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individually and on behalf of others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12 **(SPRING STREET COURTHOUSE)**

13 ADOLFO GUADARRAMA DIAZ,
14 individually and on behalf of others similarly
15 situated,

16 Plaintiff,

17 vs.

18 REPUBLIC NATIONAL SECURITY,
19 THOMAS W. KEMP, ADELA KEMP, and
DOES 1 through 50,

20 Defendants.

) CASE NO.: 23STCV03317

) CLASS ACTION

) Assigned For All Purposes To:

) Judge: Hon. Stuart M. Rice

) Dept.: 1

) **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: October 15, 2024

) Time: 10:30 a.m.

) Dept.: 1

) Complaint Filed: February 15, 2023

1 TO EACH PARTY AND EACH ATTORNEY OF RECORD:

2 PLEASE TAKE NOTICE THAT on October 15, 2024 at 10:30 a.m. or as soon as the
3 matter can be heard in Department 1 of this Court, located at 312 North Spring Street, Los
4 Angeles, CA 90012, Plaintiff Adolfo Guadarrama Diaz (“Plaintiff”) will, and hereby does, move
5 the Court for an order granting preliminary approval of a class action and PAGA settlement
6 between Plaintiff and Defendants Republic National Security, Thomas W. Kemp, and Adela Kemp
7 (“Defendants”) (“Plaintiff” and “Defendants” are referred to collectively as the “Parties”) upon the
8 terms and conditions set forth in the Settlement Agreement (“Agreement”), a copy of which is
9 submitted currently herewith as Exhibit 1 to the Declaration of Justian Jusuf. The Settlement
10 Agreement and its attached Notice of Class and PAGA Settlement are based on the model form
11 provided by the Los Angeles Superior Court for “Class & PAGA combined Settlement
12 Agreement,” available at the Court’s website: <https://www.lacourt.org/division/civil/CI0044.aspx>.

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

- 14 1. Certifying a Class for settlement purposes;
- 15 2. Appointing Plaintiff Adolfo Guadarrama Diaz as Class Representative for
16 settlement purposes;
- 17 3. Appointing Plaintiff’s Counsel, Justian Jusuf of Law Office of Justian Jusuf APC
18 and Sahag Majarian II of Majarian Law Group, as Class Counsel for settlement
19 purposes;
- 20 4. Approving the proposed Notice of Class and PAGA Settlement, attached to the
21 Settlement Agreement, which will be translated into Spanish and mailed in English
22 and Spanish to Class Members and Aggrieved Employees; and
- 23 5. Setting a Final Approval Hearing for a date approximately 120 (One Hundred
24 Twenty) days after the preliminary approval date.

25 Pursuant to Labor Code § 2699(l)(2), electronic PDF copies of the Settlement Agreement
26 and the moving papers are being submitted to the Labor and Workforce Development Agency
27 (“LWDA”) via its PAGA website: [https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
28 [Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html).

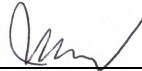
1 This motion is brought pursuant to Rule 3.769 of the California Rules of Court and Section
2 2699(l) of the Labor Code, and is based upon this notice and motion, the attached memorandum of
3 points and authorities, the Declarations of Justian Jusuf and Adolfo Guadarrama Diaz, submitted
4 concurrently herewith, the records and files in this action, and any other further evidence or
5 argument that the Court may properly receive at or before the hearing.

6 Plaintiff does not anticipate any opposition to this motion.

7 Respectfully submitted,

8 Dated: June 5, 2024

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

9
10 By: 
Justian Jusuf

11 Attorneys for Plaintiff Adolfo Guadarrama
12 Diaz, individually and on behalf of others
13 similarly situated
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1 **I. INTRODUCTION**

2 Plaintiff Adolfo Guadarrama Diaz (“Plaintiff”) and Defendants Republic National Security
3 (“RNS”), Thomas W. Kemp, and Adela Kemp (“Defendants”) (collectively the “Parties”) have
4 reached a settlement to fully resolve the alleged class claims and alleged claims for civil penalties
5 under the Labor Code Private Attorneys General Act (“PAGA”), upon the terms and conditions set
6 forth in the Settlement Agreement (“Agreement”), a copy of which is submitted concurrently
7 herewith as **Exh. 1** to the Declaration of Justian Jusuf (“Jusuf Decl.”)¹. The Settlement Agreement
8 and its attached Notice of Class and PAGA Settlement are based on the model form provided by
9 the Los Angeles Superior Court for “Class & PAGA combined Settlement Agreement,” available
10 at the Court’s website: <https://www.lacourt.org/division/civil/CI0044.aspx>.

