

1 John G. Yslas (SBN 187324)
2 john.yslas@wilshirelawfirm.com
3 Diego Aviles (SBN 315533)
4 diego.aviles@wilshirelawfirm.com
5 Emily Borman (SBN 303180)
6 emily.borman@wilshirelawfirm.com
7 Harry Erganyan (SBN 333091)
8 harry.erganyan@wilshirelawfirm.com
9 Mariam Nazaretyan (SBN 334154)
10 mariam.nazaretyan@wilshirelawfirm.com
11 **WILSHIRE LAW FIRM, PLC**
12 660 S. Figueroa St., Sky Lobby
Los Angeles, California 90017
Telephone (213) 381-9988
Facsimile (213) 381-9989
Attorneys for Plaintiff Eric Herrera
(Additional counsel listed on following page)

13 **UNITED STATES DISTRICT COURT**

14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 ERIC HERRERA, individually, and on
16 behalf of all others similarly situated,

17 *Plaintiff,*

18 v.
19

20 CORECIVIC OF TENNESSEE, LLC, a
21 Tennessee limited liability company;
22 and DOES 1 through 50, inclusive

23 *Defendants.*

Case No.: 3:25-cv-2298-GPC-DEB

*Assigned to District Judge Hon. Gonzalo
P. Curiel*

**JOINT NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATIONS OF JOHN G.
YSLAS AND ERIC HERRERA**

APPROVAL HEARING

Date: July 31, 2026

Time: 1:30 p.m.

Room: 12A

Complaint Filed: May 30, 2025

Removal Filed: July 11, 2025

1 TOREY JOSEPH FAVAROTE (SBN: 198521)
2 DAVID H. DANNING (SBN: 354477)
3 GLEASON & FAVAROTE, LLP
4 3646 Long Beach Blvd., Suite 203
5 Long Beach, California 90807
6 Telephone: (213) 452-0510
7 Facsimile: (213) 452-0514
8 tfavarote@gleasonfavarote.com
9 ddanning@gleasonfavarote.com
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Attorneys for Defendant

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

PLEASE TAKE NOTICE that on July 31, 2026, at 1:30 p.m. or as soon thereafter as the matter may be heard in Courtroom 12A of the above-captioned Court located at 333 West Broadway, San Diego, CA 92101, Plaintiff Eric Herrera (“Plaintiff”) and Defendant CoreCivic of Tennessee, LLC (“CoreCivic” or “Defendant”) (collectively the “Parties”) will and do hereby move for preliminary approval of class and PAGA action settlement, pursuant to Federal Rule of Civil Procedure (“Rule”) 23(e).

This Motion is based on this Notice, the Memorandum of Points and Authorities, the Declaration of John G. Yslas and exhibits thereto, the Declaration of Plaintiff Eric Herrera, the records, pleadings, and papers filed in this action, and any other documentary and oral evidence or argument that may be presented at the hearing.

1

JOINT NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

1 **RELIEF SOUGHT**

2 Plaintiff Eric Herrera respectfully request that the Court:

3 1. Preliminarily certify the proposed class for settlement purposes under
4 Rule 23(e) of the Federal Rules of Civil Procedure;

5 2. Preliminarily appoint Plaintiff as the Class Representative for settlement
6 purposes;

7 3. Preliminarily appoint Wilshire Law Firm, PLC as Class Counsel for
8 settlement purposes;

9 4. Preliminarily approve the class action settlement based upon the terms
10 set forth in the Class Action and PAGA Settlement Agreement (“Settlement
11 Agreement”);

12 5. Schedule a final fairness hearing to consider final approval of the
13 Settlement, class representative’s incentive payment, entry of a proposed final
14 judgment, and Plaintiff’s motion for attorney’s fees and costs;

15 6. Appoint Phoenix Class Action Administrators as the third-party
16 settlement administrator for administering the settlement, which includes mailing
17 Notice of Class Action Settlement (“Notice”); and

18 7. Approve the proposed Notice and order that it be disseminated to the
19 proposed Settlement Class as provided in the Settlement.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 This Motion is based on this Notice of Motion and Motion, the attached
2 Memorandum of Points and Authorities, the Declarations of John G. Yslas and Eric
3 Herrera, and all exhibits thereto, all papers and pleadings on file with the Court in
4 this action, all matters judicially noticeable, and on such oral and documentary
5 evidence as may be presented at the hearing on this Motion.

6
7 Dated: April 30, 2026

WILSHIRE LAW FIRM

8 s/ Diego Aviles

9 Diego Aviles

10 Email: diego.aviles@wilshirelawfirm.com

11 Attorneys for Plaintiff

12 Dated: April 30, 2026

GLEASON & FAVAROTE, LLP

13 s/ Torey Joseph Favarote

14 Torey Joseph Favarote

15 Email: tfavarote@gleasonfavarote.com

16 Attorneys for Defendant
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

1		
2	NOTICE OF MOTION AND MOTION AND RELIEF SOUGHT	1
3	MEMORANDUM OF POINTS AND AUTHORITIES.....	9
4	I. INTRODUCTION.....	9
5	II. SUMMARY OF THE LITIGATION HISTORY AND SETTLEMENT	9
6	A. Procedural History.....	9
7	B. Settlement Negotiations and Agreement	10
8	C. Key Terms of the Proposed Settlement	11
9	III. ARGUMENT	
10	A. Class Certification is Appropriate for Settlement Purposes	15
11	1. The Elements Of Rule 23(A) Are Satisfied.....	15
12	a) Rule 23(a)(1): Numerosity	16
13	b) Rule 23(a)(2): Commonality	16
14	c) Rule 23(a)(3): Typicality.....	16
15	d) Rule 23(a)(4): Adequacy of Representation	17
16	2. The Elements of Rule 23(b)(3) Are Satisfied	17
17	B. The Settlement Is Fair, Reasonable, and Adequate	19
18	1. The Strength of Plaintiff's Case	19
19	2. Risk, Expense, Complexity, and Duration of Further	
20	Litigation.....	20
21	3. Risk of Maintaining Class Action Status.....	21
22	4. Amount Offered in Settlement Given Realistic Value of	
23	Claims	21
24	5. Investigation Completed and the Status of Proceedings.....	26
25	6. The Experience and Views of Counsel.....	27
26	C. The Settlement Meets the Requirements for Preliminary	
27	Approval.....	28
28	1. The Settlement is Within the Range of Possible Approval.....	28

1	2.	The Settlement Resulted from Serious, Informed and	
2		Non-Collusive Negotiations.	28
3	3.	The Settlement is Devoid of Obvious Deficiencies.....	29
4	a)	The Settlement terms are fair and reasonable.....	29
5	b)	The Class Representative will not receive disproportionate	
6		payments to those of class members.....	29
7	c)	The Settlement’s provisions for attorneys’ fees and	
8		costs are in the range that is routinely approved.....	30
9	d)	The allocation of \$80,000 to the State’s share of	
10		PAGA penalties effectuates PAGA’s purposes	32
11	D.	The Court Should Approve the Proposed Class Notice.....	32
12	E.	The Court Should Set a Schedule for Final Approval	34
13	IV.	CONCLUSION	35

TABLE OF AUTHORITIES

STATE CASES

Cortez v. Purolator Air Filtration Products Co. 23 Cal.4th 163 (2000).....24

Naranjo v. Spectrum Sec. Servs., Inc., 88 Cal.App.5th 937 (2023)..... 20, 25

FEDERAL CASES

Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997)..... 18

Bravo v. Gale Triangle, Inc., 2017 WL 708766 (C.D. Cal. Feb 16, 2017)..... 26

Churchill Vill., LLC v. Gen. Elec., 361 F.3d 566 (9th Cir. 2004)..... 32

D’Amato v. Deutsche Bank, 236 F.3d 78 (2d Cir. 2001)..... 28

Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974) 33

Elliot v. Spherion Pacific Work, LLC, 572 F.Supp.2d 1169

(C.D. Cal. 2008)..... 20, 25

Frausto v. Bank of America, N.A., 334 F.R.D. 192 (N.D. Cal. 2019), 2020 WL

1290302 (9th Cir. Feb. 27, 2020), 2019 WL 5626640 (N.D. Cal. Oct. 31, 2019),

2018 W.L. 3659251 (N.D. Cal. Aug. 2, 2018)..... 31

Gribble v. Cool Transports Inc., No. CV 06-04863 GAF SHx,

2008 WL5281665 (C.D. Cal. Dec. 15, 2008)..... 27

Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998) *passim*

Hightower v. JP Morgan Chase Bank, NA, No. CV 11-1802 PSG,

2015 WL 9664959 (C.D. Cal. Aug. 4, 2015) 29

In re Apple Computer, Inc. Derivative Litig., No. C 06-4128 JF (HRL),

2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008)..... 28

In re Hyundai & Kia Fuel Econ. Litig. (“Hyundai I”),

881 F.3d 679 (9th Cir. 2018)..... 18

In re Hyundai & Kia Fuel Econ. Litig. (“Hyundai II”),

926 F.3d 539 (9th Cir. 2019).....17, 18, 19

In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454 (9th Cir. 2000)..... 28

