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individually and on behalf of others similarly situated

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF KINGS**

12 RAMIRO GALVAN, individually and on
13 behalf of others similarly situated,

14 Plaintiff,

15 vs.

16 RENT A TOILET, INC., DALIA PALACIO,
17 and DOES 1 through 50,

18 Defendants.

) CASE NO.: 23C-0050

) CLASS ACTION

) Assigned For All Purposes To:
) Judge: Hon. Valerie R. Chrissakis
) Dept.: 8

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

) Preliminary Approval Hearing:
) Date: December 3, 2024
) Time: 8:15 a.m.
) Dept.: 2 (Two)

) Complaint Filed: February 16, 2023

1 TO EACH PARTY AND EACH ATTORNEY OF RECORD:

2 PLEASE TAKE NOTICE THAT on December 3, 2024 at 8:15 a.m. or as soon as the
3 matter can be heard in Department 2 of this Court, located at 1640 Kings County Drive, Hanford,
4 California 93230, Plaintiff Ramiro Galvan (“Plaintiff”) will, and hereby does, move the Court for
5 an order granting preliminary approval of settlement of alleged class claims and claims for civil
6 penalties under the Labor Code Private Attorneys General Act (“PAGA”), intended to fully resolve
7 all disputes in this action, upon the terms and conditions set forth in the Class Action And PAGA
8 Settlement Agreement (“Agreement”), a copy of which is submitted as Exhibit 1 to the Declaration
9 of Justian Jusuf, filed concurrently herewith.

10 Plaintiff will, and hereby does, further move the Court for an order:

- 11 1. Conditionally certifying a Class for settlement purposes;
- 12 2. Appointing Plaintiff Ramiro Galvan as Class Representative for settlement
13 purposes;
- 14 3. Appointing Plaintiff’s Counsel, Justian Jusuf of Law Office of Justian Jusuf, APC
15 and Sahag Majarian II of Majarian Law Group, APC, as Class Counsel for
16 settlement purposes;
- 17 4. Approving the proposed Notice of Settlement (which will be translated into Spanish
18 and mailed in English and Spanish to Class Members) substantially in the form
19 attached as Exhibit A to the Agreement; and
- 20 5. Setting a Final Approval Hearing for a date approximately 120 (One Hundred
21 Twenty) days after the preliminary approval date.

22 The motion is brought pursuant to Rule 3.769 of the California Rules of Court and Section
23 2699(l) of the Labor Code, and is based upon this notice and motion, the attached memorandum of
24 points and authorities, the Declarations of Ramiro Galvan and Justian Jusuf, submitted
25 concurrently herewith, the records and files in this action, and any other further evidence or

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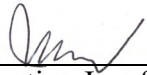
1 argument that the Court may properly receive at or before the hearing.

2 Plaintiff does not anticipate any opposition to this motion.

3 Respectfully submitted,

4 Dated: October 23, 2024

LAW OFFICE OF JUSTIAN JUSUF, APC
MAJARIAN LAW GROUP, APC

5
6 By:  _____
Justian Jusuf

7 Attorneys for Plaintiff Ramiro Galvan,
8 individually and on behalf of others similarly
9 situated

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. SUMMARY OF FACTS AND PROCEDURAL INFORMATION 4

III. THE SETTLEMENT SHOULD RECEIVE PRELIMINARILY APPROVAL 5

IV. THE REQUIREMENTS FOR CLASS ACTION ARE SATISFIED 7

 1. Ascertainability 7

 2. Numerosity 8

 3. Commonality 8

 4. Typicality 9

 5. Adequacy of Representation 9

 6. Risk of Class Status 9

V. THE SETTLEMENT IS FAIR AND REASONABLE 10

 A. The Strength Of Plaintiff's Case and Range of Class Damages 10

 1. Unpaid Wages and Waiting Time Penalty-Wages 10

 2. Meal Periods and Rest Periods 10

 3. Wage Statement Violation 11

 4. PAGA Claims 12

 5. Limited Release by Class Members 13

 B. The Risk, Expense, Complexity And Likely Duration Of Further Litigation 14

 C. The Amount Offered In Settlement Is Fair And Reasonable 15

VI. DISTRIBUTION OF UNCASHED CHECKS 16

VII. THE PROPOSED CLASS NOTICE SHOULD BE APPROVED 16

VIII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE 16

IX. THE ENHANCEMENT PAYMENT TO NAMED PLAINTIFF IS REASONABLE ... 18

X. CONCLUSION 19

TABLE OF AUTHORITIES

CALIFORNIA STATUTES

California Rule of Court 3.769	6, 16
Labor Code § 203	10
Labor Code § 226	11
Labor Code § 226.7	11
Labor Code § 2699(l)(2)	12
Labor Code § 2699(e)(2)	12

CALIFORNIA CASES

<i>Aguilar v. Cintas Corporation No. 2</i> (2006) 144 Cal.App.4th 121	7, 8
<i>Amaral v. Cintas Corporation No. 2</i> (2008) 163 Cal.App.4th 1157	12
<i>Arias v. Superior Court</i> (2009) 46 Cal.4th 969	12
<i>Armenta v. Osmose</i> (2005) 135 Cal.App.4th 314	10
<i>Bell v. Farmers Insurance Exchange</i> (2004) 115 Cal.App.4th 715	8
<i>B.W.J. Custom Kitchen v. Owens-Illinois, Inc.</i> (1987) 191 Cal.App.3d 1341	9
<i>Brinker v. Superior Court</i> (2012) 53 Cal.4th 1004	11
<i>Brown v. Superior Court</i> (2018) 28 Cal.App.5th 824	12
<i>Donohue v. AMN Services, LLC</i> (2021) 11 Cal.5th 58	11
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	6
<i>Hale v. Sharp Healthcare</i> (2014) 232 Cal.App.4th 50	7
<i>Hicks v. Kaufman & Broad</i> (2001) 89 Cal.App.4th 908	8
<i>In re Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545	17
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	6, 7, 10
<i>Laffitte v. Robert Half International, Inc.</i> (2016) 1 Cal.5th 480	16
<i>Maldonado v. Epsilon Plastics</i> (2018) 22 Cal.App.5th 1308	10
<i>Munoz v. BCI Coca-Cola Bottling Co. of L.A.</i> (2010) 186 Cal. App. 4th 399	6
<i>Naranjo v. Spectrum Security Services, Inc.</i> (2022) 13 Cal.5th 93	11

