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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12 **(UNLIMITED JURISDICTION)**

13 JAVIER ARRAZOLA, on behalf of himself and
14 all others similarly situated, the general public,
and as an “aggrieved employee” on behalf of
15 other “aggrieved employees” and the State of
California under the Labor Code Private
16 Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 IRRIGATION EXPRESS, INC., a California
20 corporation, IRRIGATION EXPRESS AND
SIMPLE TURF, a California corporation;
21 YOSEF AMZALAG SUPPLY, a California
corporation; YOSEF AMZALAG, a natural
22 person; and DOES 1–50, inclusive,

23 *Defendant(s).*
24
25
26
27
28

Case No. 25STCV25534

**PLAINTIFF JAVIER ARRAZOLA’S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: September 16, 2026
Hearing Time: 10:00 a.m.
Hearing Dept.: SSC-15, The Honorable
Timothy P. Dillon

Action filed: August 29, 2025



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Other

Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 3:29 14



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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 **I. INTRODUCTION**

4 Plaintiff Javier Arrazola (“Plaintiff”) submits this memorandum of points and authorities
5 in support of his unopposed motion for preliminary approval of the Class Action and PAGA
6 Settlement Agreement and Class Notice (the “Settlement”)³, which provides for a Gross
7 Settlement Amount (“GSA”) of \$585,000.00 in compromise of all disputed claims on behalf of
8 hourly, non-exempt employees during the period of August 29, 2021 through May 12, 2026.
9 Through this Motion, Plaintiff respectfully requests for this Court to (1) provisionally certify the
10 below-defined Class for settlement purposes only under Code of Civil Procedure § 382; (2)
11 preliminarily approve the Settlement; (3) preliminarily appoint Plaintiff as Class Representative;
12 (4) appoint David Spivak of The Spivak Law Firm and Walter L. Haines of United Employees
13 Law Group as Class Counsel ; (5) approve the proposed notice procedures and related forms; and
14 (6) schedule a final approval hearing.

15 This Court should grant Plaintiff’s motion because: (1) for settlement purposes, the
16 Settlement Class meets the requirements for class certification under Code of Civil Procedure §
17 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,
18 reasonableness, and adequacy; (3) for settlement purposes, Plaintiff is adequate to serve as Class
19 Representative; (4) Plaintiff’s attorneys are adequate to serve as Class Counsel ; (5) the proposed
20 notice procedures, and related forms, fully comport with due process and adequately apprise Class
21 Members of their rights; and (6) a final approval hearing must be scheduled to allow Settlement
22 Class Members an opportunity to be heard regarding the Settlement and to give it finality.
23 Accordingly, for the reasons detailed below, this Court should grant Plaintiff’s Motion in its
24 entirety and preliminarily approve the Settlement.

25 **II. BACKGROUND**

26 Defendants are wholesale suppliers of landscape irrigation, outdoor lighting, and artificial
27 grass. Defendants employed Plaintiff in California as a driver and warehouse associate, and
28 similar positions from about November 11, 2016 until January 15, 2025. DS, ¶ 4.

29 **A. The Claims and Procedural History**

30 On July 28, 2025, Plaintiff notified Defendants and the California Labor and Workforce

31 ³ The Settlement is attached as Exhibit (“Ex.”) 1 to the Declaration of David Spivak (“DS”),
32 which is submitted herewith under a separate cover.



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1 Development Agency (“LWDA”), pursuant to the California Private Attorneys General Act of
2 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor Code violations
3 committed by Defendants. DS, ¶ 5, Ex. 2.

4 On August 29, 2025, Plaintiff filed a Class Action Complaint in the Los Angeles County
5 Superior Court, Case No. 25STCV25534, against Defendants on behalf of himself and others
6 similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages
7 Earned for All Hours Worked (Lab. Code §§ 221, 510, 1194, 1197, and 1198); (2) Failure to
8 Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab.
9 Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage
10 Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§
11 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). DS, ¶ 6, Ex. 3. On
12 October 1, 2025, Plaintiff filed his First Amended Complaint adding a claim under PAGA. DS, ¶
13 6, Ex. 4. On October 29, 2025, Defendants filed an answer to Plaintiff’s First Amended
14 Complaint. DS, ¶ 6, Ex. 5. Defendants deny all of Plaintiff’s allegations and strongly contend that
15 their wage and hour policies, practices and procedures are fully compliant with all applicable
16 laws. DS, ¶ 6.

17 **B. Investigation and Sampling**

18 On January 8, 2026, Plaintiff requested that Defendants informally disclose documents
19 and data to enable Plaintiff to prepare for settlement discussions, including the number of putative
20 class members and aggrieved employees, the number of paychecks and workweeks for the various
21 limitations periods applicable to Plaintiff’s claims. DS, ¶ 7. Plaintiff also requested a reasonable,
22 randomly selected sample of Defendants’ time, payroll, and expense records, and related
23 personnel records. *Id.* Finally, Plaintiff requested Defendants’ written policies applicable to the
24 claims at hand and asked Defendants to identify any and all comparable claims against
25 Defendants. Defendants disclosed that there have not been any comparable claims against them.
26 *Id.*

27 The Parties thereafter engaged in an informal, voluntary exchange of information in the
28 context of privileged settlement discussions to facilitate an early mediation. Defendants produced
Plaintiff’s entire personnel file (including policies and agreements he signed and acknowledged)
and copies of relevant company written policies. DS, ¶ 8.

Defendants contend that they employed 107 putative class members during the Class



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Period. Defendants produced the records of 28.00% of the putative class members for the period of August 29, 2021 to December 1, 2025. There were records for 30 employees in the sample. Plaintiff chose the sample. The sample was randomly selected. The sample consisted of time records, paystubs, and related records. DS, ¶ 9.

Plaintiff retained James Toney, a data analyst, to analyze the sample. Plaintiff also employed the Raosoft⁴ Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin of error of 43.3 percent was unacceptable. Using a margin of error of 16%, a confidence level of 95%, and a population size of 107, the Raosoft Sample Size Calculator recommended a sample of 28. DS, ¶ 10, **Exhibit 6** (Raosoft Sample Size Calculator results print-out). Thus, the sample population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

C. Mediation

On March 12, 2026, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator Steven G. Mehta, an experienced class action mediator. During the mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide settlement after the mediation session. During the mediation sessions, each side, represented by his / its respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by the Settlement Agreement pursuant to the terms and conditions of the Settlement Agreement. DS, ¶ 11.

