

Justin F. Marquez (SBN 262417)
justin@wilshirelawfirm.com
Christina M. Le (SBN 237697)
cle@wilshirelawfirm.com
Zachary D. Greenberg (SBN 331501)
zgreenberg@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

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

HECTOR MENDOZA PAZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

BORREGO SOLAR SYSTEMS, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 37-2022-00030081-CU-OE-CTL

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

*[Assigned for all purposes to Hon. Gregory
W. Pollack, Dept. C-71]*

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

*[Filed concurrently with: Declarations of
Justin F. Marquez and Hector Mendoza Paz;
and [Proposed] Order]*

PRELIMINARY APPROVAL HEARING

Date: November 3, 2023

Time: 9:30 a.m.

Dept: C-71

Complaint filed: July 29, 2022

FAC filed: May 25, 2023

Trial date: Not Set

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on November 3, 2023, at 9:30 a.m., in Department C-71
3 of the San Diego County Superior Court, 330 W Broadway, San Diego, CA 92101, pursuant to
4 Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq.*, Plaintiff Hector
5 Mendoza Paz will, and hereby does, move the Court for an Order granting preliminary approval of
6 the proposed class action and PAGA settlement between Plaintiff and Defendant Borrego Solar
7 Systems, Inc. Plaintiff further will and hereby does move the Court for an Order:

- 8 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement
9 and Class Notice;
- 10 2. Certifying a Class for settlement purposes;
- 11 3. Approving the Class Notice and the plan for distribution of the Notice;
- 12 4. Appointing Plaintiff Hector Mendoza Paz as Class Representative for settlement
13 purposes;
- 14 5. Appointing Plaintiff's Counsel, Justin F. Marquez, Christina M. Le, and Zachary D.
15 Greenberg of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes;
- 16 6. Appointing ILYM Group, Inc. as the Settlement Administrator; and
- 17 7. Scheduling a final approval hearing.

18 The motion is based upon this notice, the attached memorandum of points and authorities,
19 the Declarations of Justin F. Marquez and Hector Mendoza Paz filed concurrently herewith, the
20 records and files in this action, and any other further evidence or argument that the Court may
21 properly receive at or before the hearing.

22 Respectfully submitted,

23 Dated: October 12, 2023

WILSHIRE LAW FIRM

24 By: 

25 Justin F. Marquez
26 Christina M. Le
27 Zachary D. Greenberg

28 Attorneys for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	SUMMARY OF THE LITIGATION AND SETTLEMENT.....	1
A.	Plaintiff’s Claims	1
B.	Discovery and Investigation.....	2
C.	Settlement Negotiations	3
D.	Key Terms of the Proposed Settlement.....	4
III.	DISCUSSION	8
A.	The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation	9
1.	The Settlement Is the Product of Discovery, Investigation, and Informed and Non-Collusive Arm’s-Length Negotiations.....	9
2.	The Settlement Is Fair and Reasonable in Light of the Parties’ Respective Legal Positions.....	10
3.	Class Counsel Has Extensive Experience in Class Action Litigation.....	11
B.	The Proposed Class Notice of Settlement Should Be Approved	12
C.	The Proposed Attorneys’ Fees and Costs Are Reasonable	12
1.	Class Counsel Request an Award of Fees Based on the “Common Fund” Method	12
2.	The Requested Fee Award Is in Line with Typical Cases	13
3.	This Matter Involves A “Fee-Shifting” Provision of the Labor Code	14
4.	The Experience, Reputation and Ability of Class Counsel Support the Requested Fee Award	14
D.	The Service Award to Named Plaintiff Is Reasonable.....	15
IV.	CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED	16
A.	Legal Standard	16
B.	Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for Settlement Purposes.....	17

1	1. The Classes Are Ascertainable and Numerous	17
2	2. There are Many Common Issues of Law and Fact Which Predominate.....	17
3	3. Plaintiff’s Claims Are Typical of the Claims of the Class.....	18
4	4. Plaintiff and His Counsel Meet the Adequacy Requirement	18
5	5. A Class Action is Superior to a Multiplicity of Litigation.....	19
6	V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND.....	19
7	A. The Proposed Notice Plan Satisfies Due Process	19
8	B. The Notice is Accurate and Informative	20
9	VI. CONCLUSION	20

TABLE OF AUTHORITIES

STATE CASES

<i>Bowles v. Super. Ct.</i> (1955) 44 Cal.2d 574	17
<i>Cartt v. Super Ct.</i> (1975) 50 Cal.App.3d 960.....	19, 20
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43.....	13
<i>City and County of San Francisco v. Sweet</i> (1995) 12 Cal.4th 105.....	12, 13
<i>Classen v. Weller</i> (1983) 145 Cal.App.3d 27	18
<i>Clothesrigger, Inc. v. GTE Corp.</i> (1987) 191 Cal.App.3d 605.....	18
<i>Collins v. Rocha</i> (1972) 7 Cal.3d 232	17
<i>D’Amico v. Bd. of Medical Examiners</i> (1974) 11 Cal.3d 1	12
<i>Daar v. Yellow Cab Co.</i> (1967) 67 Cal. 2d 695.....	16
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	8
<i>Gentry v. Super. Ct.</i> (2007) 42 Cal.4th 443.....	15
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	9
<i>Laffitte v. Robert Half Int’l Inc.</i> (2016) 1 Cal.5th 480.....	13
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429.....	17
<i>Mallick v. Super. Ct.</i> (1979) 89 Cal.App.3d 434	8
<i>McGhee v. Bank of America</i> (1976) 60 Cal.App.3d 442	19
<i>Miller v. Woods</i> (1983) 148 Cal. App. 3d 862	19
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	9, 15
<i>Quinn v. State of California</i> (1995) 15 Cal.3d 162.....	12
<i>Richmond v. Dart Indus., Inc.</i> (1981) 29 Cal. 3d 462.....	17
<i>Rodriguez v. W. Publ’g Corp.</i> (9th Cir. 2009) 563 F.3d 948	15
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	17
<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25.....	12
<i>Stamburgh v. Super. Ct.</i> (1976) 62 Cal.App.3d 231	9
<i>Wershba v. Apple Computers, Inc.</i> (2001) 91 Cal.App.4th 224.....	11
<i>Wilner v. Sunset Life Ins. Co.</i> (2000) 78 Cal.App.4th 952	17

