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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF RIVERSIDE**

13 **(UNLIMITED JURISDICTION)**

14 JOEL GUTIERREZ ALARCON, on behalf of
15 himself, all others similarly situated, the general
16 public, and as an “aggrieved employee” on behalf
17 of other “aggrieved employees” under the Labor
18 Code Private Attorneys General Act of 2004,

19 *Plaintiff(s),*

20 vs.

21 FAIRWAY LANDSCAPE & IRRIGATION,
22 INC., a California corporation; and DOES 1–50,
23 inclusive,

24 *Defendant(s).*

Case No. CVRI2204068

**PLAINTIFF JOEL GUTIERREZ
ALARCON’S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: April 3, 2025

Hearing Time: 8:30 a.m.

Hearing Dept.: 1, The Honorable Harold
W. Hopp

Action filed: September 22, 2022

Trial Date: Not Set



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EMPLOYEE RIGHTS

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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 **I. INTRODUCTION**

4 Plaintiff Joel Gutierrez Alarcon (“Plaintiff”) submits this memorandum of points and
5 authorities in support of his unopposed motion for preliminary approval of the Class Action and
6 PAGA Settlement Agreement and Class Notice (the “Settlement”)², which provides for a Gross
7 Settlement Amount (“GSA”) of \$250,000.00 in compromise of all disputed claims on behalf of
8 non-exempt, hourly-paid at any time between September 28, 2021 through October 11, 2024.
9 Through this Motion, Plaintiff respectfully requests for this Court to (1) provisionally certify the
10 below-defined Class for settlement purposes only under Code of Civil Procedure § 382; (2)
11 preliminarily approve the Settlement; (3) preliminarily appoint Plaintiff as Class Representative;
12 (4) appoint David Spivak of The Spivak Law Firm and Louis M. Benowitz of Benowitz Law
13 Corporation as Class Counsel; (5) approve the proposed notice procedures and related forms; and
14 (6) schedule a final approval hearing.

15 This Court should grant Plaintiff’s motion because: (1) for settlement purposes, the
16 Settlement Class meets the requirements for class certification under Code of Civil Procedure §
17 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,
18 reasonableness, and adequacy; (3) for settlement purposes, Plaintiff is adequate to serve as Class
19 Representative; (4) Plaintiff’s attorneys are adequate to serve as Class Counsel; (5) the proposed
20 notice procedures, and related forms, fully comport with due process and adequately apprise Class
21 Members of their rights; and (6) a final approval hearing must be scheduled to allow Settlement
22 Class Members an opportunity to be heard regarding the Settlement and to give it finality.
23 Accordingly, for the reasons detailed below, this Court should grant Plaintiff’s Motion in its
24 entirety and preliminarily approve the Settlement.

25 **II. BACKGROUND**

26 Fairway Landscape & Irrigation, Inc. DS, ¶ 14. Defendant employed Plaintiff as a
27 landscaper and gardener in California from about February 18, 2018 until April 7, 2022. *Id.*

28 ² The Settlement is attached as Exhibit (“Ex.”) 1 to the Declaration of David Spivak (“DS”),
which is submitted herewith under a separate cover.





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A. The Claims and Procedural History

On September 22, 2022, Plaintiff filed a Class Action Complaint alleging causes of action against Defendant for failure to pay wages (Lab. Code §§ 501, 1194, 1197, and 1198), failure to provide meal periods (Lab. Code §§ 226.7, 512, and 1198), failure to authorize and permit rest periods (Lab. Code §§ 226.7 and 1198), failure to indemnify for business expenses (Lab. Code §§ 1198 and 2802), failure to issue proper wage statements (Lab. Code § 226, failure to timely pay wages (Lab. Code § 203), and unfair competition (Bus. & Prof. Code §§ 17200, et seq.) On December 02, 2022, Plaintiff filed a First Amended Complaint adding an additional cause of action against Defendant for PAGA civil penalties (Lab. Code §§ 2698, et seq.). On December 14, 2022, upon stipulation of the Parties, Plaintiff filed a Second Amended Complaint which asserted the same claims but included a true and correct copy of Plaintiff's PAGA Notice. On March 23, 2023, the Court granted Defendant's motion to compel arbitration and dismissed Plaintiff's class claims. For settlement purposes only, on December 5, 2024, pursuant to the stipulation of the Parties and an order of the Court, Plaintiff reinstated class claims with the filing of a Third Amended Complaint (the "Operative Complaint.").

B. Sampling

On July 10, 2024, Plaintiff requested that Defendant informally disclose documents and data to enable Plaintiff to prepare for settlement discussions, including the number of putative class members and aggrieved employees, the number of paychecks and workweeks for the various limitations periods applicable to Plaintiff's claims. DS, ¶ 17. Plaintiff also requested a reasonable, randomly selected sample of Defendant's time, payroll, and expense records, and related personnel records. *Id.* Finally, Plaintiff requested Defendant's written policies applicable to the claims at hand and asked Defendant identify any and all comparable claims against it.

The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. Defendant produced Plaintiff's entire personnel file (including policies and agreements he signed and acknowledged) and copies of its relevant company written policies. DS, ¶ 18.

The Defendant disclosed that there have not been any comparable claims against it. DS,



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¶ 22.

Defendant contends that it employed 123 putative class members during the period of January 03, 2018 to June 12, 2024. Defendant produced the records of 20.00% of the putative class members for the period of January 03, 2018 to June 12, 2024. There were records for 24 employees in the sample. Plaintiff chose the sample. The sample was randomly selected. The sample consisted of time cards, pay history and wage statements, and related records. DS, ¶ 19.

Plaintiff retained Daniel Barad, a data analyst, to analyze the sample. Plaintiff also employed the Raosoft³ Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin of error of 43.3 percent was unacceptable. Using a margin of error of 32.4%, a confidence level of 95%, and a population size of 123, the Raosoft Sample Size Calculator recommended a sample of 9. DS, ¶ 20, **Exhibit 3** (Raosoft Sample Size Calculator results print-out). Thus, the sample population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

C. Mediation

On July 22, 2024, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator David Phillips, an experienced class action mediator. During the mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide settlement after the mediation session. During the mediation sessions, each side, represented by his / its respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement. DS,

³ Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software programs for information gathering and analysis. The family of survey software supports data collection and reporting for any form-based data. Support is for web-surveys and forms, email distribution, diskette, PDA, laptop or pen-based: all types of distribution." The Raosoft webpage advertises that is it "database web survey software for gathering information." <http://www.raosoft.com/>. It also advertises, "The parameters of the sample size calculation are something that you choose." <http://www.raosoft.com/suggestreading.html>.

¶ 21.

D. Defendant's Financial Condition

At the mediation, it became clear that that Defendant had insufficient resources to cover the full extent of liability. Because Defendant's business relies upon new home construction, its earnings had declined with the slowed market. DS ¶ 19.

Based on this, Plaintiff, on his own behalf and on behalf of the Class Members, has agreed to settle the lawsuit on the terms set forth in the Settlement. *Id.*

III. OVERVIEW OF THE SETTLEMENT

A. Settlement Class and Aggrieved Employees Definition

The Settlement defines the Settlement Class as all current or former hourly paid or non-exempt employees of Defendant employed by Defendant in California at any time during the Class Period. It shall be an opt-out class. Settlement, ¶ 1.4. The Class Period is September 28, 2021 through October 11, 2024. *Id.* The "Aggrieved Employees" are non-exempt, hourly-paid employees during the PAGA Period. The "PAGA Period" begins September 19, 2021 and ends October 11, 2024. *Id.*

B. Monetary Terms

Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$250,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Class Members to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant. Settlement, ¶ 3.1.

Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement and final approval by the Court, the Administrator will make and deduct the following payments from the Gross Settlement Amount:

To Plaintiff: Class Representative Service Payment to the Class Representative of not





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1 more than \$5,000.00 (in addition to any Individual Class Payment and any Individual PAGA
2 Payment the Class Representative is entitled to receive as a Participating Class Member).
3 Defendant will not oppose Plaintiffs request for a Class Representative Service Payment that does
4 not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class
5 Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative
6 Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court
7 approves a Class Representative Service Payment less than the amount requested, the
8 Administrator will retain the remainder in the Net Settlement Amount. If the Court does not
9 approve the entirety of the application for the Class Representative Service Payments, Plaintiff
10 shall not have the right to revoke the Settlement and it will remain binding and Released Parties
11 shall not be responsible for paying the difference between the amount requested and the amount
12 awarded. The Administrator will pay the Class Representative Service Payment using IRS Form
13 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class
14 Representative Service Payment. Settlement, ¶ 3.2.1.

15 To Class Counsel: A Class Counsel Fees Payment of not more than 33.33%, which is
16 currently estimated to be \$83,333.00 and a Class Counsel Litigation Expenses Payment of not
17 more than \$17,500.00. Defendant will not oppose requests for these payments provided that do
18 not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel
19 Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the
20 Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
21 Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will
22 allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to
23 Class Counsel or any other Plaintiffs Counsel arising from any claim to any portion any Class
24 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will
25 pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
26 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
27 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
28 Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any

1 division or sharing of any of these Payments. Settlement, ¶ 3.2.2.

2 To the Administrator: An Administrator Expenses Payment not to exceed \$7,500.00
3 except for a showing of good cause and as approved by the Court. To the extent the
4 Administration Expenses are less or the Court approves payment less than \$7,500.00, the
5 Administrator will retain the remainder in the Net Settlement Amount and neither Defendant nor
6 Plaintiff shall be responsible for paying the difference between the amount requested and the
7 amount awarded.

8 **C. Timing of Payments**

9 Class Workweeks. Based on a review of its records as of July 22, 2024, Defendant
10 estimates there are 123 Class Members who collectively worked a total of 10,245 Workweeks.
11 Settlement, ¶ 4.1.

12 Class Data. Not later than 15 days after the Court grants Preliminary Approval of the
13 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the
14 form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
15 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
16 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
17 employees who need access to the Class Data to effect and perform under this Agreement.
18 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class
19 Data omitted class member identifying information and to provide corrected or updated Class
20 Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant
21 must send the Class Data to the Administrator, the Parties and their counsel will expeditiously
22 use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or
23 omitted Class Data. Settlement, ¶ 4.2.

24 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement
25 Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes
26 (contingent upon the Administrator providing the amount owed by Defendant for such payroll
27 taxes) by transmitting the funds to the Administrator no later than 14 days after the Effective
28 Date. Settlement, ¶ 4.3.



1 Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the
2 Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments,
3 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses
4 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and
5 the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the
6 Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall
7 not precede disbursement of Individual Class Payments and Individual PAGA Payments.
8 Settlement, ¶ 4.4.

9 The Administrator will issue checks for the Individual Class Payments and/or Individual
10 PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid.
11 The face of each check shall prominently state the date (not less than 180 days after the date of
12 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by
13 the void date. The Administrator will send checks for Individual Settlement Payments to all
14 Participating Class Members (including those for whom Notice Packet was returned undelivered).
15 The Administrator will send checks for Individual PAGA Payments to all Class Members
16 including Non-Participating Class Members who qualify as Class Members (including those for
17 whom Notice Packet was returned undelivered). The Administrator may send Participating Class
18 Members a single check combining the Individual Class Payment and the Individual PAGA
19 Payment. Before mailing any checks, the Administrator must update the recipients' mailing
20 addresses using the National Change of Address Database. Settlement, ¶ 4.4.1.

21 1.1.1. The Administrator must conduct a Class Member Address Search for all
22 other Class Members whose checks are returned undelivered without USPS forwarding address.
23 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
24 forwarding address provided or to an address ascertained through the Class Member Address
25 Search. The Administrator need not take further steps to deliver checks to Class Members whose
26 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
27 replacement check to any Class Member whose original check was lost or misplaced, requested
28 by the Class Member prior to the void date. Settlement, ¶ 4.4.2.





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D. Calculation of Settlement Shares

To Each Participating Class Member: An Individual Class Payment is calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. Settlement, ¶ 3.2.4.

E. Apportionment of Settlement Shares

Tax Allocation of Individual Class Payments. 20.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. Settlement, ¶ 3.2.4.1.

F. The Releases

RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all charges, complaints, claims, debts, liabilities, promises, agreements, controversies, actions, suits, rights, demands, obligations, guarantees, costs, losses, penalties, expenses, attorneys' fees, damages, transactions, occurrences, or causes of action of any kind or nature, known or unknown, suspected or unsuspected, asserted or unasserted, or that might have been asserted, that occurred during the Class Period, which Plaintiff, at any time prior to the execution of this Settlement Agreement, had or claimed to have or may have, including, but not limited to: (a) all claims based on the factual allegations and statutes asserted or that could have

1 been asserted in the Action and Operative Complaint, including failure to pay wages (Lab.
2 Code §§ 501, 1194, 1197, and 1198), failure to provide meal periods (Lab. Code §§ 226.7, 512,
3 and 1198), failure to authorize and permit rest periods (Lab. Code §§ 226.7 and 1198), failure to
4 indemnify for business expenses (Lab. Code §§ 1198 and 2802), failure to issue proper wage
5 statements (Lab. Code § 226, failure to timely pay wages (Lab. Code § 203), and unfair
6 competition (Bus. & Prof. Code §§ 17200, et seq.) or ascertained during the Action and released
7 under 6.2, below and (b) all PAGA claims based on the factual allegations and statutes asserted
8 or that could have been asserted in the Action, Operative Complaint, Plaintiffs PAGA Notice, or
9 ascertained during the Action and released under 6.3, below. ("Plaintiffs Release.") Plaintiffs
10 Release does not extend to any claims or actions to enforce this Agreement, or to any claims for
11 vested benefits, unemployment benefits, disability benefits, social security benefits, workers'
12 compensation benefits that arose at any time, or based on occurrences outside the Class Period.
13 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to,
14 the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that
15 Plaintiffs Release shall be and remain effective in all respects, notwithstanding such different or
16 additional facts or Plaintiffs discovery of them. Settlement, ¶ 6.1.

17 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of
18 Plaintiffs Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits,
19 if any, of section 1542 of the California Civil Code, which reads:

20
21 A general release does not extend to claims that the creditor or releasing party does
22 not know or suspect to exist in his or her favor at the time of executing the release,
23 and that if known by him or her would have materially affected his or her
24 settlement with the debtor or Released Party.

25
26 Settlement, ¶ 6.1.1.

