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18

19 **SUPERIOR COURT OF CALIFORNIA**

20 **COUNTY OF SAN BENITO**

21 MIGUEL VEGA, on behalf of himself
22 and all similarly aggrieved employees,

23 Plaintiff,

24 v.

25 TRICAL, INC.; and DOES 1 through 50,
26 inclusive,

27 Defendants.

Case No. CU-25-00181

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

Date: November 12, 2026

Time: 1:30 p.m.

Dept.: 1

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on November 12, 2026, at 1:30 p.m., or as soon
3 thereafter as the matter may be heard, before the Honorable J. Omar Rodriguez in Department
4 1 of the above-referenced Court, located at 450 Fourth Street, Hollister, California, Plaintiff
5 Miguel Vega ("Plaintiff") will seek an Order:

6 (1) approving the Joint Stipulation of Class Action and PAGA Settlement and Release
7 of Claims ("Settlement" or "Settlement Agreement") in this matter;

8 (2) conditionally certifying the following Class for settlement purposes only:
9 all persons who work or worked for Defendant as non-exempt
10 employees in the State of California at any time from June 10, 2021,
11 through the date of preliminary approval of this settlement

12 (3) appointing Plaintiff as Class Representative, and the law firms of Fitzpatrick &
13 Swanston and Diversity Law Group, P.C., as Class Counsel;

14 (4) preliminarily approving the Settlement Agreement and the total Gross Settlement
15 Amount in the amount of Three Hundred Fifty Dollars and 00/100 Cents (\$350,000.00);

16 (5) finding on a preliminary basis that the Settlement Agreement appears to be within
17 the range of reasonableness of a settlement, including the amount of Plaintiff's service award,
18 attorneys' fees and costs, settlement administration costs, and the allocation of payments to
19 Class Members that could ultimately be given final approval by this Court;

20 (6) approving the Notice Packet to be sent to Class Members;

21 (7) appointing Apex as the Settlement Administrator; and

22 (8) setting the matter for a Final Approval hearing.

23 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
24 provides for court approval of the settlement of a purported class action and allows the Court
25 to preliminarily certify a class for settlement purposes.

26 The basis for this Motion, filed without any opposition from Defendant Trical, Inc., is
27 that the proposed settlement is fair, adequate, and reasonable and the procedures proposed by
28 the Parties are adequate to ensure the opportunity of Class Members to participate in, opt-out
of, or object to the settlement.

1 This Motion will be based on the attached Memorandum of Points and Authorities, the
2 Settlement Agreement and the proposed Notice Packet, and the supporting Declarations of B.
3 James Fitzpatrick, Alison L. Baker, Larry W. Lee, Max Gavron, Plaintiff Miguel Vega, and
4 upon the oral arguments of counsel (should there be any) and on the complete records and file
5 herein.

6
7 Dated: September 15, 2026

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

8
9 By: /s/ B. James Fitzpatrick
10 B. James Fitzpatrick
11 Attorneys for Plaintiff,
12 MIGUEL VEGA, on behalf of himself
13 and all similarly aggrieved employees,
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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	7
II. PROCEDURAL HISTORY	8
A. The Operative Complaint.....	9
III. DISCUSSION	10
A. Proposed Class Definition	12
B. Settlement Terms and Evaluation	13
1. Amount and Manner of Distribution of the Compensation to be Provided to Class Members Including the Amount, or an Estimate, of What Each Class Member Will Receive.....	20
2. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Class Members or Might Revert to the Defendants.....	22
3. Scope of the Release of Class Members' Claims	22
4. Tax Treatment of Settlement Amounts.....	22
5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations	23
C. Notice to Class Members	23
D. Typicality and Adequacy of Representation	24
1. Class Representative's Claims are Typical of the Class.....	24
2. Class Counsel Have Adequately Represented the Class and Have Experience with Wage and Hour Class Action	25
E. Costs and Fees	26
1. Attorneys' Fees and Costs	26
2. Proposed Payment to the Class Representative	27
3. Settlement Administration Costs.....	28
IV. NOTICE TO THE LWDA	28
V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL	29

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal. App. 4th 1157 (2008)	18
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018).....	18, 19
<i>City and County of San Francisco v. Sweet</i> , 12 Cal. 4th 105 (1995).....	26
<i>City of San Jose v. Superior Court</i> , 12 Cal. 3d 447 (1974)	25
<i>Donohue v. AMN Services, LLC</i> , 11 Cal. 5th 58 (2021)	16
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	12
<i>Duran v. U.S. Bank Nat'l Ass'n</i> , 59 Cal. 4th 1 (2014).....	19
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480 (2016)	26, 27
<i>Naranjo v. Spectrum Security Services, Inc.</i> , 13 Cal.5th 93, 117 (2022).....	16, 17
<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462 (1981).....	25
<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	26
<i>Stephens v. Montgomery Ward & Co.</i> , 193 Cal. App. 3d 411 (1987)	25
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800 (1971)	25
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	12, 26

Federal Cases

<i>Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.</i> 2009 WL 2448430 (S.D. Cal. Aug. 10, 2009)	18
<i>Bellinghausen v. Tractor Supply Co.</i> , No. 13-CV-02377-JSC, 2015 WL 1289342 (N.D. Cal. Mar. 20, 2015)	20
<i>Bernstein v. Virgin Am., Inc.</i> , 3 F.4th 1127, 1144 (9th Cir. 2021).....	18
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	26
<i>Greko v. Diesel U.S.A., Inc.</i> , No. 10-cv-02576 NC, 2013 WL 1789602 (N.D. Cal. Apr. 26, 2013)	20
<i>Hammon v. Barry</i> , 752 F. Supp. 1087 (D.D.C. 1990)	13
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (1998).....	24
<i>Harris v. Vector Mktg. Corp.</i> , 656 F. Supp. 2d 1128 (N.D. Cal. 2009).....	17

