

Justin F. Marquez (SBN 262417)
justin@wilshirelawfirm.com

Benjamin H. Haber (SBN 315664)
benjamin@wilshirelawfirm.com

Arrash T. Fattahi (SBN 333676)
afattahi@wilshirelawfirm.com

WILSHIRE LAW FIRM

3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

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

CANDICE WADE, individually, on behalf of all
others similarly situated, and on behalf of the
State of California and other aggrieved persons,

Plaintiff,

v.

MALLORY SAFETY AND SUPPLY LLC, a
Limited Liability Company; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 23CV00951

**CLASS & PAGA REPRESENTATIVE
ACTION**

[Assigned to: Hon. John Freeland]

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

[Filed concurrently with: Declaration of
Justin F. Marquez; and [Proposed] Order]

PRELIMINARY APPROVAL HEARING

Date: February 29, 2024

Time: 9:30 a.m.

Courtroom: 2

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

2 PLEASE TAKE NOTICE that on February 29, 2024 at 9:30 a.m., in Courtroom 2 of the
3 Siskiyou County Superior Court, 411 Fourth Street, Yreka, California 96097, pursuant to Code of
4 Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*, Plaintiff Candice Wade will
5 move the Court for an Order granting preliminary approval of the proposed class action
6 settlement between Plaintiff and Defendant Mallory Safety and Supply LLC. Plaintiff further
7 moves the Court for an Order:

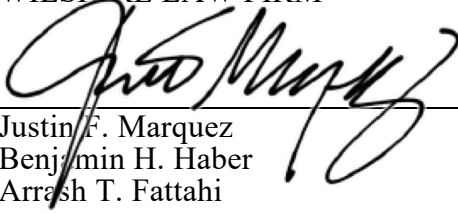
- 8 1. Granting preliminary approval of the Joint Stipulation of Settlement and Release of
9 Class and PAGA Action;
10 2. Certifying a Class for settlement purposes;
11 3. Approving the Notice and the plan for distribution of the Notice;
12 4. Appointing Plaintiff Candice Wade as Class Representative for settlement purposes;
13 5. Appointing Plaintiff's Counsel, Justin F. Marquez, Benjamin H. Haber, Arrash T.
14 Fattahi of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes;
15 6. Appointing APEX as the Settlement Administrator; and
16 7. Scheduling a final approval hearing.

17 The motion will be based upon this notice, the attached memorandum of points and
18 authorities, the Declaration of Justin F. Marquez, filed concurrently herewith, the records and
19 files in this action, and any other further evidence or argument that the Court may properly
20 receive at or before the hearing.

21 Respectfully submitted,

22 Dated: February 5, 2024

WILSHIRE LAW FIRM

23
24 By: 

Justin F. Marquez
Benjamin H. Haber
Arrash T. Fattahi

25
26 Attorneys for Plaintiff
27
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Candice Wade (“Plaintiff”) seeks preliminary approval of a proposed \$150,000 non-
4 reversionary, wage and hour class action settlement with Defendant Mallory Safety and Supply LLC
5 (“Defendant”). The Settlement will provide substantial monetary payments to approximately 121
6 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria
7 for settlement approval under California law. The Settlement was reached after extensive
8 investigation, informal discovery, and negotiations. The negotiations were at arms-length and were
9 facilitated by an experienced wage and hour class action and Private Attorneys General Act
10 (“PAGA”) mediator, Jeffrey Krivis, Esq., over the course of a full day of mediation that was
11 conducted via Zoom. After extensive negotiations and discussions regarding the strengths and
12 weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties¹ reached a settlement.
13 Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify
14 the proposed settlement class, approve the proposed notice, and set a final approval hearing.

15 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

16 **A. Plaintiff’s Claims**

17 1. This is a wage and hour class action and PAGA representative action. Plaintiff and
18 putative class members worked in California as hourly-paid or non-exempt employees for
19 Defendant during the class period. Defendant is a wholesale distributor of safety products and
20 supplies. (Declaration of Justin F. Marquez in Support of Plaintiff’s Motion for Preliminary
21 Approval of Class Action Settlement (Declaration of Justin F. Marquez [“Marquez Decl.”], ¶ 2.)

