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13 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF SAN JOAQUIN

15 HECTOR ESTRADA, individually and on
16 behalf of others similarly situated
17 Plaintiff,

18 vs.

19 GLASSFAB TEMPERING SERVICES INC.;
20 and DOES 1 through 100, inclusive,
21 Defendants.

Case No: STK-CV-UOE-2021-8051

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT FOR MOTION FOR
PRELIMINARY APPROVAL OF THE
CLASS ACTION SETTLEMENT**

Hearing Date: 10/13/23
Hearing Time: 9 AM
Judge: 10A

**This case has been assigned to Judge
GEORGE J. ABDALLAH in Department
10A for all purposes including trial.**

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1 **I. INTRODUCTION**

2 Through Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, Plaintiff
3 request court approval of a class action settlement on behalf of 636 Class Members who were
4 formerly employed by Defendant as non-exempt workers. The Parties agree, pursuant to the
5 Settlement Agreement, that all California Labor Code and Business and Professions Code violations
6 claimed by the Class Representative is common to all Class members because they were all similarly
7 situated in terms of type of employment with Defendant, and because they were all subject to the
8 same and uniform employment practices of Defendant. Utilization of the class action process as a
9 means of adjudicating their claims is superior to the filing of individual claims because individual
10 claims would burden the judicial system, and the cost of individual legal representation for each of
11 Defendant’s affected employees would severely diminish potential individual recovery.

12 The basic terms of the Class Action and PAGA Settlement Agreement (“Settlement
13 Agreement” or “Settlement”) provide for the following:

- 14 1. A non-reversionary Gross Settlement Sum of \$345,000 allocated to approximately 636 Class
15 Members on a pro rata basis according to the number of weeks each Class Member worked
16 during the Class Period;
- 17 2. An award of up to 35% of the Gross Settlement Sum (currently \$120,750.00) and up to
18 \$17,000 in reimbursement of costs to Plaintiff’s Counsel for services rendered as counsel on
19 this matter;
- 20 3. Service Awards of up to \$5,000.00 to Plaintiff Estrada;
- 21 4. Settlement Administration fees and costs of up to \$13,000; and
- 22 5. PAGA Group Size: an estimated **369** individuals, who worked roughly **102** PAGA Pay Periods
23 each (Ladv Decl. ¶ 53);
- 24 6. PAGA Period: August 27, 2021 through the date of final approval of the Parties’ settlement
25 agreement by the Court. (Ladv Decl. ¶ 53);
- 26 7. Withdrawal Clause: If the number of workweeks is more than 10% higher than the estimated
27 57,760 workweeks as of the date of the Agreement, then Plaintiff may exercise the option to
28

- 1 withdraw from the settlement. (Settlement, ¶ 9);
- 2 8. Kullar/Munoz Analysis: Plaintiff addresses the claims analysis herein, and in more detail in the
- 3 Declaration of Ashwin Ladva, at Paragraph 57;
- 4 9. No Reversion: The Settlement is a *non-reversionary* settlement (Settlement, ¶ 3.1);
- 5 10. No Claim Form: No claim form is required (Settlement, ¶ 3.1);
- 6 11. Class Release: The Settlement will release specified wage-and-hour claims for Participating
- 7 Class Members (those Class Members who do not opt out of the Settlement) as defined by the
- 8 Operative Complaint (Settlement, ¶ 6.2);
- 9 12. PAGA Release: Plaintiff and the LWDA will release the PAGA Claims set forth in this Action,
- 10 that were identified in the Operative Complaint and Plaintiff's LWDA Notice Letter, regardless
- 11 of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 6.3);
- 12 13. Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys' fees
- 13 and costs, service payment to Plaintiff, administration costs, and the PAGA penalty, the
- 14 remainder will be available for distribution to Class Members who do not opt out, with each
- 15 Class Member receiving a share based on the number of workweeks each Class Member worked
- 16 for Defendant within the Class Period. The Net Settlement Amount is estimated to be at least
- 17 **\$179,250.00**. (Ladva Decl., ¶ 58.)
- 18 14. Tax Allocation: The amounts distributed to Class Members will be characterized as 10% alleged
- 19 unpaid wages, 90% to interest and penalties, and PAGA Settlement Payments will be allocated as
- 20 100% penalties. (Settlement, ¶¶ 3.2.4.1, 3.2.5.2.)
- 21 15. Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes (e.g.,
- 22 FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages
- 23 will be paid separate and apart from the MSA (Settlement, ¶ 3.1);
- 24 16. Settlement Administrator: The notice portion of the Settlement will be administered by a third-
- 25 party Administrator, Simpluris, and the Parties estimated that the costs of administration should
- 26 not reasonably exceed \$13,000.00. (Settlement, ¶ 3.2.3;)
- 27 17. Class Data for Administration: The Settlement Administrator will receive the Class List within
- 28 21 calendar days of Preliminary Approval, use the NCOA database to update the Class List, and

- 1 then use skip tracing on returned Notices (Settlement, ¶¶ 4.4.1);
- 2 18. Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 8.4.2).
- 3 The Notice describes how to dispute workweeks, submit an objection in writing, in person, or
- 4 through an attorney, or request exclusion (Settlement, ¶¶ 8.5 – 8.7);
- 5 19. Notice Language: Notice will issue in English (Settlement, ¶ 1.11);
- 6 20. Objections: Objections can be submitted in person, through an attorney, or in writing to the
- 7 Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶¶ 8.7.2 – 8.7.3);
- 8 21. Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement
- 9 Administrator, is the same as the procedure for submitting a written objection (Settlement, ¶¶
- 10 8.5.1 and 8.7.2);
- 11 22. PAGA Allocation: Payment of \$10,000 for civil penalties pursuant to PAGA. Seventy-five
- 12 percent (75%) of this payment, or \$7,500 will be paid to the California Labor and Workforce
- 13 Development Agency (“LWDA Payment”), and twenty-five percent (25%), or \$2,500 will
- 14 be paid to the Net Settlement Amount for distribution to Class Members. (Settlement, ¶ 1.34);
- 15 23. Notice to LWDA: Notice was provided to the LWDA of this Motion. Evidence is attached to
- 16 the proof of service;
- 17 24. Enhancement/Service Award to Plaintiff: Defendant will not oppose the application for Class
- 18 Representative Service Payment of up to **\$5,000.00** for Plaintiff, to be paid from the MSA
- 19 (Settlement, ¶ 3.2.1);
- 20 25. Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 4.4.1);
- 21 26. Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain
- 22 uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed
- 23 to the State Bar’s Justice Gap Fund as *cy pres* (Settlement, ¶ 4.4.3);
- 24 27. Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after
- 25 entry;
- 26 28. Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with
- 27 Class Members (Settlement ¶ 13.13).
- 28

1 The settlement discussions were conducted at arm's-length with a mediator and involved an
2 informed and detailed analysis of Defendant's potential liability of total exposure in relation to the
3 costs and risks associated with continued litigation (Review of Defendants' financials; tax returns
4 and profit & loss statements).

5 Discussions between counsel for the Parties, informal discovery, as well as the investigation
6 and evaluation of the allegations in the Complaint by the Parties, have permitted each side to assess
7 the relative merits of the claims and defenses to those claims.

