

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
Miriam L. Schimmel (State Bar No. 185089)
mschimmel@blackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff Michael Bravo

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

MICHAEL BRAVO, individually, and on behalf
of others similarly situated,

Plaintiff,

vs.

MICHELS PACIFIC ENERGY, INC., a
Delaware corporation; and DOES 1 through 25,
inclusive,

Defendants.

Case No. 22CV403427

Honorable Theodore C. Zayner
Department 19

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

Date:
Time: 1:30 p.m.
Dept.: 19

Complaint Filed: September 26, 2022
FAC Filed: November 28, 2022
Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on _____ at 1:30 p.m. in Department 19 of the above-captioned Court located at 161 North First Street, San Jose, California 95113 pursuant to California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiff Michael Bravo (“Plaintiff”) will and hereby does move the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiff and Defendant Michels Pacific Energy, Inc. (“Defendant”).

Plaintiff requests that the Court enter an Order:

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

2. Certifying the Class for Settlement purposes;

3. Appointing Plaintiff Michael Bravo as the Class Representative for Settlement purposes;

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

5. Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as Exhibit A to the Settlement Agreement, to be mailed to the Class;

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

7. For each Class Member, directing Defendant to furnish their full name, last known mailing address, Social Security number, and dates employed by Defendant during the Class Period and PAGA Period (if applicable), to the Settlement Administrator within thirty (14) calendar days after entry of the order granting preliminary approval of the Settlement;

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

9. Setting a Final Approval Hearing.

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1 Pursuant to California Labor Code section 2699(1)(2) and concurrently with the filing of this
2 Motion, a copy of the Settlement was submitted to the California Labor and Workforce Development
3 Agency (“LWDA”) via online submission through the LWDA’s website. (Genish Decl., ¶ 46).

4 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the
5 Declaration of Jonathan M. Genish, the Declaration of Plaintiff Michael Bravo, the Declaration of
6 Michael Sutherland of ILYM Group, Inc., the pleadings and other records on file with the Court in this
7 matter, and any other further evidence or argument that the Court may properly receive at or before the
8 hearing.

9 Respectfully submitted,

10 Dated: November 3, 2023

BLACKSTONE LAW, APC

11
12 By: _____

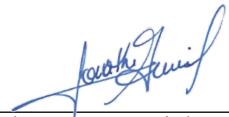

Jonathan M. Genish
Attorneys for Plaintiff Michael Bravo

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

- 8
- Class Size: Approximately 306 individuals (as of September 27, 2023).
 - 9 • Gross Settlement Amount: One Million Seven Hundred Fifty Thousand Dollars and Zero
10 Cents (\$1,750,000.00).
 - 11 • Settlement Administration Costs: Not to exceed Eight Thousand Five Hundred Dollars and
12 Zero Cents (\$8,500.00), to be paid from the Gross Settlement Amount.
 - 13 • Enhancement Payment: Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff
14 Michael Bravo, to be paid from the Gross Settlement Amount.
 - 15 • PAGA Amount: Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) from the
16 Gross Settlement Amount, 75% of which will be paid to the Labor and Workforce
17 Development Agency (“LWDA”) and the remaining 25% to be paid to the PAGA
18 Employees.
 - 19 • Attorneys’ Fees and Costs: Attorneys’ fees of one-third (1/3) of the Gross Settlement Amount
20 (\$583,333.33 if the Gross Settlement Amount is \$1,750,000.00) plus actual litigation costs
21 and expenses not to exceed Thirteen Thousand Dollars and Zero Cents (\$13,000.00), to be
22 paid from the Gross Settlement Amount.
 - 23 • Estimated Net Settlement Amount: Nine Hundred Thirty-Five Thousand One Hundred Sixty-
24 Six Dollars and Sixty-Six Cents (\$935,166.67) to be distributed to Settlement Class
25 Members.

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

1 for final settlement approval, among other requested relief.

2 II. FACTUAL AND PROCEDURAL BACKGROUND

3 Defendant builds, maintains, relocates, and rebuilds energy infrastructure in California and on the
4 West Coast. Plaintiff was employed by Defendant as an hourly-paid, non-exempt Project Coordinator
5 from approximately May 2021 to April 2022 at its location in Santa Clara, California. (Declaration of
6 Michael Bravo in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement
7 [“Bravo Decl.”], ¶ 2).