27 Release by Participating Class Members: Plaintiff and all Participating Class Members, on behalf
28 of themselves and their respective former and present representatives, agents, attorneys, heirs,



1 administrators, successors, and assigns, release and discharge Released Parties, for the duration
2 of the Class Period, claims based on the factual allegations and statutes asserted or that could have
3 been asserted in the Action and Operative Complaint, including failure to pay wages including
4 claims for off the clock work and failure to pay sick pay, vacation pay and/or overtime at the
5 regular rate of pay (Lab. Code §§ 501, 1194, 1197, and 1198), failure to pay overtime
6 compensation, failure to provide meal periods (Lab. Code §§ 226.7, 512, and 1198), failure to
7 pay meal period premium wages; (7) failure to pay rest period premium wages; failure to
8 indemnify for business expenses (Lab. Code §§ 1198 and 2802), failure to issue proper wage
9 statements (Lab. Code § 226, failure to timely pay wages (Lab. Code § 203), failure to maintain
10 accurate payroll records and unfair competition (Bus. & Prof. Code §§ 17200, *et seq.*), and
11 associated penalties, whether civil or statutory in nature, interest, attorneys' fees and costs, or any
12 other associated damages, and all other alleged violations of the Labor Code and Business and
13 Professions Code section 17200, *et seq.* Except as set forth in Section 6.3 of this Agreement,
14 Participating Class Members do not release any other claims, including claims for vested benefits,
15 wrongful termination, violation of the Fair Employment and Housing Act, unemployment
16 insurance, disability, social security, workers' compensation, or claims based on facts occurring
17 outside the Class Period. Settlement, ¶ 6.2.

18 **G. Notice and Claims Process and Procedures**

19 No later than three (3) business days after receipt of the Class Data, the Administrator
20 shall notify Class Counsel that the list has been received and state the number of Class Members,
21 and Workweeks in the Class Data. Settlement, ¶ 8.4.1.

22 Using best efforts to perform as soon as possible, and in no event later than 14 days after
23 receiving the Class Data, the Administrator will send to all Class Members identified in the Class
24 Data, via first-class United States Postal Service ("USPS") mail, the Notice Packet with Spanish
25 translation, if applicable, substantially in the forms attached to this Agreement as Exhibits A, B,
26 C, and D. The first page of the Class Notice shall prominently estimate the dollar amounts of any
27 Individual Class Payment to the Participating Class Member and /or Individual PAGA Payment
28 payable to the Class Member, and the number of Workweeks (if applicable) used to calculate





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1 these amounts. Before mailing Notice Packets, the Administrator shall update Class Member
2 addresses using the National Change of Address database. Settlement, ¶ 8.4.2.

3 Not later than 3 business days after the Administrator's receipt of any Notice Packet
4 returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet using any
5 forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
6 the Administrator shall conduct a Class Member Address Search, and re-mail the Notice Packet
7 to the most current address obtained. The Administrator has no obligation to make further
8 attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by
9 the USPS a second time. Settlement, ¶ 8.4.3.

10 The deadlines for Class Members' written objections, Challenges to Workweeks
11 (disputes), and Requests for Exclusion will be extended an additional 14 days beyond the 45 days
12 otherwise provided in the Class Notice for all Class Members whose notice is remailed. The
13 Administrator will inform the Class Member of the extended deadline with the remailed Notice
14 Packet. Settlement, ¶ 8.4.4.

15 If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers
16 any persons who believe they should have been included in the Class Data and should have
17 received Notice Packet, the Parties will expeditiously meet and confer by telephone, and in good
18 faith. in an effort to agree on whether to include them as a Class Member. If the Parties agree,
19 such persons will be a Class Member entitled to the same rights as other Class Members, and the
20 Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise
21 options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline
22 dates in the Class Notice, which ever are later. Settlement, ¶ 8.4.5.

23 **1. Disputes**

24 Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after
25 the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose
26 Notice Packet is re-mailed) to challenge the number of Class Workweeks (if any) allocated to the
27 Class Member in the Class Notice. This is also known as a dispute. A Workweek Dispute form,
28 attached as Exhibit C, may be used for this purpose but is not required. The Class Member may

1 challenge the allocation by communicating with the Administrator via fax, email or mail. The
2 Administrator must encourage the challenging Class Member to submit supporting
3 documentation. In the absence of any contrary documentation, the Administrator is entitled to
4 presume that the Workweeks contained in the Class Notice are correct so long as they are
5 consistent with the Class Data. The Administrator's determination of each Class Member's
6 allocation of Workweeks shall be final and not appealable or otherwise susceptible to challenge.
7 The Administrator shall promptly provide copies of all challenges to calculation of Workweeks
8 to Defense Counsel and Class Counsel and the Administrator's determination the challenges.
9 Settlement, ¶ 8.6.

10 **2. Opting Out**

11 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
12 send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later
13 than 45 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
14 Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class
15 Member or his/her representative that reasonably communicates the Class Member's election to
16 be excluded from the Settlement and includes the Class Member's name, address and email
17 address or telephone number and the last four digits of the Class Member's social security number.
18 To be valid, a Request for Exclusion must be signed by the Class Member or his/her representative
19 and timely faxed, emailed, or postmarked and delivered to the Administrator by the Response
20 Deadline. An Election Not to Participate in Settlement form, attached as Exhibit B, may be used
21 for this purpose but is not required. Settlement ¶ 8.5.1.

22 A Request for Exclusion will not be valid if it is not timely submitted (e.g., postmarked
23 on or before the Response Deadline), not signed by the Class Member, and/or does not contain
24 the name and address of the Class Member. Settlement ¶ 8.5.2.

25 Class Members who fail to submit valid and timely Exclusion Forms will automatically
26 be included in the Settlement and will become Participating Class Members upon the expiration
27 of the Response Deadline. Each Participating Class Member shall be bound by all terms of the
28 Settlement and any Final Judgment entered in this Action if the Settlement is finally approved by



1 the Court and becomes Effective, including the Participating Class Members' Releases under
2 Paragraphs 6.2 and 6.3 of this Agreement and shall receive an Individual Class Payment
3 regardless of whether the Participating Class Member has objected to the Settlement. If there is a
4 question about the authenticity of a signed Exclusion Form, the Administrator may demand
5 additional proof of the Class Member's identity. The Administrator's determination of authenticity
6 shall be final and not appealable or otherwise susceptible to challenge. Settlement ¶ 8.5.3.

7 Every Class Member who submits a valid and timely Request for Exclusion is a Non-
8 Participating Class Member and shall not receive an Individual Class Payment or have the right
9 to object to the class action components of the Settlement. Nothing in this Settlement will
10 constitute or be construed as a waiver of any defense that Defendant or the Released Parties have
11 or could assert against anyone who timely submits an Exclusion Form. Notwithstanding the
12 foregoing, the Parties agree there is no statutory or other right for any Class Member to opt out
13 or otherwise exclude himself or herself from the PAGA portion of the Settlement, which releases
14 the PAGA claims. A Class Member who submits a valid and timely request for exclusion shall
15 still receive his or her share of the Individual PAGA Payment and shall release the PAGA claims
16 as set forth in Paragraph 6.3. Settlement ¶ 8.5.4.

17 **3. Objecting**

18 Only Participating Class Members may object to the class action components of the
19 Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
20 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
21 Payment and/or Class Representative Service Payment. Settlement, ¶ 8.7.1.

