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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA CLARA
12 UNLIMITED JURISDICTION
13

14 ANDRES GARCIA, on behalf of himself and
all others similarly situated

15 Plaintiff,

16 v.

17 DHL EXPRESS (USA), INC., an Ohio
corporation; and DOES 1 through 50,
18 inclusive,

19 Defendants
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Case No. 22CV407813

Assigned for All Purposes to the Honorable
Theodore C. Zayner, Department 19

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

*[Filed concurrently with Declaration of Shaun
Setareh and Declaration of Andres Garcia in
support thereof and Proposed Order]*

Date: January 7, 2026
Time: 1:30 p.m.
Place: Department 19

Complaint Filed: December 6, 2022

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 7, 2026 at 1:30 p.m., or as soon thereafter as the matter
3 may be heard in Department 19 of the above-entitled Court located at 191 N. First Street, San Jose, CA
4 95113, Plaintiff Andres Gracia (“Plaintiff”) will and does hereby move this Court for an Order:

- 5 • Preliminarily approving the proposed Class and Joint Stipulation of Class and PAGA
6 Settlement and Release as fair, reasonable, and adequate;
- 7 • Preliminarily approving the form, manner, and content of the notice to be mailed to the
8 Class;
- 9 • Setting deadlines for the Settlement Administrator to provide notice to the Class and for
10 Class Members to opt out of or object to the Settlement;
- 11 • Provisionally certifying the Class;
- 12 • Staying all proceedings in this action, except for such proceedings as may be necessary to
13 implement and complete the Settlement, until Final Approval;
- 14 • Appointing Plaintiff Andres Garcia as the Class Representative for settlement purposes
15 only;
- 16 • Appointing Shaun Setareh, Thomas Segal and Farrah Grant of Setareh Law Group as Class
17 Counsel for settlement purposes only; and
- 18 • Approving Simpluris, Inc. as the Settlement Administrator;
- 19 • Directing that notice be mailed to the Class; and
- 20 • Scheduling a hearing date for the Motion for Final Approval of Class Action Settlement.

21 This motion is made pursuant to California Rules of Court 3.769. This motion will be based upon
22 this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the
23 Declaration of Shaun Setareh as well as exhibits attached thereto, the Declaration of Andres Garcia, the
24 arguments of counsel, the documents filed in this action and any other matters as may be properly
25 presented on or before the hearing on this motion.

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DATED: June 12, 2025

SETAREH LAW GROUP

/s/ Farrah Grant
SHAUN SETAREH
THOMAS SEGAL
FARRAH GRANT
Attorneys for Plaintiff
Andres Garcia

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Andres Garcia (“Plaintiff”) seeks preliminary approval of a non-reversionary class and
4 representative action settlement of wage and hour claims and claims for civil penalties under the Private
5 Attorneys General Act of 2004 (“PAGA”) against Defendant EXCEL INC. DBA DHL SUPPLY CHAIN
6 (“Defendant”)¹ for a Gross Settlement Amount (“GSA”) of **\$4,947,000**. The Class, to be certified for
7 purposes of settlement only, is estimated to consist of approximately 11,856 Class Members. No Class
8 Members will have to make a claim to receive payment. Instead, all Class Members will be mailed checks
9 directly. Any residue from uncashed checks will go to a mutually agreeable cy pres beneficiary subject
10 to court approval.

11 The Net Settlement Amount (“NSA”) expected to be paid to Class Members – after payment of
12 Class Counsel fees of thirty three and one-third of the GSA (\$1,649,000) and costs of up to \$35,000,
13 settlement administration cost estimated to not exceed \$43,000, Plaintiff’s Enhancement Payment of
14 \$10,000, and a PAGA Settlement Amount of \$250,000, which includes payment to the California Labor
15 & Workforce Development Agency (“LWDA”) of \$187,500 (75% of the total PAGA Settlement Amount)
16 and payment to PAGA Employees of \$62,500 (25% of the PAGA Settlement Amount), is \$2,960,000.
17 Including the 25% portion of the PAGA Payment, or \$62,500, that will be paid to PAGA Employees, the
18 NSS being paid to Class Members is **\$3,022,500**. The average estimated share of the NSA per Class
19 Member is approximately **\$254.93**. Plaintiff has obtained a significant monetary recovery for Class
20 Members.

21 The Settlement occurred as a result of extensive, arm’s-length negotiations by experienced counsel
22 after sufficient informal discovery and investigation into the facts. The case settled following mediation
23 and a mediator’s proposal from Todd Smith, an experienced mediator. The Settlement seeks to fully and
24 finally settle and resolve all claims against Defendant on behalf of all individuals employed by Defendant
25 as non-exempt employees in California at any time from June 1, 2020 to August 1, 2024. The Settlement
26

27 ¹ The Parties executed a Joint Stipulation of Class Action and PAGA Settlement and Release
28 (“Settlement”), attached as Exhibit 1 to the Declaration of Shaun Setareh filed concurrently herewith.

1 will result in financial benefit to the Class Members on terms that are fair, reasonable, and adequate. Based
2 upon their evaluation, Plaintiff and his counsel have determined that the Settlement is fair, reasonable,
3 adequate and in the best interest of the Class, and they request that this Court grant preliminary approval
4 of the Settlement.

5 **II. THE MAJOR TERMS OF SETTLEMENT**

6 Key provisions of the proposed settlement include the following:

- 7 • Defendant will pay a GSA of **\$4,947,000**.
- 8 • Defendant will not oppose Class Counsel’s application for fees up to 33 and 1/3 percent of the
9 GSA (\$1,649,000) and costs not to exceed **\$35,000**, to be paid out of the GSA.
- 10 • The notice portion of the Settlement will be administered by Simpluris, Inc. (“Simpluris”), whose
11 costs are estimated to not exceed **\$43,000** to administer the Settlement per its terms.
- 12 • Out of the GSA, **\$250,000** is allocated to resolve the PAGA claims, with 75%, i.e., **\$187,500**, to
13 be paid by the Settlement Administrator to the LWDA, and 25%, i.e., **\$62,500**, to be paid to PAGA
14 Employees – i.e., individuals employed by Defendant as non-exempt employees in California at
15 any time during December 6, 2021 through August 1, 2024.
- 16 • Defendant will not oppose the application for a **\$10,000** Enhancement Payment to Plaintiff.
- 17 • After deducting Class Counsel’s attorneys’ fees and costs, service award to Plaintiff, settlement
18 administration costs, and the PAGA Settlement Amount, the remainder – i.e., the NSA – is calculated
19 to be at least \$2,960,000. Including the 25% portion of the PAGA Payment, or \$62,500, that will be
20 paid to PAGA Employees, the NSS being paid to Class Members is **\$3,022,500**. Each Settlement Class
21 Member and each PAGA Employee will receive a *pro rata* share from one or both of these amounts
22 based upon the number of weeks worked during the Class Period and/or PAGA Period.
- 23 • Settlement Class Members will be mailed a check so long as they do not opt out. PAGA
24 Employees will be mailed a check regardless of whether they opt out of the Settlement as a Class
25 Member.
- 26 • Any checks issued by the Settlement Administrator to Settlement Class Members shall be
27 negotiable through the void date. Those checks remaining uncashed after the void date will be
28 sent to the mutually agreeable cy pres subject to Court approval.

