

HUNTER PYLE, SBN 191125
JOHN J. DARIN, SBN 323730
HUNTER PYLE LAW PC
505 14th Street, Suite 600
Oakland, California 94612
Telephone: (510) 444-4400
Facsimile: (510) 444-4410
Emails: hunter@hunterpylelaw.com
jdarin@hunterpylelaw.com

*Attorneys for Plaintiff, the Putative Class,
and all other aggrieved employees*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

EFREN PALOMINO, on behalf of himself and
all others similarly situated;

Plaintiff,

v.

WINALL OIL CO., a California Corporation;
ALLEN GIMENEZ, an individual; GARY
GIMENEZ, an individual; and DOES 1 through
20, inclusive,

Defendants.

Case No. 23STCV04401

CLASS AND REPRESENTATIVE ACTION

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

Date: December 5, 2024
Time: 9:00 am
Dept: 17
Judge: Hon. Laura A. Seigle

Complaint Filed: February 28, 2023
FAC Filed: March 21, 2023
Trial Date: Not Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on December 5, 2024 at 9:00 a.m. or as soon thereafter as the matter may be heard in Department 17 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, CA 90012, named Plaintiff Efren Palomino ("Plaintiff") will and hereby do move this Court for:

1) Preliminary approval of the proposed Stipulation of Settlement (the "Settlement") in this case (the "Action");

2) Provisional certification, pursuant to section 382 of the California Code of Civil Procedure, for settlement purposes only, of the proposed Class defined as: all current and former gas-station attendants who were employed by Defendants throughout California at any time from February 28, 2019, through the date of preliminary approval of the Settlement by the Court;

3) Preliminary appointment of Efren Palomino as the Class Representative;

4) Preliminary appointment of Hunter Pyle and John J. Darin of Hunter Pyle Law as Class Counsel;

5) Leave for Plaintiff to file his Second Amended Complaint, as provided for in the Settlement;

6) The scheduling of a final approval hearing to consider whether the Settlement should be finally approved and to award a Service Award to Plaintiff and attorneys' fees and costs to Plaintiff's counsel;

7) Appointment of Simpluris as the third-party Settlement Administrator;

8) Approval of the proposed Class Notice and an order that it be disseminated to the proposed Class as provided in the Settlement; and

9) A stay of all proceedings in the Action, except those proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing.

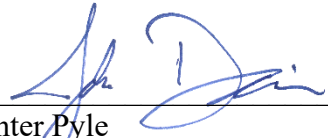
This motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the Declaration of John J. Darin in Support of Plaintiff's Motion for Preliminary Approval of Class and Representative Action Settlement ("Darin Decl.") with the attached exhibits; the Declaration of Efren Palomino in Support of Plaintiff's Motion for Preliminary Approval of

1 Class and Representative Action Settlement (“Palomino Decl.”); the pleadings and other papers
2 filed in this Action; and any further oral or documentary evidence or argument presented at the time
3 of hearing.

4
5 Respectfully submitted,

6 Dated: September 26, 2024

HUNTER PYLE LAW

7
8 By:  _____

Hunter Pyle
John J. Darin

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10 Attorneys for Plaintiff, the Putative Class,
11 and all other aggrieved employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to Rule 3.769 of the California Rules of Court, named Plaintiff Efren Palomino
4 (“Plaintiff”) respectfully requests that this Court grant preliminary approval of the Settlement
5 Agreement agreed to by Plaintiff and Defendants Winall Oil Co., Allen Gimenez, and Gary
6 Gimenez (“Defendants”). Plaintiff and the Defendants are collectively referred to here as the
7 “Parties.”

8 Plaintiff and Class Members worked as non-exempt, non-unionized employees of
9 Defendants in California. (Declaration of John J. Darin in Support of Plaintiff’s Motion for
10 Preliminary Approval of Class and Representative Action Settlement (“Darin Decl.”), ¶ 20.) The
11 Settlement, attached as Exhibit 1 to the Darin Declaration, is not a claims-made settlement. (*Id.* at
12 ¶ 3, Exh. 1 (“Settlement”).) It includes the following essential terms:

- 13 1) The Class¹ is comprised of: all current and former gas-station attendants who were
14 employed by Defendants throughout California at any time from February 28, 2019,
15 through the date of preliminary approval of the parties’ Settlement by the Court (the
16 “Class Period”). (Darin Decl., Exh. 1 [Settlement] at ¶ 2.2, 2.3.)
- 17 2) A Total Settlement Amount of \$1,384,804.25, which is neither claims-made nor
18 reversionary, that includes Individual Settlement Payments to Class Members;
19 Plaintiff’s Service Award; the Class Counsel Award; the Settlement Administrator
20 Expenses; and the PAGA Payment. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.1, Exh. A
21 [Class Notice].) These amounts, pending Court approval, are as follows:
- 22 a. A PAGA Payment of \$100,000, with seventy-five percent (\$75,000) paid to
23 the California Labor and Workforce Development Agency (“LWDA”) and the
24 remaining twenty-five percent (\$25,000) paid to the PAGA Employees. (Darin
25 Decl., Exh. 1 [Settlement] at ¶ 4.4.)

26
27 ¹ Unless otherwise defined here, all capitalized terms have the same meanings as those in the
Settlement Agreement.

- b. Settlement Administrator Expenses of up to Six-Thousand Dollars (\$6,000). (Darin Decl., Exh. 1 [Settlement] at ¶ 4.5.)
 - c. A Service Award for Plaintiff Efren Palomino of up to \$20,000 for his service to the Class and the risks he faced in bringing this Action on Class Members' behalf. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.2; Los Angeles County Superior Court, Checklist for Preliminary Approval of Class Action Settlement ("Preliminary Approval Checklist") § I(E).)
 - d. An award of up to one-third of the Total Settlement Amount (not to exceed \$461,601.42) in attorneys' fees and up to \$50,000 in reimbursement of litigation costs to Plaintiff's counsel. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.3.)
- 3) The Net Distribution Fund is the Total Settlement Amount minus the Service Award, the Class Counsel Award, the Settlement Administrator Expenses, and the PAGA Payment. (Darin Decl., Exh. 1 [Settlement] at ¶ 2.18; Exh. A [Class Notice].) All funds allocated to the Service Award, the Class Counsel Award, the Settlement Administrator Expenses, and the PAGA Payment but not approved by this Court will become part of the Net Distribution Fund. (Darin Decl., Exh. 1 [Settlement] at ¶¶ 4.2, 4.3, 4.4, 4.5, ; Exh. A [Class Notice]; see Preliminary Approval Checklist § II(C).) Upon approval by the Court, the Net Distribution Fund will be allocated to Settlement Class Members on a pro-rata basis based on their number of workweeks during the Class Period (the "Individual Settlement Payment"). (Darin Decl., Exh. 1 [Settlement] at ¶ 4.6; Exh. A [Class Notice].) The PAGA settlement allocated to PAGA Employees is projected to be an additional \$25,000. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.4; Exh. A [Class Notice].) The PAGA Payment will be distributed to PAGA Employees on a pro-rata basis based on workweeks during the PAGA Period. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.7; Exh. A [Class Notice].))

1 As discussed below, the Settlement satisfies all criteria for preliminary approval under
2 California law and falls well within the range of reasonableness. The Settlement was reached
3 through informed, arm's-length bargaining at and after mediation between experienced attorneys.

4 Accordingly, the Parties respectfully request that the Court enter an Order: (1) preliminarily
5 approving the proposed Settlement; (2) provisionally certifying the Class; (3) provisionally
6 approving the appointment of Efren Palomino as Class Representative; (4) provisionally approving
7 the appointment of Hunter Pyle and John J. Darin of Hunter Pyle Law as Class Counsel; (5)
8 granting Plaintiff leave to file his Second Amended Complaint, as set forth in the Settlement; (6)
9 setting a final fairness and approval hearing; (7) appointing Simpluris as the third-party Settlement
10 Administrator; and (8) approving and directing distribution of a Notice of Settlement of Class
11 Action ("Class Notice") to the Class (attached as Exhibit A to the Settlement).

12 **II. SUMMARY OF THE ACTION**

13 **A. FACTUAL AND PROCEDURAL BACKGROUND**

14 Plaintiff alleges that Defendants often failed to adequately staff their gas stations, resulting
15 in only one Class Member working at a time. (Darin Decl.) Because Defendant's policies and
16 practices prohibited Plaintiff and other Class Members from closing the stations during shifts,
17 Plaintiff and other Class Members working alone were unable to take off-duty meal and rest
18 periods. (Darin Decl.) Defendants did not pay period-premiums to Plaintiff and other Class
19 Members for the meal- and rest-periods they could not take when working alone. (Darin Decl.) As a
20 result, the wage statements Defendant issued to Plaintiff and other Class Members omitted
21 premiums earned, in violation of Labor Code section 226. (Darin Decl.)

22 Plaintiff's First Amended Complaint seeks to recover unpaid meal- and rest-period
23 premiums and wage-statement statutory penalties on behalf of himself and the Class, and PAGA
24 civil penalties on behalf of the State of California and all Aggrieved Employees. (Darin Decl.)

