

1 Joseph Lavi, Esq. (SBN 209776)
2 Vincent C. Granberry, Esq. (SBN 276483)
3 Jeffrey D. Klein, Esq. (SBN 297296)
4 Paolo Policastro, Esq. (SBN 359731)
5 **LAVI & EBRAHIMIAN, LLP**
6 8889 W Olympic Boulevard, Suite 200
7 Beverly Hills, California 90211
8 Telephone: (310) 432-0000
9 Facsimile: (310) 432-0001
10 Email: jlavi@lelawfirm.com
11 vgranberry@lelawfirm.com
12 jklein@lelawfirm.com
13 ppolicastro@lelawfirm.com

14 Attorneys for Plaintiff DIANA BANUELOS VELASQUEZ,
15 on behalf of herself and others similarly situated.

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF MONTEREY**

18 DIANA BANUELOS VELASQUEZ, on behalf
19 of herself and others similarly situated,

20 Plaintiff,

21 vs.

22 MANN PACKING CO., INC.; and DOES 1 to
23 100, inclusive,

24 Defendants.

Case No.: 25CV004157

[Consolidated Case No. 25CV003026]

CLASS AND PAGA ACTION

[Assigned for All purposes to the
Hon. Thomas W. Wills, Dept. 15]

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

[Filed concurrently with the Declarations in
Support Thereof; and [Proposed] Order]

[Hearing Information:]

Date: July 24, 2026

Time: 08:30 a.m.

Dept.: 15]

1 **TO THE HONORABLE COURT, ALL PARTIES, AND TO THEIR RESPECTIVE**
2 **ATTORNEYS OF RECORD:**

3 **NOTICE IS HEREBY GIVEN** that on [July 24, 2026, at 8:30 a.m.], or as soon thereafter as
4 the matter can be heard in Department 15 of the Monterey County Superior Court located at 1200
5 Aguajito Rd, Monterey, CA 93940. Plaintiff DIANA BANUELOS VELASQUEZ (“Plaintiff”) will
6 and hereby does move for an order granting preliminary approval of the proposed class action
7 settlement on the terms and conditions set forth in the Class Action and Private Attorneys General
8 Act Settlement and Release Agreement (“Settlement” or “Settlement Agreement”) between Plaintiff
9 and Defendant MANN PACKING CO., INC. (“Defendant”), a copy of which is attached to the
10 Declaration of Paolo Policastro (“Policastro Dec.”) as **Exhibit “1.”** Plaintiff will further move that
11 the Order specifically encompass the following:

- 12 1. Certify a class for settlement purposes only;
- 13 2. Provisionally appoint the Plaintiff as Class Representative for settlement purposes
14 only;
- 15 3. Provisionally appoint Joseph Lavi, Esq., Vincent C. Granberry, Esq., Jeffrey D. Klein,
16 Esq., and Paolo Policastro, Esq., of Lavi & Ebrahimian, LLP as Class Counsel for settlement purposes
17 only;
- 18 4. Approve the Class Notice in the form attached as **Exhibit “2”** to the Policastro
19 Declaration and authorize the mailing of the Class Notice to the Class members in accordance with
20 the terms of the Settlement Agreement;
- 21 5. Provisionally appoint ILYM Group, Inc. (“ILYM”) as the Settlement Administrator;
- 22 6. Set a Final Approval and Settlement Fairness Hearing on a date that is approximately
23 150 days after the Court grants preliminary approval of the Settlement.

24
25 Dated: May 11, 2026

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

26
27 By: /s/Paolo Policastro
Joseph Lavi, Esq.
28 Vincent C. Granberry, Esq.

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Jeffrey D. Klein, Esq.
Paolo Policastro, Esq.
Attorneys for Plaintiff DIANA
BANUELOS VELASQUEZ on
behalf of herself and others similarly
situated

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Plaintiff Diana Banuelos Velasquez (“Plaintiff”) respectfully submits this memorandum of
4 points and authorities in support of her motion for preliminary approval of the proposed class action
5 settlement with Defendant Mann Packing Co., Inc. (“Defendant”) (Plaintiff and Defendant are
6 collectively hereinafter referred to as “the Parties”). Plaintiff seeks entry of a proposed order granting
7 preliminary approval of the class settlement which: (1) preliminarily approves the proposed
8 settlement of the class action and PAGA representative action; (2) approves the form and method for
9 providing notice and directs that notice be given to members of the settlement class; (3) preliminarily
10 certifies the settlement class for settlement purpose; and (4) schedules a final approval hearing date.

11 As consideration for this Settlement, Defendant shall pay an adjusted Gross Settlement Amount
12 equal to Four Hundred Six Thousand Seven Hundred Forty-Eight Dollars and Sixteen Cents
13 (\$406,748.16) (the “Adjusted Gross Settlement Amount”) to fund the non-reversionary, no claims
14 made settlement of this class action.¹ (§III(B) and § XIII of the Class Action and PAGA Settlement
15 Agreement and Class Notice (“Settlement” or “Settlement Agreement”), a copy of which is attached
16 as **Exhibit “1”** to Declaration of Paolo Policastro (“Policastro Dec.”) filed herewith.) The Adjusted
17 Gross Settlement Amount is inclusive of Individual Settlement Payments to Class Members,
18 Individual PAGA Payments, the LWDA Payment, Class Counsel Attorneys’ Fees, Class Counsel
19 Litigation Costs, the Class Representative Enhancement Payment, and the Administration Expenses
20 Payment. (*Id.*)

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26 ¹ The Settlement provides for a Gross Settlement Amount (“GSA”) of \$388,000.00, subject to
27 increase pursuant to the Escalator Clause of the Settlement (Section XIII). Pursuant to Section
28 XIII(A)(1), Defendant notified Plaintiff on April 1, 2026, that the Escalator Clause had triggered,
and that Defendant elected to proportionally increase the GSA by 4.832% (i.e. \$18,748.16), for an
adjusted gross settlement amount of \$406,748.16. (Policastro Dec., ¶14.)

1 **II. SUMMARY OF LITIGATION**

2 **A. The Parties**

3 The named Plaintiff worked as a non-exempt hourly-paid employee for Defendant and seeks
4 to represent approximately 470 current and former hourly-paid, non-exempt employees employed by
5 Defendant during the relevant time period, and who have not previously released all known and
6 unknown claims against Defendant (hereinafter “Class” or “Class Members”). (Policastro Dec. ¶3.)
7 Plaintiff also seeks to maintain a representative action to recover civil penalties under PAGA on
8 behalf of the Labor and Workforce Development Agency (LWDA) and a group of approximately
9 556 current and former non-exempt employees based in California and employed by Defendant
10 (“PAGA Group Members.”). (Policastro Dec. ¶4.)

11 **B. The Complaint and Allegations**

12 This is a proposed employee wage and hour class action and representative action. On June 13,
13 2025, Plaintiff commenced this class action by filing a complaint against Defendant for alleged
14 violations of the California Labor Code in the Monterey County Superior Court (the “Class Action”).
15 Plaintiff alleged the following: (1) Failure to Pay Wages For All Hours Worked At Minimum Wage
16 in Violation of Labor Code Sections 1194 and 1197, (2) Failure to Pay Overtime Wages for Daily
17 Overtime Worked In Violation Of Labor Code Section 510 and 1194, (3) Failure to Authorize or
18 Permit Meal Periods In Violation of Labor Code Sections 512 and 226.7, (4) Failure to Authorize or
19 Permit Rest Periods in Violation of Labor Code Section 226.7, (5) Failure to Provide Complete and
20 Accurate Wage Statements in Violation of Labor Code Section 226, (6) Failure to Timely Pay All
21 Earned Wages and Final Paychecks Due at Time of Separation of Employment in Violation of Labor
22 Code Sections 201, 202, and 203, and (7) Unfair Business Practices, in Violation of Business and
23 Professions Code Sections 17200, et seq. Defendant has denied all claims in the Class Action.
24 (Policastro Dec. ¶5.)