(Declaration of Shaun Setareh (“Setareh Decl.”), ¶ 18, Exh. 1 (the “Settlement”).)

III. STATEMENT OF FACTS

A. THE PARTIES

Defendant is an international company handling logistics across state lines to various countries and throughout the nation. (Setareh Decl. ¶ 7.) Plaintiff Andres Garcia worked for Defendant as an hourly non-exempt employee in Fontana, California as a Material Handler from approximately May 2, 2021 to December 7, 2021. (*Id.*; Declaration of Andres Garcia (“Garcia Decl.”) ¶¶ 3-4.)

B. PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES

Plaintiff alleges that Plaintiff and putative class members’ meal and rest breaks were sometimes interrupted, not afforded, restricted and/or shortened. (Setareh Decl. ¶ 13.)

Additionally, Plaintiff alleges that Defendant did not pay employees for all the off-the-clock work performed, including time spent going through security checks and clocking in. (*Id.*)

Plaintiff additionally alleges that Plaintiff and the putative class members were not provided with vacation pay that they were legally entitled to. (*Id.*)

Moreover, Plaintiff alleges that individuals who were paid with pay cards sometimes incurred fees when using the pay cards. (*Id.*)

Plaintiff asserts that Defendant failed to properly factor in non-discretionary bonuses and shift differential pay when calculating the regular rate of pay. (*Id.*)

Finally, Plaintiff alleges that because of these discrepancies in hours worked as reported, Defendant failed to provide accurate wage statements and also failed to timely pay all wages owed to him and other former employees upon separation of employment. (*Id.*)

Defendant denies all of Plaintiff’s allegations and contends it has fully complied with all applicable laws and regulations in connection with its employment of Plaintiff and the employees he seeks to represent. Defendant asserts that this case is controlled by an arbitration agreement. Defendant further contends that Plaintiff cannot establish the requirements to certify a class. Defendant also contends that Plaintiff’s claims are incapable of being manageably tried as a class or PAGA representative action. Defendant asserts that it provides meal periods to employees and authorizes and permits them to take rest periods, and pays meal and rest period premiums, in accordance with applicable law. Defendant asserts

1 that to prove whether any particular employee was not provided the opportunity to take a meal or rest
2 periods on any given day would require an individualized inquiry that would prevent this issue from being
3 resolved on a class and/or representative basis. Defendant asserts that it paid employees for time spent
4 going through security checks, and that checks only took a few seconds. Defendant has contended that it
5 did not have a purported policy of not paying required compensation, but rather a policy of paying
6 compensation and of requiring employees to report any unpaid compensable time, and that any failures to
7 report by employees cannot be legally charged to Defendant and, in any event, involve such highly
8 individualized circumstances as to prevent class certification and representative action treatment should
9 this case be litigated. Defendant contends that it paid employees all owed vacation pay. Defendant asserts
10 that employees are only paid by pay card at the time of termination, and all other payments were by direct
11 deposit. Furthermore, Defendant asserts that no payment was required to withdraw funds from the pay
12 cards. (Setareh Decl. ¶ 14.)

13 **C. PROCEDURAL HISTORY**

14 On December 6, 2022, Plaintiff filed the putative class and representative action complaint
15 against Defendant DHL Express (USA), Inc. in Santa Clara Superior Court, entitled *Andres Garcia v.*
16 *DHL Express (USA), Inc.*, Case No. 22CV407813. The Complaint alleged eight causes of action for
17 (1) failure to provide meal periods, (2) failure to provide rest periods, (3) failure to pay hourly wages,
18 (4) failure to pay vacation wages, (5) failure to provide accurate itemized wage statements, (6) failure
19 to timely pay all final wages, (7) failure to pay wages without discount, and (8) statutory unfair
20 competition. (Setareh Decl. ¶ 8.)

21 On December 6, 2022, Plaintiff provided notice by electronic upload to the Labor and
22 Workforce Development Agency (“LWDA”) and written notice by certified mail to DHL Express
23 (USA), Inc. of his intent to pursue civil penalties under California Labor Code section 2698, *et seq.*
24 (“PAGA”) for alleged violations of the California Labor Code. (Setareh Decl. ¶ 9.)

25 On February 9, 2023, Plaintiff filed a First Amended Complaint adding a cause of action for
26 civil penalties under PAGA. (Setareh Decl. ¶ 10.)
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1 Defendant DHL Express (USA), Inc. represented that the correct name of Defendant is Excel
2 Inc. dba DHL Supply Chain. On April 24, 2023, Plaintiff submitted an amended PAGA letter to the
3 Labor & Workforce Development Agency to name Excel Inc. dba DHL Supply Chain and to clarify
4 claims and allegations based on information learned and theories developed through the course of the
5 litigation. (Setareh Decl. ¶ 11.)

6 On June 29, 2023, Plaintiff filed his Second Amended Complaint adding Defendant Excel Inc.
7 dba DHL Supply Chain to the Action. (Setareh Decl. ¶ 12.)

8 **D. INVESTIGATION AND DISCOVERY**

9 The Parties agreed to attend mediation to attempt to resolve the action entirely and further agreed
10 to engage in informal discovery in advance and in preparation thereof. In preparation for mediation,
11 Plaintiff requested and Defendant provided substantial informal discovery, including production of a
12 sampling of timekeeping and payroll data, relevant policy documents and other information requested
13 by Plaintiff. (Setareh Decl., ¶ 15.)