8 Based on the documents produced, as well as Plaintiff's counsel's own independent
9 investigation and evaluation, Plaintiffs' counsel believes that the settlement for the consideration and
10 on the terms set forth in this Agreement is fair, reasonable, and adequate, and is in the best interest
11 of the Class Action Members in light of all known facts and circumstances, including the risks of
12 significant delay and uncertainty associated with litigation and various defenses asserted by
13 Defendant.

14 **II. PROCEDURAL POSTURE**

15 On August 27, 2021, Plaintiff filed a putative class action against Defendant, entitled *Hector*
16 *Estrada v. GLASSFAB TEMPERING SERVICES INC.*, in SAN JOAQUIN County Superior Court,
17 Case No. STK-CV-UOE-2021-8051 (the "Action") seeking to represent a class consisting of the
18 "current" and former Class Members of Defendant for claims related to alleged wages, specifically,
19 (1) Violations of the Labor Code sections 1194(a) and 510 (failure to pay overtime wages); (2)
20 Violation of California Labor Code section 226.7 (failure to provide meal and rest breaks); (3)
21 Violation of Labor Code section 226 (failure to provide accurate itemized wage statements); (4)
22 Violation of Labor Code section 510 and 204 (failure to pay all wages and overtime wages); (5)
23 Violation of Labor Code section 201, 202, 203, and 203.1 (waiting time penalties); (6) Unfair
24 Competition in Violation of Cal. Business and Professions Code §17200; (7) Unjust Enrichment; and
25 (8) Declaratory relief behalf of himself and other employees of the Company.

26 On April 15, 2022, Plaintiff filed a Motion to Compel Further Responses to Plaintiff's First
27 Set of Requests for Production of Documents and First Set of Special Interrogatories. On May 24,
28

1 2022, Defendants filed his opposition to both motions. The parties stipulated to postpone the date of
2 the hearing until after mediation. The two motions were later withdraw without prejudice based on
3 the parties preliminary settlement of the case.

4 Plaintiff sent a letter to the Labor and Workforce Development Agency (“LWDA”), pursuant
5 to California Labor Code § 2699.3, providing notice of his intent to seek civil penalties under the
6 Private Attorneys General Act, California Labor Code § 2698, et seq. (“PAGA Letter”). The LWDA
7 did not indicate that it intended to investigate the alleged violations referenced in the letter, and the
8 65-day time period permitted for the LWDA to provide such a notification expired.

9 The First Amended Complaint was filed on June 7, 2023. The following claims were added in
10 amended complaint included minimum wages, reimbursement of expenses, and a California Private
11 Attorneys’ General Act (“PAGA”) Claim.

12 **III. PREMEDIATION INVESTIGATION**

13 In addition to interviewing our client and reviewing all relevant documents in his
14 possession (time sheets, schedules, pay stubs), Plaintiff conducted significant relevant written
15 discovery in this matter, including serving Special Interrogatories and Requests for Production
16 of Documents. Through the discovery process the Parties estimate that there are approximately
17 636 Class Members. (Ladva Dec. ¶ 6)) Defendant produced 8,153 documents including a 20
18 percent sample of the class. (Ladva Dec. ¶ 23) Defendant disclosed that there are 636 non-exempt
19 employees who are Class Members from August 27, 2017 (four years prior to the lawsuit) to
20 February 14, 2023 (i.e., the date of the mediation). Of the 636 class members 267 are no longer
21 employed by Defendant. (Ladva Dec. ¶ 23) Defendant disclosed that Class Members worked
22 56,760 workweeks during the above period. (Ladva Dec. ¶ 7

23 Defendant’s human resources handbook does not list a meal break policy and rest break
24 policy for hours worked in excess of 10 hours. (Ladva Dec. ¶ 25) Defendant contends that it posted
25 the Labor Board Wage Order outlining employees right to all meal and rest breaks, but Plaintiff
26 contends that he has never seen such order at the break room or by the time clock or anywhere else
27 in the two factories during his employment with Defendant. (Ladva Dec. ¶ 26)

1 **IV. MEDIATION**

2 The Parties engaged in a mediation on February 14, 2023 with Jeffrey Krivis, Esq. The Parties
3 discussed at length the burdens and risks of continuing with the litigation as well as the merits of
4 claims and defenses. (Nakama Decl., ¶ 16) After the mediation, the Parties then signed a long form
5 settlement agreement. (*Id.*) Plaintiff and Class Counsel are aware of the burdens of proof necessary
6 to establish liability for the claims asserted in the Action, both generally and in response to Defendant's
7 defenses thereto. (Nakama Decl., ¶ 17)

8 Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set
9 forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the
10 Class. (Nakama Decl., ¶ 18) Solely for the purpose of settling this case, the parties agree that the
11 requirements for establishing class action certification with respect to this class have been met and are
12 met. (*Id.*) If this Settlement is not approved by the Court for any reason, Defendant reserves its right
13 to contest class certification. (*Id.*) This Settlement, if approved, will result in the termination of the
14 litigation through the entry of the Judgment and the release of all Released Claims for all Class
15 Members, including all within the class definition who have not elected to exclude themselves from
16 the Class.

17 **V. TERMS OF THE SETTLEMENT**

18 **1. Total Gross Amount, Reimbursement of Costs, Attorneys' Fees, Service**
19 **Award to Plaintiff, and Payment to LWDA for PAGA Claim.**

20 Plaintiff Estrada and Defendant GTS agreed to settle the class claims in exchange for a Gross
21 Settlement Sum of \$345,000. (Ladva Decl., Exhibit 1, Class Action and PAGA Settlement
22 Agreement and Class Notice, § 1.22 & 3.1) The Gross Settlement Sum will be used to make
23 payments for the following: (1) Individual Settlement Payments to Participating Class Members; (2)
24 attorneys' fees to Class Counsel of up to 35 percent of the Gross Settlement Sum; (3) reimbursement
25 of Class Counsel's litigation costs of up to \$17,000; (4) a Service Award to Plaintiff Estrada of up to
26 \$5,000.00; (5) Settlement Administration fees and costs of \$13,000; and (6) a payment to the LWDA
27 of \$7,500 (75% of \$10,000) pursuant to PAGA and the remaining \$2,500 (25% of \$10,000)
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distributed to aggrieved employees from August 27, 2021 to date of order granting final approval of the judgment. *Id.* at §§ 1.4, 1.34, 3.2.3. Class Members' Individual Settlement Payments will be distributed after final approval of the Settlement and Defendants fund the Gross Settlement Sum. *Id.* at §11. Plaintiff's counsel provided notice to the LWDA by serving them a copy of this motion. (See Proof of Service filed concurrently with this motion).

2. Class Definition

The Settlement Agreement defined "Class" as the following:

"Class" shall be defined as all current and former hourly employees who worked for Defendant in California any time or times between August 27, 2017, through the date of preliminary approval of the parties' settlement agreement by the Court, (the "Class Period"), and excluding any persons who are currently represented by counsel and have a civil action pending, and also excluding any persons who opt-out of the class. (Ladva Decl., Exhibit 1, Class Action and PAGA Settlement Agreement and Class Notice, Pg. 1, Section 1.5).