III. OVERVIEW OF THE SETTLEMENT

A. Settlement Class and Aggrieved Employees Definition

The Settlement defines the Settlement Class as all persons employed by Defendants in California and classified as hourly, non-exempt employees who worked for Defendants during

⁴ Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software programs for information gathering and analysis. The family of survey software supports data collection and reporting for any form-based data. Support is for web-surveys and forms, email distribution, diskette, PDA, laptop or pen-based: all types of distribution." The Raosoft webpage advertises that is it "database web survey software for gathering information." <http://www.raosoft.com/>. It also advertises, "The parameters of the sample size calculation are something that you choose." <http://www.raosoft.com/suggestreading.html>.



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1 the Class Period. Settlement, § 1.5. The Class Period is August 29, 2021 through May 12, 2026.
2 Settlement, § 1.12. The Settlement defines “Aggrieved Employee” as a person employed by
3 Defendants in California and classified as an hourly, non-exempt employee who worked for
4 Defendants during the PAGA Period. Settlement, § 1.4. The “PAGA Period” begins July 28, 2024
and ends May 16, 2026. Settlement, § 1.32.

5 **B. Monetary Terms**

6 Except as otherwise provided by Paragraph 9 of the Settlement Agreement, Defendants
7 promise to pay \$585,000.00 and no more as the Gross Settlement Amount and to separately pay
8 Defendants’ share of employer payroll taxes owed on the Wage Portions of the Individual Class
9 Payments. Defendants have no obligation to pay any portion of the Gross Settlement Amount (or
10 any payroll taxes) prior to the deadline stated in § 4.3 of the Settlement Agreement. Settlement,
§ 3.1.

11 The Administrator will make and deduct the following payments from the Gross
12 Settlement Amount, in the amounts specified by the Court in the Final Approval:

13 To Plaintiff: Class Representative Service Payment to the Class Representative of not
14 more than \$15,000.00 (in addition to any Individual Class Payments and any Individual PAGA
15 Payments the Class Representative is entitled to receive as a Participating Class Member).
16 Defendants will not oppose Plaintiff’s request for a Class Representative Service Payment that
17 does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class
18 Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative
19 Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court
20 approves a Class Representative Service Payment less than the amount requested, the
21 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
22 pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
23 responsibility and liability for employee taxes owed on the Class Representative Service Payment.
Settlement, § 3.2.1.

24 To Class Counsel: A Class Counsel Fees Payment of not more than one third of the Gross
25 Settlement Amount, which is currently estimated to be \$195,000.00 and a Class Counsel
26 Litigation Expenses Payment of not more than \$20,000.00. Defendants will not oppose requests
27 for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel
28 will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no



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1 later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel
2 Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts
3 requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released
4 Parties will have no liability to Class Counsel or any other Plaintiff's Counsel arising from any
5 claim to any portion of the Class Counsel Fee Payment and/or Class Counsel Litigation Expenses
6 Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel
7 Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility
8 and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation
9 Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute
or controversy regarding any division or sharing of any of these Payments. Settlement, § 3.2.2.

10 To the Administrator: An Administration Expenses Payment not to exceed \$10,000.00
11 except for a showing of good cause and as approved by the Court. To the extent the
12 Administration Expenses Payment are less or the Court approves payment less than \$10,000.00,
13 the Administrator will retain the remainder in the Net Settlement Amount. Settlement, § 3.2.3.

14 To Each Participating Class Member: An Individual Class Payment calculated by (a)
15 dividing the Net Settlement Amount by the total number of Work Weeks worked by all
16 Participating Class Members during the Class Period and (b) multiplying the result by each
Participating Class Member's Work Weeks. Settlement, § 3.2.4.

17 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$25,000.00
18 to be paid from the Gross Settlement Amount, with 65% (\$16,250.00) allocated to the LWDA
19 PAGA Payment and 35% (\$8,750.00) allocated to the Individual PAGA Payments. Settlement, §
20 3.2.5.

21 **C. Timing of Payments**

22 Defendants will fully fund the Gross Settlement Amount, and also fund the amounts
23 necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the
24 Administrator no later than 30 days after the Effective Date. Defendants' payment of the Gross
25 Settlement Amount and Defendants' share of payroll taxes is contingent upon receipt of the
26 Administrator's payment instructions. Defendants' payment obligations with respect to the Gross
27 Settlement Amount and Defendants' share of payroll taxes will be met upon initiating the
28 electronic transfer of funds in the amounts provided for in this Settlement Agreement pursuant to
the Settlement Administrator's instructions. In the event of an unsuccessful electronic transfer of



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1 funds, the Parties agree to cooperate in good faith to resolve the issues. Settlement, § 4.3.

2 Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator
3 will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA
4 PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the
5 Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.
6 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
7 Payment and the Class Representative Service Payment will not precede disbursement of
8 Individual Class Payments and Individual PAGA Payments. The Settlement Administrator will
9 also set aside the employer taxes and all employee-side payroll taxes, contributions, and
10 withholdings, and timely forward these to the appropriate government authorities. Settlement, §
11 4.4.

12 The Administrator will issue checks for the Individual Class Payments and/or Individual
13 PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid.
14 The face of each check will prominently state the date (not less than 180 days after the date of
15 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by
16 the void date. The Administrator will send checks for Individual Settlement Payments to all
17 Participating Class Members (including those for whom Notice Packet was returned undelivered).
18 The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees
19 including Non-Participating Class Members who qualify as Aggrieved Employees (including
20 those for whom Notice Packet was returned undelivered). The Administrator may send
21 Participating Class Members a single check combining the Individual Class Payment and the
22 Individual PAGA Payment. Before mailing any checks, the Administrator must update the
23 recipients' mailing addresses using the National Change of Address Database. Settlement, § 4.4.1.

24 **D. Calculation of Settlement Shares**

25 An Individual Class Payment will be calculated by (a) dividing the Net Settlement
26 Amount by the total number of Work Weeks worked by all Participating Class Members during
27 the Class Period and (b) multiplying the result by each Participating Class Member's Work
28 Weeks. Settlement, § 3.2.4.

29 The Administrator will calculate each Individual PAGA Payment by (a) dividing the
30 amount of the Aggrieved Employees' 35% share of PAGA Penalties \$8,750.00 by the total
31 number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and



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(b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. Settlement, § 3.2.5.1.

E. Apportionment of Settlement Shares

20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. Notwithstanding the treatment of the payments to each Participating Class Member, none of the payments called for by the Settlement Agreement, including the Wage Portions of the Individual Class Payments, are to be treated as earnings, wages, pay or compensation for the purpose of any applicable benefit or retirement plan, nor do any payments under the Settlement Agreement extend or alter Class Members' or Aggrieved Employees' period of employment for any purpose. Settlement, § 3.2.4.1.