25 On June 13, 2025, Plaintiff also submitted a notice to the LWDA informing them of her
26 intention to bring a claim for civil penalties pursuant to PAGA. (Policastro Dec. ¶6.)²

27
28 ² Concurrently with the filing of this Motion, Plaintiff’s Counsel submitted a copy of the proposed
Settlement to the LWDA in compliance with Labor Code § 2699(1)(2). (Policastro Dec., ¶41.)

1 On August 18, 2025, Plaintiff filed an action in the Monterey County Superior Court under the
2 Private Attorneys General Act of 2004 (PAGA) against the same Defendant, seeking civil penalties
3 for alleged violations by Defendant (“PAGA Action”) bearing Case No. 25CV004157. (Policastro
4 Dec. ¶7.) (the Class Action and PAGA Action are referred to collectively herein as the “Action”).

5 On December 3, 2025, after informal discovery and data exchange, the Parties attended a
6 mediation session with Allison Eckstrom, Esq., a well-respected mediator experienced in mediating
7 wage and hour class and representative actions. After a full day of arm’s-length negotiations, the
8 Parties reached a settlement of the Class Action and PAGA Action and subsequently finalized the
9 Settlement Agreement in March 2026. (Policastro Dec. ¶8.)

10 On April 17, 2026, the Parties filed a joint stipulation to consolidate the Class Action and PAGA
11 Action for all purposes pursuant to California Code of Civil Procedure § 1048 and for leave to file an
12 amended consolidated complaint (“Operative Complaint”), which added the claims from the Class
13 Action to the PAGA Action. (Policastro Dec. ¶9.). On April 24, 2026, the Court granted the
14 stipulation, approved the filing of the Operative Complaint and the consolidation request, and
15 designated the PAGA Action (Case No. 25CV004157) as the lead case. (Policastro Dec. ¶10.)

16 **C. The Exchange of Detailed Informal Discovery and Legal Analysis by the Parties’**
17 **Counsel**

18 As a critical part of settlement negotiations, the Parties engaged in extensive informal discovery
19 exchange where Plaintiff’s counsel and the expert of Plaintiff’s counsel reviewed and analyzed the
20 following: (1) time records for all Class Members and PAGA Group Members; (2) pay records for
21 all Class Members and PAGA Group Members; (3) information relating to the size and scope of the
22 class; (4) data permitting Plaintiff to fully understand the nature and scope of the allegations in the
23 Complaint and (5) documents regarding Defendant’s wage and hour policies. (Policastro Dec. ¶11.)

24 Plaintiff believes that her case is suitable for class certification in that she believes there were
25 company-wide policies that affected Defendant’s employees, which could be established using
26 representative testimony from class members, as well as the practices brought forth in discovery.
27 While Plaintiff asserts that this is a case for certification, Plaintiff also realizes that there is always a
28

1 significant risk associated with class certification, and Defendant's compelling defenses to this case
2 discussed more fully below. (Policastro Dec. ¶12.)

3 The Settlement was reached as a result of arm's-length negotiations facilitated by a highly
4 regarded and experienced wage and hour mediator, Allison Eckstrom, Esq., and analysis by Plaintiff's
5 counsel. The Settlement negotiations have been, at all times, adversarial and non-collusive in nature.
6 While Plaintiff believes in the merits of her case, she also recognizes the inherent risks of litigation
7 and understands the benefit of the Class receiving settlement funds immediately as opposed to risking
8 an unfavorable decision on class certification, summary judgment, at trial, and/or the damages
9 awarded, and/or on an appeal that can take several more years to litigate. (Policastro Dec. ¶13.)

10 Defendant denies the allegations in the Operative Complaint, denies any failure to comply with
11 the laws identified in the Operative Complaint, and denies any and all liability for the causes of action
12 alleged. (Settlement, §XVII(B).) Defendant contends that it complied in good faith with wage and
13 hour laws and has dealt legally and fairly with Plaintiff, putative class members, and allegedly
14 aggrieved employees.

15 **III. THE SETTLEMENT**

16 The settlement contemplates (i) entry of an Order preliminarily approving the settlement and
17 approving certification of a provisional settlement class, contingent upon final approval of the
18 settlement; and (ii) entry of an Order granting final approval of the settlement and judgment.

19 Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure
20 and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the Action
21 by agreement upon the terms and conditions and for the consideration set forth in the Settlement. a
22 copy of which is attached to the Declaration of Paolo Policastro as **Exhibit "1."** A summary of the
23 key terms of the Settlement is as follows:

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1 **A. Material Terms of Settlement**

2 Plaintiff and Defendant agreed to settle the Action in exchange for a Gross Settlement
3 Amount of \$388,000.00, subject to an Escalator Clause. Settlement Agreement, § III(B). The Gross
4 Settlement Amount will be used to make payments for the following: (1) Individual Settlement
5 Payments to Class Members; (2) attorneys’ fees to Class Counsel of up to one-third of the Gross
6 Settlement Amount; (3) reimbursement of Class Counsel’s litigation costs of up to \$20,000.00; (4)
7 an Enhancement Payment to Plaintiff of up to \$5,000.00; (5) Settlement Administration fees and
8 costs; and (6) an allocation of \$213,400.00 to penalties under PAGA. *Id.* at §§ III(B) – (G).

9 Pursuant to the escalator clause of the Settlement, Defendant has elected to increase the
10 Gross Settlement Amount based on the 28,708 Pay Periods worked during the PAGA Period (June
11 13, 2024 through January 31, 2026), thereby resulting in a 4.832 percent increase of the GSA, such
12 that the actual, increased Gross Settlement Amount Defendant will pay is \$406,748.16 on a non-
13 reversionary basis (“Adjusted Gross Settlement Amount”). [(Policastro Dec., ¶14); Ex. 1 at § XIII.]

14 The Settlement Agreement defines the “Class” as all current and former non-exempt
15 employees based in California and employed by Mann Packing Co., Inc. in a non-union
16 (administrative/IR8) role from March 19, 2025 through January 31, 2026 (“**IR8 Class Period**”) and
17 all current and former non-exempt employees based in California and employed by Mann Packing
18 Co., Inc., in a union (production/IR4) role from August 19, 2025 through January 31, 2026 (“**IR4**
19 **Class Period**”). (Settlement, §I(A).).

20 The Settlement Agreement defines “PAGA Group” or “PAGA Group Members” as: all
21 current and former non-exempt employees based in California and employed by Mann Packing Co.,
22 Inc. in either a union (production/IR4) or non-union (administrative/IR8) role from June 13, 2024
23 through January 31, 2026 (the “**PAGA Period**”). (Settlement, §I(F).)

24 Class Members do not need to submit a claim form to participate in the Settlement. Settlement
25 Agreement, § VIII(C). Pursuant to the Settlement Agreement, Defendant will fully fund the
26 Adjusted Gross Settlement Amount within 30 days of the date the Court grants final approval of the
27 settlement and enters judgment and the time to appeal any judgment has expired (the “Effective
28 Date”) by sending a wire to the Settlement Administrator. *Id.* at § XI(A). The Settlement

1 Administrator will then have 15 days from the date the settlement funds are received to mail
2 payments to Class Members and/or PAGA Group Members. *Id.* at § XI(A).

3 Individual Settlement Payments will be calculated proportionally according to the following
4 formula: Net Settlement Amount divided by the total of the number of workweeks during the IR4
5 Class Period and IR8 Class Period by participating Class Members (“Workweek Payment Rate”)
6 multiplied by the number of workweeks worked during the IR4 or IR8 Class Period (as applicable)
7 by the individual Class Member at issue in a non-exempt position in California, less applicable
8 withholdings (“Individual Class Member Payments”). Every Class Member will be paid a
9 minimum of one workweek’s worth of the relevant portion of the Net Settlement Amount. *Id.* at §
10 VIII(D)(1).

11 Individual PAGA Payments will be calculated proportionally according to the following
12 formula: (a) dividing the amount of the PAGA Group Payment³ (\$74,690.00) by the total number
13 of Pay Periods worked by all PAGA Group Members in the PAGA Period (“PAGA Group Pay
14 Periods”), and (b) multiplying the result by each PAGA Group Member’s “Individual PAGA Pay
15 Periods” (i.e. the total number of Pay Periods worked by that PAGA Group Member in the PAGA
16 Period). All PAGA Group Members will receive at least a minimum Individual PAGA Payment
17 equivalent to the figure paid to those PAGA Group Members who worked in at least one pay period
18 during the PAGA Period.

