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individually, and on behalf of all others
similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MADERA**

CHANTHA SVAY, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

CERTAINTEED, LLC, a limited liability
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: MCV093066

**CLASS AND REPRESENTATIVE
ACTION**

[Assigned for all purposes to: Hon. Michael J.
Jurkovich, Dept. 44]

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

[Filed with the Declaration of Benjamin H.
Haber, Declaration of John G. Yslas, and
Proposed Order]

PRELIMINARY APPROVAL HEARING

Date: January 16, 2025

Time: 8:30 a.m.

Dept: 44

Complaint filed: September 30, 2024

Trial date: Not set

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on January 16, 2025 at 8:30 a.m., in Department 44 of the
3 Madera Superior Court, located at 200 South G Street, Madera, CA 93637, pursuant to Code of
4 Civil Procedure § 382 and California Rules of Court 3.769 *et seq.*, Plaintiff Chantha Svay will
5 move the Court for an Order granting preliminary approval of the proposed class action settlement
6 between Plaintiff and Defendant CertainTeed, LLC (“Defendant”). Plaintiff further moves the
7 Court for an Order:

- 8 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement
9 and Class Notice in the form attached as Exhibit 1 to the declaration of Benjamin H.
10 Haber;
- 11 2. Certifying a Class for settlement purposes;
- 12 3. Approving the Notice and the plan for distribution of the Notice;
- 13 4. Appointing Plaintiff Chantha Svay as Class Representative for settlement purposes;
- 14 5. Appointing Plaintiff’s Counsel, John G. Yslas, Benjamin H. Haber, and Daniel J.
15 Kramer of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes;
- 16 6. Appointing CPT Group, Inc. as the Settlement Administrator; and
- 17 7. Scheduling a final approval hearing.

18 The motion will be based upon this notice, the attached memorandum of points and
19 authorities, the Declaration of Benjamin H. Haber, the Declaration of John G. Yslas, filed
20 concurrently herewith, the records and files in this action, and any other further evidence or
21 argument that the Court may properly receive at or before the hearing.

22 Before filing the Motion for Preliminary Approval, Plaintiff’s Counsel filed the settlement
23 agreement with the Labor and Workforce Development Agency through its online filing system and
24 provided notice of the date and time of the hearing on the motion for approval of the class action and
25 PAGA settlement.

26 ///

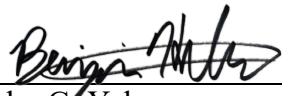
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1
2 Dated: December 23, 2024

Respectfully submitted,

WILSHIRE LAW FIRM

3
4 By: 
5 John G. Yslas
6 Benjamin H. Haber
7 Daniel J. Kramer

Attorneys for Plaintiff

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3	Conte & Newberg, <i>Newberg on Class Actions</i> (3rd Ed.)	11, 15, 23
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Chantha Svay (“Plaintiff”) seeks preliminary approval of a proposed \$1,950,000.00 non-reversionary, wage and hour putative class action and PAGA representative action settlement with Defendant CertainTeed, LLC (“Defendant”). The Settlement will provide substantial monetary payments to approximately 623 non-exempt employees. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arms-length and were facilitated by an experienced class action mediator, Lisa Klerman, Esq., over the course of a full day of mediation that was conducted via Zoom. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties reached a settlement on April 15, 2024. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff’s Claims

This is a wage and hour class action and Private Attorneys General Act (“PAGA”) (Labor Code §§ 2699, *et seq.*) representative action. Plaintiff and putative Class Members worked in California as hourly-paid or non-exempt employees for Defendant during the class period. Defendant advertises itself as the world’s “leading brand of exterior and interior building products”. It employs non-exempt employees in three California locations. (Declaration of Benjamin H. Haber in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement [“Haber Decl.”], ¶ 2.)

Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours worked. Plaintiff further alleges that Defendant failed to provide employees with legally compliant meal and rest periods, and Defendant failed to reimburse business expenses. Based on these allegations, Plaintiff asserts related claims for failure to provide accurate wage

1 statements, failure to pay all final wages at termination, unfair business practices, and civil
2 penalties under PAGA. Defendant denies all claims, and further maintains that Plaintiff's claims
3 are not appropriate for class certification. (*Id.* at ¶ 3.)

4 On January 31, 2023, former Plaintiff Francisco Trejo-Ramirez filed a putative wage-
5 and-hour class action complaint in this Court against Defendant for: (1) failure to pay minimum
6 and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay
7 overtime wages (Labor Code §§ 1194 and 1198); (3) failure to provide meal periods (Labor
8 Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7
9 and 512); (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6)
10 failure to provide accurate itemized wage statements (Labor Code § 226); and (7) unfair
11 business practices (Business and Professions Code 17200 et seq.). (Haber Decl., at ¶ 4.) *See*
12 Madera County Superior Court Case No. MCV088583. On February 13, 2023, Trejo-Ramirez
13 sent a notice to Defendant and the California Labor & Workforce Development Agency
14 ("LWDA") alleging similar wage and hour violations pursuant to the PAGA. On April 27, 2023,
15 Trejo-Ramirez filed a separate Complaint against Defendant for civil penalties under PAGA in
16 this Court. (*Id.*) Madera County Superior Court Case No. MCV089326.