11 Pursuant to Labor Code § 2699(l)(2), electronic PDF copies of the Settlement Agreement
12 and the moving papers are being submitted to the Labor and Workforce Development Agency
13 (“LWDA”) via its PAGA website: [https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
14 [Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html). (See Proof of Service, filed concurrently herewith.)

15 The Parties reached the terms of the Settlement following a full-day mediation with the
16 Hon. Thomas Willhite, Jr. (Ret.), in which the Parties and their counsel exchanged their respective
17 views on the factual and legal issues, and subsequently accepting Justice Willhite’s Mediator’s
18 Proposal. Prior to the mediation, the Parties engaged in informal exchange of information to allow
19 both sides to engage in meaningful settlement discussions and make informed decisions.

20 A summary of the terms of the Settlement is as follows:

- 21 • For purposes of this Settlement only, Defendants stipulate to certification of a Class
22 defined as “any and all persons employed by RNS in California and classified as a non-exempt
23 employees during the Class Period, from February 15, 2019 to February 15, 2024.” There are 23
24 Class Members, and they worked a total of 261 Workweeks during the Class Period.
- 25 • Defendants shall pay a sum of \$115,000.00 (One Hundred Fifteen Thousand
26 Dollars and Zero Cents) in Gross Settlement Amount to establish a non-reversionary Settlement

27 _____
28 ¹ All Exhibits are submitted as attachments to the Declaration of Justian Jusuf, filed
concurrently herewith.

1 Fund to pay for claims of the Class Members who do not opt out of the settlement, civil penalties
2 under the PAGA, Class Representative Service Payment to Plaintiff, the Settlement
3 Administrator's fees and expenses, and reasonable attorneys' fees and costs reimbursement to
4 Class Counsel, in exchange for the releases provided in the Settlement Agreement.

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

8 • Out of the Settlement Fund, a sum of \$20,000.00 (Twenty Thousand Dollars and
9 Zero Cents) shall be allocated as payment for civil penalties under PAGA, 75% of which
10 (\$15,000.00) shall be paid to the Labor and Workforce Development Agency ("LWDA"), and the
11 remaining 25% (\$5,000.00) shall be paid to Aggrieved Employees, proportionally based on the
12 number of Pay Periods they worked during the PAGA Period, from February 15, 2022 to February
13 15, 2024, regardless of whether or not they otherwise opt out of the Class. There is a total of 19
14 Aggrieved Employees, and they worked a total of 106 Pay Periods during the PAGA Period.

15 • Out of the Settlement Fund, a sum of \$5,000.00 (Five Thousand Dollars and Zero
16 Cents) will be paid to Plaintiff, as Service Payment for his services to the Class and taking the
17 risks of bringing the Action as a class action, which has resulted in substantial benefits to the Class
18 Members.

19 • Out of the Settlement Fund, a sum of \$4,500.00 (Four Thousand and Five Hundred
20 Dollars and Zero Cents Cents) will be paid to the Settlement Administrator for its fees and costs
21 for administering this Settlement. The Parties have agreed to hire Phoenix Settlement
22 Administrators, an experienced class action administrator, to serve as the Settlement
23 Administrator.

24 • Out of the Settlement Fund, a sum of \$38,333.33 (Thirty-Eight Thousand Three
25 Hundred Thirty-Three Dollars and Thirty-Three Cents), which is one-third (33.33%) of the Gross
26 Settlement Amount, will be paid to Class Counsel in reasonable attorneys' fees for services they
27 have performed in this Action and anticipated to be performed in connection with seeking
28 approval, monitoring the implementation of this Settlement, and doing other work relating to these

1 proceedings in this Action.

2 • Out of the Settlement Fund, a sum not to exceed \$14,000.00 (Fourteen Thousand
3 Dollars and Zero Cents) will be paid to Class Counsel for reimbursement of costs and other
4 expenses incurred and reasonably anticipated to be incurred in this Action.