In re Mercury Interactive Corp. Sec. Litig., 618 F.3d 988 (9th Cir. 2010)..... 31

1	<i>In re Omnivision Techs., Inc.</i> , 559 F.Supp.2d 1036 (N.D. Cal. 2008).....	26
2	<i>In re On-Line DVD Rental Antitrust Litig.</i> , 779 F.3d 934 (9th Cir. 2015)	30
3	<i>In re Pac. Enter. Sec. Litig.</i> , 47 F.3d 373 (9th Cir. 1995)	27, 30
4	<i>In re Portal Software, Inc. Securities Litig.</i> ,	
5	No. C-03-5138 VRW, 2007 WL 4171201 (N.D. Cal. Nov. 26, 2007)	20
6	<i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008).....	19
7	<i>In re Tableware Antitrust Litig.</i> , 484 F. Supp. 2d 1078 (N.D. Cal. 2007).....	1
8	<i>LaFleur v. Med. Mgmt. Int’l, Inc.</i> , No. EDCV 13–00398–VAP (OPx),	
9	2014 WL 2967475 (C.D. Cal. June 5, 2014)	30
10	<i>Lerwill v. Inflight Motion Pictures, Inc.</i> , 582 F.2d 507 (9th Cir. 1978)	17
11	<i>Mazza v. Am. Honda Motor Co., Inc.</i> , 666 F.3d 581 (9th Cir. 2012)	18
12	<i>Misra v. Decision One Mortg. Co.</i> ,	
13	No. 07-0994 DOC, 2009 WL 4581276 (C.D. Cal. Apr. 13, 2009).....	34
14	<i>Nat’l Rural Telecomm. Coop. v. DIRECTTV, Inc.</i> ,	
15	221 F.R.D. 523 (C.D. Cal. 2004).....	20
16	<i>O’Connor v. Uber Technologies, Inc.</i> , 201 F.Supp.3d 1110 (N.D. Cal. 2016).....	32
17	<i>Rodriguez v. West Publ’g Corp.</i> , 563 F.3d 948 (9 th Cir. 2003)	19
18	<i>Schwartz v. Dallas Cowboys Football Club, Ltd.</i> ,	
19	157 F. Supp. 2d 561 (E.D. Pa. 2001).....	1
20	<i>Singer v. Becton Dickinson & Co.</i> ,	
21	No. 08-821 IEG, 2010 WL 2196104 (S.D. Cal. Jun. 1, 2010).....	30
22	<i>Stanton v. Boeing Co.</i> , 327 F.3d 938 (9 th Cir. 2003)	15
23	<i>Stuart v. Radioshack Corp.</i> , No. C-07-4499 EMC,	
24	2010 WL 3155645 (N.D. Cal. Aug. 9, 2010)	30
25	<i>Syed v. M-I, LLC</i> , No. 1:12-cv-01718-DAD,	
26	2017 WL 714367 (E.D. Cal. Feb. 22, 2017).....	32
27	<i>Viceral v. Mistras Group, Inc.</i> , No. 15-cv-02198-EMC,	
28	2016 WL 5907869 (N.D. Cal. Oct. 11, 2016)	32

1	<i>Welling v. Allexy</i> , 155 F.R.D. 654 (N.D. Cal. 1994)	16
2	<i>Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.</i> 2019 WL 3943859	
3	(E.D. Cal. Aug. 21, 2019)	26
4	<i>Wright v. Linkus Enter., Inc.</i> , 259 F.R.D. 468 (E.D. Cal. 2009).....	34
5	STATE STATUTES	
6	8 Cal. Code Regs. § 13520	20, 25
7	Labor Code § 226	20
8	Cal. Labor Code § 2699	10
9	FEDERAL STATUTES	
10	Fed. R. Civ. P. 23(a).....	16, 17
11	Fed. R. Civ. P. 23(c).....	32
12	Fed. R. Civ. P. 23(e).....	<i>passim</i>
13	TREATISES	
14	Conte & Newberg, <i>Newberg on Class Actions</i> (4th ed. 2002)	15, 28
15	Manual for Complex Litigation (3d ed. 1995).....	28
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Eric Herrera (“Plaintiff”) seeks preliminary approval of a
4 proposed \$624,550.00 non-reversionary, class action settlement of this wage-and-
5 hour case with defendant CoreCivic of Tennessee, LLC (“Defendant” and together
6 Plaintiff, the “Parties”). The settlement will provide finality to a contested case,
7 and, as set forth more fully below, the proposed settlement satisfies all the criteria
8 for settlement approval under Federal Rules of Civil Procedure, Rule 23. The
9 settlement was reached after extensive investigation, initial disclosures by both
10 Parties and multiple Early Neutral Evaluation Conferences presided over by
11 United States Magistrate Judge, Hon. Daniel E. Butcher, which ultimately led to
12 the settlement.

13 Accordingly, the Parties respectfully request that the Court bring closure to
14 this case by preliminarily approving the proposed settlement, certifying the
15 proposed settlement class, approving the Notice, and scheduling a final approval
16 hearing.

17 **II. SUMMARY OF THE LITIGATION HISTORY AND SETTLEMENT**

18 **A. Procedural History**

19 On May 30, 2025, Plaintiff filed a putative wage-and-hour class action in Santa
20 Clara County on behalf of himself and all hourly-paid, non-exempt employees in
21 California against Defendant for: (1) failure to pay minimum and straight time wages;
22 (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to
23 authorize and permit rest periods; (5) failure to timely pay final wages at termination;
24 (6) failure to provide accurate itemized wage statements; (7) failure to indemnify
25 employees for expenditures; (8) failure to produce requested employment records; and
26 (9) violation of California’s Unfair Competition Law, California Business and
27 Professions Code §§ 17200, *et seq.* Declaration of John G. Yslas in Support of
28 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Yslas

Decl.”), ¶ 4. On July 11, 2025, Defendant removed this matter to federal court on the basis of diversity jurisdiction. On August 28, 2025, the Parties stipulated to transfer venue to the Southern District of California where Plaintiff worked for the Defendant.

Plaintiff sent notice to Defendant and the California Labor & Workforce Development Agency (“LWDA”) alleging similar wage-and-hour violations pursuant to the Private Attorneys General Act (“PAGA”) (Cal. Labor Code §§ 2699, *et seq.*). On August 29, 2025, Plaintiff separately filed a PAGA-only action in the San Diego County Superior Court. *Id.* at ¶ 5. On January 26, 2026, Plaintiff filed a First Amended Complaint in the instant action which merges the separately filed PAGA Complaint into the pending federal court case, as required by the Parties’ Settlement Agreement. *Id.* at ¶ 6.

B. Settlement Negotiations and Agreement

On November 24, 2026, the Parties participated in an Early Neutral Evaluation Conference presided over by United States Magistrate Judge, Hon. Daniel E. Butcher. Yslas Decl., ¶ 7. The settlement negotiations were at arm’s length and, although conducted in a professional manner, were adversarial. *Id.* The Parties went into Early Neutral Evaluation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. *Id.*

After extensive preparation, investigation, negotiations, and discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, including the exchange of initial disclosures by the Parties and a relevant sample time and payroll data for the punitive class members and aggrieved employees, the Parties were ultimately able to reach a settlement as to the material terms which are encompassed within the Settlement Agreement. *Id.* at ¶ 8. To be clear, and to comply with Federal Rules of Civil Procedure Rule 23(e)(3), the Settlement agreement states all of the terms of the agreement between the Parties regarding the potential resolution of this matter. *Id.* Class Counsel believes that the proposed settlement

1 is fair, reasonable, and adequate and is in the best interests of the Settlement Class
2 Members in light of all known facts and circumstances, the risk of significant
3 delay, the defenses that could be asserted by Defendant both to certification and
4 on the merits, trial risk, and appellate risk. *Id.* at ¶ 8.