FEDERAL CASE

<i>Frank v. Eastman Kodak Co.</i> (W.D.N.Y. 2005) 228 F.R.D. 174	15
<i>Karl Adams, III, et al. v. MarketStar Corporation, et al.</i> , No. 2:14-cv-02509-TLN-DB	15
<i>Leyva v. Medline Ind.</i> (9th Cir. 2013) 716 F.3d 510	19
<i>Priddy v. Edelman</i> (6th Cir. 1989) 883 F.2d 438	9
<i>Van Vranken v. Atlantic Richfield Company</i> (N.D. Cal. 1995) 901 F.Supp. 294.....	13

STATE STATUTES

Code of Civil Procedure § 382.....	16, 17
Labor Code § 1194	14
Labor Code § 90.5	15

RULES

California Rules of Court, Rule 3.766.....	19
California Rules of Court, Rule 3.769(f).....	12

TREATISES

Conte & Newberg, <i>Newberg on Class Actions</i> (3rd Ed.) § 11.51	9
Conte & Newberg, <i>Newberg on Class Actions</i> (3rd Ed.) § 14.03	13
Conte & Newberg, <i>Newberg on Class Actions</i> (3rd Ed.) § 8.39	20

OTHER AUTHORITIES

Theodore Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”, 53 UCLA L. Rev. 1303 (2006)	16
--	----

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Hector Mendoza Paz (“Plaintiff”) seeks preliminary approval of a proposed \$145,000 non-reversionary, wage and hour class action and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, et seq.) settlement with Defendant Borrego Energy, LLC (formerly known and named herein as Borrego Solar Systems, Inc.) (“Defendant”). The Settlement will provide substantial monetary payments to approximately 42 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arms-length and were facilitated by an experienced class action mediator, Hon. Ronald S. Prager (Ret.), over the course of a full day of mediation that was conducted via Zoom. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendants’ defenses, the Parties reached a settlement on February 13, 2023. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff’s Claims

This is a wage and hour class and PAGA representative action. Plaintiff and putative class members worked in California as hourly-paid or non-exempt employees for Defendant Borrego Energy, LLC (formerly known as Borrego Solar Systems, Inc.) during the class period. Defendant is a third-party operations and maintenance provider in California. Plaintiff was employed with Defendant as a technician in Defendant’s San Diego office from roughly December 2021 to March 2022. (Declaration of Justin F. Marquez in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement [“Marquez Decl.”], ¶ 2.)

Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours worked, including but not limited to off-the-clock work. Plaintiff further alleges that Defendant failed to

1 provide employees with legally compliant meal and rest periods, and Defendant failed to reimburse
2 for necessary business-related expenses. Based on these allegations, Plaintiff asserts related claims
3 for failure to provide accurate wage statements, failure to pay all final wages at termination, unfair
4 business practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

5 On July 29, 2022, Plaintiff filed a putative wage-and-hour class action complaint (“Class
6 Action”) against Defendants for: (1) failure to pay minimum and straight time wages; (2) failure
7 to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit
8 rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate
9 itemized wage statements; (7) failure to reimburse business expenses; and (8) violation of
10 California’s Unfair Competition Law, California Business and Professions Code §§ 17200, et
11 seq. On July 29, 2022, Plaintiff sent a notice to Defendant and the California Labor & Workforce
12 Development Agency (“LWDA”) alleging wage-and-hour violations pursuant to PAGA, Cal.
13 Lab. Code §§ 2699, et seq. The operative complaint is the First Amended Complaint deemed
14 filed on May 25, 2023, pursuant to a stipulation submitted by the Parties and granted by the
15 Court. Plaintiff’s First Amended Complaint adds claims for civil penalties under PAGA in
16 addition to adding claims for sick leave and regular rate of pay violations. Plaintiff also filed and
17 submitted an amended PAGA notice to the LWDA on May 19, 2023. (*Id.* at ¶ 4.)

18 **B. Discovery and Investigation**

19 Following the filing of the Complaint, the parties exchanged documents and information
20 before mediating this action. Defendant produced a sample of time and pay records for class
21 members. Defendant also provided documents of its wage and hour policies and practices during
22 the class period, and information regarding the total number of current and former employees in
23 its informal discovery responses. (*Id.* at ¶ 5.)