F. The Releases

Effective on the date when Defendants fully fund the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, Aggrieved Employees, and Class Counsel will release claims against all Released Parties as follows:

Plaintiff's Release. In addition to the Released Class Claims and Released PAGA Claims described below, Plaintiff, individually and on behalf of his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under § 6.3, below ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce the Settlement Agreement, or to those rights that as a matter of law



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1 cannot be waived, including but not limited to, any claims for vested benefits, unemployment
2 benefits, disability benefits, social security benefits, workers' compensation benefits that arose at
3 any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff
4 may discover facts or law different from, or in addition to, the facts or law that Plaintiff now
5 knows or believes to be true but agrees, nonetheless, that Plaintiff's Release will be and remain
6 effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery
7 of them. Settlement, § 6.1. For purposes of Plaintiff's Release, Plaintiff expressly waives and
8 relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil
Code, which reads:

9 A general release does not extend to claims that the creditor or releasing party does not
10 know or suspect to exist in his or her favor at the time of executing the release, and that if
11 known by him or her would have materially affected his or her settlement with the debtor
12 or Released Party.

13 Settlement, § 6.1.1.

14 Release by Participating Class Members: All Participating Class Members, on behalf of
15 themselves and their respective former and present representatives, agents, attorneys, heirs,
16 administrators, successors, and assigns, release Released Parties from all claims that were alleged,
17 or reasonably could have been alleged, based on facts set forth in the Operative Complaint that
18 arose during the Class Period including, e.g., claims for: (a) failure to pay all wages earned for all
19 hours worked and other compensable hours at the correct rates of pay, including for off-the-clock
20 work, hours improperly deducted, minimum wages, regular wages, overtime wages, and
21 doubletime wages; (b) failure to provide rest breaks or compensation in lieu thereof; (c) failure to
22 provide compliant meal periods or compensation in lieu thereof; (d) failure to reimburse for
23 necessary business-related expenses; (e) failure to provide accurate and complete itemized wage
24 statements and maintain payroll records, including statements of available sick leave; (f) failure
25 to timely pay all wages due during employment and upon separation of employment; (g) unlawful
26 deductions from wages and (h) claims for unfair competition. ("Released Class Claims"). Except
27 for Plaintiff's Release by Plaintiff and as set forth in Section 6.3 of the Settlement Agreement,
28 Participating Class Members do not release any other claims, including claims for vested benefits,
wrongful termination, violation of the Fair Employment and Housing Act, unemployment



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1 insurance, disability, social security, workers' compensation, or claims based on facts occurring
2 outside the Class Period. Settlement, § 6.2.

3 Release of PAGA Claims by Aggrieved Employees. All Aggrieved Employees are
4 deemed to release, on behalf of themselves and their respective former and present
5 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
6 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been
7 alleged, based on the facts set forth in the Operative Complaint and the PAGA Notice that arose
8 during the PAGA Period including, e.g., claims for: (a) failure to pay all wages earned for all
9 hours worked and other compensable hours at the correct rates of pay, including for off-the-clock
10 work, hours improperly deducted, minimum wages, regular wages, overtime wages, and
11 doubletime wages; (b) failure to provide rest breaks or compensation in lieu thereof; (c) failure to
12 provide compliant meal periods or compensation in lieu thereof; (d) failure to reimburse for
13 necessary business-related expenses; (e) failure to provide accurate and complete itemized wage
14 statements and maintain payroll records, including statements of available sick leave; (f) failure
15 to timely pay all wages due during employment and upon separation of employment; (g) unlawful
16 deductions from wages and (h) claims for unfair competition. The foregoing release shall be
17 binding on Plaintiff, the Aggrieved Employees, and the State of California, and shall bar by res
18 judicata any claim under the PAGA brought by any person, including the Aggrieved Employees,
19 on behalf of the State of California, as to any claims predicated on the Released PAGA Claims.
Aggrieved Employees do not release claims for wages or damages unless such Aggrieved
Employee is a Participating Class Member. Settlement, § 6.3.

20 **G. Notice and Claims Process and Procedures**

21 No later than three (3) business days after receipt of the Class Data, the Administrator will
22 notify Class Counsel that the list has been received and state the number of Class Members,
23 Aggrieved Employees, Work Weeks, and Pay Periods in the Class Data. Settlement, § 8.4.1.

24 Using best efforts to perform as soon as possible, and in no event later than 14 days after
25 receiving the Class Data, the Administrator will send to all Class Members identified in the Class
26 Data, via first-class United States Postal Service ("USPS") mail, the Notice Packet with Spanish
27 translation, if applicable substantially in the forms attached to the Settlement Agreement as
28 Exhibits A, B, C, and D. The first page of the Class Notice will prominently estimate the dollar
amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class



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1 Member, and the number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate
2 these amounts. Before mailing Notice Packets, the Administrator will update Class Members
3 addresses using the National Change of Address database. Settlement, § 8.4.2.

4 Not later than 3 business days after the Administrator's receipt of any Notice Packet
5 returned by the USPS as undelivered, the Administrator will re-mail the Notice Packet using any
6 forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
7 the Administrator will conduct a Class Member Address Search, and re-mail the Notice Packet to
8 the most current address obtained. The Administrator has no obligation to make further attempts
9 to locate or send Notice Packet to Class Members whose Notice Packet is returned by the USPS
a second time. Settlement, § 8.4.3.

10 The deadlines for Class Members' written objections, Challenges to Class Work Weeks
11 and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended an additional
12 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose
13 notice is re-mailed. The Administrator will inform the Class Members of the extended deadline
14 with the re-mailed Notice Packet. Settlement, § 8.4.4.

15 If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers
16 any persons who believe they should have been included in the Class Data and should have
17 received Notice Packet, the Parties will expeditiously meet and confer in person or by telephone,
18 and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties
19 agree, such persons will be Class Members entitled to the same rights as other Class Members,
20 and the Administrator will send, via email or overnight delivery, a Class Notice requiring them
21 to exercise options under the Settlement Agreement not later than 14 days after receipt of Class
Notice, or the deadline dates in the Class Notice, whichever are later. Settlement, § 8.4.5.

22 **1. Disputes**

23 Each Class Member will have 60 days after the Administrator mails the Notice Packet
24 (plus an additional 14 days for Class Members whose Notice Packet is re-mailed) to challenge
25 the number of Class Work Weeks and PAGA Pay Periods (if any) allocated to the Class Members
26 in the Class Notice. This is also known as a dispute. A Class Work Week/PAGA Pay Period
Dispute form, attached as Exhibit C, may be used for this purpose but is not required. The Class
27 Members may challenge the allocation by communicating with the Administrator via fax, email
28 or mail. The Administrator must encourage the challenging Class Members to submit supporting



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1 documentation. In the absence of any contrary documentation, the Administrator is entitled to
2 presume that the Work Weeks and/or PAGA Pay Periods contained in the Class Notice are correct
3 so long as they are consistent with the Class Data. The Administrator's determination of each
4 Class Member's allocation of Class Work Weeks and/or PAGA Pay Periods will be final and not
5 appealable or otherwise susceptible to challenge. The Administrator will promptly provide copies
6 of all challenges to calculation of Class Work Weeks and/or PAGA Pay Periods to Defense
7 Counsel and Class Counsel and the Administrator's determination of the challenges. Settlement,
§ 8.6.