5 This settlement resolves the risk attendant with continued litigation. Class
6 Counsel believes that the settlement amount is reasonable in light of Defendant's
7 realistic range of exposure. Yslas Decl., ¶ 9. This is a good result for the Class,
8 particularly in light of the difficulty in certifying a class and continuing in
9 litigation. *Id.* Because of the proposed Settlement, Settlement Class Members will
10 be able to receive timely, guaranteed relief and will avoid the risk of an unfavorable
11 judgment. *Id.*

12 **C. Key Terms of the Proposed Settlement**

13 Under the Settlement Agreement, Defendant will pay Six Hundred Twenty-
14 Four Thousand Five Hundred Fifty Dollars and Zero Cents (\$624,550.00) to
15 resolve this litigation. Yslas Decl. ¶ 12, Exhibit 2 (Class Action and PAGA
16 Settlement Agreement (the "Settlement Agreement")). The key terms include:

17 Settlement Class: "all current and former nonexempt employees of Defendants
18 who were employed in California between July 11, 2023 through December 12, 2025."
19 Settlement, § 1.25.

20 Settlement Amount: "The maximum settlement amount of \$624,550.00 to be
21 paid by Defendant in full satisfaction of all Released Claims, which includes all
22 Individual Settlement Payments to Participating Settlement Class Members, any
23 Incentive Award, the Cost of Administration, the LWDA Payment, the PAGA
24 Settlement Amount, and Attorneys' Fees and Costs." Settlement § 1.24.

25 Escalator: "Defendant represents that based on its current knowledge, as of
26 December 12, 2025, there were approximately 51,800 applicable workweeks worked
27 by the Class Members in aggregate and that there are approximately 1,200 Class
28 Members. If, it turns out that as of December 12, 2025, the number of workweeks

1 ends up increasing by more than 8% Defendant shall increase the Total Settlement
2 Amount proportionally (i.e. for an increase of 9% in workweeks, Defendant shall add
3 an extra 1 % to the Settlement Amount, for a 10% increase in employees Defendant
4 shall add an extra 2% to the Settlement Amount).” Settlement, § 1.25.

5 Calculation and Distribution of Settlement Payments: “Individual Settlement
6 Payments will be calculated and apportioned from the Net Settlement Amount based
7 on the number of workweeks a Participating Settlement Class Member is calculated
8 to have worked during the Class Period. A Class Member’s Settlement Share will
9 equal the Net Settlement Amount times the ratio of: (i) the number of workweeks
10 worked by the Class Member for Defendant in California as a non-exempt hourly
11 employee from July 11, 2023, through December 12, 2025, to (ii) the total number of
12 workweeks worked by all such Class Members during the Settlement Period (other
13 than those who elected not to participate in the Settlement). Settlement, § 2.10.

14 The entire Net Settlement Amount will be disbursed to all Class Members who
15 do not submit a timely and valid Request for Exclusion. If there are any valid and
16 timely Requests for Exclusion, the Settlement Administrator shall remove the number
17 of workweeks worked by the excluded individual for Defendant during the Class
18 Period from the total number of workweeks worked by all Class Members, such that
19 100% of the Net Settlement Amount is distributed pro rata.” Settlement, § 2.10.

20 Release by Participating Class Members: “All wage and hour claims, rights,
21 demands, liabilities and causes of action of any nature or description arising from the
22 facts, theories of liability and claims asserted in or contemplated by the Action and/or
23 the claims that could have been asserted in the Action based on the facts ascertained
24 or alleged in the Action, including without limitation, any and all statutory,
25 constitutional, contractual or common law claims for wages, damages, unpaid costs,
26 penalties, liquidated damages, interest, attorneys’ fees, litigation costs, restitution, and
27 equitable or other relief based on the following categories: (a) any and all claims
28 involving any alleged failure to pay the wages required by state or federal law; (b) any

1 and all claims arising under state or federal law involving any alleged failure to pay
2 employees for all hours worked, including but not limited to any claim for minimum,
3 straight time, or overtime wages; (c) any and all claims arising under state or federal
4 law involving any alleged failure to pay wages, including but not limited to any claim
5 involving “off the clock” work or the failure to pay for all time under the employer’s
6 control; (d) any and all claims involving payment of wages; (e) any and all claims
7 involving the failure to correctly calculate or include bonuses, other incentive pay, or
8 compensation of any kind in the “regular rate” of pay or compensation; (f) any and all
9 claims arising under state law involving any alleged failure to properly provide meal
10 periods and/or authorize and permit rest periods, to pay premiums for missed, late,
11 short, unprovided, on-duty, or interrupted meal and/or rest periods, or to pay such
12 premiums at the regular rate of compensation; (g) any and all claims involving any
13 alleged failure to keep accurate records or to issue proper wage statements to
14 employees; (h) any and all claims involving any alleged failure to timely pay wages,
15 including but not limited to any claim of violation of Labor Code §§ 201 or 202, and
16 any claim for waiting time penalties under Labor Code § 203; (i) any and all claims
17 involving any alleged failure to reimburse for necessary business expenses under
18 Labor Code §§ 2800 or 2802, including but not limited to any claim for the failure to
19 provide and/or reimburse mileage, work equipment, personal cellular telephone usage,
20 or for reimbursement of any other necessary business expenses; (j) and any and all
21 claims for unfair business practices in violation of Business and Professions Code
22 sections 17200, et seq. (collectively, the “Released Claims”). The Released Claims
23 include, but are not limited to, all claims arising under the California Labor Code
24 sections 201, 202, 203, 204, 210, 213, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 246,
25 432, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199,
26 2800, 2802; the Wage Orders of the California Industrial Welfare Commission;
27 California Business and Professions Code section 17200 et seq.; the California
28 common law of contract; and federal common law. The release excludes the release

1 of claims not permitted by law. The Released Claims cover the time period of July
2 11, 2023 through April 15, 2026 or the date of preliminary approval of the Settlement,
3 whichever comes first. For the avoidance of doubt, only Class Members (i.e. those
4 who worked from July 11, 2023 to December 12, 2025) are included in this release.”
5 Settlement, § 1.17.

6 Released PAGA Claims: “All claims asserted through California Labor Code
7 §§ 2698, et seq. in the operative Complaint and in Plaintiff’s PAGA Notice Letter, that
8 arise out of or are related to the Released Claims during the PAGA Period, including
9 California Labor Code sections 201, 202, 203, 204, 210, 213, 218.5, 218.6, 226, 226.3,
10 226.7, 227.3, 246, 432, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
11 1198.5, 1199, 2800, 2802, 2698, 2699, 2699.3. A Class Member who is also a PAGA
12 Member will receive his or her share of the PAGA Settlement Payment regardless of
13 whether the Class Member opts out of the Settlement.” Settlement, § 1.18.

14 Tax Allocation: “As to that portion of the Net Settlement Fund (defined below)
15 paid to Participating Settlement Class Members that constitutes wages (20%), the
16 employer portion of applicable employment taxes, shall not be paid from the
17 Settlement Fund.” Settlement, § 1.24.

18 Settlement Class Counsel Fees and Costs: The settlement provides that Class
19 Counsel may seek up to 30% (\$187,365.00) of the \$624,550.00 settlement amount
20 for attorneys’ fees, and up to \$12,000 for their actual litigation expenses incurred.
21 Settlement, §§ 1.24, 1.28. Plaintiff will make a separate motion for attorneys’ fees
22 and costs under Rule 23(h) on a later date.