14 Plaintiff hired an expert to analyze the produced data with respect to potential damages and
15 penalties in preparation for mediation. (Setareh Decl. ¶ 16.) From the data and other documents obtained
16 from Defendant pertaining to the Class and Defendant's policies, Plaintiff's expert was able to analyze the
17 data sampling, and Plaintiff was then able to thoroughly assess the merits of each claim. (*Id.*)

18 **E. SETTLEMENT NEGOTIATIONS AND SETTLEMENT**

19 The Parties agreed to mediate Plaintiff's alleged wage and hour and PAGA claims and selected
20 Todd Smith to serve as mediator. The case settled following acceptance of a mediator's proposal at
21 the end of the full-day mediation on July 12, 2024. (Setareh Decl., ¶ 17.) Each of the Parties, represented
22 by its respective counsel, recognized the risk of an adverse result in the Action. (Setareh Decl., ¶ 20.)
23 The Parties agreed to settle the Action and resolve the claims against Defendant. (Settlement, ¶ 4.)

24 **F. REASONABLENESS OF THE SETTLEMENT**

25 Plaintiff's Counsel believe that the Settlement is in the best interest of the class members based on
26 their investigation and discovery, their detailed understanding of the issues raised, and the outcome of
27 extensive settlement negotiations. (Setareh Decl., ¶ 19.) Plaintiff's counsel balanced the Settlement
28

1 against the probable outcome of class certification, liability, the range of recovery at trial, the risks of losing
2 class certification, losing at trial, or not recovering as much as provided by the proposed Settlement, as
3 well as the difficulties and complexity of the litigation, the lengthy process of litigating to judgment, and
4 the various possible delays and appeals. (*Id.* ¶ 20.) Although Defendant contends they have no liability
5 in this case and that an arbitration agreement applies, Plaintiff’s Counsel believe that the Settlement
6 represents a fair, reasonable, and adequate settlement given the respective risks associated with the Action.
7 (*Id.*)

8 **IV. DESCRIPTION OF THE SETTLEMENT**

9 **A. APPOINTMENT OF SETTLEMENT CLASS COUNSEL**

10 The Parties have stipulated to the appointment of Shaun Setareh, Thomas Segal and Farrah Grant
11 of Setareh Law Group as Class Counsel. (Settlement, ¶ 6.c.)

12 **B. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

13 The Parties have stipulated to the appointment of Simpluris to administer the Settlement and to
14 provide notice to the Class Members (the “Settlement Administrator”). Simpluris estimates that settlement
15 administration costs shall not exceed **\$43,000**. The Settlement Administrator’s estimated fee of \$43,000
16 is reasonable for a settlement with a class of this size. (Setareh Decl., ¶ 24.)

17 **C. DESCRIPTION OF THE SETTLEMENT CLASS**

18 For settlement purposes only, the Parties agree to the certification of a class pursuant to
19 California Code of Civil Procedure § 382 defined as all individuals employed by Defendant as non-
20 exempt employees in California at any time during the Class Period, i.e. from June 1, 2020 through August
21 1, 2024. (Settlement, ¶ 6.g.)

22 PAGA Employees are defined as all current and former non-exempt employees employed by
23 Defendant Exel Inc. dba DHL Supply Chain (USA) in California at any time during the PAGA Period.
24 (*Id.*, ¶ 6.z.)

25 Defendant estimates that there were approximately 11,856 Class Members. (Setareh Decl. ¶ 26.)
26 Defendant represents that, during the period from June 1, 2020, through August 1, 2024, there are
27 approximately 703,500 Workweeks for the Class Members. If it is determined that the total number
28 of Workweeks during the Class Period exceed 703,500 by more than ten percent (10%) (i.e. exceeds

773,850), then Defendant will have the option of either: (a) increasing the Gross Settlement Amount on a *pro rata* basis equal to the percentage increase in the number of Workweeks above 773,850 Workweeks (e.g., if the threshold of 773,850 Workweeks is exceeded by 1%, the Gross Settlement Amount will increase by 1%); or (b) shortening the Class Period so that the total Workweeks for the Class Members is 773,850 or less. (Settlement, ¶ 36.)

D. SCOPE OF THE RELEASE

1. Released Class Claims

“Released Class Claims” means any and all claims, actions, or cause of action alleged in the Complaint or that could have been alleged based upon the facts alleged in the Complaint, arising during the Class Period, including and not limited to, for failure to properly pay overtime, including a failure to pay overtime premiums at the regular rate of pay and failure to pay minimum wages (including, but not limited to, any time lost or inaccurately recorded due to an inability to access the Kronos timekeeping system, or other timekeeping systems), failure to provide compliant meal periods and associated premiums including a failure to pay premiums at the regular rate of pay, failure to provide compliant rest periods and associated premiums including a failure to pay premiums at the regular rate of pay, failure to pay vested vacation wages, failure to timely pay wages upon termination, during employment, and associated waiting-time penalties, failure to provide compliant wage statements, failure to pay wages without discount, failure to keep requisite payroll records, failure to return deposits, failure to reimburse necessary business expenses, in violation of California Labor Code sections 200, 201, 202, 203, 204, 210, 212, 223, 226(a), 226.7, 226.7(b), 227.3, 404, 510, 512(a), 558, 558.1, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, violation of California Business and Professions Code section 17200 *et seq.* based on the aforementioned, and any other applicable provisions of state or federal law, including the applicable Industrial Wage Orders, based on the facts alleged in the Action. (*Id.*, ¶ 6. ff.)

2. Released PAGA Claims

“Released PAGA Claims” means all claims for civil penalties under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* that were alleged in the PAGA Notice, the Amended PAGA Notice, and Complaint in the Action or that reasonably could have been alleged based on the factual allegations in the PAGA Notice, the Amended PAGA Notice, and Complaint in the Action, arising during the PAGA Period, against any of the Released Parties, for violations of the California Labor Code, including *inter alia* sections 200, 201, 202, 203, 204, 210, 212, 223, 226(a), 226.7, 226.7(b), 227.3, 404, 510, 512(a), 558, 558.1, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, 6400 *et seq.*, and applicable Industrial Welfare Commission Wage Order for failure to properly pay overtime including a failure to pay overtime premiums at the regular rate of pay, failure to pay minimum wages, failure to provide compliant meal periods and associated premiums including a failure to pay premiums at the regular rate of pay, failure to provide compliant rest periods and associated premiums including a failure to pay

1 premiums at the regular rate of pay, failure to pay vested vacation wages, failure
2 to timely pay wages upon termination, during employment, and associated
3 waiting-time penalties, failure to provide compliant wage statements, failure to
4 pay wages without discount, failure to keep requisite payroll records, failure to
return deposits, and failure to reimburse necessary business expenses.
(*Id.*, ¶ 6.gg.)