8 2. Opting Out

9 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
10 send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later
11 than 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
12 Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class
13 Member or his/her representative that reasonably communicates the Class Member's election to
14 be excluded from the Settlement and includes the Class Member's name, address and email
15 address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed,
16 or postmarked by the Response Deadline. An Election Not to Participate in Settlement form,
attached as Exhibit B, may be used for this purpose but is not required. Settlement, § 8.5.1.

17 The Administrator may not reject a Request for Exclusion as invalid because it fails to
18 contain all the information specified in the Class Notice. The Administrator will accept any
19 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the
20 person as a Class Member and the Class Member's desire to be excluded. The Administrator's
21 determination will be final and not appealable or otherwise susceptible to challenge. If the
22 Administrator has reason to question the authenticity of a Request for Exclusion, the
23 Administrator may demand additional proof of the Class Member's identity. The Administrator's
24 determination of authenticity will be final and not appealable or otherwise susceptible to
challenge. Settlement, § 8.5.2.

25 Every Class Member who does not submit a timely and valid Request for Exclusion is
26 deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
27 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
28 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement Agreement, regardless of



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1 whether the Participating Class Member actually receives the Class Notice or objects to the
2 Settlement. Settlement, § 8.5.3.

3 Every Class Member who submits a valid and timely Request for Exclusion is a Non-
4 Participating Class Member and will not receive an Individual Class Payment or have the right to
5 object to the class action components of the Settlement. Because future PAGA claims are subject
6 to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are
7 Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of the
8 Settlement Agreement and are eligible for an Individual PAGA Payment. Settlement, § 8.5.4.

9 **3. Objecting**

10 Only Participating Class Members may object to the class action components of the
11 Settlement and/or the Settlement Agreement, including contesting the fairness of the Settlement
12 and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
13 Payment and/or the Class Representative Service Payment. Settlement, § 8.7.1.

14 Participating Class Members may send written objections to the Administrator, by fax,
15 email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an
16 attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
17 Participating Class Member who elects to send a written objection to the Administrator must do
18 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
19 14 days for Class Members whose Notice Packet was re-mailed). An Objection form attached as
20 Exhibit D may be used for this purpose but is not required. Settlement, § 8.7.2.

21 Non-Participating Class Members have no right to object to any of the class action
22 components of the Settlement. Settlement, § 8.7.3.

23 **H. Uncashed Checks**

24 For any Class Member whose Individual Class Payment check or Individual PAGA
25 Payment check is uncashed and cancelled after the void date, the Administrator will transmit the
26 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
27 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
28 California Code of Civil Procedure Section 384, subd. (b). Settlement, § 4.4.3.

29 **IV. CERTIFICATION OF THE CLASS IS APPROPRIATE**

30 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
31 and its members are too numerous for joinder to be practical; (2) the representative and absent
32 class members share a community of interest and questions of law and fact common to the class



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1 predominate over questions unique to individual class members; (3) the representative's claims
2 are typical of the class' claims; and (4) the representative will fairly and adequately represent the
3 class' interests. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Moreover,
4 in the settlement context, the Court can use a lesser standard to determine the appropriateness of
5 a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.* (1996) 48
6 Cal.App.4th 1794, 1807. As explained below, all of these requirements are met in this case.

7 **A. The Settlement Class Is Objectively Ascertainable**

8 A class is ascertainable when it may be readily identified without unreasonable expense
9 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932
10 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the above-
11 defined Class is ascertainable because its members may be identified by reference to Defendants'
12 records and Defendants have agreed to share the relevant information from their records to
13 facilitate the settlement process. DS, ¶ 12. Therefore, the Settlement Class is ascertainable.

14 **B. The Membership of the Settlement Class Is Sufficiently Numerous**

15 The Settlement Class has sufficiently numerous members to render joinder impractical.
16 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
17 (1972) 28 Cal.App.3d 1017, 1030. Defendants estimate that there are approximately 107 Class
18 Members. DS, ¶ 13. Plaintiff maintains that it would be impractical and economically inefficient
19 to require each Class Member to separately maintain an individual action or be joined as a named
20 plaintiff in this action. The California Supreme Court has upheld a class of as few as 10
21 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations,
22 the Settlement Class' membership is sufficiently numerous. DS, ¶ 13. *See Daar v. Yellow Cab*
23 *Co.* (1967) 67 Cal.2d 695.

24 **C. Class Members Share a Well-Defined Community of Interest**

25 The community of interest requirement "embodies three factors: (1) predominant common
26 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
27 (3) class representatives who can adequately represent the class." *Sav-On Drug Stores, Inc. v.*
28 *Superior Court* (2004) 34 Cal. 4th 319, 326. It "does not mandate that class members have
uniform or identical claims." *Capitol People First v. Dept. of Developmental Servs.* (2007) 155
Cal. App. 4th 676, 692. Rather, courts focus on the defendant's internal policies and "pattern and
practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs
renders class certification appropriate." *Id.* (citing *Sav-On*, 34 Cal. 4th at 333).



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1 To justify certification, the class proponent “must show ... that questions of law or fact
2 common to the class predominate over the questions affecting the individual members” *See*,
3 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal. App. 4th 723, 732 (citing *Washington Mut. Bank,*
4 *FA v. Superior Court* (2001) 24 Cal. 4th 906, 913). In light of the more lenient standard for
5 certification of a settlement class, the Parties agree that for the purposes of the Settlement only,
6 the claims of the Class Members all stem from the same sources. DS, ¶ 14.

7 In this case, Plaintiff asserts all Class Members were subject to the same or similar
8 operations and employment policies, practices, and procedures. The claims arise from
9 Defendants’ alleged policy-driven failure to pay wages, failure to provide meal periods, failure to
10 authorize and permit rest periods, failure to indemnify for business expenses, failure to issue
11 proper wage statements, failure to timely pay wages, unauthorized and unlawful wage deductions,
12 and related labor law violations, all of which Plaintiff claims constitute unfair business practices
13 and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not
14 limited to: (1) Whether Defendants failed to pay all wages earned to Class Members for all hours
15 worked at the correct rates of pay; (2) Whether Defendants failed to provide the class with all
16 meal and rest periods in compliance with California law; (3) Whether Defendants failed to pay
17 the class one additional hour of pay on workdays they failed to provide the class with one or more
18 meal or rest periods in compliance with California law; (4) Whether Defendants failed to
19 indemnify the class for all necessary business expenditures incurred during the discharge of their
20 duties; (5) Whether Defendants knowingly and intentionally failed to provide the class with
21 accurate wage statements; (6) Whether Defendants willfully failed to provide the class with timely
22 final wages; and (7) Whether Defendants engaged in unfair competition within the meaning of
23 Business and Professions Code section 17200, *et seq.*, with respect to the class. DS, ¶ 14.
24 Therefore, common questions predominate.

