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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN BERNARDINO**

ERIC CALDERON on behalf of himself,  
all others similarly situated, and on behalf  
of the general public,

Plaintiffs,

v.

CELS ENTERPRISES, INC. DBA  
CHINESE LAUNDRY; and DOES 1-100,

Defendants.

Case No. CIVSB2308785

*[Assigned for All Purposes to the  
Hon. Jessica Morgan, Dept. S26]*

**PLAINTIFF ERIC CALDERON'S MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS AND PAGA ACTION  
SETTLEMENT, CONDITIONAL  
CERTIFICATION, APPROVAL OF CLASS  
NOTICE, SETTING OF FINAL APPROVAL  
HEARING DATE**

Date: November 21, 2024

Time: 8:30 a.m.

Complaint Filed: April 14, 2023

Trial Date: None Set

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1     **I.     INTRODUCTION**

2             Plaintiff Eric Calderon (“Plaintiff”), on behalf of himself and the approximately 255-  
3 member putative class, respectfully requests that this Court preliminarily approve the Joint  
4 Stipulation and Settlement Agreement (hereinafter “Agreement”<sup>1</sup>) entered into between Plaintiff  
5 and Defendant CELS Enterprises, Inc. (“Defendant” or “Chinese Laundry”) collectively, Plaintiff  
6 and Defendant are referred to as the “Parties”). The Parties’ Agreement seeks to resolve claims  
7 raised against Defendant in this matter in exchange for a non-reversionary \$500,000 Gross  
8 Settlement Amount. The proposed Class is comprised of all individuals who are employed or have  
9 been employed by CELS in the State of California as hourly non-exempt employees and worked  
10 at one of CELS’s warehouses in California at any time from April 14, 2019, to October 12, 2024.<sup>2</sup>  
11 It is requested that the Court grant preliminary approval as, when analyzing the strengths and  
12 vulnerabilities of the claims and Defendant’s potential liability exposure, this proposed settlement  
13 of \$500,000 is within the range of reasonableness. This settlement is estimated to pay Class  
14 Members an average payment of approximately \$1,081.70.<sup>3</sup> The proposed Agreement satisfies all  
15 the criteria for preliminary approval under Rule 3.769 of the California Rules of Court.

16             As the following sections show, Class Counsel are convinced that the proposed settlement  
17 is in the best interests of the Class based on the negotiations and a detailed knowledge of the issues  
18 presented in this action. The length and risks of trial and perils of litigation that affect the value of  
19 the claims were all carefully weighed. In addition, the defenses asserted by Defendant, the  
20 uncertainty of class certification, the difficulties of complex litigation, the lengthy process of  
21 establishing specific damages and various possible delays and appeals, were also carefully  
22 considered by Class Counsel in arriving at the proposed settlement. The Agreement was the  
23 product of an all-day mediation with mediator Tagore Subramaniam and was the product of non-  
24 collusive, arm’s-length negotiations by informed counsel and parties. The settlement is fair,

26             <sup>1</sup> The Parties’ Agreement is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as  
27 Exhibit 1. “Exhibit 1” herein refers to the Parties’ Agreement.

27             <sup>2</sup> Exhibit 1 at Paragraph 4.

28             <sup>3</sup> The Net Settlement Amount is approximately \$275,833.33. \$275,833.33 divided by 255 class  
members = \$1,081.70.

1 reasonable, and adequate. Accordingly, Plaintiff seeks: (1) preliminary approval of the terms  
2 contained in the Agreement; (2) provisional certification of the Class; (3) appointment of Plaintiff  
3 as Class Representative; (4) appointment of Mara Law Firm, PC, and Lawyers for Employee and  
4 Consumer Rights as Class Counsel; (5) approval of the Parties' proposed notice of class action  
5 settlement<sup>4</sup> (referred to herein as the "Class Notice" or "Notice") and method of notifying the Class  
6 about the settlement; and (6) a hearing date for final approval of March 13, 2025.

## 7 **II. BACKGROUND**

8 Defendant designs, manufactures, and retails women's shoes. Defendant operates out of a  
9 warehouse in Ontario, California. Plaintiff filed a wage and hour class action complaint on April  
10 14, 2023, alleging that Defendant failed to pay all straight time and overtime wages, failed to  
11 provide lawful meal and rest periods, failed to adopt a complaint sick pay policy, failed to provide  
12 accurate itemized wage statements, failed to pay all wages due at the termination of employment,  
13 and violated the Unfair Competition Law. (Mara Dec. ¶ 10).

14 Plaintiff provided notice to the Labor and Workforce Development Agency ("LWDA") in  
15 accordance with the Private Attorneys General Act of 2004 ("PAGA") on February 15, 2023.  
16 Thereafter, on May 1, 2023, Plaintiff filed a PAGA action (Case No. CIVSB2312110) alleging  
17 that Defendant violated the PAGA by failing to pay all straight time and overtime wages, failing  
18 to provide lawful meal and rest periods, failing to adopt a complaint sick pay policy, failing to  
19 provide accurate itemized wage statements, and failing to pay all wages due at the termination of  
20 employment. On July 17, 2023, the Parties stipulated to consolidate the class and PAGA actions.  
21 (Mara Dec. ¶ 11).

