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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

TIMA HIM, as an individual and on behalf of all others similarly situated, Plaintiff, vs. WESTLAKE MANAGEMENT SERVICES, INC., a Delaware corporation; WESTLAKE CHEMICAL & VINYLS LLC, a Delaware limited liability company; WESTLAKE CHEMICAL, a business organization, form unknown; and DOES 1 through 50, inclusive, Defendants.	Case No.: STK-CV-UOE-2025-0008956 [Assigned for all purposes to the Hon. Robert T. Waters, in Department 11B] **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Date: July 21, 22, 23, 24, or 29, 2026 Time: 9:00 a.m. Dept.: 11B

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 21, 22, 23, 24, or 29, 2026, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable George J. Abdallah, judge presiding, in Department 10A of the above referenced Court located at 180 E Weber Ave., 2nd Floor, Stockton, CA 95202, Plaintiffs Tima Him and Celso Chavez Canseco ("Plaintiffs") will seek an Order:

(1) Approving the Joint Stipulation of Class Action and PAGA Settlement ("Agreement" or "Settlement Agreement") in this matter;

(2) Conditionally certifying the following class for settlement purposes only: all current and former non-exempt employees who worked for Defendant in California from July 1, 2021, through January 12, 2026, excluding those who were: (a) exclusively employed prior to February 3, 2024; and (b) assigned to Defendant's *Stone*- and *Roofing*-related segments;

(3) Appointing Plaintiffs Tima Him and Celso Chavez Canseco ("Plaintiffs") as the Class Representatives, and Larry W. Lee and Mai Tulyathan of Diversity Law Group, P.C., and William L. Marder of Polaris Law Group, as Class Counsel;

(4) Preliminarily approving the Settlement Agreement and the total Gross Settlement Amount in the amount of Eight Hundred Fifty Thousand Dollars and Zero Cents ($850,000.00);

(5) Finding on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement, including the amount of the PAGA penalties, Class Representative Service Payments, Class Counsel's attorneys' fees and costs, settlement administration costs, and the allocation of payments to Class Members, that could ultimately be given final approval by this Court;

(6) Approving the Notice of Class and PAGA Action Settlement ("Class Notice") to be sent to Class Members;

(7) Appointing Phoenix Settlement Administrators as the Settlement Administrator; and

(8) Setting the matter for a Final Fairness and Final Approval hearing.

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

The basis for this Motion, filed without any opposition from Defendant, is that the proposed settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to participate in, opt-out of, or object to the settlement. This Motion will be based on the attached Memorandum of Points and Authorities, the Settlement Agreement and the Class Notice, and the supporting Declarations of Larry W. Lee, Mai Tulyathan, William L. Marder, Plaintiffs Tima Him and Celso Chavez Canseco, and upon the oral arguments of counsel (should there be any) and on the complete records and file herein.

DATED: June 16, 2026

DIVERSITY LAW GROUP, P.C.

By:______________________________

Larry W. Lee
Kwanporn "Mai" Tulyathan
Attorneys for Plaintiffs and the Class

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MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

This is a wage and hour class and representative PAGA action predicated on alleged violations of the Labor Code. Plaintiffs Tima Him and Celso Chavez Canseco ("Plaintiffs" or the "Class Representative") brought claims Defendants Westlake Management Services, Inc., Westlake Chemical & Vinyls LLC, and Westlake Chemical ("Defendants") on a class-wide and representative, alleging that Defendants failed to pay overtime wages at the regular rate of pay, in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; failed to pay meal and rest period premium wages at the regular rate of pay, in violation of Labor Code §§ 201-203, 226.7, and 512; failed to pay sick pay at the regular rate of pay, in violation of Labor Code §§ 201-203 and 246; and failed to provide accurate itemized wage statements, in violation of Labor Code § 226(a). Based on these alleged violations of the Labor Code, Plaintiffs seek unpaid wages and statutory penalties on behalf of the putative class, as well as civil PAGA penalties on behalf of alleged aggrieved employees.

After extensive investigation, discovery, mediation and negotiations, Plaintiffs and Defendant Westlake Management Services, Inc. ("Defendant") (collectively, the "Parties") reached a class and PAGA action settlement, the terms of which are reflected in the Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement" or "Agreement").[1] [2] Plaintiffs now seek preliminary approval of the proposed settlement, which includes a $850,000.00 non-reversionary payment. As set forth more fully below, the Parties believe that the terms of the Agreement are fair, adequate, and reasonable, considering all known

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[1] The Joint Stipulation of Class Action and PAGA Settlement is attached to the Declaration of Mai Tulyathan ("Tulyathan Decl.") as **Exhibit A**.