19 The Individual Settlement Payments to Class Members will be allocated for tax purposes as
20 follows: 20% to wages; 80% to penalties and interest. Settlement Agreement, § IX(A). The
21 employer-side payroll taxes on the portion allocated to wages will be paid by Defendant separately
22 from, and in addition to the Gross Settlement Amount. *Id.* No portion of the Gross Settlement
23 Amount will revert to Defendant. *Id.* at § III(B). Funds from uncashed or undeliverable checks will
24 be tendered by the Settlement Administrator to the California State Controller’s Unclaimed Property
25 Fund in the name of the Class Member and/or PAGA Group Member for whom the funds are

27 ³ Sixty-Five Percent (65%) of the PAGA Settlement Amount will be paid to the LWDA (the
28 “LWDA Payment”), and the remaining Thirty-Five Percent (35%) will be paid to all PAGA Group
Members (“PAGA Group Payment”). Settlement, §III(C).

designated. *Id.* at § XI(C)(1).

B. Proposed Notice, Opt-Out and Objection Process

Once the Court grants preliminary approval, Defendant will have 20 days to deliver the Class Data to the Settlement Administrator. Settlement Agreement, § V(A). The Settlement Administrator will then have 25 days to send Class Members the Class Notice by first-class mail after checking for updated addresses through the National Change of Address database. *Id.* at § V(C). The proposed Class Notice provides information regarding the nature of the lawsuit, a summary of the material terms of the settlement, the formula for calculating Individual Settlement Payments and Individual PAGA Payments, the individual's estimated payout, a statement that Class Members who take no action will release their claims and receive settlement checks, instructions regarding how to dispute the calculations, instructions regarding how to request exclusion or object to the Settlement, the date for the final approval hearing, the amounts sought for attorneys' fees and costs, the Settlement Administration Costs, the Class Representative's Enhancement Payment, and the PAGA allocation. The proposed Class Notice is attached to the Policastro Decl. as **Exhibit "2"**.

The Class Notice provides instructions for Class Members who choose to exclude themselves from the class portion of the Settlement. [*See* Policastro Dec; Ex. 2 at p. 9.] To opt out, Class Members are instructed to submit a Request for Exclusion to the Settlement Administrator by a specified date (60 days after the date of mailing of the Class Notice). [*Id.* at pp. 9-10.] Class Members do not need to submit a claim form to participate in the Settlement. [*Id.* at p. 9.] Class Members are also informed of how they can object to the Settlement, and the Class Notice informs Class Members of the date, time, and location of the final fairness and approval hearing so that they can appear if they wish. [*Id.* at pp. 10-11.⁴] The Class Notice also informs Class Members to check the Administrator's website or contact Class Counsel to verify the date and time of the Final Approval Hearing. [*Id.* at p. 11.] Accordingly, the content of the Class Notice complies with the requirements of California Rules of Court Rule 3.766(d).

⁴ Plaintiff and Defendant may respond in writing to any written Objections by no later than seven (7) calendar days before the Final Settlement Approval Hearing (or some other number of days as the Court shall specify) unless the Objection is received at a later time. Plaintiff and Defendant may also respond to Objections orally at the Final Settlement Approval Hearing. (Settlement, §VII(A).)

1 If Class Notices are returned as undeliverable, the Settlement Administrator will perform a
2 skip-trace or other search, and re-mail the Class Notice. Class Members who are provided a re-mailed
3 Class Notice have an extended deadline, to opt out or object, of 14 days from the original Response
4 Deadline. Settlement Agreement, § VI(A). The initial 60-day notice period and extension process
5 ensures the notice program provides due process by giving Class Members enough time to determine
6 whether they want to participate in the Settlement. This means of notice is reasonably calculated to
7 apprise Class Members of the pendency of the action. *See* California Rules of Court Rule 3.766 (d)-
8 (f).

9 **C. Proposed Releases**

10 The release to be given by Participating Class Members is limited to Defendant Mann Packing
11 Co., Inc., Fresh Del Monte Produce, Inc., and its and their former and present parents, subsidiaries,
12 affiliated corporations and entities, current, former, and future officers, directors, members, managers,
13 employees, partners, shareholders, joint venturers and third-party agents, and any successors, assigns,
14 legal representatives, or any individual or entity which could be jointly liable with Defendant, and all
15 persons or entities acting by, through, under, or in concert with Defendant (“**Released Parties**”).
16 Settlement § XV(A). Upon the date Defendant fully funds the entire Adjusted Gross Settlement
17 Amount, Participating Class Members will be deemed to have released the Released Parties from:

18 all applicable California wage and hour claims, rights, demands, liabilities, and
19 causes of action, whether known or unknown, arising from the claims pled in the
20 Velasquez Actions or that could have been asserted based on the facts alleged in
21 the Velasquez Actions against Defendant, including, but not limited to, claims for:
22 off-the-clock work, unpaid wages, unpaid overtime wages, failure to timely pay all
23 wages due, failure to pay all compensation at the regular rate of pay or correct
24 regular rate of pay, failure to provide meal periods or rest breaks, unpaid premium
25 wages for meal periods or rest periods (including with respect to the rate at which
26 premiums were paid), untimely payment of wages, inaccurate wage statements,
27 failure to timely pay all wages owed at termination of employment, unlawful
28 deductions from wages, and claims under Labor Code sections 201-204, 218.5,
218.6, 223, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1194, 1198, and the
IWC Wage Order; claims for unfair, unlawful or fraudulent business practices in
violation of California Business and Professions Code section 17200 et seq.; and
any damages, penalties, restitution, disgorgement, interest, costs, or attorneys’ fees
as a result thereof (“**Released Claims**”) The Released Claims do not include claims
to enforce this Agreement or claims that may not be released as a matter of law,
including, for example, claims for vested benefits under an ERISA, 401(k), or

1 similar plan, wrongful termination, violation of the Fair Employment and Housing
2 Act, unemployment insurance, disability, social security, workers' compensation,
3 or claims based on facts occurring outside of the applicable IR4 and IR8 Class
4 Periods. This Settlement and the judgment entered thereon are intended to have res
judicata effect precluding Plaintiff and the Participating Class Members from
initiating any other proceedings regarding claims released pursuant to this
Agreement. (Settlement, §XV(A).)

5 In addition, pursuant to the "PAGA Release of Claims" under the Settlement, upon the funding of
6 the Gross Settlement Amount, all PAGA Group Members will release the Released Parties from "all
7 claims under PAGA arising from and/or relating in any way to the claims pled in the Velasquez
8 Actions, or Plaintiff's LWDA letter, or that could have been asserted based on the facts alleged or
9 theories asserted in the Velasquez Actions against Defendant... and that arose during the PAGA
10 Period." *Id.* at § XV(B)(1).

11 **IV. ANALYSIS**

12 **A. Class Action Settlements Are Subject to Review and Approval Under the** 13 **California Rules of Court**

14 Rule 3.769 of the California Rules of Court requires court approval for class action settlements.
15 "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement."
16 (Cal. Rules of Court, rule 3.769(g).) Courts act within their discretion in approving settlements which
17 are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional
18 uncertainties inherent in complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir.
19 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators*
20 *Ass'n* (1981) 452 U.S. 905.)