23 Incentive Award to Class Representative: The Settlement provides for an
24 Incentive Award of \$10,000.00 to the Class Representative, Plaintiff Eric Herrera, in
25 recognition of his efforts on behalf of the Class. Settlement, §§ 1.6, 2.6. If approved,
26 Plaintiff will receive this amount in addition to his Individual Settlement Payment.
27 *Id.*

28 ///

1 Settlement Administration Costs: The Parties have agreed to use Phoenix Class
2 Action Administrators as the settlement administrator, with administration fees
3 capped at \$15,500.00. Settlement, §§ 1.23, 2.7.

4 **III. ARGUMENT**

5 At preliminary approval, the Court first determines whether a class exists.
6 *Stanton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). Then, the Court evaluates
7 whether the settlement is within the “range of reasonableness,” and whether notice
8 to the class and the scheduling of a final approval hearing should be ordered. *See,*
9 *generally*, Conte & Newberg, *Newberg on Class Actions* § 11.25 (4th ed. 2002).

10 The Settlement here meets all the requirements for preliminary approval.

11 **A. Class Certification is Appropriate for Settlement Purposes**

12 When considering a request for certification of a settlement class for
13 settlement purposes, the Court must first determine “whether the proposed
14 settlement class satisfies the requirements of Rule 23 (a) of the Federal Rules of
15 Civil Procedure applicable to all class actions, namely: (1) numerosity, (2)
16 commonality, (3) typicality, and (4) adequacy of representation.” *Hanlon v.*
17 *Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).

18 At this stage, the Court only needs to make a preliminary determination as to
19 the appropriateness of class certification for settlement purposes, not trial. In 2018,
20 Congress changed Rule 23 by authorizing a court to send notice of a proposed
21 settlement to the class if the parties have demonstrated that it is “likely” the court
22 will be able to approve the settlement and “certify the class for purposes of judgment
23 on the proposal” after a notice and objection period. Fed. R. Civ. P. 23(e)(1); Conte
24 & Newberg, *Newberg on Class Actions* § 13:17 (4th ed. 2002). The 2018 Advisory
25 Committee Notes further explain:

26 if a class has not been certified, the parties must ensure that the court has a
27 basis for concluding that it likely will be able, after the final hearing, to certify
28 the class. Although *the standards for certification differ for settlement and*

1 *litigation purposes*, the court cannot make the decision regarding the
2 prospects for certification without a suitable basis in the record. *The ultimate*
3 *decision to certify the class for purposes of settlement cannot be made until*
4 *the hearing on final approval of the proposed settlement.*

5 Fed. R. Civ. P. 23(e)(1) advisory committee’s notes to 2018 amendment (emphasis
6 added).

7 **1. The Elements Of Rule 23(A) Are Satisfied**

8 *a) Rule 23(a)(1): Numerosity*

9 The first requirement of Rule 23(a) is that the class be so numerous that
10 joinder of all members would be “impracticable.” *See* Fed. R. Civ. P. 23(a)(1).
11 Numerosity is satisfied with as few as 50-60 class members. *See Welling v. Allexy*,
12 155 F.R.D. 654, 656 (N.D. Cal. 1994). Here, numerosity is satisfied because there
13 are approximately 1,200 Settlement Class Members – all of whom are identifiable
14 from Defendant’s records. Yslas Decl., ¶ 27.

15 *b) Rule 23(a)(2): Commonality*

16 Rule 23(a) also requires “questions of law or fact common to the class.” Fed.
17 R. Civ. P. 23(a)(2). The commonality requirement is permissively construed by the
18 Ninth Circuit such that the “existence of shared legal issues with divergent factual
19 predicates is sufficient, as is a common core of salient facts coupled with disparate
20 legal remedies within the class.” *Hanlon*, 150 F.3d at 1019. Plaintiff meets the
21 criteria of Rule 23(a)(2) because the Settlement Class Members’ claims turn upon
22 answers to overarching common questions regarding Defendant’s policies and
23 procedures that are capable of class-wide resolution for settlement purposes,
24 including whether Defendant had legally compliant policies and practices to
25 correctly pay all meal and rest period premium wages owed to Settlement Class
26 Members.

27 *c) Rule 23(a)(3): Typicality*

28 Plaintiff must establish that the “claims or defense of the representative

1 parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3).)
2 This is a permissive standard that is met so long as the representative claims “are
3 reasonably coextensive with those of absent class members.” *Hanlon*, 150 F.3d at
4 1020. Here, the named Plaintiff was subject to the same policies that were
5 challenged in the First Amended Complaint and the PAGA Notice. *See* First
6 Amended Complaint; Yslas Decl., ¶ 4-6, Exhibit 1. ¶

7 *d) Rule 23(a)(4): Adequacy of Representation*

8 Rule 23 also requires that “the representative parties fairly and adequately
9 protect the interests of the class.” Fed. R. Civ. P. 23(a)(4).) To satisfy this element,
10 Plaintiff must establish that: (1) the class representatives do not have a conflict of
11 interest; and (2) class counsel will adequately represent the interests of the class.
12 *See Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978).
13 Here, there is no conflict of interest between the Class Representative and the
14 proposed settlement class. Furthermore, Plaintiff and Class Counsel are well
15 qualified and willing to vigorously prosecute the interests of the Class. *See*
16 *generally* Declaration of Eric Herrera; Yslas Decl., ¶¶ 39-53. Indeed, Class
17 Counsel are well-regarded and accomplished attorneys who are qualified and
18 experienced in wage-and-hour class action litigation. Yslas Decl., ¶¶ 39-53.
19 Therefore, the adequacy requirement is satisfied.

20 **2. The Elements of Rule 23(b)(3) Are Satisfied**

21 In the Ninth Circuit, the general rule is that predominance is readily satisfied
22 in the settlement context. *In re Hyundai & Kia Fuel Econ. Litig.* (“*Hyundai II*”), 926
23 F.3d 539 (9th Cir. 2019). This legal principle is set forth in detail in *Hyundai II*.

24 In *Hyundai II*, a putative class of consumers sued the automaker Hyundai
25 under California consumer-protection law, among other claims, alleging that
26 Hyundai “misled consumers throughout the United States by advertising inflated fuel
27 economy standards” in particular vehicles. *Id.* at 553. The district court considered
28 class certification for trial and for settlement. At first the court indicated that it was

1 likely to deny class certification for trial. *In re Hyundai & Kia Fuel Econ. Litig.*
2 (“*Hyundai I*”), 881 F.3d 679, 692-93 (9th Cir. 2018) (citing *Mazza v. Am. Honda*
3 *Motor Co., Inc.*, 666 F.3d 581, 590-92 (9th Cir. 2012)). Later, when asked to certify
4 a class for settlement purposes, the district court determined that “such an [extensive
5 choice-of-law] analysis,” as *Mazza* required, “was not warranted in the settlement
6 context.” *Id.* at 700. Instead, consistent with *Hanlon v. Chrysler Corp.* 150 F.3d 1011
7 (9th Cir. 1998), the district court held that common questions, such as “[w]hether the
8 fuel economy statements were in fact accurate” and “whether defendants knew that
9 their fuel economy statements were false or misleading,” predominated. *Id.* at 708
10 (Nguyen, J., dissenting) (alteration in original).

11 The Ninth Circuit reviewed the decision and a three-judge panel relied on
12 *Mazza v. Am. Honda Motor Co.* 666 F.3d 581 (9th Cir. 2012) to reverse on appeal.
13 *Id.* at 702-03 (majority opinion). The panel reasoned that, “[i]n failing to apply
14 California choice of law rules, the district court committed a legal error” because
15 “[a]s explained in *Mazza*, the district court was required to apply California’s choice
16 of law rules.” *Hyundai I*, 881 F.3d at 702. The distinction between certifying a class
17 for trial or settlement, the panel concluded, was immaterial. *Id.* at 702-03.

18 An *en banc* panel of the Ninth Circuit then reversed that decision after a
19 rehearing. The *en banc* panel clarified that “[t]he criteria for class certification are
20 applied differently in litigation classes and settlement classes.” *Hyundai II*, 926 F.3d
21 at 556. In the settlement context, a district court assessing predominance “need not
22 inquire whether the case, if tried, would present intractable management problems.”
23 *Id.* at 558 (quoting *Amchem Prods., Inc. v. Windsor* 521 U.S. 591, 620 (1997)).
24 Reaffirming *Hanlon*, the *en banc* panel explained that common issues like whether
25 the fuel economy statements were inaccurate and whether the automakers knew
26 about the inaccuracy were the sort of “common course of conduct by [a] defendant”
27 that can establish predominance. *Id.* at 559.