5 3. Settlement Amount and Allocation of Settlement Monies

6 The Settlement provides for a GSA of **\$4,947,000**, which includes all settlement payments to the
7 Class Members, all attorneys' fees, all litigation costs, all settlement administration expenses, all payments
8 to the LWDA, and the enhancement payment to Plaintiff. (*Id.*, ¶ 6.r.) This is a non-reversionary
9 settlement, and none of the GSA shall revert to Defendant, with the funds of checks uncashed after the
10 void date being directed to the cy pres. (¶¶ 6.r, 20.b.) The Parties propose the State Bar Justice Gap Fund
11 as the cy pres. Setareh Decl. ¶ 27.

12 E. CLASS MEMBER SETTLEMENT PAYMENT FORMULA

13 The Parties have agreed to a settlement formula which allocates settlement amounts to Class
14 Members and PAGA Employees on a *pro rata* basis, based on their number of workweeks. (Settlement,
15 ¶¶ 13, 14). The Settlement Administrator shall calculate the total number of Workweeks worked by all
16 Settlement Class Members during the Class Period by adding together all the Workweeks provided by
17 Defendant for each Settlement Class Member. The Settlement Administrator shall then divide the estimated
18 Net Settlement Amount by the Workweeks of all Class Members during the Class Period to yield the
19 "Estimated Workweek Value," and multiply each Class Member's individual Workweeks during the Class
20 Period by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share (*Id.* at
21 ¶ 14.a)

22 Individual PAGA Payments will be calculated and apportioned from the PAGA Employee
23 Amount based on the PAGA Employees' number of Workweeks during the PAGA Period as
24 follows: The Settlement Administrator will divide the PAGA Employee Amount, i.e., 25% of the
25 PAGA Amount, by the total number of Workweeks of all PAGA Employees during the PAGA
26 Period to yield the "PAGA Workweek Value," and multiply each PAGA Employee's individual
27 Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual
28 PAGA Payment. (*Id.* at ¶ 13.)

1 Class Settlement Awards shall be allocated 15% to wages subject to Withholdings and Taxes and
2 85% to interest, penalties, and non-wage damages. (*Id.*, ¶ 25.)

3 The Parties agree to allocate **\$250,000** of the GSA for settlement of claims for civil penalties under
4 PAGA, Labor Code § 2699, *et seq.* (*Id.*, ¶ 6.y.) Pursuant to Labor Code section 2699(i), 75% of that
5 amount (**\$187,500**) will be paid to the LWDA. The remaining 25% (**\$62,500**), will be distributed to PAGA
6 Employees on a *pro rata* basis according to the number of PAGA Pay Periods. (*Id.* ¶¶ 6.y., 13.)

7 The Claims Administrator shall distribute the Individual Settlement Payments within seven (7)
8 calendar days after funding of the GSA by Defendant. (*Id.*, ¶ 9.)

9 **F. NOTICE TO CLASS MEMBERS OF SETTLEMENT**

10 The proposed Class Notice (attached as Exhibit A to the Settlement) provides Class Members with
11 all required information so that each member may make an informed decision regarding his or her
12 participation in the Settlement. (*Id.*, ¶ 19.a.) All Class Members will receive a Class Notice. (*Ibid.*)

13 Within twenty-one (21) calendar days following entry of the Preliminary Approval Order,
14 Defendant will provide the Settlement Administrator the Class List containing the following information
15 with respect to each Class Member: (i) name, (ii) last known residence address, (iii) last known telephone
16 number, (iv) Social Security number, and (v) dates worked as a non-exempt employee of Defendant in
17 California during the Class Period and PAGA Period (if applicable). (*Id.*, ¶ 6.d.) No later than fourteen
18 (14) calendar days after receiving the Class List from Defendant, the Settlement Administrator shall mail
19 the Class Notice to all Class Members via first class United States Mail. (*Id.*, ¶ 19.a.)

20 Any Class Notices returned to the Settlement Administrator with a forwarding address shall be re-
21 mailed by the Settlement Administrator within five (5) calendar days. (*Id.*, ¶ 19.b.)

22 Class Members have 45 calendar days to object or opt out of the settlement or dispute the number
23 of workweeks. (*Id.* ¶ 6.jj.)

24 Any Class Member wishing to opt-out from the Settlement Agreement must send the settlement
25 administrator a written request for exclusion that is signed by the Class Member, postmarked by no later than
26 45 calendar days after the date the Settlement Administrator initially mails the Notice to the Class Members.
27 The Request for Exclusion must: (a) contain the case name and number of the Action; (b) contain the
28 requesting Class Member's full name and signature; (c) contain a clear written statement indicating

1 that the Class Member seeks exclusion from the Class Settlement; and (d) be submitted by mail to
2 the Settlement Administrator at the specified address, postmarked on or before the Response
3 Deadline. (Settlement, ¶ 6.ii.) Each Class Member who does not submit a Request for Exclusion within
4 the Notice Response Deadline shall be bound by the terms of the Settlement and any Court order approving
5 the terms of the Settlement. (*Id.* ¶ 21.)

6 To object to the Settlement Agreement, a Class Member must not exclude themselves from the
7 Settlement and must submit a signed, written objection to the settlement administrator by no later than 45
8 calendar days after the Class Notice was initially mailed to the Settlement Class members. An Objection must:
9 (a) contain the case name and number of the Action; (b) contain the objecting Class Member's full name; (c)
10 contain a written statement of all grounds for the objection accompanied by any legal and factual support for
11 such objection; and (d) contain a statement whether the objector intends to appear at the Final Approval
12 Hearing. (*Id.* ¶ 6.x.) Written Objections and all supporting briefs or other materials must be submitted to the
13 Settlement Administrator, by United States mail, postmarked no later than the Response Deadline. Settlement
14 Class Members may but are not required to appear at the Fairness Hearing. (*Id.* ¶ 22.)

15 Settlement Class Members may dispute the number of Workweeks attributed to them for the Class
16 Period by written letter disputing the pre-printed information on the Class Notice as to the number
17 of Workweeks credited to them, which must: (a) contain the case name and number of the Action;
18 (b) contain the disputing Class Member's full name and signature; (c) clearly state that the Class
19 Member disputes the number of Workweeks credited to him or her and what he or she contends is
20 the correct number to be credited to him or her; (d) attach any documentation that he or she has to
21 support the dispute; and (e) be submitted by mail to the Settlement Administrator at the specified
22 address. The member of the Settlement Class must submit the letter no later than 45 calendar days after the
23 date of the mailing of the Class Notice. (*Id.* ¶ 6.oo.)