24 After reviewing documents regarding Defendants’ wage and hour policies and practices,
25 analyzing Defendants’ timekeeping and payroll records, Class Counsel was able to evaluate the
26 probability of class certification, success on the merits, and Defendant’s estimated maximum
27 monetary exposure for all claims. (*Id.* at ¶ 6.) Class Counsel also investigated the applicable
28 law regarding the claims and defenses asserted in the litigation. Class Counsel reviewed these

records and prepared a damage analysis prior to mediation. (*Id.* at ¶ 6.)

C. Settlement Negotiations

On February 13, 2023, the Parties participated in private mediation with experienced class action mediator, Hon. Ronald S. Prager (Ret.). The mediation was conducted via Zoom. The settlement negotiations were at arm’s length and, although conducted in a professional manner, were adversarial. The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.* at ¶ 7.)

After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties reached a settlement, the material terms of which are encompassed within the Settlement Agreement. (*Id.* at ¶ 8, **Ex. 1** [Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”) and **Ex. 2**. [Notice of Class and PAGA Action Settlement (“Notice”)].)

Class Counsel has conducted a thorough investigation into the facts of this case. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. (*Id.* at ¶ 14.)

Indeed, the \$145,000 Settlement represents **49.0% of the realistic maximum recovery of \$296,549.83**. (*Id.* at ¶ 24.) Although Class Counsel estimated that Defendant’s maximum potential liability for all claims was approximately \$1.9 million, when the risk of prevailing at certification and trial are factored into the equation, Class Counsel believes that Defendants’ realistic exposure was \$296,549.83 meaning the Settlement achieves a significant recovery. (*Id.* at ¶¶ 14-28.) Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 26.) Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

1 **D. Key Terms of the Proposed Settlement**

2 The Settlement’s key terms include:

3 1. Settlement Class Definition: For settlement purposes only, the Parties agree to the
4 certification of a class pursuant to California Code of Civil Procedure § 382 defined as: “All non-
5 exempt or hourly-paid employees of Defendant who worked for Defendant in California during the
6 Class Period.” (Settlement, Definitions, § 4.)

7 2. Settlement Class Period: “is February 1, 2018 through the date the court enters an
8 order granting preliminary approval of the Agreement.” (Settlement, Definitions, § 3.)

9 3. Participating Settlement Class Members: “are those Class Members who do not
10 submit timely and compliant exclusion requests to the Settlement Administrator.” (Settlement,
11 Definitions, § 21.)

12 4. Gross Settlement Amount: The Gross Settlement Amount is \$145,000 and is all-
13 inclusive, meaning it covers all Settlement Payments, Plaintiff’s attorney’s fees and costs, the
14 Service Payment to Plaintiff, the costs of settlement administration, the PAGA Allocation, and any
15 other payments provided by this Settlement (“Gross Settlement Amount”), except as provided in
16 the Escalator Clause and Defendant will be separately responsible for any employer-side payroll
17 taxes required by law, including the employer FICA, FUTA, and SDI contributions. Defendant shall
18 not be required to pay any additional sums under this Agreement or to otherwise settle the Action.
19 (Settlement, Primary Terms of Settlement, § 32.)

20 5. Uncashed Checks: “Funds from uncashed or abandoned Settlement Class Payment
21 checks or PAGA Settlement Checks, based on a 180-day void date, shall be transmitted by the
22 Settlement Administrator to the California State Controller’s Office for Unclaimed Property in the
23 name of each Settlement Class Member Joint Stipulation of Class Action and PAGA Settlement
24 and/or PAGA Employee who failed to cash their Settlement Payment check prior to the void date,
25 unless otherwise ordered by the Court.” (Settlement, Disposition of Settlement Payments and
26 Uncashed Checks, § 67.)

27 6. Release: “Release by Settlement Class Members. Upon final approval by the Court
28 of this Settlement and Defendant’s payment of the Gross Settlement Amount and Employer-Side

1 Payroll Taxes, and except as to such rights or claims as may be created by this Settlement, the
2 Settlement Class Members shall be deemed to have released the Released Parties from the Released
3 Claims arising during the Class Period. Release by PAGA Employees. Upon final approval by the
4 Court of this Settlement and Defendant's payment of the Gross Settlement Amount and Employer-
5 Side Payroll Taxes, the PAGA Employees will be deemed to have released the Released Parties
6 from the Released PAGA Claims, regardless of whether they submitted a request for exclusion
7 from the Settlement of Class claims. Effective Date, Plaintiff and Participating Settlement Class
8 Members, for themselves and their respective heirs, executors, administrators, affiliates, successors,
9 and assigns, shall be deemed to have, and by operation of the judgment shall have, fully, finally,
10 and forever released, relinquished, and discharged all Released Claims against the Released Parties,
11 as defined herein." (Settlement, Releases, § 69, 70.)

12 "Released Claims" means any and all claims for wages, damages, unpaid costs, penalties,
13 liquidated damages, benefits, fringes, interest, attorney fees, litigation costs, restitution, or equitable
14 relief, against any of the Released Parties, that were pled or could have been pled based on the
15 factual allegations, circumstances, and/or primary rights set forth in the Action and/or PAGA Letter,
16 including all claims under the California Labor Code, Industrial Welfare Commission Wage Orders
17 and applicable law for: failure to pay wages (including minimum wages, regular wages, overtime
18 wages, and regular rates of pay); failure to failure to pay sick leave at the proper rate of pay; failure
19 to provide compliant meal and/or rest periods or proper premiums in lieu thereof; failure to pay
20 wages timely during employment and upon termination; failure to maintain accurate records
21 (including without limitation records of hours worked and meal periods, and payroll records); failure
22 to provide legally-compliant wage statements; failure to reimburse business expenses; all claims for
23 violation of California Business and Professions Code §§ 17200, et seq., arising from the above-
24 referenced claims and those claims in the Actions; and all claims for penalties under California
25 Labor Code § 2698, et. seq. (Settlement, Definitions, § 18.)