[2] This action names three defendant entities, including Westlake Management Services, Inc., Westlake Chemical & Vinyls LLC, and Westlake Chemical. Westlake Management Services, Inc. is the correct employer entity that employed Plaintiffs and the primary defendant for purposes of this settlement. The release also encompasses Westlake Chemical & Vinyls LLC as an affiliated entity. The third named defendant, Westlake Chemical, will be dismissed with prejudice, upon final approval of the settlement. Tulyathan Decl. ¶ 8.

circumstances and the expenses and risks inherent in litigation. Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class and Representative Action Settlement.

II. PROCEDURAL HISTORY

A. The PAGA Notices and Operative Complaint.

Plaintiff Tima Him was employed by Defendant from November 2022 to on or about April 28, 2025, during which time he worked as a non-exempt hourly Electrician. Declaration of Tima Him ("Him Decl.") ¶ 2. Plaintiff Chavez Canseco was employed by Defendant from about April 2022, until on or about April 28, 2025. Plaintiff Chavez Canseco worked as a Machine Operator. Throughout his employment, Plaintiff Chavez Canseco worked as a non-exempt, hourly employee. Declaration of Chavez Canseco ("Chavez Canseco Decl.") ¶ 2.

On or about May 2, June 25, and September 25, 2025, Plaintiffs sent written notices to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-204, 226, 226.7, 246 , 510, 512, 558, 1194, 1197, and1197.1 pursuant to Labor Code § 2699 ("PAGA Notices"). Tulyathan Decl. ¶ 3. As set forth in the PAGA Notices, Plaintiffs allege wage and hour violations predicated on Defendants' alleged failure to: (i) pay overtime wages at the regular rate of pay, in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (ii) pay meal period premium compensation at the regular rate of pay, in violation of Labor Code §§ 201-203, 226.7, and 512; (iii) pay rest period premium compensation at the regular rate of pay, in violation of Labor Code §§ 201-203 and 226.7; (iv) pay sick pay wages at the regular rate of pay in violation of Labor Code §§ 201-203 and 246; (v) provide accurate itemized wage statements to employees in violation of Labor Code § 226. *Id.* at ¶ 4.

On July 1, 2025, Plaintiff Him filed a class action complaint against Defendants in the Action. *Id.* ¶ 5. On November 3, 2025, Plaintiffs filed the First Amended Class and Representative Action Complaint ("FAC"), adding Plaintiff Chavez Canseco as a named Plaintiff. The FAC is the operative complaint and alleges causes of action for: (1) failure to pay overtime wages; (2) violation of Labor Code §§ 226.7 and 512; (3) violation of Labor Code § 226.7; (4) violation of Labor Code §§ 201-203; (5) violation of Labor Code § 226; (6) violation of Business and Professions Code § 17200, *et seq*.; and (7) violation of Labor Code § 2698, *et seq*., the Private Attorneys General Act ("PAGA"). *Id.* at ¶ 6.

On or about December 3, 2025, Defendants filed their Answer to the Operative Complaint. *Id.* at ¶ 7. Defendants deny the allegations in the Operative Complaint and denies any and all liability for the causes of action alleged.

B. The Informal Discovery Prior to Mediation.

After the filing of the complaint, in September 2025, the Parties subsequently agreed to participate in private mediation. Tulyathan Decl. ¶ 9. The Parties agreed to mediate with Hon. Peter H. Kirwan (Ret.) and to exchange informal discovery in advance of mediation. Defendant provided payroll records for all employees from its locations in California, from which Class Counsel were able to pull the number of current and former individuals in the class, average rates of pay, and the number of pay periods/workweeks at issue. *Id.* at ¶ 10. Based on the pay data provided by Defendant, Class Counsel engaged an expert (Peregrine Economics) to conduct underpayment analyses for overtime and meal and rest period premiums. Class Counsel also conducted a damages and penalties analysis based on the pay data. *Id.* at ¶ 11.

C. The Mediation.

On January 12, 2026, the Parties participated in a full-day mediation with Judge Kirwan, an experienced wage and hour class action mediator. *Id.* at ¶ 12. As a result of the mediation, the Parties reached the present class-wide settlement. On or about March 3, 2026, the Parties executed a Memorandum of Understanding. *Id.* at ¶ 13. The Parties subsequently negotiated and executed the long-form Settlement Agreement on or about April 27, 2026. *Id.* at ¶ 14. The mediation, settlement discussions, and negotiations were conducted at arm's-length.

III. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

A. The Essential Terms of the Settlement Agreement.

1. Proposed Class Definition

The Action is being settled on behalf of "all current and former non-exempt employees who worked for Defendant in California from July 1, 2021, through January 12, 2026, excluding those who were: (a) exclusively employed prior to February 3, 2024; and (b) assigned to

Defendant's *Stone- and Roofing*-related segments" (the "Class"). SA § 3. There approximately 785 individuals that comprise the Class. *Id.* at § 37.