1	<i>Nordstrom Commission Cases</i> (2010) 186 Cal.App.4th 576	13
2	<i>Reyes v. San Diego County Board of Supervisors</i> (1987) 196 Cal.App.3d 1263	7
3	<i>Richmond v. Dart Industries, Inc.</i> (1981) 29 Cal.3d 462	7
4	<i>Robinson v. Southern Counties Oil Co.</i> (2020) 53 Cal.App.5th 476	12
5	<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	8
6	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	7
7	<i>Weinstat v. Dentsply Intern., Inc.</i> (2010) 180 Cal.App.4th 1213	9
8	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal. App. 4th 224	6, 15, 16, 17
9		
10	FEDERAL CASES	
11	<i>Amchem Products, Inc. v. Windsor</i> (1997) 521 U.S. 591	7
12	<i>Ansari v. New York Univ.</i> (S.D. N.Y. 1998) 179 F.R.D. 112	8
13	<i>Hanlon v. Chrysler Corporation</i> (1998) 150 F.3d 1011	9
14	<i>In re Activision Securities Litigation</i> , (N.D. Cal 1989) 723 F. Supp. 1373	17
15	<i>Roberts v. Texaco</i> (S.D.N.Y. 1997) 979 F. Supp. 185, 201	19
16	<i>Speed Shore Corp. v. Denda</i> (9th Cir. 1979) 605 F.2d 469	5
17	<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1977) 557 F.2d 759	16
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ramiro Galvan (“Plaintiff”) and Defendants Rent A Toilet, Inc., RAT
4 Incorporated, Dalia Palacio, and Edison Palacio (“Defendants”) (collectively the “Parties”) have
5 reached a class action settlement, which includes a settlement of alleged claims for civil penalties
6 under the Labor Code Private Attorneys General Act (“PAGA”), intended to fully resolve all
7 disputes in this action, upon the terms and conditions set forth in the Class Action And PAGA
8 Settlement Agreement (“Agreement”), a copy of which is submitted as **Exh. 1** to the Declaration
9 of Justian Jusuf (“Jusuf Decl.”), filed concurrently herewith.

10 A summary of the terms of the settlement under the Agreement is as follows:

11 • Defendants, jointly and severally, will pay a sum of \$175,000.00 (One Hundred
12 Seventy-Five Thousand Dollars and Zero Cents) to establish a non-reversionary “Settlement
13 Fund” to pay for claims of the Class Members who do not opt out of the settlement, civil penalties
14 under PAGA, an Enhancement Award to Plaintiff, the Settlement Administrator’s fee and
15 expenses, and reasonable attorneys’ fees and costs reimbursement to Class Counsel, in exchange
16 for the releases provided in the Agreement.

17 • For purposes of this Settlement, Defendants stipulate to certification of a Class
18 defined as follows: “Any and all persons who have been employed by Defendants as non-exempt
19 employees in California at any time during the Class Period, from February 16, 2019 to July 25,
20 2024.” There are a total of 107 Class Members, and they worked a total of 5961 Workweeks
21 during the Class Period.

22 • The Settlement is conditioned on and contemplates: (i) entry of an Order granting
23 preliminary approval of the Settlement, and (ii) entry of an Order granting final approval of the
24 Settlement and entry of Judgment approving the Settlement with retention of jurisdiction for
25 enforcing the terms of the Settlement.

26 • Upon the Court granting final approval of the Settlement, Defendants shall jointly
27 and severally pay the Settlement Fund amount on or before July 31, 2025 by transmitting a sum of
28

1 \$175,000.00 (One Hundred Seventy Five Thousand Dollars and Zero Cents) to an account to be
2 established by the Settlement Administrator for the benefit of this Settlement.

3 • Class Members need not submit a claim to be paid under the Settlement. Upon the
4 Court granting final approval of the Settlement, the Settlement Administrator will mail settlement
5 checks to Class Members who do not opt out of the Settlement.

6 • Out of the Settlement Fund, a sum of \$15,000.00 (Fifteen Thousand Dollars and
7 Zero Cents) shall be allocated as payment for civil penalties under PAGA, 75% of which
8 (\$11,250.00) shall be paid to the Labor and Workforce Development Agency (“LWDA”), and the
9 remaining 25% (\$3,750.00) shall be paid to Settlement Aggrieved Employees (i.e., those Class
10 Members who were employed by Defendants during the PAGA Period), proportionally based on
11 the number of Pay Periods they worked during the PAGA Period, from February 16, 2022 to July
12 25, 2024, regardless of whether or not they otherwise opt out of the Class.

13 • Out of the Settlement Fund, a sum of \$10,000.00 (Ten Thousand Dollars and Zero
14 Cents) will be paid to Plaintiff, as Enhancement Award for his services to the Class and taking the
15 risks of bringing the Action as a class action, which has resulted in monetary benefits to the Class
16 Members, and in exchange for providing a general release for his individual known and unknown
17 claims against Defendants.

18 • Out of the Settlement Fund, a sum of \$6,000.00 (Six Thousand Dollars and Zero
19 Cents) will be paid to the Settlement Administrator for its fees and costs for administering this
20 Settlement. The Parties have agreed to hire Phoenix Settlement Administrators, an experienced
21 class action administrator, to serve as the Settlement Administrator.

22 • Out of the Settlement Fund, a sum of \$58,333.33 (Fifty-Eight Thousand Three
23 Hundred Thirty-Three Dollars and Thirty-Three Cents), which is one-third (33.33%) of the
24 Settlement Fund, will be paid to Class Counsel in reasonable attorneys’ fees for services they have
25 performed in this Action and anticipated to be performed in connection with seeking approval,
26 monitoring the implementation of this Settlement, and doing other work relating to these
27 proceedings in this Action.