26 7. No Reversion: "No portion of the Gross Settlement Amount will revert to
27 Defendant." (Settlement, Primary Terms of Settlement, § 34.)

28 8. PAGA Allocation: The settlement includes \$10,000 allocated to Plaintiff's claims

under PAGA, with 75% of which (\$7,500) being paid to the LWDA and 25% (\$2,500.00) being paid to the Aggrieved Employees. (Settlement, Definitions, § 12.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Marquez Decl., ¶ 9.)

9. Net Settlement Amount: The “Net Settlement Amount” shall be calculated by deducting from the Gross Settlement Amount (\$145,000.00) the following sums, subject to approval by the Court: (1) Plaintiff’s attorney’s fees (not to exceed 33 1/3% of the Gross Settlement Amount, or \$48,333.33); (2) Plaintiff’s attorney’s reasonable litigation costs (not to exceed \$15,000.00); (3) the Service Payment (not to exceed \$5,000.00 to Plaintiff); (4) the PAGA Allocation (\$10,000.00); and (5) costs of settlement administration (estimated not to exceed \$10,000). (Settlement, Primary Terms of Settlement, § 36.)

10. Distribution Formula: “Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will be paid out of the Net Settlement Amount. Each Settlement Class Member will be paid a pro-rata share of the Net Settlement Amount as calculated by the Settlement Administrator. The pro-rata share will be determined by comparing the individual Settlement Class Member’s Covered Workweeks employed during the Class Period in California to the total Covered Workweeks of all the Settlement Class Members during the Class Period as follows: [Workweeks worked by a Settlement Class Member] ÷ [Sum of all Covered Workweeks worked by all Settlement Class Members] × [Net Settlement Amount] = individual Settlement Class Payment for a Settlement Class Member. Settlement Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members. Uncashed, unclaimed or abandoned checks, shall be transmitted by the Settlement Administrator to the California State Controller’s Office. PAGA Payments: PAGA Settlement Payments will be paid out of the PAGA Allocation deducted from the Gross Settlement Amount after the PAGA Penalty Amount (75 percent of the PAGA Allocation) is paid to the LWDA. Each PAGA Employee will be paid a pro-rata share of the PAGA Settlement Payment, as calculated by the Settlement Administrator. Class Members who are PAGA Employees will not be permitted to exclude themselves from this portion of the Settlement. Each PAGA Employee’s pro-rata share will

1 be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the
2 PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period
3 as follows: [PAGA Pay Periods worked by a PAGA Employee] ÷ [Sum of all PAGA Pay Periods
4 worked by all PAGA Employees] × [PAGA Settlement Payment] = individual PAGA
5 Employee's portion of the PAGA Settlement Payment. PAGA Settlement Payments to PAGA
6 Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail
7 to the PAGA Employees at the same time Settlement Class Payments issued to the Settlement Class.
8 Settlement Class Members who are also PAGA Employees may receive their settlement payments
9 in a single check. Joint Stipulation of Class Action and PAGA Settlement Class Members who
10 exclude themselves from the Class Settlement will still receive their PAGA Settlement Payment
11 and be bound by the release of the Released PAGA Claims, notwithstanding their exclusion from
12 the Settlement Class. Uncashed, unclaimed or abandoned checks, shall be transmitted by the
13 Settlement Administrator to the California State Controller's Office, as set forth below. The
14 Settlement Administrator will send the PAGA Penalty Payment to the LWDA at the same time the
15 Settlement Administrator sends Settlement Payments to the Settlement Class and PAGA Settlement
16 Payments to the PAGA Employees." (Settlement, Primary Terms of Settlement, §§ 39, 40.)

17 11. Tax Allocation: Any settlement money paid to Settlement Class Members will be
18 allocated as 20% wages, 80% to penalties and interest. (Settlement, Primary Terms of Settlement,
19 § 41.)

20 12. Class Representative Service Award: "Subject to Court approval, and in exchange
21 for a general release from Plaintiff, Defendant will not object to Class Counsel's application for an
22 additional payment of up to \$5,000.00 to Plaintiff for service as a Class Representative ("Service
23 Payment"). The Service Payment is in addition to any individual Settlement Payment to which
24 Plaintiff may be entitled under this Agreement. The Settlement Administrator will issue an IRS
25 Form 1099 for the Service Payment to the Plaintiff. Plaintiff will be individually responsible for
26 correctly characterizing this compensation on personal income tax returns for tax purposes and for
27 paying any taxes on the amounts received. Any amount not approved by the Court shall be added
28 to the Net Settlement Amount. Plaintiff agrees not to opt out or object to the Service Payment as

the Class Representative. Plaintiff will apply to the Court for, and Defendants will not oppose the application for, an award not to exceed ten thousand dollars (\$10,000) for his role in serving as the Settlement Class Representative (i.e., Enhancement Award). The Enhancement Award is in addition to the Settlement Share to which Plaintiff is entitled along with other Participating Settlement Class Members. An award by the Court of a lesser amount than that sought by Plaintiff for the Enhancement Award will not constitute a material change to the Settlement.” (Settlement, Primary Terms of Settlement, § 44.)