3. Aggrieved Employee Definition

For the purposes of allocating funds to the PAGA Claim, "Aggrieved Employees" was defined as "all current or former non-exempt employees who worked for Glassfab in the State of California from August 27, 2021, through the date of final approval of the parties settlement agreement by the Court." (Ladva Decl., Exhibit 1, Class Action and PAGA Settlement Agreement and Class Notice, Pg. 1, Section 1.4).

4. Settlement Range for Class Members

The Individual Settlement Amount shall be calculated by multiplying the Class Member Payout Fund by a fraction, the numerator of which is the total number of Workweeks the Participating Claimant worked during the Class Period, and the denominator of which is the aggregate number of workweeks worked by all Participating Class Members during the Class Period. (Ladva Decl., Exhibit 1, Class Action and PAGA Settlement Agreement and Class Notice, § 1.14.) The gross range of payment to the class will be between \$201.57 to \$689.84. (Ladva Decl., Exhibit 1, Class Action and PAGA Settlement Agreement and Class Notice, § 1.14.)

1 The Individual Settlement Payments to Class Members will be allocated for tax purposes as
2 follows: 10% to wages; 90% to penalties and interest. (Ladva Decl., Exhibit 1, Class Action and
3 PAGA Settlement Agreement and Class Notice, § 3.2.4.1. The employer- side payroll taxes on the
4 portion allocated to wages will be paid by Defendants separately from, and in addition to the Gross
5 Settlement Sum. No portion of the Gross Settlement Sum will revert to Defendants. The Settlement
6 Administrator will calculate the actual estimated recovery to include in the Class Notice and provide
7 the estimated low and high range of possible recovery at final approval. (*Id.*, Settlement Agreement,
8 Exhibit 1 (Notice of Class Action Settlement).

9 **5. Proposed Opt-Out and Objection Process**

10 The "Response Deadline" for opt outs means 60 days after the Administrator mails Notice to
11 Class Members and Aggrieved Employees, and shall be the last date on which Class Members may:
12 (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or
13 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been
14 returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the
15 Response Deadline has expired. (Ladva Decl., Exhibit 1, Class Action and PAGA Settlement
16 Agreement and Class Notice, § 1.43).

17 The Class Notice provides information regarding the nature of the lawsuit, a summary of the
18 substance of the settlement terms, the formula for calculating Individual Settlement Payments, the
19 individual's estimated payout, a statement that Class Members who take no action will release their
20 claims and receive settlement checks, instructions regarding how to dispute the calculations,
21 instructions regarding how to request exclusion or object to the Settlement, the date for the final
22 approval hearing, the amounts sought for attorneys' fees and costs, the Settlement Administration
23 Costs, the class representatives' Service Award, the PAGA allocation, and information on how to
24 access the court's website to view the case records. *See* Ladva Decl., Exhibit 1, Settlement
25 Agreement, Exhibit 1 (Class Notice).

26 The Class Notice provides instructions for Class Members who choose to exclude themselves
27 from the Settlement. *Id.* To opt out, Class Members are instructed to submit a Request for Exclusion
28

1 to the Settlement Administrator by a specified date (60 calendar days after the date of mailing of the
2 Class Notice). Id. at pp. 1, 6-7. Class Members do not need to submit a claim form to participate in
3 the Settlement. See Settlement Agreement, Exhibit 1 (Class Notice), p. 1. Class Members are
4 informed of how they can object to the Settlement, and the Class Notice informs Class Members of
5 the date, time, and location of the final fairness and approval hearing so that they can appear in
6 person. Id. at pp. 1, 6-7. Accordingly, the content of the Class Notice complies with the requirements
7 of Cal. R. Ct. 3.766(d).

8 If Class Notice packets are returned as undeliverable, the Settlement Administrator will
9 perform a skip-trace or other search, and re-mail the Class Notice. Settlement Agreement, § 1.10.
10 The initial 60- day notice period ensures the notice program provides due process by giving Class
11 Members enough time to determine whether they want to participate in the Settlement. This means
12 of notice is reasonably calculated to apprise Class Members of the pendency of the action. See Cal.
13 R. Ct. 3.766 (d)-(f).

14 **6. Proposed Release**

15 The release to be given by Class Members is on behalf of themselves and their respective
16 former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
17 release GlassFab, its agents, officers, employees, directors, owners, subsidiaries, DBA's, affiliates,
18 attorneys and parent companies, ("Released Parties") ("Defendant Releasees"). (Ladva Decl.,
19 Exhibit 1, Settlement Agreement, § 6.2.) Under the proposed release, Class Members who do not
20 exclude themselves from the Settlement will be deemed to have released or waived the following
21 "Released Claims" against the Defendant Releasees during the period of August 17, 2017, through
22 the date of preliminary approval:

23 "Any and all claims that were asserted in the Action, or that arise from or could have been
24 asserted based on the facts, circumstances, transactions, events, occurrences, acts,
25 disclosures, statements, omissions or failures to act alleged in Plaintiff's Complaint or First
26 Amended Complaint, regardless of whether such claims arise under federal, state and/or local
27 law, statute, ordinance, regulation, common law, or other source of law ("the Released
28 Claims"). The Released Claims specifically include, but are not limited to Labor Code §§
201, 202, 203, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, and 2802 and the
related IWC Wage Order No. 1-2001 and Business & Professions Code §§ 17200, et seq.
claims based on alleged violations of these Labor Code and Wage Order provisions) and all

1 other claims, such as those under the California Labor Code, Wage Orders, regulations,
2 and/or other provisions of law, that could have been pleaded based on the facts asserted in
3 the Action, including: (1) failure to timely pay employees upon separation or discharge; (2)
4 failure to pay all wages due and owing for time worked; (3) failure to reimburse necessary
5 business expenditures, (4) failure to provide meal or rest periods of compensation in lieu
6 thereof, (5) failure to provide accurate itemized wage statement, (6) all related violations of
7 the applicable Wage Orders; (7) all related violations of California's unfair competition law;
8 and (8) interest, fees, and costs ("Released Claims"). The enumeration of these specific
9 statutes shall neither enlarge or narrow the scope of res judicata based on the claims that were
10 asserted in the Action or could have been asserted in the Action based on the facts and
11 circumstances alleged in any Complaint on file in the Action."

12 (Ladva Decl., Exhibit 1, Settlement Agreement, § 6.2.)

13 **VI. ARGUMENTS**

14 **A. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE.**

15 Class certification is appropriate when there exists (1) an ascertainable and sufficiently
16 numerous class, (2) a well-defined community of interest among class members, and (3) when
17 certification would be a fair and efficient means of adjudicating the action, rendering class litigation
18 superior to alternative means. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004,
19 1021 (2012). "The certification question is 'essentially a procedural one that does not ask whether an
20 action is legally or factually meritorious.'" *SAV-ON Drug Stores, Inc.*, 34 Cal.4th 319, 326 (2004).
21 Indeed, the certification question simply asks whether the theory of recovery advanced by the
22 plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181
23 Cal. App. 4th 1286, 1298 (2010). "[I]t is also well established that trial courts should use different
24 standards to determine the propriety of a settlement class, as opposed to a litigation class
25 certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Global Minerals*
26 *& Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor*
27 *Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996).