28 ///

1 • Out of the Settlement Fund, a sum not to exceed \$20,000.00 (Twenty Thousand
2 Dollars and Zero Cents) will be paid to Class Counsel for reimbursement of costs and other
3 expenses incurred and reasonably anticipated to be incurred in this Action and this settlement.

4 • After deducting the Settlement Administrator's fees and costs, payments for
5 settlement of PAGA claims, Enhancement Award to Plaintiff, and Class Counsel's reasonable
6 attorneys' fees and reimbursement of costs from the Settlement Fund, the Net Settlement Amount,
7 estimated at approximately \$65,666.67 (Sixty-Five Thousand Six Hundred Sixty-Six Dollars and
8 Sixty-Seven Cents), will be allocated Class Members proportionally based on their respective
9 Workweeks during the Class Period. Amounts allocated to Class Members who opt out of the
10 Class shall be re-allocated to Class Members who do not opt out of the Class proportionally based
11 on their respective shares of the Net Settlement Fund.

12 • Any settlement checks that are not cashed after 180 (One Hundred Eighty) calendar
13 days of issuance will be cancelled, and the money shall be transmitted to the California State
14 Controller's Office, to be placed in its Unclaimed Property funds.

15 Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

16 The Settlement provides substantial benefit to the Class. It was achieved after Plaintiff and
17 Class Counsel diligently conducted extensive investigation, discovery, both written discovery and
18 the taking of the corporate witness of Defendants, informal exchange of information to supplement
19 discovery, and after a full-day mediation before the Honorable Howard Broadman (Ret.), a well-
20 regarded mediator in this area of law, in which the Parties and their counsel engaged in extensive
21 discussions and arm's length settlement negotiations, based on the Parties' respective views on the
22 strengths and weaknesses of their respective positions.

23 The Settlement resolves this case favorably for the Class. It promotes judicial efficiency,
24 provides substantial monetary benefit to the Class and the LWDA, eliminates costly and lengthy
25 litigation without any assurance of a better outcome, and eliminates inherent litigation risks that
26 the Class Members may receive nothing.

27 Plaintiff respectfully requests that the Court grant preliminary approval of the settlement,
28 direct the Parties to implement the terms of the settlement, including providing the Notice of

1 Settlement to the Class members, and set a final approval hearing for a date approximately 120
2 days after the preliminary approval date.

3 **II. SUMMARY OF FACTS AND PROCEDURAL INFORMATION**

4 Defendants are in the business of providing portable toilets and related cleaning services to
5 their customers, employing on average of approximately 15 non-exempt employees in various
6 positions, including Service Technicians and Delivery Technicians. Plaintiff was one of those
7 employees.

8 On February 16, 2023, Plaintiff filed a class action complaint against Defendants Rent A
9 Toilet, Inc. and Dalia Palacio, alleging class claims for (1) failure to pay wages for all hours
10 worked, (2) failure to provide meal periods, (3) failure to provide rest periods, (4) failure to
11 provide accurate wage statements, and (5) violation of Business and Professions Code section
12 17200, *et seq.* On February 16, 2023, Plaintiff also sent written notice to the Labor and Workforce
13 Development Agency regarding claims for civil penalties pursuant to the PAGA. (**Exh. 2**)

14 After the expiration of the 60-day waiting period under PAGA, on April 25, 2023, Plaintiff
15 filed a First Amended Complaint, adding the Sixth through the Ninth Causes of Action for civil
16 penalties under PAGA, based on the alleged Labor Code violations asserted in the First through the
17 Fourth Causes of Action. Subsequently, on May 19, 2023, based on stipulation of the Parties,
18 Plaintiff filed the operative Second Amended Complaint, substituting fictitiously sued Doe 1 and
19 Doe 2 defendants with RAT Incorporated and Edison Palacio.

20 In the operative Second Amended Complaint, Plaintiff alleges class action causes of action
21 against Defendants for (1) failure to pay wages for all hours worked, (2) failure to provide meal
22 periods, (3) failure to provide rest periods, (4) failure to provide accurate wage statements, and (5)
23 violation of Business & Professions Code § 17200, *et seq.* Plaintiff also alleges causes of action
24 for civil penalties under PAGA based on the foregoing Labor Code violations for (6) failure to pay
25 wages for all hours worked, (7) failure to provide meal periods, (8) failure to provide rest periods,
26 (9) failure to provide accurate wage statements.

27 On June 30, 2023, Defendants filed an Answer to the operative Second Amended
28 Complaint.

1 Shortly after the commencement of the Action, Plaintiff propounded written discovery,
2 including requests for admission, form and special interrogatories, and requests for production of
3 documents. On October 17, 2023, Plaintiff took the deposition of the corporate witness of
4 Defendants Rent A Toilet, Inc. and RAT Incorporated. Thereafter, counsel for the respective
5 Parties engaged in numerous discussions regarding the factual and legal issues involved in this
6 case, as well as their respective views on the strengths and weaknesses of the claims and potential
7 defenses. Ultimately, the Parties agreed to participate in a private mediation to explore a possible
8 settlement to fully resolve all disputes in the action.

9 On July 25, 2024, the Parties and their counsel participated in a full-day mediation
10 supervised by the Hon. Howard Broadman, an experienced and well-regarded mediator in this area
11 of law. Prior to the mediation, the Parties engaged in informal exchange of information to
12 augment discovery responses. The Parties were able to reach the terms of the settlement in
13 principle, and executed a short-form settlement agreement memorializing the key terms of the
14 settlement. In the ensuing weeks, the Parties and their counsel worked diligently until all the
15 terms of the Agreement are finalized.