8 On September 22, 2022, Plaintiff provided written notice to the LWDA by online submission and
9 to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified
10 provisions of the California Labor Code alleged to have been violated by Defendant (“PAGA Letter”).
11 (Genish Decl., ¶ 9; Exh. 1 thereto).

12 On September 26, 2022, Plaintiff filed a Class Action Complaint for Damages in the action
13 entitled *Michael Bravo v. Michels Pacific Energy, Inc.*, Santa Clara County Superior Court Case No.
14 22CV403427 (“Action”), thereby commencing a putative class action against Defendant. (*Id.*, ¶ 10). On
15 November 28, 2022, Plaintiff filed a First Amended Class Action Complaint for Damages and
16 Enforcement Action Under the Private Attorneys General Act, California Labor Code §§ 2698 Et Seq.
17 (“Operative Complaint”) in the Action, which added a cause of action under PAGA. (*Ibid.*). The
18 Operative Complaint alleges nine (9) causes of action for violations of the California Labor Code for
19 failure to pay overtime wages, failure to provide compliant meal periods and premium payments in lieu
20 thereof, failure to provide compliant rest periods and premiums payments in lieu thereof, failure to pay
21 minimum wages, failure to timely pay wages upon termination, failure to provide accurate wage
22 statements, and failure to reimburse necessary business expenses, for violations of California Business &
23 Professions Code Section 17200, *et seq.* based on the aforementioned California Labor Code violations,
24 and for civil penalties under PAGA based on the aforementioned California Labor Code violations.
25 (*Ibid.*).

26 Following the filing of the Operative Complaint, the Parties met and conferred with respect to the
27 potential resolution of the Action by means of a private mediation and agreed to exchange informal
28 discovery as part of that process. (*Id.*, ¶ 11). Pursuant to the Parties’ decision to mediate, Defendant

1 produced a random sampling of putative class members' time and pay records, as well as information
2 and documents concerning the claims set forth in Plaintiff's Operative Complaint, such as Defendant's
3 employee handbooks, collective bargaining agreements, relevant wage and hour policies, and information
4 regarding the total number of putative class members, the number of current versus former employees,
5 the total workweeks worked by the putative class members, the dates of employment of the putative class
6 members, and the average rate of pay for the putative class members. (Ibid).

7 On July 13, 2023, after a thorough investigation and analysis of these documents and data, the
8 Parties attended a formal mediation with Louis Marlin, Esq. ("Mediator"), a neutral and respected
9 mediator with extensive experience in complex wage and hour matters. (*Id.*, ¶ 12). At the mediation, the
10 Parties engaged in intensive settlement discussions during which they debated their respective positions
11 and exchanged views regarding the strengths and weaknesses of the alleged claims. (Ibid). After a full
12 day of mediation, and with the help of the Mediator, the Parties were able to reach an agreement to resolve
13 this dispute on a class and representative basis. (Ibid).

14 Following the mediation, the Parties worked diligently to negotiate and memorialize the terms in
15 a long form settlement agreement. (*Id.*, ¶ 13). On September 19, 2023, the Parties executed the
16 Settlement Agreement. (Ibid; Exh. 2 thereto).

17 **III. THE SETTLEMENT TERMS**

18 **A. Class Definition**

19 For purposes of settlement only, the Parties have agreed that the Class shall be defined as "all
20 current and former hourly-paid and/or non-exempt non-union employees and union employees covered
21 under the National Pipe Line Agreements employed by Defendant in the State of California at any time
22 during the Class Period" ("Class Members" or "Class"). (Genish Decl., ¶ 14; Settlement Agreement, ¶
23 6.b). The Class Period is defined as the period from September 26, 2018 through October 11, 2023.
24 (Genish Decl., ¶ 14; Settlement Agreement, ¶ 6.f). The National Pipe Line Agreements is defined as the
25 Collective Bargaining Agreements ("CBAs") that cover Defendant's employees who are members of the
26 International Union of Operating Engineers ("IUOE"), the International Brotherhood of Teamsters
27 ("IBT") and the Laborers' International Union of North America ("LIUNA"). (Genish Decl., ¶ 14;
28 Settlement Agreement, ¶ 6.u). Based on information provided by Defendant, as of September 27, 2023,

1 it is estimated that there are a total of three hundred and six (306) Class Members. (Genish Decl., ¶ 14).