17 On May 15, 2023, the putative class action was removed to the United States District
18 Court, where it is currently pending in the Eastern District of California. On December 14,
19 2023, Plaintiff Chantha Svay was substituted in as class representative via Plaintiff's First
20 Amended Class Action Complaint. (*Id.* at ¶ 5.)

21 **B. Discovery and Investigation**

22 The Parties have undertaken significant investigation of the facts and law during the
23 pendency of this Action. Following the filing of the Complaint, the Parties exchanged
24 documents and information before mediating this action. Defendant produced a complete set
25 of time and pay records for all putative class members. Defendant also provided documents of
26 its wage and hour policies and practices during the class period, and information regarding the
27 total number of current and former employees in its informal discovery responses. (*Id.* at ¶ 6.)

28 After reviewing documents regarding Defendant's wage and hour policies and practices,

analyzing Defendant's timekeeping and payroll records, and interviewing Class Members, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. (*Id.* at ¶ 7.) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Class Counsel reviewed these records and prepared a damage analysis prior to mediation. (*Id.*)

C. Settlement Negotiations

On April 15, 2024, the parties participated in private mediation with experienced class action mediator Lisa Klerman, Esq. (*Id.* at ¶ 8.) The mediation was conducted via Zoom. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached a settlement the material terms of which are encompassed within the Settlement. (*Id.* at ¶ 8, Ex. 1 [Joint Stipulation Re: Class Action Settlement].) The settlement was facilitated by both parties agreeing to a mediator's proposal made by Lisa Klerman following the Parties' full-day mediation. (Haber Decl., ¶ 8.)

Class Counsel has conducted a thorough investigation into the facts of this case. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. (*Id.* at ¶ 16.)

Indeed, the \$1,950,000.00 Settlement represents **66% of the realistic maximum recovery of \$2,949,960.40.** (*Id.* at ¶ 25.) Although Class Counsel estimated that Defendant's maximum potential liability for all claims was approximately \$16.9 million, when the risk of prevailing at certification and trial are factored into the equation, Class Counsel believes that Defendant's realistic exposure was \$2,949,960.41, meaning the Settlement achieves a

significant recovery. (*Id.* at ¶¶ 16-29.) Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 25.) Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

D. Key Terms of the Proposed Settlement

The Settlement’s key terms include:

1. Class Member Definition: For settlement purposes only, the Parties agree to the certification of a class pursuant to California Code of Civil Procedure § 382 defined as: “all current and former non-exempt employees employed by Defendant in California during the Class Period.” (Settlement, § I(f).)

2. Class Period: means “the time period from August 6, 2018 through May 30, 2024.” (Settlement, § I(g).)

3. Participating Class Members: All Class Members who do not exclude themselves from the settlement shall be referred to as “Participating Class Member” or “Participating Class Members.” (Settlement, § IV(15).)

4. PAGA Group Members: “All current and former non-exempt employees of Defendant employed in California at any time during the PAGA Period.” (Settlement, § I(s).)

5. PAGA Period: shall mean “the time period between February 13, 2022 through May 30, 2024.” (Settlement, § I(t).)

6. Total Class Action Settlement Amount: “shall mean One Million Nine Hundred Fifty Thousand Dollars and Zero Cents (\$1,950,000.00). This is the maximum possible amount that may be paid by Defendant to resolve the action with the limited exception of: (1) Defendant’s responsibility for the employer’s share of taxes associated with the Class Members’ Individual Settlement Amounts; and (2) the additional amount to be paid, if any, due to a possible increase of the Total Class Action Settlement amount as described in Paragraph 14. The Total Class Action Settlement Amount is a non-reversionary amount that is intended to be a qualified settlement fund pursuant to 26 U.S.C. § 468B.” (Settlement, § I(z).)

7. Uncashed Checks: “There will be no reversion to Defendant. In the event that an

Individual Settlement Award is paid to a Participating Class Members by check and the check is not cashed on or before the Check Cashing Deadline, the amount of the Individual Settlement Award shall be considered unclaimed. Each unclaimed Individual Settlement Award paid to a Class Member but not cashed on or before the Check Cashing Deadline shall be tendered to the State of California State Controller's Office, Unclaimed Property Fund in the Participating Class Member's name." (Settlement, § VI(22).)