22 Participating Class Members may send written objections to the Administrator, by fax,
23 email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an
24 attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
25 Participating Class Member who elects to send a written objection to the Administrator must do
26 so not later than 45 days after the Administrator's mailing of the Notice Packet (plus an additional
27 14 days for Class Members whose Notice Packet was re-mailed). A The Objection form attached
28 as Exhibit D may be used for this purpose but is not required. The form notwithstanding, for an





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1 objection to be valid, it must: (i) be signed by the objecting Class Member or his or her lawful
2 representative; (ii) include the objecting Class Member's full name, address, telephone number,
3 and last four digits of the Social Security Number; (iii) include the words "Notice of Objection"
4 or "Formal Objection;" (iv) state the case name and case number of the Action; (v) include any
5 and all supporting papers, briefs, written evidence, and/or other evidence; and (5) be postmarked
6 no later than the Response Deadline. Settlement, ¶ 8.7.2.

7 Non-Participating Class Members have no right to object to any of the class action
8 components of the Settlement. Settlement, ¶ 8.7.3.

9 If a Class Member objects to this Settlement, the Class Member will remain a member of
10 the Class. Moreover, if the Court grants final approval of the Settlement, the Class Member will
11 be bound by the terms of the Settlement and any Final Approval Order and Final Judgment.
12 Settlement, ¶ 8.7.4.

13 The Settlement Administrator shall send all objections to the Parties' counsel. Class
14 Counsel will be responsible for filing the objections with the Court in advance of the Final
15 Approval Hearing. Class Counsel and Defense Counsel will be permitted to respond in writing to
16 any properly submitted objections no later than nine (9) court days before the Final Approval
17 Hearing. Settlement, ¶ 8.7.5.

18 If a Class Member submits both an Exclusion Form and written objection to the
19 Administrator prior to the Response Deadline, the Settlement Administrator will first attempt to
20 contact this Class Member to determine if they intended to submit only the Exclusion Form or
21 written objection. If the Settlement Administrator is unable to contact the Class Member within
22 ten (10) calendar days of receiving both the Exclusion Form and written objection or the Class
23 Member fails to respond to the Settlement Administrator within ten (10) calendar days of being
24 contacted, then the forms will be deemed invalid and the Class Member will be included in the
25 Settlement, will receive an Individual Class Payment and be bound by all terms and conditions of
26 the Settlement including the releases provided in paragraphs 6.2 and 6.3. Settlement, ¶ 8.7.6.

27 ///

28 ///



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H. Uncashed Checks

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). Settlement, ¶ 4.4.3.

IV. CERTIFICATION OF THE CLASS IS APPROPRIATE

Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest and questions of law and fact common to the class predominate over questions unique to individual class members; (3) the representative's claims are typical of the class' claims; and (4) the representative will fairly and adequately represent the class' interests. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Moreover, in the settlement context, the Court can use a lesser standard to determine the appropriateness of a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807. As explained below, all of these requirements are met in this case.

A. The Settlement Class Is Objectively Ascertainable

A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the above-defined Class is ascertainable because its members may be identified by reference to Defendant's records and Defendant has agreed to share the relevant information from its records to facilitate the settlement process. DS, ¶ 32. Therefore, the Settlement Class is ascertainable.

B. The Membership of the Settlement Class Is Sufficiently Numerous

The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030. Defendant estimates that there are approximately 123 Class Members. DS, ¶ 33. Plaintiff maintains that it would be impractical and economically inefficient

1 to require each Class Member to separately maintain an individual action or be joined as a named
2 plaintiff in this action. The California Supreme Court has upheld a class of as few as 10
3 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations,
4 the Settlement Class' membership is sufficiently numerous. DS, ¶ 33. *See Daar v. Yellow Cab*
5 *Co.* (1967) 67 Cal.2d 695.

6 **C. Class Members Share a Well-Defined Community of Interest**

7 The community of interest requirement “embodies three factors: (1) predominant common
8 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
9 (3) class representatives who can adequately represent the class.” *Sav-On Drug Stores, Inc. v.*
10 *Superior Court* (2004) 34 Cal. 4th 319, 326. It “does not mandate that class members have
11 uniform or identical claims.” *Capitol People First v. Dept. of Developmental Servs.* (2007) 155
12 Cal. App. 4th 676, 692. Rather, courts focus on the defendant’s internal policies and “pattern and
13 practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs
14 renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal. 4th at 333).

15 To justify certification, the class proponent ““must show ... that questions of law or fact
16 common to the class predominate over the questions affecting the individual members”” *See,*
17 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal. App. 4th 723, 732 (citing *Washington Mut. Bank,*
18 *FA v. Superior Court* (2001) 248 Cal. 4th 906, 913). In light of the more lenient standard for
19 certification of a settlement class, the Parties agree that for the purposes of the Settlement only,
20 the claims of the Class Members all stem from the same sources. DS, ¶ 37.

21 In this case, Plaintiff asserts all Class Members were subject to the same or similar
22 operations and employment policies, practices, and procedures. The claims arise from
23 Defendant’s alleged policy-driven failure to pay wages, failure to provide meal periods, failure to
24 authorize and permit rest periods, failure to indemnify for business expenses, failure to issue
25 proper wage statements, failure to timely pay wages, failure to maintain required payroll records,
26 and related labor law violations, all of which Plaintiff claims constitute unfair business practices
27 and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not
28 limited to: (1) Whether Defendant failed to pay all wages earned to Class Members for all hours



1 worked at the correct rates of pay; (2) Whether Defendant failed to provide the class with all meal
2 and rest periods in compliance with California law; (3) Whether Defendant failed to pay the class
3 one additional hour of pay on workdays it failed to provide the class with one or more meal or
4 rest periods in compliance with California law; (4) Whether Defendant failed to indemnify the
5 class for all necessary business expenditures incurred during the discharge of their duties; (5)
6 Whether Defendant knowingly and intentionally failed to provide the class with accurate wage
7 statements; (6) Whether Defendant willfully failed to provide the class with timely final wages;
8 and (7) Whether Defendant engaged in unfair competition within the meaning of Business and
9 Professions Code section 17200, *et seq.*, with respect to the class. DS, ¶ 34. Therefore, common
10 questions predominate.

11 **D. Plaintiff Is Typical of the Settlement Class**

12 The class representative must be similarly situated to the rest of the purported class. *See*
13 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating “it has never been the law in California
14 that the class representative must have identical interests with the class members. The only
15 requirements are ... that the class representative be *similarly* situated”) (emphasis in original); *See*
16 *also* Newberg, § 3:29 (typicality “focuses on whether there exists a relationship between the
17 Plaintiff’s claims and the claims alleged on behalf of the class”). Plaintiff contends that his claims
18 are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that he, like absent
19 Class Members was subject to the same relevant policies and procedures governing his
20 compensation, hours of work and meal and rest periods. Because Plaintiff contends that he was
21 subject to the same general course of conduct as absent Class Members, resolving the common
22 questions as they apply to Plaintiff will determine Defendant’s *prima facie* liability to all Class
23 Members. Moreover, Plaintiff’s claims could potentially be subject to the same primary
24 affirmative defenses as those of absent Class Members. Accordingly, Plaintiff’s claims are typical
25 of the Class. DS, ¶ 35.

26 **E. Plaintiff Will Adequately Represent the Settlement Class**

27 The adequacy requirement is met where the plaintiff is represented by counsel qualified
28 to conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to the class’



1 interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the
2 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling
3 conflicts of interest that might hinder the plaintiff's ability to represent the class. DS, ¶ 36.

