10 well-established that trial courts should use a “lesser standard of scrutiny” for determining the propriety
11 of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor Co.* (1996) 48
12 Cal.App.4th 1794, 1807, fn. 19.) Since no trial is anticipated in a class-based settlement, the case
13 management issues inherent in determining if the class should be certified need not be confronted, and
14 the Court’s fairness review of the settlement focuses on protecting the interests of the non-
15 representative class members. (*Ibid.*; see also *Officers for Justice v. Civil Service Com’n of City and*
16 *County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 633; *Amchem Products, Inc. v. Windsor* (1997)
17 521 U.S. 591, 620 [117 S.Ct. 2231, 2248] [“Confronted with a request for settlement-only class
18 certification, a district court need not inquire whether the case, if tried, would present intractable
19 management problems . . . for the proposal is that there be no trial.”].)

20 As discussed below, for settlement purposes only, the Parties ask this court to conditionally
21 certify the Class, as defined above, under section 382 of the Code of Civil Procedure.

22 **B. THE PROPOSED CLASS IS NUMEROUS AND ASCERTAINABLE**

23 Numerosity is met if a proposed class is so large that joinder of all members would be
24 impracticable. (See Code Civ. Proc., § 382.) A proposed settlement class is ascertainable if the class
25 members can be objectively identified and given notice of the litigation without unreasonable time or
26 expense. (See *Medraza v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 101.) Defendant has
27 represented that the proposed Class consists of approximately 64 Class Members ascertained through
28 Defendant’s records. As such, the numerosity requirement is met.

1 **C. MEMBERS OF THE PROPOSED CLASS SHARE A WELL-DEFINED**
2 **COMMUNITY OF INTEREST**

3 **1. Commonality**

4 To justify certification, the class proponent must show that questions of law or fact common to
5 the class predominate over the questions affecting the individual members. (See *Arenas v. El Torito*
6 *Restaurants, Inc.* (2010) 183 Cal.App.4th 723 [citing *Washington Mutual Bank, FA v. Superior Court*
7 (2001) 24 Cal.4th 906, 913].) The commonality element is satisfied here because common legal and
8 factual questions exist, such as **(a)** whether individuals working for Defendant were subject to unlawful
9 wage-and-hour policies and/or practices under the California Labor Code; **(b)** whether these violations
10 triggered derivative claims for penalties; and **(c)** whether Defendant’s violations were knowing or
11 willful.

12 **2. Typicality**

13 Typicality focuses on: **(1)** whether other members of the proposed class have the same or
14 similar injury to the named plaintiff(s), **(2)** whether the action is based on conduct which is not unique
15 to the named plaintiff(s), and **(3)** whether other class members have been injured by the same course
16 of conduct. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502; *Martinez v. Joe’s Crab*
17 *Shack Holdings* (2014) 231 Cal.App.4th 362, 375.) Here, Plaintiff’s claims are typical of the Class
18 Members because she was subject to Defendant’s policies and practices described above in Plaintiff’s
19 analysis of the claims and defenses, which were consistently applied class-wide to all non-exempt
20 employees. (Declaration of Martha D. Jimenez in Support of Plaintiff’s Motion for Preliminary
21 Approval of Class Action Settlement (“Jimenez Decl.”), ¶ 4.)

22 **3. Adequacy of Representation**

23 A proposed class representative must establish that they will adequately represent the proposed
24 class. (See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.) Plaintiff is
25 adequate as a class representative because she is a member of the Class, experienced the same wage
26 and hour practices as the rest of the Class, is committed to representing the interests of the Class, has
27 no interests that are adverse to members of the Class, and understands and accepts her duty to represent
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1 the best interests of the Class. Plaintiff is committed to the Class and is adequate to represent the
2 interests of the Class in this litigation. (Jimenez Decl., ¶ 5.)

3 Plaintiff also provided counsel with information that was crucial to initiating the action and
4 preparing the mediation brief, discussed settlement strategy with counsel, and provided valuable
5 information about the Class Members and their experiences working for Defendant. (Smith Decl., ¶
6 75; Jimenez Decl., ¶¶ 6–8.)