8. Release by Plaintiffs and Participating Class Members: "As of the date that Defendant fully funds the Total Class Action Settlement Amount and employer's share of taxes, Plaintiff and Participating Class Members release the Released Parties from the following, collectively referred to as the "Released Class Claims" during the Class Period: All causes of action and factual or legal theories that were alleged in the operative complaint or reasonably could have been alleged based on the facts and legal theories contained in the operative complaints in this Action, and the complaints in (1) *Francisco Trejo-Ramirez on behalf of the State of California and other aggrieved employees v. CertainTeed LLC, a limited liability corporation*; Does 1 through 10, inclusive himself, Defendants, Madera County Superior Court Case No. MCV089326; and (2) the legal action pending in the United States District Court for the Eastern District of California, entitled *Chantha Svay, individually, and on behalf of all others similarly situated, v. Certainteed LLC, a limited liability corporation; and DOES 1 through 10, inclusive*, Case No. 1:23-cv-00775-KES-EPG, including all of the following claims for relief: (a) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (b) failure to provide proper rest periods, and to properly provide premium pay in lieu thereof; (c) failure to pay wages due, including but not limited to minimum wages, straight-time wages, overtime wages, vacation pay, sick pay, meal period premiums, rest period premiums, reporting time wages, split differentials, and bonuses; (d) failure to reimburse for all necessary expenditures or losses; (e) failure to pay all wages timely at the time of termination and/or during employment; (f) failure to provide complete, accurate or properly formatted wage statements; (g) failure to maintain accurate records of hours worked and meal periods; (h) failure to provide sick pay and failure to provide information pertaining to sick pay balances, amount of sick pay available for use, and/or payments

1 on wage statements; (i) unfair business practices that could have been premised on the claims,
2 causes of action or legal theories of relief described above or any of the claims, causes of action or
3 legal theories of relief pleaded in the operative complaint; (j) all claims under the California Labor
4 Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes
5 of action or legal theories described above or any of the claims, causes of action or legal theories
6 of relief pleaded in the operative complaint; (k) any other claims or penalties under the wage and
7 hour laws pleaded in the Action; and (l) all damages, penalties, interest and other amounts
8 recoverable under said claims, causes of action or legal theories of relief (collectively, the
9 “Released Claims”). The period of the Release shall extend to the limits of the Class Period. The
10 res judicata effect of the Judgment will be the same as that of the Release. Defendant shall be
11 entitled to a release of Released Claims which occurred during the Class Period only during such
12 time that the Settlement Class Member was classified as non-exempt, and expressly excluding all
13 other claims, including claims for vested benefits, wrongful termination, unemployment insurance,
14 disability, social security, workers’ compensation, claims while classified as exempt, and claims
15 outside of the Class Period.

16 Plaintiff and the Class Members may hereafter discover facts or legal arguments in addition to
17 or different from those they now know or currently believe to be true with respect to the claims,
18 causes of action and legal theories of recovery in this Action, which are the subject matter of
19 the Released Class Claims. Regardless, the discovery of new facts or legal arguments shall in
20 no way limit the scope or definition of the Released Class Claims, and by virtue of this
21 Stipulation, Plaintiff and Participating Class Members shall be deemed to have, and by operation
22 of the final judgment approved by the Court, shall have, fully, finally, and forever settled and
23 released all of the Released Class Claims as defined in this Stipulation.” (Settlement, § V(16).)

24 PAGA Release: “As of the date Defendant fully funds the Total Class Action Settlement
25 Amount and employer’s share of taxes, Plaintiff, the PAGA Group Members, and the State of
26 California will release the Released Parties from the following claims for civil penalties during the
27 PAGA Period, collectively referred to as the “Released PAGA Claims,” whether known or
28 unknown, and irrespective of the factual or legal basis for such claims, including penalties for those

1 facts and legal theories contained in the Amended Complaint (as described in Paragraph 25 below).
2 This release extends to Plaintiff, the PAGA Group Members, and the State of California without
3 regard to whether any Class Member requests to be excluded from the settlement. To be clear, the
4 scope of the PAGA release is limited to the Released PAGA Claims: All causes of action and
5 factual or legal theories that were alleged in the operative complaint or reasonably could have
6 been alleged based on the facts and legal theories contained in the operative complaints in
7 Action and the Amended Complaint (as described in Paragraph 25 below), including but not
8 limited to claims for: All causes of action and factual or legal theories that were alleged in the
9 operative complaint or reasonably could have been alleged based on the facts and legal
10 theories contained in the operative complaint, including all of the following claims for relief:
11 (a) failure to provide proper meal periods, and to properly provide premium pay in lieu
12 thereof; (b) failure to provide proper rest periods, and to properly provide premium pay in lieu
13 thereof; (c) failure to pay wages due, including but not limited to minimum wages, straight-
14 time wages, overtime wages, vacation pay, sick pay, meal period premiums, rest period
15 premiums, reporting time wages, split differentials, and bonuses; (d) failure to reimburse for
16 all necessary expenditures or losses; (e) failure to pay all wages timely at the time of
17 termination and/or during employment; (f) failure to provide complete, accurate or properly
18 formatted wage statements; (g) failure to maintain accurate records of hours worked and meal
19 periods; (h) failure to provide sick pay and failure to provide information pertaining to sick
20 pay balances, amount of sick pay available for use, and/or payments on wage statements; and
21 (j) all civil penalties and other amounts recoverable under said causes of action under
22 California law, to the extent permissible, including but not limited to the California Labor
23 Code and the applicable Wage Orders (collectively, the “PAGA Released Claims”). The
24 period of the Release shall extend to the limits of the PAGA Period. The res judicata effect of
25 the Judgment will be the same as that of the Release.” (Settlement, § V(17).)