21 **B. This Settlement Is Fair, Reasonable, and Adequate**

22 The purpose of the preliminary evaluation of class action settlements is to determine only
23 whether the proposed settlement is within the *range of reasonableness* and, therefore, whether notice
24 to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple*
25 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4th Ed.) §11:25.)
26 Courts have broad powers to determine whether a proposed settlement is fair under the circumstances
27 of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-35; *Mallick v. Superior Court* (1979) 89
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1 Cal.App.3d 434, 438.) In evaluating preliminary approval, courts must consider several relevant
2 factors, including “the strength of the Plaintiffs’ case, the risk, expense, complexity and likely
3 duration of further litigation, the risk of maintaining class action status through trial, the amount
4 offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the
5 experience and views of counsel....” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)
6 “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the
7 factors depending on the circumstances of each case.” (*Wershba, supra*, 91 Cal.App.4th at 245.)
8 Furthermore, courts must give “proper deference to the private consensual decision of the parties”
9 because “the court’s intrusion upon what is otherwise a private consensual agreement negotiated
10 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
11 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
12 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
13 (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

14 A proposed class action settlement is presumed fair under the following circumstances: (1)
15 the parties reached settlement after arm’s-length negotiations; (2) investigation and discovery were
16 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
17 litigation, and (4) the percentage of objections is small. (*Dunk v. Ford Motor Co., supra*, 48
18 Cal.App.4th at 1802.) The Declaration of Class Counsel Paolo Policastro demonstrates that the
19 proposed settlement was the product of serious, informed, and non-collusive negotiations and
20 demonstrates counsel’s extensive experience in both employment law as well as class action
21 litigation.

22 **1. The Settlement is the result of serious, informed, and non-collusive**
23 **negotiations.**

24 The Settlement was reached as a result of arm’s-length negotiations facilitated by a highly
25 regarded and experienced wage and hour mediator, Allison Eckstrom, Esq., and analysis by Plaintiff’s
26 counsel. (Policastro Dec. ¶¶11-21.) While Plaintiff believes in the merits of her case, she also
27 recognizes the inherent risks of litigation and understands the benefit of the Class receiving settlement
28 funds immediately as opposed to risking an unfavorable decision on class certification, summary

1 judgment, at trial, and/or the damages awarded, and/or on an appeal that can take several more years
2 to litigate. (*Id.*)

3 **2. The extent of the information provided through formal and informal**
4 **discovery and the stage of the proceedings support the Settlement.**

5 As described herein, the Parties investigated and evaluated the factual strengths and weaknesses
6 of this case before reaching the proposed Settlement and engaged in sufficient investigation and
7 discovery, as referenced above, to support the Settlement. (*Id.*) Accordingly, the proposed Settlement
8 was reached following probative factual evaluation of Defendant’s relevant policies and procedures and
9 review, compilation, and analysis by Plaintiff’s counsel and Plaintiff’s counsel’s expert regarding the
10 following: (1) the total number of current and former putative class members and aggrieved employees
11 who worked during the relevant time periods; (2) the total number of workweeks at issue during the
12 relevant time periods; (3) the total number of pay periods at issue during the relevant time periods; (4)
13 the average hourly rate for the putative class members; (5) time and pay data for all Class Members; and
14 (6) other relevant information, including Defendant’s Employee Handbook and Plaintiff’s personnel file,
15 wage statements, and time records. Further, the Plaintiff’s counsel had multiple discussions, calls, and
16 emails with the Defendant’s counsel about the disputed factual and legal issues involved in this case, the
17 risks attending further prosecution, including risks related to a contested motion for class certification,
18 and the substantial benefits to be received pursuant to a compromise and settlement of the case as set
19 forth in the Agreement. As such, settlement on the terms agreed to is in the best interest of Plaintiff and
20 the settlement class. (*Id.*)

21 Thus, the Settlement came only after the case was fully investigated by counsel, as set forth
22 above. This litigation, therefore, has reached the stage where “the Parties certainly have a clear view
23 of the strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
24 *Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

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3. Plaintiff's counsel are experienced in similar litigation.

Experienced counsel, operating at arm's-length, have weighed the strengths of the case and examined all of the issues and risks of litigation and endorse the proposed settlement. The view of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp., supra*, 485 F.Supp. at 617.)

Both Plaintiff's and Defendant's counsel are experienced in employment, wage and hour and class action matters. Lavi & Ebrahimian LLP is a well-regarded firm that handle almost exclusively employment matters. Joseph Lavi, of Lavi & Ebrahimian, LLP, has been approved as class counsel in numerous actions and has been named a Southern California Super Lawyer in the area of Plaintiff's employment litigation - class action from 2011-2022. (*Id.*) Defendant's counsel, Koree B. Wooley and Cindi L. Ritchey of Jones Day, are also extremely well-regarded and respected as employment defense counsel. Counsel on both sides share the view – endorsed by an experienced wage and hour class action mediator – that this is a fair and reasonable settlement in light of the complexities of the case, the state of the law, and uncertainties of class certification and litigation, and the benefit the settlement confers on the class. (Policastro Dec. ¶¶11-21.) Given the risks inherent in litigation, in class certification proceedings, and in the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of the class. (*Id.*)

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4. The Settlement is fair and reasonable based on the strengths of Plaintiff's case and the risks and costs of further litigation

Plaintiff and her counsel have concluded it was reasonable to enter into the proposed Settlement. Defendant has vigorously contested and continues to contest liability for the claims asserted in the action. Although Defendant believes that class certification would be unlikely on such claims, it nevertheless agreed to attempt resolution of the case through extensive informal discovery and mediation to avoid the expense, distraction, and uncertainty of protracted litigation. There are significant legal uncertainties associated with cases such as this, as they can be factually complex and require protracted litigation to resolve. A settlement is not judged solely against what

1 might have been recovered had plaintiff prevailed at trial, nor does the settlement have to provide
2 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th
3 Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney v. Wells Fargo*
4 *Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, “[c]ompromise is inherent and necessary in the
5 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
6 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because
7 the public interest may indeed be served by a voluntary settlement in which each side gives ground
8 in the interest of avoiding litigation.” (*Wershba*, 91 Cal.App.4th at 250.)

9 **5. The Proposed Settlement is a Reasonable Compromise of Claims**

10 To evaluate a settlement, the trial court must receive “basic information about the nature
11 and magnitude of the claims in question and the basis for concluding that the consideration being
12 paid for the release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker*
13 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) However, the record need not contain an explicit
14 statement of the maximum theoretical recovery:

15 “Greenwell misunderstands *Kullar*, apparently interpreting it to require the record
16 in all cases to contain evidence in the form of an explicit statement of the maximum
17 amount the plaintiff class could recover if it prevailed on all its claims—a number
18 which appears nowhere in the record of this case. But *Kullar* does not, as Greenwell
19 claims, require any such explicit statement of value; it requires a record which
allows “an understanding of the amount that is in controversy and the realistic
ranges of outcomes of the litigation.”

20 (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

21 Based on the information informally produced by Defendant for the period from March 19,
22 2025, through January 31, 2026 (“**IR8 Class Period**”) and from August 19, 2025, through January
23 31, 2026 (“**IR4 Class Period**”), Defendant employed approximately 470 current and former non-
24 exempt employees over the course of approximately 8,824 workweeks who received an average
25 rate of pay of \$23.62/hour. (Policastro Dec. ¶15.) Based on Class Counsel’s and Plaintiff’s expert
26 witness’s analysis of the data, the maximum exposure for Plaintiff’s claims were as follows:

27 With regard to Plaintiff’s Unpaid Wages, Plaintiff alleged that Defendant failed to pay
28 Plaintiff and similarly situated employees all wages at the applicable minimum wage for all hours

1 worked due to Defendant's policies, practices, and/or procedures including: (a) Requiring Plaintiff
2 and similarly situated employees to undergo off-the-clock security badge check at parking lot which
3 took approximately 2 minutes each shift; and (b) Plaintiff and similarly situated employees were not
4 paid for the time spent traveling from the parking lot to the designated clock-in station, approximately
5 4 minutes at the beginning and 4 minutes at the end of each shift. Plaintiff and similarly situated
6 employees were not paid for this time, resulting in Defendant's failure to pay minimum wage for all
7 the hours Plaintiff and similarly situated employees worked. To the extent that the foregoing unpaid
8 time resulted from employees being subject to the control of Defendant when they worked more than
9 eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven days in a
10 workweek, the employees should have been paid overtime wages. Therefore, Plaintiff estimated there
11 were approximately \$260,518.18 in damages for unpaid minimum wages and overtime wages
12 [Calculated as follows: 8,824 workweeks x 0.16666 hours off unpaid x \$23.62 average hourly rate x
13 5 days x 1.5 overtime = \$260,518.18]. (Policastro Dec. ¶16.)