The class period begins July 1, 2021, and ends January 12, 2026, the date of mediation. *Id.* at § 8; Tulyathan Decl. ¶ 17. Two exclusions narrow the settlement class to avoid overlap with prior class action settlements. First, *Stone*- employees exclusively employed before February 3, 2024 are excluded because that date represents the end of the release periods in the prior settlements entitled *Meraz v. Westlake Royal Roofing, LLC*, Orange County Superior Court No. 30-2022-01262267-CU-OE-CXC and *Barajas de Botello, et al. v. Boral Stone Products, LLC, et al.*, Napa County Superior Court No. 22CV000732. Second, employees assigned to Defendant's stone and roofing segments are excluded because those segments, which previously operated as separate entities Westlake Royal Roofing, LLC and Westlake Royal Stone, LLC, were absorbed into Westlake Management around 2023, and the wage-and-hour claims arising from employment in those segments were released through the *Meraz* and *Barajas* settlements. Defendant has confirmed that no claims released in this settlement overlap with claims released in *Meraz* and *Barajas*. Tulyathan Decl. ¶ 18.

2. Payments to Class Members.

The Settlement Agreement provides for Eight Hundred Fifty Thousand Dollars and Zero Cents ($850,000.00) as the Gross Settlement Amount.[3] SA §§ 17, 36. This is a non-reversionary settlement, meaning that none of the Gross Settlement Amount will revert to Defendant. *Id.* at § 36. The Net Settlement Amount, calculated after deduction of PAGA penalties ($80,000.00), the Class Representative Service Payments ($10,000.00 each for a collective total of $20,000.00), Class Counsel's attorneys' fees ($297,500.00), Class Counsel's litigation costs (up to $25,000.00), Waiting Time Penalty Payment ($150,000.00), and the settlement administration costs ($12,750.00) is estimated to be approximately $264,750.00. *Id*. at § 20; Tulyathan Decl. ¶ 26.

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[3] Defendant, however, shall separately pay employer-side payroll taxes owed on the portion of Individual Class Payments classified as wages. SA § 36.

Each Class Member who does not opt-out of the settlement ("Participating Class Member") will be awarded a portion of the Net Settlement Amount on a *pro rata* basis, based upon the number of workweeks worked during the Class Period. SA §§ 15, 43. Defendant has represented that there are 785 individuals in the Class who worked no more that 59,198 workweeks during the Class Period. *Id.* at § 37. Based thereon, on a raw average, each Participating Class Member may potentially recover approximately $337.26 per person. Tulyathan Decl. ¶ 28. The amount actually paid to each Participating Class Member may increase or decrease depending on the actual number of workweeks credited to the employee and/or the number of timely Requests for Exclusion received. *Id*. Class Members do not need to do anything should they wish to receive their share of the settlement funds.

The settlement also allocates One Hundred Fifty Thousand Dollars ($150,000.00) of the Gross Settlement Amount as the Waiting Time Penalty Payment. SA § 35. Because this case involves claims for waiting time penalties under Labor Code § 203, the Parties have agreed that the Waiting Time Penalty Payment will be allocated to the resolution of any claims, penalties, and remedies pursuant to Section 203. *Id.* The Waiting Time Penalty Payment shall be divided on a per capita basis based on the number of class members who do not opt out. *Id.* § 43.ii. Based on Defendant's estimated number of former employees of 149, on a raw average, each Participating Waiting Time Sub-Class Member may potentially recover approximately $1,006.71 per person. Tulyathan Decl. ¶ 29. This amount may increase or decrease depending on the number of timely Requests for Exclusion received. *Id*.

Additionally, the settlement allocates Eighty Thousand Dollars ($80,000.00) of the Gross Settlement Amount to the resolution of the representative PAGA claims alleged on behalf the Aggrieved Employees.[4] SA §§ 22, 42. Pursuant to the PAGA, sixty-five percent of the PAGA Payment—*i.e.* the sum of Fifty-Two Thousand Dollars ($52,000.00)—shall be paid to the LWDA. *Id*. The remaining thirty-five percent—*i.e.* the sum of Twenty-Eight Thousand Dollars ($28,000.00)—shall be distributed to Aggrieved Employees as Individual PAGA Payments. *Id*.

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[4] The Agreement defines "Aggrieved Employees" to mean all non-exempt employees employed by Defendant in California from May 2, 2024, through the date of preliminary approval. SA § 2.

Individual PAGA Payments will be distributed to Aggrieved Employees based on the number of workweeks worked by each Aggrieved Employee during the PAGA Period. *Id.*

Participating Class Members and Aggrieved Employees shall have 180 days to cash the settlement check. SA § 61. Uncashed checks (upon the expiration date) will be paid out pursuant to California Code of Civil Procedure § 384 to the *cy pres* recipient, Legal Aid at Work. *Id.* at § 61.