7 Adequacy may be established by the fact that counsel are experienced practitioners. (See *Local*
8 *Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244
9 F.3d 1152, 1162.) Plaintiff is represented by counsel experienced in the litigation of wage and hour
10 class actions, who have no interests adverse to Plaintiff or the Class, who vigorously prosecuted this
11 action, and who have the financial resources to handle this case. (Smith Decl., ¶¶ 8–17.)

12 **4. Superiority**

13 Certification of the Class for settlement purposes is superior here because there will be a global
14 resolution of all claims at once, which fosters judicial economy. Class certification is also superior to
15 litigation of numerous individual claims because most of the claims are too small to litigate
16 individually.

17 **5. Predominance**

18 The common issues here, concerning the uniform deficiencies to Defendant’s wage-and-hour
19 policies and practices raise predominating factual and legal issues supporting certification of a
20 settlement class.

21 **VI. PRELIMINARY APPROVAL SHOULD BE GRANTED**

22 **A. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, AND** 23 **NON-COLLUSIVE NEGOTIATIONS**

24 The Settlement Agreement was negotiated at arm’s length between counsel using a professional
25 and well-respected third-party neutral. (Smith Decl., ¶ 59.) Counsel for both parties were thoroughly
26 familiar with the complex legal and factual questions at issue in this litigation. (Smith Decl., ¶ 59.) The
27 Settlement Agreement is a product of intensive negotiations, supported by investigation and direct
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1 exchanges of information through informal discovery, during the course of settlement negotiations,
2 including a full-day mediation. (Smith Decl., ¶ 59.)

3 Although Plaintiff and her counsel believed the class claims had merit and there was a
4 possibility of certifying the class and claims, they recognized the potential risk, expense, and
5 complexity posed by litigation, such as unfavorable decisions on class certification, summary
6 judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years
7 to litigate. (Smith Decl., ¶ 60.) The resulting Settlement Agreement was based on calculations, risk
8 assessment, and non-collusive negotiation. (Smith Decl., ¶ 61.) It takes the risks identified above and
9 others into account in arriving at the non-reversionary Gross Settlement Amount. (Smith Decl., ¶ 61.)

10 **B. THE DISCOVERY AND INVESTIGATIONS WERE EXTENSIVE**

11 Counsel for the Parties spent months prior to the mediation developing the factual record for
12 this case, engaging in informal discovery and exchanges of documents and information, and drafting
13 detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and
14 weaknesses of their respective positions at the mediation and during subsequent settlement
15 negotiations. (Smith Decl., ¶ 62.) The Parties and their counsel attended a full-day mediation session
16 before an experienced and well-respected mediator which resulted in the resolution of the case on a
17 class and representative basis. (Smith Decl., ¶ 63.) Mr. Marlin is a nationally recognized mediator of
18 complex class actions and employment matters.

19 In addition, the parties are represented by skilled and experienced counsel with extensive
20 backgrounds in complex litigation and experience litigating similar wage and hour class actions. (Smith
21 Decl., ¶¶ 8–17.) The Settlement Agreement was reached after extensive investigation and research,
22 calculations and risk evaluation, substantial exchanges of documents, and Plaintiff’s counsel’s
23 thorough factual investigation, which were sufficient to evaluate Defendant’s defenses. (Smith Decl.,
24 ¶ 64.) The Settlement Agreement came only after the case was thoroughly investigated by Plaintiff’s
25 counsel. (Smith Decl., ¶ 64.) Plaintiff’s counsel all agree that this settlement is fair, adequate, and
26 reasonable, and in the best interests of Class Members. (Smith Decl., ¶ 65.)

1 **C. THE RISKS INHERENT IN CONTINUED LITIGATION ARE GREAT**

2 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court
3 should also consider “[t]he strength of plaintiff’s case, the risk, expense, complexity and likely duration
4 of further litigation, [and] the risk of maintaining class action status.” (*Dunk v. Ford Motor Co.* (1996)
5 48 Cal.App.4th 1794, 1801.) As described above, Defendant had strong defenses to Plaintiff’s claims,
6 which create a real possibility that the claims might not be certified or might fail on the merits. (Smith
7 Decl., ¶ 66.) Proceeding with litigation would impose a significant risk of no recovery as well as
8 ongoing, substantial additional expenditures of time and resources. If settlement were not achieved,
9 continued litigation of the claims would take a substantial amount time and possibly confer no benefit
10 on Class Members. By contrast, the settlement will yield a prompt, certain, and substantial recovery
11 for the Class Members, which also benefits the Parties and the Court. In considering these risks, the
12 choice was overwhelmingly in favor of settlement. (Smith Decl., ¶ 67.)