14 With regard to Plaintiff's Meal Break Claim, Plaintiff alleged that Defendant employed
15 policies, practices, and/or procedures that resulted in their failure to authorize or permit meal periods
16 to Plaintiff and similarly situated employees of no less than thirty (30) minutes for each five-hour
17 period of work as required by law. This left Plaintiff and similarly situated employees unable to take
18 their first meal break until after five (5) hours from the start of their shift. Plaintiff alleged that
19 under staffing pressures, Defendant did not permit Plaintiff and similarly situated employees to take
20 their first meal break until after five (5) hours from the start of their shift. Additionally, Plaintiff
21 alleged that Defendant required Plaintiff and similarly situated employees to clock out at the
22 beginning of their meal break and required Plaintiff to clock back in at exactly 30 minutes for meal
23 breaks, which required Plaintiff and similarly situated employees to shorten their lunches to factor
24 in the waiting time required to clock back in, approximately 1 minute, and further that Defendant
25 did not provide non-exempt nonunion employees with any grace period for meal breaks at any time.

26 For non-exempt union employees, the collective bargaining agreement provided for thirty
27 minute uninterrupted meals for every five consecutive hours. Only when the union employees are
28 recalled to work during the meal period does the agreement provide a specific penalty of payment

1 for the entire thirty minute meal period as time worked. The agreement is silent as to other penalties.
2 On March 4, 2024, the collective bargaining agreement included a 3-minute grace period before
3 every meal period and another 3-minute grace period at the end of every meal period. Therefore,
4 Plaintiff estimated there was a maximum of approximately \$1,042,114.40 in damages for meal break
5 violations. [Calculated as follows: 8,824 workweeks x 5 meal period violations per workweek x
6 \$23.62 average hourly rate = \$1,042,114.40]. (Policastro Dec. ¶17.)

7 With regard to Plaintiff's Rest Break Claim, Plaintiff alleged that Defendant employed
8 policies, practices, and/or procedures that resulted in their failure to authorize or permit all legally
9 required and compliant rest periods to Plaintiff and similarly situated employees. Such policies,
10 practices, and/or procedures included, but were not limited to, failing to provide Plaintiff and
11 similarly situated employees with net ten (10) minute rest breaks for every four (4) hours worked
12 or major fraction thereof due to chronic understaffing. Plaintiff did not receive any rest breaks on a
13 regular basis due to understaffing. Additionally, Defendant's policies required Plaintiff and
14 similarly situated employees to return to their desks exactly at ten (10) minutes. Plaintiff alleged
15 that Plaintiff and similarly situated employees had to leave their workstations and walk
16 approximately 3 minutes to the designated rest areas and return at the end of the ten (10) minutes
17 allocated to their rest breaks, the functional remaining 4 minutes would not constitute the full 10
18 minutes required under Labor Code section 226.7 for a compliant rest period.

19 For the non-exempt union employees, the collective bargaining agreement provided for a
20 ten minute uninterrupted rest period for every two consecutive hours worked, or a fifteen minute
21 uninterrupted rest period for every two and a half consecutive hours worked. The agreement is silent
22 as to rest period violation penalties. On March 4, 2024, the collective bargaining agreement
23 included a 3-minute grace period before every rest period and another 3-minute grace period at the
24 end of every rest period, in recognition of the prevalent walking time issue in the facility. Therefore,
25 Plaintiff estimated there was a maximum of approximately \$1,042,114.40 in damages for rest break
26 violations. [Calculated as follows: 8,824 workweeks x 5 rest period violations per workweek x \$23.62
27 average hourly rate = \$1,042,114.40]. However, due to variance in work stations and the fact that
28 rest breaks are not recorded in timesheets, extensive individualized inquiries and discovery would

1 be required to both obtain class certification, and prevail on the merits. As a consequence of the
2 additional risk arising from the difficulty in obtaining class certification and prevailing on the merits
3 of this claim, Plaintiff applied an 60% discount to the estimated maximum value, representing a
4 realistically discounted exposure of \$416,845.76 (Policastro Dec. ¶18.)

5 With regard to Plaintiff's Wage Statement claim, the maximum that Plaintiff could recover
6 amounted to approximately \$440,000.00 [approximately 4400 pay statements X \$100 per pay period
7 penalty = \$440,000.00]. (Policastro Dec. ¶19.)

8 With regard to Plaintiff's Waiting Time penalties claim, the maximum that Plaintiff could
9 recover amounted to approximately \$34,012.80 [6 former employees X 8 hours per workday X
10 \$23.62/hour average rate of pay X 30 days = \$34,012.80]. (Policastro Dec. ¶ 20.)

11 As such, Plaintiff's maximum potential recovery in this matter, **excluding PAGA penalties**,
12 would amount to approximately \$2,193,491.00. The settlement reached in this matter was
13 \$406,748.16 or approximately 18.54% of exposure. (Policastro Dec. ¶ 21.)

14 The PAGA allocation of \$213,400.00, moreover, is fair and reasonable, and meets the standard
15 for a PAGA settlement approval. Settlements of PAGA claims require court approval. (Labor Code §
16 2699(1)(2)).⁵ PAGA civil penalties recovered on the State's behalf are intended to "remediate present
17 violations and deter future ones, not to redress employees' injuries." *Amaro v. Anaheim Arena*
18 *Management, LLC*, 69 Cal.App.5th 521, 542 (2021). The standard for evaluating a PAGA settlement is
19 not whether the employees are fully compensated for their injuries, but "whether it is fair, reasonable,
20 and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones,
21 and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77
22 (2021), *disapproved of on other grounds by Turrieta v. Lyft, Inc.*, 16 Cal. 5th 664 (2024).

23 PAGA was initiated to ensure compliance with the Labor Code in light of the government's
24 limited enforcement resources. *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 379 (2014).
25 Where, as here, the parties reach a substantial settlement providing employees with monetary
26 compensation for underlying Labor Code violations, many of PAGA's underlying policy objectives are

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28 ⁵ Further, in accordance with the statutory requirement, Plaintiff provided a copy of the Settlement
to the LWDA on the same day she filed this Motion. (Policastro Dec. ¶41).

1 satisfied. The amount allocated to the PAGA claims is fair to those affected because it accounts for a
2 realistic assessment of the PAGA exposure on the claims as well as the significant possibility of the
3 Court not awarding the PAGA penalties even if Plaintiff prevailed on the merits due to the Court's
4 discretion to substantially reduce PAGA penalties under Labor Code § 2699(e)(2). Lab. Code § 2699(2);
5 *Thurgood v. Bayshore Transit Mgmt., Inc.* 203 Cal. App. 4th 1112, 1135 (2012).

6 According to the data informally produced by Defendant in this case, during the relevant
7 PAGA period (from June 13, 2024 through January 31, 2026), there are 28,708 aggregate pay periods
8 for approximately 555 aggrieved employees. (Policastro Dec. ¶22.) The penalties here are governed
9 by the 2024 amendment to PAGA, so Plaintiff does not use the highest penalties available under these
10 amendments to estimate the maximum potential exposure of Defendant. These heightened penalties
11 are only available where "(i) Within the five years preceding the alleged violation, the agency or any
12 court issued a finding or determination to the employer that its policy or practice giving rise to the
13 violation was unlawful" or "(ii) The court determines that the employer's conduct giving rise to the
14 violation was malicious, fraudulent, or oppressive." Cal. Lab. Code §2699(2)(f). This mirrors the
15 general requirement under California Law that recovery of punitive, exemplary, or heightened
16 damages for civil claims require a showing that Defendant acted with malice, fraud or oppression.
17 Civ. Code § 3294(c); See, e.g. *Samantha B. v. Aurora Vista Del Mar, LLC* (Cal. App. 2d Dist. Apr.
18 5, 2022), 77 Cal. App. 5th 85, 85; *Silberg v. Cal. Life Ins. Co.* (1974) 11 Cal.3d 452, 462 ("In order
19 to justify an award of exemplary damages, the defendant must be guilty of oppression, fraud or
20 malice"). "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship
21 in conscious disregard of that person's rights. Civ. Code § 3294(c)(2) "Malice" means conduct which
22 is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on
23 by the defendant with a willful and conscious disregard of the rights or safety of others. Civ. Code §
24 3294(c)(1).). Under the facts of this case, and the heightened burden of proving malice or oppression,
25 Plaintiffs proceeded in evaluating Defendant's maximum exposure using the standard penalties
26 available of \$100 per Pay Period. [See Labor Code §2699(f)(2)(A)]. (Policastro Dec. ¶23).