24 **G. NOTICE AND PAGA PAYMENT TO THE LWDA**

25 The Parties agree to allocate **\$250,000** of the GSA for settlement of claims for civil penalties under
26 PAGA, Labor Code § 2699, *et seq.* (Settlement., ¶¶ 6.y., 13.) Pursuant to Labor Code section 2699(i),
27 75% of that amount (**\$187,500**) will be paid to the LWDA. The remaining 25% (**\$62,500**), will be
28 distributed to PAGA Employees on a *pro rata* basis according to the number of PAGA Pay Periods. (*Id.*,

¶ 6.aa.) The entirety of each PAGA Settlement Award shall be allocated as penalties. (*Id.*, ¶ 25.)

Class Counsel will provide a copy of the Settlement and this Motion for Preliminary Approval to the LWDA in accordance with the requirements specified in Labor Code sections 2698-2699.5. (Setareh Decl., ¶ 25.)

V. ARGUMENT

A. THE COURT SHOULD CONDITIONALLY CERTIFY THE SETTLEMENT CLASS BECAUSE IT MEETS ALL THE REQUIREMENTS FOR CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY UNDER CODE OF CIVIL PROCEDURE SECTION 382

Under Code of Civil Procedure § 382, class certification is warranted so long as there is “a numerous and ascertainable class with a well-defined community of interest among its members” and a “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332. “The certification question is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” *Id.* at 326 (quoting *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-440). Indeed, the certification question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment. *E.g., Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1298. In ruling on a certification motion, a trial court’s task is to determine “whether...the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” *Id.*

“[I]t is also well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859 (citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 n.19 (“*Dunk*”). As the court noted in *Dunk*, although certification requirements are intended “to protect the interests of the non-representative class members,” that concern is “protected by the trial court’s fairness review of the settlement.” *Id.*

1 Indeed, numerous courts have certified settlement classes. For example, *In re Drexel Burnham*
2 *Lambert Group, Inc.* (2d Cir. 1992) 960 F.2d 285, *cert. dismissed* (1993) 506 U.S. 1088, 122 L. Ed. 497,
3 113 S. Ct 1070, the parties entered into a tentative settlement before a class was certified. After a hearing,
4 the "district court issued an order certifying the class and approving the settlement agreement." *Id.* at 289;
5 *see also, Alaniz v. California Processors, Inc.* (N.D. Cal. 1976) 73 F.R.D. 269, 278 ("the use of the
6 tentative settlement class procedure was appropriate in this case"), *aff'd*, 572 F.2d 657 (9th Cir.), *cert.*
7 *denied*, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action litigation
8 and an approved procedure which ought to be followed in this case. *See Newberg on Class Actions* (3d ed.
9 1991) § 11.27, pp. 11-40 to 11-56; and *Manual for Complex Litigation*, 2d (1993) § 30.45.

10 Plaintiff submits that, as shown below, this Settlement and the Settlement Class easily meet all of
11 the requirements for certification for settlement purposes.

12 **1. Objectively Ascertainable and Sufficiently Numerous Class**

13 A class is ascertainable when it may be readily identified via an objectively stated definition
14 without unreasonable expense or time by reference to official records. *Rose v. City of Hayward* (1981) 126
15 Cal.App.3d 926, 932. No set number of class members is required to maintain a class action. *Hebbard v.*
16 *Colgrove* (1972) 28 Cal.App.3d 1017, 1030. The California Supreme Court has upheld a class of as few
17 as ten members. *Bowles v. Super. Ct. (Nickel, Jr.)* (1955) 44 Cal.2d 574, 577-81. Here, the Settlement
18 Class is made up of approximately 11,856 individuals, all of whom may be readily ascertained by
19 reference to Defendant's personnel records. (Setareh Decl. ¶ 26.) Accordingly, the Settlement Class is not
20 only ascertainable, but also sufficiently numerous.

21 **2. Predominance of Common Questions**

22 A question of law or fact is common to the members of a class if it may be resolved through
23 common proof. *See Jaimez, supra*, 181 Cal.App.4th at 1305. As for predominance, it "is a comparative
24 concept, and 'the necessity for class members to individually establish eligibility and damages does not
25 mean individual fact questions predominate.'" *Sav-on, supra*, 34 Cal.4th at 334 (*quoting Reyes v. San*
26 *Diego Cty. Bd. of Supervisors* (1979) 196 Cal.App.3d 1263, 1278). Thus, "[i]ndividual issues do not render
27 class certification inappropriate so long as such issues may effectively be managed." *Id.* This is especially
28 so where the key difference between class members solely concerns their respective amounts of damages.

1 *See id.* As a general rule, if a defendant's liability can be determined by facts common to all members, a
2 class will be certified even if the members must individually prove their damages. *See Hicks v. Kaufman*
3 *& Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916.

4 Plaintiff contends that in this case, the Settlement Class meets these requirements. Plaintiff submits
5 that Defendant's liability arises from the same set of facts and legal questions that apply to and are
6 answered equally as to all Class Members. Plaintiff alleges Class Members were subjected to a common
7 practice in that Defendant: failed to pay them, *inter alia*, for off-the-clock work, failed to provide meal
8 periods and rest periods, including premiums, failed to pay vacation pay, failed to properly calculate the
9 regular rate of pay, failed to provide compliant wage statements, were improperly paid wages via pay cards
10 and failed to pay all wages due upon separation of employment.

11 The Court accordingly should certify the Settlement Class for purposes of settlement under Code
12 of Civil Procedure section 382 and Rule of Court 3.769(c).

13 **3. Typicality of Plaintiff's Claims**

14 Typicality "requires a showing that the class representative has claims or defenses typical of the
15 class." *See, e.g., Fireside Bank v. Super. Ct. (Gonzalez)* (2007) 40 Cal.4th 1069, 1090. This focuses on
16 "the nature of the claim or defense of the class representative, and not to the specific facts from which it
17 arose or the relief sought." *Hanon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d 497, 508 (internal
18 citations omitted). "The test of typicality 'is whether other members have the same or similar injury,
19 whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class
20 members have been injured by the same course of conduct.'" *Id.* (quoting *Schwartz v. Harp* (C.D. Cal.
21 1985) 108 F.R.D. 279, 282; *accord Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 ("it has never been
22 the law in California that the class representative must have *identical* interest with the class members").