28 **1. The Proposed Class is Numerous and Ascertainable**

Whether a class is ascertainable is determined by examining (1) the class definition; (2) the
size of the class; and (3) the means available for identifying class members. *Reyes v. Board of*
Supervisors of San Diego County (1987) 196 Cal.App.3d 1263, 1271. Typically, in employment
cases, ascertainability is not at issue because the class members are easily identifiable – they are

1 employees of the company and the employer is required under the California Labor Code and
2 Industrial Wage Orders to maintain their identification and location. *See Rich v. Schwab*, (1984) 162
3 Cal.App.3d 739, 744 [class members ascertainable because identifiable from Defendant's business
4 records without unreasonable expense or time].

5 Here, ascertainability is not an issue because the Parties have defined the class members as
6 any current or former 636 non-exempt workers who worked for Defendant during the Class Period.
7 Furthermore, the Class is readily ascertainable from Defendant's business and payroll records that
8 have class members full name, dates of employment and contact information. Defendant has and will
9 diligently and in good faith compile from its records and provide to the Claims Administrator in an
10 encrypted format to include each putative Class Member's full name, last known address, telephone
11 numbers and/or emails to the extent they were available, social security numbers and dates worked as
12 Class Members during the Class Period. Accordingly, the Parties have satisfied the ascertainability
13 required because they have defined the class, identified the size of the class, and implemented a
14 practical and accurate means for identifying class members.

15 **2. Well-Defined Community of Interest.**

16 "The 'community of interest' requirement embodies three factors: (1) predominant common
17 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
18 class representatives who can adequately represent the class." *Sav-on Drug Stores, Inc. v. Superior*
19 *Court* (2004) 34 Cal. 4th 319, 326.

20 **a. Common Questions Predominate.**

21 To assess whether common questions predominate, courts focus on whether the theories of
22 recovery advanced are likely to prove amenable to class treatment. *Sav-On Drug Stores, Inc. v.*
23 *Superior Court* (2004) 34 Cal. 4th 319, 327. In other words, courts determine whether the elements
24 necessary to establish liability are susceptible of common proof, even if the class members must
25 individually prove their damages. *Brinker*, 53 Cal. 4th at 1021-1022, 1024.

26 Plaintiff alleged that Defendant maintained uniform employment policies and/or practices
27 that illegally deprived Class Members of lawful wages, meal periods, rest breaks and accurate wage
28

1 statements. Plaintiff's allegations present common legal and factual questions of, whether GTS
2 applied the same scheduling, timekeeping, overtime pay, meal period, and rest break policies to all
3 Class Members; whether these policies and practices resulted in Labor Code violations; whether
4 Defendants' conduct was intentional; and whether Class Members are entitled to penalties. These
5 common questions could be resolved using Class Members' payroll records, schedules, and written
6 communications between Defendants and Class Members. Thus, the Court can and should exercise
7 its discretion to grant conditional class certification for settlement purposes.

8 ***b. Plaintiff's Claims are Typical of the Class Claims.***

9 The test of typicality is "whether other members have the same or similar injury, whether the
10 action is based on conduct which is not unique to the named plaintiffs, and whether other class
11 members have been injured by the same course of conduct." *Seastrom v. Neways, Inc.* (2007) 149
12 Cal.App. 4th 1496, 1502. The typicality requirement is satisfied when the legal theories and facts
13 supporting Plaintiffs' claims are substantially similar to other class members. Here, Plaintiff Estrada
14 alleges that he and other Class Members were employed by GTS and injured by GTS's common
15 wage and hour policies and practices, including GTS's timekeeping, overtime pay, meal period, and
16 rest break practices. Through documents and information exchanged through discovery, after filing
17 of two (2) motions to compel and in preparation of the mediation, Plaintiff confirmed that these
18 common policies and practices similarly affected Plaintiff Estrada and the Class. Thus, Plaintiff
19 Estrada's claims arise from the same employment practices and are based on the same legal theories
20 as those applicable to other Class Members.

21 ***c. Plaintiff and Plaintiff's Counsel will Adequately Represent the Class.***

22 The adequacy requirement is met by fulfilling two conditions – 1) the named plaintiff must
23 be represented by counsel qualified to conduct the litigation, 2) the named plaintiff's interests in the
24 litigation must not be antagonistic to the class – i.e., they must have no disabling conflict of interest
25 that might hinder the prosecution of the action on behalf of the class. *McGhee v. Bank of America*
26
27
28

1 (1976), 60 Cal.App.3d 442, 451. Class Counsel must be “qualified, experienced and generally able to
2 conduct the proposed litigation.” *Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.

3 Here, Plaintiff’s interests are coextensive with the interests of the Class. Plaintiff
4 demonstrated an ability to advocate for the interests of the Class by initiating this litigation, gathering
5 documents and information, being available on the day of mediation to answer questions, meeting
6 with his attorneys on several occasions to understand the claims and theories of liability at issue,
7 assisting attorneys in preparing for mediation, reviewing the proposed settlement agreement to
8 understand its legal affect, and obtaining a fair settlement on behalf of Class Members who stand to
9 recover a substantial amount under the settlement. Plaintiff does not have any interests in this case
10 that conflict with the interests of the potential class members, Plaintiff is willing and able to
11 adequately represent the interests of the classes, and understand that he must seek the best interest of
12 the class throughout litigation. (Estrada Decl., ¶¶ 9-27).

13 Likewise, Class counsel is both qualified and experienced in and class action wage claims.
14 Ashwin Ladva, Scott Nakama, and Daniel Martinez de la Vega have prosecuted numerous class
15 actions claims and has shown their qualifications though the prosecution of this case, which has
16 resulted in an equitable settlement for the class members. (Ladva Decl. ¶¶ 11-20; *See generally*
17 *Nakama Decl.*; *See generally* *Vega Decl.*)

19 **3. Class Action is Superior to Multitude of Individual Lawsuits.**

20 Class treatment is superior to other methods of adjudication when the probability is small that
21 each class member will come forward to prove his or her claim and when the class approach would
22 deter and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435,
23 446; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal. App. 4th 1524, 1537-1538. Here, a class
24 action is a superior method for seeking relief than individual lawsuits as the probability is small that
25 each class member will come forward to pursue the claims. Because all elements of class certification
26 have been satisfied, the Parties move the Court to approve certification of the class pursuant to the
27 Settlement Agreement.

28 **B. The Settlement Meets the Standard for Preliminary Approval.**

1 Preliminary approval is warranted if the settlement falls within a “reasonable range.” *See*
2 *North County Contractor’s Ass’n., Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-90
3 (1994); *Conte & Newberg, Newberg on Class Actions*, § 11.26 (4th ed. 2002). In reviewing the
4 fairness of a class action settlement, due regard should be given to what is ““otherwise a private
5 consensual agreement between the parties.”” *Cellphone Termination Fee Cases*, 186 Cal. App. 4th
6 1380, 1389 (2010). The inquiry “must be limited to the extent necessary to reach a reasoned
7 judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the
8 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
9 concerned.” *Id.*

10 Reasonableness and fairness are presumed where (1) the settlement is reached through
11 “arms-length bargaining”; (2) investigation and discovery are “sufficient to allow counsel and the
12 court to act intelligently”; (3) counsel is “experienced in similar litigation”; and (4) the percentage of
13 objectors “is small.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996). The Settlement
14 satisfies the first three factors. Plaintiffs will analyze the fourth factor at the final approval stage.