## 22 **III. INVESTIGATION/LITIGATION HISTORY**

### 23 **a. Discovery and Investigation**

24 After filing, the Parties engaged in informal discovery. These discovery efforts led to  
25 Defendant producing hundreds of pages of documents, including policy documents that covered  
26 employees' employment with Defendant, such as employee handbooks. Included within these  
27 documents were Defendant's wage and hour policies, including its meal and rest period policies.

---

28 <sup>4</sup> The Class Notice is attached to the Agreement as Exhibit A.

1 Defendant also produced time and wage records for a 20% sampling of Class Members. Plaintiff  
2 also requested, and Defendant produced, data surrounding the number of current and former  
3 employees, as well as the number of workweeks worked by Class Members during the relevant  
4 time period, to establish a potential exposure model in preparation for mediation. From this  
5 discovery, Plaintiff and his Counsel were able to analyze Defendant's liability in this action and  
6 prepare a realistic damage model. (Mara Dec. ¶ 12).

7 **b. The Parties Agreed to Attend Mediation**

8 The Parties attended an all-day mediation presided over by wage and hour mediator Tagore  
9 Subramaniam on August 12, 2024. This mediation was successful. The Parties then met and  
10 conferred over all the terms of the settlement and finalized their settlement in the Parties'  
11 Agreement. The Parties seek preliminary approval of the Agreement in the instant motion. (See  
12 Mara Dec. ¶ 13; *see also* Exhibit 1 attached thereto).

13 **c. The Parties' Staunchly Conflicting Positions**

14 **i. Arbitration Agreement**

15 Defendant argues at the outset that it has an enforceable arbitration agreement that covers  
16 Plaintiff's and the class members' employment. If Defendant were correct on this issue, Plaintiff  
17 and the putative class members would only be able to pursue their claims in arbitration. Defendant  
18 claims that its employee handbook contains an arbitration agreement contains an arbitration  
19 agreement that is signed by employees. (Mara Dec. ¶ 14).

20 Plaintiff asserts that the arbitration agreement in Defendant's employee handbook is  
21 unenforceable. Plaintiff contends that Defendant's arbitration agreement is substantively  
22 unconscionably overbroad, lacks mutuality, requires employees to engage in an employer-  
23 controlled pre-mediation procedure, and sets limitations on the requirements of the arbitrator that  
24 benefit Defendant. In making these arguments, Plaintiff relies on the case *Cook v. University of*  
25 *Southern California* (2024) 102 Cal.App.5th 312, 321-325. Plaintiff also argues that Defendant's  
26 arbitration agreement is procedurally unconscionable because it is a contract of adhesion, was  
27 unilaterally drafted by Defendant, was presented to employees on a take-it-or-leave-it basis, and  
28 was a condition of employment. For these reasons, Plaintiff contends that Defendant's arbitration

1 agreement is unenforceable. (Mara Dec. ¶ 15).

2 Defendant disagrees and contends that the Court would uphold its agreement and compel  
3 Plaintiff's individual claims to arbitration and dismiss Plaintiff's class claims. Defendant further  
4 asserts that, to the extent the Court were to find any of the provisions in the agreement to be  
5 unenforceable, the Court could sever those terms from the arbitration agreement and enforce the  
6 remainder of the agreement. Plaintiff contends that severance is not possible as the agreement  
7 permeates with unconscionability. (Mara Dec. ¶ 16).

8 As such, the Parties have a disagreement as to whether Defendant's arbitration agreement  
9 is enforceable. As this is a threshold issue, if the Court were to agree with Defendant, Plaintiff's  
10 individual claims would be compelled to arbitration and the class claims would be dismissed. If  
11 this were to occur, the damages under Plaintiff's class claims would be eliminated. (Mara Dec. ¶  
12 17).

## 13 **ii. Rest Breaks**

14 Plaintiff alleges that employees are not provided with lawful rest periods. Employers have  
15 an obligation to provide employees with ten (10) minute rest periods. An employer's obligation to  
16 provide its employees with rest periods arises under the Industrial Welfare Commission Wage  
17 Orders. Wage Order 7-2001, Section 12(A) states, "[e]very employer shall authorize and permit  
18 all employees to take rest periods, which insofar as practicable shall be in the middle of each work  
19 period. The authorized rest period time shall be based on the total hours worked daily at the rate  
20 of ten (10) minutes net rest time per four (4) hours or major fraction thereof." Here, Plaintiff alleges  
21 that Defendant requires employees to remain on the premises during rest periods. (Mara Dec. ¶  
22 18).

23 In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme  
24 Court ruled that the standards applicable to providing meal periods the Court articulated a few  
25 years earlier in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, were equally  
26 applicable to the rest period context. Citing *Brinker*, the *Augustus* Court ruled that, like meal  
27 periods, "[d]uring required rest periods, employers must relieve their employees of all duties and  
28 relinquish any control over how employees spend their break time." *Augustus*, 2 Cal.5th at 260.

1 At a minimum, to relinquish employer control over how employees spend their break time, the  
2 employee must be “free to leave the premises.” *Brinker*, 53 Cal.4th at 1036. As the *Augustus*  
3 Court reasoned, the employee must be free to travel five minutes away from the work site so that  
4 they can get back within the allotted ten-minute time frame of the break. *Augustus*, 2 Cal.5th at  
5 270. Plaintiff contends that, here, Defendant does not permit employees to leave the premises  
6 during rest periods. (Mara Dec. ¶ 19).