23 Plaintiff submits that under these standards, Plaintiff's claims are typical of those of the Class
24 Members. Like Class Members, Plaintiff was an hourly non-exempt employee of Defendant in California.
25 (Setareh Decl., ¶ 21.) Plaintiff alleges he was not paid for all hours worked, was not provided with
26 compliant meal periods and rest breaks, engaged in off the clock work, was paid wages by pay card, did
27 not receive accurate wage statements and did not receive all wages owed on termination of employment.
28 (*Id.*) *See Classen, supra*, 145 Cal. App. 3d at 46 (representative plaintiffs need not have all claims or

1 identical interests with class members; they need only have claims that are “typical of the class”); *see also*
2 *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal. App. 3d 1341, 1347 (representative
3 plaintiffs need not suffer all of the exact same damages as every class member). Accordingly, Plaintiff
4 pursues claims typical of the class he seeks to represent.

5 **4. Adequacy of Plaintiff and Class Counsel to Represent the Class**

6 The adequacy requirement is met where the named plaintiffs are represented by counsel qualified
7 to conduct the litigation and the plaintiffs’ interest in the litigation is not antagonistic to the classes interests.
8 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51. In other words, where the named
9 plaintiffs have adequate counsel, they may represent the entire class absent any disabling conflicts of
10 interest that might hinder the named plaintiffs’ ability to represent the class. *Id.*

11 In this case, Plaintiff submits that he has no conflict of interest with absent Settlement Class
12 Members and has agreed to place the class’s interests above his own. (Setareh Decl., ¶ 21.) *See Global*
13 *Minerals, supra*, 113 Cal.App.4th at 851 (the inquiry into the adequacy of a class representative is intended
14 to uncover any conflicts between the plaintiff and the class he or she seeks to represent). Setareh Law
15 Group is experienced in wage and hour class action litigation and has no conflicts of interest with absent
16 Class Members. (Setareh Decl., ¶¶ 3-6, 21.) Thus, this Court should appoint Plaintiff Andres Garcia as
17 Class Representative for the Settlement Class and appoint his counsel as Class Counsel.

18 **B. STANDARD FOR GRANTING PRELIMINARY SETTLEMENT APPROVAL**

19 Cases brought as class actions may only be settled upon court approval and then only after a
20 determination that the settlement is fair, adequate, and reasonable is made. *In re Microsoft I-V Cases*
21 (2006) 135 Cal.App.4th 706, 723. Courts have broad discretion to make this determination and consider
22 factors, such as the strength of plaintiff’s case, the risk, expense, complexity and likely duration of further
23 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
24 extent of discovery completed and the stage of the proceedings, the experience and views of counsel, and
25 the reaction of the class members to the proposed settlement. *Id.*; *Dunk*, 48 Cal.App.4th at 1800-01; *Reed*
26 *v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 336. “[A] presumption of fairness exists
27 where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
28 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;

1 and (4) the percentage of objectors is small.” *Dunk, supra*, at 1802; *see also Chaves v. Netflix, Inc.* (2008)
2 162 Cal.App.4th 43, 52.

3 California Rule of Court 3.769 sets forth the procedures for settlement of class actions in
4 California. A two-step process is required. First, the court preliminarily approves the settlement and the
5 class members are notified as directed by the court. Cal. Rule of Court 3.769(c)-(f). “The notice must
6 contain an explanation of the proposed settlement and the procedures for class members to follow in filing
7 written objections to it and in arranging to appear at the settlement hearing and state any objections to the
8 proposed settlement.” Cal. Rule of Court 3.769(f). Second, the court conducts a final approval hearing to
9 inquire into the fairness of the proposed settlement. Cal. Rule of Court 3.769(g). If the court approves
10 the settlement, a judgment is entered with provision for continued jurisdiction for the enforcement of the
11 judgment. Cal. Rule of Court 3.769(h).

12 In deciding whether to grant preliminary approval, courts are to give “due regard” to “what is
13 otherwise a private consensual agreement between the parties.” *Sutter Health Uninsured Pricing Cases*
14 (2009) 171 Cal.App.4th 495, 505. When approving a settlement, “the court need not ‘reach any ultimate
15 conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the
16 very uncertainty of the outcome in litigation and avoidance of wasteful and expensive litigation that induce
17 consensual settlements.’” *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291 (quoting
18 *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625).² The court’s inquiry must
19 be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of
20 fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
21 whole, is fair, reasonable and adequate to all concerned. *Id.*

22 //

23 //

24 //

25
26 ² The California Supreme Court has suggested that trial courts, in the absence of controlling California
27 authority, utilize class action procedures of the Federal Rules of Civil Procedure. *See LaSala v. American*
28 *Sav. & Loan Ass’n* (1971) 5 Cal.3d 864, 872. Thus, the Court may look to federal authorities in ruling on
this motion.

1 **C. THIS COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER**
2 **PRELIMINARILY APPROVING THE SETTLEMENT BECAUSE IT IS**
3 **FAIR, ADEQUATE, AND REASONABLE**

4 **1. Settlement Resulted from Serious, Informed, Non-Collusive Negotiations**

5 The Parties reached this settlement only after they conducted extensive and protracted arm's-length
6 negotiations through an experienced and knowledgeable mediator, Todd Smith and after acceptance of the
7 mediator's proposal. (Setareh Decl., ¶ 17.) Plaintiff and Defendant do not have any agreements regarding
8 the proposed Settlement that are not reflected in the Settlement. (*Id.* ¶ 20.)

9 **2. Sufficient Fact Investigation and Discovery Has Occurred to Assess the**
10 **Fairness of the Settlement**

11 As discussed above, Plaintiff's counsel engaged in investigation and informal discovery that has
12 allowed them to evaluate the merits of the Class Members' claims and Defendant's defenses as well as the
13 range of possible recoverable damages. (*Id.*, ¶¶ 15, 20.) Based on Plaintiff's counsel's investigation and
14 discovery, Plaintiff and his counsel are of the opinion that this settlement is fair, reasonable, adequate, and
15 in the Class Members' best interest. (*Id.* ¶ 20.) Plaintiff's counsel's investigation and discovery are more
16 than sufficient to warrant their and Plaintiff's decision to enter into the Settlement.

17 Plaintiff and Defendant engaged in informal discovery prior to resolving the Action. Leading up
18 to the mediation, the Parties engaged in informal discovery and exchange of information and
19 documents. (Setareh Decl., ¶ 15.)