1	<i>In re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979)	13
2	<i>In re Baldwin-United Corp.</i> , 105 F.R.D. 475 (S.D.N.Y. 1984)	12
3	<i>In re Chicken Antitrust Litig.</i> , 560 F. Supp. 957 (N.D. Ga. 1980)	13
4	<i>Lesevic v. Spectraforce Techs., Inc.</i> , 2021 WL 1599310 (N.D. Cal. Apr. 23, 2021)	19
5	<i>Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.</i> , 834 F.2d 677 (7th Cir. 1987)	13
6	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004)	13
7	<i>Priddy v. Edelman</i> , 883 F.2d 438 (6th Cir. 1989)	13
8	<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n</i> , 79 F.R.D. 571 (E.D. Pa. 1978)	13
9	<i>Steinberg v. Carey</i> , 470 F. Supp. 471 (S.D.N.Y. 1979)	13
10	<i>Van Ba Ma v. Covidien Holding Inc.</i> , U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014)	20
11	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. CV 09-00261 SBA EMC, 2012 WL 5878390 (N.D. Cal. Nov. 21, 2012)	20
12	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759 (9th Cir. 1997)	26
13	Statutes, Codes & Regulations	
14	Labor Code § 203	17
15	Labor Code § 226	17
16	Labor Code § 2699(e)(2)	18
17	Labor Section § 226(e)	17
18	Other Authorities	
19	Alba Conte & Herbert B. Newberg, <i>4 Newberg on Class Actions</i> § 11.26 (4th ed. 2002).11, 12, 13	
20	<i>The Manual for Complex Litigation, Third</i> § 30.41	10
21		
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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act
3 (“PAGA”) action seeking statutory and civil penalties under the California Labor Code.
4 Plaintiff alleges that Defendant failed to pay all minimum and overtime wages, failed to
5 provide proper off-duty meal and rest periods or pay premiums in lieu thereof, failed to
6 reimburse business expenses, failed to provide accurate itemized wage statements, failed to
7 timely pay all wages and upon separation of employment, and engaged in unfair business
8 practices. Plaintiff brings class and PAGA claims based on these violations. The Parties have
9 reached a proposed class and PAGA action settlement, the terms of which are reflected in the
10 Parties’ Joint Stipulation of Class Action and PAGA Settlement and Release of Claims
11 (“Settlement,” “Settlement Agreement,” or “SAR”)¹.

12 Prior to the settlement of this action, the Parties thoroughly investigated the facts
13 relating to the class and PAGA claims alleged in the lawsuit and engaged in a thorough study
14 of legal principles applicable to the claims asserted against Defendant. Through the exchange
15 of informal discovery, Defendant provided necessary data pertaining to the number of putative
16 class members and number of workweeks at issue, a sample of time and pay records of the
17 putative class members, as well as information pertaining to Defendant’s payroll policies and
18 practices. Thereafter, the Parties attended a full day of mediation with Hon. Peter H. Kirwan
19 (Ret.). As a result, the Parties reached the current settlement of the class and PAGA claims.
20 The following represents the key terms of the settlement:

- 21 • Gross Settlement Amount of \$350,000.00, which will be paid by
22 Defendant and distributed to the Class on a **non-reversionary** basis
 (See SAR ¶ III.B.1.);
- 23 • Estimated Class of 274 individuals (*Id.* ¶ III.B.1.);
- 24 • Class Members do **not** need to submit claim forms to participate in the
25 settlement (*Id.* ¶ III.C.3.);
- 26 • Plaintiff’s Service Award of up to \$15,000.00 (*Id.* ¶ III.B.5.);
- 27 • Class Counsel’s attorneys’ fees of up to \$122,500.00 (35% of the Gross

28 ¹ The Settlement Agreement is attached to the Declaration of B. James Fitzpatrick
 (“Fitzpatrick Decl.”) as **Exhibit 1**.

Settlement Amount), which includes costs and expenses up to \$25,000.00 (*Id.* ¶ III.B.6.);

- Settlement Administration Costs of up to \$7,690.00 (*Id.* ¶ III.B.7; Fitzpatrick Decl. ¶ 38);
- PAGA penalties of \$35,000.00, of which 65% or \$22,750.00 will go to the LWDA, and 35% or \$12,250.00 will be distributed to PAGA Members, defined as “all persons who worked for Defendant as non-exempt employees in the State of California at any time from May 2, 2024, through the date of preliminary approval of this settlement.” (*Id.* ¶ III.B.8);
- Net Settlement Amount of approximately \$169,810.00 (*Id.* ¶ III.B.9);
- Raw average of approximately **\$619.74** to each Participating Class Member ($\$169,810.00 \div 274$ Class Members).
- Workweek Value is \$5.06 ($\$169,810.00 \div 33,533$ Workweeks).

The Parties believe that the settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, adequate, and reasonable in light of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiff and their counsel are confident that they could prevail on class certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific risks that a class might not be certified, that Plaintiff could fail to establish liability, and/or that Plaintiff would be unable to prove damages in the amounts sought. Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. PROCEDURAL HISTORY

On or about May 2, 2025, Plaintiff’s counsel sent a letter to the California Labor and Workforce Development Agency pursuant to Labor Code § 2699.3(a)-(c) seeking to exhaust Plaintiff’s administrative remedies under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code § 2698, *et seq.*, and specifically identifying violations of Labor Code §§ 201, 202, 203, 204, 208, 216, 221, 223, 226, 226.7, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2698, *et seq.*, 2699(f) and (g), and 2802. Fitzpatrick Decl. ¶ 4.

On June 10, 2025, Plaintiff commenced this Action in Superior Court for the State of California, County of San Benito, alleging seven causes of action: (1) failure to provide off-

1 duty meal periods or pay premiums at the regular rate of pay, in violation of Labor Code §§
2 226.7 and 512; (2) failure to provide off-duty rest periods or pay premiums at the regular rate
3 of pay, in violation of Labor Code § 226.7; (3) failure to pay overtime wages for all hours
4 worked at the correct regular rate of pay, in violation of Labor Code §§ 1194 and 1198; (4)
5 failure to provide accurate itemized wage statements and keep accurate records, in violation of
6 Labor Code §§ 226, 1174, and 1175; (5) failure to timely pay wages when due and upon
7 separation of employment, in violation of Labor Code §§ 201-203; (6) failure to reimburse
8 work-related expenses, in violation of Labor Code § 2802; and (7) unfair business practices, in
9 violation of Business and Professions Code § 17200, *et seq.* Fitzpatrick Decl. ¶ 5.

10 On September 5, 2025, Plaintiff filed a first amended complaint (“FAC” or
11 “Complaint”), adding a cause of action for violation of the Labor Code § 2698, *et seq.*, the
12 Private Attorney Generals Act (the “PAGA”). The FAC is the operative complaint. *Id.* ¶ 6.

13 During litigation of the action against Defendant, the Parties agreed to exchange
14 information informally to evaluate their respective claims and defenses. Fitzpatrick Decl. ¶ 7.
15 The Parties subsequently engaged in informal discovery for Plaintiff to assess the claims, as
16 well as the maximum exposure of damages and penalties. Defendant provided Plaintiff’s
17 counsel with informal data and information pertaining to the putative class size and number of
18 pay periods, a sample of time and pay records of the employees, and information concerning
19 the extent of Defendant’s wage and hour policies and practices. *Id.*

20 On March 26, 2026, the Parties attended mediation with the Honorable Peter H.
21 Kirwan (Ret.). Fitzpatrick Decl. ¶ 15.