26 9. PAGA Allocation: “The Parties agree to allocate Fifty Thousand Dollars and Zero
27 Cents (\$50,000.00) of the Total Class Action Settlement Amount to resolve the PAGA Group
28 Members’ claims arising under PAGA (the “PAGA Allocation”). Pursuant to PAGA, seventy-five

percent (75%) of the PAGA Allocation, or Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00), shall be paid to the State of California Labor and Workforce Development Agency (the “LWDA”), with the remaining twenty-five percent (25%), or Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00), paid pro rata to PAGA Group Members as set forth below.” (Settlement, § VI(21)(a).) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Haber Decl., ¶ 10.)

10. Net Settlement Amount: “shall mean and refer to the balance of the Total Class Action Settlement Amount, after all Court-approved deductions for attorneys’ fees and actual costs to Class Counsel, the Settlement Administrator’s costs and fees, the Class Representative’s enhancement award, and the PAGA Allocation. The Net Settlement Amount is the maximum amount that will be available for distribution to Class Members.” (Settlement, § I(q).)

11. Distribution Formula: “After the amounts described in Paragraph 21, subparagraphs (a) through (e), above, have been deducted from the Total Class Action Settlement Amount, the remainder – the Net Settlement Amount – shall be distributed to each Participating Class Member, in the following manner:

The Net Settlement Amount shall be divided by the number of aggregate Qualified Weeks worked by all Participating Class Members during the Class Period to produce a “Weekly Settlement Value.” A “Qualified Week” shall be a week where a Participating Class Member who worked during the Class Period. Each Participating Class Member shall be eligible to receive a settlement payment in the amount of the total number of Qualified Weeks attributable to the Participating Class Members during the Class Period multiplied by the Weekly Settlement Value, less applicable withholdings, provided that the Participating Class Member has not submitted a Request for Exclusion.” (Settlement, § VI(21)(f).) As to PAGA: “Twenty-five percent (25%), or Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00), of the PAGA Allocation to be paid to the PAGA Group Members shall be divided by the number of aggregate Qualified Pay Periods worked by all PAGA Group Members during the PAGA Period to produce a “Pay Period Settlement Value.” A “Qualified Pay Period” shall be a pay period where a PAGA Group Member worked for Defendant during the PAGA Period. Each PAGA Group Member shall be eligible to

1 receive a settlement payment in the amount of the total number of Qualified Pay Period attributable
2 to the PAGA Group Member during the PAGA Period multiplied by the Pay Period Settlement
3 Value (the “PAGA Payment”).” (Settlement, § VI(21)(g).)

4 12. Tax Allocation: 25% of each Individual Settlement Award shall be allocated as
5 wages, and 75% of each Individual Settlement Award shall be allocated as interests and penalties.
6 (Settlement, § VII(23)(g).)

7 13. Class Representative Service Award: Class Counsel may apply for an enhancement
8 award to the Class Representative in an amount not to exceed Ten Thousand Dollars and Zero
9 Cents (\$10,000.00). The enhancement award shall be paid from the Total Class Action Settlement
10 Amount. This enhancement award is in addition to the payment to which Plaintiff is entitled as a
11 Participating Class Member. Defendant agrees not to oppose any such application that is consistent
12 with this paragraph. Even in the event that the Court reduces or does not approve the enhancement
13 award discussed in this paragraph, Class Representative and Class Counsel shall not have the right
14 to revoke this Stipulation.” (Settlement, § VI(21)(c).) This amount is for Plaintiff’s time and effort
15 in bringing and presenting the action, and in exchange for a general release of all claims, known
16 or unknown, pursuant to Civil Code Section 1542. (Settlement, § V(17).)

17 14. Attorneys’ Fees and Costs: Class Counsel may apply for an award of attorneys’ fees,
18 not to exceed Six Hundred Eighty-Two Thousand Five Hundred Dollars and Zero Cents
19 (\$682,500.00) (35% of the Total Class Action Settlement Amount). (Settlement, § VI(21)(a).) In
20 addition to attorneys’ fees, Class Counsel may apply for an award of costs, not to exceed the sum
21 of Forty Thousand Dollars and Zero Cents (\$40,000.00). (Settlement, § VI(21)(b).)

22 15. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a
23 statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys’
24 fees, costs, and service award being sought, and an explanation of how the settlement allocations
25 are calculated. (Settlement, Ex. 1, Class Notice.) Class Members will be notified by first-class
26 mail of the settlement. (Settlement, § VII(23)(b).) CPT Group, Inc., the proposed Settlement
27 Administrator, will undertake its best efforts to ensure that the notice is provided to the current
28 addresses of class members, including conducting a national change of address search and re-

1 mailing the notice to updated addresses. (*Id.*; Haber Decl., ¶ 11, Ex. 3 [Settlement Administrator
2 Bid].)

3 **III. DISCUSSION**

4 To prevent fraud, collusion, or unfairness to the class, the settlement of a class action
5 requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This
6 Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super.*
7 *Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached
8 through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to
9 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
10 is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

11 In considering whether a settlement is reasonable, the trial court should consider relevant
12 factors, which may include the strength of plaintiff's case, the risk, expense, complexity and likely
13 duration of further litigation, the risk of maintaining class action status through trial, the amount
14 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
15 experience and views of counsel, the presence of a governmental participant, and the reaction of
16 the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168
17 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself
18 that the class settlement is within the "ballpark" of reasonableness. (*Id.* at p. 133.) The record
19 need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-*
20 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not
21 require "an explicit statement of the maximum amount the plaintiff class could recover if it
22 prevailed on all its claims", but instead, only an "understanding of the amount that is in controversy
23 and the realistic range of outcomes of the litigation."].)