25 **D. Plaintiff Is Typical of the Settlement Class**

26 The class representative must be similarly situated to the rest of the purported class. *See*
27 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating “it has never been the law in California
28 that the class representative must have identical interests with the class members. The only
requirements are ... that the class representative be *similarly* situated”) (emphasis in original); *See*
also Newberg, § 3:29 (typicality “focuses on whether there exists a relationship between the
Plaintiff’s claims and the claims alleged on behalf of the class”). Plaintiff contends that his claims



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1 are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that he, like absent
2 Class Members, was subject to the same relevant policies and procedures governing his
3 compensation, hours of work and meal and rest periods. Because Plaintiff contends that he was
4 subject to the same general course of conduct as absent Class Members, resolving the common
5 questions as they apply to Plaintiff will determine Defendants' *prima facie* liability to all Class
6 Members. Moreover, Plaintiff's claims could potentially be subject to the same primary
7 affirmative defenses as those of absent Class Members. Accordingly, Plaintiff's claims are typical
8 of the Class. DS, ¶ 15.

9 **E. Plaintiff Will Adequately Represent the Settlement Class**

10 The adequacy requirement is met where the plaintiff is represented by counsel qualified
11 to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class'
12 interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the
13 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling
14 conflicts of interest that might hinder the plaintiff's ability to represent the class. DS, ¶ 16.

15 First, Class Counsel have supplied the Court with declarations to show that they are
16 adequate to represent the Settlement Class and that they have significant experience in
17 employment litigation generally, and wage and hour and employment-related class action
18 litigation specifically. *See* DS, ¶¶ 17-25; Declaration of Walter L. Haines ("Haines Decl.") ¶ 3.
19 Thus, Plaintiff's counsel are adequate to serve as Class Counsel.

20 Second, Plaintiff contends that he is an adequate class representative. Plaintiff and the
21 Class Members have strong and co-extensive interests in this litigation because they all worked
22 for Defendants during the relevant time period, allegedly suffered the same alleged injuries from
23 the same alleged course of conduct, and there is no evidence of any conflict of interest between
24 Plaintiff and the Class Members. DS, ¶ 17. Moreover, Plaintiff has demonstrated his commitment
25 to the Settlement Class by, among other things, retaining experienced counsel, providing counsel
26 with documents and extensively speaking with them to assist in identifying the claims asserted in
27 this case, assisting them in identifying witnesses, as well as exposing himself to the risk of
28 attorneys' fees and costs awards against him if this lawsuit had been unsuccessful. DS, ¶ 17. Thus,
Plaintiff is adequate to serve as settlement class representative. Accordingly, this Court should
find that Plaintiff and his counsel are adequate to represent the Settlement Class as required under
Code of Civil Procedure § 382.



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1 **F. Class Action Treatment Is the Superior Means For Resolving The Claims Of**
2 **The Class Members.**

3 Plaintiff further contends that a class action is also superior to other means of adjudicating
4 the issues in this action. The predominance of common legal and factual questions shows that this
5 Court could fairly adjudicate the claims of Class Members through a single class action. In view
6 of the *theoretical* alternatives that proposed class members could potentially utilize—
7 representative PAGA action (where there is less relief available), individual civil lawsuits or wage
8 claims through the Division of Labor Standards Enforcement (where there would be relatively
9 little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly
10 superior to all of them. Thus, this consideration supports conditional class action treatment for
11 purposes of this Settlement only. DS, ¶ 26.

12 **V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL BECAUSE THE**
13 **SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

14 **A. Legal Standard**

15 A class action settlement requires court approval. California Rules of Court (“CRC”),
16 Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a
17 written motion for preliminary approval, the proposed class settlement, and the proposed class
18 notice; (2) Issuance of notice of settlement to class members; and (3) A final settlement approval
19 hearing where class members may be heard regarding the settlement, and at which evidence and
20 argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.
21 The decision to approve or reject a class settlement is committed to the Court’s broad discretion.
22 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve
23 class settlement may be reversed only upon a showing of “clear abuse of discretion.” *Id.*

24 **B. The Settlement Is Presumptively Fair**

25 In assessing preliminary approval, a court evaluates if the settlement process has certain
26 indicia of fairness. A “presumption of fairness exists where (1) the settlement is reached through
27 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
28 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
29 of objectors is small.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996)
30 48 Cal.App.4th at 1794.

31 The class settlement here satisfies all of these factors. DS, ¶ 27. The Settlement resulted
32 from thorough, arms’ length, negotiations between experienced counsel with the assistance of a
33 respected mediator after sufficient discovery was exchanged to assess the relative strengths and



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1 weaknesses of their respective cases and Defendants’ estimated exposure. *Id.*

2 At issue in this class and Private Attorneys General Act (“PAGA”) action is the liability
3 of a wholesale supplier of landscape irrigation systems to their approximately 107 California
4 hourly, non-exempt workers for unprovided meal periods, unpermitted rest breaks, unreimbursed
5 expenses, unpaid wages, unpaid overtime, and related claims. DS, ¶ 28. Plaintiff prepared
6 “damages” estimates in advance of the mediation. DS, ¶ 28, Ex. 7. Plaintiff determined
7 Defendants’ maximum possible exposure for restitution and penalties to be approximately
8 \$3,175,095.78 (consisting of \$441,887.89 in unpaid wages, \$353,434.22 in liquidated damages,
9 \$448,139.87 in missed meal period premium wages, \$668,067.79 in missed rest break premium
10 wages, \$247,632.00 in unreimbursed expenses, \$113,050.00 for wage statement penalties,
11 \$329,784.00 for waiting time penalties, and \$573,100.00 for civil penalties under PAGA).
12 Plaintiff calculated the damages based on the number of workweeks and pay periods provided by
13 Defendant, Plaintiff’s reports, and the sample data. *Id.*

14 The estimates are in essence “home run” projections that omit data points that will
15 undoubtedly reduce the maximum possible damages award and do not factor in any of the risks
16 involved in litigating this Action discussed below. These initial estimates do not realistically
17 account for the risks outlined below or the risk that a class will not be certified. Therefore, Plaintiff
18 believes a class settlement for \$585,000.00 is fair and reasonable. Plaintiff’s Counsel applied
19 discounts to the maximum possible exposure to account for all other risks discussed below. DS,
20 ¶ 29.