5 • After deducting the Settlement Administrator's fees and costs, payments for
6 settlement of PAGA claims, Class Representative Service Payment to Plaintiff, and Class
7 Counsel's reasonable attorneys' fees and reimbursement of costs from the Settlement Fund, the
8 Net Settlement Amount, estimated at approximately \$33,166.67 (Thirty-Three Thousand One
9 Hundred Sixty-Six Dollars and Sixty-Seven Cents), will be allocated Class Members
10 proportionally based on their respective Pay Periods during the Class Period. The payroll taxes
11 (both the employee's portion and the employer's portion) on portion of settlement payments
12 deemed as wages will be paid out of the Net Settlement Amount allocated to the Class Members.
13 For purposes of the Settlement, 50% of the Settlement Payments to Class Members are deemed
14 wages, and the other 50% are deemed interest and penalty.

15 • Amounts allocated to Class Members who opt out of the Class shall be re-allocated
16 to Class Members who do not opt out of the Class proportionally based on their respective shares
17 of the Net Settlement Fund.

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

21 The Settlement provides substantial benefit to the Class. It was achieved after Plaintiff and
22 Class Counsel conducted extensive investigation, informal exchange of information, a full-day
23 mediation with Hon. Thomas Willhite, Jr. (Ret.), and after numerous and extensive discussions of
24 the Parties' respective views on the strengths and weaknesses of their respective positions.

25 The Settlement resolves this case favorably for the Class. It promotes judicial efficiency,
26 provides substantial monetary benefit to the Class, eliminates costly and lengthy litigation without
27 any assurance of a better outcome, and eliminates inherent litigation risks that the Class Members
28 may receive nothing, especially in light of Defendants' limited financial resources.

1 Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement,
2 and schedules a final approval hearing for a date approximately 120 days after the preliminary
3 approval date.

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

5 Defendants are in the business of providing high security guard services to the Mountain
6 View School District (El Monte) and the Garvey School District (Rosemead) in the Southern
7 California areas, employing on average of approximately 6 (six) non-exempt employees as security
8 guards. Plaintiff was one of those employees.

9 On February 15, 2023, Plaintiff gave written notice of PAGA claims to the LWDA and
10 Defendants. (**Exh. 2:** 2/15/2023 PAGA Claim Notice)

11 On February 15, 2023, Plaintiff commenced this Action by filing a class action complaint
12 alleging causes of action against Defendants for failure to pay overtime at legally required rates of
13 pay, failure to provide meal periods, failure to provide rest periods, failure to indemnify employees
14 for work related expenses, failure to provide accurate wage statements, and violation of California
15 Business and Professions Code § 17200. On April 24, 2023, Plaintiff filed the operative First
16 Amended Complaint (“FAC”), adding causes of action for civil penalties under PAGA against
17 Defendants. Each of the Defendants denies the allegations in the FAC.

18 Shortly after the commencement of the Action, counsel for the respective parties engaged
19 in numerous and extensive discussions regarding the factual and legal issues involved in the
20 Action, their respective views on the strengths and weaknesses of the claims and defenses.

21 At the Initial Status Conference held on June 1, 2023, counsel for the respective Parties
22 informed the Court that the Parties were interested in early mediation and to engage in informal
23 exchange of information in lieu of discovery prior to the mediation. (Jusuf Decl. ¶ 8) Thereupon,
24 the Court continued the Status Conference, and ordered the stay on the case to remain in effect. In
25 the ensuing months, the Parties engaged in informal exchange of information. (*Id.*)

26 On February 15, 2024, the Parties and their counsel participated in a full-day mediation
27 with Hon. Thomas Willhite, Jr. (Ret.), a well-regarded jurist and mediator in this area of law.
28 (Jusuf Decl. ¶ 9) As noted, prior to the mediation, Defendants provided information and

1 documents, including the number of security guards employed by Defendants, time records, and
2 other documents to allow Plaintiff and his counsel engage in meaningful settlement discussions.
3 (*Id.*) At the mediation, the Parties and their counsel engaged in extensive discussions regarding
4 their respective views on the claims and potential defenses, and arm's length negotiations for a
5 settlement, facilitated by the Mediator. (*Id.*)