2 **B. Amount of Settlement**

3 The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint
4 for a non-reversionary Gross Settlement Amount of One Million Seven Hundred Fifty Thousand Dollars
5 and Zero Cents (\$1,750,000.00), exclusive of employer-side payroll taxes. (Genish Decl., ¶ 15; Settlement
6 Agreement, ¶ 6.p).

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

8 The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees,
9 and other allocations. (Genish Decl., ¶ 15; Settlement Agreement, ¶ 6.p). The Gross Settlement Amount
10 includes: (1) Class Counsel’s fees in the amount of one-third (1/3) of the Gross Settlement Amount (i.e.,
11 \$583,333.33 if the Gross Settlement Amount is \$1,750,000.00); (2) Class Counsel’s actual litigation costs
12 and expenses, not to exceed Thirteen Thousand Dollars and Zero Cents (\$13,000.00); (3) Settlement
13 Administration Costs, not to exceed Eight Thousand Five Hundred Dollars and Zero Cents (\$8,500.00);
14 (4) Enhancement Payment in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00); and (5)
15 PAGA Amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00). (Genish Decl., ¶ 15;
16 Settlement Agreement, ¶¶ 6.p, 9, 10, 11, and 12). After the above-estimated amounts are deducted from
17 the Gross Settlement Amount, the Net Settlement Amount that will be available for Class Members is
18 currently estimated to be Nine Hundred Thirty-Five Thousand One Hundred Sixty-Six Dollars and Sixty-
19 Seven Cents (\$935,166.67). (Genish Decl., ¶ 15). Additionally, 25% of the PAGA Amount (“PAGA
20 Employee Amount”), which is \$50,000.00 out of \$200,000.00 will be fully distributed to all current and
21 former hourly-paid and/or non-exempt non-union and union employees covered under the National Pipe
22 Line Agreements employed by Defendant in the State of California at any time during the PAGA Period
23 (“PAGA Employees”). (Genish Decl., ¶ 15; Settlement Agreement, ¶¶ 6.p, 6.z, 6.y, and 11). The “PAGA
24 Period” is defined as the period from September 22, 2021 through October 11, 2023. (Genish Decl., ¶
25 15; Settlement Agreement, ¶ 6.aa).

26 Defendant has represented that the Class Members were employed for a total of 12,515
27 workweeks during the period from September 26, 2018 through May 31, 2023. (Genish Decl., ¶ 16;
28 Settlement Agreement, ¶ 13). If it is determined by the Settlement Administrator that the total number

1 of workweeks employed by the Class Members during that time period exceeds 12,515 by more than 7%
2 (i.e., by more than 13,391 workweeks), then the Gross Settlement Amount will be increased on a *pro rata*
3 basis equal to the percentage increase in the number of workweeks employed by the Class Members
4 above 7%. (Genish Decl., ¶ 16; Settlement Agreement, ¶ 13). For example, if the number of workweeks
5 during the period from September 26, 2018 through May 31, 2023 increases by 8% to 13,516 workweeks,
6 then the Gross Settlement Amount will increase by 1%. (Genish Decl., ¶ 16; Settlement Agreement, ¶
7 13).

8 The Net Settlement Amount will be distributed and paid to all Class Members who do not submit
9 a timely and valid Request for Exclusion (“Settlement Class Members”) on a *pro rata* basis based on the
10 number of weeks each Class Member was employed by Defendant as an hourly-paid and/or non-exempt
11 non-union or union employee covered under the National Pipe Line Agreements in California during the
12 Class Period (“Workweeks”). (Genish Decl., ¶ 17; Settlement Agreement, ¶¶ 6.mm and 6.nn). The *pro*
13 *rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class
14 Settlement (“Individual Settlement Share”) will be calculated by the Settlement Administrator, in
15 accordance with the Settlement Agreement. (Genish Decl., ¶ 17; Settlement Agreement, ¶¶ 6.s and 16).

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

24 Each Individual Settlement Share will be allocated as twenty percent (20%) wages and eighty
25 percent (80%) penalties, interest, and non-wage damages. (Genish Decl., ¶ 19; Settlement Agreement, ¶
26 16). The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to
27 penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the
28 Settlement Administrator. (Genish Decl., ¶ 19; Settlement Agreement, ¶ 16). The Settlement

1 Administrator will withhold the employee's share of taxes and withholdings with respect to the wages
2 portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their net
3 payment of their Individual Settlement Share ("Individual Settlement Payment"). (Genish Decl., ¶ 19;
4 Settlement Agreement, ¶¶ 6.r and 16). The employer's share of taxes and contributions in connection
5 with the wages portion of Individual Settlement Shares will be paid by Defendant separately and in
6 addition to the Gross Settlement Amount. (Genish Decl., ¶ 19; Settlement Agreement, ¶¶ 6.p and 16).
7 Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be
8 reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Genish Decl., ¶ 19;
9 Settlement Agreement, ¶ 16).