22 After thorough investigation and evaluation of the facts and claims at issue, and arm’s
23 length negotiations facilitated by the mediator, the Parties reached a global settlement of the
24 Action. *Id.* The Parties memorialized the terms of their settlement in the Joint Stipulation of
25 Class Action and PAGA Settlement and Release. Fitzpatrick Decl. ¶ 16; Ex. 1.

26 **A. The Operative Complaint**

27 Plaintiff’s class and PAGA claims as pled in the operative Complaint are predicated
28 upon the following allegations. Fitzpatrick Decl. ¶ 8. With respect to the failure to pay wages

1 claim, Plaintiff contends that employees were required to work “off the clock” and were not
2 compensated for said time spent working off the clock. Fitzpatrick Decl. ¶ 9.

3 With respect to the meal and rest period claim, Plaintiff contends that employees did
4 not receive proper meal and rest breaks during their shifts. Defendant failed to pay premiums
5 for missed, late, or interrupted breaks. To date, Plaintiff has yet to receive payment of all
6 wages owed. Fitzpatrick Decl. ¶ 10.

7 With respect to the business reimbursement claim, Plaintiff contends that Defendant
8 failed to reimburse employees for costs incurred when using personal cell phones. Fitzpatrick
9 Decl. ¶ 11.

10 With respect to the wage statement claims, Plaintiff contends that Defendant issued
11 deficient wage statements, as said wage statements do not correctly identify all applicable rates
12 of pay and the number of hours worked at each rate, total hours worked, and gross and net
13 wages earned as a result of the nonpayment of wages and meal and rest period premiums.
14 Fitzpatrick Decl. ¶ 12.

15 As a result of the alleged violations above, Plaintiff seeks damages and penalties under
16 the California Labor Code, the California Business & Professions Code, and the PAGA, as
17 well as attorneys’ fees and costs. Fitzpatrick Decl. ¶ 13. Defendant has at all times denied
18 Plaintiff’s collective allegations and has asserted factual and legal defenses to the above
19 claims, including that Defendant maintained procedures that comply with California law, that
20 individualized issues predominate, and that trial on a class or representative basis would be
21 unmanageable. Fitzpatrick Decl. ¶ 14.

22 **III. DISCUSSION**

23 Any settlement of a class action lawsuit must be reviewed and approved by the Court.
24 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final
25 review after notice has been distributed to the class members for their comment or objections.
26 The *Manual for Complex Litigation, Third* § 30.41 states:

27 Approval of class action settlements involves a two-step process.
28 First, counsel submits the proposed terms of settlement and the court
makes a preliminary fairness evaluation. If the preliminary

1 evaluation of the proposed settlement does not disclose grounds to
2 doubt its fairness or other obvious deficiencies, such as unduly
3 preferential treatment of class representatives or of segments of the
4 class, or excessive compensation for attorneys, and appears to fall
5 within the range of possible approval, the court should direct that
notice...be given to the class members of a formal fairness hearing,
at which arguments and evidence may be presented in support of
and in opposition to the settlement.

6 (Fed. Jud. Ctr., 3rd ed. 1995).

7 Thus, the preliminary approval by the trial court is simply a conditional finding that the
8 settlement appears to be within the range of acceptable settlements. As Professor Newberg
9 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or
10 conference concerning a tentative settlement proposal may vary. The court may find that the
11 settlement proposal contains some merit, is within the range of reasonableness required for a
12 settlement offer, or is presumptively valid subject only to any objections that may be raised at
13 a final hearing.” Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th
14 ed. 2002).

15 The procedures for the parties’ submission of a proposed settlement for preliminary
16 approval by the court also are discussed in *4 Newberg on Class Actions*:

17 When the parties to an action reach a monetary settlement, they will
18 usually prepare and execute a joint stipulation of settlement, which
19 is submitted to the court for preliminary approval. The stipulation
20 should set forth the central terms of the agreement, including but not
determining the effective date of settlement and any recapture
clause.

21 *Id.* § 11.24.

22 Here, the Parties have reached such an agreement and have submitted to this Court in
23 connection with this Motion a copy of the Settlement Agreement fully setting forth the
24 agreement reached among the Parties. The Settlement Agreement sets forth all terms of the
25 agreement reached by the Parties, which include, among other things, the method for
26 calculating the Class Members’ Individual Settlement Payments.

27 The parties also may, at the preliminary approval stage, request that the court
28 provisionally approve certification of the class – conditional upon final approval of the

1 settlement. “[P]re-certification settlements are routinely approved if found to be fair and
2 reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *accord*
3 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was
4 reached before any “adversary certification,” the court was satisfied that it was “fair, adequate
5 and reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many
6 courts have employed this practice in the name of judicial efficiency in order to facilitate
7 apparently beneficial settlement proposals”). As further explained by Professor Newberg:

8 The strength of the findings made by a judge at a preliminary
9 hearing or conference concerning a tentative settlement
10 proposal...may be set out in conditional orders granting tentative
11 approval to the various items submitted to the court. Three basic
12 rulings are often conditionally entered at this preliminary hearing.
These conditional rulings may approve a temporary settlement class,
the proposed settlement, and the class counsel’s application for fees
and expenses.

13 *4 Newberg on Class Actions* § 11.26.

14 In addition to such terms as class identification, settlement amount, and payment
15 procedures, the Settlement Agreement reached among the Parties contains a provision
16 pursuant to which the Parties stipulate to the Court’s provisional certification of the Settlement
17 Class for the purposes of this settlement only. SAR ¶ III.A.1. Defendant has reserved its right
18 to contest class certification in the event that the settlement is not approved and litigation
19 resumes.

20 **A. Proposed Class Definition**

21 The current settlement is being settled on behalf of “all persons who work or worked
22 for Defendant as non-exempt employees in the State of California at any time during the Class
23 Period” (the “Class” or “Class Member(s)”). *See* SAR ¶ III.A.1. The Class Period is defined
24 as the period from June 10, 2021, through the date of preliminary approval of this
25 settlement, subject to the Escalator Clause in Paragraph B.2. (“Class Period”). SAR ¶
26 III.A.1. Defendant estimates that there are approximately 274 individuals that comprise the
27 Class. SAR ¶ III.B.2.