24 As discussed below, Class Counsel has provided information exceeding the threshold
25 required to provide this Court with materials and information necessary to determine that the
26 proposed settlement is fair, adequate, and reasonable.

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1 **A. The Settlement Is Fair, Reasonable, Adequate, and the Product of**
2 **Investigation, Litigation, and Negotiation**

3 **1. The Settlement Is the Product of Discovery, Investigation, and Informed**
4 **and Non-Collusive Arm’s-Length Negotiations**

5 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
6 evidence to the contrary is offered; thus, there is a presumption here that the negotiations were
7 conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.)
8 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super.*
9 *Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The
10 fact that a plaintiff might have received more if the case had been fully litigated is no reason not
11 to approve the settlement.”].)

12 The Settlement was reached following extensive negotiations following one day of
13 mediation with experienced employment mediator, Lisa Klerman, Esq. (Haber Decl. ¶ 8.) The
14 settlement negotiations were at arm’s length and, although conducted in a professional manner,
15 were adversarial. (*Id.*) The parties went into the mediation willing to explore the potential for a
16 settlement of the dispute, but each side was also prepared to litigate their or its position through
17 trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and
18 discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses,
19 the Parties reached an agreement by accepting a mediator’s proposal. (Haber Decl. ¶ 9.)

20 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
21 the claims set forth in the Litigation, such as the entirety of putative class members’ timekeeping
22 and payroll records, Defendant’s policies and procedures concerning the payment of wages, the
23 provision of meal and rest breaks, issuance of wage statements, and providing all wages at
24 separation, as well as information regarding the number of putative class members and the mix of
25 current versus former employees, the wage rates in effect, and the amount of meal and rest period
26 premium wages paid to class members. (*Id.* at ¶¶ 6-7.) In conjunction with their extensive factual
27 investigation, Class Counsel investigated the applicable law regarding the claims and defenses
28 asserted in the litigation. (*Id.*) Thus, Plaintiff and his counsel were able to act intelligently and

effectively in negotiating the proposed Settlement. (*Id.*)

Class Counsel also has considerable experience and has demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 40-46; Declaration of John G. Yslas in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement [“Yslas Decl.”], ¶ 3-10.) Again, this supports the position that the terms of the Settlement are premised on objective evidence that has been considered and weighed in light of the risks, expenses, and time consumption to both sides of continued litigation of this action.

2. The Settlement Is Fair and Reasonable in Light of the Parties’ Respective Legal Positions

A settlement is not judged against what might plaintiff recover had he prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent and necessary in the settlement process . . . even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.”].)

This settlement avoids the risks and the accompanying expense of further litigation. (Haber Decl., ¶ 27.) While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 26.) Plaintiff also recognizes that proving the amount of wages due to each class member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Defendant also maintained that the claims were not certifiable given the lack of any common policy or practice that resulted in wage-and-hour violations.

The proposed settlement of \$1,950,000.00 therefore represents a substantial recovery when compared to Plaintiff’s reasonably forecasted recovery. (*Id.* at ¶¶ 16-29.) Because of the proposed Settlement, putative class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of \$1,950,000.00 is within

the “ballpark” of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed, each Settlement Class Member is eligible to receive an average net benefit of approximately \$1,853.53.*** (*Id.* at ¶ 28.)

3. Class Counsel Has Extensive Experience in Class Action Litigation

The settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel have a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage and hour class action litigation. (Haber Decl., ¶¶ 40-46; Yslas Decl., ¶¶ 3-10.) Although Plaintiff and his counsel were prepared to litigate the claims alleged in the litigation, they support the proposed Settlement as being in the best interests of the class.

B. The Proposed Class Notice of Settlement Should Be Approved

The proposed Notice, in the form attached to the Settlement Agreement, should be approved for dissemination to the putative class. The Notice informs the putative class of the terms of the settlement and of their rights to be excluded from the settlement. Further, the Notice will be sent in both English and Spanish. (Haber Decl., ¶ 11, Ex. 2.) Putative class members have up to 45 days to submit requests for exclusion or objections. (Haber Decl., ¶ 9, Ex. 1) And if there are putative class members who wish to object to this proposed class action settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing. Accordingly, the proposed Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court.

C. The Proposed Attorneys’ Fees and Costs Are Reasonable

Under the Settlement, Class Counsel may apply for reasonable attorneys’ fees up to of \$682,500.00, which will be paid from the Total Class Action Settlement Amount. Defendant agrees not to oppose this request. This sum represents 35% of the gross Settlement Amount. Plaintiff’s counsel will seek up to \$40,000.00 in costs, again paid from the Total Class Action Settlement Amount. These amounts are disclosed to all class members in the proposed Notice and are reasonable.