13. Attorneys’ Fees and Costs: “Subject to approval by the Court, Defendant will not object to Class Counsel’s application for attorney’s fees of up to 33 1/3% of the Gross Settlement Amount (meaning \$48,333.33) and reimbursement of litigation costs and expenses not to exceed \$15,000.00, subject to proof. (Settlement, Primary Terms of Settlement, § 43.)

14. Notice of Proposed Class Action Settlement: Each Class Member will be mailed a notice setting forth the material terms of the proposed Settlement, along with instructions about how to object or request exclusion from the class portion of the proposed Settlement. For each Class Member, there will be pre-printed information on the mailed Notice, based on Defendant’s records, stating the Class Member’s Covered Workweeks during the Class Period, PAGA Pay Periods during the PAGA Period, and the estimated total Settlement Payment under the Settlement, including the Settlement Class Payment and the PAGA Settlement Payment. The Notice will issue in English only. The Parties agree a Spanish translation or other non-English translation is not necessary. (Settlement, Primary Terms of Settlement, §§ 48, 49.)

III. DISCUSSION

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached through arm’s-length bargaining; (2) investigation is sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

1 In considering whether a settlement is reasonable, the trial court should consider relevant
2 factors, which may include the strength of plaintiff's case, the risk, expense, complexity and likely
3 duration of further litigation, the risk of maintaining class action status through trial, the amount
4 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
5 experience and views of counsel, the presence of a governmental participant, and the reaction of the
6 class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168
7 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself
8 that the class settlement is within the "ballpark" of reasonableness. (*Id.* at p. 133.) The record need
9 not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola*
10 *Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require
11 "an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all
12 its claims", but instead, only an "understanding of the amount that is in controversy and the realistic
13 range of outcomes of the litigation."].)

14 As discussed below, Class Counsel has provided information exceeding the threshold
15 required to provide this Court with materials and information necessary to determine that the
16 proposed settlement is fair, adequate, and reasonable.

17 **A. The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation,**
18 **Litigation, and Negotiation**

19 **1. The Settlement Is the Product of Discovery, Investigation, and Informed**
20 **and Non-Collusive Arm's-Length Negotiations**

21 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
22 evidence to the contrary is offered; thus, there is a presumption here that the negotiations were
23 conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.)
24 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super.*
25 *Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 ["The fact
26 that a plaintiff might have received more if the case had been fully litigated is no reason not to
27 approve the settlement."].)

28 The Settlement was reached following extensive negotiations following one day of

1 mediation with experienced employment mediator, Steven Rottman, Esq. (Marquez Decl. ¶ 7.) The
2 settlement negotiations were at arm's length and, although conducted in a professional manner,
3 were adversarial. (*Id.*) The parties went into the mediation willing to explore the potential for a
4 settlement of the dispute, but each side was also prepared to litigate their or its position through trial
5 and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions
6 regarding the strengths and weaknesses of Plaintiff's claims and Defendants' defenses, the Parties
7 reached an agreement. (*Id.* at ¶ 8.)

8 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
9 the claims set forth in the Litigation, such as a sample of class member timekeeping and payroll
10 records, Defendants' policies and procedures concerning the payment of wages, the provision of
11 meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well
12 as information regarding the number of putative class members and the mix of current versus former
13 employees, the wage rates in effect, and the amount of meal and rest period premium wages paid to
14 class members. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation, Class
15 Counsel investigated the applicable law regarding the claims and defenses asserted in the litigation.
16 (*Id.*) Thus, Plaintiff and his counsel were able to act intelligently and effectively in negotiating the
17 proposed Settlement. (*Id.*)

18 Class Counsel also has considerable experience and has demonstrated competence with
19 litigating wage and hour class actions. (*Id.* at ¶¶ 39-49.) Again, this supports the position that the
20 terms of the Settlement are premised on objective evidence that has been considered and weighed
21 in light of the risks, expenses, and time consumption to both sides of continued litigation of this
22 action.

23 2. The Settlement Is Fair and Reasonable in Light of the Parties' Respective 24 Legal Positions

25 Defendants have aggressively denied any liability as to any of the claims. Yet, a settlement
26 was reached through good faith negotiation and efforts to provide a fair and reasonable resolution
27 that avoids the risks and expense of further litigation. A settlement is not judged against what might
28 plaintiff recover had he prevailed at trial, nor does the settlement have to provide 100% of the

1 damages sought to be fair and reasonable. (*Wershba v. Apple Computers, Inc.* (2001) 91
2 Cal.App.4th 224, 246, 250 [“Compromise is inherent and necessary in the settlement process...even
3 if the relief afforded by the proposed settlement is substantially narrower than it would be if the
4 suits were to be successfully litigated, this is no bar to a class settlement because the public interest
5 may indeed be served by a voluntary settlement in which each side gives ground in the interest of
6 avoiding litigation.”].)

7 This settlement avoids the risks and the accompanying expense of further litigation.
8 (Marquez Decl., ¶ 26.) While Plaintiff is confident in the merits of his claims, a legitimate
9 controversy exists as to each cause of action. (*Id.* at ¶ 25.) Plaintiff also recognizes that proving
10 the amount of wages due to each class member would be an expensive, time-consuming, and
11 uncertain proposition. (*Id.*)

12 The proposed settlement of \$145,000 therefore represents a substantial recovery when
13 compared to Plaintiff’s reasonably forecasted recovery. (*Id.* at ¶¶ 14-28.) Because of the proposed
14 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
15 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
16 achieving class certification, the burdens of proof necessary to establish liability, the probability of
17 appeal of a favorable judgment, it is clear that the settlement amount of \$145,000 is within the
18 “ballpark” of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed,***
19 ***each Settlement Class Member is eligible to receive a gross average net benefit of approximately***
20 ***\$1,349.20.*** (*Id.* at ¶ 27.)