3. Payment of Class Counsel Award, Service Payments, and Settlement Administration Costs.

As part of the Settlement, Defendant does not object to Class Counsel's request for attorneys' fees in an amount up to thirty-five percent (35%) of the Gross Settlement Amount, *i.e.* the sum of Two Hundred Ninety-Seven Thousand Five Hundred Dollars ($297,500.00), as well as actual litigation costs not to exceed Twenty-Five Thousand Dollars ($25,000.00) in connection with this Action. SA § 39. Any amount of attorney's fees or costs not approved by the Court shall be added to the Net Settlement Amount for distribution to Participating Class Members. *Id.*

Defendant also does not object to the payment of the Class Representative Service Payments in the amount of Ten Thousand Dollars ($10,000.00) to each Plaintiff, for a collective total of Twenty Thousand Dollars ($20,000.00). SA § 40. This amount is intended to compensate Plaintiffs for their efforts and work in prosecuting this case, including meeting and communicating with Class Counsel on numerous occasions, searching for and gathering documents, remaining available during mediation, and reviewing the pleadings and documents in this case, including the PAGA Notices, complaints and the Agreement. Any portion of the Class Representative Service Payment not approved by the Court shall be added to the Net Settlement Amount for distribution to Participating Class Members. *Id*.

Finally, the Settlement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. SA § 41. The Parties have selected Phoenix Settlement Administrators as the Settlement Administrator. *Id.* at § 32. The Settlement Administrator's anticipated costs are Twelve Thousand Seven Hundred and Fifty Dollars

($12,750.00). *Id*. at § 33; Tulyathan Decl. ¶ 25, Ex. B.

4. Scope of the Release of Class Members' Claims

Upon funding of the Gross Settlement Amount, Participating Class Members and Participating Waiting Time Sub-Class Members shall release the following claims against the Released Parties:

> [A]ll claims that were pled in the Action, including claims for alleged violations of Labor Code Sections 201-204, 226, 226.7, 233, 246, 510, 512, 558, 1194, 1197, and 1197.1, based on the factual allegations in the Action, that accrued during the Class Period. The Released Claims do not include claims for vested benefits, claims for workers' compensation benefits, claims for unemployment insurance benefits, or claims that cannot be released as a matter of law.

SA §§ 27, 72. This release is appropriately limited, as it applies to claims based on or alleged in the Action. If a Class Member does not wish to take part in this settlement and be bound by the release of class claims, the Class Member must submit a Request for Exclusion. *Id*. §§ 30, 53. The Released Parties is defined to include Defendant and Defendant's respective partners, employees, independent contractors, representatives, officers, attorneys, insurers, reinsurers, predecessors, successors, assigns, and related entities, including Westlake Chemical & Vinyls LLC. *Id*. § 29.

In addition, Aggrieved Employees shall release the following claims against the Released Parties:

> [A]ll claims for PAGA civil penalties that were pled in the Action and the PAGA notice submitted by Plaintiff Him to the LWDA on May 2, 2025, the amended PAGA notice submitted by Plaintiff Him to the LWDA on June 25, 2025, and the PAGA notice submitted by Plaintiff Canseco to the LWDA on September 25, 2025 (collectively, the "PAGA Notices"), based on the factual allegations in the Action and the PAGA Notices, including claims for alleged violations of Labor Code Sections 201-204, 226, 226.7, 233, 246, 510, 512, 558, 1194, 1197, 1197.1, and 2698, et seq., that accrued during the PAGA Period.

SA § 28; *see also ZB, N.A. v. Superior Ct.*, 8 Cal. 5th 175, 196 (2019) ("Nonparty employees are bound by the judgment in an action under the PAGA").

B. Preliminary Approval of the Settlement Is Warranted.

1. The Settlement Carries a Strong Presumption of Fairness.

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See* e.g., *Hanlon*, supra, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.*, *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

To make a fairness determination, the Court should consider several factors, including: "the strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.,* 48 Cal.App.4th 1794, 1801 (1996). "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.,* 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case

2. The Settlement is Reasonable When Compared to the Value of the Underlying Labor Code Claim and Inherent Uncertainty of Litigation.

Here, Plaintiffs alleges that Defendant underpaid overtime wages by excluding non-discretionary remuneration, including incentives, bonuses, and shift differentials, earned in the same period, from the calculation of the regular rate of pay that was used to pay overtime wages. Tulyathan Decl. ¶ 34. Pursuant to California law, employers must include all non-discretionary items of pay, including incentive pay and/or bonuses, into the regular rate of compensation or pay. *See Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542, 554 (2018) (observing that the regular rate of pay "includes adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any nonhourly compensation the employee has earned"); *Adoma v. Univ. of Phoenix, Inc*., 779 F.Supp.2d 1126, 1135 (E.D. Cal. 2011) (explaining that "meals, dormitory rooms, merchandise and 'tuition furnished by a college to its student employees'" should be included in the regular rate); *Wert v. U.S. Bancorp*, 2014 WL 7330891, at *3 (S.D. Cal. Dec. 18, 2014) ("'Regular rate of pay' [under California law] takes into account compensation beyond the normal hourly rate"); *Marin v. Costco Wholesale Corp.* (2008) 169 Cal. App. 4th 804, 807, as modified on denial of reh'g (Jan. 21, 2009) ("Where a bonus payment is considered a part of the regular rate at which an employee is employed, it must be included in computing his regular hourly rate of pay and overtime compensation.")