16 Plaintiff and Class Counsel recognize the expense and length of continued proceedings
17 necessary to litigate their disputes through trial and through any possible appeals. Plaintiff and
18 Class Counsel have also taken into account the uncertainty and inherent risks of the outcome of
19 further litigation, the complexities and uncertain merits of their claims and defenses, the collection
20 risks, and the delays inherent in further litigation. Plaintiff and Class Counsel have also taken into
21 account Defendants' agreement to enter into the Settlement that confers substantial benefits to the
22 Class Members. Therefore, Plaintiffs and Class Counsel have concluded that the Settlement set
23 forth in this Agreement is a fair, adequate and a reasonable Settlement, and is in the best interests
24 of the Class.

25 **III. THE SETTLEMENT SHOULD RECEIVE PRELIMINARILY APPROVAL**

26 "It is well recognized that settlement agreements are judicially favored as a matter of sound
27 public policy." *Speed Shore Corp. v. Denda* (9th Cir. 1979) 605 F.2d 469, 473. Approval of a
28 class action settlement involves a two-step process in which the Court first determines whether a

1 proposed class action settlement should receive preliminary approval and then, after notice is given
2 to class members, whether final approval is warranted. California Rule of Court 3.769, *et seq.*
3 The decision to approve or reject a proposed settlement is committed to the sound discretion of the
4 Court. *Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal. App. 4th 399, 407; *Wershba*
5 *v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 234-35.

6 “Although the court gives regard to what is otherwise a private consensual agreement
7 between the parties, the court must also evaluate the proposed settlement agreement with the
8 purpose of protecting the rights of the absent class members who will be bound by the settlement.”
9 *Wershba*, 91 Cal.App.4th at p. 245. “The court must therefore scrutinize the proposed settlement
10 agreement to the extent necessary to ‘reach a reasoned judgment that the agreement is not the
11 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
12 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’” (*Id.*)

13 The settlement is entitled to “a presumption of fairness . . . where: (1) the settlement is
14 reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow
15 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
16 the percentage of objectors is small.” *Kullar v. Foot Locker Retail* (2008) 168 Cal.App.4th 116,
17 128, quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.

18 To determine whether a settlement is fair, reasonable and adequate, courts consider several
19 well-recognized factors, including “the strength of plaintiffs’ case, the risk, expense, complexity
20 and likely duration of further litigation, the risk of maintaining class action status through trial, the
21 amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
22 the experience and views of counsel” *Munoz*, 186 Cal. App. 4th at 407.

23 “There is usually an initial presumption of fairness when a proposed class settlement . . .
24 was negotiated at arm’s length by counsel for the class,” but “the court should not give rubber-
25 stamp approval.” *Kullar*, 168 Cal.App.4th at 130. “Rather, to protect the interests of absent class
26 members, the court must independently and objectively analyze the evidence and circumstances
27 before it in order to determine whether the settlement is in the best interests of those whose claims
28 will be extinguished.” *Id.* “To make this determination, the factual record before the . . . court

1 must be sufficiently developed.” *Id.*

2 “The court undoubtedly should give considerable weight to the competency and integrity of
3 counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement
4 represents an arm’s length transaction entered without self-dealing or other potential misconduct.”
5 *Kullar*, 168 Cal.App.4th at 129. “The court must stop short of the detailed and thorough
6 investigation that it would undertake if it were actually trying the case...” *Id.* at 130.

7 **IV. THE REQUIREMENTS FOR CLASS ACTION ARE SATISFIED**

8 A proposed class action settlement must meet the requirements of a class action, except the
9 manageability requirement. *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620. Courts
10 must pay “undiluted, even heightened, attention” to class certification requirements in a settlement
11 context. *Id.* Importantly, however, in a stipulated class for settlement purposes, the Court need not
12 inquire whether the case, if tried, would present intractable management problem, because the
13 proposed settlement would eliminate any trial. *Id.* at 621.

14 Two basic requirements for a class action: “The first is existence of an ascertainable class,
15 and the second is a well-defined community of interest in the question of law and fact involved.”
16 *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 809. Whether a class is “ascertainable” within the
17 meaning of CCP § 382 “is determined by examining (1) the class definition, (2) the size of the
18 class, and (3) the means available for identifying the class members.” *Reyes v. San Diego County*
19 *Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271. The “community of interest”
20 requirement embodies three factors: (1) predominant questions of law or fact, (2) class
21 representatives whose claims or defenses are typical of the class, and (3) class representatives who
22 can adequately represent the class. *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.

23 **1. Ascertainability.**

24 “Ascertainability is required in order to give notice to putative class members as to whom
25 the judgment in the action will be res judicata.” *Aguilar v. Cintas Corp. No. 2* (2006) 144
26 Cal.App.4th 121, 135. The class members must be “readily identifiable without unreasonable time
27 and expense.” *Hale v. Sharp Healthcare* (2014) 232 Cal.App.4th 50, 59-60. A class may be
28 ascertainable even if the definition includes ultimate facts or conclusions of law. *Hicks v.*

1 *Kaufman & Broad* (2001) 89 Cal.App.4th 908, 918-916. The class definition need not include the
2 claims asserted; the notice to the class is the proper place to explain the relationship between the
3 class and the legal claims being made in the case. *Hicks*, 89 Cal.App.4th at 915.

4 Here, the identities of the Class Members can be ascertained from Defendants' employee
5 records. Indeed, Defendants have ascertained that there are 107 individuals in the proposed Class.
6 Thus, the ascertainability requirement is satisfied.

7 **2. Numerosity.**

8 Class action is appropriate when the parties are so numerous that individual joinder is
9 impracticable. *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 739-740. There
10 is no minimum number of putative class members as a matter of law for maintenance of a class
11 action. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934. "Generally speaking, courts
12 will find that the 'numerosity' requirement has been satisfied when the class is comprised of 40 or
13 more members, and will find that it has not been satisfied when the class comprises 21 or fewer."
14 *Ansari v. New York Univ.* (S.D. N.Y. 1998) 179 F.R.D. 112, 114.

15 There are 107 individuals in the proposed Class, making joinder impracticable. The
16 numerosity requirement is satisfied.