28 ///

1 Certification of a class for settlement purposes here is consistent with *Hyundai*
2 *II* because, again, certification is not being sought in the context of trial and as
3 discussed below, there are many common issues among the class.

4 **B. The Settlement Is Fair, Reasonable, and Adequate**

5 “[T]here is a strong judicial policy that favors settlements, particularly where
6 complex class action litigation is concerned.” *In re Syncor ERISA Litig.*, 516 F.3d
7 1095, 1101 (9th Cir. 2008); *see also Hanlon*, 150 F.3d at 1027 (endorsing the trial
8 court’s “proper deference to the private consensual decision of the parties” when
9 approving a settlement). This policy guides the Court in determining whether a
10 settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(1).

11 In determining whether a settlement is “fair, reasonable, and adequate”, this
12 Court may consider the following factors: (1) the strength of the plaintiff’s case;
13 (2) the risk, expense, complexity, and likely duration of further litigation; (3) the
14 risk of maintaining class action status throughout trial; (4) the amount offered in
15 settlement; (5) the extent of discovery completed and the stage of the proceedings;
16 (6) the experience and views of counsel; (7) the presence of a governmental
17 participant; and (8) the reaction of the class members to the proposed settlement.
18 *See Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 963 (9th Cir. 2003). Plaintiff
19 addresses each relevant factor below.¹

20 **1. The Strength of Plaintiff’s Case**

21 Although Plaintiff steadfastly maintains that his claims are meritorious,
22 Plaintiff acknowledges that Defendant possessed legitimate defenses to liability
23 and certification. Moreover, even if Plaintiff prevailed at certification, Defendant
24 could have successfully asserted defenses to Plaintiff’s wage statement and waiting
25

26 ¹ Because there are no government participants in the Lawsuits, Plaintiff have
27 omitted the seventh factor from discussion. Should the Court grant preliminary
28 approval of the proposed settlement such that notice is given to the Settlement Class
Members, Plaintiff will address the eighth factor in their motion for final approval.

1 time penalties claims. For example, Defendant possessed strong defenses to these
2 derivative claims, since it can argue a “good-faith” dispute that any wages were
3 due, thereby precluding the imposition of penalties. *See* 8 Cal. Code Regs. § 13520
4 (a “good-faith” dispute exists to waiting time penalties “when an employer
5 presents a defense, based in law or fact which, if successful, would preclude any
6 recovery on the part of the employee. The fact that a defense is ultimately
7 unsuccessful will not preclude a finding that a good faith dispute did exist.”); *see*
8 *also Naranjo v. Spectrum Sec. Servs., Inc.*, 88 Cal.App.5th 937, 951 (2023)
9 (applying a “willfulness” standard to the imposition of wage statement penalties
10 under Labor Code § 226).

11 Further, because Plaintiff’s claims for civil penalties under PAGA were
12 wholly derivative of the underlying Labor Code claims, Defendant could have
13 successfully defeated or minimized Plaintiff’s PAGA claims if other claims were
14 to fail. *See, e.g., Elliot v. Spherion Pacific Work, LLC*, 572 F.Supp.2d 1169, 1181-
15 82 (C.D. Cal. 2008) (“Plaintiff’s claim under the Private Attorneys General Act is
16 wholly dependent upon her other claims. Because all of Plaintiff’s other claims fail
17 as a matter of law, so does her PAGA claim.”).

18 In short, Plaintiff’s ability to certify, and prevail on his claims was far from
19 guaranteed. Indeed, “[i]n most situations, unless the settlement is clearly
20 inadequate, its acceptance and approval are preferable to lengthy and expensive
21 litigation with uncertain results.” *Nat’l Rural Telecomm. Coop. v. DIRECTTV,*
22 *Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (internal quotations omitted). Thus, this
23 factor supports preliminary approval.

24 **2. Risk, Expense, Complexity, and Duration of Further** 25 **Litigation**

26 The Parties have already expended substantial resources investigating this
27 case and vigorously preparing for mediation. This settlement avoids the risk of
28 future litigation and the accompanying additional expense. *See, e.g., In re Portal*

1 *Software, Inc. Securities Litig.*, No. C-03-5138 VRW, 2007 WL 4171201 (N.D.
2 Cal. Nov. 26, 2007), at *3 (noting that the “inherent risks of proceeding to
3 summary judgment, trial and appeal also support the settlement”).

4 **3. Risk of Maintaining Class Action Status**

5 The Court has not ruled on class certification as to Plaintiff’s claims for
6 unpaid work time, meal period violations, and rest period violations. There would
7 therefore be a risk that the Court would deny the certification of the class. Thus,
8 this factor, too, supports preliminary approval of the settlement.

9 **4. Amount Offered in Settlement Given Realistic Value of** 10 **Claims**

11 As detailed immediately below, the Settlement provides a monetary recovery
12 for the Settlement Class in the face of vigorously disputed claims in this matter.
13 Thus, preliminary approval is appropriate.

14 In preparation for mediation, Defendant provided Plaintiff’s counsel with
15 randomized timekeeping and payroll records for the putative class members.
16 Plaintiff’s counsel hired an expert to analyze this data and create a damages model.
17 Yslas Decl. ¶ 18. The damages model is based on an estimated 51,800 pay periods
18 worked by putative class members and an average hourly rate of \$35.62 per hour.
19 *Id.*

20 Minimum and Overtime Wages: Plaintiff alleges that Defendant failed to pay
21 the putative class for all hours worked, including minimum, straight time, and
22 overtime wages, due to its consistent policy and practice of, for example, requiring
23 employees to work through their meal periods while clocked out. Yslas Decl. ¶ 20.
24 Plaintiff further alleges Defendant required Plaintiff and employees to undergo a
25 security verification process, where they had to verify their identity. *Id.* Plaintiff
26 also alleges Defendant failed to compensate the putative class for all hours spent
27 undergoing verification screenings. *Id.* Defendant denied these claims. For purposes
28 of calculating Defendant’s liability based on a best-case scenario for Plaintiff and the

1 Class, Class Counsel estimates that Defendant's maximum potential exposure by
2 assuming that all unpaid work time should have been paid at the overtime rate, and
3 Class Counsel assumed that Defendant is liable for one (1) hour of unpaid worktime
4 per workweek. *Id.* This results in an estimate of approximately \$2,767,674.00
5 (51,800 workweeks x \$35.62 hourly rate x 1.5 overtime rate x 0.50 hour of unpaid
6 work per workweek), but Class Counsel applied a risk discount based on a 20%
7 chance of succeeding at class certification and a 20% chance of succeeding at trial
8 on the merits because liability depends on whether Defendant knew or should have
9 known that class members were working off-the-clock, yielding a realistic damage
10 estimate of approximately \$110,706.96 (\$2,767,674.00 x 20% x 20%). *Id.*

11 Meal Periods: With respect to the meal period claim, Plaintiff alleges that
12 Defendant required Plaintiff and similarly situated class members to either work in
13 lieu of taking meal periods, or their meal periods were untimely or interrupted. Yslas
14 Decl. ¶ 21. Specifically, Plaintiff alleges that he was regularly required to carry a
15 radio with him at all times during his shift to communicate with his supervisors in lieu
16 of taking a meal and/or rest period. *Id.* Plaintiff further alleges his meal breaks were
17 often interrupted by supervisors due to understaffing. Class Counsel's expert analyzed
18 Defendant's timekeeping records and found that approximately 29.30% of all meal
19 break violations consisting of short, late, or missed meal periods. *Id.* Defendant
20 asserts Plaintiff's claim lacks merit because it had lawful written policies providing
21 meal periods and rest breaks and specifically informed employees that they were to
22 turn their radios off during meal periods and rest breaks. Additionally, Defendant
23 paid premiums to employees that were not provided meal periods and rest breaks.
24 Therefore, potential liability for the meal period claim is approximately \$2,230,763.02
25 (213,743 shifts x \$35.62 hourly rate x 29.30% violation rate). *Id.* Here, Defendant
26 provided meal break waiver forms to all employees upon onboarding and expected
27 employees to sign the meal break waiver forms. *Id.* Accordingly, after taking into
28 account the difficulty of certifying and proving meal period claims, as well as