20 The Parties agreed to attend mediation to attempt to resolve the action entirely and further agreed
21 to engage in informal discovery in advance and in preparation thereof. In preparation for mediation,
22 Plaintiff requested and Defendant provided substantial informal discovery, including a sampling of
23 timekeeping and payroll data, relevant policy documents and other information requested by Plaintiff.
24 (*Id.*)

25 Plaintiff hired an expert to analyze the produced data with respect to potential damages and
26 penalties in preparation for mediation. (*Id.* ¶ 16.) From the data and other documents obtained from
27 Defendant pertaining to the Class and Defendant's policies, Plaintiff's expert was able to analyze the data
28 sampling, and Plaintiff was then able to thoroughly assess the merits of each claim. (*Id.*)

1 **3. Plaintiff’s Counsel Are Experienced Class Action and Employment**
2 **Attorneys and the Amount of Attorneys’ Fees Sought Are Appropriate**

3 As detailed more completely in the declaration of Shaun Setareh of the Setareh Law Group,
4 Plaintiff’s counsel are particularly experienced in employment law and wage and hour class actions.
5 (Setareh Decl., ¶¶ 3-6.)

6 Plaintiff’s counsel believe that the 33¹/₃% of the GSA that they will seek in attorneys’ fees are
7 appropriate in this matter. (Setareh Decl., ¶ 23.) The Court of Appeal has recognized that one factor
8 supporting a lodestar multiplier is comparison to the fees typically earned in contingency fee litigation
9 where the plaintiff’s attorney is awarded fees based on a percentage of the award recovered for the client:
10 “to ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in
11 comparable litigation.” *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 50. As the Court
12 knows, contingency fees typically range from one-third to forty percent. Indeed, Setareh Law Group has
13 been awarded 33¹/₃% common-fund attorneys’ fees in numerous class actions. (*Id.*)

14 Factors that courts consider in determining the multiplier include: “The quality of the
15 representation, the novelty and complexity of the issues, the results obtained, and the contingent risk
16 presented.” *Lafitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 489. “There is no hard and fast
17 rule limiting [these]...numerous factors, and their evaluation is entrusted to a trial court’s sound
18 discretion.” *Center for Biological Diversity v. Cty. of San Bernardino* (2010) 185 Cal.App.4th 866, 901.

19 Counsel believe the proposed settlement is fair, reasonable, and adequate in light of the
20 complexities of the case, the uncertainties of further litigation, and that it represents a fair and reasonable
21 recovery for the Settlement Class. (Setareh Decl., ¶ 20.)

22 **4. The Settlement Is Fair and Reasonable Based on the Strength of**
23 **Plaintiff’s Case and the Risks and Costs of Further Litigation**

24 California courts recognize that “‘the merits of the underlying class claims are not a basis for
25 upsetting the settlement of a class action.’” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
26 246 (quoting *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
27 1150). The settlement need not provide one-hundred percent of the damages sought in order to be judged
28 reasonable. *Wershba*, 91 Cal.App.4th at 250. “Thus, even if ‘the relief afforded by the proposed settlement

1 is substantially narrower than it would be if the suits were to be successfully litigated,’ this is not a bar to
2 a class settlement because ‘the public interest may indeed be served by a voluntary settlement in which
3 each side gives ground in the interest of avoiding litigation.’” *Id.* (quoting *Air Lines Stewards v. American*
4 *Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109).

5 Despite a total potential recovery of \$17,217,067 on his class claims, Plaintiff recognizes the
6 challenges he faces in certifying a class action and establishing liability on the underlying wage and hour
7 claims. (*Id.*) Plaintiff estimates that his likelihood of prevailing on all his causes of action is extremely
8 low and thus his likelihood of recovering \$17,217,067 or anything close to that amount on behalf of a class
9 is very unlikely. (*Id.*) The settlement of \$4,947,000 represents about **28.7%** of the estimated \$17,217,067
10 exposure for claims for damages under the Labor Code, assuming these amounts could be proven at trial. If
11 the derivative Labor Code section 203 waiting time penalties and section 226 inaccurate wage statement
12 penalties are included (those are \$27,667,838 and \$17,587,500) the potential exposure is \$62,472,405. (*Id.*)
13 However, as the Ninth Circuit has indicated, only damages, not penalties, need be considered when
14 assessing the fairness of a settlement because the fairness inquiry looks to whether the class members were
15 compensated for “past injuries”. *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 964 (2009.) Further,
16 Labor Code section 203 and 226 penalties require a showing of willfulness, and Defendants would argue
17 that any failure to pay meal or rest premiums or other amounts owed was not willful. For example, in
18 *Naranjo v. Spectrum Security Services, Inc.*, 17 Cal.5th 1056, 1088 (2024) the California Supreme Court
19 held that section 226 penalties like section 203 penalties, should not be awarded even if liability is
20 established at trial, if the employer presents defenses that were “reasonable, if ultimately unconvincing.”

21 There is a risk that the class action causes of action could be compelled to arbitration as Defendant
22 alleges an arbitration agreement applies. Plaintiff adamantly denies that the arbitration agreement is
23 controlling, because Plaintiff is subject to a statutory exemption to the Federal Arbitration Act for
24 transportation workers, meaning workers who move goods in the channels of foreign or interstate
25 commerce. Plaintiff worked at a distribution warehouse, moving goods that arrived from foreign countries,
26 and then preparing those foods to be sent out of state. Additionally, Plaintiff asserts that the PAGA claims
27 will not proceed in arbitration as the arbitration agreement specifies that PAGA is not covered by the
28 Arbitration Agreement. Drawn out litigation regarding arbitration is avoided through this settlement. For

1 those claims, if any, that are certified for class treatment, Plaintiff must prevail at a trial on the merits. In
2 addition to having to prove that Plaintiff and other workers were not paid for all hours worked, Plaintiff
3 must establish willfulness with respect to their waiting time penalties claim under Labor Code Section 203
4 as well as a knowing and intentional violation under Labor Code Section 226 for wage statement penalties.

5 With respect to the claims asserted on behalf of the Settlement Class in this case, there are
6 significant risks that support the reduced compromise amount. These risks include, but are not limited to,
7 the following:

8 (i) The risk that Plaintiff would be unable to establish liability for allegedly unpaid straight
9 time and overtime wages. *See Duran v. U.S. Bank Nat'l Ass'n* (2014) 59 Cal.4th 1, 39 & fn. 33 ("*Duran*"),
10 citing *Dilts v. Penske Logistics, LLC* (S.D. Cal. 2014) 2014 WL 205039 (dismissing certified off-the-
11 clock claims based on proof at trial).

12 (ii) The risk that Plaintiff would not be able to prove liability for alleged failure to provide
13 compliant meal periods and rest breaks; or that to establish liability for the failure to provide compliant
14 meal periods and rest breaks would require an individualized inquiry that would prevent these issues from
15 being resolved on a class and/or collective basis. For example, Plaintiff alleged that he and Class Members
16 were not provided with meal breaks of at least 30 minutes for each 5 hour work period due to Defendant
17 (1) chronically understaffing each work shift with not enough workers; (2) imposing so much work on
18 each employee such that it made it unlikely that an employee would be able to take their breaks if they
19 wanted to finish their work on time; and (3) security checks cutting meal breaks short.

