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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN JOAQUIN

CURTIS WHITE on behalf of himself and
all similarly aggrieved employees,

Plaintiff,

v.

CORTECH WEST STAFFING, LLC;
THYSSENKRUPP MATERIALS NA, INC.;
THYSSENKRUPP SUPPLY CHAIN
SERVICES NA INC.; TESLA, INC. dba
TESLA MOTORS, INC.; and DOES 1
through 50, inclusive,

Defendants.

Case No. STK-CV-UOE-2023-0000029

(Assigned to the Hon. Erin Guy Castillo, Dept.
10B)

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

Date: July 30, 2024,
July 31, 2024,
August 1, 2024,
August 2, 2024, or
August 6, 2024

Time: 9:00 A.M.
Dept.: 10B

Action Filed: January 3, 2023
Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 30, 2024, July 31, 2024, August 1, 2024, August 2, 2024, or August 6, 2024, at 9:00 A.M., or as soon thereafter as the matter may be heard, before the Honorable Erin Guy Castillo, judge presiding, in Department 10B of the above referenced Court, located at 180 E. Weber Avenue, Stockton, California 95202, Plaintiff Curtis White (“Plaintiff”) will seek an Order:

(1) preliminarily approving the Joint Stipulation of Class and Representative Action Settlement (“Settlement Agreement,” “Settlement,” or “Agreement”) in this matter;

(2) conditionally certifying the following class for settlement purposes only: all current and former non-exempt employees of Defendant thyssenkrupp Supply Chain Services NA, Inc. (“tk Supply”) who worked for tk Supply in California at any time during the Class Period and all non-exempt employees of Defendant CorTech West Staffing, LLC (“CorTech”) assigned to work at Telsa’s Livermore and/or Lathrop, California Production facilities managed by tk Supply at any time during the Class Period (“Class” or “Class Members”);

(3) appointing Plaintiff Curits White as Class Representative, and B. James Fitzpatrick and Laura L. Franklin of Fitzpatrick & Swanston and Larry W. Lee and Christine S. Lee of Diversity Law Group, P.C. as Class Counsel;

(4) preliminarily approving the Settlement Agreement and the total Gross Settlement Amount in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00);

(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 Plaintiff’s service award, Class Counsel’s attorneys’ fees and costs, settlement administration costs, payment of PAGA penalties (including payment to the California Labor & Workforce Department), and the allocation of payments to Class Members, that could ultimately be given final approval by this Court;

(6) approving the Notice of Class Action Settlement (“Class Notice”) to be sent to Class Members, which is attached as an exhibit to the Settlement Agreement;

(7) approving the distribution of the Class Notice to Class Members substantially in

1 the manner and form set forth in the Settlement Agreement;

2 (8) appointing Phoenix Settlement Administrators as the Settlement Administrator;
3 and

4 (9) setting the matter for a Final Fairness and Final Approval hearing.

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

8 The basis for this Motion, filed without any opposition from Defendants CorTech West
9 Staffing, LLC, thyssenkrupp Materials NA, Inc., thyssenkrupp Supply Chain Services NA, Inc.,
10 and Tesla, Inc. (collectively, "Defendants"), is that the proposed settlement is fair, adequate, and
11 reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of
12 class members to participate in, opt-out of, or object to the settlement.

13 This Motion will be based on the attached Memorandum of Points and Authorities, the
14 Settlement Agreement and the proposed Class Notice, and the supporting Declarations of B.
15 James Fitzpatrick, Laura L. Franklin, Larry W. Lee, Christine S. Lee, and Plaintiff Curtis White,
16 and upon the oral arguments of counsel (should there be any) and on the complete records and
17 file herein.

18
19 Dated: June 25, 2024

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

20
21 By: _____


B. James Fitzpatrick
Larry W. Lee
Attorneys for Plaintiff
Curtis White on behalf of himself and all
similarly aggrieved employees

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1 **I. INTRODUCTION**

2 Plaintiff Curtis White (“Plaintiff”) seeks preliminary approval of a \$750,000.00
3 proposed class action settlement with Defendants CorTech West Staffing, LLC, thyssenkrupp
4 Materials NA, Inc., thyssenkrupp Supply Chain Services NA, Inc., and Tesla, Inc. (collectively,
5 “Defendants”) (together with Plaintiff, the “Parties”). The Parties submit their Joint Stipulation
6 of Class and Representative Action Settlement (“Settlement Agreement,” “Settlement” or
7 “Agreement”) in conjunction with this Motion. Declaration of Christine S. Lee (“CL Decl.”) ¶
8 12, Ex. A.

9 The Settlement resolves class and PAGA claims brought by Plaintiff on behalf of
10 approximately 1,303 non-exempt workers employed by CorTech and/or tk Supply at Tesla
11 facilities in Livermore, and Lathrop, California during the class period of October 24, 2018,
12 through January 28, 2024. Prior to the settlement of this action, the Parties litigated and
13 exchanged information through informal discovery. With the assistance of experienced
14 mediator, Michael J. Loeb, Esq., the Parties reached the current settlement. The terms of the
15 settlement provide that Defendants shall pay a Gross Settlement Amount of Seven Hundred
16 Fifty Thousand Dollars (\$750,000.00). **Significantly, the entire settlement amount is non-**
17 **reversionary, such that no monies will revert to Defendants.** Further, Class Members will
18 not need to do anything to participate in the settlement.

19 The Parties believe that this amount is fair, adequate, and reasonable, especially given
20 the risks and uncertainty of class certification and the merits of this case. Therefore, the Parties
21 respectfully request that the Court grant this Motion for Preliminary Approval of Class and
22 Representative Action Settlement.