22 Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices
23 resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours
24 worked. Plaintiff further alleges that Defendant failed to provide employees with legally
25 compliant meal and rest periods, and Defendant failed to reimburse business expenses. Based
26 on these allegations, Plaintiff asserts related claims for failure to provide accurate wage
27

28 ¹ Plaintiff and Defendant.

statements, failure to pay all final wages at termination, unfair business practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

On January 30, 2023, Plaintiff filed a putative wage and hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7 and 512); (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Labor Code § 226); (7) failure to indemnify employees for expenditures (Labor Code § 2802; and (8) unfair business practices (Business and Professions Code § 17200, *et seq.*). On February 13, 2023, Plaintiff sent a notice to Defendant and the California Labor & Workforce Development Agency (“LWDA”) alleging similar wage and hour violations pursuant to the PAGA (Cal. Lab. Code §§ 2699, *et seq.*). (Marquez Decl., ¶ 4.) On April 24, 2023, Plaintiff filed a First Amended Class & Representative Action Complaint, which added a cause of action for civil penalties under PAGA. (*Id.*)

B. Discovery and Investigation

Following the filing of the Complaints, the Parties exchanged documents and information before mediating this action. Defendant produced a sample of timekeeping and pay records for class members. Defendant also provided documents of its wage and hour policies and practices during the class period, and information regarding the total number of current and former employees in its informal discovery responses. (*Id.* at ¶ 5.)

After reviewing documents regarding Defendant’s wage and hour policies and practices and analyzing Defendant’s timekeeping and payroll records, 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 ¶ 6.) 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.*)

///

1 **C. Settlement Negotiations**

2 On August 1, 2023, the Parties participated in private mediation with experienced
3 mediator, Jeffrey Krivis, Esq. (*Id.* at ¶ 7.) The mediation was conducted via Zoom. The
4 settlement negotiations were at arm’s length and, although conducted in a professional manner,
5 were adversarial. The Parties went into the mediation willing to explore the potential for a
6 settlement of the dispute, but each side was also prepared to litigate their position through trial
7 and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and
8 discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s
9 defenses, the Parties reached a settlement the material terms of which are encompassed within
10 the Settlement. (*Id.* at ¶ 8, Ex. 1 [Joint Stipulation of Settlement and Release of Class and
11 PAGA Action].)

12 Class Counsel has conducted a thorough investigation into the facts of this case. Based
13 on the foregoing discovery and their own independent investigation and evaluation, Class
14 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
15 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
16 of significant delay, the defenses that could be asserted by Defendant both to certification and
17 on the merits, trial risk, and appellate risk. (*Id.* at ¶ 14.)

18 Indeed, **the \$150,000.00 Settlement represents 77% of the realistic maximum**
19 **recovery of \$194,766.49.** (*Id.* at ¶ 22.) Although Class Counsel estimated that Defendant’s
20 maximum potential liability for all claims was approximately \$1.3 million, when the risk of
21 prevailing at certification and trial are factored into the equation, Class Counsel believes that
22 Defendant’s realistic exposure was \$194,766.49, meaning the Settlement achieves a significant
23 recovery. (*Id.* at ¶¶ 14-26.) Considering the risk and uncertainty of prevailing at class
24 certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 26.) Indeed, because
25 of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid
26 the risk of an unfavorable judgment.

27 **D. Key Terms of the Proposed Settlement**

28 The Settlement’s key terms include:

1 1. Class Definition: For settlement purposes only, the Parties agree to the certification
2 of a class pursuant to California Code of Civil Procedure § 382 defined as: “all current and former
3 hourly-paid employees of Defendant within the State of California at any time during the Class
4 Period.” (Settlement, § 1.37.)

5 2. Class Period: “shall mean the period from January 30, 2019 through October 1,
6 2023.” (Settlement, § 1.7.)

7 3. Participating Class Members: “shall mean Settlement Class Members who do not
8 timely and validly opt-out of the Settlement Class in the manner set forth in this Agreement and
9 described in the Notice Packet.” (Settlement, § 1.27.)