Relatedly, Plaintiffs allege that Defendant underpaid meal/rest period premiums by excluding non-discretionary incentive payments from the calculation of the regular rate of pay. Tulyathan Decl. ¶ 35. Under well-settled California law, employers must pay meal/rest period premiums at an employee's regular rate of pay. *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858, 878 (2021) (holding that "the term 'regular rate of compensation' in section 226.7(c)…encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee"); *Naranjo v. Spectrum Security Services, Inc.*, 13 Cal. 5th 93, 105 (2022) ("…employers who unlawfully denied their employees a meal or rest period on any given day must pay the employees an 'additional hour of pay' at their 'regular rate'"); *Woodworth v. Loma Linda University Medical Center*, 93 Cal.App.5th 1038, 1059 (2023). Thus, whenever putative class members earned incentiv pay, this amount should have been included in the rate used to calculate meal/rest period premiums. Here, however, Plaintiffs allege that Defendant paid employees meal/rest period premiums at their base rate of pay. Tulyathan Decl. ¶ 35.

Plaintiffs also allege that Defendant failed to pay sick pay at the regular rate of pay based on Defendant's failure to incorporate non-discretionary remuneration into the sick pay regular rate calculation. Tulyathan Decl. ¶ 36. Under the Healthy Workplace Healthy Family Act of 2014, sick pay wages must be paid at the regular rate of pay. Lab. Code § 246(l)(1) ("Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek."). The failure to pay sick pay wages at the regular rate of pay also exposes Defendant to civil penalties for violation of Labor Code § 203. *Flores v. Dart Container Corp.*, 2020 WL 2770073 (E.D. Cal. May 28, 2020) (rejecting argument to dismiss claim for section 203 penalties because "sick leave is different from wages"; "The HWHFA entitles plaintiff to a 'regular rate of pay' for sick leave taken … .").

Lastly, Plaintiffs allege claims for wage statement violations. Plaintiffs allege that Defendant failed to properly list the employer's name and address in violation of Labor Code § 226(a)(8). Tulyathan Decl. ¶ 37; s*ee Cicairos v. Summit Logistics, Inc.*, 133 Cal. App. 4th 949, 961 (2005) (finding employer in violation of Section 226(a)(8) for failing to list the full legal name on wage statements); *see also Noori v. Countrywide Payroll & HR Sols., Inc.*, 43 Cal. App. 5th 957 (2019).

Prior to the mediation, Defendant provided payroll records for all employees from its locations in California, from which Class Counsel were able to ascertain the number of current and former class members, average rates of pay, and the number of pay periods/workweeks at issue. From this data, Plaintiffs were able to investigate the claims asserted and conduct an exposure analysis that informed Plaintiffs' position at the mediation. *Id*. Plaintiffs' counsel also engaged an expert to run regular rate underpayment analyses and extrapolate data points for the class. *Id*. Based thereon, Plaintiffs analyzed Defendant's potential class exposure as follows:

- Overtime regular rate violations: Approximately $526,000.00 in overtime underpayment based on expert analysis;
- *Ferra* regular rate violations: Approximately $10,000.00 in meal/rest period premiums underpayment based on expert analysis;
- Waiting time penalties: $847,154.40, based on 149 former employees x $23.69

average hourly rate x 8 hours per day x 30 days;

- Wage statement penalties under Labor Code § 226(e): approximately $2,057,200.00, calculated based on approximately 20,946 pay periods at issue during the 226 one-year statutory period.

Tulyathan Decl. ¶ 39.

The total theoretical exposure of Plaintiff's class claims based on the above amount to approximately $3,440,354.40. *Id.* ¶ 40. However, Defendant has raised several legal and factual defenses that present substantial risks to Plaintiffs' prevailing on their theories of liability. For example, Defendant asserts that it maintained legally compliant overtime, meal and rest break, and sick pay policies. Defendant further contended that any regular rate underpayment affected only a subset of class members, as proof of underpayment would require a workweek-by-workweek showing that a class member received incentive pay in the same workweek as paid sick leave or a break penalty, which is an individualized inquiry. Defendant also argued that its QIP bonus was structured using the percentage-of-total-earnings method, which already incorporated overtime and paid sick leave into the bonus calculation, such that no regular rate adjustment was required. *Id.* ¶ 41.