23 **II. BACKGROUND OF THE SETTLEMENT**

24 **A. The Class Action**

25 On October 24, 2022, Plaintiff commenced a putative class action against Defendants
26 entitled *Curtis White v. CorTech West Staffing, LLC, et al.*, Superior Court of the State of
27 California, County of San Joaquin, Case No. STK-CV-UOE-2022-0009807 (the “Class
28 Action”). CL Decl. ¶ 3. The Class Action was subsequently removed to the United States District

1 Court, Eastern District of California, Case No. 2:22-CV-02270-WBS-AC. *Id.* ¶ 4. The operative
2 complaint in the Class Action alleges: (1) failure to provide meal periods or compensation in
3 lieu thereof (Labor Code §§ 226.7 and 1198; and the Wage Order); (2) failure to provide rest
4 periods or compensation in lieu thereof (Labor Code §§ 226.7 and 1198; and the Wage Order);
5 (3) failure to pay hourly and overtime wages (California Labor Code §§ 1194 and 1198; and the
6 Wage Order); (4) failure to comply with itemized employee wage statement requirements
7 (California Labor Code §§ 226, 1174 and 1175; and the Wage Order); (5) failure to pay all
8 wages upon termination (California Labor Code §§ 201, 202, and 203; and the Wage Order); (6)
9 violation of Labor Code § 2802; and (7) Unfair Business Practices (California Business and
10 Professions Code §§ 17200, *et seq.* and Common Law). *Id.*

11 **B. The PAGA Action**

12 On October 25, 2022, Plaintiff filed a letter with the California Labor and Workforce
13 Development Agency (“LWDA”) alleging claims against Defendants for violations of Labor
14 Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226,
15 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699, 2800, and 2802. CL Decl. ¶
16 5.

17 On January 3, 2023, Plaintiff commenced a representative action against Defendants
18 entitled *Curtis White v. CorTech West Staffing, LLC, et al.*, Superior Court of the State of
19 California, County of San Joaquin, Case No. STK-CV-UOE-2023-0000029 (the “PAGA
20 Action”) (the “Class Action” and the “PAGA Action” collectively referred to as the “Action”).
21 CL Decl. ¶ 6. The complaint in the PAGA Action alleges a single cause of action for violation
22 of Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”), predicated on
23 underlying violations of Labor Code §§ 201-203, 226, 226.7, 1174, 1175, 1194, 1198, 2802, and
24 2698, *et seq.*, and the applicable Wage Orders of the Industrial Welfare Commission. *Id.*

25 **C. Mediation**

26 On October 5, 2023, the Parties participated in mediation with neutral Michael J. Loeb,
27 Esq., a respected mediator of complex wage and hour actions. After thorough and continued
28 settlement negotiations with the assistance of Mr. Loeb, the Parties accepted a mediator’s

1 proposal to settle Plaintiff's class and PAGA claims in their entirety. CL Decl. ¶ 9. Thereafter,
2 the Parties executed a detailed memorandum of understanding on or about November 29, 2023.
3 *Id.*

4 As a condition of the settlement, the Parties agreed to file a First Amended Complaint
5 consolidating Plaintiff's class claims into the PAGA Action, as well as pursue settlement
6 approval before the San Joaquin County Superior Court. CL Decl. ¶ 10. On May 8, 2024,
7 Plaintiff filed the First Amended Complaint (the "Operative Complaint") alleging the
8 underlying claims, causes of action, and factual theories that were pled in both the Class Action
9 and PAGA Action. *Id.* ¶ 11. The Operative Complaint alleges claims for: (1) failure to provide
10 meal periods or compensation in lieu thereof (Labor Code §§ 226.7 and 1198; and the Wage
11 Order); (2) failure to provide rest periods or compensation in lieu thereof (Labor Code §§ 226.7
12 and 1198; and the Wage Order); (3) failure to pay hourly and overtime wages (California Labor
13 Code §§ 1194 and 1198; and the Wage Order); (4) failure to comply with itemized employee
14 wage statement requirements (California Labor Code §§ 226, 1174 and 1175; and the Wage
15 Order); (5) failure to pay all wages upon termination (California Labor Code §§ 201, 202, and
16 203; and the Wage Order); (6) violation of Labor Code § 2802;¹ and (7) Unfair Business Practices
17 (California Business and Professions Code §§ 17200, *et seq.* and Common Law) ; and (8)
18 violation of Labor Code § 2698, *et seq.* *Id.* The Parties concurrently filed a stipulation to stay
19 the pending class action in the United States District Court, Eastern District of California,
20 pending final approval of this Settlement Agreement in San Joaquin County Superior Court. *Id.*

21 **D. Summary of Discovery and Investigation**

22 Plaintiff's counsel spent significant time and effort examining the documents produced
23 by Defendants throughout the litigation. CL Decl. ¶ 7. Plaintiff's counsel prepared a
24 comprehensive mediation brief that outlined the factual and legal issues relevant to the litigation,
25 contained a detailed synthesis of Defendants' timekeeping and payroll records, and presented a
26 complete damages analysis of Defendants' potential liability. With the assistance of Mr. Loeb,
27

28 ¹ For failing to reimburse employees for alleged business expenses, which included, but was not
limited to mandatory purchasing of uniforms and gear required to do the employees' duties.

1 the Parties were able to reach an agreement to resolve all of the related actions in this case,
2 which is memorialized in the Joint Stipulation of Class and Representative Action Settlement.
3 *Id.* ¶ 8.

4 **III. THE PROPOSED TERMS OF THE SETTLEMENT**

5 **A. Class Definition**

6 The proposed Class consists of “all current and former non-exempt employees of
7 Defendant thyssenkrupp Supply Chain Services NA, Inc. (“tk Supply”) who worked for tk
8 Supply in California at any time during the Class Period and all non-exempt employees of
9 Defendant CorTech West Staffing, LLC (“CorTech”) assigned to work at Telsa’s Livermore
10 and/or Lathrop, California Production facilities managed by tk Supply at any time during the
11 Class Period (the “Class”). *See* Agreement ¶ B(2). The Class Period is the time period
12 commencing on “October 24, 2018, through January 28, 2024.” *Id.* ¶ B(7). Defendants
13 represented, at mediation, that there were approximately 1,303 Class Members (or 1,225 tk
14 Supply employees and 78 CorTech employees). *Id.* ¶ B(2)(a)-(b).