28 Pursuant to the Settlement Agreement, the Net Settlement Amount will be apportioned

1 among the Class Members on a *pro rata* basis, based on the number of Workweeks worked by
2 each Class Member during the Class Period, as compared to the total number of Workweeks
3 worked by all Class Members during the Class Period. SAR ¶ III.B.10. Based on the data
4 provided to Plaintiff, there are approximately 33,533 Workweeks worked in the Class Period
5 by 274 Class Members. SAR ¶ III.B.2. If at the time of Preliminary Approval, the actual
6 number of workweeks worked by the entire Class during the Class Period (“Actual
7 Workweeks”) exceeds the Estimated Workweeks by 110% (i.e., 36,886 workweeks), then
8 Defendant will increase the Gross Settlement Amount by one percent (1%) for every
9 percentage increase above 10%. SAR ¶ III.B.10.

10 **B. Settlement Terms and Evaluation**

11 Courts presume the absence of fraud or collusion in the negotiation of settlement
12 unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir.
13 1989); *Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682
14 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts
15 do not substitute their judgment for that of the proponents, particularly where, as here,
16 settlement has been reached with the participation of experienced counsel familiar with the
17 litigation. *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal.
18 2004); *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp.
19 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979);
20 *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

21 While the recommendations of counsel proposing the settlement are not conclusive, the
22 court can properly take them into account, particularly where, as here, they have been involved
23 in informal discovery and negotiations for some period of time, appear to be competent, have
24 experience with this type of litigation, and have exchanged substantial evidence from the
25 opposing party. *See 4 Newberg on Class Actions, supra* § 11.47; *Nat’l Rural Telecomms.*
26 *Coop.*, 221 F.R.D. at p. 528 (“[s]o long as the integrity of the arm’s length negotiation process
27 is preserved, however, a strong initial presumption of fairness attaches to the proposed
28 settlement...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who

are most closely acquainted with the facts of the underlying litigation”).

Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage and hour class action litigation. Plaintiff’s counsel have been approved as class counsel in a number of wage and hour class actions and have extensive litigation experience. Fitzpatrick Decl. ¶ 39; Declaration of Alison L. Baker (“Baker Decl.”) ¶¶ 7-9; Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 6-8; Declaration of Max Gavron (“Gavron Decl.”) ¶¶ 7-9. Each side has apprised the other of their respective factual contentions, legal theories, and defenses, resulting in negotiations taking place between the Parties.

Prior to the mediation, Plaintiff engaged in informal discovery. Plaintiff was provided with data pertaining to putative class members during the relevant class period, as well as a sample of time and payroll records. Fitzpatrick Decl. ¶ 17. From this data, Plaintiff was able to investigate the claims asserted and conduct an exposure analysis that informed Plaintiff’s position at the mediation. Fitzpatrick Decl. ¶ 18. Plaintiff analyzed the sample time and payroll records and extrapolated. *Id.* Based on the data provided by Defendant, Plaintiff analyzed Defendant’s potential exposure, as adjusted for risk, as follows:

- Unpaid Wages: \$260,383.75, based on 33,533 total workweeks and an average hourly rate of \$31.06, which estimates approximately 15 minutes of unpaid wages each work week, inclusive of the alleged regular rate violations.
- Meal Period Violations: ~\$1.3 million, based on 33,533 total workweeks and an average hourly rate of \$31.06, and an estimated realistic exposure of a 25% violation rate.
- Rest Period Violations: \$1.3 million, based on 33,533 total workweeks and an average hourly rate of \$31.06, and an estimated realistic exposure of a 25% violation rate.
- Unreimbursed Business Expenses: \$335,330.00, assuming \$10 per workweek per employee in unreimbursed cell phone.
- Wage Statement Penalties: \$720,450, based on approximately 221 employees during the 1-year Labor Code § 226 statute of limitations period, calculated under Labor Code § 226(e). This does not factor in whether employees would achieve the \$4,000 cap, which could reduce the potentially available penalties.
- Waiting Time Penalties: \$842,347.20, based on approximately 113 former employees during the 3-year Labor Code § 203 statute of

1 limitations period, based on 30 days, 8 hours a day, and an average
2 rate of pay of \$31.06.

- 3 • PAGA Penalties: \$731,500, based on approximately 7,315 pay
4 periods.

5 Fitzpatrick Decl. ¶ 19.

6 While the total theoretical exposure of Plaintiff's class and PAGA claims based on the
7 above amounts to as high as approximately \$5.49 million, this analysis does not take into
8 account Defendant's arguments to liability and to class certification as further explained
9 below. Fitzpatrick Decl. ¶ 20.

10 Most importantly, Defendant presented evidence that at least 155 putative class
11 members signed arbitration agreements. Fitzpatrick Decl. ¶ 21. If Defendant was successful
12 in enforcing these arbitration agreements, it would cut the potential exposure on the putative
13 class action damages by a little bit more than half to approximately \$2.5 million. While
14 plaintiff maintained that he had arguments against the enforceability of the arbitration
15 agreements, realistically the potential exposure here must be reduced to account for this risk
16 factor. *Id.*

17 Defendant also has raised several legal and factual defenses that present substantial
18 risks to Plaintiff's prevailing on his theories of liability. For example, Defendant contends that
19 any alleged off-the-clock work was irregular and not capable of class resolution because it was
20 a function of employee personal choice if it occurred at all. Plaintiff estimated approximately
21 15 minutes per work week of uncompensated off-the-clock time, which resulted in a maximum
22 exposure of approximately \$260,383.75. Defendant disputes the prevalence of this practice
23 and whether such time is compensable, raising individualized issues that create risk for class
24 certification and trial. Plaintiff also asserted claims based on Defendant's failure to properly
25 calculate the regular rate of pay for purposes of overtime and sick pay, which could arguably
26 increase the estimated exposure on the unpaid wage claim incrementally. However, the bulk
27 of the exposure for the regular rate claims lies with the penalties, discussed further below.
28 Fitzpatrick Decl. ¶ 22.

Plaintiff also argued that Defendant implemented an unlawful rounding policy because

1 many of the records demonstrated that time was almost uniformly kept to the nearest ¼ hour.
2 Defendant would have rebutted this argument by claiming that the rounding practice actually
3 often benefited the employees by overcompensating them. Furthermore, Defendant disputed
4 this practice.

5 On the meal period claim, Plaintiff contends that Defendant maintained a uniform
6 practice of failing to provide timely, duty-free meal periods. Plaintiff investigated Defendant's
7 meal period policies and practices through a review of Defendant's employee handbooks, time
8 records, and other information produced before mediation. That investigation revealed that,
9 before revising its policies in September 2025 following the filing of this action, Defendant
10 maintained a policy requiring the automatic deduction of a 30-minute meal period whenever
11 an employee's time records did not reflect a compliant meal period. Under *Donohue v. AMN*
12 *Services, LLC*, 11 Cal. 5th 58 (2021), noncompliant time records raise a rebuttable
13 presumption of meal period violations that a written policy cannot rebut. Defendant argued
14 that employees were provided breaks as demonstrated on the timesheets, which would
15 undermine the presumption because it routinely identified the start and stop of breaks within
16 the confines of the law. Plaintiff also argued that Defendant failed to provide a second meal
17 period for shifts of greater than 10 hours. Plaintiff estimated a reasonable risk-adjusted meal
18 period exposure of approximately \$1.3 million. Fitzpatrick Decl. ¶ 23.