Defendant also argued that Plaintiff cannot establish that Defendant "willfully" failed to pay wages at separation of employment, and thus Plaintiff cannot recover waiting time penalties under Section 203. In *Naranjo v. Spectrum Security Services, Inc.*, 88 Cal. App. 5th 937 (2023), the court upheld an employer's good faith defense to the plaintiff's claim for waiting time penalties, pursuant to Labor Code § 203. The employer argued that it had a viable legal defense, which precluded the imposition of waiting time penalties because its acts were not "willful" within the meaning of the statute. *Naranjo* also permitted a good faith defense to rebut the plaintiff's claim for penalties, pursuant to Labor Code § 226. Should Defendant succeed on these arguments, class members would recover $0 for waiting time penalties under Labor Code § 203 and statutory penalties under Labor Code § 226. Tulyathan Decl. ¶ 42.

Defendant also argued that the violation was not "knowing and intentional" and thus would not warrant Section 226(e) penalties. *See Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d

1128, 1145-46 (N.D. Cal. 2009) (granting summary judgment in favor of employer and finding its conduct was not "knowing and intentional"). Defendant argued that it was entitled to a "good faith" defense on this claim, too. *See, e.g., Naranjo v. Spectrum Security Services, Inc.*, 15 Cal. 5th 1056, 1065 (2024) ("if an employer reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law").

With respect to Plaintiffs' claim under the PAGA, Plaintiffs estimated that Defendant could face civil penalties of at least $4,540,400.00 [5]. Defendant contends that the imposition of multiple penalties for overlapping violations during the same pay period is not permitted under the PAGA, and that only a single $100 penalty per pay period may be awarded. While Plaintiffs dispute this interpretation, some courts have exercised discretion under Labor Code § 2699(e)(2) to avoid stacking penalties for multiple violations within the same pay period. Plaintiffs' analysis is also based on the initial violation penalty amount, which does not account for the imposition of the increased subsequent violation penalty amount given recent authority indicating this increased penalty is only available where there is a prior citation for a Labor Code violation. *See Bernstein v. Virgin Am., Inc*. (9th Cir. 2021) 3 F.4th 1127, 1144 (holding no heightened penalty because the Labor Commissioner nor any court warned the defendant that it was subject to the Labor Code until the court handling the case at issue). Courts are also hesitant to award the subsequent amount where there has not been a prior violation of the Labor Code. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* 2009 WL 2448430, at *9 (S.D. Cal. Aug. 10, 2009) ("[u]nder California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies

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[5] This is calculated based on 13,249 pay periods during the PAGA Period that that included non-discretionary remuneration and overtime/double time in the same pay period, 2,370 pay periods during the PAGA Period that included non-discretionary remuneration and meal and rest period premiums in the same pay period, and 2,075 pay periods during the PAGA Period that included non-discretionary remuneration and sick pay in the same pay period, and 27,710 total pay periods during the PAGA Period for wage statement violations. Tulyathan Decl. ¶ 44.

the employer that it is in violation of the Labor Code"). Defendant argued that no such prior violation occurred here, warranting only the initial penalty, if any penalty at all. Moreover, in this case there is no indication that Defendant had received a prior notice or citation from the Labor Commissioner regarding the alleged violations at issue.

Additionally, this analysis does not account for the possibility that the Court would reduce the PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline to award PAGA penalties where "if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id*. at p. 517. Upon review, the Court of Appeal found such reduction to be proper. *Id*. at p. 539.

Although Plaintiffs believe in the merits of the alleged claims and maintains that there is no reason for reducing PAGA penalties, Plaintiffs are aware that Defendant has raised defenses to the claims and further with respect to the reduction of PAGA penalties and that those defenses could persuade the Court. Thus, even if Plaintiffs were to successfully prove their claims at trial, there is a possibility that the Court may only award a small percentage of PAGA penalties, as the Court has discretion to do so. The Gross Settlement Amount was premised with this risk in mind, associated with the possibility of the Court significantly reducing PAGA penalties. Tulyathan Decl. ¶ 48.

The settlement is the result of extensive arm's length negotiations between the Parties and their counsel and was facilitated by an experienced and neutral mediator. The Parties reached the current settlement as a result of mediation. Although Plaintiff believes that the Settlement Class can be certified, Plaintiff also believes in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the possibility of non-certification, and the potential for appeals. Tulyathan Decl. ¶ 49. These risks on class certification are compounded by the California Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained class certification and subsequently prevailed at trial after eight years of litigation, but the judgment and the certification ruling were reversed by the California Supreme Court after an additional five years of litigation. The case was remanded to superior court where class certification was denied and plaintiffs' subsequent appeal also was denied.