17 **3. Commonality.**

18 The requirement for common questions of law or fact to predominate in a class action
19 "means each member must not be required to individually litigate numerous and substantial
20 questions to determine his or her right to recover following the class treatment; and the issues
21 which may be jointly tried, when compared with those requiring separate adjudication, must be
22 sufficiently numerous and substantial to make class action advantageous to the judicial process and
23 to the litigants." *Aguilar v. Cintas Corporation No. 2* (2006) 144 Cal.App.4th 121, 132.

24 The claims alleged in this action involve common questions of facts and law. The same
25 policies and procedures being challenged in this action applied to all members of the Class, and the
26 claims covered by the Released Claims involve the same questions of law. Thus, the commonality
27 requirement is satisfied.

28 ///

1 **4. Typicality.**

2 Typicality means the class representatives' claims are similar to those of class members.
3 Typicality can refer to the nature of the claims of the class representatives as well as to the general
4 facts from which such claims arose. The claims of the class representative need not be identical to
5 those of the class members. *B.W.J. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
6 1341, 1347. A class representative's claims are "typical" of those of the class members "if they
7 are reasonably co-extensive with those of absent class members; they need not be substantially
8 identical." *Hanlon v. Chrysler Corporation* (1998) 150 F.3d 1011, 1020.

9 Plaintiff's claims are typical of those they seek to represent in this Settlement. Plaintiff is a
10 member of the Class, and he was subjected to the same policies and practices being challenged in
11 this action. The claims they assert and covered by the Released Claims can be asserted by other
12 members of the Class. Thus, the typicality requirement is satisfied.

13 **5. Adequacy of Representation.**

14 The "adequacy of representation" requirement means that (a) the proposed class
15 representative does not have any conflicts of interest with the class members and (b) the class
16 representative is represented by qualified counsel. *Hanlon v. Chrysler Corporation* (1998) 150
17 F.3d 1011, 1020. Here, there is no conflict of interest between Plaintiff and the members of the
18 Class, and Plaintiff is represented by counsel who are experienced in wage-and-hour class
19 litigations, who have diligently pursued the claims of the Class members. Thus, the adequacy of
20 representation requirement is satisfied.

21 **6. Risk of Class Status.**

22 If the case is not resolved in a settlement, there is always a risk that the case or claim is not
23 certified to proceed as a class, and the risk of decertification after an initial certification. *Weinstat*
24 *v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized
25 that trial courts should retain some flexibility in conducting class actions, which means, under
26 suitable circumstances, entertaining successive motions on certification if the court subsequently
27 discovers that the propriety of a class action is not appropriate.")

28 ///

1 Plaintiff and Class Counsel properly considered those risks, which might result in Class
2 Members receiving nothing.

3 **V. THE SETTLEMENT IS FAIR AND REASONABLE**

4 In reviewing a class action settlement, “[t]he most important factor is the strength of the
5 case for plaintiffs on the merits, balanced against the amount offered in settlement.” *Kullar*, 168
6 Cal.App.4th at 130.

7 **A. The Strength Of Plaintiff’s Claims and Range of Class Damages**

8 1. Unpaid Wages and Waiting Time Penalty-Wages

9 Plaintiff alleges that Defendants regularly failed to provide a full 30-minute meal period for
10 each workday, but deducted 30 minutes from employees’ daily hours worked, resulting in a failure
11 to pay wages for all hours worked. Defendants dispute these allegations.

12 Assuming Plaintiff prevails on the merits and on the class certification issues, the estimated
13 total class damages for the unpaid wages claim is approximately \$96,525. (Jusuf Decl. ¶ 15)

14 Plaintiff contends that the failure to pay wages of all hours worked gives rise to liability to
15 pay waiting time penalty-wages under Labor Code § 203. *Maldonado v. Epsilon Plastics* (2018)
16 22 Cal.App.5th 1308, 1324 (“If the wages are not paid in accordance with law, the employee’s
17 wages ‘shall continue as a penalty’ for up to 30 days.”) Liability under Labor Code § 203 need
18 “not be based on a deliberate evil purpose to defraud the worker of wages which the employer
19 knows are due.” *Armenta v. Osmose* (2005) 135 Cal.App.4th 314, 325. “As used in section 203,
20 ‘willful’ merely means that the employer intentionally failed or refused to perform an *act which*
21 *was required to be done.*” *Id.* (italic in original). However, “a good faith dispute that any wages
22 are due will preclude imposition of waiting time penalties under Section 203.” *Aramal v. Cintas*
23 *Corporation No. 2* (2008) 163 Cal.App.4th 1157, 1201.

24 Assuming Plaintiff prevails on the merits and on the class certification issues, the total class
25 damages for waiting time penalty-wages is approximately \$397,440. (Jusuf Decl. ¶ 16)

26 2. Meal Periods and Rest Periods

27 “Under California law, employers must generally provide employees with one 30-minute
28 meal period that begins no later than the end of the fifth hour of work and another 30-minute meal

1 period that begins no later than the end of the 10th hour of work.” *Donohue v. AMN Services, LLC*
2 (2021) 11 Cal.5th 58, 61. “If an employer does not provide an employee with a compliant meal
3 period, then ‘the employer shall pay the employee one additional hour of pay at the employee’s
4 regular rate of compensation for each workday that the meal ... period is not provided.’” *Id.*

5 Moreover, “Employees are entitled to 10 minutes’ rest for shifts from three and one-half to
6 six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for
7 shifts of more than 10 hours up to 14 hours, and so on.” *Brinker v. Sup. Ct.* (2012) 53 Cal.4th
8 1004, 1029. A failure to do so gives rise to an obligation to pay premium wages due under Labor
9 Code § 226.7.

10 Plaintiff contends that Defendants regularly failed to provide proper meal periods and rest
11 periods, and failed to pay premium wages due under Labor Code § 226.7 in lieu thereof.
12 Defendants dispute these allegations.