1 Defendant's contention that the claim lacks merit and a 29.30% violation rate is
2 unrealistic based on attestations that employees allegedly completed in Defendant's
3 timekeeping system at the end of each shift, as well as Defendant's second period meal
4 waiver and on-duty meal period agreement for employees who had transport duties,
5 Class Counsel discounted this figure based on a 25% chance of succeeding at class
6 certification and a 20% chance of succeeding at trial, yielding a realistic damage
7 estimate of approximately \$111,538.15 ($\$2,230,763.02 \times 25\% \times 20\%$). *Id.*

8 Rest Breaks: With respect to the rest period claim, Plaintiff alleges that
9 Defendant required him and similarly situated class members to work in lieu of taking
10 rest periods, remain on-call during their rest periods or their rest periods were
11 interrupted. Yslas Decl. ¶ 22. Similar to its meal period policy and practice, Plaintiff
12 and other employees, or some of them, allege that they routinely and consistently were
13 not afforded compliant first or second rest break due to understaffing and the busy
14 nature of the work environment. *Id.* Specifically, Plaintiff and other employees allege
15 that they were required to be relieved by another employee before they could take their
16 break. *Id.* Assuming a 29.30% violation rate for the class period based on Plaintiff's
17 and other class members' experience working for Defendant, Defendant's potential
18 liability for the rest period claim is approximately \$2,257,439.12 (216,299 shifts x
19 \$35.62 hourly rate x 29.30% violation rate); however, Class Counsel discounted this
20 figure to account for the difficulty of certifying and proving rest period claims,
21 particularly because rest periods do not have to be recorded, and to account for the
22 possibility of Class Members voluntarily choosing to forego a rest period. *Id.* Because
23 this claim would have relied exclusively on Class Member testimony, Class Counsel
24 discounted this claim based on a 15% chance of succeeding at class certification and
25 a 20% chance of succeeding at trial, yielding a realistic damage estimate of
26 approximately \$ \$67,723.17 ($\$2,257,439.12 \times 15\% \times 20\%$). *Id.*

27 Reimbursements: Plaintiff's reimbursement claim was based on the allegation
28 that Defendant expected employees to pay out-of-pocket for necessary employment-

1 related expenses, including, but not limited to, the cost of using their personal cell
2 phones for business related purposes. Yslas Decl. ¶ 23. Plaintiff alleges Defendant
3 did not reimburse him or other employees for these expenses. *Id.* Based on Plaintiff's
4 estimate that he incurred \$30.00 in unreimbursed expenses per month, Class Counsel
5 assumed each Class Member incurred \$30.00 in unreimbursed expenses per month in
6 calculating potential exposure to be approximately \$388,500.00 for this claim. *Id.*
7 However, Defendant argued that these expenses were not required by Defendant, and
8 that it could not have known that these expenses were being incurred. Moreover,
9 employees are not even allowed to bring their cell phones into the facility. *Id.*
10 Accordingly, Class Counsel discounted this claim based on a 20% chance of
11 succeeding at class certification and a 25% chance of succeeding at trial, yielding a
12 realistic damage estimate of approximately \$19,425.00 (\$388,500.00 x 20% x 25%).
13 *Id.*

14 In sum, Class Counsel estimated that Plaintiff's maximum recovery for the off-
15 the-clock claim, meal period violations, rest period violations, and expense
16 reimbursement violations is approximately \$7,644,376.14. Yslas Decl. ¶ 24.
17 However, after factoring in the risk and uncertainty of prevailing at certification and
18 trial, Class Counsel estimates that Plaintiff's realistic estimated recovery for the non-
19 penalty claims is approximately \$309,393.28. *Id.*

20 Derivative Penalties and PAGA Penalties: With respect to Plaintiff's derivative
21 claims for statutory and civil penalties, Plaintiff estimated that Defendant's realistic
22 potential liability is approximately \$7,613,282.28. Yslas Decl. ¶ 25. If Plaintiff prevails
23 on any one of his underlying claims, Defendant will incur significant derivative liability.
24 *Id.* Finally, determining whether Defendant violated the California Labor Code will
25 determine whether they violated the Unfair Competition Law, which defines unfair
26 competition to include any "unlawful" business practice. (*Cortez v. Purolator Air*
27 *Filtration Products Co.* 23 Cal.4th 163, 177-78 (2000) (Labor Code violation deemed
28 unlawful business practice under the UCL).); *see also* Yslas Decl. ¶ 25. Defendant's

1 maximum potential liability for waiting time penalties is approximately \$3,207,937.20
2 ([316 employees x \$35.62 hourly rate x 8.00 hours/day x 30 days] + [316 employees x
3 \$35.62 hourly rate x 1 hour/day x 1.5 overtime rate x 30 days]) based on approximately
4 316 terminated class members during the 3-year statute of limitations period,
5 approximately \$3,272,000.00 (818 employees x \$4,000 statutory maximum) for
6 inaccurate wage statements based on approximately 818 class members who worked
7 during the 1-year statute of limitations period, and approximately \$1,285,300.00 for
8 PAGA violations based on the Court assessing a \$100 penalty for initial violations for all
9 12,853 pay periods within the PAGA period. Yslas Decl. ¶ 25. In light of the foregoing,
10 Class Counsel believes that it would be unrealistic to expect the Court to award the full
11 \$7,765,237.20 in penalties given Defendant's defenses, the contested nature of Plaintiff's
12 claims, the challenges of establishing willfulness as applicable, and the discretionary
13 nature of penalties. *Id.* Defendant could successfully assert defenses to Plaintiff's wage
14 statement and waiting time penalties claims. *Id.* For example, Defendant possessed
15 strong defenses to these derivative claims, since it can argue a "good faith" dispute that
16 any wages were due, thereby precluding the imposition of penalties. *See* 8 Cal. Code
17 Regs. § 13520 (a "good-faith" dispute exists to waiting time penalties "when an employer
18 presents a defense, based in law or fact which, if successful, would preclude any recovery
19 on the part of the employee. The fact that a defense is ultimately unsuccessful will not
20 preclude a finding that a good faith dispute did exist."); *see also Naranjo v. Spectrum*
21 *Sec. Servs., Inc.*, 88 Cal.App.5th 937, 951 (2023) (applying a "willfulness" standard to
22 the imposition of wage statement penalties under Labor Code § 226). *See also* Yslas
23 Decl. ¶ 25. Moreover, because Plaintiff's claims for civil penalties under PAGA were
24 wholly derivative of the underlying Labor Code claims, Defendant asserted that the
25 PAGA claims would rise or fall with such claims. *See, e.g., Elliot v. Spherion Pacific*
26 *Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) ("Plaintiff's claim under the
27 Private Attorneys General Act is wholly dependent upon her other claims. Because all of
28 Plaintiff's other claims fail as a matter of law, so does her PAGA claim.") *see also* Yslas

Decl. ¶ 25. Considering that the underlying claims are realistically estimated to be approximately \$309,393.28, such a disproportionate award would also raise due process concerns. Yslas Decl. ¶ 25. As such, Class Counsel discounted these figures to account for the risk and uncertainty of prevailing at trial, resulting in a realistic evaluation of approximately \$96,238.12 ($\$3,207,937.20 \times 15\% \times 20\%$) for waiting time penalty claims, approximately \$98,160.00 ($\$3,272,000.00 \times 15\% \times 20\%$) for wage statement penalty claims, and \$128,530.00 for PAGA penalties, or approximately \$322,928.12 total for statutory and civil penalties. *Id.*

Using these estimated figures, Plaintiff predicted that the realistic maximum recovery for all claims, including penalties, would be approximately \$632,321.40. Yslas Decl. ¶ 26. This means that the \$624,550.00 settlement figure represents approximately 98.77 % of the realistic maximum recovery ($\$624,550.00 / \$632,321.40 = 98.77\%$). *Id.* Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class.² *Id.* Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

5. Investigation Completed and the Status of Proceedings

The parties engaged in a significant amount of investigation, informal discovery, and analysis in preparation for Early Neutral Evaluation conference prior to reaching the proposed settlement. *Id.* at ¶ 16. Defendant responded to Plaintiff's informal discovery in preparation for the Early Neutral Evaluation

² See, e.g., *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was between 9.53 percent of Plaintiffs' maximum recovery); *Bravo v. Gale Triangle, Inc.* 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (finding that "a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.* 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party.").