10 The Settlement Agreement is a non-reversionary and non-claims made settlement. (Genish Decl.,
11 ¶ 20; Settlement Agreement, ¶¶ 6.p and 34). The Net Settlement Amount will be fully distributed to
12 Settlement Class Members and the PAGA Amount will be fully distributed to the LWDA and PAGA
13 Employees, in accordance with the Settlement Agreement. (Genish Decl., ¶ 20; Settlement Agreement,
14 ¶¶ 14 and 15). No money will revert to Defendant. (Genish Decl., ¶ 20; Settlement Agreement, ¶ 6.p).

15 Each Individual Settlement Payment and Individual PAGA Payment check will be valid and
16 negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
17 thereafter, shall be canceled. (Genish Decl., ¶ 21; Settlement Agreement, ¶ 34). Any funds associated
18 with such canceled checks will be distributed by the Settlement Administrator to the State of California's
19 Unclaimed Property Fund in the name of the Settlement Class Member and/or PAGA Employee at issue.
20 (Genish Decl., ¶ 21; Settlement Agreement, ¶ 34).

21 **D. Released Claims**

22 Upon the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class
23 Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished,
24 and discharged the Released Parties of all Released Class Claims. (Settlement Agreement, ¶ 35).

25 Upon the full funding of the Gross Settlement Amount, Plaintiff, the State of California with
26 respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and
27 forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released
28 PAGA Claims. (*Id.*, ¶ 36).

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

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

21 “Released Parties” means Defendant and its current and former officers, directors, members,
22 insurers, shareholders, subsidiaries, affiliates, predecessors, successors, and assigns. (*Id.*, ¶ 6.hh).

23 **IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL**

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

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

7 The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.”
8 *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Rather,
9 the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed
10 settlement is within the range of possible approval and, as a result, “whether there is any reason to notify
11 the class members of the proposed settlement and to proceed with a fairness hearing.” A presumption of
12 fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and
13 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
14 similar litigation; and (4) the percentage of objectors is small. *See In re Microsoft I-V Cases*, 135 Cal.
15 App. 4th 706, 723 (2006).

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

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

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

25 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
26 reached through arm’s-length bargaining.” *Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
27 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). Here, the parties’ settlement negotiations
28 were at all times made at arm’s-length and were adversarial. (Genish Decl., ¶ 22). The Settlement was

1 reached following a full day of mediation with a highly respected mediator with substantial experience
2 mediating wage and hour cases. (*Id.*, ¶ 12). At all times, Plaintiff was willing and prepared to litigate
3 this matter through class certification and trial if the Parties had been unable to reach a favorable
4 resolution. (*Id.*, ¶ 42).

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

6 Courts typically assess the status of discovery in determining whether a class action settlement
7 agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. In preparation for mediation,
8 Defendant produced a random sampling of putative class members' time and pay records, as well as
9 information and documents concerning the claims set forth in Plaintiff's Operative Complaint, such as
10 Defendant's employee handbooks, collective bargaining agreements, relevant wage and hour policies,
11 and information regarding the total number of putative class members, the number of current versus
12 former employees, the total workweeks worked by the putative class members, the dates of employment
13 of the putative class members, and the average rate of pay for the putative class members. (Genish Decl.,
14 ¶¶ 11 and 23).

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

22 **C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions** 23 **and Recovery Risks**

24 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
25 trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable.
26 *Wershba*, 91 Cal.App.4th at 246, 250. In evaluating the reasonableness of a settlement, a trial court must
27 consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further
28 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the

1 extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the
2 presence of a governmental participant, and the reaction of the class members to the proposed settlement.”
3 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008).