6 Throughout mediation and in discussions between counsel before the mediation,
7 Defendants and its counsel represented that Defendants had limited financial resources, and that
8 they would not be able to withstand substantial judgment. (Jusuf Decl. ¶ 10)

9 The Parties were unable to reach a settlement at the mediation, but Justice Willhite
10 provided a "Mediator's Proposal" at the conclusion of the mediation for the Parties to consider.
11 (Jusuf Decl. ¶ 11) Subsequently, both sides timely accepted the terms of the Mediator's Proposal.
12 (*Id.*) In the ensuing weeks, counsel for the Parties worked diligently until all terms set forth in the
13 Settlement Agreement (**Exh. 1**) were finalized. (*Id.*) Both sides are represented by experienced
14 counsel in this area of law.

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

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

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

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

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

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

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

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

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

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

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

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

22 **1. Ascertainability.**

23 “Ascertainability is required in order to give notice to putative class members as to whom
24 the judgment in the action will be res judicata.” *Aguilar v. Cintas Corp. No. 2* (2006) 144
25 Cal.App.4th 121, 135. The class members must be “readily identifiable without unreasonable time
26 and expense.” *Hale v. Sharp Healthcare* (2014) 232 Cal.App.4th 50, 59-60. A class may be
27 ascertainable even if the definition includes ultimate facts or conclusions of law. *Hicks v.*
28 *Kaufman & Broad* (2001) 89 Cal.App.4th 908, 918-916. The class definition need not include the

1 claims asserted; the notice to the class is the proper place to explain the relationship between the
2 class and the legal claims being made in the case. *Hicks*, 89 Cal.App.4th at 915.

3 Here, the identities of the Class Members can be ascertained from Defendants' employee
4 records. Indeed, Defendants have ascertained that there are 23 individuals in the proposed Class.
5 Thus, the ascertainability requirement is satisfied.

6 **2. Numerosity.**

7 Class action is appropriate when the parties are so numerous that individual joinder is
8 impracticable. *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 739-740. There
9 is no minimum number of putative class members as a matter of law for maintenance of a class
10 action. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934; *Hendershot v. Ready to Roll*
11 *Transpo., Inc.* (2014) 228 Cal.App.4th 1213, 1223 (class size of 9 was sufficiently numerous).

12 There are 23 individuals in the proposed Class, making joinder impracticable. The
13 numerosity requirement is satisfied.

14 **3. Commonality.**

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

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

25 **4. Typicality.**

26 Typicality means the class representatives' claims are similar to those of class members.
27 Typicality can refer to the nature of the claims of the class representatives as well as to the general
28 facts from which such claims arose. The claims of the class representative need not be identical to

1 those of the class members. *B.W.J. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
2 1341, 1347. A class representative's claims are "typical" of those of the class members "if they
3 are reasonably co-extensive with those of absent class members; they need not be substantially
4 identical." *Hanlon v. Chrysler Corporation* (1998) 150 F.3d 1011, 1020.

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

9 **5. Adequacy of Representation.**

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

17 **6. Risk of Class Status.**

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

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

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

27 In reviewing a class action settlement, "[t]he most important factor is the strength of the
28 case for plaintiffs on the merits, balanced against the amount offered in settlement." *Kullar*, 168

1 Cal.App.4th at 130.

2 **A. The Strength Of Plaintiff's Claims and Range of Class Damages**

3 1. Overtime Claim and Waiting Time Penalty-Wage Claim

4 Labor Code § 510 provides, in relevant part: "Any work in excess of eight hours in one
5 workday and any work in excess of 40 hours in any one workweek and the first eight hours worked
6 on the seventh day of work in any one workweek shall be compensated at the rate of no less than
7 one and one-half times the regular rate of pay for an employee." Moreover, failure to pay overtime
8 as required by law gives rise to the obligation to pay waiting time penalty under Labor Code § 203.
9 *Maldonado v. Epsilon Plastics* (2018) 22 Cal.App.5th 1308, 1324 ("If the wages are not paid in
10 accordance with law, the employee's wages 'shall continue as a penalty' for up to 30 days.")