1 conference, provided extensive information on the company's wage and hour
2 policies and practices, provided sample time and payroll records for the Settlement
3 Class Members, and produced hundreds of pages of relevant documents. *Id.* It was
4 only after the exchange of a substantial amount of data and information that the
5 parties participated in mediation sessions at the Early Neutral Evaluation
6 conference and ultimately reached this proposed settlement. *Id.*

7 **6. The Experience and Views of Counsel**

8 “Parties represented by competent counsel are better positioned than courts
9 to produce a settlement that fairly reflects each party's expected outcome in
10 litigation.” *In re Pac. Enter. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here,
11 Plaintiff is represented by experienced wage and hour class action counsel who
12 pressed Plaintiff's claims forward against a large employer who retained the well-
13 regarded firm Gleason & Favarote, LLP, which regularly litigates large, high-
14 stakes cases. Yslas Decl., ¶ 39. Wilshire Law Firm, PLC is a nationally recognized
15 employment litigation firm with extensive experience prosecuting wage-and-hour
16 class and representative actions, supported by a large team and a consistent record
17 of recognition as a “Best Law Firm” since 2020. *Id.* at ¶¶ 39-41. Class Counsel
18 bring decades of specialized labor and employment experience, including
19 leadership roles at major law firms, substantial success in mediating and litigating
20 class and PAGA actions resulting in significant recoveries, and demonstrated
21 expertise through prior appointments as class counsel, trial victories, and appellate
22 achievements. *Id.*

23 Therefore, this factor strongly supports preliminary approval. *See, e.g.,*
24 *Gribble v. Cool Transports Inc.*, No. CV 06-04863 GAF SHx, 2008 WL5281665
25 (C.D. Cal. Dec. 15, 2008), at *9 (“Great weight is accorded to the recommendation
26 of counsel, who are most closely acquainted with the facts of the underlying
27 litigation.”).

28 ///

1 **C. The Settlement Meets the Requirements for Preliminary Approval**

2 At this stage, the Court can grant preliminary approval of the settlement and
3 direct that notice be given if the proposed settlement: (1) falls within the range of
4 possible approval; (2) appears to be the product of serious, informed and non-
5 collusive negotiations; and (3) has no obvious deficiencies. *See* Manual for Complex
6 Litigation § 30.41 (3d ed. 1995); Conte & Newberg, *Newberg on Class Actions* §
7 11:24-25 (4th ed. 2002). These criteria are met here.

8 **1. The Settlement is Within the Range of Possible Approval**

9 As detailed above, the proposed settlement reflects a substantial recovery in
10 light of real litigation risks to both merits and certification. Thus, the proposed
11 settlement is within the range of possible approval, such that notice should be
12 provided to the settlement class so that they can consider the settlement. *In re Mego*
13 *Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (“the Settlement amount
14 of almost \$2 million was roughly one-sixth of the potential recovery, which, given
15 the difficulties in proving the case, is fair and adequate”). The Court will have the
16 opportunity to again assess the reasonableness of the settlement after the
17 Settlement Class has the opportunity to opt-out or object.

18 **2. The Settlement Resulted from Serious, Informed and Non-**
19 **Collusive Negotiations**

20 The Settlement is the product of an Early Neutral Evaluation Conference
21 presided over by United States Magistrate Judge, Hon. Daniel E. Butcher. *In re*
22 *Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist.
23 LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs
24 considerably against any inference of a collusive settlement), *D’Amato v. Deutsche*
25 *Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a “mediator’s involvement in pre-
26 certification settlement negotiations helps to ensure that the proceedings were free
27 of collusion and undue pressure.”) At all times, the Parties’ negotiations were
28 adversarial and non-collusive.

1 **3. The Settlement is Devoid of Obvious Deficiencies**

2 The settlement contains none of the provisions that courts sometimes
3 identify as cause for concern.

4 *a) The Settlement terms are fair and reasonable*

5 There are no deficiencies in the terms of the settlement. The settlement
6 provides for a pro rata distribution of the Net Settlement Fund based on each
7 Settlement Class Member's work weeks worked during the class period. In
8 addition, Settlement Class Members will not have to make claims to receive a
9 settlement payment. Each Settlement Class Member who can be located will be
10 mailed a payment automatically. To protect the interests of all Settlement Class
11 Members, the settlement incorporates procedures to ensure that as many Settlement
12 Class Members as possible can be located. Also, the release given by Settlement
13 Class Members is limited to those claims that were or could have been alleged in
14 the Operative Complaint, and the other pleadings filed in the Lawsuits (as defined
15 in the Settlement Agreement) and the notices sent to the LWDA pursuant to PAGA
16 by or on behalf of the Plaintiff.

17 *b) The Class Representative will not receive disproportionate*
18 *payments to those of class members*

19 The Class Representative will not receive any premium above the amounts
20 received by other Settlement Class Members but instead will receive settlement
21 shares calculated by the same method. Although the Class Representative will be
22 eligible to receive an Incentive Award in addition to his Individual Settlement
23 Payment, the settlement is not contingent on Court approval of the Incentive
24 Award. Any amount that is not approved by the Court will be added to the Net
25 Settlement Fund for Settlement Class Member Individual Settlement Payments.

26 Moreover, the proposed \$10,000.00 Incentive Award to the Class
27 Representative is within the range that courts in this circuit routinely approve. *See,*
28 *e.g., Hightower v. JP Morgan Chase Bank, NA*, No. CV 11-1802 PSG, 2015 WL

1 9664959 (C.D. Cal. Aug. 4, 2015), at *12 (approving \$10,000 incentive awards to
2 each of seven lead plaintiffs in \$12 million wage and hour settlement); *LaFleur v.*
3 *Med. Mgmt. Int’l, Inc.*, No. EDCV 13–00398–VAP (OPx), 2014 WL 2967475
4 (C.D. Cal. June 5, 2014), at *8 (approving incentive awards of \$15,000 each to two
5 class representatives from \$535,000 wage and hour class action settlement). The
6 total of \$10,000.00 in a proposed incentive award comprises a mere 1.60% of the
7 gross settlement amount of \$624,550.00, and it is therefore well within the range
8 of reasonableness. *See, e.g., In re On-Line DVD Rental Antitrust Litig.*, 779 F.3d
9 934, 937-38 (9th Cir. 2015) (approving incentive awards that comprised in the
10 aggregate less than 1% of gross settlement value). Plaintiff will provide a
11 declaration in support of final approval detailing his active participation and the
12 services they provided to the class.

13 *c) The Settlement’s provisions for attorneys’ fees and costs*
14 *are in the range that is routinely approved*

15 The attorneys’ fees and costs provisions of the Settlement are similarly fair
16 and reasonable. The settlement permits Class Counsel to seek attorneys’ fees of up
17 to 30% of the gross settlement amount of \$624,550.00, or \$187,365.00. A fee
18 award of one-third of the common fund is consistent with fee awards made by
19 federal courts in the Ninth Circuit. *See, e.g., In re Pac. Enter. Sec. Litig.*, 47 F.3d
20 373, 378-79 (9th Cir. 1995) (affirming fee award of one-third of settlement); *Singer*
21 *v. Becton Dickinson & Co.*, No. 08-821 IEG, 2010 WL 2196104, at *8-9 (S.D. Cal.
22 Jun. 1, 2010) (33.33% of wage and hour settlement “falls within the typical range
23 ... in similar cases”; citing awards of 33.33%-40%); *Stuart v. Radioshack Corp.*,
24 No. C-07-4499 EMC, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010), at *6 (awarding
25 one-third of settlement fund in wage-and-hour class action and noting that “[t]his
26 is well within the range of percentages which courts have upheld as reasonable in
27 other class action lawsuits”). Here, the proposed award of attorneys’ fees to Class
28 Counsel in this case can be justified under either method – lodestar or percentage

1 recovery. Class Counsel, however, intends to base the proposed award of fees, costs
2 and expenses on the percentage method as many of the entries in the time records will
3 have to be redacted to preserve attorney-client and attorney work product privileges.