15
16 **1. The Settlement is Entitled to a Presumption of Fairness**

17 *a. The Settlement is the Result of Arm’s Length Negotiations.*

18 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
19 evidence to the contrary is offered. *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); 7-
20 *Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). Thus,
21 there is a presumption that settlement negotiations are conducted in good faith. Here, the Settlement
22 was the product of thousands of payroll records and a mediation session with a respected mediator.
23 The negotiations were adversarial, conducted at arm’s length and tampered by the efforts of both
24 sides to serve the interests of their clients. The amounts of Plaintiffs’ requested Service Awards were
25 not negotiated until after the Parties agreed to the Gross Settlement Sum and many other items.

26 **2. The Settlement is Reasonable Given the Strength of Plaintiff’s Claim and the**
27 **Risks and Expense of Litigation.**

28 Courts have discretion to approve class settlements by assessing several factors, including the

1 “strength of plaintiffs’ case, risk, expense, complexity and likely duration of further litigation and risk
2 of maintaining the class action through trial.” *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal.
3 App. 4th 399, 407 (2010); *see Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129 (2008).

4 While Plaintiffs and their counsel believed and continue to believe this is a strong case for
5 certification, the significant risks and expenses associated with class certification and liability
6 proceedings were taken into account. With respect to the claims asserted on behalf of the Class in this
7 case, there are serious risks that support this compromise amount. These risks include, but are not
8 limited to: (i) the risk that Plaintiff would be unable to establish liability for unpaid wages, *see Duran*
9 *v. US Bank Nat’l Ass’n*, 59 Cal. 4th 1, & n. 33 (2014) (“Duran”); (ii) the risk that Defendant’s meal
10 and rest period policies might not ultimately support class certification or a class-wide liability
11 finding; (iii) the risk that uncertainties about the ultimate legality of Defendant’s policies and
12 practices could preclude class-wide awards of statutory penalties; (iv) the risk that individual
13 differences between Class Members could be construed as pertaining to liability and not solely to
14 damages; (v) the risk that any civil penalties award under PAGA could be reduced by the Court in its
15 discretion; and (vi) the risk that class treatment could be deemed improper as to one or more claims,
16 except for settlement. (Nakama Decl., ¶ 21.) These risks are non-exhaustive.

17
18 *a. Exposure Analysis*

19 A settlement does not have to provide 100% of the damages sought to be considered a fair
20 and reasonable settlement. *See Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 1139 (1991).
21 Rather, compromise is expected: Compromise is inherent and necessary in the settlement process . . .
22 even if “the relief afforded by the proposed settlement is substantially narrower than it would be if the
23 suits were to be successfully litigated,” this is no bar to a class settlement because “the public interest
24 may indeed be served by a voluntary settlement in which each side gives ground in the interest of
25 avoiding litigation.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001) (citation
26 omitted). Here, Plaintiffs contend that their claims are based on Defendants’ common, class-wide
27 policies and procedures, and that liability could be determined on a class-wide basis without
28 dependence on individual assessments of liability. Although the amount of Defendants’ potential

exposure – if proven – is substantial, the legitimate and serious risks of succeeding at class certification and trial compelled a serious consideration of the benefit of a settlement.

1. Class Claims

Excluding the PAGA penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately \$8,680,980.00. (Ladva Dec. ¶ 57)

Category	Potential Exposure	Certification Risk	Merits Risk	Max Exposure
Rest Break (56,760 pay periods X \$22.00 (1 rest break per workweek))	\$1,248,720	75%	75%	\$78,045
Meal Break (56,760 pay periods X \$22.00 (1 rest break per workweek))	\$1,248,720	55%	55%	\$252,865.80
Unpaid Overtime Wages (636 class members) (\$33.00 per hour *.5 hrs per workweek * 56,760)	\$936,540.00	90%	90%	\$9,365.40
Unpaid Minimum Wages for Off-the- Clock Work (636) (\$22 per hour * .5 hrs per workweek * 56,760))	\$624,360	90%	90%	\$6,243.60
Unpaid Minimum Wages for Off-the- Clock Work Liquidated damages	\$624,360	90%	90%	\$6,243.60
Waiting Time Penalty (267 Former Employees X \$5,280.00)	\$1,409,760.00	60%	60%	\$225,561.16
Wage Statement Penalty (\$4,000 to	\$2,544,000	55%	55%	\$769,560

each of 636 class members)				
Bonus Claims (\$50.00 to each 636 class member)	\$31800	90%	90%	\$318.00
Reimbursement Risk (Fuel/Mileage/phone) (\$20.00 for each of 636 class members)	\$12,720	75%	50%	\$1,590.00
	\$8,680,980.00			\$1,349,792.56

Rest Break Claims: Plaintiff applies a seventy five percent (75%) certification risk and 75% merits risk discounts for rest break exposure. (Ladva Dec. ¶ 63) Defendant claim that they have always posted the relevant California Industrial Welfare Commission Wage Order providing class members with the notice of the right to take rests breaks for shift in excess of 10 hours and there is no evidence that Defendant deterred Class Members from reading the Wage Order. "Various district courts in California have held . . . that employers fulfill their duty [to provide meal periods] by posting the relevant IWC Wage Order at the employee's work location and need not inform individual employees of their right to take second meal breaks." *Perez v. Performance Food Grp., Inc.*, 2017 U.S. Dist. LEXIS 232637, 2017 WL 6940526, at *7 (C.D. Cal. Dec. 15, 2017); *see also Nguyen v. Baxter Healthcare Corp.*, 2011 U.S. Dist. LEXIS 141135, 2011 WL 6018284, at *6-7 (C.D. Cal. Nov. 28, 2011) (finding employer's policy lawful because it posted the IWC Wage Order in its lunchroom and "no evidence that [plaintiff] was somehow deterred from reading the Wage Order" was presented). (Ladva Dec. ¶ 63) If Defendant proves that it did in fact post the relevant wage order, it is likely that Plaintiff will not prevail in his class claims for rest breaks.

For these reasons, Class Counsel believes seventy five percent (75%) certification risk discounts are justified. However, Defendant may produce evidence and testimony that employees were over compensated during the day and received paid meal breaks. Furthermore, nearly 50% of the sample size of payroll from 2019 & 2020, the Class Members did record the number of hours they worked. Defendants will contend that Class Members if they were undercompensated

1 for hours worked or rest breaks it was due to not properly recording their hours. (Ladva Dec. ¶ 63)
2 Plaintiff calculated that the rest breaks claims were worth a maximum of \$1,248,720. However,
3 with the risk factor discounts for certification and liability proof, the value of that claim is
4 estimated by Plaintiff's counsel to be approximately \$78,045, assuming certification probability
5 of 75% and merits success at 75%.