19 On the rest period claim, Defendant contended that whether any individual employee
20 was denied a rest break on any given shift is an individualized inquiry that cannot be proved
21 through common evidence because it came down to employee choice as to whether they
22 actually took the breaks provided to them. Plaintiff estimated a reasonable risk-adjusted rest
23 period exposure of approximately \$1.3 million, although this may overestimate the exposure
24 given that no records were maintained for rest periods. Fitzpatrick Decl. ¶ 24.

25 Additionally, Defendant also argued that Plaintiff cannot establish that Defendant
26 “willfully” failed to pay wages at separation of employment, and thus Plaintiff cannot recover
27 waiting time penalties under Section 203. In *Naranjo v. Spectrum Security Services, Inc.*, 13
28 Cal.5th 93, 117 (2022), the court upheld an employer’s good faith defense to the plaintiff’s

1 claim for waiting time penalties, pursuant to Labor Code § 203. The employer argued that it
2 had a viable legal defense, which precluded the imposition of waiting time penalties because
3 its acts were not “willful” within the meaning of the statute. *Naranjo* also permitted a good
4 faith defense to rebut the plaintiff’s claim for penalties, pursuant to Labor Code § 226. Should
5 Defendant succeed on these arguments, class members would recover \$0.00 for waiting time
6 penalties under Labor Code § 203 and statutory penalties under Labor Code § 226.

7 In addition to the above defense, Plaintiff’s estimated Labor Code § 226(e) penalties
8 would likely end up lower than estimated, as not every individual would have incurred
9 violations on every pay period. Defendant also argued that the violation was not “knowing
10 and intentional” and thus would not warrant Labor Section § 226(e) penalties. *See Harris v.*
11 *Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009) (granting summary
12 judgment in favor of employer and finding its conduct was not “knowing and intentional”).
13 Defendant argued that it was entitled to a “good faith” defense on this claim, too. *See, e.g.*
14 *Naranjo, supra*, 13 Cal.5th at pp. 103-104. (“if an employer reasonably and in good faith
15 believed it was providing a complete and accurate wage statement in compliance with the
16 requirements of section 226, then it has not knowingly and intentionally failed to comply with
17 the wage statement law”).

18 With respect to the Labor Code § 2802 claim, Defendant argued that it maintained a
19 compliant reimbursement practice, and that it did not require employees to use their personal
20 cellular telephones for work purposes. Defendant further contended that any alleged failure to
21 reimburse resulted from individual employees’ failure to submit reimbursement requests,
22 rather than from a uniform practice of non-reimbursement. If successful in proving this claim,
23 the exposure could be as high as \$335,330, if Plaintiff proved employees were entitled to a \$10
24 reimbursement per workweek associated with using cellular phones. However, this likely
25 overestimates the exposure given the risks and defenses associated with this claim. Fitzpatrick
26 Decl. ¶ 25.

27 With respect to Plaintiff’s claim under the PAGA, Plaintiff estimated that Defendant
28 could face civil penalties of at least \$731,500.00 (based on 7,315 pay periods at issue during

1 the PAGA Period). Fitzpatrick Decl. ¶ 26. Defendant contended that the imposition of
2 multiple penalties for separate violations during the same pay period is not permitted under the
3 PAGA, and that only a single \$100 penalty per pay period may be awarded. While Plaintiff
4 disputes this interpretation, some courts have exercised discretion under Labor Code §
5 2699(e)(2) to avoid stacking penalties for multiple violations within the same pay period.
6 Plaintiff's analysis is also based on the initial violation penalty amount, which does not
7 account for the imposition of the increased subsequent violation penalty amount given recent
8 authority indicating this increased penalty is only available where there is a prior citation for a
9 Labor Code violation. *See Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 3 F.4th 1127, 1144
10 (holding no heightened penalty because the Labor Commissioner nor any court warned the
11 defendant that it was subject to the Labor Code until the court handling the case at issue).
12 Courts are also hesitant to award the subsequent amount where there has not been a prior
13 violation of the Labor Code. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209
14 (2008); *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* 2009
15 WL 2448430, at *9 (S.D. Cal. Aug. 10, 2009) (“[u]nder California law, courts have held that
16 employers are not subject to heightened penalties for subsequent violations unless and until a
17 court or commissioner notifies the employer that it is in violation of the Labor Code”).
18 Defendant argued that no such prior violation occurred here, warranting only the initial
19 penalty, if any penalty at all. Moreover, in this case there is no indication that Defendant had
20 received a prior notice or citation from the Labor Commissioner regarding the alleged
21 violations at issue. *Id.*

22 Additionally, this analysis does not account for the possibility that the Court would
23 reduce the PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline to
24 award PAGA penalties where “if, based on the facts and circumstances of the particular case,
25 to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or
26 confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks*
27 *Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon
28 trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the

1 employer's good faith attempt at complying with the law. *Id.* at p. 517. Upon review, the Court
2 of Appeal found such reduction to be proper. *Id.* at p. 539.

3 Although Plaintiff believes in the merits of the alleged claims and maintains that there
4 is no reason for reducing PAGA penalties, Plaintiff is aware that Defendant has raised
5 defenses to the claims and further with respect to the reduction of PAGA penalties and that
6 those defenses could persuade the Court. Thus, even if Plaintiff were to successfully prove his
7 claims at trial, there is a possibility that the Court may only award a small percentage of
8 PAGA penalties, as the Court has discretion to do so. The Gross Settlement Amount was
9 premised with this risk in mind, associated with the possibility of the Court significantly
10 reducing PAGA penalties. Fitzpatrick Decl. ¶ 28.

11 The settlement is the result of extensive arm's length negotiations between the Parties
12 and their counsel and was facilitated by an experienced and neutral mediator. Although
13 Plaintiff believes that the Class can be certified, Plaintiff also believes in the fairness of the
14 settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
15 prevailing on one or more of the causes of action or theories alleged in the operative
16 Complaint, the possibility of non-certification, and the potential for appeals. These risks on
17 class certification are compounded by the California Supreme Court's holding in *Duran v.*
18 *U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiff obtained class certification
19 and subsequently prevailed at trial after eight years of litigation, but the judgment and the
20 certification ruling were reversed by the California Supreme Court after an additional five
21 years of litigation. The case was remanded to superior court where class certification was
22 denied, and plaintiff's subsequent appeal also was denied.