7 Defendant contends that it does not require employees to remain on the premises during rest  
8 periods. Defendant argues that to resolve this claim, the factfinder would have to ask whether  
9 employees thought they could leave the premises during rest breaks. In addition, Defendant  
10 contends that employees did, in fact, leave the premises during rest periods. Defendant asserts that  
11 should litigation continue, it would present declarations from employees stating that they were free  
12 to leave the premises, and did leave the premises, during rest periods. (Mara Dec. ¶ 20).

13 Defendant also counters that even if it did tell employees they are to remain on the  
14 premises, a point that Defendant does not concede, the practical limitations the ten (10) minutes  
15 allotted for rest periods imposes on an employee’s movement are what prevent employees from  
16 leaving the premises. In other words, the time limitation of only having ten (10) minutes for rest  
17 periods prevents off-premises movement during rest periods, not expressly or impliedly telling  
18 employees that rest periods are to be taken on the premises. Based on the practical limitations  
19 associated with ten (10) minute rest periods, and not Defendant’s policies, Defendant contends its  
20 policies are aligned with, and not antagonistic to *Augustus*. Defendant finds support for this in the  
21 following language from *Augustus*:

22 Because rest periods are 10-minutes in length (Wage Order 4, subd. 12(A)), they  
23 impose practical limitations on an employee’s movement. That is, during a rest  
24 period an employee generally can travel at most five minutes from a particular work  
25 post before returning to make it back on time. Thus, one would expect that  
employees will ordinarily have to remain on site or nearby.

26 *Augustus, supra*, 2 Cal.5th at 270. (Mara Dec. ¶ 21).

27 Defendant further asserts that employees are relieved of all work and employer control  
28 during rest periods. And, to the extent there is any limitation placed on rest periods, it is something

1 that arises simply out of the fact that ten (10) minutes is a short amount of time. Therefore,  
2 Defendant asserts that the limitations placed on employees, if any, are merely inherent to rest  
3 periods and not an exertion of employer control. (Mara Dec. ¶ 22).

4 **iii. Meal Periods**

5 Plaintiff contends that Defendant does not provide employees with meal periods that  
6 conform with California law. Employers have an obligation under California law to provide  
7 employees with thirty (30) minute meal periods. Under California Labor Code § 512(a), “[a]n  
8 employer may not employ an employee for a work period of more than five hours per day without  
9 providing the employee with a meal period of not less than 30 minutes . . . .” Cal. Lab. Code §  
10 512(a). An employer “satisfies this obligation [to provide meal periods] if it relieves its employees  
11 of all duty, relinquishes control over their activities and permits them a reasonable opportunity to  
12 take an uninterrupted 30-minute break, and does not impede or discourage them from doing so.”  
13 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. Here, Plaintiff contends  
14 that Defendant’s time records show non-compliant meal periods. (Mara Dec. ¶ 23).

15 In *Donohue v. AMN Services, LLC*, the California Supreme Court issued a decision,  
16 wherein it ruled that time records showing late, short, or missed meal periods raises a rebuttable  
17 presumption that the meal periods were not provided: “If time records show missed, short, or  
18 delayed meal periods with no indication of proper compensation, then a rebuttable presumption  
19 arises” that the meal periods were not provided in accordance with California law. *Donohue v.*  
20 *AMN Services, LLC* (2021) 11 Cal.5th 58, 74. Plaintiff contends that, here, the time records show  
21 non-compliant meal periods. In these shifts, under *Donohue*, Plaintiff contends that it is presumed  
22 that meal period violations occurred. (Mara Dec. ¶ 24).

23 Defendant asserts that its meal period policy is lawful and that it provides employees with  
24 meal periods in compliance with California law. Further, Defendant alleges that if litigation  
25 continues it would be able to show that it advised employees of the right to take a meal period in  
26 compliance with California law. Defendant contends that employees either took a lawful meal  
27 period or knowingly and voluntarily decided to skip the meal period or take a late or short meal  
28 period. Defendant contends that this evidence would rebut the presumption under *Donohue v. AMN*

1 *Services, LLC*. Defendant also asserts that the evidence in this case shows that it paid meal period  
2 premiums in shifts in which employees were not provided with compliant meal periods. Thus,  
3 Defendant contends that to the extent an employee was not provided the opportunity to take a  
4 legally compliant meal period, they were provided a meal premium. (Mara Dec. ¶ 25).

5 In summary, Plaintiff contends that because Defendant's time records show non-compliant  
6 meal periods, it is presumed that meal period violations occurred in these shifts. Defendant  
7 counters that it would be able to rebut this presumption because its meal period policy is lawful.  
8 Defendant also asserts that in rebutting the presumption, the Court or fact finder would have to ask  
9 each employee why their time records show a non-compliant meal period. This could be due to  
10 employees knowingly and voluntarily deciding to skip the meal period or taking a late or short  
11 meal period. To make this determination, Defendant contends the Court or fact finder would have  
12 to ask each employee about each instance which would defeat certification as individual issues  
13 would predominate. Plaintiff contends that this is not the case and that certification under *Donohue*  
14 is proper. As such, disputes exist as to whether certification is proper and as to whether Defendant  
15 can rebut the presumption under *Donohue*. (Mara Dec. ¶ 26).