10 4. Aggrieved Employees: means a person employed by Defendant in California and
11 classified as an hourly-paid employee of Defendant during the PAGA Period of February 13, 2022
12 to October 1, 2023. (Settlement, §§ 1.23, 1.25.)

13 5. Gross Settlement Amount: This amount is \$150,000.00 and “includes the
14 Administration Expenses to the Settlement Administrator, Employee’s Taxes and Required
15 Withholdings, Class Counsel’s Attorneys’ Fees and Expenses, the Enhancement Payment to
16 Plaintiff, [and] PAGA Payment to the LWDA and PAGA Members.” (Settlement, § 1.17.)

17 6. Uncashed Checks: “The Parties agree that Code of Civil Procedure section 384 does
18 not apply to this Settlement and any uncashed checks will be sent to the Controller of the State of
19 California to be held pursuant to the Unclaimed Property Law, California Civil Code sections 1500,
20 *et seq.*, for the benefit of those Participating Settlement Class Members who did not cash their
21 checks until such time that they claim their property.” (Settlement, § 1.17.)

22 7. Release: “Upon the funding of the Gross Settlement Amount, each Settlement Class
23 Member who has not submitted a timely request to Opt-Out and Plaintiff will be bound by the
24 Judgment entered and will release the Released Parties [“Defendant and its officers, directors,
25 managers, owners, executives, partners, employees, shareholders, agents, attorneys, and any other
26 successors, assigns, or legal representatives and any of Defendant’s former and present parents,
27 subsidiaries, successors, and affiliates, and their officers, directors, managers, owners, executives,
28 partners, employees, shareholders, agents, attorneys, and any other successors, assigns, or legal

representatives”], and each of them, of and from any and all Released Claims [“all claims, rights, demands, liabilities, damages, penalties, attorneys’ fees, costs, and causes of action of every nature and description, arising from any and all claims which were asserted in the Action or reasonably could have been asserted based on the facts alleged in the Action, and arising or occurring during the Class Period of this settlement, including statutory, constitutional or common law claims for wages, damages, unpaid costs, liquidated damages, penalties, interest, attorneys’ fees, litigation costs, restitution, equitable relief, or other relief based on the following categories of allegations as set forth in the operative complaints: (a) all claims for unpaid wages, including overtime wages, minimum wages and straight time wages; (b) all claims for failure to provide meal periods; (c) all claims for failure to authorize and permit rest periods; (d) all claims for failure to timely pay final wages; (e) all claims for the failure to provide accurate wages statements; (f) all claims for failure to indemnify business expenses; (g) all claims for Unfair Business Practices under California’s Business and Professions Code section 17200, *et seq.*; and (h) all claims for any and all penalties pursuant to the Private Attorneys General Act (Labor Code § 2699, *et seq.*)”] for the Class Period. It is the desire of the Parties and the Settlement Class Members to fully, finally, and forever settle, compromise, and discharge the Released Claims during the Class Period. Each Settlement Class Member, except those who timely Opt-Out, will be bound to the release of Released Claims as a result of the Class Settlement and to the terms of the final judgment and the satisfaction of such judgment.” (Settlement, §§ 1.32, 1.33, 11.1.)

8. No Reversion: “The Gross Settlement Amount is non-reversionary, meaning no amount will revert to Defendant.” (Settlement, § 1.17.)

9. PAGA Allocation: The settlement includes \$10,000.00 allocated to Plaintiff’s claims under PAGA, with 75% of which (\$7,500.00) being paid to the LWDA and 25% (\$2,500.00) being paid to the PAGA Members. (Settlement, § 1.24.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Marquez Decl., ¶ 9.)

10. Net Settlement Amount or NSA: “shall mean the Gross Settlement Amount, minus the Court-approved amounts awarded for the Class Counsel’s Attorneys’ Fees and Expenses,

Enhancement Payment to Plaintiff, Administration Expenses, and PAGA Payment.” (Settlement, § 1.19.)