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

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

9 Prior to mediation, Class Counsel analyzed a sampling of time and payroll records provided by
10 Defendant and other relevant documents. (Genish Decl., ¶ 23). Based on the data and documents
11 provided, Class Counsel estimated with respect to the class claims, with all claims adjudicated in favor
12 of the Class, that Defendant faced a maximum potential liability of \$7,344,500. (*Id.*, ¶ 28). This estimate
13 is based off an estimated maximum liability for all claims at issue and the total aggregate workweeks
14 during the relevant time period, based on the analysis of the data, and included: \$2,284,560 for meal
15 period violations, \$2,284,560 for rest period violations, \$285,570 for unpaid overtime wages, \$56,980
16 for unreimbursed business expenses, waiting time penalties of \$1,852,380, and wage statement penalties
17 of \$580,450. (*Ibid.*). Plaintiff further estimated that Defendant faced an additional exposure of \$602,000
18 in potential, non-stacked (i.e., one penalty, per employee, per pay period during the PAGA statutory
19 period) PAGA penalties. (*Ibid.*). Together with the PAGA penalties, an estimated 100% violation rate
20 totaled \$7,946,500 in damages. (*Ibid.*).

21 **2. Class Counsel’s Risk-Based Analysis and Risk-Based Adjustments**

22 While Plaintiff believes that Defendant faced significant exposure, substantial barriers to a
23 recovery existed. Defendant contended that Plaintiff’s claims are not suitable for class certification
24 because individual issues and affirmative defenses would predominate should this case go to trial.
25 (Genish Decl., ¶ 30; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v.*
26 *U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541,
27 2551(2011). While Plaintiff and Class Counsel disagree with Defendant’s predictions, they also
28 recognize that there is a significant risk that the Court may deny class certification. (Genish Decl., ¶ 30;

1 *see also, Findings of the Study of California Class Action Litigation*, 2000-2006, available at
2 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class
3 actions were certified either as part of a settlement or as part of a contested certification motion)).

4 For example, a large portion of Defendant's overall liability lies in Plaintiff's meal period claims.
5 (Genish Decl., ¶ 31). These claims have been increasingly difficult to certify in recent years and
6 Defendant contended its practices were lawful. (Genish Decl., ¶ 31; *See Brinker*, 53 Cal. 4th at 1034-
7 35). Plaintiff's theory of liability for meal period violations was based on allegations that Defendant had
8 failed to implement lawful policies and practices that allowed Class Members to take meal breaks in the
9 manner required under California law. (Genish Decl., ¶ 31; *See Bradley v. Networkers Int'l, LLC*, 211
10 Cal.App.4th 1129 (2012) (holding that "the lack of a meal/rest break policy and uniform failure to
11 authorize such breaks are matters of common proof.")). In contrast, Defendant argued that its practices
12 at all times during the Class Period were lawful. (Genish Decl., ¶ 31). Defendant argued that the rate of
13 purported meal period violations reflected in the data would require individualized inquiry and that such
14 inquiry would prohibit a class from being certified. (Ibid). Class Counsel disagreed with this assessment
15 but had to consider the risk that the Court would find validity in an individualized proof defense to
16 certification of Plaintiff's meal period claim. (Ibid).

17 Plaintiff's rest period allegations were based on a similar failure to provide employees with timely,
18 full, and uninterrupted rest periods. (*Id.*, ¶ 32). As with the meal period allegations, Defendant contended
19 that it provided rest breaks and relieved Class Members of all duties as required under California law.
20 (Ibid). Additionally, this claim was even more uncertain given the difficulties associated with proving
21 the alleged rest period violations, as Defendant was not required to record these breaks. (Ibid). Given
22 the lack of records demonstrating rest period violations, there were legitimate concerns Plaintiff would
23 not be able to certify these claims or prove substantial damages with requisite certainty. (Ibid).

24 Plaintiff also faced challenges certifying and proving liability for their minimum wage and
25 overtime claims. (*Id.*, ¶ 33). These claims were largely based on unrecorded, off-the-clock work
26 performed by the Class Members such as being required to respond to Defendant, co-workers,
27 supervisors, and crew on work-related requests during purported meal breaks; perform work after
28 clocking out at the end of their shifts, including but not limited to, responding to work-related calls on

1 the weekends; and fill out COVID-19 screening questionnaires whenever a co-worker tested positive.
2 (Ibid). As such, the individualized nature of why this work was performed and the individualized nature
3 of damages presented substantial concerns regarding the manageability of the case and the risk the Court
4 could find these issues prevented certification. (Ibid).