#### 16 **iv. Wage Statements and Waiting Time Penalties**

17 Plaintiff also pursued claims for failure to provide accurate itemized wage statements and  
18 waiting time penalty claims. These claims are derivative of Plaintiff's meal and rest period claims.  
19 Should Plaintiff's meal and rest period claims fail, these claims would also fail. (Mara Dec. ¶ 27).

20 In addition, Defendant contends that even if Plaintiff were successful in his meal and rest  
21 period, he would have to prove Defendant "willfully" failed to pay employees the appropriate  
22 wages due upon separation of employment. "A willful failure to pay wages within the meaning of  
23 Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee  
24 when those wages are due. However, a good faith dispute that any wages are due will preclude  
25 imposition of waiting time penalties under Section 203." Cal. Code Regs. Tit. 8 § 13520. "A 'good  
26 faith dispute' that any wages are due occurs when an employer presents a defense, based in law or  
27 fact, which would preclude any recovery on the part of the employee. The fact that a defense is  
28 ultimately unsuccessful will not preclude a finding that a good faith dispute did exist." *Id.* (Mara

Dec. ¶ 28).

Defendant contends that any failure to pay meal and rest period premiums due at the separate of employment was not willful. Defendant argues that it would not be liable for waiting time penalties because a “good faith dispute” exists over the payment of those premium wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. (Mara Dec. ¶ 29).

Further, Defendant contends that Plaintiff would also have to prove that Defendant “knowingly and intentionally” failed to comply with the wage statement requirements under Labor Code § 226. *See Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056. Defendant maintains that it reasonably, and in good faith believes that it was providing a complete and accurate wage statement in compliance with California law. (Mara Dec. ¶ 30).

Defendant also argues that Plaintiff’s meal and rest period claims cannot form the basis of his wage statement claim. Defendant relies on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the position that employees do not suffer injury under California Labor Code § 226(a) so long as the wage statements correctly reflected the hours worked and the pay received even if the pay is later determined to be inaccurate. (Mara Dec. ¶ 31).

#### **v. PAGA Penalties**

Plaintiff also seeks PAGA penalties for the claims outlined above. PAGA allows the private enforcement of certain California Labor Code sections relating to wage and hour violations. The statute of limitations for PAGA violations goes back one year. Because Plaintiff’s PAGA claims are based on the same alleged unlawful conduct as his class claims, Plaintiff’s PAGA claims are subject to the same risks on the merits as Plaintiff’s class claims. (Mara Dec. ¶ 32).

In addition, Defendant maintains that Plaintiff’s PAGA claims face manageability concerns consistent with the class certification challenges. Specifically, Defendant has due process rights which would not permit Plaintiff to attempt to generalize violations from disparate anecdotal evidence. *Duran v. U.S. Bank National Assn.*, 59 Cal.4th 1 (2014). (Mara Dec. ¶ 33).

In addition, the Court may reduce any PAGA penalties awarded under Section 2699, subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to the

1 Aggrieved Employees – assuming liability is proven as to each of Plaintiff’s claims – is higher in  
2 this case where these same individuals may also be receiving money for the same unlawful conduct  
3 under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No.  
4 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 \*17 (“Because the PAGA penalties  
5 sought are at least partially duplicative of penalties granted by the underlying Labor Code  
6 violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has  
7 discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code §  
8 2699(e)(2), Plaintiff recognizes that the potential PAGA penalties are highly uncertain.”). As such,  
9 the Court will likely reduce any PAGA penalty amount awarded to the Aggrieved Employees.  
10 (Mara Dec. ¶ 34).

#### 11 **IV. TERMS OF THE PROPOSED SETTLEMENT**

12 Under the terms of the settlement, Defendant will create a settlement fund of \$500,000.

##### 13 **a. Deductions from the Settlement**

14 The Parties have agreed (subject to and contingent upon the Court’s approval) that this  
15 action be settled and compromised for the non-reversionary total sum of \$500,000 (“Gross  
16 Settlement Amount” or “GSA”), which includes, subject to Court approval: (a) attorneys’ fees of  
17 up to \$166,666.67 (33% of the GSA)<sup>5</sup> to compensate Class Counsel for work already performed  
18 and all work remaining to be performed in documenting the settlement, administering the  
19 settlement, and securing Court approval; (b) actual litigation expenses estimated not to exceed  
20 \$30,000;<sup>6</sup> (c) a Class Representative Enhancement Payment to the named class representative in a  
21 sum not to exceed \$7,500 in consideration for prosecuting this class action, serving as Class  
22 Representative, work performed, and risks undertaken for the payment of attorneys’ fees and costs  
23 in the event he had been unsuccessful in the matter; (d) settlement administration fees and expenses  
24 to ILYM Group, Inc. (“ILYM”) estimated not to exceed approximately \$10,000;<sup>7</sup> and (e) \$10,000

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25 <sup>5</sup> Although Plaintiff’s Counsel seeks attorneys’ fees under the percentage method, Plaintiff’s  
26 Counsel will also provide the Court with their lodestar information at final approval.