11 Plaintiff alleges that he and other security guards regularly worked more than eight hours a
12 day and Defendants failed to pay them overtime hours worked at no less than one and one-half
13 times their regular rates of pay, in violation of Labor Code § 510. (Jusuf Decl. ¶ 15) Plaintiff
14 further alleges Plaintiff and other employees are entitled to waiting time penalty-wages due under
15 Labor Code § 203 as a result of Defendants' failure to pay overtime wages. (*Id.*)

16 Defendants dispute Plaintiff's allegations, and contend that most security guards did not
17 work more than eight hours per day. (Jusuf Decl. ¶ 16) Defendants further contend that even if
18 security guards worked overtime, Defendants had colorable argument that the failure to pay
19 overtime was due to good faith believe that security guards were entitled to overtime only for
20 hours worked in excess of 12 in a workday, based on Defendants' experience in the industry, as to
21 preclude imposition of waiting time penalty-wages under Labor Code § 203. (*Id.*)

22 Liability under Labor Code § 203 need "not be based on a deliberate evil purpose to
23 defraud the worker of wages which the employer knows are due." *Armenta v. Osmose* (2005) 135
24 Cal.App.4th 314, 325. "As used in section 203, 'willful' merely means that the employer
25 intentionally failed or refused to perform an *act which was required to be done*." *Id.* (italic in
26 original). However, "a good faith dispute that any wages are due will preclude imposition of
27 waiting time penalties under Section 203." *Aramal v. Cintas Corporation No. 2* (2008) 163
28 Cal.App.4th 1157, 1201.

1 Assuming Plaintiff prevails on the merits and on the class certification issues, the estimated
2 maximum class damages for the overtime claim is approximately \$244,600, and the estimated
3 maximum class damages for the waiting time penalty-wage claim is approximately \$99,900.
4 (Jusuf Decl. ¶¶ 17, 18.)

5 2. Meal Period Claim and Rest Period Claim

6 Plaintiff alleges that Defendant regularly failed to provide timely meal periods and rest
7 periods, and failed to pay the premium wage due under Labor Code § 226.7.

8 California law requires every employer to provide an uninterrupted first meal break within
9 the first five hours of work. *Brinker v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1049 (“Under the wage
10 order, as under the statute, an employer’s obligation is to provide a first meal period after no more
11 than five hours of work and a second meal period after no more than 10 hours of work.”) A failure
12 to do so gives rise to an obligation to pay an hour’s worth of pay in premium wage under Labor
13 Code § 226.7. Moreover, “Employees are entitled to 10 minutes’ rest for shifts from three and
14 one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30
15 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker*, 53 Cal.4th at 1029.

16 Defendants dispute Plaintiff’s allegations, and contend that Plaintiff and other security
17 guard employees were free to take, and did take, meal periods and rest periods anytime they
18 wished to, since they worked without any supervision. (Jusuf Decl. ¶ 19)

19 Assuming Plaintiff prevails on the merits and on the class certification issues, the estimated
20 maximum class damages for the meal period claim is approximately \$122,300 (assuming 100%
21 rate of violation), and the estimated maximum class damages for the rest period claim is another
22 approximately \$122,300. (Jusuf Decl. ¶ 20.)

23 3. Work-Related Expense Reimbursement Claim

24 Labor Code § 2802 provides, in relevant part: “An employer shall indemnify his or her
25 employee for all necessary expenditures or losses incurred by the employee in direct consequence
26 of the discharge of his or her duties....” The obligation to indemnify under Labor Code § 2802
27 extends to losses suffered by employee for stolen tools left at the workplace. *Machinists Auto.*
28 *Trades Dist. Lodge v. Util. Trailers Sales Co.* (1983) 141 Cal.App.3d 80.

1 Plaintiff alleges that Defendants required him and other employees to install strobe lights
2 on their personal vehicles that they used for work, and failed to reimburse them for the costs of
3 buying and installing them. Plaintiff further alleges that Defendant failed to reimburse Plaintiff
4 and other employees for the mileage they incurred driving their vehicles making patrols.
5 Moreover, Plaintiff alleges that his personal vehicle was stolen when he was on a shift, and
6 Defendant failed to reimburse him for the loss.