4 First, Class Counsel have supplied the Court with declarations to show that they are
5 adequate to represent the Settlement Class and that they have significant experience in
6 employment litigation generally, and wage and hour and employment-related class action
7 litigation specifically. *See* DS, ¶¶ 37-45; Declaration of Louis M. Benowitz ("Benowitz Decl.")
8 ¶ 3. Thus, Plaintiff's counsel are adequate to serve as Class Counsel.

9 Second, Plaintiff contends that he is an adequate class representative. Plaintiff and the
10 Class Members have strong and co-extensive interests in this litigation because they all worked
11 for Defendant during the relevant time period, allegedly suffered the same alleged injuries from
12 the same alleged course of conduct, and there is no evidence of any conflict of interest between
13 Plaintiff and the Class Members. DS, ¶ 37. Moreover, Plaintiff has demonstrated his commitment
14 to the Settlement Class by, among other things, retaining experienced counsel, providing counsel
15 with documents and extensively speaking with them to assist in identifying the claims asserted in
16 this case, assisting them in identifying witnesses, as well as exposing himself to the risk of
17 attorneys' fees and costs awards against him if this lawsuit had been unsuccessful. DS, ¶ 37. Thus,
18 Plaintiff is adequate to serve as settlement class representative. Accordingly, this Court should
19 find that Plaintiff and his counsel are adequate to represent the Settlement Class as required under
20 Code of Civil Procedure § 382.

21 **F. Class Action Treatment Is the Superior Means For Resolving The Claims Of**
22 **The Class Members**

23 Plaintiff further contends that a class action is also superior to other means adjudicating
24 the issues in this action. The predominance of common legal and factual questions shows that this
25 Court could fairly adjudicate the claims of Class Members through a single class action. In view
26 of the *theoretical* alternatives that proposed class members could potentially utilize—
27 representative PAGA action (where there is less relief available), individual civil lawsuits or wage
28 claims through the Division of Labor Standards Enforcement (where there would be relatively
little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly



1 superior to all of them. Thus, this consideration supports conditional class action treatment for
2 purposes of this Settlement only. DS, ¶ 46.

3 **V. INTRODUCTION THE COURT SHOULD GRANT PRELIMINARY APPROVAL**
4 **BECAUSE THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

5 **A. Legal Standard**

6 A class action settlement requires court approval. California Rules of Court (“CRC”),
7 Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a
8 written motion for preliminary approval, the proposed class settlement, and the proposed class
9 notice; (2) Issuance of notice of settlement to class members; and (3) A final settlement approval
10 hearing where class members may be heard regarding the settlement, and at which evidence and
11 argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.
12 The decision to approve or reject a class settlement is committed to the Court’s broad discretion.
13 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve
14 class settlement may be reversed only upon a showing of “clear abuse of discretion.” *Id.*

15 **B. The Settlement Is Presumptively Fair**

16 In assessing preliminary approval, a court evaluates if the settlement process has certain
17 indicia of fairness. A “presumption of fairness exists where (1) the settlement is reached through
18 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
19 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
20 of objectors is small.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996)
21 48 Cal.App.4th at 1794.

22 The class settlement here satisfies all of these factors. DS, ¶ 37. The Settlement resulted
23 from thorough, arms’ length, negotiations between experienced counsel with the assistance of a
24 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
25 weaknesses of their respective cases and Defendant’s estimated exposure. *Id.*

26 On September 22, 2022, Plaintiff filed a Class Action Complaint alleging causes of action
27 against Defendant for failure to pay wages (Lab. Code §§ 501, 1194, 1197, and 1198), failure to
28 provide meal periods (Lab. Code §§ 226.7, 512, and 1198), failure to authorize and permit rest
periods (Lab. Code §§ 226.7 and 1198), failure to indemnify for business expenses (Lab. Code §§





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1 1198 and 2802), failure to issue proper wage statements (Lab. Code § 226, failure to timely pay
2 wages (Lab. Code § 203), and unfair competition (Bus. & Prof. Code §§ 17200, et seq.) On
3 December 02, 2022, Plaintiff filed a First Amended Complaint adding an additional cause of
4 action against Defendant for PAGA civil penalties (Lab. Code §§ 2698, et seq.). On December
5 14, 2022, upon stipulation of the Parties, Plaintiff filed a Second Amended Complaint which
6 asserted the same claims but included a true and correct copy of Plaintiff's PAGA Notice. On
7 March 23, 2023, the Court granted Defendant's motion to compel arbitration and dismissed
8 Plaintiffs class claims. For settlement purposes only, on December 5, 2024, pursuant to the
9 stipulation of the Parties and an order of the Court, Plaintiff reinstated class claims with the filing
10 of a Third Amended Complaint (the "Operative Complaint."). This Settlement is contingent upon
11 Preliminary and Final Approval. If the Settlement does not become final and Effective, for
12 whatever reason, the fact that the Parties were willing to stipulate to the class action being
13 reinstated shall have no bearing on and shall not be admissible or used in any way in connection
14 with the question of whether the Action should proceed on a Class basis in light of existing
15 arbitration agreements. Should the Settlement not become final and Effective, the Action will
16 revert back to a PAGA action only which will be stayed pending arbitration of Plaintiffs
17 individual claims. Settlement, ¶ 2.1. DS, ¶ 38. Plaintiff prepared "damages" estimates in advance
18 of the mediation. DS, ¶ 38, Ex. 6. In advance of the mediation, Plaintiff determined Defendant's
19 maximum possible exposure for restitution and penalties to be approximately \$11,347,255.52
20 (consisting of \$1,044,908.04 in unpaid wages, 1,044,908.04 in liquidated damages, \$234,629.35
21 in missed meal period premium wages, \$949,916.40 in missed rest break premium wages,
22 \$1,018,350.00 for wage statement penalties, \$655,528.50 for waiting time penalties, and
23 \$6,147,000.00 for civil penalties). Plaintiff calculated the damages based on the number of
24 workweeks and pay periods provided by Defendant, Plaintiff's reports, and the sample data. *Id.*

25 Plaintiff also considered the possibility that Defendant could launch a *Pick Up Stix*
26 campaign and pursue individual release agreements from the Class Members. Defendant also
27 represented that it had interviewed its current employees regarding Plaintiff's claims, all of whom
28 would provide declarations, under penalty of perjury, that were favorable to Defendant with



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1 respect to the relevant factual issues at issue in Plaintiff’s action. Plaintiff’s Counsel applied
2 discounts to the maximum possible exposure to account for all other risks discussed below. While
3 it is difficult to assign anything but crudely-determined percentages of risk to any of the claims,
4 it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such
5 employees is substantial and alone justifies a significant discount because Defendant would likely
6 by trial have gathered releases from the majority of the Class Members.

7 Plaintiff is aware of only two significant awards under the PAGA in a contested
8 proceeding, both issued by federal district courts.⁴ DS, ¶ 61. PAGA penalty awards are often
9 small even for egregious, intentional violations of the Labor Code.⁵ *Id.* For instance, on October
10 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by
11 very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving*
12 *Company, Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.*

13 ⁴ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
14 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were
15 \$18,695,692.58. In this regard, the district court stated,

16 The plain language of PAGA provides that “a court may award a lesser amount than the
17 maximum civil penalty amount specified by this part if, *based on the facts and*
18 *circumstances of the particular case*, to do otherwise would result in an award that is
19 unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code s 2699(e)(2) (emphasis
20 added). The relationship between the amount of total damages and the amount of
21 maximum PAGA penalties is certainly a “circumstance” of the case under the term’s
22 ordinary meaning. The weight given to that circumstance is greater in this case because
23 Plaintiffs’ PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs’
24 individual claims except for one. As a general matter, it would be excessively punitive
25 for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed
26 the damages caused by that injury or set of injuries.