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1 **1. Class Counsel Request an Award of Fees Based on the “Common Fund”**
2 **Method**

3 California courts have long awarded attorneys’ fees as a percentage of the benefit created
4 by counsel in creating a common fund. The California Supreme Court held that “when a number
5 of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs
6 for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
7 may be awarded attorneys’ fees out of the fund.” (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34,
8 quoting *D’Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

9 Class Counsel seeks an award of attorneys’ fees on the “percentage of recovery/ common
10 fund” theory. The purpose of this approach is to “spread litigation costs proportionally among all
11 the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent v.*
12 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995)
13 15 Cal.3d 162, the California Supreme Court stated: “[O]ne who expends attorneys’ fees in
14 winning a suit which creates a fund from which others derive benefits may require those passive
15 beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and*
16 *County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized
17 that the common fund doctrine has been applied “consistently in California when an action brought
18 by one party creates a fund in which other persons are entitled to share.” (*Id.* at p. 110.)

19 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
20 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
21 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
22 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
23 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
24 method—including relative ease of calculation, alignment of incentives between counsel and the
25 class, a better approximation of market conditions in a contingency case, and the encouragement
26 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
27 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
28 (*Id.* [internal citations omitted].)

1 **2. The Requested Fee Award Is in Line with Typical Cases**

2 According to a leading treatise on class actions, “No general rule can be articulated on what
3 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
4 reasonable fee award from a common fund in order to assure that the fees do not consume a
5 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
6 are not unprecedented.” (*See* Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 14.03.)
7 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty
8 to forty percent commonly awarded in cases where the settlement is relatively small. (*Id*; see also
9 *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most
10 cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10
11 million].)

12 Here, Plaintiff requests attorneys’ fees equal to 35% of the Settlement Amount, which is in
13 line with the prevailing guidelines established in California case law and academic literature and
14 is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43,
15 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar
16 method is used, fee awards in class actions average around one-third of the recovery.”].)
17 Accordingly, Plaintiff respectfully requests that the Court approve the attorneys’ fees as negotiated
18 by the parties and requested herein.

19 **3. This Matter Involves A “Fee-Shifting” Provision of the Labor Code**

20 Labor Code § 1194 (a) provides for the recovery of “minimum wage or overtime
21 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this
22 section, Plaintiff alleges that he would be permitted to recover actual attorneys’ fees, even if those
23 fees were larger than the total class recovery at the conclusion of this case. This settlement is
24 beneficial in that it limits the risk of continued expenses and consumption of time, energy, and
25 resources facing Defendant while at the same time rewarding Class Counsel for their decision to
26 assume risk by taking on this matter. In fact, prosecution of this action involved significant
27 financial risk for Class Counsel. (Haber Decl., ¶¶ 38-39.) Class Counsel undertook this matter
28 solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this

litigation on behalf of the putative Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class ahead of all other concerns.

4. The Experience, Reputation and Ability of Class Counsel Support the Requested Fee Award

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possess considerable expertise in litigating class actions. (Haber Decl., ¶¶ 40-46; Yslas Decl., ¶¶ 3-10.) Class Counsel has been involved as lead counsel or co-counsel in several class actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, Class Counsel's requested fee award is supported here.

Class Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. Based on these and other factors, Class Counsel has frequently received fee awards of this percentage from the gross recovery for the class. Therefore, the requested fee award is reasonable and fair.

D. The PAGA Allocation is Reasonable

Where settlements negotiate a good faith amount for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of other" class members, such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9.) Courts have approved amounts for PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement. (*Id.* [approving a PAGA payment of 0.3%, or \$1,500]; see also *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v. Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here, the amount to be paid to the LWDA is larger than many other PAGA settlement amounts approved

1 by the courts where seemingly nominal amounts were allocated for such claims. (See, e.g. *Zubia*
2 *v. Shamrock Foods Co.* (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431,
3 at *14 [approving a PAGA settlement of 0.1%]; *Hopson, supra*, (N.D. Cal. Aug. 8, 2008) 2008
4 WL 3385452, at *1 [approving a PAGA settlement of 0.3% or \$1,500]; *Garcia v. Gordon Trucking,*
5 *Inc.* (E.D. Cal. Oct. 31, 2012) No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving
6 a PAGA settlement of 0.27%].) Here, the Parties negotiated a good faith amount of \$50,000.00,
7 75% percent of which (\$37,500.00) will be paid to the LWDA, with 25% (\$12,500.00) to be
8 distributed to the allegedly Aggrieved Employees. (Settlement at § VI(21)(e).) The \$50,000.00
9 PAGA allocation amount equates to approximately 5.7% of the Gross Settlement Amount, which
10 far exceeds amounts that are routinely approved. The parties negotiated to allocate 2.6% of the
11 Settlement to PAGA penalties in good faith and this amount is reasonable considering that the
12 maximum PAGA penalties were estimated at \$1,918,100.00 (which assumed \$100 per pay period).
13 (Haber Decl. ¶ 24.)