6 Meal Break Claims: Plaintiffs apply a fifty percent (55%) certification risk and 55% merits
7 risk discounts for meal break exposure. (Ladva Dec. ¶ 64) The payroll records show a "lunch
8 deduct" specific to time entries for employees working on the fabrication floor. For fabrication
9 employees, the company did not track start/stop times for lunch as all work ceased. (See IWC
10 Wage Order 1, Section 7(A)(3). (Id. at ¶ 64) GTS claims it has always provided at least 1 meal
11 break per shift because all production ceases and the class members take meal breaks at the same
12 designated time. (Id. at ¶ 64) GTS's Administrative/Office employees have always recorded meal
13 period times. However, as of March 2021, GTS began tracking clock in/out for all meal periods
14 for all workers including for shifts of excess of 10 hours. (Id. at ¶ 64) Defendant's claim that they
15 have always posted the relevant California Industrial Welfare Commission Wage Order providing
16 class members with the notice of the right to take meal breaks for shift in excess of 10 hours and
17 there is no evidence that Defendant deterred Class Members from reading the Wage Order. Class
18 Counsel believes this justifies additional fifty percent (55%) merits risk discounts. (Id. at ¶ 64)
19 Plaintiff calculated that the meal breaks claims were worth a maximum of \$1,248,720. However,
20 with the risk factor discounts for certification and liability proof, the value of that claim is
21 estimated by Plaintiff's counsel to be approximately \$252,865.80, assuming certification
22 probability of 55% and merits success at 55%.

24 Overtime Claims: For unpaid overtime wages, Class Counsel believes a ninety percent
25 (90%) certification risk and a ninety percent (90%) merits risk discount are justified. Employees
26 workload required long hours but were required to clock all hours. (Ladva Dec. ¶ 65) Plaintiff
27 contends hours related to travel between the two locations and for companywide meetings were
28 not always properly recorded and very employees worked at both locations. (Id. at ¶ 65) Plaintiff

1 contends due to production deadlines and requirements, the supervisors and managers should have
2 known that Class Members hours were not being properly accounted for and paid. (*Id.* at ¶ 65)

3 To prevail on a claim for off-the-work work, Plaintiff must prove that Defendant knew or
4 should have known that Plaintiff was working off-the clock. *Brinker Restaurant Corp. v. Superior*
5 *Court*, 53 Cal. 4th 1007, 1051-52 (CA. 2012). To prevail on a claim for off-the-work work,
6 Plaintiff must prove that Defendants knew or should have known that Plaintiff was working off-
7 the clock. *Id.* When an employee is clocked out, the employee is presumed to be doing no work.
8 *Brinker*, 53 Cal. 4th at 1051-52 (“that employees are clocked out creates a presumption they are
9 doing no work, a presumption [plaintiff] and the putative class members have the burden to
10 rebut.”) Liability is contingent on proof the employer knew or should have known off-the-clock
11 work was occurring. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 580, 585, *White v.*
12 *Starbucks Corp.* (N.D.Cal.2007) 497 F.Supp.2d 1080, 1083–1085 (granting the defense summary
13 judgment on an off-the-clock claim in the absence of proof the employer knew or should have
14 known of the employee's work).

15
16 GTS contends that it had no reason to know of off the clock work because there were no
17 complaints of off the clock work and each of its two factories had time clocks. (*Id.* at ¶ 65)
18 Further, GTS contends there is more likely to be overpayment as prior to March 2021 employees
19 would regularly record they worked shifts of 8 hours every day when in fact their hours were less
20 8 hours. (Ladva Dec. ¶ 65) Moreover, GTS contends that the requirements for a bonus were never
21 met and therefore, Class Members’ overtime rate did not increase by earning a bonus. (Ladva Dec.
22 ¶ 65) Therefore, Labor Code violation based upon nonpayment (and therefore higher overtime
23 rate) is unlikely lead to class certification and the merit risks are high. (*Id.* at ¶ 66).

24 Plaintiff calculated that the overtime claims were worth a maximum of \$936,540.00.
25 However, with the risk factor discounts for certification and liability proof, the value of that claim
26 is estimated by Plaintiff’s counsel to be approximately \$9,365.40, assuming certification
27 probability of 90% and merits success at 90%.

28 Unpaid Bonus Claims: As mentioned above, GTS contends that the conditions to receive

1 a bonus were never met during the Class Period. Plaintiff calculated that the overtime claims were
2 worth a maximum of \$31,800.00. However, with the risk factor discounts for certification and
3 liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately
4 \$318.00, assuming certification probability of 90% and merits success at 90%.

5 Minimum Wage Claims: Plaintiff apply a ninety percent (90%) certification risk and 90%
6 merits risk discounts for minimum wage and liquidated damages exposure. (Ladva Dec. ¶ 67) If
7 an employer fails to pay an employee at least the minimum wage, then the employee can recover
8 the total in unpaid minimum wages, plus an additional penalty of "liquidated damages" in an
9 amount equal to the minimum wages owed. (Id. ¶ 67) Defendants may be able to show that whether
10 Class Members worked off the clock hours and were not paid (minimum wages violation) is an
11 individualized inquiry and Class Members that logged all their hours were paid for all hours
12 worked. (Id. at ¶ 67) Class Counsel believes this defense justifies a ninety percent (90%)
13 certification risk. In addition, Defendants may be able to show a number of employees tracked and
14 reported their hours and were paid the correct amount. (Id. ¶ 67) The liquidated damages amount
15 equal to the amount of unpaid wages not paid at minimum rate of pay would be subject to the same
16 defenses. For these reasons, Class Counsel believes a ninety percent (90%) discount due to risk on
17 the merits is justified for both the minimum wage claims and liquidated damages penalty. (Ladva
18 Dec. ¶ 67) Plaintiff calculated that the minimum wage claims were worth a maximum of
19 \$1,248,720 including liquidated damages (\$624,360 + \$624,360). However, with the risk factor
20 discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's
21 counsel to be approximately \$12,487.20, assuming certification probability of 90% and merits
22 success at 90%.

23
24 Derivative Waiting Time Penalty Claims: Plaintiff's Labor Code Section 203 claim for
25 waiting time penalties is based on Plaintiff's claims for unpaid wages, time worked off-the-clock,
26 and missed rest and meal breaks. If Plaintiff's prevail on at least one of these underlying claims,
27 waiting time penalties would result unless Defendant had a good faith legal dispute. (Ladva Dec.
28 ¶ 68) However, Defendant may argue that any failure to pay wages due and owing to employees

1 in a timely manner was not “willful” under Labor Code § 203 and was instead a mistake made in
2 good faith. (*Id.* ¶ 68) For these reasons and the reasons explained in the previous sections
3 especially about Defendant posting the applicable Wage Order, Class Counsel believes a sixty
4 percent (60%) certification risk and sixty percent (60%) risk on the merits are justified. (*Ladva*
5 *Dec.* ¶ 68) Plaintiff calculated that the waiting time penalties claims were worth a maximum of
6 \$1,409,760.00. However, with the risk factor discounts for certification and liability proof, the
7 value of that claim is estimated by Plaintiff’s counsel to be approximately \$225,561.16, assuming
8 certification probability of 60% and merits success at 60%.