13 Assuming Plaintiff prevails on the merits and on the class issues, the estimated total class
14 damages for the meal periods claim is approximately \$193,050. (Jusuf Decl. ¶ 17) The estimated
15 class damages for the rest periods claim is also approximately \$193,050. (*Id.*)

16 3. Wage Statement Violation

17 Plaintiff alleges that Defendants failed to provide Plaintiff and other employees with
18 accurate wage statements, in violation of Labor Code § 226(a). Plaintiff further alleges that the
19 violation was “knowing and intentional” within the meaning of Labor Code § 226(e), and therefore
20 they are entitled “to recover the greater of all actual damages or fifty dollars (\$50) for the initial
21 pay period in which a violation occurs and one hundred dollars (\$100) per employee for each
22 violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars
23 (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.”

24 Plaintiff contends that the wage statements were inaccurate because the total hours worked
25 reported on the wage statements were inaccurate, and the wage statements failed to show premium
26 wages due under Labor Code § 226.7. *Naranjo v. Spectrum Security Services, Inc.* (2022) 13
27 Cal.5th 93, 121 (“In sum, we hold that an employer’s obligation under Labor Code section 226 to
28 report wages earned includes an obligation to report premium pay for missed breaks.”)

1 Assuming Plaintiff prevails on the merits and on the class issues, the class damages for this
2 claim is approximately \$11,300. (Jusuf Decl. ¶ 18)

3 4. PAGA Claims

4 Settlement of PAGA claims requires court approval. Labor Code § 2699(l)(2) (“The
5 superior court shall review and approve any settlement of any civil action filed pursuant to this
6 part. The proposed settlement shall be submitted to the agency at the same time that it is submitted
7 to the court.”) In compliance with this requirement, a copy of the Agreement, as well as the
8 moving papers of this motion, are submitted to the LWDA concurrently with the filing of this
9 motion. (Please see accompanying Proof of Service)

10 The requirements for a class action do not apply to a representative suit seeking civil
11 penalties under PAGA. *Arias v. Superior Court* (2009) 46 Cal.4th 969. A PAGA action “is
12 fundamentally a law enforcement action designed to protect the public and not to benefit private
13 parties.” *Id.* at 980. As such, employees cannot opt out of a PAGA settlement. *Robinson v.*
14 *Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476, 482. “The statute of limitations for PAGA
15 claims is one year.” *Brown v. Superior Court* (2018) 28 Cal.App.5th 824, 839.

16 Under PAGA, “the civil penalty is one hundred dollars (\$100) for each aggrieved employee
17 per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee
18 per pay period for each subsequent violation.” Labor Code § 2699(f)(2). Any civil penalties
19 recovered shall be paid 75% to the LWDA, and 25% to the aggrieved employees. Labor Code §
20 2699(i).

21 PAGA further provides that “a court may award a lesser amount than the maximum civil
22 penalty amount specified by this part if, based on the facts and circumstances of the particular
23 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
24 confiscatory.” Labor Code § 2699(e)(2). The Court of Appeal has held that the rate for the “initial
25 violation” applies to the first and following violations, and the higher penalty rate for “subsequent”
26 violation applies only after the company has been on notice of a prior violation. *Amaral v. Cintas*
27 *Corporation No. 2* (2008) 163 Cal.App.4th 1157, 1209.

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1 The theoretical total maximum civil penalties under PAGA is approximately \$312,000,
2 calculated as follows:

3 Unpaid Wages (\$100 x 2,501 total pay periods)	\$250,100
4 Meal Periods (\$100 x 2,501 total pay periods)	\$250,100
5 Rest Periods (\$100 x 2,501 total pay periods)	\$250,100
6 Wage Statements (\$100 x 2,501 total pay periods)	<u>\$250,100</u>
7 Total	<u><u>\$1,000,400</u></u>

8 Under the Agreement reached by the Parties, a sum of \$15,000 will be paid out of the
9 Settlement Fund as civil penalties under PAGA, 75% (\$11,250) of which will be paid to the
10 LWDA and the remaining 25% (\$3,750) will be paid to the Aggrieved Employees, proportionally
11 based on their respective Pay Periods during the PAGA Period. The amounts allocated as PAGA
12 recovery will be mailed to those employees who are Aggrieved Employees, whether or not they
13 otherwise opt out of the Class, consistent with the principles that class requirements (including the
14 opt-out feature) do not apply to PAGA claims.

15 The Parties arrived at this amount based on the facts and circumstances of this case, in light
16 of disputed factual and legal issues involved in the claims against Defendants, and in consultation
17 with the mediator. In the context of class settlements, a trial court may approve a class settlement
18 that assigns no payment for civil penalties under PAGA. *Nordstrom Comm. Cases* (2010) 186
19 Cal.App.4th 576. The proposed settlement of the PAGA claims is fair and reasonable under the
20 circumstances, in light of the disputed factual and legal issues, the substantial benefits under the
21 settlement, and the inherent risks of litigation without any assurance of a better result.

22 5. Limited Releases

23 In exchange for the settlement payments, Plaintiff and Class Members who do not opt out
24 of the Settlement will be deemed to have released Defendants Rent A Toilet, Inc., RAT
25 Incorporated, Dalia Palacio, Edison Palacio, and each of its predecessors in interest, successors in
26 interest, affiliates, shareholders, directors, officers, managers, employees, attorneys, and agents of

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1 the limited Released Class Claims, defined as follows:

2 Any and all claims alleged against Defendants in the First through the Fifth Causes
3 of Action in the operative Second Amended Complaint, filed May 19, 2023, arising
4 during the Class Period based on the facts alleged therein, including claims for
5 alleged failure to pay wages for all hours worked, failure to pay waiting time
6 penalty-wages, failure to provide meal periods and failure to pay premium wages in
7 lieu thereof, failure to provide rest periods and failure to pay premium wages in lieu
8 thereof, and failure to provide accurate wage statements, in alleged violations of
9 California Labor Code sections 200, 201, 202, 203, 226, 510, 512, 226.7, 1194,
10 1197, Business and Professions Code section 17200, and the applicable provisions of
11 the Wage Orders.