25 Plaintiff seeks leave to file a Second Amended Complaint alleging three additional claims
26 on behalf of the Class: (a) Failure to Maintain and Furnish Records; (b) Failure to Post
27

1 Compensation Insurance Carrier and Safety Notices; and (c) Failure to Provide One Day's Rest Per
2 Workweek.

3 **1. The Parties**

4 Defendants Winall Oil Co., Allen Gimenez, and Gary Gimenez own and operate at least
5 seven gas stations in Southern California, including in Los Angeles County. (Darin Decl., ¶ 21.)
6 Plaintiff is informed and believes that, throughout the Class Period, they owned and operated more
7 than a dozen. (*Ibid.*) Allen Gimenez is Winall Oil Co.'s Chief Executive Officer and Director,
8 while Gary Gimenez is the company's Chief Financial Officer and Secretary. (*Ibid.*)

9 Defendants employ Plaintiff Efren Palomino and other Class Members and Aggrieved
10 Employees as gas station attendants. (*Ibid.*)

11 **2. Plaintiff's Class and PAGA action**

12 On October 28, 2022, Plaintiff notified Defendants and the LWDA of Defendants' alleged
13 Labor Code violations under the Private Attorneys General Act ("PAGA"), Labor Code section
14 2698, *et seq.* (Darin Decl., ¶ 22.) Plaintiff specifically alleged that Defendants violated Labor Code
15 section 558 by failing to pay for missed meal and rest periods, section 226 by failing to provide
16 adequate itemized wage statements, sections 201 through 203 by failing to pay all wages owed at
17 termination, and sections 204 and 210 by failing to pay all wages due on regular pay days. (*Ibid.*)

18 Plaintiff then commenced this Action on February 28, 2023, by filing a class and
19 representative action asserting claims for: (1) Failure to Provide Off-Duty Meal Periods; (2) Failure
20 to Authorize and Permit Rest Periods; (3) Failure to Furnish Adequate Wage Statements; (4)
21 Unlawful Business Practices; and (5) Violations of the Labor Code Private Attorneys General Act.
22 (Darin Decl., ¶ 23.) Plaintiff filed the operative First Amended Complaint on March 21, 2023, to
23 correct the spelling of the names of Defendants Allen Gimenez and Gary Gimenez. (*Ibid.*)

24 **3. The top-filed Rodriguez Peralta Action**

25 On March 2, 2023—four months after Plaintiff submitted his PAGA Notice to the LWDA
26 and two days after he filed this Action—the law firm Shioda Langley & Chang, LLP, submitted a
27 PAGA notice to the LWDA on behalf of Gerardo Enrique Rodriguez Peralta and Jose Vargas.

(Darin Decl., ¶ 24.) Shioda Langley & Chang, LLP, then filed a class and PAGA action complaint against Winall Oil Co. in Orange County Superior Court (No. 30-2023-01319871) on behalf of Mr. Rodriguez Peralta and Mr. Vargas on April 14, 2023. Mr. Rodriguez Peralta and Mr. Vargas are putative class members in Plaintiff’s action. (*Ibid.*)

Rodriguez Peralta, et al. v. Winall Oil Co. pleads substantially the same causes of action and same facts as Plaintiff’s action. (Darin Decl., ¶ 25.) However, *Rodriguez Peralta* alleges three additional Labor Code claims: (a) Failure to Maintain Employee Records; (b) Failure to Post Compensation Insurance Carrier Information; and (c) Failure to Provide One Day Rest in Seven Days. (*Ibid.*) Two of these claims—(a) Failure to Maintain and Employee Records, and (b) Failure to Post Compensation Insurance Carrier Information—fail as a matter of law. The third—(c) Failure to Provide One Day Rest in Seven Days—adds nothing to the Class damages. *Rodriguez Peralta* has been mired in procedural delays and has not been meaningfully litigated. (*Ibid.*)

On November 6, 2023, Plaintiff filed an amended PAGA notice with the LWDA, alleging the additional claims at issue in *Rodriguez Peralta*. (Darin Decl., ¶ 26.) These additions claims include violations of Labor Code sections 3550 and 3551 for failure to post a notice of Defendants’ current compensation insurance and violations of sections 551 and 552 for failure to provide one’s days rest for every seven days worked. (*Ibid.*) Plaintiff also alleged Labor Code violations of sections 558 and 1197.1 for failure to pay minimum wages for all hours worked and all wages due at termination and sections 558, 510, and 1194 for failure to pay overtime wages. (*Ibid.*)

Plaintiff’s motion seeks leave to amend his operative complaint so that he may settle and release these claims on a class basis as well.

B. INVESTIGATION

As detailed below, Plaintiff’s counsel has thoroughly investigated the claims asserted on behalf of the putative class and the State of California in both this action and *Rodriguez Peralta*, Defendants’ defenses, and the likely outcomes, risks, and expense of pursuing litigation. (Darin Decl., ¶ 27.)

1 **1. Plaintiff's Formal Written Discovery**

2 On July 18, 2023, Plaintiff propounded formal written discovery on Defendant Winall Oil
3 Co.: Form Interrogatories – Employment, Requests for Admission; Requests for Production of
4 Documents; and Special Interrogatories. (Darin Decl.)

5 On October 5, 2023, after requesting and receiving multiple extensions, Defendant Winall
6 Oil Co. served verified responses. (Darin Decl.)

7 On October 6, 2023, Defendant formally produced documents. The following documents
8 were critical to evaluating the merits of Plaintiff's claims:

- 9 • An Agreement for Paid On Duty Meal Period, signed by Mr. Palomino on June 6,
10 2007;
- 11 • Defendant Winall Oil Co.'s Employment Manual, dated June 1, 2018, containing its
12 relevant meal and rest period policies ("Winall Employment Manual");
- 13 • Wage statements summaries for all Class Members, for the entirety of the Class
14 Period ("Complete Payroll Register"); and
- 15 • Handwritten timecards for all Class Members for the entirety of the Class Period.
16 (Darin Decl.)

17 These documents allowed Plaintiff to determine under what circumstances a potential
18 violation of law could be identified.

19 First, the Agreement for Paid On Duty Meal Period suggests a defense to a significant
20 portion of Plaintiff's meal-period claims. (Darin Decl., Exh. 3.) If all Class Members signed
21 similar Agreements, there were likely few first-meal-period violations. However, it is unclear
22 whether the Agreement applies to shifts where Class Members were entitled to a second meal
23 period.

24 Second, the Winall Employment Manual confirmed that Defendant Winall Oil Co.
25 prohibited Plaintiff and other Class Members from closing its stations during their shifts,
26 suggesting potential liability for rest-period violations. (Darin Decl., Exh. 4 [Winall Employment
27

Manual] at p. 14 [“If you are the only employee at the station during such period of time, the company will discuss on duty meal and rest periods.”].)

Third, the Complete Payroll Register contained wage statement summaries for all Class Members for every pay period during the Class Period. These summaries allowed Plaintiff’s Counsel to confirm each Class Member’s rate of pay and whether Defendants provided meal- and rest-period premium wages on occasions that Class Members were unable to take off-duty periods. (Darin Decl.)

2. Defendant’s Remedial Changes to Its Scheduling Policies

The Complete Payroll Register also confirms that Defendants took remedial action to change the policies at issue in Plaintiff’s complaint.

Plaintiff produced to Counsel the written schedules posted by Defendants before and after he had initiated this lawsuit. After March 18, 2023, Defendants revised these schedules to provide for much greater overlap between shifts, permitting Plaintiff and other Class Members to take periods. (Darin Decl.)

Even when unforeseen contingencies forced Plaintiff and other Class Members to work alone after March 18, 2023, Defendants took further remedial action to address the violations alleged in Plaintiff’s complaint. During the pay period ending March 18, 2023, Defendants began paying premium wages to Plaintiff and other Class Members whenever they missed breaks due to working alone. (Darin Decl.) This policy change remedied a key aspect of Plaintiff’s meal- and rest-period claims: Defendants’ failure to pay meal- and rest-period premium-wages for missed breaks.

Taken together, these remedial efforts essentially cut off damages after March 18, 2023.

3. Defendant’s Production of Class Member Timecards

Defendant Winall Oil Co. produced the handwritten timecards for every Class Member for every workweek during the Class Period: from March 2, 2019, through September 16, 2023. (Darin Decl.) These timecards include the clock-in and clock-out times for every shift worked by every Class Member during the Class Period.

1 Class Members had weekly pay periods. The timecards shows:

2 In 2019: 2,540 pay periods worked, starting from February 28, 2019, the
3 beginning of the Class Period.

4 In 2020: 3,010 pay periods worked.

5 In 2021: 2,792 pay periods worked, including 425 pay periods after October
6 28, 2021, the start of the PAGA Period.

7 In 2022: 2,154 pay periods worked.

8 In 2023: 1,594 pay periods worked, including 404 pay periods through
9 March 17, 2023, after which date Winall Oil took remedial action
10 through policy changes.

11 From beginning of Class Period (February 28, 2019) through date of
12 remediation (March 17, 2023): 10,900 pay periods worked.

13 From beginning of PAGA Period (October 28, 2021) through date of
14 remediation (March 17, 2023): 2,983 pay periods worked.

15 The timecards show whether Class Members clocked out for meal periods during each shift.
16 They also show whether Class Members' shifts overlapped with one another, so as to permit one
17 Class Member to take meal and rest periods while the other worked the station. Finally, the
18 timecards show how often Class Members had inadequate rest days in violation of Labor Code
19 sections 551 and 552, as alleged in the *Rodriguez Peralta* Action. (Darin Decl.)

20 The timecards, along with other documents in Defendant's production, contain all of the
21 information needed to calculate class damages. (Darin Decl.)