7 Defendants deny Plaintiff's allegations, and contend that they did not require Plaintiff or
8 other employees to install strobe lights on their vehicles, and that Defendants reimbursed the
9 employees for mileage. (Jusuf Decl. ¶ 22) Defendants further contend that Plaintiff's stolen
10 vehicle was recovered by the police, and Defendants paid for the storage and towing fees for
11 Plaintiff to retrieve his vehicle. (*Id.*)

12 Assuming Plaintiff prevails on the merits and on the class certification issues, the estimated
13 total class damages for the work-related expense reimbursement claim is approximately \$2,300.
14 (Jusuf Decl. ¶ 23.)

15 4. Wage Statement Violation Claim

16 California law requires employers to provide itemized wage statements to their employees.
17 Labor Code § 226(a) ("An employer, semimonthly or at the time of each payment of wages, shall
18 furnish to their employee ... an accurate itemized statement in writing showing")

19 Plaintiff alleges that Defendants failed to provide him and other employees with any wage
20 statements required by California law.

21 Under Labor Code § 226(a)(e), "An employee suffering injury as a result of a knowing and
22 intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater
23 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
24 one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to
25 exceed an aggregate penalty of four thousand dollars (\$4,000)...."

26 Assuming Plaintiff prevails on the merits and on the class certification issues, the estimated
27 total class damages for the alleged wage statement violation claim (based on the formula provided
28 in Labor Code § 226(e), stated above) is approximately \$32,300. (Jusuf Decl. ¶ 25)

1 5. PAGA Claims

2 Settlement of PAGA claims requires court approval. Labor Code § 2699(l)(2) (“The
3 superior court shall review and approve any settlement of any civil action filed pursuant to this
4 part. The proposed settlement shall be submitted to the agency at the same time that it is submitted
5 to the court.”) A copy of the Settlement Agreement and the moving papers for this motion are
6 being submitted to the LWDA concurrently with the filing of this motion. (See Proof of Service
7 filed concurrently herewith)

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

14 Under PAGA, “the civil penalty is one hundred dollars (\$100) for each aggrieved employee
15 per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee
16 per pay period for each subsequent violation.” Labor Code § 2699(f)(2). Any civil penalties
17 recovered shall be paid 75% to the LWDA, and 25% to the aggrieved employees. Labor Code §
18 2699(i). PAGA further provides that “a court may award a lesser amount than the maximum civil
19 penalty amount specified by this part if, based on the facts and circumstances of the particular
20 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
21 confiscatory.” Labor Code § 2699(e)(2).

22 The Court of Appeal has held that the rate for the “initial violation” applies to the first and
23 following violations, and the higher penalty rate for “subsequent” violation applies only after the
24 company has been on notice of a prior violation. *Amaral v. Cintas Corporation No. 2* (2008) 163
25 Cal.App.4th 1157, 1209.

26 The theoretical maximum civil penalties under PAGA is approximately \$164,000 (Jusuf
27 Decl. ¶ 25), calculated as follows:

28 ///

Failure to Pay Overtime	\$32,800
Failure to Provide Meal Periods	<u>\$32,800</u>
Failure to Provide Rest Periods	<u>\$32,800</u>
Failure to Indemnify Work-Related Expenses	<u>\$32,800</u>
Failure to Provide Wage Statements	<u>\$32,800</u>
Total	<u><u>\$164,000</u></u>

Under the Settlement Agreement reached by the Parties, a sum of \$20,000 will be paid as civil penalties under PAGA, 75% (\$15,000) of which will be paid to the LWDA and the remaining 25% (\$5,000) will be paid to the Aggrieved Employees, proportionally based on their respective Pay Periods during the PAGA Period. The amounts allocated as PAGA recovery will be mailed to those employees who are Aggrieved Employees, whether or not they otherwise opt out of the Class, consistent with the principles that class requirements (including the opt-out feature) do not apply to PAGA claims.

The Parties arrived at this amount based on the facts and circumstances of this case, in light of disputed factual and legal issues involved in the claims against Defendants, and upon consultations with the Mediator. In the context of class settlements, a trial court may approve a class settlement that assigns no payment for civil penalties under PAGA. *Nordstrom Comm. Cases* (2010) 186 Cal.App.4th 576. The proposed settlement of the PAGA claims is fair and reasonable under the circumstances.