21 **C. The Settlement Satisfies the *Kullar* Factors for Approval**

22 The *Kullar* case sets forth several factors a court should consider in determining whether
23 to approve a class settlement. These factors include: (1) the strength of plaintiff’s case; (2) the
24 risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class
25 action status through trial; (4) the amount offered in settlement; (5) the extent of discovery
26 completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence
27 of a governmental participant; and (8) the reaction of the class members to the proposed
28 settlement. 168 Cal.App.4th at 128. As demonstrated herein, the Settlement satisfies each of these
factors.

1. **Evaluation of Plaintiff’s Case**

a. **Risks Associated with the Unpaid Wages Claim**

There is a risk that Plaintiff’s recovery for unpaid wages would be extremely limited at



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1 best, largely because Defendants’ written policies throughout the relevant time period prohibited
2 off-the-clock work. DS, ¶ 30. Off-the-clock claims are difficult where a defendant requires in its
3 written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation*
4 *Hospital* (2014) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to
5 be compensable). *Id.* In their written employment policies, Defendants mandate that employees
6 must record all time worked accurately on their time records and strictly prohibit employees from
7 performing any work off-the-clock. DS, ¶ 30. Moreover, while Defendants dispute that off-the-
8 clock work occurred, they contend that any time spent off the clock was *de minimis*. The
9 California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested
10 that irregular and minute periods of time may still be subject to a *de minimis* defense even if
11 compensable. (Stating that “We do not decide whether there are circumstances where
12 compensable time is so minute or irregular that it is unreasonable to expect the time to be
13 recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here
14 because the time spent off the clock was minute and insignificant. Accordingly, a large award of
15 penalties seems unlikely with respect to this claim. *Id.*

16 The difficulty inherent in proving that off-the-clock work occurred poses a significant
17 hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim.
18 Generally, a court will not certify a class unless it can determine an appropriate classwide
19 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff
20 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given
21 the lack of records indicating when such off-the-clock work may have taken place. Individualized
22 inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual
23 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant
24 risk that the Court would consider this evidentiary showing insufficient as a classwide
25 methodology. DS, ¶ 31.

26 **b. Risks Associated with the Meal Period Claims**

27 There are risks to Plaintiff’s meal period claim. DS, ¶ 32. Defendants contend that, to
28 establish a violation for missed meal periods, a plaintiff must do more than show that a meal break
was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. So long as an
employer provides employees with a “reasonable opportunity” to take a duty-free meal period, it
has no further duty to “police meal breaks and ensure no work thereafter is performed.” *Id.* at



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1 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the
2 employee from taking a proper break, or otherwise failed to release the employee of all control.
3 *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a particular
4 employee may have failed to take a meal break.” *Washington v. Joe’s Crab Shack* (N.D. Cal.
5 2010) 271 F.R.D. 629, 641. *Id.*

6 Defendants contend they did not impede or discourage Plaintiff, or any other employees,
7 from taking their meal or rest periods. DS, ¶ 33. Defendants’ policies mandate that employees
8 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
9 of their meal breaks each day on their time records. *Id.* The time records that comprise the random
10 sample Defendants produced to Plaintiff for purposes of mediation show that meal periods were
11 taken the vast majority of the time. *Id.* Of the time records that show a late, short or no lunch,
12 individualized evidence may be necessary to determine whether they occurred due to conduct of
13 the Defendants or each of the employees concerned. Accordingly, there is a significant risk that
14 the value of Plaintiff’s meal period claim would be substantially reduced at trial. *Id.*

15 **c. Risks Associated with the Rest Break Claims**

16 There are risks to Plaintiff’s rest period claim. DS, ¶ 34. Employers are not required to
17 record rest periods and such periods are paid. *Id.* Defendants contend they provided non-exempt
18 employees the opportunity to take rest periods in accordance with California law. Further,
19 Defendants’ written policies on meal and rest periods are consistent with the Wage Order. *Id.*
20 Thus, unlike meal periods, where there are often records showing whether an employee clocked
21 out or not, there is no such evidence to prove a missed rest period or that the employer refused to
22 authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.*
23 Plaintiff will depend on sample witness testimony and surveys to prove the claims. *Id.* While a
24 victory with such evidence is certainly possible, relevant caselaw makes such claims risky from
25 a trial management and due process perspective. *Id.*, *See Duran v. U.S. Bank National Assn.*,
26 (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist to support class
27 certification, it may be possible to manage individual issues through the use of surveys and
28 statistical sampling.”); *Tyson Foods, Inc. v. Bouaphakeo* (2016) 136 S.Ct. 1036; *Comcast*
Corporation v. Behrend (2013) 133 S.Ct. 1426.

d. Risks Associated with the Failure to Indemnify Claim

There is a risk that the Court may consider Plaintiff’s claims as to Defendants’ alleged
failure to indemnify for business expenses to be individual in nature and thus decline to certify



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1 the class. DS, ¶ 35. Plaintiff alleges that Defendants required Plaintiff and the Class Members to
2 use their personal cellular phones and failed to indemnify them for these business expenses. *Id.*
3 Defendants could present evidence that they have supplied their employees with all tools,
4 equipment, and other supplies and had an expense reimbursement policy. As such, there is a risk
5 that the Court may consider Plaintiff's claims to be individual in nature and unfit for class wide
6 resolution. *Id.*

7 **e. Risks Associated with the Waiting Time Penalty and the**
8 **Statutory Wage Statement Penalty Claims**

9 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and
10 PAGA penalties. Under Labor Code section 226, wage statements must include various
11 information, including the applicable rates of pay, corresponding hours worked, and gross pay.
12 Here, Plaintiff's wage statement claim has the same underlying risks as the above claims, as it is
13 derivative of them. *Id.* On their face, the wage statements issued by Defendants comply with the
14 requirements of Labor Code § 226. Further, without proof of willful behavior, Plaintiff will be
15 unable to recover these penalties. DS, ¶ 36.