Indeed, numerous courts have held that **gross** settlements approximating between only 8 and 25% of the defendant's potential exposure are fair and reasonable. *See Lesevic v. Spectraforce Techs., Inc.*, 2021 WL 1599310, at *3 (N.D. Cal. Apr. 23, 2021) (noting wage and hour class fund of $600,000 that compensated for 7% of maximum potential recovery was reasonable); *Bellinghausen v. Tractor Supply Co*., No. 13-CV-02377-JSC, 2015 WL 1289342, at p.*6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc*., U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (granting preliminary approval of wage and hour class settlement which obtained ***only 9.1%*** of projected damages, given the risks of continued litigation); *Villegas v. J.P. Morgan Chase & Co*., No. CV 09-00261 SBA EMC, 2012 WL 5878390, at p.*6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable); *Greko v. Diesel U.S.A., Inc*., No. 10-cv-02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24 percent was reasonable).

Here, based on the above, the total amount of class and PAGA penalties amount to approximately $7,980,754.40. Tulyathan Decl. ¶ 50. The Gross Settlement Amount is $850,000.00, which is approximately **10.65%** of the class and PAGA penalties. *Id.* Thus, the settlement was negotiated at arm's length and the settlement percentage-to-recovery further supports that the settlement is fair and reasonable.

Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class and PAGA Action Settlement ("Class Notice"), should any Class Member wish to pursue his or her own case for the claims being released herein, each Class Member has the right to submit a

Request for Exclusion (*i.e.*, opt-out) from the settlement. *See* SA § 30, 53.[6]

3. The Settlement Resulted from Serious, Informed Negotiations.

A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc*., 221 F.R.D. 523, 528 (C.D. Cal. 2004). As set forth in Section II, the Settlement resulted from an exchange of substantial information including actual payroll records, arm's-length negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and additional months of negotiating the long-form settlement agreement.

4. The Experience and Views of Class Counsel.

Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation. *In re Pacific Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995); *Carlin v. DairyAmerica, Inc*., 380 F.Supp.3d 998, 1013 (E.D. Cal., 2019) ("The recommendation of counsel—who are most closely acquainted with the facts of the underlying litigation—is to be considered"); *National Rural Telecommunications Cooperative v. DIRECTV, Inc*., 221 F.R.D. 523, 528 (C.D.Cal.,2004) ("The trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel"). Here, Plaintiffs are represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Tulyathan Decl., ¶¶ 57-60; Declaration of Larry W. Lee ("Lee Decl.") ¶ 5; Declaration of William L. Marder ("Marder Decl.") ¶ 8. Class Counsel conducted an in-depth review of Defendant's class data points and payroll records, engaged an expert to run actual underpayment analyses, and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs' case.

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[6] Class Members do not need to do anything should they wish to receive their share of the settlement funds. In other words, because this is not a claims-made settlement, Class Members will not be required to make a submission to participate in the settlement. This substantially decreases the amount of burden on each Class Member to receive their share of the settlement funds.

5. The Court Should Preliminarily Approve the Attorneys' Fees and Costs.

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

The common fund doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits, he may require the passive beneficiaries to compensate those who created the fund. Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35; *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." The reasons for applying the common fund doctrine include: "fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the 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." *Id*.

Indeed, in 2016, the California Supreme Court held that the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id*. at 487. As the Court held, only when the multiplier is "extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id*. at 505.

Here, the Parties have agreed to a payment of a maximum of 35% of the Gross Settlement Amount ($297,500.00) for payment of Class Counsel as attorneys' fees. Further, the Parties have agreed to reimbursement of class counsel's litigation costs of up to $25,000. Class Counsel have at their own risk, expended costs, for example, to file this instant action, service of process, participate in mediation, expert costs, and payment of other litigation related costs. *See* Tulyathan Decl. ¶ 23. Based on the foregoing, the Court should preliminarily approve the attorneys' fees and costs being requested by the Parties.

C. The Court Should Preliminarily Approve the Proposed Class Representative Service Payments.

Plaintiffs request a modest enhancement of $10,000.00 each, for a total of $20,000.00. SA § 40. The Class Representatives met and conferred with Class Counsel on a number of occasions to discuss the case, searched for documents related to the case, provided documents and information to Class Counsel, remained available during mediation, and reviewed the Settlement Agreement. *See* Him Decl. and Chavez Canseco Decl. ¶¶ 8-9. As part of their duties as Class Representatives, Plaintiffs provided invaluable information and documents that resulted in this settlement. *See id*. In addition to the invaluable services that they provided, Plaintiffs also took significant risks, both professionally and monetarily, in acting as Class Representatives and seeking benefits on behalf of the Class. *See id.* at ¶ 12. Because the claims alleged by the Class Representative involved the payment of costs to the prevailing party, Plaintiffs could have possibly faced paying the costs of Defendant had they not prevailed in this action.