11. Distribution Formula: “Participating Class Members will receive a pro-rated share of the NSA based on the total number of weeks worked as a Settlement Class member any time during the Class Period, in relation to the aggregate number of weeks worked by all Participating Settlement Class members, based on the following formula: **Individual Settlement Payment = NSA x (Individual’s Number of Weeks Worked ÷ Aggregate Weeks Worked by all Participating Settlement Class Members During the Class Period).**” (Settlement, § 8.3.) As to PAGA: “If a Settlement Class Member is also a PAGA Member, they will also receive a proportionate share of Two Thousand, Five Hundred Dollars (\$2,500.00) (25% of the PAGA Payment), in addition to the Individual Settlement Payment, based on the following formula: **Individual PAGA payment = \$2,500 x (Individual’s Number of Pay Periods Worked ÷ Aggregate Pay Periods Worked by all PAGA Members During the PAGA Period).**” (*Id.*)

12. Tax Allocation: Any settlement money paid to Settlement Class Members will be allocated as 20% to wages and reported on an IRS W-2 basis, 30% to interest to be reported on an IRS form 1099, and 50% to penalties to be reported on an IRS form 1099. (Settlement, § 5.3.) Any settlement money paid to PAGA Members as a PAGA Payment will be allocated as 100% to penalties to be reported on an IRS form 1099. (*Id.*)

13. Class Representative Service Award: Subject to Court approval, Plaintiff shall be paid an enhancement award not to exceed \$10,000.00. (Settlement, §§ 1.40, 5.6.) If the Court approves a lesser enhancement, then the unapproved portion or portions shall revert into the Net Settlement Amount. (Settlement, § 9.1.)

14. Attorneys’ Fees and Costs: The Settlement provides that Defendant will not object to a fee application of up to one-third of the Gross Settlement Amount (\$50,000.00), plus actual documented costs or expenses not to exceed \$25,000.00. (Settlement, § 5.5.)

15. Notice of Proposed Class Action Settlement: The Notice sets forth, in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys’ fees, costs, and service award being sought, and an explanation of how the settlement

allocations are calculated. (Settlement, Ex. A, Class Notice.) Class Members will be notified by first-class mail of the settlement. (Settlement, § 7.1.) APEX, the proposed Settlement Administrator, will undertake its best efforts to ensure that the Notice is provided to the current addresses of class members, including conducting a national change of address search and re-mailing the notice to updated addresses. (Settlement, § 6.1, 7.1, 7.2; Marquez Decl., ¶ 10, Ex. 2 [Settlement Administrator Bid].)

III. DISCUSSION

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

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

As discussed below, Class Counsel has provided information exceeding the threshold

required to provide this Court with materials and information necessary to determine that the proposed settlement is fair, adequate, and reasonable.

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

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

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

The Settlement was reached following extensive negotiations following one day of mediation with experienced employment mediator, Jeffrey Krivis, Esq. (Marquez Decl., ¶ 7.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) 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 or its 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 an agreement. (Marquez Decl., ¶ 8.)

Prior to reaching this settlement, Class Counsel conducted informal discovery concerning the claims set forth in the Litigation, such as a sample of class member timekeeping and payroll records, Defendant's policies and procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well as information regarding the number of putative class members and the mix of current versus former employees, the wage rates in effect, and the amount of meal and rest period premium wages paid to class members. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation,

1 Class Counsel investigated the applicable law regarding the claims and defenses asserted in the
2 litigation. (*Id.*) Thus, Plaintiff and her counsel were able to act intelligently and effectively in
3 negotiating the proposed Settlement. (*Id.*)

4 Class Counsel also has considerable experience and has demonstrated competence with
5 litigating wage and hour class actions. (*Id.* at ¶¶ 37-48.) Again, this supports the position that the
6 terms of the Settlement are premised on objective evidence that has been considered and weighed
7 in light of the risks, expenses, and time consumption to both sides of continued litigation of this
8 action.