6. Limited Release by Class Members

In exchange for the settlement payments, Plaintiff and Class Members who do not opt out of the Settlement will provide a limited release of claims, defined as follows (based on the model form of the Los Angeles Superior Court):

Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint. Except as set forth in Section 5.3 of this Agreement, 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 insurance, disability, social security, workers' compensation or claims based on facts occurring outside the Class Period.

1 All Non-Participating Class Members who are Aggrieved Employees are deemed to
2 release, on behalf of themselves and their respective former and present
3 representatives, agents, attorneys, heirs, administrators, successors and assigns, the
4 Released Parties from all claims for PAGA penalties that were alleged, or reasonably
5 could have been alleged, based on the PAGA Period facts stated in the Operative
6 Complaint.

7 Any and all claims asserted in the Complaint (filed October 25, 2019), as amended in
8 the operative First Amended Complaint (filed January 8, 2020) arising during the
9 Class Period and PAGA Period based on the facts alleged therein, arising out of any
10 claims that were asserted in the Action or are based on or reasonably related to the
11 claims for alleged to provide wage statements, and failure to timely pay wages due at
12 the end of employment, in alleged violations of California Labor Code sections 201,
13 202, 203, 226. The Released Claims also include alleged claims for civil penalties
14 under Labor Code Private Attorneys General Act ("PAGA"), Labor Code section
15 2698, et seq. arising during the PAGA Period, based on the foregoing alleged Labor
16 Code violations and alleged failure to keep records required by Labor Code section
17 226.

18 (Exh. 1: Settlement Agreement, p. 9, §§ 5.2, 5.3)

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

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

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

C. The Amount Offered In Settlement Is Fair And Reasonable

Under the Settlement, Defendants will pay a sum of \$115,000.00 in Gross Settlement
Amount to establish a non-reversionary Settlement Fund, to pay Class Members' claims, PAGA
penalties, a Service Payment to Class Representative, the costs of settlement administration, and
reasonable attorney fees and costs reimbursement to Class Counsel.

The \$115,000 Gross Settlement Amount represents approximately 18.46% of the

1 maximum class damages of \$623,700 (\$244,600 in overtime claim + \$99,900 in waiting time
2 penalty-wage claim + \$122,300 in meal period claim + \$122,300 in rest period claim + \$2,300 in
3 work-related expense claim + \$32,300 in wage statement claim). (Jusuf Decl. ¶ 27) With the
4 maximum PAGA penalties included, the \$115,000 Gross Settlement Amount represents
5 approximately 14.60% of the theoretical maximum recovery of \$787,700 (\$623,700 in maximum
6 class damages + \$164,000 in maximum PAGA civil penalties). (*Id.*)

7 This is a good result, in light of the disputed factual and legal issues involved, the inherent
8 risks of litigation, both on class certification issues and on the merits, the collection risks, and the
9 risks of prolonged further litigation without any assurance of a better result for the Class.

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

13 The settlement amount is, of course, a compromise figure. It took into account risks related
14 to liability, damages, the availability of class certification, the defenses asserted by Defendants.
15 *Wershba*, 91 Cal. App. 4th at 246, 250 (“Compromise is inherent and necessary in the settlement
16 process...even if the relief afforded by the proposed settlement is substantially narrower than it
17 would be if the suits were to be successfully litigated, this is no bar to a class settlement because
18 the public interest may indeed be served by a voluntary settlement in which each side gives ground
19 in the interest of avoiding litigation”).

20 **VI. DISTRIBUTION OF UNCASHED CHECKS**

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

24 **VII. THE PROPOSED NOTICE OF SETTLEMENT SHOULD BE APPROVED**

25 Class notice is sufficient if (1) it has a “reasonable chance of reaching a substantial
26 percentage of the class members;” and (2) its contents “fairly apprise[s] the class members of the
27 terms of the proposed compromise and of the options open to dissenting class members.” *Wershba*,
28 91 Cal. App. 4th at 251; *see also* Cal. R. Ct., Rule 3.769(f). The proposed notice meets all these

1 requirements. Upon Court approval, the notice will be translated into Spanish, and will be mailed
2 in English and Spanish by the Administrator to the Class Members.