24 Indeed, numerous courts have held that gross settlements approximating between only
25 8 and 25% of the defendant's potential exposure are fair and reasonable. *See Lesevic v.*
26 *Spectraforce Techs., Inc.*, 2021 WL 1599310, at *3 (N.D. Cal. Apr. 23, 2021) (noting wage
27 and hour class fund of \$600,000 that compensated for 7% of maximum potential recovery was
28 reasonable); *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342,

1 at p.*6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between
2 8.5% and 25% of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien*
3 *Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (granting preliminary
4 approval of wage and hour class settlement which obtained **only 9.1%** of projected damages,
5 given the risks of continued litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-
6 00261 SBA EMC, 2012 WL 5878390, at p.*6 (N.D. Cal. Nov. 21, 2012) (holding that gross
7 class action settlement of approximately 15% of the potential recovery was fair and
8 reasonable); *Greko v. Diesel U.S.A., Inc.*, No. 10-cv-02576 NC, 2013 WL 1789602, at *5
9 (N.D. Cal. Apr. 26, 2013) (24% was reasonable).

10 Here, based on the above, the **adjusted** total amount of class and PAGA penalties
11 amount to between approximately **\$2.5 to 5.49 million**. Fitzpatrick Decl. ¶ 29. The Gross
12 Settlement Amount is \$350,000.00, which ranges between approximately **6-14%** of the class
13 and PAGA penalties. Thus, the settlement was negotiated at arm's length and the settlement
14 percentage-to-recovery further supports that the settlement is fair and reasonable. *Id.*

15 Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class
16 Action Settlement ("Notice Packet"), should any Class Member wish to pursue his or her own
17 case for the claims being released herein, each Class Member has the right to submit a Request
18 for Exclusion (*i.e.*, opt-out) from the settlement, with the exception of the PAGA claims. *See*
19 Notice Packet. Moreover, as set forth in the Notice Packet, Class Members are advised of
20 their right to object to any of the terms contained in the Settlement Agreement and attend the
21 final approval hearing. *Id.* As provided in the Notice Packet, the final judgment will be
22 posted on the Settlement Administrator's website. *Id.*

23 **1. Amount and Manner of Distribution of the Compensation to be**
24 **Provided to Class Members Including the Amount, or an Estimate,**
25 **of What Each Class Member Will Receive**

26 The Settlement Agreement provides for \$350,000.00 as the Gross Settlement Amount.
27 SAR ¶ III.B.1. The Net Settlement Amount [calculated after deduction of attorneys' fees (up
28 to \$122,500.00, which includes out-of-pocket costs and expenses up to \$25,000.00 for

1 reimbursement of actual litigation costs), Class Representative Service Award to Plaintiff (up
2 to \$15,000.00), payment of PAGA penalties (\$35,000.00), and settlement administration costs
3 (up to \$7,690.00)] is estimated to be approximately \$169,810.00. SAR ¶¶ III.B.1., III.B.5.-
4 III.B.8; Fitzpatrick Decl. ¶ 30.

5 Pursuant to the Settlement Agreement, the Net Settlement Amount will be apportioned
6 among the Class Members on a *pro rata* basis, based on the number of Workweeks worked by
7 each Class Member during the Class Period, as compared to the total number of Workweeks
8 worked by all Class Members during the Class Period. SAR ¶ III.B.10; Fitzpatrick Decl. ¶ 31.
9 Based thereon, on a raw average, each Class Member may recover approximately \$619.74
10 (\$169,810.00 ÷ 274 Class Members). Based on the number of Workweeks, the per Workweek
11 value of the Net Settlement Amount is approximately \$5.06 (\$169,810.00 ÷ 33,533
12 Workweeks), whereas the per Workweek value of the Gross Settlement Amount is
13 approximately \$10.44 (\$350,000.00 ÷ 33,533 Workweeks). Fitzpatrick Decl. ¶ 32. The
14 amount actually paid to each Class Member will increase or decrease depending on the
15 number of Workweeks he or she worked during the Class Period. *Id.*

16 Additionally, as part of the payment of PAGA penalties, 35% of the PAGA Penalties
17 Fund, or \$12,250.00, shall be paid to PAGA Members on a *pro rata* basis, based on the
18 number of pay periods worked by each PAGA Member during the PAGA Period as compared
19 to the total number of pay periods worked by all PAGA Members during the PAGA Period.
20 SAR ¶¶ III.B.8.; Fitzpatrick Decl. ¶ 33.

21 Finally, the funds from uncashed checks (upon the expiration date of 180 calendar days
22 after issuance) shall be sent to the designated *cy pres* recipient: California Rural Legal
23 Assistance, Inc. SAR ¶ III.E.2.; Fitzpatrick Decl. ¶ 34. California Rural Legal Assistance,
24 Inc., is a non-profit legal services organization that provides legal services and policy
25 advocacy for and on behalf of California low-income individuals and/or low-wage earners.
26 Class counsel does not have any conflicts of interest with this proposed *cy pres* beneficiary.
27 Fitzpatrick Decl. ¶ 41; Baker Decl. ¶ 11; Gavron Decl. ¶ 12; Lee Decl. ¶ 10.

1 **2. Whether, and Under What Circumstances, Amounts Available for**
2 **Payment in Settlement Might Not Be Paid to Class Members or**
3 **Might Revert to the Defendant**

4 None of the settlement funds will revert to Defendant. SAR ¶ III.B.1.

5 **3. Scope of the Release of Class Members' Claims**

6 As a condition of participating in this class action settlement, Class Members who do
7 not opt out of the settlement ("Participating Class Members") will provide a limited release of
8 the following claims against the Released Parties. SAR ¶¶ III.A.7., III.A.8. Participating
9 Class Members will release the following claims:

10 The claims released by Settlement Class Members (the "Released
11 Class Claims") are any and all class claims arising out of the facts
12 alleged, or which could have reasonably been alleged, based on the
13 facts in the Complaint in the Action occurring during the Class
14 Period. ("Released Class Claims").

15 *See* SAR ¶ III.A.7.

16 In addition, regardless of their decision to participate in the class portion of the
17 settlement, PAGA Members will release the following claims:

18 The claims released by Aggrieved Employees (the "Released PAGA
19 Claims") are any and all representative claims for penalties under
20 the PAGA arising out of the facts alleged, or which could have
21 reasonably been alleged, based on the facts in the Complaint in the
22 Action occurring during the PAGA Period. ("Released PAGA
23 Claims").

24 *See* SAR ¶ III.A.8.

25 Given that the releases above are tailored to only claims pled or that could arise out of
26 the facts alleged in the Action and Plaintiff's respective PAGA letters, that accrued during
27 limited periods of time, the releases are appropriately tailored.