15 Some Class Members may also be PAGA Settlement Employees. PAGA Settlement
16 Employees consist of: “all current and former non-exempt employees employed as W-2
17 employees by tk Supply in California at any time during the PAGA Period” and “all current and
18 former non-exempt employees employed as W-2 employees by CorTech on assignment at
19 Tesla’s Livermore and/or Lathrop, California Production facilities managed by tk Supply at any
20 time during the PAGA Period.” *Id.* ¶ B(22). The PAGA Period is the time period commencing
21 on “October 25, 2021, through January 28, 2024.” *Id.* ¶ B(24). Defendants represented, at
22 mediation, that there were approximately 1,114 PAGA Settlement Employees (or 1,082 tk
23 Supply employees and 32 CorTech employees). *Id.* ¶ B(22)(a)-(b).

24 **B. Gross Settlement Amount**

25 The settlement provides for the Gross Settlement Amount of Seven Hundred Thousand
26 Dollars (\$750,000.00). Agreement ¶ B(15). The settlement allocates One Hundred Thousand
27 Dollars (\$100,000.00) of the Gross Settlement Amount to PAGA penalties. *Id.* ¶¶ B(23), C(7).
28 Pursuant to the PAGA, 75% of the PAGA penalties or PAGA Payment, *i.e.*, the sum of Seventy-

Five Thousand Dollars (\$75,000.00), shall be paid to the California Labor and Workforce Development Agency (“LWDA”). *Id.* The remaining 25% of the PAGA Payment, *i.e.*, the sum of Twenty-Five Thousand Dollars (\$25,000.00), shall be distributed to aggrieved employees (“PAGA Settlement Employees”). *See id.* The Gross Settlement Amount was calculated with, and is premised on, Defendants’ representation that Class Members worked approximately 96,384 workweeks during the Class Period. *Id.* ¶ C(10). If the actual number of workweeks worked by the Class Members exceed 96,384 by more than ten percent (10%) (*i.e.*, more than 106,022), Defendants shall have the option to either: (1) cut off the end date of the Class Period so that the total number of workweeks reaches 106,022, or (2) increase the Gross Settlement Amount on a proportional basis equal to the percentage increase in number of workweeks worked by the Class Members above the 10% (*e.g.*, if there was an 11% increase in the number of workweeks during the Class Period, Defendants may agree to increase the Gross Settlement Amount by 1%). *Id.*

C. Individual Settlement and PAGA Payments

The balance of the Gross Settlement Amount remaining after deduction of the approved Service Award to Plaintiff, Settlement Administration Costs, PAGA Payment, and award of Class Counsel’s attorneys’ fee and costs (“Net Settlement Amount”), will be available for distribution to Participating Class Members (*i.e.*, Class Members who do not opt-out). *See* Agreement ¶¶ B(36), C(9). The amount allocated to each Class Member will be based on the number of workweeks worked by Class Members in a non-exempt position during the Class Period, less any required legal deductions. *See id.* ¶ C(9). Class Members do not need to do anything should they wish to receive their share of the settlement funds.² *See id.* ¶ C(2).

Based on the size of the Class and the Gross Settlement Amount, Participating Class Members will be entitled to recover, on average, approximately \$268.61 each, after deductions for the Service Award to Plaintiff, Settlement Administration Costs, PAGA Payment, and Class

² This substantially decreases the amount of burden each Class Member must bear in order to receive his/her settlement share. If a Class Member does not wish to take part in this settlement and be bound by the release of class claims, he/she must submit a Request for Exclusion. Such obligations are thoroughly identified in the Class Notice. *See* Agreement, Ex. A.

1 Counsel attorneys' fees and costs. CL Decl. ¶ 25. The amount any particular Class Member will
2 receive may be greater or lower than this average depending on the number of workweeks he or
3 she worked, with some entitled to receive more, and others less. *Id.* This is fair, as it directly
4 allocates greater recovery to individual Class Members who have allegedly suffered greater
5 harm. *Id.*

6 In addition to the Individual Settlement Payments, PAGA Settlement Employees are also
7 entitled to receive \$25,000.00, or twenty-five percent (25%) of the PAGA Payment
8 (\$100,000.00). Agreement ¶¶ B(23), C(7). As detailed in the Settlement Agreement, the amount
9 of the Individual PAGA Payment to each PAGA Settlement Employee will be based upon the
10 number of workweeks worked by PAGA Settlement Employees during the PAGA Period. *Id.* ¶
11 C(8).

12 The Settlement Agreement provides that all Individual Settlement Payments shall be
13 allocated as thirty percent (30%) wages and seventy percent (70%) penalties, interest, and
14 reimbursements. *Id.* ¶ C(26). All Individual PAGA Payments shall be allocated as 100%
15 penalties. *Id.* ¶ C(27).

16 **D. The Settlement is Non-Reversionary**

17 This is a non-reversionary settlement, as the entirety of the settlement amount will be
18 distributed. *See* Agreement ¶ C(2). Participating Class Members and PAGA Settlement
19 Employees will have 180 days from the mailing of the settlement payment to cash their checks.
20 *See id.* ¶ C(24). After the expiration of 180 days, the funds represented by uncashed settlement
21 checks will be remitted to the designated *cy pres* recipient, Stockton Food Bank, pursuant to
22 Code of Civil Procedure § 384. *Id.* Class Counsel do not have any conflicts of interest with the
23 proposed recipient. CL Decl. ¶ 51; Declaration of B. James Fitzpatrick ("Fitzpatrick Decl.") ¶
24 6; Declaration of Laura L. Franklin ("Franklin Decl.") ¶ 7; Declaration Larry W. Lee ("LWL
25 Decl.") ¶ 9.