27 <sup>6</sup> These will be tabulated and presented to the Court at final approval. Plaintiff will only seek the  
28 amount of actual costs incurred during the litigation of this case. Should the actual costs be lower  
than \$30,000, the difference will be added to the Net Settlement Amount for disbursement to  
Participating Class Members.

<sup>7</sup> ILYM Group, Inc. will present to the Court a declaration in conjunction with the final approval

1 allocated to Plaintiff's claims under the PAGA. Of this payment, 75%, or \$7,500 will be provided  
2 to the LWDA, and 25%, or \$2,500, will be available for distribution to PAGA Aggrieved  
3 Employees.<sup>8</sup>

4 **b. Calculation of Settlement Payments to Class Members**

5 After all Court-approved deductions from the GSA, it is estimated that \$275,833.33 ("Net  
6 Settlement Amount" or "NSA"), less employee taxes on the "wage portion" of the settlement  
7 payment, will be distributed to Participating Class Members.<sup>9</sup> Subject to the terms and conditions  
8 of the settlement, each Participating Class Member will receive a proportionate share of the Net  
9 Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant, based  
10 on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all  
11 Participating Class Members based on the same Class Data, which is then multiplied by the Net  
12 Settlement Amount. Therefore, the value of each Class Member's Individual Settlement Share ties  
13 directly to the amount of weeks that he or she worked. (Exhibit 1 at Paragraph 58.1.1). This  
14 payment will be divided into a "wage portion" to compensate Participating Class Members for  
15 alleged unpaid wages and a "non-wage portion" to compensate Participating Class Members for  
16 alleged interest and penalties. The wage portion will make up 33.33% of each Participating Class  
17 Members' individual settlement payment, and the non-wage portion will make up 66.66% of each  
18 Participating Class Members' individual settlement payment. (Exhibit 1 at Paragraph 58.2).

19 In addition, each PAGA Aggrieved Employee will receive a proportionate share of the Net  
20 PAGA Settlement Amount that is equal to (i) the number of workweeks he or she worked for  
21 Defendant, based on the PAGA Data provided by Defendant, divided by (ii) the total number of  
22 workweeks worked by all Aggrieved Employees based on the same PAGA data, which is then  
23 multiplied by the Net PAGA Settlement Amount. Therefore, the value of each Aggrieved  
24 Employee's Individual PAGA Settlement Share ties directly to the amount of workweeks that he

25 

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motion outlining the costs of the settlement administration process. If the settlement administration  
26 costs are lower than the amount allocated in the Agreement, the difference will be added to the  
Net Settlement Amount for distribution to Participating Class Members.

27 <sup>8</sup> PAGA Aggrieved Employees are all Class Members who worked at least one pay period for  
CELS between February 15, 2022, to October 12, 2024. (Exhibit 1 at Paragraph 28).

28 <sup>9</sup> Participating Class Members are all Class Members who do not submit a valid and timely request  
to exclude themselves from this Settlement. (Exhibit 1 at Paragraph 33).

1 or she worked during the PAGA Period.<sup>10</sup> (Exhibit 1 at Paragraph 59.1.1). This payment will be  
2 treated as 100% penalties. (Exhibit 1 at Paragraph 59.2).

3 Under no circumstances will any portion of the \$450,000 settlement revert to Defendant.

4 **c. Notice to the Class**

5 Within twenty-one (21) days after entry of the Preliminary Approval Order, Defendant  
6 shall deliver to the Settlement Administrator an electronic database, which will list the Class<sup>11</sup> and  
7 PAGA<sup>12</sup> Data. If any or all of this information is unavailable to Defendant, Defendant will so  
8 inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree  
9 upon how to deal with the unavailable information. The Settlement Administrator will use the  
10 National Change of Address Database to obtain updated addresses for Class Members. The Class  
11 Data and PAGA Data shall be based on Defendant's payroll, personnel, and other business records.  
12 The Settlement Administrator shall maintain the Class and PAGA Data and all information  
13 contained within the Class and PAGA Data as private and confidential. (Exhibit 1 at Paragraph  
14 64.1).

15 Within fourteen (14) days after receipt of the Class and PAGA Data, the Settlement  
16 Administrator will mail via first-class regular U.S. Mail the Class Notice to all identified Class  
17 Members and Aggrieved Employees using the mailing address information provided by Defendant  
18 and the results of the search of the National Change of Address Database on all Class Members  
19 and Aggrieved Employees. (Exhibit 1 at Paragraph 64.4).

20 After notices are mailed, Class Members will have thirty (30) days to respond to the

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21 <sup>10</sup> The PAGA Period is February 15, 2022, to October 12, 2024.

22 <sup>11</sup> The "Class Data" is the electronic database Defendant shall deliver to the Settlement  
23 Administrator which will list the following information for each Class Member: (1) first and last  
24 name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5)  
25 the total number of weeks during which the Class Member performed work during the Class  
Period. The Class Data shall be based on Defendant's payroll, personnel, and other business  
records. (Exhibit 1 at Paragraph 6).

26 <sup>12</sup> The "PAGA Data" is the electronic database Defendant shall deliver to the Settlement  
Administrator which will list the following information for each Aggrieved Employee: (1) first  
27 and last name; (2) last known mailing address; (3) social security number; (4) telephone number;  
28 and (5) the total number of weeks the total number of weeks during which the Aggrieved Employee  
performed work during the PAGA Period as an Aggrieved Employee. The PAGA Data shall be  
based on Defendant's payroll, personnel, and other business records. (Exhibit 1 at Paragraph 29).