12 (Exh. 1: Agreement, pp. 5, 6; Exh. A to Agreement: Notice of Settlement, pp. 3, 4)

13 Similarly, the scope of the release by Aggrieved Employees are limited to the Released
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PAGA Claims, defined as follows:

Any and all claims for civil penalties brought under the Labor Code Private
Attorneys General Act (“PAGA”), codified at Labor Code section 2698, et seq.,
alleged against Defendants in the Sixth through the Ninth Causes of Action in the
operative Second Amended Complaint, filed May 19, 2023, arising during the
PAGA Period based on the facts alleged therein and set forth in the PAGA Claim
Notice dated February 16, 2023, a copy of which is attached to the operative Second
Amended Complaint, including claims for civil penalties based on alleged failure to
pay wages for all hours worked, failure to pay waiting time penalty-wages, failure to
provide meal periods and failure to pay premium wages in lieu thereof, failure to
provide rest periods and failure to pay premium wages in lieu thereof, and failure to
provide accurate wage statements, in alleged violations of California Labor Code
sections 200, 201, 202, 203, 226, 510, 512, 226.7, 1194, 1197, Business and
Professions Code section 17200, and the applicable provisions of the Wage Orders.

(Exh. 1: Agreement, pp. 5, 6; Exh. A to Agreement: Notice of Settlement, pp. 3, 4)

B. The Risk, Expense, Complexity And Likely Duration Of Further Litigation

In light of the disputed factual and legal issues, the inherent risks of litigation, both on the
merits and at certification, and other factors discussed above, the proposed settlement is in the best
interest of the Class, as it eliminates the risk that Class Members will recover nothing.

In addition, the proposed settlement also eliminates the need for a lengthy, uncertain, and
expensive trial or series of trials and appeals, without assurance of a better outcome for the Class.
By eliminating the risk of uncertain outcomes in litigation, the Settlement Agreement also reflects
economies of time, effort, and expense by eliminating the need for individual litigation on what
are, on average, relatively modest claims. All of these factors weigh heavily in favor of approving
the settlement.

1 **C. The Amount Offered In Settlement Is Fair And Reasonable**

2 Under the Settlement, Defendant has agreed to pay, and in fact has deposited the sum of
3 \$175,000.00 to establish a non-reversionary Settlement Fund, to pay Class Members' claims,
4 PAGA penalties, an Enhancement Award for Class Representative, the costs of settlement
5 administration, and reasonable attorney fees and costs reimbursement to Class Counsel.

6 The \$175,000 Settlement Fund represents approximately 19.63% of the maximum class
7 damages of \$891,365 (\$96,525 in unpaid wages, \$397,440 in waiting time penalty-wages,
8 \$193,050 in meal period claim, \$193,050 in rest period claim, and \$11,300 in wage statement
9 violation claim. With the maximum PAGA penalties included, the \$175,000 Settlement Fund
10 represents approximately 9.25% of the theoretical maximum recovery of \$1,891,765 (\$891,365 in
11 maximum class damages + \$1,000,400 in maximum PAGA civil penalties).

12 This is a very good result, given the disputed factual and legal issues involved, the inherent
13 litigation risks, both on class certification issues and on the merits, the risks and costs of prolonged
14 further litigation without any assurance of a better result, as discussed above, and in light of the
15 substantial benefit available to the Class Members and the LWDA now under the Settlement.

16 Moreover, throughout the mediation, Defendants assert that the nature of the business
17 Defendants are in requires significant cashflows, and Defendants will need up to July 31, 2025 to
18 accumulate sufficient funds to fund the Settlement. Plaintiff and Class Counsel, with assistance of
19 the Mediator, took all these factors into account in arriving at the Settlement Fund amount, which
20 Plaintiff and Class Counsel believe to be fair and reasonable.

21 As set forth in the proposed Notice of Settlement, each Class member will be given the
22 opportunity to opt out of the Settlement, allowing those who feel they have claims that are greater
23 than the benefits they can receive under this Settlement, to pursue their own claims.

24 The settlement amount is, of course, a compromise figure. It took into account risks related
25 to liability, damages, the availability of class certification, the defenses asserted by Defendants.
26 *Wershba*, 91 Cal. App. 4th at 246, 250 ("Compromise is inherent and necessary in the settlement
27 process...even if the relief afforded by the proposed settlement is substantially narrower than it
28 would be if the suits were to be successfully litigated, this is no bar to a class settlement because

1 the public interest may indeed be served by a voluntary settlement in which each side gives ground
2 in the interest of avoiding litigation”).

3 **VI. DISTRIBUTION OF UNCASHED CHECKS**

4 Any settlement checks that are not cashed after the expiration of the check cashing period
5 will be cancelled, and the money shall be transmitted to the California State Controller’s Office, to
6 be placed in its Unclaimed Property funds.

7 **VII. THE PROPOSED CLASS NOTICE SHOULD BE APPROVED**

8 Class notice is sufficient if (1) it has a “reasonable chance of reaching a substantial
9 percentage of the class members;” and (2) its contents “fairly apprise[s] the class members of the
10 terms of the proposed compromise and of the options open to dissenting class members.” *Wershba*,
11 91 Cal. App. 4th at 251; *see also* Cal. R. Ct., Rule 3.769(f). The proposed notice meets all these
12 requirements. Upon Court approval, the notice will be translated into Spanish, and will be mailed
13 in English and Spanish by the Administrator to the Class Members.

14 **VIII. THE PROPOSED ATTORNEYS’ FEES AND COSTS ARE REASONABLE**

15 The trial court has broad discretion to order an award of attorneys’ fees. *Wershba*, 91 Cal.
16 App. 4th at 234-35. “Courts recognize two methods for calculating attorney fees in civil class
17 actions: the lodestar/multiplier method and the percentage of recovery method.” *Id.* at 254;
18 *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). Class Counsel intend to seek
19 an award of attorneys’ fees based on the “percentage of recovery/common fund” theory. The
20 purpose of the common fund/percentage approach is to “spread litigation costs proportionally
21 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.”
22 *Vincent*, 557 F.2d at 769.