14 **E. The Service Award to Named Plaintiff Is Reasonable**

15 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
16 compensate them for the expense or risk they have incurred in conferring a benefit on other
17 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
18 of class action settlement agreements containing enhancements for the class representatives, which
19 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
20 class representatives help to bring about for the class. (See *Rodriguez v. W. Publ'g Corp.* (9th Cir.
21 2009) 563 F.3d 948, 958-59.)

22 Service awards are particularly important to plaintiffs in wage and hour cases because they
23 promote the important public policies underlying the wage and hour laws. This strong policy is
24 codified in California Labor Code § 90.5, which provides, “it is the policy of this state to vigorously
25 enforce minimum labor standards in order to ensure employees are not required or permitted to
26 work under substandard unlawful conditions”). Nonetheless, the California Supreme Court
27 has noted that “retaliation against employees for asserting statutory rights under the Labor Code is
28 widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.*

1 (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for
2 assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.*
3 (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

4 Under the settlement agreement, Plaintiff is permitted to seek a Service Award in the
5 amount of \$10,000.00, which would be paid from the Total Class Action Settlement Amount.
6 Defendant agrees not to oppose this request. This amount is also in exchange for Plaintiff's general
7 release of all claims against Defendant. Courts routinely approve a \$10,000 enhancement award
8 for plaintiffs represented by Class Counsel. (*See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D.
9 Cal. Aug. 6, 2021) 2021 WL 3673845, *3 ["The Court concludes a \$10,000 incentive award is
10 appropriate."]; *Suarez, supra*, 2024 WL 150721 at p. *4 ["The court approves awards of \$10,000
11 for each class representative."].) Class Counsel represent that Plaintiff devoted a great deal of time
12 and work assisting counsel in the case, communicated with counsel very frequently for litigation
13 and to prepare for mediation, and was frequently in contact with Class Counsel during the
14 mediation. (Haber Decl., ¶¶ 30-34.) This amount is reasonable particularly in light of the
15 substantial benefits Plaintiff generated for all putative class members. (*Id.*) Indeed, in *Karl Adams,*
16 *III, et al. v. MarketStar Corporation, et al.*, No. 2:14-cv-02509-TLN-DB, former Wilshire partner
17 Justin F. Marquez helped negotiate a \$2.5 million class action settlement for 339 class members,
18 and the court approved a \$25,000 class representative incentive award for each named plaintiff.
19 (Haber Decl., ¶ 34.)

20 When compared with the amounts awarded in typical class action cases, the amount
21 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
22 award given to class action plaintiffs from **1993 to 2002** found that the "average award per class
23 representative was \$15,992 and the median award per class representative was \$4,357." (Eisenberg
24 & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev.
25 1303, 1308.) That same study found that named plaintiffs in employment discrimination class
26 actions received an average award of \$69,850 and a median award of \$31,081, while named
27 plaintiffs in other employment class actions received an average award of \$12,121 and a median
28 award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in

1 employment cases reflected the “courts’ wish to make representative plaintiffs whole by
2 compensating them for the high costs of their service to the class, including risks of stigmatization
3 or retaliation on the job.” (*Id.* at p. 1308.)

4 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

5 **A. Legal Standard**

6 The proposed Settlement Class is well suited for class certification for settlement purposes.
7 While Defendant disputes that Plaintiff’s claims are suitable for class certification, Plaintiff alleges
8 that all of his claims derive from a core set of alleged violations of California’s wage and hour
9 laws and regulations. For the reasons set forth more fully below, for purposes of settlement only,
10 Plaintiff contends that the claims satisfy the prerequisites for certification under Code of Civil
11 Procedure § 382. Section 382 provides: “when the question is one of a common or general interest,
12 of many persons, or when the parties are numerous, and it is impracticable to bring them all before
13 the court, one or more may sue or defend for the benefit of all.” (Code Civ. Proc., § 382.) There
14 are two requirements to section 382: “(1) There must be an ascertainable class; and (2) there must
15 be a well-defined community of interest in the questions of law and fact involved affecting the
16 parties to be represented.” (*Daar v. Yellow Cab Co.* (1967) 67 Cal. 2d 695, 704 [citations omitted].)
17 To clarify these requirements, the California Supreme Court has looked to Federal Rule of Civil
18 Procedure 23 to explain that the community-of-interest requirement itself embodies three factors:
19 “(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical
20 of the class; and (3) class representatives who can adequately represent the class.” (*Richmond v.*
21 *Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 470.)

22 California law and policy favor the fullest and most flexible use of the class action device.
23 (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a
24 means to prevent a failure of justice in our judicial system” particularly where the rights of
25 consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to
26 the appropriateness of class treatment should be resolved in favor of certification. (*Richmond,*
27 *supra*, 29 Cal.3d at pp. 473-75.)

28 ///

1 **B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for**
2 **Settlement Purposes.**

3 **1. The Classes Are Ascertainable and Numerous**

4 The proposed class that Plaintiff seeks to represent is easily ascertainable and includes
5 approximately 623 employees of Defendant.

6 Plaintiff maintains that there is an easily ascertainable class, defined by objective and
7 precise criteria. Because class members are identified using specific criteria in the regular business
8 records of Defendant, i.e., job position, the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.*
9 (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the
10 subject of the lawsuit is sufficient to make the class ascertainable].)