1 settlement (this is referred to as the “Response Deadline”). (Exhibit 1 at Paragraph 39). Class  
2 Members may respond to the settlement by requesting to be excluded from it or objecting to it.  
3 Class Members can also file a dispute as to the number of workweeks attributed to them.

4 **i. Requests for Exclusion**

5 The Class Notice will provide that Class Members who wish to exclude themselves from  
6 the Settlement must mail to the Settlement Administrator a written request for exclusion. The  
7 written request for exclusion must: (a) state the Class Member’s name, address, telephone number,  
8 and the last four digits of the Class Member’s social security number or employee identification  
9 number; (b) state the Class Member’s intention to exclude themselves from or opt-out of the  
10 Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member  
11 or his or her lawful representative; and (e) be postmarked no later than the Response Deadline.  
12 (Exhibit 1 at Paragraph 66).

13 **ii. Objections to the Settlement**

14 The Class Notice will provide that the Class Members who wish to object to the Settlement  
15 must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no  
16 later than the Response Deadline. The timeframe to submit an objection will not be increased for  
17 returned mailings. Any Objections shall state: (a) the objecting person’s full name, address, and  
18 telephone number; (b) the words “Notice of Objection” or “Formal Objection;” (c) describe, in  
19 clear and concise terms, the legal and factual arguments supporting the objection; (d) list  
20 identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e)  
21 provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval  
22 hearing. (Exhibit 1 at Paragraph 65).

23 **iii. Disputes**

24 If a Class Member or Aggrieved Employee who receives a Class Notice wishes to dispute  
25 the number of work weeks listed on the Class Notice, the Class Member or Aggrieved Employee  
26 may notify the Settlement Administrator by mail or telephone no later than the Response Deadline  
27 and should produce any available supporting evidence, such as wage statements, offers of  
28 employment, termination letters, and/or other employment records, to the Settlement

1 Administrator. The documentation should provide evidence of the dates the Class Member or  
2 Aggrieved Employee contends he or she worked for Defendant during the Class or PAGA Period.  
3 The Settlement Administrator shall then provide the documentation provided by the Class Member  
4 or Aggrieved Employee to Defendant. Defendant shall review its records, the documentation  
5 provided by the Class Member or Aggrieved Employee, and shall provide information to the  
6 Settlement Administrator in response to any such disputed claim within seven (7) business days.  
7 Defendant's records shall be presumed to be determinative, but the Settlement Administrator shall  
8 evaluate the evidence submitted by the Class Member or Aggrieved Employee and make the  
9 decision as to which dates should be applied. The determination by the Settlement Administrator  
10 shall be final and binding. (Exhibit 1 at Paragraph 67).

#### 11 **iv. Returned Notices**

12 If a Class Notice is returned because of an incorrect address, within three (3) business days  
13 from receipt of the returned notice, the Settlement Administrator will conduct a search for a more  
14 current address for the Class Member and re-mail the Class Notice to the Class Member. The  
15 Settlement Administrator will use the National Change of Address Database and skip traces to  
16 attempt to find the current address. The Settlement Administrator will be responsible for taking  
17 reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is  
18 returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a  
19 minimum, the tracking of all undelivered mail, performing address searches for all mail returned  
20 without a forwarding address, and promptly re-mailing to Class Members for whom new addresses  
21 are found. (Exhibit 1 at Paragraph 64.5).

#### 22 **d. Distribution of Funds**

23 Defendant shall wire or otherwise provide to the Settlement Administrator the Gross  
24 Settlement Amount no later than thirty (30) days of the Effective Final Settlement Date. (Exhibit  
25 1 at Paragraphs 20 and 72.1). Within fourteen (14) days after the Settlement Administrator's  
26 receipt of the Gross Settlement Amount, the Settlement Administrator shall disburse: (1) the Net  
27 Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement  
28 Amount to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel

1 for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement  
2 Payment paid to the Class Representative, as approved by the Court; (5) the Administration Costs,  
3 as approved by the Court; and (6) the LWDA Payment to the LWDA. (Exhibit 1 at Paragraphs 16  
4 and 72.2).

5         Participating Class Members and Aggrieved Employees must cash or deposit their  
6 Individual Settlement Share checks within one hundred and eighty (180) calendar days after the  
7 checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar  
8 days after mailing, the Settlement Administrator will send a reminder postcard indicating that  
9 unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become  
10 non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain  
11 uncashed or not deposited by the expiration of the ninety (90) day period after mailing the reminder  
12 notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks  
13 are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks  
14 returned as undeliverable and funds associated with those checks remaining un-cashed shall be  
15 sent to the California Controller's Unclaimed Property Fund in the name of the Class Member  
16 thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure section  
17 384, subdivision (b). (Exhibit 1 at Paragraph 74).

18                 **e. Release of Claims**

19         In exchange for an Individual Class Payment, Participating Class Members will agree to  
20 the following release: The Released Class Claims include any and all claims that were asserted in  
21 the Class Action Complaint or could have arisen out of the allegations made in the Class Action  
22 Complaint. This release shall also apply to any amended complaint which is filed with the Court  
23 after August 12, 2024, i.e., the date of the mediation. This release shall be for the Class Period.<sup>13</sup>  
24 (Exhibit 1 at Paragraph 36).