9 Wage Statement Claims: Plaintiff’s Labor Code Section 226(a) claim for wage statement
10 penalties is based on Defendants’ failure to maintain accurate records. (*Ladva Dec.* ¶ 69)
11 Defendants failed to accurately record hours worked by putative Class Members and subsequently
12 issued wage statements that failed to accurately state the numbers of hours worked in violation of
13 the California Labor Code. (*Id.* ¶ 69) However, Defendants’ error most likely did not affect all
14 employees. Plaintiff further argued that Defendant failed to issue wage statements with the correct
15 and gross and net wages by failing to pay Class Members with premium pay. In addition,
16 Defendants may argue that its failure to provide accurate wage statements was not “knowing and
17 intentional” under Labor Code § 226(a). Therefore, Class Counsel believes a fifty-five percent
18 (55%) certification risk and fifty-five percent (55%) risk on the merits are justified. (*Ladva Dec.*
19 ¶ 69) Plaintiff calculated that the wage statements claims were worth a maximum of \$2,544,000.
20 However, with the risk factor discounts for certification and liability proof, the value of that claim
21 is estimated by Plaintiff’s counsel to be approximately \$769,560, assuming certification
22 probability of 55% and merits success at 55%.

23 Reimbursement Claims: Plaintiff claim - and GTS deny - that GTS failed to reimburse
24 employees for using their personal cell phones to communicate with GTS or for mileage for trips
25 between locations for work or meetings. (*Ladva Dec.* ¶ 46) Once an employer knew or had reason
26 to know that the employee had incurred an expense, it then had the duty to exercise due diligence
27 and take any and all steps to ensure that the employee was reimbursed. *Stuart v. Radioshack*
28

1 *Corp.*, 641 F. Supp. 2d 901, 905 (N.D. Cal., April 30, 2009). "Promulgating the policies alone
2 did not fulfill that duty." *Id.* Investigation into this issue revealed that there was minimal travel
3 between the locations and use of cell phones was low. At a reimbursement rate of \$20.00 per 636
4 Class Members, the total exposure to Class Members for the cell phone and gas would be \$12,720
5 (\$20 * 636 class members = \$12,720). (*Id.* ¶ 46). However, here the amount of unpaid
6 reimbursement expenses is low. However, with the risk factor discounts for certification and
7 liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately
8 \$1,590, assuming certification probability of 75% and merits success at 50%.

9 2. PAGA Claims

10 The provisions of the Labor Code potentially triggering PAGA penalties in this case include,
11 but are not limited to, Labor Code sections 201, 202, 203, 226(a) 226.3, 226.7, 510, 512(a), 558,
12 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. GTS asserted that, regardless of the results of
13 the underlying causes of action, PAGA penalties are not mandatory but permissive and
14 discretionary. GTS maintained that, in addition to its strong arguments against the underlying
15 claims, they had a strong argument that it would be unjust to award maximum PAGA penalties given
16 the current unsettled state of law. (Ladva Dec. ¶ 51)

17 The ultimate decision as to the amount of penalties is always up to the discretion of the Court.
18 Labor Code § 2699(e)(2) states: "In any action by an aggrieved employee seeking recovery of a civil
19 penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum
20 civil penalty amount specified by this part if, based on the facts and circumstances of the particular
21 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
22 confiscatory."

23 Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only
24 sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were
25 found in federal court decisions. In their view, a PAGA allocation, even if a small portion of the total
26 settlement, could be reasonable if the settlement of the wage and hour claims is robust and serves the
27 deterrent purpose of PAGA. *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D.
28

1 Cal. 2016) (“By providing fair compensation to the class members as employees and substantial
2 monetary relief, a settlement not only vindicates the rights of class members as employees, but may
3 have a deterrent effect upon the defendant employer and other employers, an objective of PAGA.”).
4 Moniz provided explicit confirmation that this was an appropriate yardstick by which to measure
5 reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with federal
6 courts that have considered how to evaluate a PAGA settlement, concluded that the class action
7 factors are appropriately considered, along with a consideration of whether the settlement furthers
8 “PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize
9 enforcement of state labor laws.”

10 As to the first set of elements (the class-type analysis), it is embodied in Plaintiffs’ discussion
11 of the adequacy of the settlement generally. Here, the expense, complexity and likely duration of
12 future litigation was to some extent an unknown. However, what is certain is that to adequately
13 establish the violations that would support a substantial penalty, tremendous time and expense would
14 be invested.

15 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
16 PAGA’s purposes include (1) remediation of present labor law violations, (2) deterrence of future
17 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
18 portion of settlement funds to class members still advances the goal of labor law violation
19 remediation. The allocation of a major portion of settlement funds to class members also deters future
20 violations. This is a \$345,000.00 settlement, not a trivial sum. Deterrence is fulfilled. Finally,
21 allocation of a major portion of settlement funds to class members still advances the goal of
22 enforcement of state labor law. This settlement is, by definition, a response to alleged violations of
23 labor laws, balanced against risks.

24 In addition, there is no evidence that a court or a commissioner had informed Defendant that
25 its conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008);
26 *Willis v. Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013). And in *Cotter*, the court
27 found a significant reduction of the PAGA claim would be appropriate because “[t]his does not
28

1 appear to be a case where a company has deliberately sought to evade the law.” *Cotter*, 176 F. Supp.
2 3d at 941.

3 Class Counsel calculated penalties under this cause of action by multiplying the number of
4 active Class Members (because of the shortened statutory period for this claim) by the civil penalties
5 that each could be awarded for the Labor Code sections enumerated under Labor Code section
6 2699.5 that were applicable in this case. Class Counsel then applied discounts in light of the
7 countervailing arguments concerning the other causes of action, as well as the Court's power to
8 award "a lesser amount than the maximum civil liability." Lab. Code § 2699(e)(2). (Ladva Dec. ¶
9 52)

10 Given the state of the law and the range of PAGA penalties requested and actually awarded
11 in California courts, it is difficult to determine a reasonable value and actual exposure for PAGA
12 penalties. Defendant disclosed that there were 369 employees employed during the PAGA period.
13 However, if PAGA penalties are granted on any one of the violations alleged in the Action. The total
14 penalties exposure for the eligible pay periods could be approximately \$3,763,800 (369 employees
15 x \$100 x 102 pay periods between 8/27/2021 to 8/13/2023) (Ladva Dec. ¶ 53)

16 Plaintiff calculated GTS' PAGA exposure using a hundred percent (100%) violation rate
17 based on the average number of pay periods worked per employee (102) during the PAGA time
18 period from August 27, 2021 through August 13, 2023 as no court or the Labor Commissioner has
19 informed GTS of any labor code violations. Multiplying the PAGA exposure by the number of
20 alleged violations under the PAGA theories of recovery (7) gives potential civil penalties of \$0 to
21 \$26,346,600. (Ladva Dec. ¶ 54)

22 Finally, Plaintiff claim - and GTS deny - that GTS are liable for wage statement civil
23 penalties for violating Labor Code § 226(a). Plaintiff contend that, based on the sample data, GTS
24 failed to accurately record hours worked by putative class members and, as a result, issued wage
25 statements that failed to state accurate number of hours worked, thereby triggering wage statement
26 penalties. GTS failed to pay premium pay for missed meal and rest breaks, therefore the gross and
27 net wages were not recorded accurately on paystubs. Plaintiff calculate GTS' total exposure as to
28

1 the claim for wage statement penalties to be approximately \$3,763,800 (369 employees x (\$100
2 initial violation rate) x 102 pay periods) (Ladva Dec. ¶ 55); *See Bernstein v. Virgin Am., Inc.*, 3 F.4th
3 1127, 1144 (9th Cir. 2021) (holding that an employer is not subject to a subsequent violation PAGA
4 rate for any labor code violations until after a court or the labor commissioner informs them of the
5 violations).