21 3. Class Counsel Has Extensive Experience in Class Action Litigation

22 The settlement negotiations were conducted by highly capable and experienced counsel.
23 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
24 experienced in handling complex wage and hour class action litigation. (Marquez Decl., ¶¶ 39-49.)
25 Although Plaintiff and his counsel were prepared to litigate the claims alleged in the litigation, they
26 support the proposed Settlement as being in the best interests of the class.

27 Defendants is represented by Ogletree Deakins, a respected defense firm, and the attorneys
28 defending the instant action are also seasoned class and PAGA attorneys.

1 **B. The Proposed Class Notice of Settlement Should Be Approved**

2 The proposed Notice should be approved for dissemination to the class and sub-class. The
3 Notice informs the class of the terms of the settlement and of their rights to be excluded from the
4 settlement. And if there are class members who wish to object to this proposed class action
5 settlement, they will have the opportunity to file their objections and be heard at the Final Approval
6 Hearing. Accordingly, the proposed Notice meet all the requirements of Rule 3.769(f) of the
7 California Rules of Court.

8 **C. The Proposed Attorneys’ Fees and Costs Are Reasonable**

9 Under the Settlement, subject to the Court’s approval, Defendants agrees to pay Class
10 Counsel reasonable attorneys’ fees in amount of \$48,333.33, which is 33 1/3% of the gross
11 Settlement Amount, and up to \$15,000.00 in costs. These amounts are disclosed to all class
12 members in the proposed Notice and are reasonable.

13 **1. Class Counsel Request an Award of Fees Based on the “Common Fund”**
14 **Method**

15 California courts have long awarded attorneys’ fees as a percentage of the benefit created
16 by counsel in creating a common fund. The California Supreme Court held that “when a number
17 of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs
18 for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
19 may be awarded attorneys’ fees out of the fund.” (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34, quoting
20 *D’Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

21 Class Counsel seeks an award of attorneys’ fees on the “percentage of recovery/ common
22 fund” theory. The purpose of this approach is to “spread litigation costs proportionally among all
23 the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent*,
24 *supra*, 557 F.2d at p. 769.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California
25 Supreme Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund
26 from which others derive benefits may require those passive beneficiaries to bear a fair share of the
27 litigation costs.” (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12
28 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been

1 applied “consistently in California when an action brought by one party creates a fund in which
2 other persons are entitled to share.” (*Id.* at p. 110.)

3 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
4 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
5 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
6 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
7 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
8 method—including relative ease of calculation, alignment of incentives between counsel and the
9 class, a better approximation of market conditions in a contingency case, and the encouragement it
10 provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
11 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
12 (*Id.* [internal citations omitted].)

13 **2. The Requested Fee Award Is in Line with Typical Cases**

14 According to a leading treatise on class actions, “No general rule can be articulated on what
15 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
16 reasonable fee award from a common fund in order to assure that the fees do not consume a
17 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
18 are not unprecedented.” (*See* Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 14.03.)
19 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty
20 to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; see also
21 *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F.Supp. 294 [stating that most
22 cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million].)

23 Here, Plaintiff requests attorneys’ fees equal to 33 1/3% of the Settlement Amount, which
24 is in line with the prevailing guidelines established in California case law and academic literature,
25 and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43,
26 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar
27 method is used, fee awards in class actions average around one-third of the recovery.”].)
28 Accordingly, Plaintiff respectfully requests that the Court approve the attorneys’ fees as negotiated

1 by the parties and requested herein.

2 **3. This Matter Involves A “Fee-Shifting” Provision of the Labor Code**

3 Labor Code § 1194(a) provides for the recovery of “minimum wage or overtime
4 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this
5 section, Plaintiff would be permitted to recover his actual attorneys’ fees, even if those fees were
6 larger than the total class recovery at the conclusion of this case. This settlement is beneficial in
7 that it limits the risk of continued expenses and consumption of time, energy, and resources facing
8 Defendants while at the same time rewarding Class Counsel for their decision to assume risk by
9 taking on this matter. In fact, prosecution of this action involved significant financial risk for Class
10 Counsel. (Marquez Decl., ¶¶ 37-38.) Class Counsel undertook this matter solely on a contingent
11 basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the
12 Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class
13 ahead of all other concerns.

14 **4. The Experience, Reputation and Ability of Class Counsel Support the**
15 **Requested Fee Award**

16 As demonstrated by their past experience in pursuing class actions on behalf of consumers
17 and employees, Class Counsel possesses considerable expertise in litigating class actions. (Marquez
18 Decl., ¶¶ 39-49.) Class Counsel has been involved as lead counsel or co-counsel in several class
19 actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class
20 counsel commensurate with their skill, reputation and experience, Class Counsel’s requested fee
21 award is supported here.

22 Class Counsel’s experience in wage and hour class actions was integral in evaluating the
23 strengths and weaknesses of the case against Defendants and the reasonableness of the settlement.
24 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the
25 rapidly evolving substantive law (state and federal), as well as the procedural law of class action
26 litigation. Based on these and other factors, Class Counsel has frequently received fee awards of
27 this percentage from the gross recovery for the class. Therefore, the requested fee award is
28 reasonable and fair.