27 In this case the PAGA Period is longer than the Class Period, and there are more Aggrieved
28 Employees than Class Members. The Settlement is fair as it provides a correspondingly heightened

1 allocation to resolve the PAGA claims. The allocation is based on the experience of counsel in
2 weighting the comparative risk and value of class claims and PAGA claims, and Plaintiff's counsel
3 believes it to be a fair allocation under these circumstances which accounts for the differences in the
4 periods released as well as the relatively higher variability in potential penalties award for PAGA
5 claims under California law. (Policastro Dec. ¶24.)

6 Indeed, Plaintiff recognizes that PAGA claims generally settle for a mere fraction of multiple
7 "stacked" PAGA penalties.⁶ Here, since the claims for minimum wages, overtime wages, meal
8 periods, rest periods, wage statements, and waiting time penalties are premised at least partially on
9 the same factual basis (i.e., that Defendant engaging in the practice of requiring Plaintiff and similarly
10 situated employees to travel to a designated area away from their workstations during their meal and
11 rest breaks, Defendant's failure to provide duty-free meal and rest periods, requiring employees to
12 travel to and from a designated area during their meal and rest periods) stacking these penalties could
13 arguably be overly punitive. Instead, seeking only penalties for minimum wages to account for the
14 off-the-clock work, with the meal and rest period violations, results in far more reasonable and less
15 punitive penalties that eliminate the "stacked" penalties for each Labor Code section violated as a
16 result of the same conduct. As a result, Defendant could argue Plaintiff and the aggrieved employees
17 may only be able to recover penalties under minimum wage claim, overtime wage, and meal and rest
18 period violations. Thus, if Defendant is correct on the "stacking" issue, the maximum theoretical
19 penalties would be substantially less under Defendant's view of the law. (Policastro Dec. ¶25.)

21 ⁶ See, e.g., *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (no abuse of discretion to
22 approve class action settlement allocating \$0 to PAGA claims); *Ceja-Corona v. CVS Pharm., Inc.*,
23 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 (E.D. Cal. Jan. 14, 2015) (preliminarily
24 approving \$10,000 in PAGA penalties out of a total settlement amount of \$900,000), report and
25 recommendation adopted, 2015 U.S. Dist. LEXIS 25730, 2015 WL 925598 (E.D. Cal. Mar. 3,
26 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (preliminarily
27 approving \$10,000 in PAGA penalties out of a total settlement amount of \$1,250,000); *Franco v.*
28 *Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 (E.D. Cal. Nov. 27,
2012) (granting final approval of \$10,000 in PAGA penalties out of a total settlement amount of
\$2,500,000); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575,
at *3 (E.D. Cal. Oct. 31, 2012) (granting final approval of \$10,000 in PAGA penalties out of a total
settlement amount of \$3,700,000); *Chu v. Wells Fargo Invs., LLC*, 2011 U.S. Dist. LEXIS 15821,
2011 WL 672645, at *1 al. Feb. 16, 2011) (granting final approval of \$10,000 in PAGA penalties
out of a total settlement amount of \$6,900,000).

1 Second, Plaintiff's calculation also assumes that Plaintiff's PAGA claims could be tried in a
2 manageable manner that comports with due process, which Defendant vigorously disputes.
3 (Policastro Dec. ¶26.)

4 Third, the Court has discretion under PAGA to reduce the amount of any penalties awarded
5 for equitable reasons. (Policastro Dec. ¶27.)

6 Finally, Defendant would argue that PAGA penalties would be limited in any event. As
7 discussed in detail above, Defendant denies any liability. Moreover, Defendant would argue that
8 even if Plaintiff prevailed, the recoverable penalties under PAGA are minimal. Indeed, courts that
9 have considered the issue have refused to "stack" PAGA penalties. *See Carrington v. Starbucks*
10 *Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving
11 PAGA penalty reduction to \$5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27 Cal.App.5th
12 809. Moreover, Defendant would argue that Plaintiff is not entitled to recover PAGA penalties at
13 the subsequent violation rate of \$200 per pay period. California's appellate courts have held that
14 "[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not
15 the commissioner or court chooses to impose penalties), the employer cannot be presumed to be
16 aware [of the violation]" and therefore, until a Court or the Commissioner issues a finding of a
17 violation, the initial \$100 violation rate applies for each pay period in which the alleged violation
18 occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; *accord Amalgamated*
19 *Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* (S.D. Cal. Aug. 10, 2009) 2009 WL
20 2448430, at *9 ("[u]nder California law, courts have held that employers are not subject to
21 heightened penalties for subsequent violations unless and until a court or commissioner notifies the
22 employer that it is in violation of the Labor Code"). Defendant further will argue that, to the extent
23 PAGA liability exists (which Defendant denies), the \$50 per pay period penalty prescribed in Labor
24 Code § 558(a)(1) would apply to the claims for unpaid wages and meal and rest violations, not
25 PAGA's \$100 per pay period default penalty. Thus, Defendant would argue that even if the Plaintiff
26 was able to establish any violation of the Labor Code, the PAGA penalties assessed for these
27 violations will be computed at the \$50 rate, as opposed to the \$200 per pay period rate at maximum
28 (for estimated 28,708 Pay Periods, exposure of \$1,435,400), and there is a likelihood that a further

1 reduction of the penalty to \$5 per pay period as approved in *Carrington* would apply given
2 Defendant's compliance with the Labor Code as discussed above (potentially mere \$143,540
3 exposure). (Policastro Dec. ¶28.)

4 In sum, the settlement in the instant case provides for a gross settlement amount of
5 \$406,748.16, with a PAGA allocation of \$213,400.00, with 65% (\$138,710.00) payable to the LWDA
6 and 35% (\$74,690.00) distributed to the Aggrieved Employees, and falls squarely within the range of
7 reasonableness for PAGA allocations outlined in the case law above. (Policastro Dec. ¶29.)

8 Defendant maintains significant defenses and opposition to the above claims as follows:

9 *Unpaid minimum and overtime wages claims:* With respect to Plaintiff's claims for unpaid
10 minimum and overtime wages, Defendant maintains that the alleged off-the-clock work (including
11 time spent traveling in the parking lot and at entrances/exits) constituted non-compensable
12 commuting time that does not qualify as "hours worked" under governing legal standards. Further,
13 because any alleged off-the-clock work was not recorded, and Defendant maintained written
14 policies promising to pay for all time worked and prohibiting off-the-clock work, this theory would
15 be largely dependent on competing testimonial evidence about Defendant's practices. The potential
16 individualized facts and circumstances and risk of these claims not being certified renders the value
17 of these claims uncertain. Regarding Plaintiff's overtime claims for failure to calculate the regular
18 rate of pay, Defendant argued that it properly paid all overtime wages owed at the proper rate.

19 *Meal and rest claims:* Regarding meal and rest periods, Defendant argued that it provided
20 timely and full 30-minute uninterrupted, meal periods, as well as full 10-minute uninterrupted rest
21 periods, during which employees were fully relieved of all duties and free to leave the work
22 premises. Defendant argued that employees were provided the opportunity to take compliant meal
23 and rest periods and, to the extent they did not do so, that was due to individual personal choices of
24 the employees, not conduct attributable to Defendant. Defendant further contends it maintained
25 compliant written policies providing for timely and fully compliant meal and rest periods, and that
26 Plaintiff will be unable to certify these claims in light of the compliant written policies and the
27 individualized facts underlying class member break practices.