26 **E. Attorneys' Fees and Reimbursement for Litigation Costs**

27 As part of the settlement, Defendants do not object to Class Counsel's request for
28 attorney's fees up to one-third (1/3) of the Gross Settlement Amount (\$750,000.00), *i.e.*, the sum

of Two Hundred Fifty Thousand Dollars (\$250,000.00), plus up to Thirty Thousand Dollars (\$30,000.00) for reimbursement of litigation costs, subject to the Court finally approving this settlement. *See* Agreement ¶ C(4).

F. Service Award to Plaintiff

As part of the settlement, Defendants do not object to Plaintiff's request for a Service Award of Five Thousand Dollars (\$5,000.00). *See* Agreement ¶ C(5). Both Plaintiff and Class Counsel expressly acknowledge that the Court has final discretion in any fee award or Class Representative Service Award, and any determination by the Court of a lesser Service Award shall not void the settlement. *See id.*

G. Settlement Administration Costs

Finally, the settlement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. The Parties have received a quote from Phoenix Settlement Administrators for a fee not to exceed Fifteen Thousand Dollars (\$15,000.00). *See* Agreement ¶¶ B(34), C(6). Any portion of the Settlement Administration Costs not used or approved by the Court shall be added to the Net Settlement Amount. *Id.*

H. Scope of the Class Members' Release

The scope of the release, as listed below, is identified in the Settlement Agreement at Section B(28), as well as in the Class Notice that will be sent to Class Members:

all claims that were alleged, or reasonably could have been alleged, based on the facts that were alleged in the letter submitted by Plaintiff to the Labor and Workforce Development Agency ("LWDA Letter") or in any complaint on file in these Actions in any jurisdiction, including claims for:

- (a) unpaid minimum, overtime or double time wages, and unpaid wages based on the regular rate of pay (Cal. Lab. Code §§ 204, 510, 515, 551, 552, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199 and applicable Wage Order); non-compliant meal periods or unpaid meal premiums (Cal. Lab. Code §§ 210, 512, 226.7, and 1198, and applicable Wage Order); non-compliant rest breaks or unpaid rest break premiums (Cal. Lab. Code §§ 210, 226.7 and 1198, and applicable Wage Order); noncompliant wage statements (Cal. Lab. Code §§ 226, 226.3, 1174, and 1175, and applicable Wage Order); untimely wage payment during employment or upon termination (Cal. Lab. Code §§ 201, 202, 203, and 204, and applicable Wage Order); failure to reimburse business expenses, including, but not limited to mandatory

1 safety uniforms, gear required to perform job duties, cell phones,
2 and personal vehicles or mileage reimbursement (Cal. Lab. Code
3 § 2802); unfair competition or unlawful business practices (Bus.
4 & Prof. Code § 17200 et seq. and Common Law); claims for
5 civil penalties pursuant to California's Private Attorneys
6 General Act of 2004 ("PAGA", Lab. Code § 2698 et seq.)
7 alleged, or which reasonably could have been alleged, based on
8 the facts alleged in the operative complaints and any PAGA
9 letter sent to the LWDA by Plaintiff in or prior to the Class
10 Actions; claims for interest or penalties including but not limited
11 to waiting time penalties at Lab. Code §§ 201-203, 204, 207,
12 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510,
13 512, 558, 1174, 1175, 1194, 1194.1, 1197, 1197.1, 1198, 1199,
14 2699, 2800, 2802, 2698 et seq., and the applicable IWC Wage
15 Orders, or premiums in connection with any of the preceding
16 claims, as well as any claims under the California Labor Code,
17 California Industrial Welfare Commission's Wage Orders, or
18 the California Code of Regulations, which were alleged or which
19 could have been alleged under the same or similar facts alleged
20 in the complaints in these Actions or letters submitted to the
21 LWDA;

12 (b) Any claims for injunctive relief, declaratory relief, restitution,
13 fraudulent business practices or punitive damages alleged or
14 which could have been alleged under the facts pleaded in the
15 complaints; and

15 (c) Any and all other claims under California common law, the
16 California Labor Code including the California Private
17 Attorneys General Act ("PAGA"), the Fair Labor Standards Act
18 ("FLSA"), California Industrial Welfare Commission Wage
19 Orders, and the California Business and Professions Code
20 alleged in or that could have been alleged under the same facts
21 pleaded in the Operative Complaint. In addition, to the extent
22 required by law, the cashing of the settlement check by the
23 Settlement Class Member shall be deemed to be an opt-in for
24 purposes of releasing the Released Parties from any claims
25 predicated under the FLSA that could have been alleged under
26 the same or similar facts, allegations and/or claims pleaded in
27 the Class Lawsuit.³

21 Agreement ¶ B(28).

22 Additionally, PAGA Settlement Employees will release:

23 all claims for civil penalties, attorneys' fees, or costs pursuant to the
24 PAGA for any violations that were alleged, or reasonably could
25 have been alleged, based upon the facts that were alleged in the letter

26 ³ The Settlement Administrator shall include a legend on the settlement check stating: "By
27 cashing this check, I am opting into the settlement in *Curtis White v. CorTech West Staffing,*
28 *LLC; thyssenkrupp Materials NA, Inc.; thyssenkrupp Supply Chain Services NA, Inc.; and Tesla,*
Inc., Superior Court of California, County of San Joaquin, Civ. Case No. STK-CV-UOE-2023-
000029 under the Fair Labor Standards Act, 29 U.S.C. § 216(b), and releasing the Released
Claims described in the Settlement Agreement.

submitted by Plaintiff to the Labor Workforce Development Agency (“LWDA Letter”) or in any complaint filed in these Actions in any jurisdiction.

Agreement ¶ B(29). The scope of the release is narrow and is limited to the claims asserted in the Operative Complaint.

IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996). In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include 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, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008). The court must satisfy itself that the class settlement is within the “ballpark” of reasonableness. *Kullar*, 168 Cal. App. 4th. at 133. The record need not contain an explicit statement of the maximum theoretical recovery. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 408-409 (2010).