22 4. Plaintiff's Extensive Review of Class Member Timecards

23 Defendant Winall Oil Co. produced the Class Member timecards in 239 pdfs, one for each
24 pay period during the Class Period. Each pdf contains anywhere from 38 to 61 timecards. In total,
25 Defendant Winall Oil Co. produced 12,090 pages of handwritten timecards. (Darin Decl.)

26 Extracting the data from these handwritten timecards proved time-consuming and costly.
27 (Darin Decl.) In order to determine an adequate sampling of this data, Plaintiff's Counsel consulted

1 with EconOne, an economics firm with expertise in the calculation of class-damages. Plaintiff's
2 Counsel utilized a sample-size calculator to determine that reviewing 148 pdfs would represent an
3 ideal sample size, with a confidence level of 95%. Finally, Plaintiff's Counsel entered each of the
4 pay periods into an excel spreadsheet and generated a random sampling of 148 pay periods. (Darin
5 Decl.)

6 Plaintiff's Counsel then retained a document-review specialist, Legal Outsourcing 2.0, to
7 input the timecard data into a manipulable spreadsheet form. Plaintiff's Counsel provided Legal
8 Outsourcing 2.0 with the approximately 7,034 handwritten timecards from its random sampling of
9 148 pay periods. Plaintiff's Counsel helped manage this project, reviewing and providing responses
10 to a daily "Decision Log" issued by the review team. (Darin Decl.)

11 Legal Outsourcing 2.0's team spent a total of 782 hours inputting the timecard data into
12 spreadsheets. The work performed by Legal Outsourcing 2.0 resulted in 51,973 lines of data, and
13 Plaintiff incurred \$19,550 in litigation costs on behalf of the Class. (Darin Decl.)

14 **5. Expert Analysis of the Timecards Data**

15 After extracting Class Members' pay rates from the Complete Payroll Register, Plaintiff's
16 Counsel provided the timecard data to EconOne. (Darin Decl.)

17 EconOne performed an extensive analysis of the data and generated a model to calculate the
18 violations rate and Defendants' exposure. (Darin Decl.) EconOne then extrapolated the analyzed
19 data, from the random sampling of 148 pay periods to the full 239 pay periods during the Class
20 Period. EconOne's analysis showed the following:

Total Pay Periods Worked	Analysis of Random Sampling of Timecards	Extrapolated Analysis for Full Timecards
From beginning of Class Period (February 28, 2019) through date of remediation (March 17, 2023):	6,360	10,215
From beginning of PAGA Period (October 28, 2021) through date of remediation (March 17, 2023):	1,966	3,158

1
2 EconOne spent over 56 hours performing its analysis, and Plaintiff incurred \$10,820.51 in
3 litigation costs on behalf of the Class. (Darin Decl.)

4 **C. ARMS-LENGTH MEDIATION AND SETTLEMENT**

5 The foregoing investigation permitted Plaintiff to thoroughly evaluate Plaintiff's claims, the
6 claims of the Class, and the PAGA claims on behalf of the State of California. (Darin Decl.)

7 On February 15, 2024, the Parties attended a private mediation with mediator David
8 Sarnoff, Esq. (Darin Decl., ¶ 31.) Plaintiff provided Mr. Sarnoff with his detailed analysis of
9 Defendants' liability and damages. (*Ibid.*) In turn, Defendants represented that all Class Members
10 had signed Agreements for Paid On Duty Meal Period, like the one signed by Plaintiff. Defendants
11 also made a show of proof, providing a sampling of 30 of these Agreements. These Agreements
12 constituted a nearly complete defense to Plaintiff's first-meal-period claim. The Parties engaged in
13 arms-length negotiations throughout the mediation and ultimately resolved the matter with the
14 assistance of Mr. Sarnoff. (*Ibid.*)

15 The principal terms of the Parties' agreement were set forth in a Stipulation of Settlement
16 eventually executed by the Parties on May 23, 2024. (Darin Decl., ¶ 4, Exh. 2 [Settlement].)

17 **D. REASONS FOR THE PARTIES' SETTLEMENT**

18 In reaching the Settlement, counsel relied on their substantial litigation experience in
19 similar employment class actions. Information gathered from investigation and discovery informed
20 Plaintiff's counsel's assessment of the strengths and weaknesses of the case and the benefits of the
21 Settlement, as further detailed below. (Darin Decl., ¶ 33.) The arms-length settlement of this matter
22 thus avoids significant litigation and financial risk and provides for a monetary distribution to all
23 Settlement Class Members. (*Ibid.*)

24 Plaintiff recognizes the expense and length of protracted proceedings necessary to continue
25 the Action against Defendants through trial and through any possible appeals. (Darin Decl., ¶ 34.)
26 Plaintiff has also taken into account the uncertainty and risks of further litigation, including the risk
27 of significant delay, the risk that the Court may not certify the Class or may later decertify it, and

1 potential appellate issues. (*Id.* at ¶ 35.) Plaintiff is also aware of the burdens of proof necessary to
2 establish liability for the claims asserted in the Action, Defendants’ defenses to those claims, and
3 the difficulties in establishing damages. (*Ibid.*)

4 **III. THE PROPOSED SETTLEMENT**

5 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

6 The Settlement provides that Defendants shall pay the Total Settlement Amount of
7 \$1,384,804.25 to resolve the claims alleged in the Action. (Darin Decl., Exh. 1 [Settlement] at
8 ¶ 4.1.) The essential terms of the Settlement are as follows:

9 **1. Class Definition**

10 The Class is defined as: all current and former gas-station attendants who were employed
11 by Defendants throughout California at any time from February 28, 2019, through the date of
12 preliminary approval of the parties’ settlement agreement by the Court (the “Class Period”). (Darin
13 Decl., Exh. 1 [Settlement] at ¶ 1.) Defendants represent that there are 69 Class Members. (Darin
14 Decl., ¶ 36.)

15 **2. Settlement Amount**

16 The sum of \$1,384,804.25 that Defendants agree to pay to settle this Action shall include all
17 payments to Class Members, the Service Award, the Class Counsel Award, the Settlement
18 Administrator Expenses, and the PAGA Payment. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.1;
19 Darin Decl., ¶ 37.)

20 The Settlement provides that any and all claims for PAGA penalties alleged in the Action
21 have been settled for \$100,000. Seventy-five percent (\$75,000) shall be paid to the LWDA, and
22 twenty-five percent (\$25,000) shall be distributed to PAGA Employees. (Darin Decl., Exh. 1
23 [Settlement] at ¶ 4.4; Darin Decl., ¶ 38.)

24 The Settlement Administrator Expenses shall not exceed \$6,000 and will be deducted from
25 the Total Settlement Amount upon approval by the Court. (Darin Decl., Exh. 1 [Settlement] at
26 ¶ 4.5; Darin Decl., ¶ 39.)

At the final approval stage, Plaintiff's counsel will apply to the Court for a Service Award of \$20,000 for Plaintiff Efren Palomino in recognition of his service to the Class. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.2; Darin Decl., ¶ 40; Preliminary Approval Checklist § I(E).)

Plaintiff's counsel will apply to the Court for an award of attorneys' fees not to exceed one-third of the Total Settlement Amount, or \$461,601.42, plus actual litigation costs, which are estimated to be no more than \$50,000. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.3; Darin Decl., ¶ 41.)

The Net Distribution Fund is the Total Settlement Amount minus the Service Award, the Class Counsel Award, the Settlement Administrator Expenses, and the PAGA Payment. (Darin Decl., Exh. 1 [Settlement] at ¶ 2.18; Darin Decl., ¶ 42.) The Net Distribution Fund is currently estimated to be \$747,202.83, and the PAGA Settlement allocated to PAGA Employees is projected to be an additional \$25,000, as follows:

Total Settlement Amount	\$ 1,384,804.25
Less PAGA Payment	-\$ 100,000
Less Settlement Administrator Expenses	-\$ 6,000
Less Service Award	-\$ 20,000
Less Attorneys' Fees	-\$ 461,601.42
<u>Less Litigation Costs</u>	<u>-\$ 50,000</u>
NET DISTRIBUTION FUND	\$ 747,202.83
PAGA Payment:	\$ 100,000
<u>Less Payment to LWDA</u>	<u>-\$ 75,500</u>
PAYMENT TO PAGA EMPLOYEES	\$ 25,000

(Darin Decl., ¶ 53.)

3. Neither Claims-Made Nor Reversionary

This is not a claims-made settlement. (Darin Decl., Exh. 1 [Settlement] at ¶¶ 3, 6, 15(c); Exh. A [Class Notice]; see Preliminary Approval Checklist § D.) Settlement Class Members will receive a portion of the Net Distribution Fund as long as they do not opt out of the Settlement. (Darin Decl., Exh. 1 [Settlement] at ¶ 2.3; Pyle Decl., Exh. A [Class Notice].) All PAGA

1 Employees will receive their portion of the PAGA Payment. (Darin Decl., Exh. 1 [Settlement] at
2 ¶ 2.32; Darin Decl., ¶ 43 & Exh. A [Class Notice].)

3 The Settlement is also non-reversionary. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.1; Darin
4 Decl. & Exh. A [Class Notice].) Under no circumstances will the Total Settlement Amount or any
5 portion of it revert back to Defendants. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.19; Darin Decl.,
6 ¶ 44 & Exh. A [Class Notice].)