25         In addition, all PAGA Aggrieved Employees will agree to the following release in  
26 exchange for an Individual PAGA Payment: The Released PAGA Claims include any and all  
27 claims that were asserted in the PAGA Complaint or could have arisen out of the allegations made

28 <sup>13</sup> The Class Period is April 14, 2019, to October 12, 2024.

1 in the PAGA Complaint. PAGA Aggrieved Employees are deemed to release all claims that were  
2 asserted or could reasonably have asserted based on the facts alleged in the Actions and/or the  
3 LWDA letter. This release shall be for the PAGA Period.<sup>14</sup> (Exhibit 1 at Paragraph 37).

4 In addition, Plaintiff has agreed to a general release of his claims. (See Exhibit 1 at  
5 Paragraph 77).

## 6 **V. ARGUMENT**

### 7 **a. Class Action Settlements Are Subject to Court Review and Approval Under 8 the California Rules of Court**

9 Rule 3.769 requires court approval for class action settlements.<sup>15</sup> “Before final approval,  
10 the court must conduct an inquiry into the fairness of the proposed settlement.” (California Rules  
11 of Court, Rule 3.769(g)). Rule 3.769 further requires a noticed motion for preliminary approval of  
12 class settlements:

13 (a) A settlement or compromise of an entire class action, or a cause of action in  
14 a class action, or as to a party, requires the approval of the court after  
15 hearing.

16 ...

17 (c) Any party to a settlement agreement may serve and file a written notice of  
18 motion for preliminary approval of the settlement. The settlement agreement  
19 and proposed notice to class members must be filed with the motion, and  
20 the proposed order must be lodged with the motion.

21 Courts act within their discretion in approving settlements that are fair, not collusive, and  
22 take into account “all the normal perils of litigation as well as the additional uncertainties inherent  
23 in complex class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167,  
24 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452  
25 U.S. 905.

### 26 **b. The Settlement is Fair, Reasonable, and Adequate**

27 In deciding whether to approve a proposed class action settlement under Code of Civil  
28 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.”

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26 <sup>14</sup> The PAGA Period is February 15, 2022, to October 12, 2024.

27 <sup>15</sup> The California Supreme Court also has authorized California’s trial courts to use Federal Rule  
23 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court*  
28 (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate,  
therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is  
2 **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-  
3 length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court  
4 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of  
5 objectors is small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As the following shows, all of these  
6 elements – with the exception of the percentage of objectors, which cannot be anticipated at this  
7 stage of the litigation – bearing on the fairness of the proposed settlement are present here and the  
8 Court’s grant of preliminary approval is therefore requested.

9 **i. The Settlement was Reached as a Result of Arm’s-Length Negotiations**

10 The settlement was reached as a result of arm’s-length negotiations. Though cordial and  
11 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in  
12 nature. Prior to, at, and after the mediation, Counsel for the Parties conducted extensive arm’s  
13 length settlement negotiations until the settlement was reached. The terms of the settlement are  
14 memorialized in the Agreement which is attached to the Declaration of David Mara, Esq. as  
15 Exhibit 1. While Plaintiff believes in the merits of his case, he also recognizes the inherent risks  
16 of litigation and understands the benefit of the Class receiving significant settlement funds  
17 immediately as opposed to risking continued litigation in achieving class certification, preparing  
18 for and conducting a trial, and/or an appeal that may take several more years to litigate.

19 **ii. The Settlement is the Result of Thorough Investigation and Discovery**

20 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses  
21 before reaching the proposed settlement, and engaged in sufficient investigation, research and  
22 discovery to support the settlement. The settlement was only possible following investigation,  
23 discovery, and evaluation of Defendant’s policies and procedures, as well as the data produced for  
24 the putative class, which permitted Class Counsel to engage in a comprehensive analysis of  
25 liability and potential damages. This litigation has reached the stage where “the Parties certainly  
26 have a clear view of the strengths and weaknesses of their cases” sufficient to support the  
27 settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

28 **iii. Counsel for Both Parties are Experienced in Similar Litigation**

Both Plaintiff's Counsel and Defendant's Counsel are particularly experienced in wage and hour employment law and class actions. Plaintiff's Counsel has significant experience in litigating meal period, rest period, waiting time penalty, and wage statement claims. (Mara Dec. ¶¶ 3-9; Declaration of Peter Horton, Esq., ¶¶ 2-5). Plaintiff's Counsel has prosecuted numerous wage and hour class action cases on behalf of employees for California Labor Code violations and thus are experienced and qualified to evaluate the class claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. This experience instructed Plaintiff's Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed settlement.<sup>16</sup> Defendant's Counsel practices labor and employment law and have represented numerous employers in similar types of claims. Accordingly, both Parties' Counsel are experienced in wage and hour employment law and class actions.

#### **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

An understanding of the amount in controversy is an important factor in determining whether the settlement "of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; *see also* *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is "the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." *Id.*

In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys." *Kullar, supra*, 168 Cal.App.4th at 133. *Kullar* does not require an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims, provided there is a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409. Put differently, "as the court does when it approves a settlement as in good faith under Code of Civil Procedure §

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<sup>16</sup> The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class Notice has been provided to the class and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the final approval motion.