4 In this case, the fees and costs provision is reasonable. WLF has had fee awards
5 of up to 33 and 1/3% approved in Federal Court. Yslas Decl., ¶ 35. In *Frausto v.*
6 *Bank of America, N.A.* (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir.
7 Feb. 27, 2020), 2019 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251
8 (N.D. Cal. Aug. 2, 2018), the Court approved Wilshire Law Firm, PLC's application
9 for 33 and 1/3% of a \$1,890,000.00 based on the percentage of recovery method and
10 further supported by a negative lodestar multiplier. *Id.* In *Frausto*, the Northern
11 District of California found that Class Counsel's requested fee award was appropriate
12 based on the significant total benefits made available to the class members and the
13 subsequent lodestar cross-check, where Class Counsel had a negative multiplier. *Id.*

14 Class Counsel has also created substantial benefits for the class members, and,
15 has also expended significant attorney hours in the litigation of this case. *Id.* Class
16 Counsel will file a separate motion for attorneys' fees and costs pursuant to Federal
17 Rule 23(h) two weeks before the deadline for Settlement Class Members to opt-
18 out or object to afford Settlement Class Members a full opportunity to review and
19 comment on it. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 991
20 (9th Cir. 2010).

21 Moreover, Class Counsel's hourly rates are reasonable when compared to
22 rates charged within the relevant legal marketplace. Yslas Decl. ¶ 51, Exhibit 2.
23 In light of the foregoing, and considered against the risks of continued litigation,
24 and the importance of advocating for employment rights and a speedy recovery,
25 the relief provided under the Settlement represents a very strong result for the
26 Aggrieved Employees. Class Counsel's fee request is fair and reasonable and
27 should be approved.

28 ///

1 d) *The allocation of \$80,000 to the State’s share of PAGA*
2 *penalties effectuates PAGA’s purposes*

3 The allocation of \$80,000.00 to the PAGA claim, which amounts to a
4 \$52,000.00 payment to the LWDA for the State’s share of PAGA penalties, is
5 consistent with recent authority regarding the allocation of settlement proceeds to
6 PAGA in large wage and hour class actions. In a combined class action and PAGA
7 settlement of wage and hour claims, “the Court must evaluate the adequacy of
8 compensation to the class as well as the adequacy of the settlement in view of the
9 purposes and policies of PAGA. In doing so, the court may apply a sliding scale.
10 For example, if the settlement for the Rule 23 class is robust, the purposes of PAGA
11 may be concurrently fulfilled.” *O’Connor v. Uber Technologies, Inc.*, 201
12 F.Supp.3d 1110, 1134 (N.D. Cal. 2016).

13 Applying the sliding scale analysis, courts have held that comparable
14 allocations to PAGA penalties in a class action settlement fulfill the purposes of
15 PAGA and warrant approval. *See, e.g., Syed v. M-I, LLC*, No. 1:12-cv-01718-DAD,
16 2017 WL 714367 (E.D. Cal. Feb. 22, 2017), at *13 (granting preliminary approval
17 of allocation of \$100,000 to PAGA penalties from gross settlement of \$3.95
18 million settlement of California wage and hour claims); *Viceral v. Mistras Group,*
19 *Inc.*, No. 15-cv-02198-EMC, 2016 WL 5907869 (N.D. Cal. Oct. 11, 2016), at *9
20 (granting preliminary approval of allocation of \$20,000 to PAGA penalties from
21 \$6 million settlement based on overall quality of settlement balanced against
22 litigation risks).

23 **D. The Court Should Approve the Proposed Class Notice**

24 Rule 23(c)(2)(B) requires that absent class members receive the “best notice
25 that is practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B). “Notice is
26 satisfactory if it generally describes the terms of the settlement in sufficient detail to
27 alert those with adverse viewpoints to investigate and to come forward and be heard.”
28 *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (internal

1 quotations marks and citations omitted). Such notice is reasonable if mailed to each
2 member of a settlement class “who can be identified through reasonable effort.”
3 *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 176 (1974).

4 The proposed Notice meets all of the requirements. The Notice will be
5 provided in English and Spanish. The Notice explains in plain and easily understood
6 language: what the case is about; the class definition and claims; the settlement
7 amount and approximate individual amount each Settlement Class Member will
8 receive; the requested amounts to be paid to Class Counsel and as Incentive Award
9 to the Class Representative; the rights of Settlement Class Members to appear
10 through attorneys; the rights of Settlement Class Members to opt-out or object to the
11 Settlement’s terms and the process by which they can do so; the binding effect of the
12 Settlement on those who do not request exclusion, including a description of the
13 claims being released; and the particulars of the final fairness hearing. Settlement
14 Class Members whose Notices do not have to be re-mailed will have 45 calendar days
15 to decide whether to opt out or object to the Settlement. *See* Settlement, § 1.21.;
16 Settlement, Ex. A (Class Notice). The deadlines for Class Members’ written
17 objections, challenges to Class Period Workweeks and/or PAGA Pay Periods, and
18 Requests for Exclusion will be extended an additional 15 calendar days beyond the
19 45 days otherwise provided in the Class Notice for all Class Members whose notice
20 is re-mailed. Settlement, § 1.21.

21 The Parties’ proposed plan for directing notice to the Class is also “the best
22 notice that is practicable under the circumstances.” Using last-known addresses
23 provided by Defendants, the Settlement Administrator will send the Notice by First
24 Class U.S. Mail to all Settlement Class Members. Settlement, § 2.15. Further, the
25 Settlement Administrator will perform skip traces to obtain the correct address of
26 any Settlement Class Members for whom the Notice is returned as undeliverable, and
27 shall attempt re-mailings where new addresses are ascertained. Settlement, §2.16.

28 For these reasons, the Settlement’s plan for directing notice to Settlement

1 Class Members satisfies Rule 23(c)(2)(B). *See, e.g., Wright v. Linkus Enter., Inc.*,
2 259 F.R.D. 468, 475 (E.D. Cal. 2009); *Misra v. Decision One Mortg. Co.*, No. 07-
3 0994 DOC, 2009 WL 4581276, *9 (C.D. Cal. Apr. 13, 2009).

4 **E. The Court Should Set a Schedule for Final Approval**

5 Because the case meets the requirements for certification of a settlement
6 class and the Settlement meets the requirements for preliminary approval, the
7 Court should direct notice to issue and set a final fairness hearing to decide whether
8 to grant final approval to the Settlement, as well as whether to grant the Class
9 Representative's application for an award of an incentive payment and Class
10 Counsel's motion for attorney's fees and costs. *See* Fed. R. Civ. P. 23(e)(2).

11 Plaintiff requests that the Court set the Final Approval hearing for one
12 hundred and twenty (120) days following the date of Preliminary Approval, or the
13 earliest available date thereafter. As reflected in the proposed order submitted
14 herewith, Plaintiff further requests that the Court order the following briefing
15 schedule:

16 Plaintiff's motion for attorneys' fees 17 and costs	14 days before the deadline for Settlement Class Members to submit 18 objections to the settlement
19 Plaintiff's motion for final approval of 20 the settlement and for Class 21 Representative service payments	28 days before the Final Approval Hearing
22 Defendant's Counsel shall file with the 23 Court a declaration attesting that CAFA 24 Notice has properly been served 25 pursuant to 28 U.S.C. §1715	10 days before the Final Approval hearing
26 Reply briefs, if any	14 days before the Final Approval 27 hearing 28

1 **IV. CONCLUSION**

2 For the foregoing reasons, Counsel respectfully requests that the Court grant
3 preliminary approval of the proposed class action settlement.
4

5 Respectfully submitted,

6 Dated: April 30, 2026

WILSHIRE LAW FIRM

7 s/ Diego Aviles
8 _____

9 Diego Aviles

10 Email: diego.aviles@wilshirelawfirm.com

11 Attorneys for Plaintiff

12 Dated: April 30, 2026

GLEASON & FAVAROTE, LLP

13 s/ Torey Joseph Favarote
14 _____

15 Torey Joseph Favarote

16 Email: tfavarote@gleasonfavarote.com

17 Attorneys for Defendant
18
19
20
21
22
23
24
25
26
27
28