1 *Waiting time and wage statement penalties:* With respect to Plaintiff’s wage statement
2 claim, Defendant contends any alleged wage statement violations could not be shown to be
3 “knowing and intentional” given their good-faith defenses, and that Plaintiff cannot show that she
4 or other employees “suffer[ed] injury,” as required by Labor Code § 226(e). Defendant also argued
5 that wage statements always accurately reflected hours worked and amounts paid to employees.
6 Defendant further maintains that Plaintiff and Class Members were paid all wages owed upon
7 separation of employment, and that Defendant believed, in good faith, that it was properly paying all
8 wages to separating employees, such that Plaintiff would not be able to not prove the “willful” prong
9 needed to obtain waiting time penalties under Labor Code section 203. Moreover, Defendant argues
10 that Plaintiff would not recover any of these derivative penalties if Plaintiff failed to prove the
11 underlying claims, and these claims likewise cannot be certified for the same reasons the predicate
12 claims cannot be certified. For these reasons, Defendant concluded, Plaintiff would not likely prevail
13 on their claims. (Policastro Dec. ¶30.)

14 If Plaintiff continued litigating this matter, the class members could potentially receive
15 **nothing** if the Court agreed with Defendant’s position, or if Defendant was able to defeat certification
16 based on the individual inquiries that would be required regarding Plaintiff’s off-the-clock claims and
17 meal and rest claims. Furthermore, even if the Court agreed with Plaintiff, Plaintiff still had to prove
18 Defendant faced exposure under Plaintiff’s derivative claims and acted intentionally and *willfully* in
19 order to receive the additional penalties under Labor Code Sections 203, 204, and 226. As such,
20 Plaintiff’s decision to settle this matter was in the best interest of the Class Members. (Policastro Dec.
21 ¶31.)

22 This is a fair and reasonable result. Other substantial benefits also include that it is a non-
23 reversionary, non-claims made settlement, which distributes the Net Settlement Amount on a pro rata
24 basis based on the number of Workweeks each Participating Class Member worked for Defendant
25 during the Class Period. (Settlement, §III(C).). The 35% portion of the PAGA Settlement Amount
26 allocated to Aggrieved Employees will be distributed to each Aggrieved Employee who worked
27 during the PAGA Period based on their individual number of PAGA Period Pay Periods during the
28 PAGA Period. (Settlement, §*Id.*). Settlement Class Members will have one hundred eighty (180)

1 days to cash their checks. Any funds not distributed after the expiration of the Individual Class
2 Payment checks shall escheat to the California Controller's Unclaimed Property Fund in the name of
3 the Class Member. (Settlement, §XI(B).) (Policastro Dec. ¶32.)

4 The Gross Settlement Amount is reasonable in light of the risks involved in this case—
5 including the prospect of a potential adverse summary judgment ruling, class certification issues as
6 well as the uncertainty of class certification, defenses to the case, potential appeal, the elements of
7 willfulness and/or injury required for certain penalties.

8 Plaintiff's Counsel is convinced that the proposed Settlement is in the best interest of the class
9 based on the negotiations and a detailed knowledge of the issues present in this action. The affirmative
10 defenses asserted by Defendant, the prospect of a potential adverse summary judgment ruling,
11 preemption issues, class certification issues, as well as the uncertainty of class certification, the
12 difficulties of complex litigation, the lengthy process of establishing specific damages, and various
13 possible delays and appeals were also carefully considered by Class Counsel in agreeing to the
14 proposed Settlement. In light of the above, the proposed Settlement is well within the "ballpark" of
15 reasonableness and should be granted preliminary approval.

16 **V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES**
17 **ONLY**

18 The court may make an order approving certification of a provisional settlement class after the
19 preliminary settlement hearing. (California Rules of Court, Rule 3.769(d).) For settlement purposes,
20 courts use a less stringent standard for certification of classes. (*Global Minerals & Metals Corp. v.*
21 *Superior Court* (2003) 113 Cal.App.4th 836, 859.) "The reason for this is that no trial is anticipated
22 in a settlement class case, so the case management issues inherent in the ascertainable class
23 determination need not be confronted." (*Id.*; see also *7-Eleven Owners for Fair Franchising v.*
24 *Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming certification of class action for
25 settlement purposes only].) Accordingly, this Court has discretion to certify Plaintiff's class for
26 settlement purposes only.

27 The requirements under California Code of Civil Procedure Section 382 are all met for the
28 purposes of certifying this case for settlement purposes:

1 • Numerosity: The settlement class consists of approximately 470 Class Members.
2 Thus, the requirement of numerosity is easily met because joinder of all Class Members into a single
3 case is otherwise impracticable in light of the circumstances of this case.

4 • Typicality: The claims of the class representative are typical of the claims of the class
5 members as a whole. The named Plaintiff suffered the same alleged violations (e.g. failure to pay
6 minimum and overtime wages, failure to pay meal and rest period premium wages for non-compliant
7 meal and rest periods, failure to pay timely wages during employment, failure to provide complete
8 and accurate wage statements, and failure to pay all wages due upon separation of employment) as
9 the class as a whole did and, thus, the claims of the named Plaintiff fairly represents the claims of the
10 class as a whole.

11 • Ascertainability: The proposed “Class” is easily ascertainable based on Defendant’s
12 own payroll records.

13 • Adequacy: Plaintiff has proven to be an adequate class representative. She has
14 conducted herself diligently and responsibly in representing the class in this litigation, she
15 understands her fiduciary obligations, and she has actively participated in the prosecution of this case.
16 [(Policastro Dec. ¶38); See concurrently filed Declaration of Diana Banuelos Velasquez.] Plaintiff
17 produced informal discovery discussed during conversations with opposing counsel or raised in
18 pleadings filed in this matter. The named Plaintiff provided Class Counsel with factual information
19 needed to prepare the complaints. She collected relevant documents and produced those documents
20 to Class Counsel. She continued to be engaged in continued settlement negotiations that were
21 ultimately required to reach a settlement in this case. (*Id.*) Further, Plaintiff does not have any interest
22 that is adverse to the interests of the other class members. (*Id.*) Moreover, proposed class counsel is
23 adequate to represent the class for settlement purposes and has been appointed as class counsel before
24 by this Court as well as both State and Federal Courts. (Policastro Dec. ¶30.)

25 • Commonality: Many common issues of law and fact unite the class. The common
26 questions of law and fact include, but are not limited to:

- 27 1) Whether Defendant failed to pay minimum wages;
- 28 2) Whether Defendant failed to pay overtime wages;

- 3) Whether Defendant failed to provide the Class Members with meal and rest periods and premium wages for missed meal and rest periods;
- 4) Whether Defendant failed to provide the Class Members with complete and accurate wage statements;
- 5) Whether Class Members are entitled to waiting time penalties for Defendants' failure to pay all wages upon separation of employment; and
- 6) Whether Defendant violated Business and Professions Code section 17200.

- Superiority: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Joinder of all members of the proposed class is impractical. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously for settlement purposes without the unnecessary duplication of effort and expense that numerous individual actions would engender.

VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE APPROVED

The proposed Class Notice in the form attached to the Declaration of Paolo Policastro as Exhibit 2 should be approved for dissemination to the Class Members. This document informs the Class of the terms of the Settlement, of their right to receive their proportional share of the Settlement and the manner in which to do so, of their right to request exclusion or to comment upon or object to the Settlement, and of their right to appear in person or by counsel at the final approval hearing and to be heard regarding approval of the Settlement. Adequate periods of time are provided by each of these procedures. Furthermore, the date and time of the Final Approval hearing will be inserted in the Notice, which will identify the information upon which the Class Member's share will be calculated, as well as the estimated amount he or she can expect to receive if he or she chooses to participate in the settlement.