1 **D. The Service Award to Named Plaintiff Is Reasonable**

2 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
3 compensate them for the expense or risk they have incurred in conferring a benefit on other
4 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
5 of class action settlement agreements containing enhancements for the class representatives, which
6 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
7 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
8 2009) 563 F.3d 948, 958-59.)

9 Service awards are particularly important to plaintiffs in wage and hour cases because they
10 promote the important public policies underlying the wage and hour laws. This strong policy is
11 codified in California Labor Code section 90.5, which provides, “it is the policy of this state to
12 vigorously enforce minimum labor standards in order to ensure employees are not required or
13 permitted to work under substandard unlawful conditions....”). Nonetheless, the California
14 Supreme Court has noted that “retaliation against employees for asserting statutory rights under the
15 Labor Code is widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry*
16 *v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be
17 rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman*
18 *Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

19 Under the settlement agreement, subject to the Court’s approval, Defendant agreed to pay a
20 Service Award in the amount of \$5,000 to Plaintiff. This amount is also in exchange for Plaintiff’s
21 general release of all claims against Defendant. Class Counsel represent that Plaintiff devoted a
22 great deal of time and work assisting counsel in the case, communicated with counsel very
23 frequently for litigation and to prepare for mediation, and was frequently in contact with Class
24 Counsel during the mediation. (Marquez Decl., ¶¶ 29-33.) This amount is reasonable particularly
25 in light of the substantial benefits Plaintiff generated for all class members. (*Id.*) Indeed, in *Karl*
26 *Adams, III, et al. v. MarketStar Corporation, et al.*, No. 2:14-cv-02509-TLN-DB, Class Counsel
27 Justin F. Marquez helped negotiate a \$2.5 million class action settlement for 339 class members,
28 and the court approved a \$25,000 class representative incentive award for each named plaintiff.

1 (Marquez Decl., ¶ 33.)

2 When compared with the amounts awarded in typical class action cases, the amount
3 requested here is particularly reasonable. Indeed, a 2006 study examining the average incentive
4 award given to class action plaintiffs from 1993 to 2002 found that the “average award per class
5 representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore
6 Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”,
7 53 UCLA L. Rev. 1303, 1308 (2006).) That same study found that named plaintiffs in employment
8 discrimination class actions received an average award of \$69,850 and a median award of \$31,081,
9 while named plaintiffs in other employment class actions received an average award of \$12,121 and
10 a median award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in
11 employment cases reflected the “courts’ wish to make representative plaintiffs whole by
12 compensating them for the high costs of their service to the class, including risks of stigmatization
13 or retaliation on the job.” (*Id.* at p. 1308.)

14 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

15 **A. Legal Standard**

16 The proposed Settlement Class is well suited for class certification. All of the claims derive
17 from a core set of alleged violations of California’s wage and hour laws and regulations. For the
18 reasons set forth more fully below, for purposes of settlement only, the Class satisfies the
19 prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: “when
20 the question is one of a common or general interest, of many persons, or when the parties are
21 numerous, and it is impracticable to bring them all before the court, one or more may sue or defend
22 for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to section 382: “(1)
23 There must be an ascertainable class; and (2) there must be a well-defined community of interest in
24 the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow Cab*
25 *Co.* (1967) 67 Cal. 2d 695, 704 [citations omitted].) To clarify these requirements, the California
26 Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-
27 interest requirement itself embodies three factors: “(1) predominant questions of law or fact; (2)
28 class representatives with claims or defenses typical of the class; and (3) class representatives who

1 can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 470.)

2 California law and policy favor the fullest and most flexible use of the class action device.
3 (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a
4 means to prevent a failure of justice in our judicial system” particularly where the rights of
5 consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to
6 the appropriateness of class treatment should be resolved in favor of certification. (*Richmond*,
7 *supra*, 29 Cal.3d at pp. 473-75.)

8 **B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for**
9 **Settlement Purposes.**

10 **1. The Classes Are Ascertainable and Numerous**

11 The proposed class that Plaintiff seeks to represent is easily ascertainable, and includes
12 approximately 42 employees of Defendant.

13 Plaintiff maintains that there is an easily ascertainable class, defined by objective and precise
14 criteria. Because class members are identified using specific criteria in the regular business records
15 of Defendants, i.e., job position, the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.* (2000)
16 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the subject
17 of the lawsuit is sufficient to make the class ascertainable].)

18 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
19 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
20 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action
21 may be maintained as a class action even where the parties are numerous and it is in fact practicable
22 to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a class
23 action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a
24 trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574;
25 see also, *Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) Therefore, Plaintiff
26 contends that numerosity is plainly satisfied.

27 **2. There are Many Common Issues of Law and Fact Which Predominate**

28 The Court should grant conditional class certification for settlement purposes here on the

1 grounds that questions of law and fact common to all class and subclass predominate over any
2 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
3 warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
4 Cal.App.3d 605.)

5 Here, the employment practices at issue are: whether Defendant had legally compliant
6 policies and practices to provide employees with meal periods; whether Defendant had legally
7 compliant policies and practices authorizing and permitting its employees to take rest periods;
8 whether Defendant had legally compliant policies and practices for all hours worked, including
9 overtime wages and off-the clock work; whether Defendant paid overtime and sick pay at the
10 appropriate regular rates of pay; where Defendant failed to reimburse employees for necessary
11 business related expenses; whether final payment of wages was untimely and excluded unpaid
12 wages, including meal period premium wages, and rest period premium wages; and whether the
13 wage statements were consequently non-compliant. Plaintiff contends that the factual and legal
14 issues are the same for all of the identified class members, including Plaintiff. Further, all class
15 members suffered from, and seek redress for, the same alleged injuries.