28 **4. Tax Treatment of Settlement Amounts**

 The Parties have agreed that the settlement payments ("Individual Settlement
Payments") to Participating Class Members from the Net Settlement Amount shall be
allocated as follows: 20% wages, for which an IRS Form W-2 will issue and from which
payroll taxes will be deducted, and 80% penalties and interest, for which an IRS Form 1099
will issue. SAR ¶ III.B.12. Defendant will be liable for employer-side payroll taxes. SAR ¶

1 III.B.12.

2 The Individual Settlement Payments to PAGA Members from the PAGA Penalties
3 Fund will be deemed one hundred percent (100%) penalties and be accompanied by an IRS
4 Form 1099. SAR ¶ III.B.13.

5 **5. Affirmative Obligations to be Undertaken by Class Members or**
6 **Class Counsel and the Reasons for Any Such Obligations**

7 As stated above, Class Members do not need to do anything should they wish to
8 receive their share of the settlement funds. In other words, because this is not a claims-made
9 settlement, Class Members will not be required to make a submission to participate in the
10 settlement. Thus, this substantially decreases the burden each Class Member must bear in
11 order to receive their Individual Settlement Payment. If a Class Member does not wish to take
12 part in this settlement and be bound by the Released Class Claims, the Class Member must
13 submit a Request for Exclusion. SAR ¶ III.C.7.

14 **C. Notice to Class Members**

15 Should the Court grant the instant Motion, Defendant will provide the Settlement
16 Administrator with a list containing each Class Member's full name, most recent mailing
17 address and telephone number, Social Security number, dates of employment, respective
18 number of Workweeks worked during the Class Period and PAGA Period (if any), and any
19 other relevant information needed to calculate settlement payments ("Class List"). SAR ¶
20 III.C.3. Defendant shall provide this information within twenty-one (21) calendar days of
21 preliminary approval of this settlement. SAR ¶ III.C.4. Upon receipt of the information and
22 prior to mailing the Notice Packet, the Settlement Administrator shall perform a search based
23 on the National Change of Address Database for information to update and correct for any
24 known or identifiable address changes. SAR ¶ III.C.6. Within ten (10) calendar days of
25 receipt of the Class List, the Settlement Administrator shall mail the Notice Packet to all Class
26 Members. SAR ¶ III.C.5. Any notices returned to the Settlement Administrator as non-
27 deliverable on or before the opt-out deadline shall be sent promptly via regular first-class U.S.
28 mail to the forwarding address affixed thereto. SAR ¶ III.C.6. If no forwarding address is
provided, the Settlement Administrator shall promptly attempt to determine the correct address

1 using a skip trace or other search and perform a re-mailing. SAR ¶ III.C.6.

2 The Parties have agreed to the language of the Notice Packet. The Notice Packet will
3 describe the terms of the settlement and advise Class Members of their opportunity to opt out
4 of the settlement, object to the settlement, and/or dispute the number of Workweeks credited to
5 them. SA ¶¶ III.C.3., III.C.7, III.C.8. Class Members will have thirty (30) calendar days from
6 the initial mailing of the Notice Packet by the Settlement Administrator to opt out of the
7 settlement, object to the settlement, and/or submit a dispute regarding the number of
8 Workweeks. *Id.* Class Members who receive a re-mailed Notice Packet will have either (a) an
9 additional fifteen (15) calendar days or (b) until the Response Deadline, whichever is later, to
10 respond to the Notice Packet. *Id.* Class Members can submit objections to the settlement in
11 writing to the Settlement Administrator.

12 For disputes regarding the calculation of the number of Workweeks, Class Members
13 may produce evidence to the Settlement Administrator. The Parties will work in good faith to
14 resolve the dispute, and if the Parties are unable to come to a resolution, then the Settlement
15 Administrator shall examine all evidence submitted and make a decision, which will be final.
16 SAR ¶ III.E.1. The Notice Packet provides for instructions to Class Members on how to
17 submit a Workweek dispute.

18 If Class Members need further information about the settlement and/or the lawsuit,
19 Class Counsel's contact information and the Settlement Administrator's contact information
20 are provided in the Notice Packet. *See* Notice Packet. The Class Notice will be provided to
21 Class Members in English and Spanish. Fitzpatrick Decl. ¶ 35.

22 **D. Typicality and Adequacy of Representation**

23 **1. Class Representative's Claims are Typical of the Class**

24 The commonality requirement is met when there are questions of law and fact common
25 to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) ("The existence of
26 shared legal issues with divergent legal factual predicates is sufficient, as is a common core of
27 salient facts couple with disparate legal remedies within the class"). Commonality requires
28 only that some common legal or factual questions exist; the Plaintiff need not show that all

1 issues in the litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473
2 (1981). Defendant's conduct is central to the commonality inquiry. *See City of San Jose v.*
3 *Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13
4 (1971). Where the employer's conduct is uniformly directed at a class of employees, as it is
5 here, the class wide impact of the Defendant's policies and practices satisfies the commonality
6 requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

7 Plaintiff alleges that Defendant violated the Labor Code by failing to pay all minimum
8 and overtime wages owed for all hours worked, failing to provide off-duty meal and rest
9 breaks or pay meal and rest period premiums, failing to timely pay all wages when due and
10 upon separation of employment, failing to reimburse business expenses, failing to provide
11 accurate itemized wage statements, and engaging in unfair business practices. Declaration of
12 Plaintiff Miguel Vega ("Pltf Decl.") ¶¶ 3-7. As a result, Plaintiff alleges that he is owed
13 unpaid wages and penalties for the above violations.

14 In other words, Plaintiff contends that he was subjected to the same policy and practice
15 as other Class Members and that his claims are typical to those of the Settlement Class.

16 Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such
17 issues been raised or presented. Pltf Decl. ¶ 8. Plaintiff has taken all necessary steps to
18 represent the interests of the Settlement Class, and by providing information and documents to
19 Plaintiff's counsel. Pltf Decl. ¶¶ 8-9. For such reasons, Plaintiff has adequately represented
20 the Class Members and will continue to do so.

21 **2. Class Counsel Have Adequately Represented the Class and Have** 22 **Experience with Wage and Hour Class Action**

23 From the inception of the case, Class Counsel have zealously represented the interests
24 of the Class. Class Counsel have engaged in significant investigation and meet and confer
25 discussions with Defendant's counsel to obtain informal data and documents and to discuss the
26 merits of the claims on behalf of the Class. Fitzpatrick Decl. ¶ 3. The settlement was obtained
27 for the benefit of the Class, as opposed to the individual Class Representative. Fitzpatrick
28 Decl. ¶ 3.