6 Plaintiff also recognized the risk that any PAGA award could be significantly reduced. Many
7 of the causes of action brought were duplicative of the statutory claims such as violations of
8 California Labor Code §§ 226, 226.7, 510, 512(a), 1194, 1198 and 2802. Thus, the maximum
9 penalties for each pay period are not justified. It was indeed arguable whether the Court would award
10 the maximum penalties under the law. Thus, allocating \$10,000 to PAGA civil penalties was
11 reasonable based on a rate of \$0.57 per pay period [(\$10,000 DIVIDED by (102 pay periods in
12 PAGA Timeframe * 369 = 37,638 pay periods) = \$0.265], given the fact that GTS are also paying
13 an additional \$335,000 in the Class settlement. Where PAGA penalties are negotiated in good faith
14 and "there is no indication that [the] amount was the result of self-interest at the expense of other
15 Class Members," such amounts are generally considered reasonable. (Ladva Dec. ¶ 56) While the
16 proportion is tipped in favor of the employees, the allocation is not unfair because it satisfies
17 California's wage and hour policies.

18 **C. THE REQUESTED SERVICE AWARD FOR PLAINTIFF.**

19 Plaintiffs seek a Service Award of up to \$5,000 to Plaintiff for accepting the responsibilities
20 of representing the interests of the Class and assuming risks and potential costs that were not borne
21 by any other Class Members. A named plaintiff is eligible for payment that reasonably compensates
22 him or her for undertaking and fulfilling a fiduciary duty to represent absent class members. See
23 *Cellphone Termination Fee Cases*, *supra*, 186 Cal. App. 4th at 1393; *Bell v. Farmers Ins. Exch.*, 115
24 Cal. App. 4th 715, 726 (2004).

25 Here, Plaintiff had the option to pursue his claims individually, but instead chose to pursue
26 this class action, delaying individual recovery until approval of a class action settlement. Throughout
27 the case, Plaintiffs assisted counsel in gathering the evidence necessary to prosecute the class claims,
28

1 maintained regular contact with counsel, were available on the day of mediation and communicated
2 with his attorneys during the day of mediation to answer critical questions, and reviewed the
3 Settlement to make sure it was fair to the Class. No action would likely have been taken by Class
4 Members individually, and no compensation would have been recovered for them, but for Plaintiffs'
5 services on behalf of the Class.

6 By actively pursuing this action, Plaintiff furthered the California public policy goal of
7 enforcing the State's wage and hour laws. *See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340.
8 The requested Service Award for Plaintiffs' service as the class representative and for a general
9 release of all employment claims is reasonable and should be preliminarily approved. At the final
10 approval stage, Plaintiffs will further support the request for Service Awards by declarations
11 addressing the factors for the award.

12 **D. PLAINTIFF COUNSEL'S PURSUIT OF CLASS CLAIMS LEAD TO A**
13 **TOTAL SETTLEMENT FUND OF \$345,000.00.**

14 The purpose of an attorneys' fee award in a class action litigation is to reward counsel who
15 invested in a case despite the risk of non-payment and achieved a substantial positive result for the
16 class. Attorneys' fees are awarded as a matter of equity. Plaintiff seeks the appointment of Ashwin
17 Ladva and Scott Nakama of Ladva Law Firm, and Daniel Martinez de la Vega of the Law Offices of
18 Daniel Vega as Class counsel. The attorneys performed significant work and expended litigation
19 costs in prosecuting the matter with no guarantee of payment. (See generally Nakama Decl., Vega
20 Decl, and Ladva Decl.). Plaintiff's Counsel seeks \$120,750.00 in attorneys' fees, which is up to 35%
21 of the Gross Settlement Sum, and up to \$17,000 in reimbursement of litigation costs. (Ladva Dec. ¶
22 77-81) Given the work performed in this matter, the extensive information exchange, and substantial
23 recovery obtained on behalf of Plaintiff and the Class, Plaintiff's Counsel achieved a settlement
24 through efficient and diligent work. At final approval, Plaintiff's Counsel will fully brief the merits
25 of its request for the award of attorneys' fees and litigation costs.

26 Pursuant to California Code of Civil Procedure section 1021.5, a court may award attorney
27 fees to the successful party in an action that resulted in the enforcement of an important right
28

1 affecting the public interest. A trial court may award attorney fees to a “successful party” in an action
2 that has “resulted in the enforcement of an important right affecting the public interest if: (a) a
3 significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a
4 large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to
5 make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the
6 recovery, if any. ...” *Carian v. Department of Fish & Wildlife* (2015) 235 Cal. App. 4th 806. In
7 *Vasquez*, the California Supreme Court held that pre-settlement negotiations are not required to award
8 attorneys’ fees under California Code of Civil Procedure section 1021.5. “No rule applicable to this
9 case required plaintiff, in order to recover attorney fees under Code of Civil Procedure section
10 1021.5, first to attempt to settle the matter short of litigation.” *Id.* at 259.

11 Successful plaintiffs in a class action challenging a bank’s assessment of fees against
12 customers who failed to make timely payments, were awarded attorneys’ fees pursuant to CCP
13 section 1021.5, expert fees, and other costs. *Beasley v. Wells Fargo* (1991) 235 Cal.App.3d 1407,
14 *overruled in part, Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142. Likewise
15 in *Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, an appellate court
16 awarded attorneys fees to class counsel under CCP section 1021.5 in a class action for employees to
17 receive reimbursement for expenses because the class action benefited many workers. Similarly,
18 attorneys’ fees were awarded pursuant to CCP section 1021.5 in a class action on behalf of newspaper
19 home delivery carriers for wrongfully withheld reimbursement of business expenses. *Espejo v. the*
20 *Copley Press, Inc.* (2017) 13 Cal.App.5th 329.

21 Here, this Class Action was brought on behalf of the public as Plaintiff Estrada brought this
22 action to prevent GTS from unlawfully failing to pay class members all wages that they earned via
23 injunctive relief and have incurred significant costs including costs of mediation.
24

25 **VII. CONCLUSION**

26 The proposed settlement is fair, adequate, and reasonable, as it represents a reasoned
27 compromise reached through arms-length negotiations and considers the risks, complexity, and
28 expense of further litigation. Based thereon, the Parties jointly request that the proposed Settlement of

1 the Class Action Claims be approved. The Proposed Order is attached as Exhibit 2 of the Declaration
2 of Ashwin Ladva.

3
4 Dated: September 12, 2023

LADVA LAW FIRM

5
6 

7
8 By _____
9 Ashwin Ladva
10 Scott S. Nakama
11 Attorneys for Plaintiff
12 HECTOR ESTRADA

13 DATE: September 12, 2023

LAW OFFICES OF DANIEL VEGA

14
15 

16
17
18 By _____
19 Daniel Martinez De La Vega
20 Attorney for Plaintiff
21 HECTOR ESTRADA