16 **3. Plaintiff's Claims Are Typical of the Claims of the Class**

17 The typicality requirement does not focus on the individual characteristics or circumstances
18 of the representative plaintiff compared to those of the remainder of the class, but rather upon the
19 typicality of the proposed representative's claims as they relate to the Defendant's conduct and
20 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 "[t]he only requirements are that
21 common questions of law and fact predominate and that the class representative be similarly
22 situated" vis-à-vis the class.]) A representative plaintiff's claims are typical of the class if they
23 arise from the same event, practice or course of conduct, and if the claims rest on the same legal
24 theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant; as such,
25 he alleges that he was subject to the same policies and practices as other similarly situated
26 employees.

27 **4. Plaintiff and His Counsel Meet the Adequacy Requirement**

28 The adequacy of representation requirements is met by fulfilling two conditions: first, a

1 named plaintiff must be represented by counsel qualified to conduct the pending litigation; second,
2 a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of*
3 *America* (1976) 60 Cal.App.3d 442, 451.)

4 All of these requirements are met here for settlement purposes. Plaintiff retained counsel
5 with extensive experience in prosecuting complex class actions, including similar class actions that
6 previously settled. (Marquez Decl., ¶¶ 39-47.) Class Counsel unquestionably is "qualified,
7 experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148
8 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel,
9 litigated this case and diligently reviewed the settlement terms, showing their dedication. Plaintiff's
10 willingness to serve as a representative demonstrates his serious commitment to bringing about the
11 best results possible for the class and subclass. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

12 **5. A Class Action is Superior to a Multiplicity of Litigation**

13 Finally, in making its class certification decision, the Court must determine that a class
14 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
15 By consolidating many potential individual actions into a single proceeding, this Court's use of the
16 class action device enables it to manage this litigation in a manner that serves the economics of
17 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-
18 situated employees with small but nevertheless meritorious claims for damages would, as a practical
19 matter, have no means of redress because of the time, effort and expense required to prosecute
20 individual actions. (*Gentry v. Super. Ct.* (2007) 42 Cal. 4th 443, 457-62; *Leyva v. Medline Ind.* (9th
21 Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are
22 essentially non-existent.

23 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

24 **A. The Proposed Notice Plan Satisfies Due Process**

25 Notice requirements are set forth in the California Rules of Court. Cal. Rules of Court, Rule
26 3.766 (e) and (f). California law vests the Court with broad discretion in fashioning an appropriate
27 notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no statutory or
28 due process requirement that all class members receive actual notice, but in this matter, the class

1 members will receive direct mailed notice. As the Court of Appeals has explained, “[t]he notice
2 given should have a reasonable chance of reaching a substantial percentage of the Class Members
3” (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided by direct
4 mailing, the best possible form of notice.

5 **B. The Notice is Accurate and Informative**

6 The proposed Notice should be approved. It will be disseminated through direct U.S. first
7 class mail to the last known address for each Class Member. It informs the Class Members of the
8 terms of the settlement and their right to be excluded from the Settlement. And if there are Class
9 Members who wish to object to this proposed class action settlement, they will have the opportunity
10 to file their objections and be heard at the Final Approval Hearing.

11 The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg,
12 Newberg on Class Actions (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the terms
13 and conditions of the settlement agreement, in an informative and coherent manner. It makes
14 clear that the settlement agreement does not constitute an admission of liability by the
15 Defendants, who denies all liability, and it recognizes that this Court has not ruled on the merits
16 of the action. It also states that the final settlement approval decision has yet to be made. The
17 Notice thus complies with the standards of fairness, completeness, and neutrality required of a
18 combined settlement-certification class notice.

19 **VI. CONCLUSION**

20 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
21 approval of the proposed settlement and set a Final Approval Hearing for in early to mid-March
22 2024.

23 Respectfully submitted,

24 Dated: October 12, 2023

WILSHIRE LAW FIRM

25 By: 

26 Justin F. Marquez
27 Christina M. Le
28 Zachary D. Greenberg

Attorneys for Plaintiff

PROOF OF SERVICE

Hector Mendoza Paz v. Borrego Solar Systems, Inc., et al.
37-2022-00030081-CU-OE-CTL

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Sandy S. Sespene, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is ssespene@wilshirelawfirm.com.

On October 12, 2023, I served the foregoing **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Marlene M. Moffitt (SBN 223658)
marlene.moffitt@ogletree.com
**OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.**
4660 La Jolla Village Drive, Suite 900
San Diego, CA 92122
Telephone: (858) 652-3100
Facsimile: (858) 652-3101

David Szwarcztejn (SBN 272371)
david.szwarcztejn@ogletree.com
Alicia Martinez
alicia.martinez@ogletree.com
Mimie Normis
mimie.normis@ogletree.com
Nicole Schard
nicole.schard@ogletree.com
**OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.**
400 South Hope Street, Suite 1200
Los Angeles, CA 90071
Telephone: (213) 239-9800
Facsimile: (213) 239-9045

Attorneys for Defendant

- (X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.
- (X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **October 12, 2023**, at Los Angeles, California.



Sandy Sespene