A. The Settlement Was Reached Through Arm’s Length Negotiations

The Parties attended a full-day mediation with experienced wage and hour mediator, Michael J. Loeb, Esq. CL Decl. ¶ 9. Both during and prior to the mediation, the Parties spoke at length about the strengths and weaknesses of each side’s claims and defenses, the certifiability of the claims, and the scope of Defendants’ liability. *Id.* After a full day of mediation and further negotiations conducted in the following months, the Parties were able to reach a global settlement of all claims. *Id.*

B. The Parties Engaged in Significant Investigation and Discovery

Plaintiff’s counsel conducted a thorough investigation of the allegations involved in this case since its inception. *See* CL Decl. ¶ 7. The Parties exchanged informal discovery and engaged in meet and confer efforts. Defendants provided necessary data pertaining to the

1 number of putative class members employed by Defendants, number of workweeks and pay
2 periods at issue, applicable rates of pay, a sample of time and pay records of the class members,
3 as well as information pertaining to Defendants' payroll policies and practices in advance of the
4 mediation. *Id.* Using the data provided by Defendants, Plaintiff's counsel conducted a full
5 damage analysis. *Id.*

6 **C. The Strengths and Weaknesses of the Claims**

7 Although Plaintiff's counsel believes in the merits of Plaintiff's claims, they are
8 experienced and realistic, and understand the possibility of non-certification on one or more of
9 the theories alleged in the Operative Complaint. CL Decl. ¶ 45; Fitzpatrick Decl. ¶ 3; Franklin
10 Decl. ¶ 5; LWL Decl. ¶ 4. These risks on class certification are compounded by the California
11 Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014).

12 Further, Defendants continue to expressly deny any liability or wrongdoing of any kind
13 associated with the claims alleged in the Actions and those released as part of the settlement.
14 Defendants deny all material allegations set forth in the Operative Complaint and have asserted
15 numerous affirmative defenses. Defendants maintain, among other things, they have complied
16 with federal and California law in all respects.

17 **1. Failure to Provide Off-Duty Meal and Rest Periods and Pay Meal/Rest Period Premiums**

18 Plaintiff alleges that Defendants did not provide employees with off-duty meal and rest
19 periods during their shifts or premium compensation in lieu thereof. CL Decl. ¶ 29; Declaration
20 of Curtis White ("White Decl.") ¶ 3. Plaintiff further alleged that his meal and rest periods were
21 sometimes interrupted or cut short by his managers without compensation. Consequently,
22 Plaintiff contends that employees are owed meal and rest period premiums and derivative
23 waiting time and wage statement penalties. CL Decl. ¶ 29.

24 Defendants argued several things in their defense. Most prominently, Defendants argued
25 that, during the relevant time period, they had a uniform meal period and rest break policy that
26 complied with California law. CL Decl. ¶ 30. In addition, the meal period and rest break policy
27 and the applicable Wage Order are posted at the subject facilities—supporting a compliant
28

1 company-wide meal period policy.⁴ Evidenced further, for example, by Defendant's
2 documented payment of a meal period premium(s). As such, Defendants assert that Plaintiff
3 would be unable to meet his burden to prove that Defendants did not meet their obligation under
4 the Labor Code and *Brinker* to provide employees a meal period and/or rest break. *See Brinker*
5 *Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) ("On the other
6 hand, the employer is not obligated to police meal breaks and ensure no work thereafter is
7 performed."). This, Defendants argued, would result in a claim that could not be certified as a
8 class action because Defendants maintained and enforced legally compliant policies. Defendants
9 claimed this would require Plaintiff to investigate and ask each putative class member the reason
10 time records may have shown a deficient meal period and whether a premium was, in fact, owed
11 to the class member. *Id.*

12 **2. Failure to Pay Wages for All Hours Worked**

13 Plaintiff alleges that, as a pattern and practice, Defendants suffered and permitted non-
14 exempt employees to work without payment of wages for all hours worked in a workday and
15 workweek. CL Decl. ¶ 31. More specifically, Plaintiff alleges that he was required to perform
16 work and was not paid for his time, including overtime hours for which he should have received
17 premium overtime wages. CL Decl. ¶ 31; White Decl. ¶ 4.

18 First, Defendants deny that Plaintiff was required or allowed to perform any work off-
19 the-clock, and Defendants deny having knowledge of any work performed by Plaintiff or other
20 employees for which they were not compensated. Defendants assert that its timekeeping records
21 refute any contentions of performed off-the-clock work. For example, tk Supply uses an
22 electronic timekeeping system, with time clocks located at the entrances of the facilities. tk
23 Supply maintains that its employees can clock in before even reporting to their workstations and
24 clock out as the last thing they do before exiting the facility. Likewise, employees clock in/out

25
26 ⁴ *See, e.g., Perez v. Safety-Kleen Sysv Inc.*, 253 F.R.D. 508, 515 (N.D. Cal. 2008) (rejecting
27 employee's "proposition that an employer is required to schedule meal breaks for its employees
28 or to inform employees of meal break rights other than to post Wage Order posters"); *see also*
Roberts v. Trimac Transp. Servs., Inc., 2013 WL 4647223, at *2 (N.D. Cal. Aug. 28, 2013)
("under California law, the absence of a formal policy does not constitute a violation of the meal
and rest period").

1 for meal periods at timekeeper terminals near the entrance of the break rooms. Further, tk Supply
2 maintains that its employees, through their managers/supervisors, can edit their time entries and
3 do so frequently. CL Decl. ¶ 32.