5 There are also substantial risks associated with Plaintiff's waiting time penalties and wage
6 statement claims. (*Id.*, ¶ 34). First, these claims were derivative of Plaintiff's claims for unpaid meal
7 period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages,
8 and if certification was denied on those underlying claims, these derivative claims for penalties would
9 also likely fail. (Ibid). Further, even if Plaintiff prevailed on his underlying claims, he would still be
10 required to demonstrate that Defendant's violations of California Labor Code section 203 were *willful*
11 violations. (Genish Decl., ¶ 34; *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013)
12 (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding
13 of willfulness")). Wage statement claims have also seen varying treatment at the appellate level because
14 such claims have an element of discretion attached to them rather than a pure calculation of damages after
15 liability is proven. (Genish Decl. ¶ 34; *Cf., Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010)
16 *with Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims,
17 which comprised a substantial portion of Defendant's estimated liability, were therefore uncertain.
18 (Genish Decl., ¶ 34).

19 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the
20 amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
21 proposition. (*Id.*, ¶ 35). In order to prove liability and damages, Class Counsel will need to request and
22 analyze thousands of pages of documents, obtain the Class Members' contact information, contact them,
23 and obtain their declarations at great expense. (Ibid). Obtaining the cooperation of current employees
24 would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current
25 employer. (Ibid). On the other hand, Defendant would likely be able to obtain the cooperation of their
26 employees. (Ibid). Moreover, even if Plaintiff prevailed at class certification and trial, possible appeals
27 would substantially delay any recovery by the Class. (Ibid).

28 ///

1 Therefore, taking into account the risk of not obtaining class certification and the cost and delay
2 in recovering the alleged potential damages, Class Counsel discounted Defendant's estimated liability by
3 50% to \$3,973,250. (*Id.*, ¶ 36). The merits-based risk factors further reduced Defendant's estimated
4 liability by an additional 50%. (*Ibid.*). This resulted an adjusted estimated liability of \$1,986,625. (*Ibid.*).
5 In light thereof, the settlement amount of \$1,750,000 is a significant settlement. (*Ibid.*).

6 Class Counsel also contemplated the risks of proceeding with the PAGA action and potential
7 liability Defendant could face from this claim as part of the global resolution. (*Id.*, ¶ 37). Existing case
8 law makes PAGA claims subject to the same defenses and risks as Plaintiff's underlying wage claims.
9 (Genish Decl., ¶ 37; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal.
10 2008) ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because Plaintiff's
11 other claims fail as a matter of law, so does her PAGA claim"). Moreover, although California case law
12 clearly states that PAGA actions need not satisfy class action requirements, Class Counsel remained
13 mindful of the fact that some courts have nevertheless held that PAGA claims must meet a threshold
14 "manageability" requirement. (Genish Decl., ¶ 37; See, e.g., *Wesson v. Staples the Office Superstore,*
15 *LLC*, 68 Cal.App.5th 746 (2021)). Class Counsel also anticipated that even if successful on the merits at
16 trial, the imposition of cumulative civil penalties based on the alleged wage and hour violations could be
17 considered unjust, arbitrary and oppressive, or confiscatory, and that Defendant would argue that it made
18 a good faith attempt to comply with its legal obligations warranting a reduction in penalties. (Genish
19 Decl., ¶ 37).¹ Class Counsel also anticipated Defendant would argue that it made a good faith attempt to
20 comply with its legal obligations and that the violations per pay period were low, warranting an additional
21 reduction in civil penalties. (*Ibid.*). Finally, Class Counsel was also mindful of the fact that PAGA is
22 fundamentally not intended to be compensatory in nature, but is instead intended to facilitate enforcement
23

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

of California's labor laws by financing state activities and educating and deterring non-compliance. (Ibid).

Therefore, after considering this multitude of factors, Plaintiff and Class Counsel concluded that it was in the best interest of the State of California and the PAGA Employees to enter into the Settlement, and to allocate Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) of the Gross Settlement Amount towards the PAGA claim, which represents approximately 11.43% of the Gross Settlement Amount. (*Id.*, ¶ 38). This percentage of the settlement is well within the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. (Ibid). Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as reasonable by courts. (Ibid). Moreover, the overall relief obtained by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California's labor laws, provide funds to the state, and deter future non-compliance by the employer. (Ibid).

The Settlement is in the best interest of the Class Members, the PAGA Employees, and the State of California and is within the accepted range of recoveries for this type of litigation given the inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further litigation. (*Id.*, ¶ 39).

VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

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

///

1 **A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is**
2 **Impracticable**

3 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
4 the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d 862,
5 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is
6 defined as “all current and former hourly-paid and/or non-exempt non-union employees and union
7 employees covered under the National Pipe Line Agreements employed by Defendant in the State of
8 California at any time during the Class Period”. (Genish Decl., ¶ 14; Settlement Agreement, ¶ 6.b). This
9 provides a clear and definite scope for the proposed class.

10 Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity
11 requirement. Courts have certified classes with as few as ten or twenty-eight class members. *Rose v.*
12 *City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995);
13 *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Here, the estimated Class size of three hundred
14 and six (306) individuals (as of September 27, 2023) meets the numerosity requirement.

15 Finally, the question of whether class members are easily identifiable turns on whether a plaintiff
16 can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706
17 (1967). The existence of an ascertainable class in this case can be established through Defendant’s payroll
18 records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and the
19 Court to determine the parameters of the Class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d
20 605, 617 (1987).

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

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

26 The commonality criterion requires the existence of common question of law or fact and is
27 generally established with the issues of predominance and typicality. *See Daar*, 67 Cal.2d 695, 706.
28 What is required is that a common question of fact or law exists which predominates over issues unique

1 to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising
2 from employment—is not a bar to class certification as long as they do not render class litigation
3 unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v. Owens-Illinois,*
4 *Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

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

11 To satisfy the typicality requirement, California law does not require that plaintiffs’ claims be
12 identical to the other class members. Rather, the test of typicality for a class representative is whether
13 other members have the same or similar injury, whether the action is based on conduct which is not
14 unique to the named plaintiff, and whether other class members have been injured by the same course of
15 conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality requirement
16 for a class representative refers to the nature of the claim or defense of the representative, and not to the
17 specific facts from which it arose or the relief sought. *See id.*

18 Here, Plaintiff alleges that his claims are similar to that of the other Class Members and that
19 Plaintiff’s claims arise out of the same alleged course of conduct giving rise to the claims of the other
20 Class Members. Because Plaintiff’s claims are based upon the same alleged conduct and business
21 practices as those of Class Members, the typicality requirement has been satisfied.

22 Finally, the question of adequacy of representation “depends on whether the plaintiff’s attorney
23 qualifies to conduct the proposed litigation in the plaintiff’s interest or not antagonistic to the interests of
24 the class.” *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations are
25 satisfied. Class Counsel is well-regarded and is qualified and experienced in employment-related, class-
26 action litigation. (Genish Decl., ¶¶ 1-8). Plaintiff will vigorously, adequately, and fairly represent the
27 interests of the Class. Plaintiff has, at all times, throughout the course of the litigation considered the
28 interests of the Class and understood that he must take steps to adequately represent the Class and their

1 interests. (Bravo Decl., ¶ 10). Because Plaintiff's claims are typical of other Class Members and are not
2 based on unique circumstances, there is no antagonism between the interests of Plaintiff and the Class.

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

4 Under the circumstances, proceeding as a class action is a superior means of resolving this dispute,
5 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
6 the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429,
7 434 (2000) (relevant considerations include the probability that each class member will come forward to
8 prove his or her separate claim and whether the class approach would actually serve to deter and redress
9 the alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly
10 burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior
11 to individual litigation.

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

13 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation
14 “for the expense or risk they have incurred in conferring a benefit on other members of the class.” *Munoz*
15 *v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of
16 class action settlement agreements containing enhancements for the class representative, which are
17 necessary to provide incentive to represent the class and are appropriate given the benefit the class
18 representatives help to bring about for the class. *See In re Online DVD Rental*, 779 F.3d 934, 947-948
19 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive
20 award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL
21 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and reasonable”).

22 Plaintiff initiated this litigation on behalf of his former co-workers who will now be entitled to
23 receive payment from the Settlement. Plaintiff invested substantial time and effort into litigation,
24 including his own research, reviewing documents, and extensive discussions with Class Counsel. (Bravo
25 Decl., ¶¶ 3-5). Further, the requested amount for Plaintiff is also reasonable given the average award and
26 the benefit gained by other Class Members. For these reasons, Plaintiff requests that an Enhancement
27 Payment of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff be preliminarily approved by
28 the Court. (Genish Decl., ¶ 40; Bravo Decl., ¶ 12).