27 *Id.*, fnnt. 9. The district court further stated, “Virgin “has not presented any evidence that the full
28 penalty would be excessive in relation to its ability to pay,” the weight of this factor is lessened.”
Id.

29 In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
30 awarded approximately \$102 million in damages, primarily based on the Defendant’s failures to
31 comply with the requirements of California Labor Code section 226.

32 ⁵ In 2012, Plaintiff’s Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court
33 case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The
34 plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the
35 Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under
36 the PAGA.

(2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the defendant's meal period violations. A similar result could occur here. *Id.*

Plaintiff's initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. *Id.* Therefore, Plaintiff believes a class settlement for \$250,000.00 is fair and reasonable. *Id.*

C. The Settlement Satisfies the *Kullar* Factors for Approval

The *Kullar* case sets forth several factors a court should consider in determining whether to approve a class settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. 168 Cal.App.4th at 128. As demonstrated herein, the Settlement satisfies each of these factors.

1. Evaluation of Plaintiff's Case

a. Risks Associated With the Arbitration Agreements

The arbitration agreements entered into between Defendant on the one hand, and the Class Members, on the other, present a significant risk to the success of Plaintiff's class action litigation. DS ¶ 42. According to Defendant, the majority of the Class entered into arbitration agreements with Defendant. *Id.* As the arbitration agreements in question restrict potential litigants from bringing class actions against Defendant, Plaintiff would be effectively barred from pursuing claims on behalf of the Class in Court. *Id.* Thus, there is a significant risk the Court could determine that those Class Members who have not entered into arbitration agreements with Defendant do not constitute a sufficiently numerous class to justify class action treatment. As such, by continuing to trial on class-wide claims, Plaintiff would run the high risk of suffering defeat due to the existence of the arbitration agreement. Moreover, the arbitration agreements would pose danger to any class certification motion brought by Plaintiff. Because different



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1 defenses would apply to some Class Members and not others – i.e., the existence of signed
2 arbitration agreements – there is a risk that the Court could determine that Plaintiff’s claims
3 present too many individualized inquiries to justify class certification. *Id.*

4 **b. Risks Associated with Defendant’s Financial Condition**

5 Defendant’s financial condition was the key factor in reaching this Settlement. DS, ¶ 43.
6 Due to Defendant’s financial condition, even if Plaintiff prevailed on all claims at trial, he may
7 never recover the damages due to the risk of insolvency. A very large class action judgment would
8 almost certainly put the company out of business and/or would interfere with the company's
9 ability to carry out its contractual obligations. *Id.* In short, the “poor financial health of [the
10 defendant will] seriously increase [] the chance that Plaintiffs would be left with nothing if they
11 continued to litigate their claims.” *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
12 1376 (the financial condition of defendant predominated in assessing the reasonableness of
13 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
14 concerning defendant’s financial stability “strongly supports the reasonableness of the
15 settlement”); *Laguna v. Coverall N. Am., Inc.* (9th Cir. 2014) 2014 U.S. App. LEXIS 10259 at
16 *11 (finding potential insolvency to be additional risk that favors approval of a class action
17 settlement). Accordingly, Defendant’s financial distress supports this settlement. *Id.*

18 **c. Risks Associated with the Unpaid Wages Claim**

19 There is a risk that Plaintiff’s recovery for unpaid wages would be extremely limited at
20 best, largely because Defendant’s written policies throughout the relevant time period prohibited
21 off-the-clock work. DS, ¶ 44. Off-the-clock claims are difficult where a defendant requires in its
22 written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation*
23 *Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to
24 be compensable). *Id.* In its written employment policies, Defendant mandates that employees
25 must record all time worked accurately on their time records and strictly prohibit employees from
26 performing any work off-the-clock. DS, ¶ 44. Moreover, while Defendant disputes that off-the-
27 clock work occurred, it contends that any time spent off the clock was *de minimis*. The California
28 Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular





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1 and minute periods of time may still be subject to a *de minimis* defense even if compensable.
2 (Stating that “We do not decide whether there are circumstances where compensable time is so
3 minute or irregular that it is unreasonable to expect the time to be recorded.”). Following *Troester*,
4 Defendant contends that the *de minimis* doctrine may apply here because the time spent off the
5 clock were minute and insignificant. Accordingly, a large award of penalties seems unlikely with
6 respect to this claim. *Id.*

7 The difficulty inherent in proving that off-the-clock work occurred poses a significant
8 hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim.
9 Generally, a court will not certify a class unless it can determine an appropriate classwide
10 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff
11 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given
12 the lack of records indicating when such off-the-clock work may have taken place. Individualized
13 inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual
14 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant
15 risk that the Court would consider this evidentiary showing insufficient as a classwide
16 methodology. DS, ¶ 45.

17 **d. Risks Associated with the Meal Period Claims**

18 There are risks to Plaintiff’s meal period claim. DS, ¶ 46. Defendant contends that, to
19 establish a violation for missed meal periods, a plaintiff must do more than show that a meal break
20 was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a
21 “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal
22 breaks and ensure no work thereafter is performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must
23 show the employer impeded, discouraged, or prohibited the employee from taking a proper break,
24 or otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard
25 to the meal break claim is the reason that a particular employee may have failed to take a meal
26 break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

27 Defendant contends it did not impede or discourage Plaintiff, or any other employees,
28 from taking their meal or rest periods. DS, ¶ 47. Defendant’s policies mandate that employees

1 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
2 of their meal breaks each day on their time records. *Id.* The time records that comprise the random
3 sample Defendant produced to Plaintiff for purposes of mediation show that meal periods were
4 taken the vast majority of the time. *Id.* Of the time records that show a late, short or no lunch,
5 individualized evidence may be necessary to determine whether they occurred due to conduct of
6 the Defendant or each of the employees concerned. Accordingly, there is a significant risk that
7 the value of Plaintiff's meal period claim would be substantially reduced at trial. *Id.*

8 **e. Risks Associated with the Rest Break Claims**

9 There are risks to Plaintiff's rest period claim. DS, ¶ 48. Employers are not required to
10 record rest periods and such periods are paid. *Id.* Defendant contends it provided non-exempt
11 employees the opportunity to take rest periods in accordance with California law. Further,
12 Defendant's written policies on meal and rest periods are consistent with the Wage Order. *Id.*
13 Thus, unlike meal periods, where there are often records showing whether an employee clocked
14 out or not, there is no such evidence to prove a missed rest period or that the employer refused to
15 authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.*
16 Plaintiff will depend on sample witness testimony and surveys to prove the claims. *Id.* While a
17 victory with such evidence is certainly possible, relevant caselaw makes such claims risky from
18 a trial management and due process perspective. *Id.*, *See Duran v. U.S. Bank National Assn.*,
19 (2014) 59 Cal. 4th 1, 31 (explaining "[I]f sufficient common questions exist to support class
20 certification, it may be possible to manage individual issues through the use of surveys and
21 statistical sampling."); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast*
22 *Corporation v. Behrend* (2013) 133 S.Ct. 1426.