23 The California Supreme Court has re-affirmed the use of the percentage of the common
24 fund approach for determining attorney fee awards. *Laffitte v. Robert Half International, Inc.*
25 (2016) 1 Cal.5th 480, 486 (“We clarify today that when an attorney fee is awarded out of a
26 common fund preserved or recovered by means of litigation, the award is not per se unreasonable
27 merely because it is calculated as a percentage of the common fund.”) In *Laffitte*, the trial court
28 approved, over the objection of one class member, an award of attorney fees of \$6,333,333.33,

1 which was one-third (33.33%) of the gross settlement amount of \$19 million. *Id.* at 486.

2 The common fund approach is preferable to the lodestar because: (1) it aligns the interests
3 of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by
4 providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on
5 judicial resources. *In re Activision Securities Litigation*, (N.D. Cal 1989) 723 F. Supp. 1373, 1378.

6 Under the Settlement, and subject to the Court's approval, a sum of \$58,333.33, which is
7 one-third (33.33%) of the Settlement Fund, will be paid to Class Counsel (out of the Settlement
8 Fund) in reasonable attorneys' fees for services performed in this action and future services
9 anticipated to be performed in connection with seeking approval and monitoring the
10 implementation of this Settlement. In addition, a sum up to \$20,000.00 will be paid out of the
11 Settlement Fund to Class Counsel for reimbursement of costs and other expenses they incurred in
12 this action relating to claims asserted against these Defendants. The proposed attorneys' fees and
13 cost reimbursement are disclosed to the Class Members in the proposed Class Notice.

14 Plaintiff is seeking \$58,333.33, which is one-third (33.33%) of the common fund. The
15 request is reasonable in class action settlements. *In re Consumer Privacy Cases* (2009) 175
16 Cal.App.4th 545, 558, fn. 13 ("Empirical studies show that, regardless of whether the percentage
17 method or the lodestar method is used, fee award in class actions average around one-third the
18 recovery.")

19 The requested fee amount is reasonable in a cross-check to the lodestar approach. Under
20 the lodestar approach, the attorney fee amount is calculated by multiplying the hours spent by a
21 reasonable hourly rate, and then enhance the amount with a multiplier, if appropriate. *Wershba v.*
22 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254. "Multiplier can range from 2 to 4 or even
23 higher." *Id.* at 255.

24 To date Class Counsel have spent a total of no less than 123.30 hours of attorney time
25 reasonably valued at \$80,145. in this litigation. (Jusuf Decl. ¶ 22) The fee amount under the
26 lodestar approach exceeds the requested amount under the Agreement.

27 Class Counsel have borne, and continue to bear, the entire risk and cost of litigation and
28 collection associated with this class action on a pure contingency basis. Based on past experience

1 in wage and hour settlements, Class Counsel is confident that they will be called upon, after Class
2 Notice has been mailed, to expend substantial additional time assisting Class Members with
3 understanding the Settlement terms, preparing and documenting claims, presenting and resolving
4 claim disputes, and other individual Class Member issues.

5 To date, Class Counsel have incurred a total of no less than \$18,588.85 in this action.
6 (Jusuf Decl. ¶ 25; **Exh. 4**: Class Counsel's costs) A summary of these costs is as follows:

Court filing fees (incl. e-filing fees) and PAGA filing fee	\$1,988.19
Deposition Fee	\$2,349.56
Expert Consultant (time records data analysis)	\$6,240.00
Mediation Fee	\$7,500.00
Other Costs	\$511.10
Total	\$18,588.85

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12 These costs were necessary and reasonable to properly prosecute the claims to obtain the
13 result for the Class Members. In addition to the amounts incurred, Plaintiff anticipates incurring
14 additional amounts in filing fees and related fees relating to the motions for preliminary and final
15 approval of the settlement, and other costs related to monitoring and implementing the settlement.

16 Under the Settlement, a sum not to exceed \$20,000 will be paid out of the Settlement Fund
17 for reimbursement of costs incurred by Class Counsel.

18 **IX. THE ENHANCEMENT AWARDS TO NAMED PLAINTIFFS ARE REASONABLE**

19 Under the Settlement, a sum of \$10,000 shall be paid to Plaintiff, to be paid out of the
20 Settlement Fund, in (a) Enhancement Award for his services to the Class, and taking the risks of
21 bringing this Action as a class action, which has resulted in substantial benefits to the Class, and
22 (b) in exchange for the general release of Plaintiff's individual known and unknown claims against
23 Defendants. (**Exh. 1**: Agreement, pp. 4, 12, 15-16)

24 Plaintiff has devoted a great deal of time and work assisting counsel in the case, frequently
25 communicated with counsel and provided important information regarding defendants'
26 employment practices. (Jusuf Decl. ¶ 21; Please also see Declaration of Romero Galvan)

27 Plaintiff risked intrusive discovery and the personal peril of being perceived as a non-loyal
28 employee -- a perception that could adversely affect her future employment prospects. *See, e.g.,*

1 *Roberts v. Texaco* (S.D.N.Y. 1997) 979 F.Supp. 185, 201 (the assumption of potentially career-
2 damaging risks to vindicate the rights of fellow employees may justify a substantial enhancement).

3 The requested Enhancement Awards are reasonable, in light of the sacrifices Plaintiff has
4 made and the substantial benefit they generated for the Class.

5 **X. CONCLUSION**

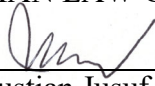
6 Plaintiff's motion for preliminary approval should be granted.

7 The Parties should be ordered to implement the terms of the Agreement, and a Final
8 Approval Hearing should be scheduled for a date approximately 120 days after the preliminary
9 approval date.

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11 Dated: October 23, 2024

Respectfully submitted,

LAW OFFICE OF JUSTIAN JUSUF, APC
MAJARIAN LAW GROUP, APC

By: 

Justian Jusuf

Attorneys for Plaintiff Romero Galvan,
individually and on behalf of others similarly
situated