16 **f. Risks Associated With the PAGA Claim**

17 Regarding PAGA, a court has discretion to award a lesser amount than the maximum
18 penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
19 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed
20 valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the
21 PAGA claims likewise face significant uncertainty. DS, ¶ 37. There is a risk that the Court would
22 consider the maximum civil penalty available to be confiscatory. *Id.*

23 This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a
24 significant discount for settlement purposes. DS, ¶ 38. For mediation purposes, Plaintiff's counsel
25 estimated a maximum possible exposure of approximately \$573,100.00 in civil penalties. This
26 estimate did not take into account any of the risks discussed above and assumed a violation for
27 every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay
28 period for the same alleged violations of different Labor Code provisions and derivative
violations. *Id.* Although two federal district court decisions held that "stacking" PAGA penalties
in this fashion may be appropriate to determine the amount in controversy for purposes of removal
jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
multiple PAGA penalties for the same violation for the same pay period under different Labor



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Code provisions. *Id.* This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking. *Id.*

Plaintiff is aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts.⁵ DS, ¶ 39. PAGA penalty awards are often small even for egregious, intentional violations of the Labor Code.⁶ *Id.* For instance, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the defendant's meal period violations. A similar result could occur here. *Id.*; Exs. 8 and 9.

g. Risks Associated With A Pick Up Stix Campaign

An employer enjoys the right to settle a putative class member's disputed wage claims

⁵ In *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of \$12,277,500.00 where total adjusted damages were \$18,695,692.58. In this regard, the district court stated,

The plain language of PAGA provides that “a court may award a lesser amount than the maximum civil penalty amount specified by this part if, *based on the facts and circumstances of the particular case*, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code s 2699(e)(2) (emphasis added). The relationship between the amount of total damages and the amount of maximum PAGA penalties is certainly a “circumstance” of the case under the term's ordinary meaning. The weight given to that circumstance is greater in this case because Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs' individual claims except for one. As a general matter, it would be excessively punitive for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed the damages caused by that injury or set of injuries.

Id., fnnt. 9. The district court further stated, “Virgin “has not presented any evidence that the full penalty would be excessive in relation to its ability to pay,” the weight of this factor is lessened.” *Id.*

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court awarded approximately \$102 million in damages, primarily based on the Defendant's failures to comply with the requirements of California Labor Code section 226.

⁶ In 2012, Plaintiff's Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA.



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1 individually, without the consent or involvement of class counsel. DS, ¶ 40. See *Chindarah v.*
2 *Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* Defendants may launch a “pick off” settlement
3 campaign to pursue individual release agreements from the Class Members, thereby potentially
4 narrowing the size of the Settlement Class – 107 members - until it is no longer numerous enough
5 for class certification. *Id.* Plaintiff, then, may not have sufficient number of employees to
6 represent. This led to a significant reduction of claim value in settlement negotiations. *Id.*

7 While the evidence gathered through Plaintiff’s discovery supports the merits of the
8 claims asserted in this lawsuit, Plaintiff and his counsel recognize that continued litigation
9 presents significant risks that support a downward departure from Defendants’ estimated liability
10 exposure. DS, ¶ 41. In view of the risks, the Settlement reflects Plaintiff’s estimate of the total
11 amount of damages, monetary penalties or other relief that the Class could reasonably expect to
12 be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.*
13 It also represents a fair, adequate, and reasonable compromise amount for these claims and
14 warrants preliminary approval. *Id.*, *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
15 1376 (the financial condition of defendant predominated in assessing the reasonableness of
16 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
17 concerning defendant’s financial stability “strongly supports the reasonableness of the
18 settlement”); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014
19 WL 2465049, * 3.

20 While it is difficult to assign anything but crudely-determined percentages of risk to any
21 of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery
22 for such employees is substantial and alone justifies a significant discount because Defendants
23 would likely by trial have gathered releases from the majority of the Class Members. DS, ¶ 42.
24 However, based on the difficulties of proof, the Defendants’ defenses, and the other attendant
25 risks Plaintiff identifies, Plaintiff estimates the likely awards at trial should Plaintiff prevail
26 to be the following amounts:

- 27 a. Unpaid wages and liquidated damages with interest in the amount of
28 \$397,661.06;
- 29 b. Meal period premium wages with interest in the amount of \$224,069.94;
- 30 c. Rest period premium wages with interest in the amount of \$334,033.90;
- 31 d. Unreimbursed expenses with interest in the amount of \$123,816.00;



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- e. Statutory pay stub penalties in the amount of \$56,525.00;
- f. Waiting time penalties in the amount of \$164,892.00; and
- g. Civil penalties in the amount of \$114,620.00.

The total of these amounts is \$1,415,617.89. The Gross Settlement Amount of \$585,000.00 is 41.32% of this amount. DS, ¶ 43. A settlement for approximately 41.32% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.⁷ DS, ¶ 42.

2. Presence of Governmental Participant

As required under Labor Code section 2699(l)(2), Plaintiff will provide notice of this settlement to the LWDA with the filing and service of this motion. DS, ¶ 66, Ex. 20.

VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY COMPENSATES CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY COMPARED TO OTHER CLASS MEMBERS.

The Individual Settlement Payments will be paid to each Class Member based on his or her eligible Work Weeks compared to the total Work Weeks. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable.

Defendants estimate that there are 8,184 Work Weeks for the Class Period. So, each Work Week has a value of approximately \$39.10 (\$320,000.00 Net Settlement Amount / 8,184 Work Weeks = \$39.10). Plaintiff had 81 Work Weeks during the Class Period. Based on this, it is anticipated that Plaintiff Javier Arrazola will receive an Individual Class Payment of approximately \$3,167.16 as a Participating Class Member (81 Work Weeks x \$39.10 = \$3,167.16) while the average estimated Individual Class Payment to Participating Class Members will be approximately \$2,990.65. Some Class Members – those who worked more Work Weeks

⁷ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998) (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum potential recovery asserted by either party.”).



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1 during the Class Period - will receive more, and some less. The highest possible Individual Class
2 Payment to a Participating Class Member (i.e., to those who qualify for all Work Weeks in the
3 Class Period) will be approximately \$4,414.41. The lowest possible Individual Class Payment to
4 a Participating Class Member (i.e., to those who qualify for only one Work Week in the Class
5 Period) will be approximately \$39.10. DS, ¶¶ 60-61.

6 It is anticipated that the average Aggrieved Employee Individual PAGA Payment will
7 be \$213.41. *Id.* Plaintiff's Individual PAGA Payment, his individual share of 35% of the PAGA
8 Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement,
9 each Aggrieved Employee will receive a *pro rata* distribution of 35% of the PAGA Penalties
10 proportionate to the number of paychecks he or she had with Defendants during the PAGA Period,
11 compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as
12 reflected by Defendants' records. Plaintiff estimates that there are 1,042 PAGA Pay Periods for
13 the PAGA Period. So, each Aggrieved Employee paycheck from the PAGA Period has a value
14 of approximately \$8.39 (35% of \$25,000.00 in PAGA Penalties / 1,042 PAGA Pay Periods =
15 \$8.39). It is anticipated that Plaintiff Javier Arrazola will receive an Individual PAGA Payment
16 of approximately \$92.29 as an Aggrieved Employee (11 paychecks during the PAGA Period x
17 \$8.39 paycheck value = \$92.29) while the average estimated Individual PAGA Payment to an
18 Aggrieved Employee will be approximately \$213.41 (\$8,750.00, 35% of PAGA Penalties / 41 =
19 \$213.41 Individual PAGA Payment). Some Aggrieved Employees – those who had more
20 paychecks during the PAGA Period - will receive more, and some less. The highest possible
21 Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for all paychecks
22 in the PAGA Period) will be approximately \$362.45. The lowest possible Individual PAGA
23 Payment to an Aggrieved Employee (i.e., to those who qualify for only one paycheck in the
24 PAGA Period) will be approximately \$8.39. DS, ¶ 62.