9 **2. The Settlement Is Fair and Reasonable in Light of the Parties’** 10 **Respective Legal Positions**

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

18 This settlement avoids the risks and the accompanying expense of further litigation.
19 (Marquez Decl., ¶ 26.) While Plaintiff is confident in the merits of her claims, a legitimate
20 controversy exists as to each cause of action. (*Id.* at ¶ 23.) Plaintiff also recognizes that proving
21 the amount of wages due to each class member would be an expensive, time-consuming, and
22 uncertain proposition. (*Id.*)

23 The proposed settlement of \$150,000.00 therefore represents a substantial recovery when
24 compared to Plaintiff’s reasonably forecasted recovery. (*Id.* at ¶¶ 14-26.) Because of the proposed
25 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
26 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
27 achieving class certification, the burdens of proof necessary to establish liability, the probability
28 of appeal of a favorable judgment, it is clear that the settlement amount of \$150,000.00 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 \$384.29.*** (*Id.* at ¶ 25.)

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. (Marquez Decl., ¶¶ 37-48.) Although Plaintiff and her 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 class and sub-class. The Notice informs the class of the terms of the settlement and of their rights to be excluded from the settlement. And if there are 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, subject to the Court’s approval, Defendant agrees to pay Class Counsel reasonable attorneys’ fees in amount of \$50,000.00, which is one-third (1/3) of the Gross Settlement Amount, and up to \$25,000.00 in costs. These amounts are disclosed to all class members in the proposed Notice and are reasonable.

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

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

1 quoting *D’Amico v. Bd. of Medical Examiners* (1974)
2 11 Cal.3d 1.)

3 Class Counsel seek an award of attorneys’ fees on the “percentage of recovery/ common
4 fund” theory. The purpose of this approach is to “spread litigation costs proportionally among all
5 the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent v.*
6 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995)
7 15 Cal.3d 162, the California Supreme Court stated: “one who expends attorneys’ fees in winning
8 a suit which creates a fund from which others derive benefits may require those passive
9 beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and*
10 *County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized
11 that the common fund doctrine has been applied “consistently in California when an action brought
12 by one party creates a fund in which other persons are entitled to share.” (*Id.* at p. 110.)

13 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
14 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
15 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
16 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
17 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
18 method—including relative ease of calculation, alignment of incentives between counsel and the
19 class, a better approximation of market conditions in a contingency case, and the encouragement
20 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
21 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
22 (*Id.* [internal citations omitted].)

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

24 According to a leading treatise on class actions, “[n]o general rule can be articulated on
25 what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on
26 a reasonable fee award from a common fund in order to assure that the fees do not consume a
27 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
28 are not unprecedented.” (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.)

Attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also*, *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F.Supp. 294 [stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under \$10 million].)

Here, Plaintiff requests attorneys' fees equal to one-third (1/3) of the Settlement Amount, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Accordingly, Plaintiff respectfully requests that the Court approve the attorneys' fees as negotiated by the Parties and requested herein.

3. This Matter Involves A "Fee-Shifting" Provision of the Labor Code

Labor Code § 1194(a) provides for the recovery of "minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Under this section, Plaintiff would be permitted to recover her actual attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this case. This settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Class Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Class Counsel. (Marquez Decl., ¶¶ 35-36.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the 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. (Marquez

Decl., ¶¶ 37-48.) 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 Service Award to Named Plaintiff Is Reasonable

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

Service awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in California Labor Code section 90.5, which provides, “it is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions....”). Nonetheless, the California Supreme Court has noted that “retaliation against employees for asserting statutory rights under the Labor Code is widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should

1 be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v.*
2 *Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

3 Under the settlement agreement, subject to the Court’s approval, Defendant agreed to not
4 object to a Service Award in the amount of \$10,000 to Plaintiff. This amount is also in exchange
5 for Plaintiff’s general release of all claims against Defendant. Class Counsel represent that
6 Plaintiff devoted a great deal of time and work assisting counsel in the case, communicated with
7 counsel very frequently for litigation and to prepare for mediation, and was frequently in contact
8 with Class Counsel during the mediation. (Marquez Decl., ¶¶ 27-31.) This amount is reasonable
9 particularly in light of the substantial benefits Plaintiff generated for all class members. (*Id.*)
10 Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation, et al.*, No. 2:14-cv-02509-TLN-DB,
11 Class Counsel, Justin F. Marquez, helped negotiate a \$2.5 million class action settlement for 339
12 class members, and the court approved a \$25,000 class representative incentive award for each
13 named plaintiff. (Marquez Decl., ¶ 31.)