7 **4. Settlement Administrator**

8 The Parties have agreed that Simpluris will serve as the Settlement Administrator. (Darin
9 Decl., Exh. 1 [Settlement] at ¶ 3.4; Darin Decl., ¶ 46.) Simpluris has successfully administered a
10 large number of wage and hour class action settlements in an efficient and effective manner.
11 (Declaration of Andrew Meyer in Support of Plaintiff's Motion for Preliminary Approval of
12 Class and Representative Action Settlement ("Meyer Decl."), ¶ 2; see Preliminary Approval
13 Checklist § II(D).) Simpluris has provided a bid of no more than \$6,000 for the proposed
14 administrative work. (Meyer Decl., ¶¶ 9–10, Exh. C.) Plaintiff's counsel considered three bids
15 before choosing Simpluris. (Darin Decl., ¶ 46.)

16 **5. Class Notice, Opting Out, and Objections**

17 The Settlement Administrator will mail a Class Notice, including a computation of the
18 amount of each Class Member's share of the Net Distribution Fund and PAGA Payment, to all
19 Class Members, whose names and addresses Defendants will provide to the Settlement
20 Administrator. (Darin Decl., Exh. 1 [Settlement, Exh. A [Class Notice].) The Class Notice is
21 attached as Exhibit A to the Settlement.

22 The Class Notice informs Class Members of their right to object or opt out of the
23 Settlement without soliciting extraneous information (Darin Decl., Exh. 1 [Settlement], Exh. 1A
24 [Class Notice]; see Preliminary Approval Checklist § II(E).) The Class Notice provides clear
25 instructions for Class Members to object to the Settlement, opt out of the Settlement, or dispute the
26 computation of the Class Member's share of the Net Distribution Fund and PAGA Payment. (Darin
27 Decl., Exh 1 [Settlement], Exh. A [Class Notice].)

1 Class Members will have sixty days to postmark objections, disputes, and requests for
2 exclusion. (Darin Decl., Exh. 1 [Settlement, Exh. A [Class Notice]; see Preliminary Approval
3 Checklist § II(E).) The Settlement Administrator will evaluate and resolve disputes from Class
4 Members regarding the number of workweeks attributed to them. (Darin Decl., Exh. 1 [Settlement,
5 Exh. A [Class Notice]; see Preliminary Approval Checklist § II(E).) Individuals who do not
6 submit valid and timely requests for exclusion will be deemed Settlement Class Members. ((Darin
7 Decl., Exh. 1 [Settlement, Exh. A [Class Notice].)

8 Class Members who submit valid and timely requests for exclusion will not be Settlement
9 Class Members and will not be bound by the terms of the Settlement. (Darin Decl., Exh. 1
10 [Settlement, Exh. A [Class Notice].) However, Class Members who are PAGA Employees and
11 worked during the PAGA Period from between October 28, 2021, through the date of preliminary
12 approval of the Settlement cannot opt out of the PAGA Payment. (Darin Decl., Exh. 1 [Settlement,
13 Exh. A [Class Notice]; see *Robinson v. Southern Counties Oil Company* (2020) 53 Cal.App.5th
14 476, review denied (Nov. 24, 2020).)

15 **6. Calculation and Distribution of Payments**

16 Each Settlement Class Member will receive a pro-rata share of the Net Distribution Fund
17 based on the number of Workweeks the Class Member worked for Defendants during the Class
18 Period (the “Individual Settlement Payment”). (Darin Decl., Exh. 1 [Settlement] at ¶ 4.6(a); Darin
19 Decl., Exh. 1 [Settlement, Exh. A [Class Notice].) Each Class Member’s number of Workweeks
20 will be derived by Defendants based on the payroll and time records kept by Defendants in the
21 ordinary course of business during the Class Period. Individual Settlement Payments shall be
22 characterized as 20 percent wages, 60 percent penalties, and 20 percent interest. (Darin Decl., Exh.
23 1 [Settlement] at ¶ 4.6(b); Darin Decl., Exh. 1 [Settlement, Exh. A [Class Notice].) Wage
24 payments shall be subject to all required withholdings. Defendants shall be responsible for the
25 employer’s share of any applicable payroll taxes. Each Class Member’s Individual Settlement
26 Award will be reported on a W-2 or 1099 Form. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.6(b);
27 Darin Decl., Exh. 1 [Settlement, Exh. A [Class Notice].)

PAGA Employees will receive an Individual PAGA Payment that consists of a pro rata share of 25% of the PAGA Payment based on total pay periods worked during the PAGA Period. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.7; Darin Decl., Exh. 1 [Settlement, Exh. A [Class Notice].) Specifically, 25% of the PAGA Payment shall be divided by the total of all Workweeks worked by PAGA Employees during the PAGA Period in order to establish the value of each Workweek. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.7; Darin Decl., Exh. 1 [Settlement, Exh. A [Class Notice].) The Individual PAGA Payment to be made to each PAGA Employee shall be calculated by multiplying the value of a Workweek by the number of Workweeks worked by the PAGA Employee during the PAGA Period. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.7; Darin Decl., Exh. 1 [Settlement, Exh. A [Class Notice].) Individual PAGA Payments will be allocated as one hundred percent penalties to be reported on IRS Form 1099. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.10; Darin Decl., Exh. 1 [Settlement, Exh. A [Class Notice].) The remaining seventy-five percent of the PAGA Payment (\$97,500) will be distributed to the LWDA. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.4; Darin Decl., Exh. 1 [Settlement, Exh. A [Class Notice].)

7. Mailing of Checks

Within thirty calendar days of receipt of the Total Settlement Amount, the Settlement Administrator will make all disbursements under the Settlement. (Darin Decl., Exh. 1 [Settlement, Exh. A [Class Notice].) The checks will remain negotiable for 180 days from the date of mailing. (Darin Decl., Exh. 1 [Settlement, Exh. A [Class Notice].)

8. Cy Pres Beneficiary

Any funds that remain from uncashed or unclaimed Settlement checks will be distributed to the Wage Justice Center, the *cy pres* recipient agreed upon by the Parties. (Darin Decl., Exh. 1 [Settlement, Exh. A [Class Notice]; see Preliminary Approval Checklist § II(F).) Redistributing any uncashed checks to Class Members would result in additional Settlement Administrative Expenses. (Darin Decl., ¶ 54.) Under Code of Civil Procedure section 384(b), *cy pres* awards may be made to “nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of

1 the underlying cause of action . . . or to nonprofit organizations providing civil legal services to the
2 indigent.”

3 The Parties propose that the Court designate the Wage Justice Center of Los Angeles as the
4 *cy pres* beneficiary. (Darin Decl., Exh. 1 [Settlement, Exh. A [Class Notice].) In support of their
5 motion for final approval, Plaintiff will submit declarations establishing that the Wage Justice
6 Center is a qualified *cy pres* designee under section 384 because it is a “nonprofit organization[]
7 providing civil legal services to the indigent.” Plaintiff’s counsel have no involvement in the
8 governance of the Wage Justice Center. (Darin Decl., ¶ 55; see Preliminary Approval Checklist
9 § II(F).)

10 **IV. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT**

11 **A. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR**
12 **PRELIMINARY APPROVAL**

13 California Rule of Court 3.769 conditions settlement of a class action on court approval,
14 which is generally evaluated under the federal standards applicable to Rule 23 of the Federal Rules
15 of Civil Procedure. (See *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337
16 [Rule 3.769 requires the trial court to determine “that the settlement is fair, reasonable and
17 adequate to all concerned”]; *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 [Rule
18 23(e) requires the court to determine “whether a proposed settlement is fundamentally fair,
19 adequate, and reasonable”].)

20 Settlement is the preferred means of resolution, particularly in complex class action
21 litigation. (See *In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101.) The Court’s role in
22 evaluating a proposed settlement is to ensure that the agreement taken as a whole is fair and is
23 within the range of reasonableness. (See, e.g., *Hanlon, supra*, 150 F.3d at 1027.) There is an initial
24 presumption of fairness when the settlement agreement was negotiated at arm’s-length by
25 Plaintiff’s counsel. (See, e.g., *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.)

1 **1. Standard for Preliminary Approval**

2 To make a fairness determination, the Court should consider several factors, including “the
3 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation,
4 the risk of maintaining class action status through trial, the amount offered in settlement, the extent
5 of discovery completed and the stage of the proceedings, [and] the experience and views of
6 counsel.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) “The list of factors
7 is not exclusive and the Court is free to engage in a balancing and weighing of the factors
8 depending on the circumstances of each case.” (*Ibid.*)

9 For the following reasons, the Court should find that the Settlement is fair, reasonable, and
10 adequate.

11 **2. The Settlement Is Within the Range of Reasonableness**

12 The Settlement is within the range of reasonableness. (See Preliminary Approval Checklist
13 § I(B).) Settlement Class Members will receive an award based on their total number of
14 Workweeks during the Class Period. (Darin Decl., Exh. 1 [Settlement] at ¶ 4.6(a); Darin Decl.,
15 ¶ 56 & Exh. 1 [Settlement], Exh. A [Class Notice].) PAGA Employees will also receive an award
16 based on their total number of Workweeks during the PAGA Period. (Darin Decl., Exh. 1
17 [Settlement] at ¶ 4.7; Darin Decl., ¶ 56 & Exh. 1 [Settlement], Exh. A [Class Notice].) The
18 Settlement therefore provides meaningful relief for the disputed Labor Code violations and will
19 result in a substantial benefit to all Settlement Class Members. (Darin Decl., ¶ 56.)