23 **f. Risks Associated with the Failure to Indemnify Claim**

24 There is a risk that the Court may consider Plaintiff's claims as to Defendant's alleged
25 failure to indemnify for business expenses to be individual in nature and thus decline to certify
26 the class. DS, ¶ 49. Plaintiff alleges that Defendant required Plaintiff and the Class Members to
27 use their personal items including cellular phones and tools, and failed to indemnify them for
28 these business expenses. *Id.* Defendant presented evidence that it has supplied its employees with



1 tools, equipment, and other supplies and had an expense reimbursement policy. As such, there is
2 a risk that the Court may consider Plaintiff's claims to be individual in nature and unfit for class
3 wide resolution. *Id.*

4 **g. Risks Associated with the Statutory "Wage Statement"**
5 **Penalty Claims**

6 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and
7 PAGA penalties. Under Labor Code section 226, wage statements must include various
8 information, including the applicable rates of pay, corresponding hours worked, and gross pay.
9 DS, ¶ 50.

10 Here, Plaintiff's wage statement claim has the same underlying risks as the above claims,
11 as it is derivative of them. *Id.* On their face, the wage statements issued by Defendant comply
12 with the requirements of Labor Code § 226. DS, ¶ 50.

13 **h. Risks Associated with the Waiting Time Penalty Claims.**

14 Without proof of willful behavior, Plaintiff will be unable to recover these penalties.

15 **i. Risks Associated With the PAGA Claim**

16 Regarding PAGA, a court has discretion to award a lesser amount than the maximum
17 penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
18 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendant has posed valid
19 defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the PAGA
20 claims likewise face significant uncertainty. DS, ¶ 59. There is a risk that the Court would
21 consider the maximum civil penalty available to be confiscatory. This is particularly the case
22 considering Defendant's financial condition. *Id.* Moreover, the current COVID-19 pandemic
23 could motivate the Court to further reduce the penalty award to avoid what it may consider a
24 confiscatory taking. *Id.*

25 This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a
26 significant discount for settlement purposes. DS, ¶ 60. For mediation purposes, Plaintiff's counsel
27 estimated a maximum possible exposure of approximately \$6,147,000.00 in civil penalties. This
28 estimate did not take into account any of the risks discussed above and assumed a violation for
every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay



1 period for the same alleged violations of different Labor Code provisions and derivative
2 violations. *Id.* Although two federal district court decisions held that “stacking” PAGA penalties
3 in this fashion may be appropriate to determine the amount in controversy for purposes of removal
4 jurisdiction, Plaintiff’s counsel is not aware of any California state courts awarding plaintiffs
5 multiple PAGA penalties for the same violation for the same pay period under different Labor
6 Code provisions. *Id.* This may be because the PAGA does not provide for what many employers
7 characterize as claim splitting and not merely stacking. *Id.*

8 **i. Risks Associated With A Pick-Up Stix Campaign**

9 An employer enjoys the right to settle a putative class member’s disputed wage claims
10 individually, without the consent or involvement of class counsel. DS, ¶ 63. (See *Chindarah v.*
11 *Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* As discussed above, Defendant may launch a
12 “pick off” settlement campaign to pursue individual release agreements from the Class Members,
13 thereby potentially narrowing the size of the Settlement Class – 123 members - until it is no longer
14 numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of
15 employees to represent. This led to a significant reduction of claim value in settlement
16 negotiations. *Id.*

17 While the evidence gathered through Plaintiff’s discovery supports the merits of the
18 claims asserted in this lawsuit, Plaintiff and his counsel recognize that continued litigation
19 presents significant risks that support a downward departure from Defendant’s estimated liability
20 exposure. DS, ¶ 64. In view of the risks, the Settlement reflects Plaintiff’s estimate of the total
21 amount of damages, monetary penalties or other relief that the Class could reasonably expect to
22 be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.*
23 It also represents a fair, adequate, and reasonable compromise amount for these claims and
24 warrants preliminary approval. *Id.*, *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
25 1376 (the financial condition of defendant predominated in assessing the reasonableness of
26 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
27 concerning defendant’s financial stability “strongly supports the reasonableness of the
28 settlement”); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014



1 WL 2465049, * 3.

2 **2. Allocation of the PAGA Payment**

3 The settlement of PAGA penalties in the sum of \$25,000.00, of which 75% (\$18,750.00)
4 will be paid to the LWDA and 25% (\$6,250.00) will be distributed to the Class, is reasonable and
5 appropriate under the circumstances. DS, ¶ 65. The Parties negotiated a good faith amount for
6 PAGA Penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA
7 was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements
8 “negotiate[] a good faith amount” for PAGA penalties and “there is no indication that this amount
9 was the result of self-interest at the expense of other Class Members,” such amounts are generally
10 considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844
11 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good
12 faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted
13 because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary,
14 and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming
15 trial court’s award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The
16 amount to be paid to the LWDA comports with PAGA settlement amounts approved by other
17 courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL
18 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund);
19 *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA
20 payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v.*
21 *Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA
22 settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589
23 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also
24 approved settlements for \$20,000 or less. See, e.g., *Hicks v. Toys ‘R’ Us–Delaware, Inc.*, (C.D.
25 Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in a case
26 involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012)
27 2012 WL 5941801 at *14 (approving PAGA penalties of \$10,000 as part of \$2.5 million
28 settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3



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1 (approving PAGA payment of \$10,000 as part of \$3.7 million common-fund settlement). *Id.*

2 **3. Presence of Governmental Participant**

3 As required under Labor Code section 2699(l)(2), Plaintiff will provide notice of this
4 settlement to the LWDA with the filing and service of this motion. DS, ¶ 121, Ex. 17.

5 **4. Reaction of Class Members to Proposed Settlement**

6 If the settlement is preliminarily approved, Class Members will be provided with the
7 Notice of Settlement To LWDA (attached as Exhibits A and D to the Settlement) and an
8 opportunity to object. DS, ¶ 87. The parties' proposed notice fully complies with California Rules
9 of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the
10 proposed settlement. *Id.*

11 **VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY**
12 **COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS**
13 **MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY**
14 **COMPARED TO OTHER CLASS MEMBERS**

15 The Individual Settlement Payments will be paid to each Class Member based on his or
16 her eligible Work Weeks compared to the total Work Weeks. Because this method compensates
17 Class Members based on the extent of their potential injuries, in that Class Members who worked
18 for Defendant longer would have been subject to more alleged violations, it is fair, adequate, and
19 reasonable. *Id.*

20 Plaintiff estimates that there are 10,245 Work Weeks for the Class Period. So, each Work
21 Week has a value of approximately \$10.90 (\$111,667.00 Net Settlement Amount / 10,245 Work
22 Weeks = \$10.90). Plaintiff had 27 Work Weeks during the Class Period. Based on this, it is
23 anticipated that Plaintiff Joel Gutierrez Alarcon will receive a Individual Class Payment of
24 approximately \$294.29 as a Participating Class Member (27 Work Weeks x \$10.90 = \$294.29)
25 while the average estimated Individual Class Payment to Participating Class Members will be
26 approximately \$907.86. Some Class Members – those who worked more Work Weeks during the
27 Class Period - will receive more, and some less. The highest possible Individual Class Payment
28 to a Participating Class Member (i.e., to those who qualify for all Work Weeks in the Class Period)
will be approximately \$1,722.09. The lowest possible Individual Class Payment to a Participating
Class Member (i.e., to those who qualify for only one Work Week in the Class Period) will be



1 approximately \$10.90. *See* DS Decl., ¶ 73.