Furthermore, given that future employers are much less likely to hire individuals who have filed suit against their prior employer, particularly cases of this nature, Plaintiffs may face prejudice in the future from other potential employers. Plaintiffs took this risk upon themselves and the whole Class benefited from these risks taken by Plaintiffs. Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a public lawsuit.

D. The Court Should Preliminarily Approve the Administration Costs.

The Parties have agreed to an estimated payment not to exceed $12,750.00 to the Administrator, Phoenix Settlement Administrators, to send notices and to administer this settlement. SA §§ 33, 41. Phoenix Settlement Administrators is a well-recognized class action settlement administrator. The Parties believe that the administration fee is reasonable and should be approved. *See* Tulyathan Decl. ¶ 25, Ex. B.

IV. THE COURT SHOULD CONDITIONALLY CERTIFY THE CLASS.

Defendant has agreed to certify the Class for settlement purposes only. The Class that Plaintiffs seeks to conditionally certify is ascertainable. "Class members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records." *Lee v. Dynamex, Inc*., 166 Cal. App. 4th 1325, 1334 (2008). Here, members of the Class are readily identifiable. Defendant has determined that there are approximately 785 individuals that comprise the Class. SA § 37. Furthermore, the Class is sufficiently numerous. Courts generally find that numerosity is satisfied if the class includes forty or more members. *See Villalpando v. Excel Direct Inc*., 303 F.R.D. 588, 605-606 (N.D. Cal. 2014).

The commonality requirement is met when there are questions of law and fact common to the class. *See Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1019 (1998). "The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within the class"). Plaintiffs allege that Defendant, as a matter of its corporate policy, practice, or procedure violated the Labor Code by failing to pay overtime wages at the regular rate of pay, failing to pay meal/rest period premium compensation at the regular rate of pay, failing to pay sick pay wages at the regular rate of pay, and failing to provide accurate itemized wage statements to employees. *See* Him Decl. and Chavez Canseco Decl. ¶¶ 3-5. In other words, Plaintiffs were subjected to the same policies and practices as other Class Members. Thus, Plaintiffs' claims are typical to those of Class Members.

The adequacy requirement is also met. "Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450 (1976). Here, Plaintiffs do not have any interests adverse to the class, nor has any such issues been raised or presented. *See* Him Decl. and Chavez Canseco Decl. ¶¶ 6-7. Plaintiffs have taken all necessary steps to represent the interests of the Class, and by providing information and documents to Class Counsel. *See id.* For such reasons, Plaintiffs have adequately represented the Class Members and will continue to do so.

Further, as detailed in their declarations, Class Counsel has adequately represented the Class and has experience with wage and hour class actions. Indeed, Class Counsel are experienced and well-qualified class action litigators who have litigated many wage and hour class actions and have each been certified as class counsel in numerous other class actions, particularly wage and hour class actions. Tulyathan Decl. ¶¶ 57-60; Lee Decl. ¶ 5; Marder Decl. ¶ 8. From the inception of the case, Class Counsel has solely represented the interest of the Class. Tulyathan Decl. ¶ 2; Lee Decl. ¶ 6; Marder Decl. ¶ 10.

V. <u>NOTICE TO THE LWDA HAS BEEN PROVIDED</u>

Concurrent with the filing of this Motion, Plaintiffs uploaded the instant motion to the LWDA's website. *See* Tulyathan Decl. ¶ 61, Ex. C.

VI. <u>CONCLUSION</u>

Here, the proposed settlement is fair, adequate, and reasonable. It will result in both substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arm's length negotiations conducted by counsel for respective Parties who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the Class Notice, and set a date for a final approval hearing.

DATED: June 16, 2026

DIVERSITY LAW GROUP, P.C.

By:______________________________

Larry W. Lee
Kwanporn "Mai" Tulyathan
Attorneys for Plaintiffs and the Class

PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On June 16, 2026, I served the following document(s) described as:

1. **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
2. **DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
3. **DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
4. **DECLARATION OF MAI TULYATHAN IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**
5. **DECLARATION OF PLAINTIFF TIMA HIM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**
6. **DECLARATION OF CHAVEZ CANSECO IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**
7. **[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

on the interested parties in this action as follows:

David L. Cheng Keith R. Rossman D'Metria J. Bolden Malinda Brown Ford & Harrison LLP 350 South Grand Avenue, Suite 2300 Los Angeles, California 90071	*Attorneys for Defendants Westlake Management Services, Inc. & Westlake Chemical & Vinyls LLC* dcheng@fordharrison.com krossman@fordharrison.com dBolden@fordharrison.com MBrown@fordharrison.com

__X__ BY ELECTRONIC MAIL: by personally sending a true and correct copy of the above-described document(s) to the party(ies) listed above or on the attached mailing list from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s) indicated above or on the attached mailing list. I certify that said electronic transmission was completed and that all pages were received by the party(ies) identified herein or on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 16, 2026, at Los Angeles, California.

Erika Mejia