3 **VIII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

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

12 The California Supreme Court has re-affirmed the use of the percentage of the common
13 fund approach for determining attorney fee awards. *Laffitte v. Robert Half International, Inc.*
14 (2016) 1 Cal.5th 480, 486 ("We clarify today that when an attorney fee is awarded out of a
15 common fund preserved or recovered by means of litigation, the award is not per se unreasonable
16 merely because it is calculated as a percentage of the common fund.") In *Laffitte*, the trial court
17 approved, over the objection of one class member, an award of attorney fees of \$6,333,333.33,
18 which was one-third (33.33%) of the gross settlement amount of \$19 million. *Id.* at 486.

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

23 Under the Settlement, and subject to the Court's approval, a sum of \$38,333.33, which is
24 one-third (33.33%) of the Gross Settlement Amount, will be paid to Class Counsel (out of the
25 Gross Settlement Amount) in reasonable attorneys' fees for services performed in this action and
26 future services anticipated to be performed in connection with seeking approval and monitoring the
27 implementation of this Settlement. In addition, a sum not to exceed \$14,000.00 will be paid out of
28 the Gross Settlement Amount to Class Counsel for reimbursement of costs and other expenses they

1 incurred in this action relating to claims asserted against these Defendants. The proposed
2 attorneys' fees and cost reimbursement are disclosed to the Class Members in the Class Notice.

3 The agreed-upon and requested fee amount is reasonable in class action settlements. *In re*
4 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 ("Empirical studies show that,
5 regardless of whether the percentage method or the lodestar method is used, fee award in class
6 actions average around one-third the recovery.") While the Ninth Circuit "benchmark" is 25%
7 (*Vizcaino v. Microsoft*, 290 F.3d 1043, 1047 (9th Cir. 2002)), 33.33% is within the range of
8 reasonable amount, particularly when the settlement fund created is non-reversionary, such as the
9 one achieved by Plaintiff and Class Counsel.

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

15 To date Class Counsel have spent a total of no less than 94.90 hours of attorney time
16 reasonably valued at \$61,685.00 in this litigation. (Jusuf Decl. ¶ 29) The fee amount under the
17 lodestar approach exceeds the requested amount under the Agreement.

18 Class Counsel have borne, and continue to bear, the entire risk and cost of litigation and
19 collection associated with this class action on a pure contingency basis.

20 To date, Class Counsel have incurred a total of no less than \$9,659.95 in this action. (Jusuf
21 Decl. ¶ 32; **Exh. 5**: Class Counsel's costs) A summary of these costs is as follows:

Court filing fees and PAGA fee	\$2,152.58
Attorney Services	\$218.10
Mediation, Hon. Thomas Willhite, Jr. (Ret)	\$4,000.00
Document Translation Fees	\$3,244.25
Other Costs	\$45.02
Total:	\$9,659.95

22
23
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27 These costs were necessary and reasonable to properly prosecute the claims to obtain the
28 result for the Class Members.

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

2 Under the Settlement, a sum of \$5,000 will be paid out of the Gross Settlement Amount to
3 Plaintiff as Class Representative Service Payment, for his services to the Class Members and
4 taking the risks of bringing this Action as a class action, which has resulted in substantial benefits
5 to the Class. Plaintiff has devoted a great deal of time and work assisting counsel in the case,
6 frequently communicated with counsel and provided important information regarding defendants'
7 employment practices.

8 Plaintiff risked intrusive discovery and the personal peril of being perceived as a non-loyal
9 employee -- a perception that could adversely affect her future employment prospects. *See, e.g.,*
10 *Roberts v. Texaco* (S.D.N.Y. 1997) 979 F.Supp. 185, 201 (the assumption of potentially career-
11 damaging risks to vindicate the rights of fellow employees may justify a substantial enhancement).

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

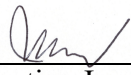
14 **X. CONCLUSION**

15 For reasons set forth herein, the motion for preliminary approval should be granted. The
16 Parties should be ordered to implement the terms of the Agreement, and a Final Approval Hearing
17 should be scheduled for a date approximately 120 days after the preliminary approval date.

18 Respectfully submitted,

19 Dated: June 5, 2024

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

20 By: 
21 Justian Jusuf

22 Attorneys for Plaintiff Adolfo Guadarrama
23 Diaz, individually and on behalf of others
24 similarly situated