20 **3. The Settlement Is Reasonable in Light of Significant Litigation Risks**

21 The Court must make an “independent assessment of the reasonableness of the terms of the
22 settlement” prior to granting preliminary and final approval. (*Clark v. American Residential*
23 *Services LLC* (2009) 175 Cal.App.4th 785, 799; *Kullar, supra*, 168 Cal.App.4th at 127–28, 130,
24 133.) To do so requires that the Parties submit “basic information about the nature and magnitude
25 of the claims in question and the basis for concluding that the consideration being paid for the
26 release of those claims represents a reasonable compromise.” (*Clark, supra*, 175 Cal.App.4th at
27 800; see also Preliminary Approval Checklist § I(B).) However, the Court should not “attempt to

1 decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
2 that of the attorneys.” (*Kullar, supra*, 168 Cal.App.4th at 133.)

3 Here, prior to engaging in settlement discussions, Plaintiff’s Counsel conducted an
4 extensive investigation into Defendants’ policies and practices, and Class Members’ timecards and
5 wage statements. Specifically, Plaintiffs’ Counsel retained contractors to review timecard data for
6 148 of the 239 pay periods during the Class Period, a statistically significant sampling. Plaintiff’s
7 economic consultant reviewed more the than 50,000 lines of resulting timecard data to calculate
8 Defendants’ total potential exposure for each claim alleged. (*Ibid.*) Plaintiff’s counsel then assigned
9 a reasonable settlement value to each of the claims asserted on behalf of Class Members. (Pyle
10 Decl., ¶ 59.)

11 As explained below, the Total Settlement Amount of \$1,384,804.25 is consistent with the
12 aggregate reasonable settlement value of the Class Members’ claims. (Darin Decl., ¶ 60.)

13 **i. Failure to Provide Meal Periods**

14 Labor Code sections 226.7 and 512 and the IWC Wage Orders, including IWC Wage Order
15 7-2001 (Cal. Code Reg, tit. 8, § 11070, subd. 11(A)), prohibit employers from employing an
16 employee for more than five hours without a meal period of at least thirty minutes unless the
17 employee works less than six hours. Additionally, employers must provide employees with a
18 second off-duty meal-period whenever the employee works a shift of more than 10 hours. (See *id.*)

19 When an employer fails to provide an employee a meal period where one is required, the
20 employer must pay the employee a premium-wage of one hour of pay at the employee’s regular
21 rate of pay. (*Ibid.*) However, these provisions do not apply where the nature of the employer’s
22 work does not allow employees to be relieved from all work and the employer and employee agree
23 in writing to a paid on-duty meal-period. (Cal. Code Re, tit. 8, § 11070, subd. 11(a) [IWC 7-2001];
24 Labor Code § 226.7(e).)

25 Plaintiff’s expert analyzed the timecard data and determined from the extrapolated data that
26 there were a total of 45,029 shifts of more than six hours in which a Class Member’s first meal
27 period was missed, late, or short. Additionally, the extrapolated data showed there were a total of

1 3,333 shifts of over ten hours. Assuming violations for each of these shifts, Plaintiff's expert
2 calculated the unpaid meal-period premium-wages to total \$777,655, plus prejudgment interest of
3 \$158,910.

4 In response, during mediation Defendants represented that all Class Members had signed
5 Agreements for Paid On Duty Meal Period like the one Plaintiff had signed. Defendants then made
6 a show of proof in support of this representation, producing a sampling of 15 such agreements for
7 currently employed Class Members and 16 such agreements for formerly employed Class
8 Members. These Agreements spanned decades, from as early as May 7, 2003, to as late as April
9 28, 2023. Plaintiffs Counsel reviewed these Agreements and confirmed that they were identical to
10 the Agreement signed by Plaintiff.

11 In light of these Agreements, Defendants will likely argue there is no violation for the
12 45,029 shifts with a deficient first meal period. Those shifts represent approximately 93% of the
13 total shifts with potential meal-period violations during the Class Period. However, Plaintiff will
14 argue that the nature of Defendants' business do not prevent Plaintiff and other Class Members
15 from being relieved of all duties, because Plaintiff and Class Members could easily close down
16 their stations for a 30 minute meal period. Additionally, it is unclear whether the Agreements for
17 Paid On Duty Meal Periods apply to second-meal periods, suggesting violations for the remaining
18 3,333 or 7% of shifts.

19 Defendants will likely argue that it operated a dozen different stations, each with their own
20 peculiar scheduling needs and managed by different supervisors.

21 It is therefore reasonable to discount Plaintiff's meal period claim by 20 percent
22 (multiplying by 0.8) to account for the risks involved in certifying a class and maintaining
23 certification through trial and by an additional 40 percent (multiplying by 0.6) or more to account
24 for the risks that Defendants will prevail on its defenses. (Darin Decl., ¶ 64.)

25 Accordingly, the reasonable settlement value of the meal period claim including interest is
26 **\$449,551.20.** (Darin Decl., ¶ 65.)

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Here, Defendant contends that it has a legally compliant scheduling policy, with shifts that sufficiently overlap to allow Class Members to take off-duty rest periods while another employee works the station. (Darin Decl., ¶ 66.)

Based on the requirement that employers must allow employees to take rest periods as near the middle of each four-hours worked as possible, Plaintiff's expert assumed 120 minutes (2 hours) as the minimum amount of overlapping coverage needed to allow Class Members to take timely off-duty rest-periods. Plaintiff's expert then calculated that from February 28, 2019, through

1 March 17, 2023, approximately 37,762 shifts, or 56% of all shifts worked, had insufficient
2 coverage to allow Class Members to take off-duty rest periods. Assuming violations for each of
3 these shifts, Plaintiff's expert calculated the unpaid rest-period payments to total \$629,920, plus
4 prejudgment interest of \$133,120.

5 Meaningful risks abound, however. First and foremost, Defendants will likely argue that
6 120 minutes of overlapping coverage is not necessary in order to comply with California law.
7 Defendants will likely emphasize the requirement's language that rest periods be offered as near
8 "as possible" to the middle of each four-hour period. They will argue that the nature of
9 Defendant's business prevents it from offering rest-periods to Class Members at the same time
10 during every shift. Indeed, it is the busy and unpredictable nature of Defendant's business that
11 underlies the Agreements for Paid Off-Duty Meal Periods signed by all Class Members. This in
12 itself highlights the meaningful challenges Plaintiff will face in certifying and maintaining a class
13 until trial. In light of this, Defendant will likely argue that a significantly lower amount of
14 overlapping coverage is sufficient to satisfy California law.

15 It is therefore reasonable to discount Plaintiff's rest-period claim by 25 percent
16 (multiplying by 0.75) or more to account for the risks involved in certifying a class and
17 maintaining certification through trial and by another 25 percent (multiplying by 0.75) to account
18 for the risk that Defendants will prevail on its defenses. (Darin Decl., ¶ 64.)

19 Accordingly, the reasonable settlement value of the rest-period claim including interest is
20 **\$429,210.** (Darin Decl., ¶ 65.)

21 **iii. Failure to Provide Accurate Wage Statements**

22 Labor Code section 226 subdivision (a) mandates that employers provide non-exempt
23 employees with itemized wage statements that include: (1) gross wages earned, (2) total hours
24 worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if
25 the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
26 written orders of the employee may be aggregated and shown as one item, (5) net wages earned,
27 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee

1 and only the last four digits of their SSN or an employee identification number other than an SSN,
2 (8) the name and address of the legal entity that secured the services of the employer, and (9) all
3 applicable hourly rates in effect during the pay period and the corresponding number of hours
4 worked at each hourly rate by the employee. (Lab. Code § 226(a).)

5 When an employer knowingly and intentionally violates its duty to provide accurate wage
6 statements, an injured employee may recover actual damages or a statutory penalty. (Lab. Code
7 § 226(e)(1).) However, an employer’s “objectively reasonable, good faith belief that it has
8 provided employees with adequate wage statements precludes an award of penalties under section
9 226.” (*Naranjo v. Spectrum Security Services, Inc.* (2024) 320 Cal.Rptr.3d 646, 667.) The penalties
10 are fifty dollars for the initial violation and one hundred dollars for each subsequent violation per
11 employee per pay period, up to four thousand dollars per employee. (Lab. Code § 226(e)(1); Darin
12 Decl., ¶ 68.) Wage statement penalties are only available to Class Members who were employed
13 within one year of the filing of the original complaint. (Darin Decl., ¶ 69.)

14 Here, Plaintiff alleges that Defendants failed to provide Class Members with wage
15 statements that accurately reflect wage-premiums earned for meal- and rest-period violations, in
16 violation of Labor Code section 226 and the applicable IWC wage orders. (Darin Decl., ¶ 69.)
17 Plaintiff’s expert identified 2,126 pay periods within the one-year statutory period in which a meal-
18 or rest-period violation occurred. At \$100 per pay period, up to \$4,000 per employee, these
19 violations amount to \$208,948 in statutory penalties.

20 As discussed above, however, a large number of these violations assume first-meal-period
21 violations. However, Agreements for Paid On Duty Meal Periods apply to approximately 93% of
22 these assumed meal-period violations. Therefore, the number of derivative 226 violations is likely
23 to drop significantly.

24 Additionally, Section 226 provides penalties only if Plaintiff prove that Defendants’
25 violations were knowing and intentional. (Pyle Decl., ¶ 71.) A knowing and intentional failure
26 “does not include an isolated and unintentional payroll error due to a clerical or inadvertent
27 mistake.” (*Furry v. East Bay Publishing, LLC* (2018) 30 Cal.App.5th 1072, 1085.)