1 **VIII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

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

8 Here, the requested attorneys’ fees of one-third (1/3) the Gross Settlement Amount (i.e.,
9 \$583,333.33 if the Gross Settlement Amount is \$1,750,000.00) is disclosed to Class Members in the
10 proposed Class Notice. (Settlement Agreement, Exh. A). The requested fee was freely negotiated, is
11 common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will
12 elaborate on the nature of the legal services provided and will also support Class Counsel’s request for
13 the reimbursement of litigation costs and expenses not to exceed Thirteen Thousand Dollars and Zero
14 Cents (\$13,000.00). (Genish Decl., ¶¶ 41 & 43). The Attorneys’ Fees and Costs that are not ultimately
15 approved by the Court shall instead be included in the Net Settlement Amount to be distributed to
16 Settlement Class Members. (Settlement Agreement, ¶ 9).

17 **IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS**
18 **MEETS DUE PROCESS REQUIREMENTS**

19 The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members.
20 (*Id.*, Exh. A). The Class Notice will include information regarding the nature of the Action, a summary
21 of the terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the
22 Class Settlement and to dispute Workweeks and/or PAGA Workweeks, and the date of the Final Approval
23 Hearing. (*Ibid.*). The Class Notice will list each Class Member’s total Workweeks and their estimated
24 Individual Settlement Share and each Aggrieved Employee’s total PAGA Workweeks and their estimated
25 Individual PAGA Payment. (*Ibid.*).

26 Within fourteen (14) calendar days after entry of the preliminary approval order, Defendant will
27 provide a list in a formatted readable Microsoft Office Excel spreadsheet to the Settlement Administrator
28 containing the following information for each Class Member: full name; last known mailing address;

1 Social Security number; dates employed during the Class Period and PAGA Period (if applicable); and
2 such other information as is necessary for the Settlement Administrator to calculate Workweeks and
3 PAGA Workweeks (collectively referred to as the “Class List”). (*Id.*, ¶¶ 23 and 6.d). Within seven (7)
4 calendar days after receiving the Class List, the Settlement Administrator will perform a search based on
5 the National Change of Address Database or other similar services available, such as provided by
6 Experian, for information to update and correct for any known or identifiable address changes, and will
7 mail a Class Notice in English to all Class Members via First-Class U.S. Mail, using the most current,
8 known mailing addresses identified by the Settlement Administrator. (*Id.*, ¶ 24.a). The Parties have
9 agreed to use ILYM Group, Inc. as the Settlement Administrator. (Genish Decl., ¶ 44; Settlement
10 Agreement, ¶ 6.kk).

11 In determining whether to approve a settlement of a class action, a trial court has virtually
12 complete discretion as to the manner of giving notice to class members, and review on appeal is governed
13 by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380
14 (2010). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which
15 would result in a higher likelihood of actual notice. (Genish Decl., ¶ 45). The original source of the
16 mailing addresses is from Class Members, who provided the information to Defendant. (*Ibid.*).

17 Class Members will have sixty (60) calendar days after the initial mailing of the Class Notice by
18 the Settlement Administrator to submit a Request for Exclusion, Notice of Objection, and/or Workweeks
19 Dispute (“Response Deadline”). (Settlement Agreement, ¶ 6.jj).

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

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

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

20 To object to the Class Settlement, Settlement Class Members must submit a timely and complete
21 written objection (“Notice of Objection”) to the Settlement Administrator, by mail, on or before the
22 Response Deadline. (*Id.*, ¶¶ 6.w & 27). A Notice of Objection must: (a) contain the case name and
23 number of the Action; (b) contain the objector’s full name, signature, address, telephone number, and the
24 last four (4) digits of the objector’s Social Security number; (c) contain a written statement of all grounds
25 for the objection accompanied by any legal support for such objection; (d) contain copies of any papers,
26 briefs, or other documents upon which the objection is based; and (4) be returned by mail to the Settlement
27 Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*, 6.w).
28 Settlement Class Members, individually or through counsel, may also present their objection orally at the

1 Final Approval Hearing, regardless of whether they have submitted a Notice of Objection. (*Id.*, ¶ 27).

2 **X. CONCLUSION**

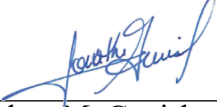
3 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's
4 Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

5 Respectfully submitted,

6 Dated: November 3, 2023

BLACKSTONE LAW, APC

7
8 By:


Jonathan M. Genish
Attorneys for Plaintiff Michael Bravo