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1 **VII. THE PROPOSED ATTORNEY FEES AND COSTS ARE REASONABLE**

2 Class Counsel seeks attorneys' fees and costs award of one-third of the Settlement Amount,
3 which is One Hundred Thirty-Five Thousand Five Hundred Eighty Two Dollars and Seventy-Two
4 Cents (\$135,582.72), and Class Counsel's costs not to exceed Twenty Thousand Dollars (\$20,000),
5 for the time spent litigating this matter as well as expenses incurred in the prosecution of the action
6 thus far. Defendant will not object to an award of attorneys' fees and costs in these amounts. The
7 requested fee falls well within the historical range of attorneys' fee awards under the common fund
8 theory, which is generally from 20% to 50%. The requested fee is a fair compensation for undertaking
9 complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in
10 light of the substantial benefits achieved by Plaintiff's counsel for the Class Members. Plaintiff's
11 counsel diligently litigated and investigated this case.

12 California courts have recognized that an appropriate method for awarding attorneys' fees in
13 class actions is to award a percentage of the "common fund" created as a result of the settlement.
14 (*City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15
15 Cal. 3d 162, 168; *see also Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253,
16 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26.) The basis of the common
17 fund is fairness to the successful litigant, who might otherwise receive no benefit because his
18 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to others
19 who are entitled to share in the fund and who should bear their share of the burden of its recovery;
20 encouragement of the attorney for the successful litigant, who will be more willing to undertake and
21 diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that
22 he will be properly and directly compensated should his efforts be successful. (*City & County of San*
23 *Francisco v. Sweet, supra*, 12 Cal. 4th at 111.) In *Quinn*, the California Supreme Court stated: "[O]ne
24 who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits
25 may require those passive beneficiaries to bear a fair share of the litigation costs." (*Quinn v. State,*
26 *supra*, 15 Cal. 3d at 167.) Similarly, in *Sweet*, the California Supreme Court recognized that the
27 common fund doctrine has been applied "consistently in California when an action brought by one
28 party creates a fund in which other persons are entitled to share." (*City & County of San Francisco*

1 v. *Sweet*, *supra*, 12 Cal. 4th at 110.)

2 Several courts have expressed frustration with the alternative “lodestar” approach for
3 deciding fee awards, which usually involves wading through voluminous and often indecipherable
4 time records. (*Lealao*, *supra*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D. Cal
5 1989)] 723 F. Supp. 1373, 1375].) The percentage approach is preferable to the lodestar because: (1)
6 it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution
7 of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
8 demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79.) The Ninth
9 Circuit now routinely uses the percentage of the common fund approach to determine the award of
10 attorney’s fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g.*, *In re Pacific Enters. Sec. Litig.* (9th Cir.
11 1995) 47 F.3d 373, 378-79 [approving attorney’s fee of 33.33%].)

12 Plaintiff’s counsel’s request for fees equal to one-third (33.33%) of the Gross Settlement
13 Amount is within the range of reasonableness. Historically, courts have awarded percentage fees in
14 the range of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec.*
15 *Litig.*, *supra*, 723 F. Supp. at 1378.) According to Professor Newberg: “No general rule can be
16 articulated on what is a reasonable percentage of a common fund...Usually 50 per cent of the fund
17 is the upper limit on a reasonable fee award from a common fund, in order to assure that fees do not
18 consume a disproportionate part of the recovery obtained for the class, though somewhat larger
19 percentages are not unprecedented.” (Newberg, *supra*, §14.6.)

20 Class Counsel have borne, and continue to bear, the entire risk and cost of litigation
21 associated with this class action on a pure contingency basis. The factual and legal issues posed in
22 this case were highly disputed, and there were also risks as to whether or not a class would be
23 certified, leaving a large number of putative class members unlikely to receive any recovery.

24 Based on Class Counsel’s past experience in class action wage and hour litigation, it is safe
25 to state that Class Counsel is very likely to be called upon, after the Class Notice has been sent, to
26 expend substantial amounts of additional time to help Class Members understand the terms of the
27 proposed Settlement. It is also likely that, even after final approval of the Settlement has been
28 granted, Class Counsel will be called upon to expend additional amounts of time in the presentation

1 and resolution of contests and questions relating to Class Members' allocation under the terms of the
2 proposed Settlement, as to the amounts of individual claims and perhaps other individual issues.

3 The Court should preliminarily approve the requested attorney's fees and costs, which are
4 justified by the results achieved, the complexity of the issues, the difficulty of the case, and the great
5 risk undertaken by Class Counsel. The requested attorney's fees and costs will not be opposed by
6 Defendant and are well within established guidelines. The Class Members will also be notified of the
7 requested amount and have an opportunity to object to the requested fees.

8 **VIII. THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE**

9 The named Plaintiff is entitled to a Class Representative Enhancement Payment for her
10 service as class representative and the risks associated with her role as Class Representative and
11 named Plaintiff in this action. Plaintiff understood and continues to understand her role as Class
12 Representative; she has protected the interests of Class Members during the pendency of this matter
13 and will continue to do so. (Policastro Dec. ¶38.) Plaintiff has spent hours in meetings and
14 conferences with counsel to get a better understanding of her work environment (*Id.*) Even after
15 mediation, she continued to be engaged with counsel for the months of the continued negotiations
16 that it took to ultimately finalize a settlement, as well as understanding and discussing the settlement
17 agreement with the attorneys. (*Id.*) Further, Plaintiff does not have any interest that is adverse to
18 the interests of the other class members. (*Id.*) Defendant will not oppose the application for an
19 enhancement of \$5,000.00 to Plaintiff as the Class Representative from the Gross Settlement Amount
20 for her services to the Class in this action. Class Counsel can attest that Plaintiff devoted a
21 proportionate amount of time and work assisting counsel in the case, communicating with counsel
22 frequently, and providing documents and information regarding her employer and employment,
23 which led to an increase in the value and the ultimate success of the Settlement. (*Id.*)

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1 **IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS**

2 The Parties propose the following schedule for the fairness hearing and final proceedings:

- 3
- 4 1. Not later than twenty (20) calendar days after the Court grants Preliminary
- 5 Approval of the Settlement, Defendant will deliver the Class Data to the
- 6 Administrator, in the form of a Microsoft Excel spreadsheet. (Settlement, §V(A).)
- 7
- 8 2. Using best efforts to perform as soon as possible, and in no event later than twenty-
- 9 five (25) calendar days after receiving the Class Data, the Administrator will send
- 10 to all Class Members identified in the Class Data, via first-class United States
- 11 Postal Service (“USPS”) mail, the Class Notice with Spanish translation.
- 12 (Settlement, §V(C).)
- 13
- 14 3. If a Class Member wishes to submit a Request for Exclusion or Objection, they
- 15 may do so within Sixty (60) days from the date the Class Notice is mailed to them
- 16 (“Response Deadline”). (Settlement, §VII(A).) (Settlement, §VI(A).)
- 17
- 18 4. Not later than sixteen (16) court days before the calendared Final Approval
- 19 Hearing, Plaintiff will file in Court a motion for final approval of the Settlement
- 20 that includes a request for approval of the PAGA settlement under Labor Code
- 21 section 2699, subd (s), a Proposed Final Approval Order, and a proposed
- 22 Judgment (collectively “Motion for Final Approval”).
- 23
- 24 5. The Final Fairness and Approval Hearing date will be determined by the Court.
- 25 The parties request that the Final Fairness and Approval Hearing be set
- 26 approximately one hundred fifty (150) days following the Court’s granting of
- 27 preliminary approval of the proposed Class Action Settlement.
- 28

19 **X. CONCLUSION**

20 The proposed class action settlement is fair, adequate, and reasonable. It will result in fair and

21 immediate payment to Class Members; it is non-collusive; and it was achieved as the result of

22 informed, extensive, and arm’s length negotiations conducted by counsel for respective parties who

23 are experienced in wage and hour class action litigation. For the foregoing reasons, the parties

24 respectfully request that the Court grant preliminary approval of the proposed Settlement, sign the

25 proposed Order, approve and authorize mailing of the proposed Class Notice of Settlement and set a

26 date for a final approval hearing.

27 Dated: May 11, 2026

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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By: /s/Paolo Policastro
Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Jeffrey D. Klein, Esq.
Paolo Policastro, Esq.
Attorneys for Plaintiff DIANA BANUELOS
VELASQUEZ, on behalf of herself and others
similarly situated