13 **D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS**

14 The Settlement Agreement represents a fair compromise given the risks and uncertainties
15 presented by continued litigation. Defendant asserted and would have continued to assert legal and
16 factual grounds to defend against this action, including factual and legal defenses on the merits.
17 Moreover, continued litigation would be costly, time-consuming, and uncertain. In contrast, the
18 Settlement Agreement ensures timely relief and substantial recovery of the Defendant’s realistic
19 exposure. (Smith Decl., ¶ 68.)

20 **E. PLAINTIFF’S COUNSEL ARE EXPERIENCED IN SIMILAR WAGE-AND-
21 HOUR LITIGATION**

22 Plaintiff’s counsel are experienced in wage-and-hour class actions. (Smith Decl., ¶¶ 8–17.)
23 Numerous state and federal courts have certified Mr. Smith as adequate and competent class counsel
24 in wage and hour class actions. (Smith Decl., ¶¶ 8–17.) Mr. Smith devotes the vast majority of his law
25 practice to plaintiff-side class and representative employment-law cases. (Smith Decl., ¶ 69.)

26 The Parties’ counsel agree that this settlement is fair, adequate, and reasonable in light of the
27 nature of the claims, realistic risk-adjusted value of damages, complexities of the case, the state of
28 the law, and uncertainties of class certification and litigation. (Smith Decl., ¶ 70.) Given the risks

1 inherent in litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and
2 in the best interests of Class Members and should be preliminarily approved. (Smith Decl., ¶ 70.) The
3 Settlement Agreement is also consistent with other settlements that received approval of the Courts.
4 (Smith Decl., ¶ 70.)

5 Experienced counsel, operating at arm's length, have weighed the strengths and risks of the
6 case, and endorse the proposed settlement. (Smith Decl., ¶ 71.) The view of the attorneys actively
7 conducting the litigation is entitled to significant weight in deciding whether to approve the settlement.
8 (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *aff'd* (9th Cir. 1981) 661 F.2d
9 939 ["[T]he fact that experienced counsel involved in the case approved the settlement after hard-
10 fought negotiations is entitled to considerable weight."]; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
11 Cal.App.4th 116, 128 [court must take into account the experience and view of counsel].)

12 **F. THE CLASS NOTICE PLAN CONFORMS TO ALL APPLICABLE**
13 **STATUTES AND RULES**

14 The proposed Class Notice—which the parties have already agreed to—should be approved, as
15 it fully informs the Class Members of the nature of the lawsuit and each Class Member's rights under
16 the terms of the Settlement Agreement and applicable law. (Initial Agreement, Exh. A.) The way the
17 Class Notice is to be disseminated, as outlined above, will ensure that all of the Class Members will be
18 properly notified of the proposed settlement. This Court can therefore proceed with a presumption of
19 fairness knowing that the Parties have followed this Court's pre-approved notice plan.

20 The Court has wide discretion in approving the means of providing notice, so long as the class
21 representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching
22 a substantial percentage of class members." (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 860,
23 quotation marks omitted.) Here, the Parties' notice plan is that notice of the Settlement Agreement will
24 be disseminated directly to the class members by first class mail by the settlement administrator within
25 14 days of the date on which the Settlement Administrator receives the Class Data from Defendant.
26 (Initial Agreement, at p. 13.)