1 Accordingly, Defendants will likely argue that Class Members' wage statements comply
2 with the law but that, to the extent that Defendants failed to provide adequate wage statements, the
3 failure was not a "knowing and intentional failure" within the meaning of section 226. (Darin
4 Decl., ¶ 72.) Rather, any errors in the wage statements were inadvertent, whether through human or
5 computer error. (*Ibid.*) Recovering penalties under section 226 also requires showing that the
6 employee was injured. (Lab. Code 226(e).) Defendants will likely argue that Plaintiffs cannot show
7 that any Class Members were injured by any deficiencies in their wage statements. (Darin Decl.,
8 ¶ 73.)

9 Should Defendants prevail on these arguments, Class Members would not be able to
10 recover any penalties under section 226(e). (Darin Decl., ¶ 74.) It is therefore reasonable to
11 discount Plaintiff's wage statement claim by twenty percent (multiplying by .8) to account for the
12 risks involved in certifying a class and maintaining certification through trial and to account for the
13 risks that Defendants will prevail on their defenses. (*Ibid.*)

14 Accordingly, the reasonable settlement value of the wage statement claim is **\$167,158.**
15 (Darin Decl., ¶ 75.)

16 **iv. Unfair Competition**

17 Plaintiff's claim for violation of the Unfair Competition Law, Business and Professions
18 Code section 17200 (the "UCL"), is based on the same Labor Code violations as his other claims.
19 If the Court were to rule against Plaintiff on the predicate claims, the UCL claim would also fall. In
20 addition, the damages for Plaintiff's UCL claim are co-extensive with the damages for his other
21 claims. This claim therefore does not add to the case's settlement value. (Darin Decl., ¶ 76.)

22 **v. The *Rodriguez Peralta* Claims**

23 **a. Failure to Maintain and Furnish Employee Records**

24 The *Rodriguez Peralta* complaint does not clearly allege which records it believes
25 Defendants failed to maintain. It does not allege that the *Rodriguez Peralta* plaintiffs requested
26 their records or that their records were destroyed. In other words, it fails to state a claim.
27

1 It is possible that this cause of action is based on “Plaintiff Peralta [not] receiving itemized
2 wage statements showing vacation or sick time accrued.” Neither Labor Code sections 226 or 1174
3 require an employer to include this information on wage statements. As discussed above, Labor
4 Code section 226 enumerates nine different items that must appear on wage statements. Accrued
5 vacation time and sick time are not among them. Labor Code section 1174 requires employers to
6 furnish records “to the [Industrial Welfare] Commission,” not to individual employees; and to
7 maintain these records for inspection by “any member of the commission or the employees of the
8 Division of Labor Standards Enforcement.” Section 1174 does not contemplate furnishment of
9 such records to civilians. For this reason also, the complaint fails to state a claim under Labor Code
10 sections 226 and 1174.

11 California’s Paid Sick Leave Law, Labor Code sections 245 through 249 do require wage
12 statements or another written record to reflect accrued sick leave. (See Labor Code § 246(i).)
13 However, unlike the statutory penalties under Labor Code section 226, the administrative penalties
14 available under the Paid Sick Leave Law are available only to the Labor Commissioner. (See
15 Labor Code § 248.5.)

16 For these reasons, the reasonable settlement value of this claim is \$0.

17 **b. Failure to Post Compensation Insurance Carrier and Safety**
18 **Information**

19 The *Rodriguez Peralta* complaint alleges that “Defendant failed to post compensation
20 insurance carrier information in a conspicuous place at the worksite,” and pleads a cause of action
21 for “Violation of California Labor Code Sections 3550, 6430 and 6431 / Failure to Post Safety and
22 Compensation Carrier Information.”

23 Labor Code section 3550 is part of Division 4 of the Labor Code, Workers Compensation
24 and Insurance, sections 3200 through 6002. The *Rodriguez Peralta* plaintiffs cannot bring a civil
25 action for a workers’ compensation violation; they must bring a workers’ compensation action.
26 And PAGA does not apply to violations of Division 4. (See Labor Code § 2699(m) [“This section
27 shall not apply to the recovery of administrative and civil penalties in connection with the workers’

1 compensation law as contained in . . . Division 4 (commencing with Section 3200).”].) Therefore,
2 this portion of the claim fails as a matter of law.

3 Labor Code sections 6430 and 6431 are part of Division 5, Safety in Employment (“Cal-
4 OSHA”). The *Rodriguez Peralta* complaint alleges that these Sections require “an employer to
5 provide information related to protections and obligations by **posting the information.**” These
6 sections provide for civil penalties collectible by the state; they do not provide for private rights of
7 action or damages. Even if they did, the *Rodriguez Peralta* plaintiffs cannot bring a civil action for
8 a workers’ compensation violation; they must bring a workers’ compensation action. Additionally,
9 no PAGA action can be brought for violation of any posting requirement. (See Labor Code
10 § 2699(g)(2).) For these reasons, this claim fails as a matter of law.

11 The reasonable settlement value of this claim is therefore \$0.

12 **c. Failure to Provide One Day Rest in Seven Days**

13 Labor Code sections 551 provides that “[e]very person employed in any occupation of labor
14 is entitled to one day’s rest therefrom in seven.” Section 552 adds, “No employer of labor shall
15 cause his employees to work more than six days in seven.”

16 The California Supreme Court has described Sections 551 and 552 as “manifestly
17 ambiguous.” (*Mendoza v. Nordstrom Inc.* (2017) 2 Cal. 5th 1074, 1080.) A total of 12 published
18 decisions make reference to these sections,² and only the *Mendoza* cases provide meaningful
19 guidance.³ The California Supreme Court concluded that these sections generally require
20 employers to provide employees “at least one day of rest during each week, rather than one day in
21

22 ² See *Kajberouni v. Bear Valley Community Services District* (E.D. Cal. 2022) 599 F. Supp. 3d 961,
23 967; *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal. App. 5th 521; *Mendoza v.*
24 *Nordstrom, Inc.* (9th Cir. 2017) 865 F.3d 1261, 1262; *Mendoza v. Nordstrom Inc.* (2017) 2 Cal. 5th
25 1074; *Mendoza v. Nordstrom, Inc.* (9th Cir. 2015) 778 F.3d 834, 835; *Grabowski v. Robinson* (S.D.
26 Cal. 2011) 817 F. Supp. 2d 1159, 1163; *Villacres v. ABM Industries Inc.* (2010) 189 Cal. App. 4th
27 562; *Arenas v. El Torito Restaurants, Inc.* (2010) 183 Cal. App. 4th 723; *National Steel and*
28 *Shipbuilding Co. v. Superior Court* (2006) 38 Cal Rptr. 3d 253, review granted and opinion
superseded by *National Steel & Shipbuilding v. S.C. (Godinez)* (2006) 42 Cal. Rptr. 3d 415; *Barnick*
v. Longs Drug Stores, Inc. (1988) 203 Cal. App. 3d 377; *Industrial Welfare Commission v. Superior*
Court (1980) 27 Cal. 3d 690; *Martin v. Henderson* (1953) 40 Cal. 2d 583.

³ See *Mendoza*, 865 F. 3d at pp. 1262-66; *Mendoza*, 2 Cal. 5th at pp. 1074-92; *Mendoza*, 778 F. 3d
at pp. 838-41.

1 every seven on a rolling basis.” (*Mendoza*, 2 Cal. 5th. at p. 1086.) In other words, Sections 551 and
2 552 do not prohibit employees from working seven days in a row over multiple workweeks.
3 Rather, they generally require only the provision of one day rest within each work week.

4 Labor Code section 554 creates an exception to this requirement. It provides that “[n]othing
5 in this chapter shall be construed to prevent an accumulation of days of rest when the nature of the
6 employment reasonably requires that the employee work seven or more consecutive days, if in
7 each calendar month the employee receives days of rest equivalent to one day’s rest in seven.”
8 Therefore, Section 554 provides an exception where the nature of an employer’s business requires
9 seven or more consecutive days of work and the employee’s schedule averages out to one day’s
10 rest in seven over the course of the month.

11 Labor Code section 556 creates a further exception “when the total hours of employment do
12 not exceed 30 hours in any week or six hours in any one day thereof.” The Supreme Court has
13 confirmed that “the ‘six hours or less’ daily exception is satisfied only if every daily shift that week
14 has entailed six hours or less of work.” (*Mendoza*, 2 Cal. 5th at p. 1090.)

15 Finally, the Supreme Court has clarified that an employer “is not liable simply because an
16 employee chooses to work a seventh day.” (*Id.* at p. 1091.) “Rather, an employer’s obligation is to
17 apprise employees of their entitlement to a day of rest and thereafter to maintain absolute neutrality
18 as to the exercise of that right. An employer may not encourage its employees to forgo rest or
19 conceal the entitlement to rest” (*Ibid.*)

20 Accordingly, pursuant to Labor Code sections 551, 552, and 556, Plaintiff’s expert
21 calculated a violation of Sections 551 and 552 for every pay period in which:

- 22 • Class Members did not have a single day of rest during the workweek; and
- 23 • Class Members worked more than 30 hours or Class Members worked fewer than
24 30 hours but more than six hours in at least one day during the workweek.

25 Plaintiff’s expert determined on an extrapolated basis that approximately 732 pay periods
26 met these criteria.

Additionally, to account for Section 554's contingency that a factfinder may determine that the nature of Defendants' business required Class Members to work seven or more consecutive days, Plaintiff's expert calculated a violation of Labor Code sections 551 and 552 for all pay periods in which:

- Class Members did not have a single day of rest during the workweek; and
- Class Members did not receive days of rest equivalent to one day's rest in seven over the course of the month.