4 Second, Defendants argue that these claims are not suitable for class treatment because
5 their policies required accurate recording of time and prohibited off-the-clock work. CL Decl. ¶
6 33. Defendants' written policies prohibit non-exempt employees from working off the clock for
7 any reason. *Id.* Defendants further argue that individual questions predominate. *Id.* Citing to
8 *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012) and its progeny,
9 Defendants argue that their liability is contingent on proof that Defendants knew or should have
10 known that off-the-clock work was occurring. In the absence of a uniform policy, Defendants
11 contend that Plaintiff will not be able to establish the requisite knowledge through common
12 proof and thus certification would not have been granted. *Id.*

13 3. Wage Statement Claim

14 Defendants maintain that this claim is derivative of Plaintiff's other claims, and,
15 therefore, deny it on the basis that Defendants deny owing any unpaid wages and unpaid
16 premiums. CL Decl. ¶ 34. Even if any unpaid wages or premiums could be proven (which
17 Defendants dispute), Defendants maintain that any alleged omission of information from the
18 wage statements was not a "knowing and intentional failure" by Defendants to comply with
19 Labor Code § 226(a), and penalties are therefore unwarranted. *See Harris v. Vector Mktg. Corp.*,
20 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009) (granting summary judgment in favor of
21 employer and finding its conduct was not "knowing and intentional"). Defendants also would
22 have argued that penalties under Section 226 are subject to a similar "good faith" defense as
23 articulated below in the context of Plaintiff's claims for waiting time penalties. *See, e.g.*,
24 *Apodaca v. Costco Wholesale Corp.*, 2014 WL 2533427, at *3 (C.D. Cal. June 5, 2014) ("Where
25 an employer has a good faith belief that it is not in violation of Section 226, any violation is not
26 knowing and intentional."); *Naranjo v. Spectrum Sec. Servs., Inc.*, __ Cal. Rptr. 3d __, 2023 WL
27 2261253 (Cal. Ct. App. 2023). CL Decl. ¶ 34.

28 4. Failure to Pay Wages Upon Termination

1 Plaintiff seeks waiting time penalties predicated on Defendants' alleged
2 underpayment/non-payment of wages, including for meal and rest period premium wages. CL
3 Decl. ¶ 35; White Decl. ¶ 6.

4 Similar to Plaintiff's wage statement claim, Defendants maintain that this claim is
5 derivative of Plaintiff's other claims, and, therefore, deny it on the basis that Defendants deny
6 owing any unpaid wages and unpaid premiums. CL Decl. ¶ 36. Even if any underpayment could
7 be proven (which Defendants dispute), Defendants maintain their payments to employees were
8 made pursuant to a good faith belief that they were paying wages correctly, and as a result,
9 Plaintiff cannot establish that Defendants "willfully" failed to pay wages at separation of
10 employment and/or that a good faith dispute exists as to whether the allegedly underpaid monies
11 were wages due. *Id.* This is a legal defense that, if successful, could potentially defeat Plaintiff's
12 Section 203 claim. *Chavez v. Converse, Inc.*, 2020 WL 1233919, at *1 (N.D. Cal. 2020) (holding
13 that an employer's failure to pay is not willful where there is uncertainty in the law or a "good
14 faith mistaken belief that wages are not owed"). In *Naranjo v. Spectrum Security Services, Inc.*,
15 __ Cal. Rptr. 3d __, 2023 WL 2261253 (Feb. 27, 2023), *review granted* 2023 WL 3745105 (May
16 31, 2023), the court upheld an employer's good faith defense to the plaintiff's claim for waiting
17 time penalties, pursuant to Labor Code § 203. The employer argued that it had a viable legal
18 defense, which precluded the imposition of waiting time penalties because its acts were not
19 "willful" within the meaning of the statute. *Naranjo* also permitted a good faith defense to rebut
20 the plaintiff's claim for penalties, pursuant to Labor Code § 226. CL Decl. ¶ 36.

21 **5. Failure to Reimburse Work Expenses**

22 Plaintiff alleges that Defendants required Class Members to purchase mandatory safety
23 uniforms and gear but did not reimburse employees for the costs. CL Decl. ¶ 37; White Decl. ¶
24 5.

25 Defendants deny that Plaintiff was required to purchase any uniform or gear for work
26 for which the employees did not receive reimbursement. CL Decl. ¶ 38. Defendants maintain
27 that they provide any required personal protective equipment and provide a reasonable
28 reimbursement allowance, in accordance with a written reimbursement policy. Further,

1 Defendants dispute the existence of a common policy that requires employees to purchase safety
2 uniforms and/or gear because they maintained compliant written reimbursement policies. *Id.*
3 Some courts have denied class certification of Section 2802 claims because liability hinges on
4 individualized inquiries into the actual expenses incurred by class members and whether each
5 class member was fully reimbursed pursuant to the policy.

6 **6. Derivative PAGA Penalties**

7 Plaintiff pursues derivative PAGA penalties based on the Labor Code violations
8 discussed above. CL Decl. ¶ 39. The trial court has the discretion to reduce PAGA civil penalties
9 “if, based on the facts and circumstances of the particular case, to do otherwise would result in
10 an award that is unjust, arbitrary and oppressive, or confiscatory.” *See* Labor Code § 2699(e)(2).
11 Plaintiff’s counsel is not blind to the fact that Defendants could be persuasive to the Court at
12 trial and that the penalties herein could be substantially reduced. CL Decl. ¶ 39.