14 When compared with the amounts awarded in typical class action cases, the amount
15 requested here is particularly reasonable. Indeed, a 2006 study examining the average incentive
16 award given to class action plaintiffs from 1993 to 2002 found that the “average award per class
17 representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore
18 Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study,”
19 53 UCLA L. Rev. 1303, 1308 (2006).) That same study found that named plaintiffs in employment
20 discrimination class actions received an average award of \$69,850 and a median award of \$31,081,
21 while named plaintiffs in other employment class actions received an average award of \$12,121
22 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards
23 in employment cases reflected the “courts’ wish to make representative plaintiffs whole by
24 compensating them for the high costs of their service to the class, including risks of stigmatization
25 or retaliation on the job.” (*Id.* at p. 1308.)

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

2 **A. Legal Standard**

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

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

24 **B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for**
25 **Settlement Purposes.**

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

27 The proposed class that Plaintiff seeks to represent is easily ascertainable, and includes
28 approximately 121 employees of Defendant.

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

6 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
7 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
8 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action
9 may be maintained as a class action even where the parties are numerous and it is in fact practicable
10 to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a
11 class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries
12 of a trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d
13 574; *see also, Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) Therefore,
14 Plaintiff contends that numerosity is plainly satisfied.

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

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

21 Here, the employment practices at issue are: whether Defendant had legally compliant
22 policies and practices to provide employees with meal periods; whether Defendant had legally
23 compliant policies and practices authorizing and permitting its employees to take rest periods;
24 whether Defendant had legally compliant policies and practices for all hours worked, including
25 overtime wages; whether Defendant reimbursed employees for business expenses; whether final
26 payment of wages was untimely and excluded unpaid wages, including meal period premium
27 wages, and rest period premium wages; and whether the wage statements were consequently non-
28 compliant. Plaintiff contends that the factual and legal issues are the same for all of the identified

1 class members, including Plaintiff. Further, all class members suffered from, and seek redress for,
2 the same alleged injuries.

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

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

14 **4. Plaintiff and Her Counsel Meet the Adequacy Requirement**

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

19 All of these requirements are met here for settlement purposes. Plaintiff retained counsel
20 with extensive experience in prosecuting complex class actions, including similar class actions that
21 previously settled. (Marquez Decl., ¶¶ 37-48.) Class Counsel unquestionably is "qualified,
22 experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148
23 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel,
24 litigated this case and diligently reviewed the settlement terms, showing their dedication.
25 Plaintiff's willingness to serve as a representative demonstrates her serious commitment to
26 bringing about the best results possible for the class and subclass. (*McGhee, supra*, 60 Cal.App.3d
27 at p. 451.)

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

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

12 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

13 **A. The Proposed Notice Plan Satisfies Due Process**

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

22 **B. The Notice is Accurate and Informative**

23 The proposed Notice should be approved. It will be disseminated through direct U.S. first-
24 class mail to the last known address for each Class Member. It informs the Class Members of the
25 terms of the settlement and their right to be excluded from the Settlement. And if there are Class
26 Members who wish to object to this proposed class action settlement, they will have the
27 opportunity to file their objections and be heard at the Final Approval Hearing.

28 The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg,

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

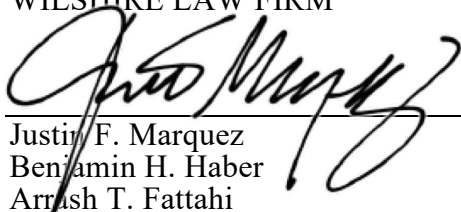
8 **VI. CONCLUSION**

9 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
10 approval of the proposed settlement and set a Final Approval Hearing in July 2024.

11
12
13 Dated: February 5, 2024

Respectfully submitted,

WILSHIRE LAW FIRM

14 By: 

15 Justin F. Marquez
16 Benjamin H. Haber
Arrish T. Fattahi

17 Attorneys for Plaintiff
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Wade v. Mallory Safety and Supply LLC, et al.
23CV00951

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

3 Executed this **February 5, 2024**, at Los Angeles, California.

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6 Zeyra Ceballos
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