1 **E. Costs and Fees**

2 **1. Attorneys' Fees and Costs**

3 California state and federal courts have recognized that an appropriate method for
4 determining award of attorneys' fees is based on a percentage of the total value of benefits to
5 class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
6 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472,
7 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose
8 of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation
9 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the
10 entire burden alone." *Vincent*, 557 F.2d at 769.

11 The common fund doctrine is predicated on the principle of preventing unjust
12 enrichment. When a litigant's efforts create or preserve a fund from which others derive
13 benefits, she may require the passive beneficiaries to compensate those who created the fund.
14 Both California state and federal courts have embraced this doctrine. *Serrano v. Priest*, 20 Cal.
15 3d at p. 35; *Vincent*, 557 F.2d at p. 769. Similarly, in *City and County of San Francisco v.*
16 *Sweet*, 12 Cal. 4th 105, 110 (1995), the California Supreme Court recognized that the common
17 fund doctrine has been applied "consistently in California when an action brought by one party
18 creates a fund in which other persons are entitled to share." The reasons for applying the
19 common fund doctrine include:

20 Fairness to the successful litigant, who might otherwise receive no
21 benefit because his recovery might be consumed by the expenses;
22 correlative prevention of an unfair advantage to the others who are
23 entitled to share in the fund and who should bear their share of the
24 burden of its recovery; encouragement of the attorney for the
successful litigant who will be more willing to undertake and
diligently prosecute proper litigation for the protection or recovery
of the fund if he is assured that he will be properly and directly
compensated should his efforts be successful.

25 *Id.*

26 Indeed, in 2016, the California Supreme Court has also now held that the award of
27 attorneys' fees in common fund wage and hour class action settlements should start with the
28 percentage method. See *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (2016) ("We

1 join the overwhelming majority of federal and state courts in holding that when class action
2 litigation establishes a monetary fund for the benefit of the class members, and the trial court
3 in its equitable powers awards class counsel a fee out of that fund, the court may determine the
4 amount of a reasonable fee by choosing an appropriate percentage of the fund created”).

5 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
6 percent of the fund. *Laffitte*, 1 Cal. 5th at p. 506. And this was based on a lodestar amount that
7 required a multiplier of 2.13. *Id.* at p. 487. As the Court held, only when the multiplier is
8 “extraordinarily high or low [should] the trial court [] consider whether the percentage method
9 should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at p.
10 505.

11 Here, the Parties have agreed to a payment of up to thirty-five percent (35%) of the
12 Gross Settlement Amount, equal to \$122,500.00, which includes out-of-pocket costs and
13 expenses up to \$25,000.00 for reimbursement of actual litigation costs, subject to Court
14 approval. SAR ¶ III.B.6. The Parties have agreed to a payment of the foregoing attorneys’
15 fees and, thus, this payment should be presumed to be fair. Fitzpatrick Decl. ¶ 36.

16 Class Counsel have, at their own risk, expended costs to prosecute the Action,
17 including filing the instant Action, effecting service of process, participating in mediation, and
18 paying other litigation-related costs.

19 Based on the foregoing, the Court should preliminarily approve the attorney’s fees and
20 costs as requested by the Parties.

21 **2. Proposed Payment to the Class Representative**

22 Plaintiff and Class Representative requests a modest enhancement of \$15,000.00. SAR
23 ¶ III.B.5. The Class Representative met and conferred with Class Counsel on a number of
24 occasions to discuss the case, provided documents and information to Class Counsel, and
25 reviewed the pleadings and the Settlement Agreement. As part of his duties as Class
26 Representative, Plaintiff provided invaluable information, evidence, and documents that
27 resulted in this settlement. Fitzpatrick Decl. ¶ 37; Pltf Decl. ¶ 12.

28 In addition to the invaluable services that he provided, Plaintiff also took a significant

1 risk, both professionally and monetarily, in acting as Class Representative and seeking benefits
2 on behalf of the Class. Because the claims alleged by the Class Representative involved the
3 payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of
4 Defendant, had he not prevailed in this action.

5 Plaintiff devoted substantial time and effort in connection with the litigation of this
6 action. Pltf Decl. ¶ 9. For example, Plaintiff met with his attorneys to discuss the facts
7 supporting the theories of liability in this action and apprised his attorneys of his
8 understanding of Defendant's policies and practices. Plaintiff also provided documents to his
9 attorneys to evaluate the claims in the case, including, but not limited to, payroll and
10 employment documents, and wage statements received throughout his employment with
11 Defendant. Plaintiff also conferred with his attorneys regarding the terms of the proposed
12 settlement, reviewed the proposed settlement agreement, and assisted in reviewing, drafting,
13 and revising his declaration in support of the Motion for Preliminary Approval. Pltf Decl. ¶ 9.
14 Finally, Plaintiff agreed to provide a general release of claims and waiver of the protections of
15 Civil Code § 1542, which is something that was not required of Class Members. SAR ¶
16 III.G.1; Pltf Decl. ¶ 14. For these reasons and those articulated in his Motion, the Court
17 should preliminarily approve the enhancement payment.

18 **3. Settlement Administration Costs**

19 The Parties have agreed to an estimated payment of \$7,690.00 to the Settlement
20 Administrator, Apex, to send notices and to administer this settlement. SA ¶ III.B.7. Apex is
21 a well-recognized class action settlement administrator. The Parties believe that the
22 administration fee is reasonable and should be approved. Based on the bid provided by the
23 proposed administrator totaling (\$7,690.00), the estimated cost per class member for
24 administration is approximately \$28.07 (\$7,690.00 / 274 class members), which is reasonable
25 based on the experience of class counsel. Fitzpatrick Decl. ¶ 38.

26 **IV. NOTICE TO THE LWDA**

27 Plaintiff submitted the Settlement Agreement and supporting documents to the LWDA.
28 Fitzpatrick Decl. ¶ 42; Ex. 2.

1 **V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**
2 **PRELIMINARY APPROVAL**

3 Here, the proposed settlement is fair, adequate, and reasonable. It will result in
4 substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the
5 result of informed, extensive, and arm's length negotiations conducted by counsel for the
6 respective parties who are experienced in wage and hour class action litigation.

7 For the foregoing reasons, Plaintiff respectfully requests that the Court grant
8 preliminary approval of the proposed settlement, sign the proposed Order, approve and
9 authorize mailing of the proposed Notice Packet, and set a date for a final approval hearing.

10 Dated: September 15, 2026

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

11
12
13 By: /s/ B. James Fitzpatrick

14 B. James Fitzpatrick
15 Attorneys for Plaintiff,
16 MIGUEL VEGA, on behalf of himself
17 and all similarly aggrieved employees,
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