13 **D. Potential Estimated Value of the Class and Representative PAGA Claims**

14 Based on the class data provided by Defendants, Plaintiff’s counsel estimated that
15 Defendants could face potential liability of up to approximately \$6.081 million for the class and
16 PAGA claims, based on the following:

- 17 • Failure to pay wages: Plaintiff estimated that the amount of unpaid wages owed
18 by Defendants is approximately \$670,170.00. This was calculated based on a
19 modest assumption of 5 minutes off-the-clock work per shift worked, based on
20 the putative class members’ average overtime rate of \$33.38 for 481,920 shifts
21 worked, and 50% reduction based on the difficulty of proving this claim (($\$33.38$
22 average overtime rate x 5 minutes off-the-clock work x 481,920 shifts worked) /
23 50% risk reduction);
- 24 • Failure to provide meal and rest periods: Plaintiff estimate exposure of
25 approximately \$1.072 million for unpaid premiums owed, based on 5 violations
26 per workweek, applying a 20% violation rate based on sample time and payroll
27 data of putative class members, and 50% reduction based on the difficulty of
28 proving this claim ((($96,384$ workweeks x $\$22.25$ average hourly rate x 5

violations per workweek)) x 20% violation / 50% risk reduction);

- Failure to timely pay wages upon separation of employment: With respect to waiting time penalties under § 203, Plaintiff estimated the potential penalties owed was approximately \$1.193 million, which was calculated based on 447 former employees, based on the average hourly rate of pay of \$22.25, and 50% reduction based on the difficulty of proving this claim ((447 former employees x 8 hours x 30 days x \$22.44 average hourly rate) / 50% risk reduction);
- Wage statement penalties: Plaintiff also alleged that Defendants would be subject to penalties for wage statement violations, pursuant to Labor Code § 226. Plaintiff estimated the penalties associated with this claim is approximately \$1.717 million, in relation to the approximately 34,915.50 pay periods at issue, and 50% reduction based on the difficulty of proving this claim ((34,915.50 pay periods at issue x \$100) - (1,114 employees x \$50) / 50% risk reduction);
- Unreimbursed business expenses: Plaintiff calculated the total exposure for this claim as approximately \$26,060.00, which contemplates a \$40 per workweek reimbursement, and 50% reduction based on the difficulty of proving this claim ((1,303 class members x \$40 per workweek violation) / 50% risk reduction.

CL Decl. ¶ 40.

While the total exposure of Plaintiff's class claims based on the above amount to approximately \$6.081 million, this does not take into account Defendant's arguments to liability and to class certification. *Id.* ¶ 41.

With respect to Plaintiff's claims under the PAGA, Plaintiff estimated that Defendant could face civil penalties of at least \$14.010 million, in relation to the approximately 69,831 workweeks at issue during the PAGA period. *Id.* ¶ 42.

It is unrealistic to assume that the Court will award the full amount of PAGA penalties if Plaintiff is able to prevail at trial. The recovery is uncertain because the Court can decline to award the full amount of 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,

1 or confiscatory.” As shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*,
2 while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum
3 PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying with the
4 law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such reduction
5 to be proper. *Id.* at 539; *see O’Connor v. Uber Techs., Inc.*, 2016 WL 4398271, at *17 (N.D.
6 Cal. Aug. 18, 2016) (noting that even if PAGA penalties amounted to \$1 billion, such award
7 “could well be reduced, as a court may reduce the penalty when to do otherwise would result in
8 an award that is unjust, arbitrary and oppressive, or confiscatory”). If the Court exercised the
9 same discretion here, the PAGA penalties would be reduced from approximately \$14.010
10 million to \$1.401 million. *Id.* ¶ 43.

11 Thus, the Gross Settlement Amount of \$750,000.00 represents 12.33% of the realistic
12 maximum damages and penalties at issue. CL Decl. ¶ 44.⁵

13 **E. The Proposed Payment to Class Representative**

14 Plaintiff requests an enhancement of Five Thousand Dollars (\$5,000.00). Plaintiff met
15 with his counsel on various occasions to discuss the case, provide documents and information,
16 and review the Settlement Agreement. White Decl. ¶ 8. In addition to the invaluable services
17 that he provided, Plaintiff also took significant risks, both professionally and monetarily, in
18 acting as Class Representative and seeking benefits on behalf of the Class. Because the claims
19 alleged by the Class Representative involved the payment of costs to the prevailing party,
20 Plaintiff could have possibly faced paying the fees and costs of Defendants, had he not prevailed
21 in this action.

22 Further, given that future employers are much less likely to hire individuals who have
23 filed suit against their prior employer, particularly cases of this nature, Plaintiff may face
24

25 ⁵ Courts have held that gross settlements approximating between only 8 and 25% of the
26 defendant’s potential exposure are fair and reasonable. *See Bellinghausen v. Tractor Supply Co.*,
27 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (approving class settlement recovering
28 between 8.5% and 25% of the defendant’s potential exposure); *Van Ba Ma v. Covidien Holding*
Inc., U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (approving wage and hour class
settlement which obtained only 9.1% of projected damages); *Villegas v. J.P. Morgan Chase &*
Co., 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that settlement of
approximately 15% of the potential recovery was fair and reasonable).

1 prejudice in the future from other potential employers. Plaintiff took this risk upon himself and
2 the whole Class benefited from these risks taken by Plaintiff. Class Members did not have to
3 file individual lawsuits and bear the risks of payment of fees and costs if they did not prevail,
4 nor did they have to face the potential for retaliation and not getting future employment had they
5 filed a public lawsuit.

6 Notably, courts have routinely granted approval of representative enhancements for far
7 greater amounts than the \$5,000.00 sought by Plaintiff in this case. *See, e.g., Van Vranken v.*
8 *Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of
9 \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio
10 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v.*
11 *Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award);
12 *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio
13 1991) (\$50,000 awarded to each class representative). Here, Plaintiff requests an enhancement
14 of \$5,000, which is reasonable and consistent with case law.

15 **F. The Requested Attorneys' Fees and Litigation Costs**

16 California state and federal courts have recognized that an appropriate method for
17 determining award of attorneys' fees is based on a percentage of the total value of benefits to
18 class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
19 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*,
20 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).
21 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread
22 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
23 bear the entire burden alone." *Vincent*, 557 F.2d at 769.

24 Under California law, the award of attorneys' fees in common fund wage and hour class
25 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1
26 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in
27 holding that when class action litigation establishes a monetary fund for the benefit of the class
28 members, and the trial court in its equitable powers awards class counsel a fee out of that fund,

1 the court may determine the amount of a reasonable fee by choosing an appropriate percentage
2 of the fund created”). Under the percentage of the fund method, the Court’s objective remains
3 to “mimic the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th
4 Cir. 1998) (J. Posner) (“When a fee is set by a court rather than by contract, the object is to set
5 it at a level that will approximate what the market will set.... The judge, in other words, is trying
6 to mimic the market in legal services”).