2 It is anticipated that the average Aggrieved Employee Individual PAGA Payment will
3 be \$50.81. *Id.* Plaintiff's Individual PAGA Payment, his individual share of 25% of the PAGA
4 Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement,
5 each Aggrieved Employee will receive a *pro rata* distribution of 25% of the PAGA Penalties
6 proportionate to the number of paychecks he or she had with Defendant during the PAGA Period,
7 compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as
8 reflected by Defendant's records. Plaintiff estimates that there are 10,245 Aggrieved Employee
9 paychecks for the PAGA Period. So, each Aggrieved Employee paycheck from the PAGA
10 Period has a value of approximately \$0.61 (25% of \$25,000.00 in PAGA Penalties / 10,245
11 Aggrieved Employee paychecks = \$0.61). It is anticipated that Plaintiff Joel Gutierrez Alarcon
12 will receive a Individual PAGA Payment of approximately \$17.08 as an Aggrieved Employee
13 (28 paychecks during the PAGA Period x \$0.61 paycheck value = \$294.29) while the average
14 estimated Individual PAGA Payment to an Aggrieved Employee will be approximately \$50.81
15 (\$6,250.00, 25% of PAGA Penalties / Aggrieved Employee paychecks during the PAGA Period
16 = \$50.81 Individual PAGA Payment). Some Aggrieved Employees – those who had more
17 paychecks during the PAGA Period - will receive more, and some less. The highest possible
18 Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for all paychecks
19 in the PAGA Period) will be approximately \$97.17. The lowest possible Individual PAGA
20 Payment to an Aggrieved Employee (i.e., to those who qualify for only one paycheck in the
21 PAGA Period) will be approximately \$0.61. *See* DS Decl., ¶ 83.

22 **VII. ALLOCATION FOR CLASS COUNSEL'S FEE AWARD AND ATTORNEYS'**
23 **FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE**

24 The Settlement states Class Counsel may seek attorneys' fees of \$83,333.00 (one-third of
25 the GSA) and up to \$17,500.00 for actual reasonable litigation costs and expenses incurred in
26 prosecuting the Action. Settlement § 3.2.2. These amounts are reasonable, given the facts and
27 circumstances of the case. DS, ¶¶ 66-68.

28 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*



1 *Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the “experienced
2 trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum*
3 *v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should
4 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
5 incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Cal. 5th 480, 503 (citing *Lealao, supra*, 82
6 Cal.App.4th at p. 48-49). The Supreme Court has recently approved fees equal to one-third (1/3)
7 of the common fund. *Laffitte, supra*, 1 Cal. 5th 480. Many courts have similarly approved fee
8 awards equal to or greater than the percentage requested here. *See, e.g., In re Pacific Enterprises*
9 (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re Activision* (N.D.
10 Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re Ampicillin Antitrust*
11 *Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

12 The amount of fees and costs requested are commensurate with (1) the risk Class Counsel
13 took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the
14 skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the
15 value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned
16 down to devote time to this matter. DS, ¶ 67. Class Counsel interviewed and obtained information
17 from putative class members, met and conferred with Defendant’s counsel on numerous
18 occasions, reviewed and analyzed hundreds of pages of data and documents provided by
19 Defendant and obtained through other sources, researched applicable law, and provided
20 estimates of “damages” for purposes of settlement discussions, among other tasks. *Id.*

21 Class Counsel have borne all the risks and costs of litigation and will receive no
22 compensation until recovery is obtained. DS, ¶ 68. Class Counsel are well-experienced in wage-
23 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*
24 Considering the amount of the attorney fees requested, the work performed, and the risks incurred,
25 the requested fees and costs are reasonable and should be awarded. *Id.*

26 ///

27 ///

28 ///



1 **VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFF**
2 **SHOULD BE PRELIMINARILY APPROVED BECAUSE IT IS FAIR,**
3 **ADEQUATE, AND REASONABLE**

4 Courts routinely approve incentive awards to compensate named plaintiffs for the services
5 they provide and the risks they incur during class action litigation, often in much higher amounts
6 than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
7 (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van*
8 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
9 enhancement award). The Settlement provides that Plaintiff may seek an Class Representative
10 Service Payment of \$5,000.00. This amount is entirely reasonable given Plaintiff’s efforts in this
11 action and the risks he undertook on behalf of Class Members. DS, ¶ 69; Declaration of Joel
12 Gutierrez Alarcon (“Plaintiff decl.”), generally. Plaintiff has devoted many hours advancing the
13 interests of the Settlement Class. Plaintiff has done this by, among other things, retaining
14 experienced counsel, providing them with information about his work history with Defendant and
15 Defendant’s policies and practices with respect to the wage and hour claims at issue, participating
16 in mediation, and being actively involved in the settlement process to ensure a fair result for the
17 Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks,
18 including the risk of an order to pay Defendant’s attorneys’ fees and costs if this action had been
19 unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on
20 behalf of the Settlement Class shows that the proposed Class Representative Service Payment is
21 fair, adequate, and reasonable, and thus warrants preliminary approval. DS, ¶ 69; Plaintiff decl.,
22 generally.

23 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE**
24 **PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE,**
25 **AND REASONABLE**

26 With regard to the settlement administration costs (“Administration Expenses Payment”)
27 provision, it is reasonable. Before agreeing to Phoenix Class Action Administration Solutions and
28 its bid of \$7,000.00, the Parties sought and reviewed bids from other reputable third-party
administrators which provided higher bids. DS, ¶ 111-112, Exs. 8, 9, and 10. Thus, the settlement
administration costs provision should be given preliminary approval.



1 **X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN**
2 **SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO**
3 **GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO**
4 **EXERCISE THEIR RIGHTS**

5 This Court should approve the proposed plans for giving notice to the Settlement Class
6 and administering the Settlement. The standard for determining the adequacy of notice is whether
7 the notice has “a reasonable chance of reaching a substantial percentage of the class members.”
8 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple
9 measures to ensure that as many Class Members as practicable receive actual notice of the
10 Settlement and have enough time to exercise their rights. The Settlement requires distribution of
11 the Notice by First Class U.S. mail only. Settlement, ¶ 8.4.2. Although there are current employee
12 Class Members, it is uncertain whether Defendant’s records of their contact information include
13 email addresses and Class Members, who perform all of their work away from a desk, are not in
14 a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable.
15 DS, ¶ 98.

16 With respect to its content, “[The] notice given to the class must fairly apprise the class
17 members of the terms of the proposed compromise and of the options open to dissenting class
18 members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.
19 The purpose of the notice in class settlement context is to give class members sufficient
20 information to decide whether they should accept the benefits offered, opt out and pursue their
21 own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides
22 Class Members with all pertinent information that they need to fully evaluate their options and
23 exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among
24 other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how
25 Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the
26 Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how
27 payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the
28 individual Settlement Class Member’s estimated payment. Additionally, the Class Notice will
include the number of Work Weeks a Class Member had during the Class Period. Accordingly,
the Notice should be approved because it describes the Settlement with sufficient clarity and



specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. DS, ¶ 98.

XI. CONCLUSION

For the reasons stated above, this Court should grant Plaintiff's Motion in its entirety and adopt the proposed order submitted concurrently herewith.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: March 11, 2025

By:



DAVID G. SPIVAK, Attorney for
Plaintiff, JOEL GUTIERREZ
ALARCON, and all others similarly
situated



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