Plaintiff's expert determined on an extrapolated basis that approximately 582 pay periods met these criteria. However, all 582 pay periods also met the first set of criteria. Therefore, only 732 pay periods contain a potential violation of Labor Code sections 551 and 552.

However, Labor Code sections 551 and 552 do not provide for any damages. Accordingly, no class damages result from any of these violations, and the reasonable class settlement value of these claims is \$0.

vi. PAGA Penalties

Trial courts evaluating PAGA settlements, including those made in conjunction with a class settlement, must determine whether they are “fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.) Courts should “evaluate the adequacy of compensation to the class *as well as* the adequacy of the settlement in view of the purposes and policies of PAGA.” (*O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1134, emphasis in original.) In doing so, the court may apply a sliding scale. For example, if the settlement for the class is robust, the purposes of PAGA may be concurrently fulfilled. (*Ibid.*) “By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of the class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA.” (*Ibid.*)

1 Here, the Parties have agreed to allocate \$100,000 for PAGA penalties in light of
2 Defendants' possible defenses and the Court's authority to reduce any award that is "unjust,
3 arbitrary and oppressing, or confusing." (Darin Decl., ¶ 77; Lab. Code § 2699(e)(2); see, e.g.,
4 *Fleming v. Covidien Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 [reducing PAGA
5 penalty by more than eighty percent to avoid injustice].)

6 That amount is fair, reasonable, and adequate. Plaintiff calculates the maximum amount of
7 the potential PAGA penalties available to be approximately \$1,913,981. However, to recover that
8 amount, Plaintiff would have to prevail on his underlying claims.

9 As described above, Defendants have multiple formidable defenses to Plaintiff's claims. At
10 least one of these defenses has the potential to reduce the value of Plaintiff's meal-period claim by
11 93%. It is reasonable to discount the maximum amount of the potential PAGA penalties 40%
12 percent (multiplying by .6) or more to account for the risks that Defendants will prevail on their
13 defenses at trial.

14 Furthermore, Courts have broad discretion to reduce penalty amounts under PAGA. (See
15 Lab. Code § 2699(e)(2).) Courts typically reduce PAGA penalties where there is unsettled law
16 during the pendency of the litigation, where the case presents a matter of first impression that the
17 court has to rule upon, or where an employer demonstrates a serious attempt to comply with the
18 law. (See *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112; *Cotter v.*
19 *Lyft, Inc.* (N.D. Cal 2016) 176 F.Supp.3d 930, 941.) Here, Plaintiff's investigation shows that
20 Defendants took action to remedy all of the alleged violations within weeks of Plaintiff filing his
21 lawsuit. Moreover, \$745,842 (approximately 39%) of those \$1,913,981 in maximum civil penalties
22 are for alleged violations of Labor Code sections 204 and 210, and another \$212,642 (approximately
23 11%) are for alleged violations of Labor Code section 226. These alleged violations are all
24 derivative of Plaintiff's other underlying claims. It is unclear whether employees can "stack" PAGA
25 penalties, meaning receive more than one PAGA penalty for a particular pay period.⁴ (Darin Decl.,

26 ⁴ Plaintiff is not aware of any controlling authority resolving the issue of whether courts can award
27 consecutive PAGA penalties, sometimes referred to as "stacking." One Northern District decision

¶ 48.) It is thus reasonable to further discount by 50 percent (multiplying by .5) to account for the discretionary nature of PAGA penalties. (Darin Decl., ¶ 79.)

Finally, courts have approved hybrid class action and PAGA settlements where only a fraction of the settlement was allocated to PAGA. (E.g., *Nordstrom Comm’n Cases* (2010) 186 Cal.App.4th 576, 589 [settlement approved where \$0 out of nearly \$9 million settlement allocated to PAGA penalties]; *Cotter, supra*, 193 F.Supp.3d at 1037 [approving allocation of \$1 million to PAGA claims out of \$27 million settlement].) In such cases, it is prudent to permit a higher compromise of the PAGA penalties to allow class members to receive the maximum amount of reimbursement for unpaid wages. (See, e.g., *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 196–97 [PAGA promotes the Labor Code’s broad remedial purpose of protecting workers by increasing civil penalties while preserving and enhancing workers’ rights to recover for lost wages]; *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1134 [courts may apply a “sliding scale” when reviewing PAGA penalties].)

For these reasons, the PAGA Payment of \$100,000 is more than reasonable. (Darin Decl., ¶ 81.) Furthermore, Plaintiff has notified the LWDA of the PAGA-related provisions of the Settlement. He will notify the Court if he receives any response from the LWDA regarding the Settlement. (*Ibid.*)

4. The Settlement Is the Product of Non-Collusive, Arm’s-Length and Informed Negotiations

California courts recognize that “a presumption of fairness exists where . . . [a] settlement is reached through arm’s-length bargaining.” (*Wershba, supra*, 91 Cal.App.4th at 245.) In this case, the Settlement was reached after arm’s-length negotiations between the Parties. (Darin Decl., ¶ 33.) As discussed, prior to engaging in settlement discussions, Plaintiff’s Counsel conducted an extensive investigation into Defendants’ policies and practices, and Class Members’ timecards and wage statements. These documents provided Plaintiff with nearly all of the information needed to prove damages in his claim. In spite of this, Defendants were able to present a nearly complete _____ questions courts’ ability to do so. (See *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3, (N.D. Cal., June 13, 2013).)

1 defense to Plaintiff's meal-period claim, in light of the Agreements for Paid On Duty Meal Period
2 signed by every Class Member (See *id.* at ¶¶ 63, 66, 72.) After a full-day mediation where the
3 Parties engaged in good faith, arm's-length settlement negotiations, they reached a resolution of the
4 Action. (*Id.* at ¶ 31.)

5 In reaching the Settlement, counsel on both sides relied on their substantial litigation
6 experience in similar employment class actions. (Darin Decl., ¶ 33.) Information gathered from
7 investigation and informal discovery informed Plaintiff's counsel's assessment of the strengths and
8 weaknesses of the case and the benefits of the Settlement. (*Ibid.*) Thus, the Settlement is the
9 product of informed and non-collusive arm's-length bargaining and is entitled to a presumption of
10 fairness.

11 **5. The Experience and Views of Plaintiff's Counsel Favor Approval**

12 "The recommendations of plaintiffs' counsel should be given a presumption of
13 reasonableness." (*In Re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1043
14 [quotation marks and citation omitted].) "The court undoubtedly should give considerable weight
15 to the competency and integrity of counsel . . . in assuring itself that a settlement agreement
16 represents an arm's-length transaction entered without self-dealing or other potential misconduct."
17 (*Kullar, supra*, 168 Cal.App.4th at 129.)

18 Plaintiff and Plaintiff's counsel have vigorously prosecuted this case and will continue to
19 do so. (Darin Decl., ¶ 82.) Information gathered from Plaintiff's counsel's investigation and
20 discovery informed counsel's assessment of the merits and risks of the case and the benefits of the
21 Settlement. (*Ibid.*) Plaintiff's counsel conducted a thorough investigation into the facts of the
22 Action. (*Ibid.*) Based on an independent investigation and evaluation, Plaintiff's counsel believe
23 that the Settlement is fair, reasonable, and adequate, and it is in the best interest of the Class
24 Members in light of all known facts and circumstances, including the risk of significant delay, the
25 risk that Defendants will prevail on their defenses, and potential appellate issues. (*Ibid.*)

26 In addition to being thoroughly familiar with this case, Plaintiff's counsel has extensive
27 expertise in litigating wage and hour class actions like this and is therefore well-qualified to

1 represent Plaintiff and the Class Members. (Darin Decl., ¶¶ 5–19.) Class Counsel’s experience is
2 detailed in the declaration of counsel filed herewith. (*Ibid.*; see Preliminary Approval Checklist
3 § I(C).) The recommendation of Plaintiff’s counsel thus also weighs in favor of Settlement
4 approval.

5 **6. The Proposed Release Is Narrowly Tailored**

6 The release of claims and PAGA release of claims in the Settlement are narrowly tailored.
7 (See Preliminary Approval Checklist § II(B).)

8 As to the non-PAGA claims, the Settlement provides that Class Members will release any
9 and all claims, charges, complaints, liens, demands, causes of action, obligations, damages and
10 liabilities, during the Class Period, known or unknown, suspected or unsuspected, that each
11 participating class member had, now has, or may hereafter claim to have during the Class Period
12 against Defendants and that were asserted in the Action, or that arise from or could have been
13 asserted based on any of the facts, circumstances, transactions, events, occurrences, acts,
14 disclosures, statements, omissions or failures to act alleged in Plaintiff’s Second Amended
15 Complaint, regardless of whether such claims arise under federal, state and/or local law, statute,
16 ordinance, regulation, common law, or other source of law. The Released Class Claims specifically
17 include, but are not limited to Labor Code §§ 226, 226.7, 551, 552, 558, 2810.3, 3550, 3551, 6430,
18 and 6431, and the related IWC Wage Order No. 7-2001 and Business & Professions Code §§
19 17200, et seq., and all other claims, such as those under the California Labor Code, Wage Orders,
20 regulations, and/or other provisions of law, that could have been pleaded based on the facts
21 asserted in the Action, including: (1) Failure to Provide Off-Duty Meal Periods; (2) Failure to
22 Authorize and Permit Rest Periods; (3) Failure to Furnish Adequate Wage Statements; (4)
23 Unlawful Business Practices; (5) Failure to Maintain and Furnish Records; (6) Failure to Post
24 Compensation Insurance Carrier and Safety Notices; and (7) Failure to Provide One Day’s Rest Per
25 Workweek, as well as interest, fees, and costs. The enumeration of these specific statutes shall
26 neither enlarge or narrow the scope of res judicata based on the claims that were asserted in the
27

1 Action or could have been asserted in the Action based on the facts and circumstances alleged in
2 any Complaint on file in the Action. (Darin Decl., Exh. 1 [Settlement] at ¶ 2.26.)