7 The results delivered by Plaintiff’s counsel also support the requested percentage of the
8 fund. Here, the Parties have agreed to a payment of a maximum of one-third (1/3) of the Gross
9 Settlement Amount (or \$250,000.00) for payment to Plaintiff’s counsel as attorneys’ fees.
10 Agreement ¶ C(4). The Parties have agreed to a payment of the foregoing attorney’s fees and,
11 thus, this payment should be presumed to be fair. Further, it is not uncommon for courts to award
12 attorneys’ fees as approximately one-third or 33.3% of the settlement amount in wage and hour
13 class action settlements. For example, in *McKinnon v. Best Buy Co., Inc.*, (Alameda Superior
14 Court Case No. RG03082294), the court awarded over \$9 million as attorneys’ fees, which was
15 33% of the maximum settlement amount of \$26.9 million.

16 Further, the Parties have agreed to reimbursement of Plaintiff’s counsel’s litigation costs.
17 Class Counsel have expended costs at their own risk, for example, to file this instant action,
18 effect service of process, and pay mediation fees and other litigation related costs. CL Decl. ¶
19 22. The agreement allocates up to \$30,000 for costs. Agreement ¶ C(4). Based on the foregoing,
20 the court should preliminarily approve the attorney’s fees and costs being requested by the
21 Parties.

22 **G. The Settlement Administrator’s Fees are Reasonable**

23 The Parties request that Phoenix Settlement Administrators be appointed as the
24 settlement administrator in this case. The Parties have agreed to an estimated not to exceed
25 payment of \$15,000.00 to send notices and to administer this settlement. Phoenix Settlement
26 Administrators is a well-recognized class action settlement administrator. CL Decl. ¶ 23.

27 **V. THE PROPOSED CLASS MEETS ALL CERTIFICATION REQUIREMENTS**

28 **A. The Class is Ascertainable and Sufficiently Numerous**

1 The Class that Plaintiff seeks to conditionally certify is ascertainable. “Class members
2 are ‘ascertainable’ where they may be readily identified without unreasonable expense or time
3 by reference to official records.” *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008).
4 Here, members of the Class are readily identifiable. Defendants have determined that there are
5 approximately 1,303 individuals that comprise the Class, which is sufficiently numerous. *See*
6 CL Decl. ¶ _.

7 **B. There are Common Questions of Law and Plaintiff’s Claims are Typical**

8 The commonality requirement is met when there are questions of law and fact common
9 to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998). Commonality requires
10 only that some common legal or factual questions exist; the plaintiffs need not show that all
11 issues in the litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473
12 (1981). Where the employer’s conduct is uniformly directed at a class of employees, as it is
13 here, the class wide impact of the Defendants’ policies satisfies the commonality requirement.
14 *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

15 Plaintiff alleges, in part, that Defendants, as a matter of their corporate policy, practice,
16 or procedure violated the Labor Code by: (1) failing to provide off-duty meal and rest breaks
17 and failing to pay premium compensation for the missed meal and rest breaks; (2) failing to pay
18 all regular, minimum, and overtime wages owed; (3) failing to provide accurate itemized wage
19 statements; (4) failing to timely pay wages during employment and at separation of employment;
20 and (5) failing to reimburse business expenses. White Decl. ¶¶ 3-6. In other words, Plaintiff was
21 allegedly subjected to the same policy and practice as other Class Members. Thus, Plaintiff’s
22 claims are typical to those of Class Members.

23 **C. Plaintiff and Plaintiff’s Counsel Have Adequately Represented the Class**

24 The adequacy requirement is also met. “Adequacy of representation depends on whether
25 the plaintiff’s attorney is qualified to conduct the proposed litigation and the plaintiff’s interests
26 are not antagonistic to the interests of the class.” *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442,
27 450 (1976). Here, Plaintiff does not have any interests adverse to the Class, nor have any such
28 issues been raised or presented. White Decl. ¶ 7. Plaintiff has taken all necessary steps to

1 represent the interests of the Class, by providing information and documents. *Id.* ¶ 8. For such
2 reasons, Plaintiff has adequately represented the Class and will continue to do so.

3 Further, as detailed in their declarations, Plaintiff's counsel are experienced and well-
4 qualified class action litigators who have litigated many wage and hour class actions and have
5 each been certified as class counsel in numerous other class actions, particularly wage and hour
6 class actions. CL Decl. ¶¶ 47-50; Fitzpatrick Decl. ¶ 4; Franklin Decl. ¶¶ 3-4; LWL Decl. ¶¶ 6-
7 8. From the inception of the case, Plaintiff's counsel have solely represented the interests of the
8 Class. CL Decl. ¶ 46.

9 **VI. NOTICE TO THE LWDA**

10 In conjunction with filing this Motion, Plaintiff provided notice to the LWDA. CL Decl.
11 ¶ 52; Ex. B.

12 **VII. CONCLUSION**

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

20 Dated: June 25, 2024

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

21
22
23 By: 
24 B. James Fitzpatrick
25 Larry W. Lee
26 Attorneys for Plaintiff
27 Curtis White on behalf of himself and all
28 similarly aggrieved employees

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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.

- 1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**
- 2. DECLARATION OF CHRISTINE S. LEE IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**
- 3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**
- 4. DECLARATION OF B. JAMES FITZPATRICK IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**
- 5. DECLARATION OF LAURA L. FRANKLIN IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**
- 6. DECLARATION OF CURTIS WHITE IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**
- 7. [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

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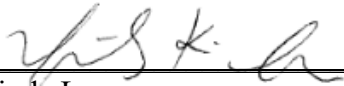
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 25, 2024, at Los Angeles, California.



Linda Lee