11 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
12 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
13 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action
14 may be maintained as a class action even where the parties are numerous and it is in fact practicable
15 to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a
16 class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries
17 of a trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d
18 574; see also, *Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) Therefore,
19 Plaintiff contends that numerosity is plainly satisfied.

20 **2. There are Many Common Issues of Law and Fact Which Predominate**

21 The Court should grant conditional class certification for settlement purposes here on the
22 grounds that questions of law and fact common to all class and subclass predominate over any
23 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
24 warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
25 Cal.App.3d 605.)

26 Here, the employment practices at issue are: whether Defendant had legally compliant
27 policies and practices to provide employees with meal periods; whether Defendant had legally
28 compliant policies and practices authorizing and permitting its employees to take rest periods;

1 whether Defendant had legally compliant policies and practices for all hours worked, including
2 overtime wages; whether Defendant reimbursed employees for business expenses; whether final
3 payment of wages was untimely and excluded unpaid wages, including meal period premium
4 wages, and rest period premium wages; and whether the wage statements were consequently non-
5 compliant. Plaintiff contends that the factual and legal issues are the same for all of the identified
6 class members, including Plaintiff. Further, all class members suffered from, and seek redress for,
7 the same alleged injuries.

8 **3. Plaintiff's Claims Are Typical of the Claims of the Class**

9 The typicality requirement does not focus on the individual characteristics or circumstances
10 of the representative plaintiff compared to those of the remainder of the class, but rather upon the
11 typicality of the proposed representative's claims as they relate to the defendant's conduct and
12 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that
13 common questions of law and fact predominate and that the class representative be similarly
14 situated" vis-à-vis the class.]) A representative plaintiff's claims are typical of the class if they
15 arise from the same event, practice or course of conduct, and if the claims rest on the same legal
16 theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant; as
17 such, he alleges that he was subject to the same policies and practices as other similarly situated
18 employees.

19 **4. Plaintiff and His Counsel Meet the Adequacy Requirement**

20 The adequacy of representation requirements is met by fulfilling two conditions: first, a
21 named plaintiff must be represented by counsel qualified to conduct the pending litigation; second,
22 a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of*
23 *America* (1976) 60 Cal.App.3d 442, 451.)

24 All of these requirements are met here for settlement purposes. Plaintiff retained counsel
25 with extensive experience in prosecuting complex class actions, including similar class actions that
26 previously settled. (Haber Decl., ¶¶ 40-46; Yslas Decl., ¶¶ 3-10.) Class Counsel unquestionably
27 is "qualified, experienced and generally able to conduct the proposed litigation." (*Miller v. Woods*
28 (1983) 148 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with

counsel, litigated this case and diligently reviewed the settlement terms, showing his dedication. Plaintiff's willingness to serve as a representative demonstrates his serious commitment to bringing about the best results possible for the class. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

5. A Class Action is Superior to a Multiplicity of Litigation

Finally, in making its class certification decision, the Court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation. By consolidating many potential individual actions into a single proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-situated employees with small but nevertheless meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort and expense required to prosecute individual actions. (*Gentry v. Super. Ct.* (2007) 42 Cal. 4th 443, 457-62; *Leyva v. Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are essentially non-existent.

V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND

A. The Proposed Notice Plan Satisfies Due Process

Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court, Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the class members will receive direct mailed notice. As the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class Members" (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided by direct mailing, the best possible form of notice.

B. The Notice is Accurate and Informative

The proposed Notice should be approved. It will be disseminated through direct U.S. first class mail to the last known address for each Class Member in both English and Spanish. It informs the Class Members of the terms of the settlement and their right to be excluded from the Settlement.

1 And if there are Class Members who wish to object to this proposed class action settlement, they
2 will have the opportunity to file their objections and be heard at the Final Approval Hearing.

3 The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg,
4 *Newberg on Class Actions* (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the
5 terms and conditions of the settlement agreement, in an informative and coherent manner. It
6 makes clear that the settlement agreement does not constitute an admission of liability by the
7 Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits
8 of the action. It also states that the final settlement approval decision has yet to be made. The
9 Notice thus complies with the standards of fairness, completeness, and neutrality required of a
10 combined settlement-certification class notice.

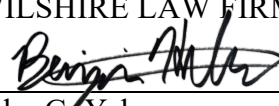
11 **VI. CONCLUSION**

12 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
13 approval of the proposed settlement and set a Final Approval Hearing.

14 Respectfully submitted,

15 Dated: December 23, 2024

WILSHIRE LAW FIRM

16 By: 

17 John G. Yslas
18 Benjamin H. Haber
19 Daniel J. Kramer

20 *Attorneys for Plaintiff*

PROOF OF SERVICE

Svay v. Certainteed, LLC, et al.
MCV093066

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Rebecca Padilla, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is rebecca.padilla@wilshirelawfirm.com.

On December 23, 2024, I served the **PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

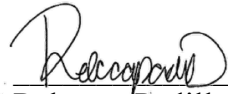
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Los Angeles, CA 90071
Telephone: (213) 239-9805

Attorneys for Defendant

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on December 23, 2024, at Los Angeles, California.



Rebecca Padilla