3 Additionally, PAGA Employees will release and discharge the Released Parties from any
4 claim for civil penalties pursuant to the California Labor Code Private Attorneys General Act of
5 2004, Labor Code section 2698 *et seq.* that arise from or could have been asserted based on any of
6 the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions
7 or failures to act alleged in Plaintiff's Second Amended PAGA Notice submitted to the Labor
8 Workforce and Development Agency, including but not limited to claims for violations of Labor
9 Code §§ 201, 202, 203, 204, 210, 226, 226.7, 551, 552, 558, 3550, 3551, 6430, and 6431, and the
10 applicable IWC Wage Orders. (Darin Decl., Exh. 1 [Settlement] at ¶¶ 2.23, 4.15.)

11 **7. The Proposed Class Notice Satisfies the Rules of Court**

12 The form and content of class notice and the method used to notify the class are within the
13 trial court's discretion. (*Wershba, supra*, 91 Cal.App.4th at 251.) The Class Notice informs Class
14 Members about the Action, the terms of the Settlement, the scope of the release, the right to receive
15 a payment, the right to opt out of the Settlement, the right to object to the Settlement, how
16 Individual Settlement Payments and Individual PAGA Payments are calculated, how to challenge
17 the data used to calculate the Individual Settlement Payments and Individual PAGA Payments, and
18 the date, time, and location of the final approval hearing. (Settlement, Exh. A; Darin Decl., ¶ 49.) It
19 also provides the contact information of Class Counsel to answer questions, a URL to a website
20 maintained by the Settlement Administrator that has links to the Notice and the most important
21 documents in the case, the URL for the Court's electronic filing and service website, and the
22 Court's address. (Settlement, Exh. A; Darin Decl., ¶ 49; see Preliminary Approval Checklist
23 § II(D), (E).) The Class Notice is therefore crafted to ensure that Class Members are alerted to the
24 terms of the Settlement. (Darin Decl., ¶ 49.)

25 The means of giving notice is reasonably calculated to reach a substantial percentage of
26 Class Members and meets the requirements of Rule of Court 3.766(e). (See *Wershba, supra*, 91
27 Cal.App.4th at 251 ["The] standard is whether the notice has a 'reasonable chance of reaching a
28

substantial percentage of the class members.”].) The Settlement Administrator will send the Notice to Class Members via first-class U.S. Mail. (Darin Decl., Exh. 1 [Settlement] at ¶ 6.2; see Preliminary Approval Checklist § II(D).) For each Class Notice returned as undeliverable without a forwarding address, the Settlement Administrator will perform a single computer or “skiptrace” search to obtain an updated address. (Darin Decl., Exh. 1 [Settlement] at ¶ 6.2; see Preliminary Approval Checklist § II(D).) The proposed Notice is thus reasonable and should be approved by the Court.

V. THE COURT SHOULD PROVISIONALLY CERTIFY THE SETTLEMENT CLASS

The proposed Class satisfies the criteria for certification of a settlement class under California law because: 1) the individuals in the Class are so numerous that joinder would be impractical; 2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; 3) Plaintiff’s claims are typical of the Class claims; and 4) Plaintiff and his counsel will fairly and adequately represent the interests of absent Class members. (Code Civ. Proc. § 382.)

A. THE PROPOSED CLASS IS ASCERTAINABLE AND NUMEROUS

A class is “ascertainable” where members “may be readily identified without unreasonable expense or time by reference to official [or business] records.” (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 [alterations in original].) Here, the proposed Class is defined as: all current and former gas-station attendants who were employed by Defendants throughout California at any time from February 28, 2019, through the date of preliminary approval of the parties’ Settlement by the Court. (Darin Decl., Exh. 1 [Settlement] at ¶ 2.2.)

Class Members can easily be identified from Defendants’ personnel and employment records. (Darin Decl., ¶ 83.) Defendants represent that there are approximately 69 Class Members, rendering it impracticable to bring all Class Members before the Court. (*Id.* at ¶ 36.)

B. COMMON ISSUES OF LAW AND FACT PREDOMINATE

The focus on certification is on what types of questions, “common or individual,” are likely to arise in the action. (*Sav-On Drug Store, Inc. v. Sup. Ct.* (2004) 34 Cal.4th 319, 327.) Plaintiff’s

1 claims are predicated on allegedly unlawful policies including Defendants’ meal and rest period
2 and compensation schemes. (Darin Decl., ¶ 83.) Courts commonly hold these claims to be proper
3 for class certification. (E.g., *Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926 [reversing
4 trial court and holding plaintiffs’ meal period, rest period, and wage statement claims were suitable
5 for class treatment]; *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388
6 [reversing trial court’s denial of class certification and holding meal and rest period claims could
7 be determined class-wide]; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th
8 701 [reversing trial court’s denial of class certification for meal and rest period claims].)

9 **C. THE PROPOSED CLASS REPRESENTATIVE’S CLAIMS ARE TYPICAL**

10 Typicality is satisfied where a class representative has claims that are typical of those of the
11 class. (*B.W.I. Custom Kitchen v. Owens-Illinois* (1987) 191 Cal.App.3d 1341, 1347.) Plaintiff here
12 seeks preliminary appointment as Class Representative. Plaintiff’s claims are typical of those held
13 by Class Members. (Darin Decl., ¶ 84.) Plaintiff was employed by Defendants during the Class
14 Period and was subject to Defendants’ scheduling and compensation plans and other relevant wage
15 and hour policies and was injured by the same challenged policies that injured the Class. (*Ibid.*)

16 **D. THE PROPOSED CLASS REPRESENTATIVE AND COUNSEL WILL**
17 **ADEQUATELY REPRESENT THE CLASS**

18 The adequacy requirement examines conflicts of interest between the named parties and the
19 class they seek to represent. (*Capital People First v. State Dept. of Developmental Svcs.* (2007) 155
20 Cal.App.4th 676, 697.) Plaintiff and his counsel will adequately represent the Class as there are no
21 conflicts between Plaintiff and the Class Members he seeks to represent, and Plaintiff possesses
22 claims that are in line with those of the Class. Plaintiff’s counsel also have extensive experience in
23 wage and hour class action litigation. (Darin Decl., ¶¶ 5–19, 85.)

24 Plaintiff has provided a declaration that demonstrates his participation in the Action thus far
25 and shows he has diligently represented the Class. (Palomino Decl., ¶¶ 1–16; see Preliminary
26 Approval Checklist § I(C).) In his declaration, Plaintiff describes the great personal and
27 professional risks he faced in bringing this lawsuit.

1 **VI. THE COURT SHOULD APPROVE THE CLASS NOTICE AND SET A FINAL**
2 **APPROVAL HEARING**

3 In addition to requesting approval of the Settlement and provisional certification of the
4 Class, the Parties request that the Court approve the form, content, and distribution of the Class
5 Notice and set a date for a final approval hearing. Plaintiff's Proposed Order Granting Preliminary
6 Approval, filed concurrently here, sets forth a proposed schedule for further proceedings.

7 **VII. CONCLUSION**

8 The arm's-length Settlement of this matter avoids significant litigation risks and provides
9 for a substantial monetary distribution to Settlement Class Members. For these reasons, the Parties
10 respectfully request that the Court enter an order:

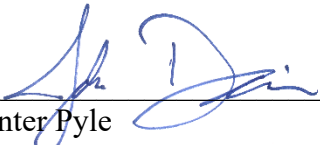
- 11 1. Preliminarily approving the proposed Stipulation of Settlement;
- 12 2. Provisionally certifying, pursuant to section 382 of the Code of Civil Procedure, for
13 settlement purposes only, the proposed Settlement Class defined as: all current and former gas-
14 station attendants who were employed by Defendants throughout California at any time from
15 February 28, 2019, through the date of preliminary approval of the Parties' Settlement by the
16 Court;
- 17 3. Appointing Plaintiff Efren Palomino as Class Representative;
- 18 4. Appointing Hunter Pyle and John J. Darin of Hunter Pyle Law as Class Counsel;
- 19 5. Granting Plaintiff leave to file his Second Amended Complaint, as provided for in
20 the Settlement;
- 21 6. Scheduling a final approval hearing to consider whether the Settlement should be
22 finally approved and to award a Service Award to the Class Representative and attorneys' fees and
23 costs to Class Counsel;
- 24 7. Appointing Simpluris as the third-party Settlement Administrator;
- 25 8. Approving the proposed Class Notice and ordering that it be disseminated to the
26 proposed Class as provided in the Settlement; and
27

1 9. Staying all proceedings in the Action, except those proceedings necessary to
2 implement and complete the Settlement, pending the Final Approval Hearing.

3 Respectfully submitted,

4 Dated: September 26, 2024

HUNTER PYLE LAW

5
6 By: 
7 Hunter Pyle
 John J. Darin

8 Attorneys for Plaintiff, the Putative Class,
9 and all other aggrieved employees