20 Defendant asserts that it provides meal periods to employees and authorizes and permits them to
21 take rest periods, and pays meal and rest period premiums, in accordance with applicable law. Defendant
22 asserts that to prove whether any particular employee was not provided the opportunity to take a meal or
23 rest periods on any given day would require an individualized inquiry that would prevent this issue from
24 being resolved on a class and/or representative basis.

25 (iv) The risk that Defendant's challenged employment policies might not ultimately support
26 class certification or a class-wide liability finding, *see, Duran*, 59 Cal.4th at 14 & fn. 28 (citing Court of
27 Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability
28 of proposition). Defendant has contended, for example, that it did not have a purported policy of not

1 paying required compensation, but rather a policy of paying compensation and of requiring employees to
2 report any unpaid compensable time, and that any failures to report by employees cannot be legally charged
3 to Defendant and, in any event, involve such highly individualized circumstances as to prevent class
4 certification and representative action treatment should this case be litigated. *See, e.g., Morillion v. Royal*
5 *Packing Co.* (2000) 22 Cal.4th 575, 585 (employer not required to pay employees for time spent
6 performing work of which the employer had no knowledge).

7 (v) For the same reasons, liability, damages recovery, and certification risks are heightened
8 given: (1) the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and practices
9 could preclude class-wide awards of statutory penalties under Labor Code section 226(e); (2) the risk that
10 individual differences between settlement Class Members could be construed as pertaining to liability, and
11 not solely to damages, *see, Duran*, 59 Cal.4th at 19; and (3) the risk that class or collective treatment could
12 be deemed improper as to one or more claims except for settlement purposes.

13 (vi) The risk that any civil penalties award under PAGA could be reduced by the Court in its
14 discretion, which would materially impact the recovery by the Class. *See* Labor Code section 2699(e)(1).

15 (vii) The risk that lengthy appellate litigation could ensue as to both liability and certification
16 issues, with associated litigation risk and costs, further enhances the value of a confirmed settlement as
17 opposed to unpredictable litigation.

18 (viii) Although the PAGA penalties calculated by Plaintiff's expert amounts to an extravagant
19 \$10,552,500, that amount is not likely to bear fruit in this case. Most significantly, the ultimate decision
20 as to the amount of penalties is always up to the discretion of the Court.

21 (ix) The risk that the Court would find that security checks occurred while employees were clocked
22 in. This is further compounded by the individualized inquiry that could be necessary to make this determination
23 for each employee based on his or her particular circumstances, including but not limited to co-workers,
24 employees, site, and working conditions.

25 In these respects, Defendant strongly denies any liability and the propriety of class certification for
26 any reason other than settlement. (Setareh Decl., ¶20.) Continued litigation of this lawsuit presented
27 Plaintiff and Defendant with substantial legal risks that were (and continue to be) very difficult to assess.
28 (*Id.*)

1 In light of the uncertainties of protracted litigation, the Settlement amount reflects a fair and
2 reasonable recovery for the Class Members. (*Id.*) The Settlement amount is, of course, a compromise
3 figure. (*Id.*) By necessity, it took into account risks related to liability, damages, class action certification,
4 and all the defenses asserted by Defendant as to all such matters. (*Id.*) Moreover, each Settlement Class
5 Member will be given the opportunity to opt out of the Settlement, allowing those who think they have
6 claims that are greater than the benefits they can receive under this Settlement to pursue their own claims.
7 (*Id.*)

8 **D. THE COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER**
9 **DIRECTING THAT NOTICE BE SENT**

10 “The notice given to the class must fairly apprise the class members of the terms of the proposed
11 compromise and of the options open to dissenting class members.” *Trotsky v. L.A. Fed. Sav. & Loan Ass’n*
12 (1975) 48 Cal.App.3d 134, 151-52. “The notice must be structured to enable class members to decide
13 whether to intervene or object, ‘opt out,’ or accept the settlement.” *Id.* at 152. Class notice must strike a
14 balance between thoroughness and the need to avoid unduly complicating the content of the notice and
15 confusing class members. *Wershba*, 91 Cal.App.4th at 252. Furthermore, an appropriate notice is one
16 which has a reasonable chance of reaching the class members. *Cartt v. Superior Court* (1975) 50
17 Cal.App.3d 960, 974.

18 The Class Notice explains in plain and easily understood language what the case is about; the class
19 definition and claims; the settlement amount and approximate individual amount each Class Member will
20 receive; the requested amounts to be paid to class counsel and as a service award to the class representative;
21 the rights of class members to opt out or object to the Settlement’s terms and the process by which they
22 can do so; the binding effect of the Settlement on those who do not request exclusion, including a
23 description of the claims being released; and the particulars of the final fairness hearing. (Settlement, ¶
24 19.a, Ex. A.)

25 The Parties’ proposed plan for directing notice to the Class is also the best notice that is practicable
26 under the circumstances. Using last-known addresses, the Settlement Administrator will send the Class
27 Notice by First Class U.S. Mail to all Class Members. (*Id.*) Further, the Settlement Administrator will
28 perform skip traces to obtain the correct address of any Class Members for whom the Class Notice is

1 returned as undeliverable and will attempt re-mailings. (*Id.* ¶ 19.b.)

2 **E. THE COURT SHOULD SET A HEARING FOR FINAL APPROVAL**

3 Finally, the Court should set a formal hearing to conduct an inquiry into the fairness of the proposed
4 settlement. Cal. Rule Ct. 3.769(e), (g). At the hearing, proponents of the Settlement may explain and
5 describe the terms and conditions and offer argument of settlement approval. Members of the Settlement
6 Class, or their counsel, may also appear and offer evidence and testimony in opposition to the Stipulation
7 of Settlement. The Parties request that the hearing on final approval of the settlement be set as soon as
8 may be convenient for the Court.

9 **VI. CONCLUSION**

10 For the foregoing reasons, the Parties respectfully submit that the Settlement's terms are fair,
11 adequate, and reasonable and that it is in the best interest of the Class Members. Under the applicable
12 class action criteria and guidelines, this Class should be conditionally certified, the Settlement should be
13 preliminarily approved, the Class should be notified regarding the Settlement, and the Court should
14 schedule a final approval hearing.

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19 DATED: June 12, 2025

SETAREH LAW GROUP

20
21 /s/ Farrah Grant

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