27 The notice plan and the Class Notice satisfy the requirements of rule 3.766 of the California
28 Rules of Court and afford the Class Members with all due process protections required by the United

1 States Constitution. Moreover, the contents of the Class Notice are in compliance with rule 3.766,
2 subdivision (d), of the California Rules of Court, because the Class Notice includes, among other
3 things: **(1)** a detailed explanation of the case, including the basic contentions or denials of the parties;
4 **(2)** a statement that the court will exclude the member from the class if the member so requests by a
5 specified date; **(3)** a procedure for the member to follow in requesting exclusion from the class; **(4)** a
6 statement that the judgment, whether favorable or not, will bind all members who do not request
7 exclusion; and **(5)** a statement that any member who does not request exclusion may, if the member so
8 desires, enter an appearance through counsel. (Initial Agreement, Exh. A.) The 45-day deadline for
9 Class Members to exclude themselves or challenge the number of workweeks worked during the Class
10 Period is reasonable, as it provides Class Members with sufficient time to do so and, if they so choose,
11 to seek independent legal advice in the interim. (Initial Agreement, at pp. 14–16.)

12 **VII. THE ATTORNEYS' FEE ALLOCATION UNDER THE SETTLEMENT**
13 **AGREEMENT IS FAIR**

14 In addition, at the time of final approval, Plaintiff's counsel will request attorneys' fees of up
15 to one-third of the Gross Settlement Amount, (i.e., \$133,333.33), plus reimbursement of litigation
16 expenses and costs of up to \$27,500.00. (Initial Agreement, at p. 6.) As the California Supreme Court
17 has made clear, one-third of the common fund is a reasonable percentage for a trial court to award as
18 attorneys' fees in a class action where a common fund was generated as a result of the case. (See *Laffitte*
19 *v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [finding no abuse of discretion where trial court
20 approved a fee request of one-third of the common fund].) As part of the final approval motion,
21 Plaintiff's counsel will request approval of the attorneys' fees and costs described in this motion and
22 in the Settlement Agreement, which will be heard at the final approval hearing. Accordingly, the Court
23 need not decide the fees and costs at this time, but only authorize the Class Notice to inform class
24 members that counsel will seek fees and costs up to one third of the Gross Settlement Amount in fees,
25 plus actual litigation costs.

26 **VIII. THE CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND APPROPRIATE**

27 Plaintiff will request payment of a service award from the Gross Settlement Amount of up to
28 \$10,000.00 in addition to whatever payment she is otherwise entitled to receive as a Class Member.

(Initial Agreement, at p. 6.) The proposed service award is reasonable compensation given the time and effort that Plaintiff devoted to this case and the valuable assistance she provided to counsel. (Smith Decl., ¶ 74; Initial Agreement, at p. 6; Jimenez Decl., ¶¶ 6–9.) Plaintiff provided invaluable assistance to Plaintiff’s counsel and the Class Members in this case, including providing factual background for mediation and the Operative Complaints, reviewing the relevant documents, participating in phone calls with Plaintiff’s counsel, gathering highly relevant documents, preparing for and providing deposition testimony, and reviewing the settlement documents. (Smith Decl., ¶ 75.) Plaintiff agreed to participate in this case with no guarantee of personal benefit. Further, Plaintiff agreed to undertake the financial risk of serving as a class representative and exposed herself to the risk of negative publicity by anyone who opposed this case. (Smith Decl., ¶ 75.)

Moreover, the requested service award for Plaintiff falls within the range of service payments typically awarded to class representatives in similar class actions. (See, e.g., *Bond v. Ferguson Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 [approving **\$11,250.00** service award to each of the two class representatives in a meal break class action]; *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving service awards in the amount of **\$10,000.00** each from a \$300,000.00 settlement fund in a wage/hour class action]; *West v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 [“the court finds Plaintiff’s enhancement payments of **\$15,000.00** each to be reasonable.”], emphasis added; *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal. Apr. 22, 2010) No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 [“Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of **\$20,000** or more where, as here, the class representative has demonstrated a strong commitment to the class”], emphasis added.)

IX. SUBMISSION TO THE LWDA

The Settlement Agreement and this motion are concurrently being submitted to the LWDA in accordance with Labor Code section 2699, subdivision (l)(2). (Smith Decl., ¶ 76.) The proof of electronic submission is attached as **Exhibit 4** to the Declaration of Kyle D. Smith.

X. CONCLUSION

For these reasons, Plaintiff’s motion for preliminary approval should be granted.

1 Dated: May 6, 2026

MELMED LAW GROUP P.C.

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4 **KYLE D. SMITH**

5 Attorneys for Plaintiff, the Putative Class, and the
6 Aggrieved Employees
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