25 **VII. ALLOCATION FOR CLASS COUNSEL'S FEE AWARD AND ATTORNEYS'**
26 **FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE**

27 The Settlement states Class Counsel may seek attorneys' fees of \$195,000.00 (one-third
28 of the GSA) and up to \$20,000.00 for actual reasonable litigation costs and expenses incurred in
prosecuting the Action. These amounts are reasonable, given the facts and circumstances of the
case. DS, ¶¶ 44-47.

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*



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1 *Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the “experienced
2 trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum*
3 *v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should
4 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
5 incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Cal. 5th 480, 503 (citing *Lealao, supra*, 82
6 *Cal.App.4th at pp. 48-49*). The Supreme Court has recently approved fees equal to one-third
7 (1/3) of the common fund. *Laffitte, supra*, 1 Cal. 5th 480. Many courts have similarly approved
8 fee awards equal to or greater than the percentage requested here. *See, e.g., In re Pacific*
9 *Enterprises* (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re*
10 *Activision* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re*
11 *Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

12 The amount of fees and costs requested are commensurate with (1) the risk Class Counsel
13 took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the
14 skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the
15 value Class Counsel achieved for the class, and (6) the other cases Class Counsel turned down to
16 devote time to this matter. DS, ¶ 45. Class Counsel interviewed and obtained information from
17 putative class members, met and conferred with Defendants’ counsel on numerous occasions,
18 reviewed and analyzed hundreds of pages of data and documents provided by Defendants and
19 obtained through other sources, researched applicable law, and provided estimates of “damages”
20 for purposes of settlement discussions, among other tasks. *Id.*

21 Class Counsel have borne all the risks and costs of litigation and will receive no
22 compensation until recovery is obtained. DS, ¶ 46. Class Counsel are well-experienced in wage-
23 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*
24 Considering the amount of the attorney fees requested, the work performed, and the risks incurred,
25 the requested fees and costs are reasonable and should be awarded. *Id.*

26 **VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFF**
27 **SHOULD BE PRELIMINARILY APPROVED BECAUSE IT IS FAIR,**
28 **ADEQUATE, AND REASONABLE**

Courts routinely approve incentive awards to compensate named plaintiffs for the services
they provide and the risks they incur during class action litigation, often in much higher amounts
than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
(upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van*



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1 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
2 enhancement award). The Settlement provides that Plaintiff may seek a Class Representative
3 Service Payment of \$15,000.00. This amount is entirely reasonable given Plaintiff's efforts in this
4 action and the risks he undertook on behalf of Class Members. DS, ¶ 48; Declaration of Javier
5 Arrazola ("Plaintiff decl."), generally. Plaintiff has devoted many hours advancing the interests
6 of the Settlement Class. Plaintiff has done this by, among other things, retaining experienced
7 counsel, providing them with information about his work history with Defendants and
8 Defendants' policies and practices with respect to the wage and hour claims at issue, participating
9 in mediation, and being actively involved in the settlement process to ensure a fair result for the
10 Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks,
11 including the risk of an order to pay Defendants' attorneys' fees and costs if this action had been
12 unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on
13 behalf of the Settlement Class shows that the proposed Class Representative Service Payment is
14 fair, adequate, and reasonable, and thus warrants preliminary approval. DS, ¶ 48-58, Exs. 10-15;
15 Plaintiff decl., generally.

16 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE**
17 **PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE,**
18 **AND REASONABLE**

19 With regard to the settlement administration costs ("Administration Expenses Payment")
20 provision, it is reasonable. Before agreeing to Phoenix Class Action Administration Solutions and
21 its bid of \$6,000.00, the Parties sought and reviewed bids from other reputable third-party
22 administrators which provided higher bids. DS, ¶¶ 64-65, Exs. 16, 17, 18, and 19. Thus, the
23 settlement administration costs provision should be given preliminary approval.

24 **X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN**
25 **SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO**
26 **GIVE ACTUAL NOTICE TO CLASS MEMBERS OR SETTLEMENT CLASS**
27 **MEMBERS AND SUFFICIENT TIME TO EXERCISE THEIR RIGHTS**

28 This Court should approve the proposed plans for giving notice to the Settlement Class
and administering the Settlement. The standard for determining the adequacy of notice is whether
the notice has "a reasonable chance of reaching a substantial percentage of the class members."
Cartt v. Superior Court (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple
measures to ensure that as many Class Members as practicable receive actual notice of the
Settlement and have enough time to exercise their rights. The Settlement requires distribution of



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1 the Notice by First Class U.S. mail only. Although there are current employee Class Members, it
2 is uncertain whether Defendants' records of their contact information include email addresses and
3 Class Members, who perform all of their work away from a desk, are not in a position to check
4 their emails. As such, notice by mail alone is fair, adequate, and reasonable. DS, ¶ 63.

5 With respect to its content, "[The] notice given to the class must fairly apprise the class
6 members of the terms of the proposed compromise and of the options open to dissenting class
7 members." *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.
8 The purpose of the notice in class settlement context is to give class members sufficient
9 information to decide whether they should accept the benefits offered, opt out and pursue their
10 own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides
11 Class Members with all pertinent information that they need to fully evaluate their options and
12 exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among
13 other things: (1) what the Settlement is about; (2) who is a Class Member or Settlement Class
14 Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be
15 bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be
16 allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be
17 resolved; and (9) the individual Class Member's estimated payment. Additionally, the Class
18 Notice will include the number of Work Weeks a Class Member had during the Class Period.
19 Accordingly, the Notice should be approved because it describes the Settlement with sufficient
20 clarity and specificity to explain to Class Members what this action is about, their rights under
21 the Settlement and how to exercise those rights. DS, ¶ 63.

22 **XI. CONCLUSION**

23 For the reasons stated above, this Court should grant Plaintiff's Motion in its entirety and
24 adopt the proposed order submitted concurrently herewith.

25 Respectfully submitted,

26 THE SPIVAK LAW FIRM

27 Dated: August 5, 2026

28 By:



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ARRAZOLA, and all others similarly
situated



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