877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500. As the following subsections show, the Parties’ investigation and discovery revealed many reasons to discount claims and agree to this settlement.

### **1. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff’s Case and the Risks and Costs of Further Litigation**

The proposed settlement was only possible following significant discovery and an evaluation of Defendant’s relevant policies and procedures, as well as the data that Defendant produced for the putative class as referenced above. This permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. The discovery conducted allowed Plaintiff to evaluate the strengths and weaknesses of his theories of liability, which are predicated on Plaintiff’s claims that Defendant failed to provide to pay all wages owed to driver employees. As explained herein, Defendant maintains that the discovery produced demonstrates that it would succeed at both in denying class certification and on the merits.

Although, Plaintiff believes this case is suitable for certification on the claimed bases that there are company-wide policies that Plaintiff contends violate California law and uniformly affect the Class Members, Defendant’s counterarguments raise uncertainties with respect to both class certification and success on the merits. As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court’s sound discretion. Decisions following *Sav-On* have reached different conclusions, with respect to certification of wage and hour claims.<sup>17</sup> While remaining confident in the strengths of his claims, all of these factors led Plaintiff to discount the following maximum potential damage exposure.

### **2. Potential Exposure on Plaintiff’s Claims**

The settlement encompasses 10,899 workweeks. This equates to approximately 48,008 shifts. Employees earned approximately \$17.46 per hour on average. (Mara Dec. ¶ 35).

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<sup>17</sup> See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal. App. 4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal. App. 4th 121 (reversing denial of certification); *Dunbar v. Albertson’s Inc.* (2006) 141 Cal. App. 4th 1422 (affirming denial of certification).

1 Plaintiff alleges that Defendant failed to provide employees with rest periods in accordance  
2 with California law. Plaintiff contends that employees are required to remain on the premises  
3 during rest periods. If Plaintiff were to prevail on this claim for the entire class period, Plaintiff  
4 and the Class Members would be entitled to the following potential damages: \$838,219 (48,008  
5 shifts x \$17.46 = \$838,219.68). (Mara Dec. ¶ 36).

6 Defendant contends that this amount should be zero because it has a lawful rest period  
7 policy and practice. Defendant disagrees and contends that it does not require employees to remain  
8 on the premises during rest periods and that employees do, in fact, leave the premises during rest  
9 periods. Accordingly, Defendant claims Plaintiff should take nothing on this claim and, if the  
10 factfinder agreed, Plaintiff would take nothing. Although remaining confident in her position,  
11 Plaintiff had no way of knowing how the factfinder would rule on this issue and a substantial  
12 discount had to be given to make settlement possible.

13 In addition, Plaintiff alleges that Defendant failed to provide employees with meal periods  
14 in accordance with California law because Defendant's time records show unlawful meal periods.  
15 If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and the Class Members  
16 would be entitled to the following potential damages: \$525,807 (30,115 shifts with unique meal  
17 period violations x \$17.46 = \$525,807.90). (Mara Dec. ¶ 37).

18 Defendant contends that this amount is too high as it has paid meal period premiums to  
19 employees. Defendant asserts that no damages would be attributable to shifts in which a premium  
20 has already been paid and the maximum potential damages would be reduced. Defendant also  
21 contends that that this amount should be zero because it would be able to rebut the presumption  
22 under *Donohue*, in part, by showing it has a lawful meal period policy.

23 If Plaintiff were to prevail on his meal period and/or rest period claims, Plaintiff may be  
24 entitled to penalties for inaccurate wage statements. If Plaintiff were to prevail on this claim, the  
25 damages would be \$464,000 (116 class members x \$4,000 maximum penalty = \$464,000). (Mara  
26 Dec. ¶ 38).

27 If Plaintiff were to prevail on his meal period and/or rest period claims, he and the Class  
28 Members may also be entitled to waiting time penalties. Plaintiff calculates the potential exposure

1 under his waiting time penalties cause of action as \$926,078 (221 former employees x 30 days x  
2 8 hours x \$17.46 = \$926,078.40). (Mara Dec. ¶ 39).

3 If Plaintiff's meal period and rest period claims fail, these claims also fail. There is also a  
4 possibility that the factfinder could find that these violations are not willful and knowing and  
5 intentional. If this were to occur, Plaintiff and the Class would receive nothing under these claims.  
6 In addition, a good faith dispute that any wages are due will preclude imposition of waiting time  
7 penalties. Defendant argues that Plaintiff will not be able to show that any violations were knowing  
8 and intentional and willful. Defendant also contends that there is a good faith dispute about whether  
9 any wages are due. Defendant further argues that Plaintiff's overtime, meal period, and rest period  
10 claims cannot form the basis of her wage statement claim. Defendant relies on the case *Maldonado*  
11 *v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the position that employees do not suffer  
12 injury under California Labor Code § 226(a) so long as the wage statements correctly reflected the  
13 hours worked and the pay received even if the pay is later determined to be inaccurate. Plaintiff  
14 had to take these arguments into consideration.

15 Plaintiff also seeks PAGA penalties. PAGA allows the private enforcement of certain  
16 California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2)  
17 reads, in part, as follows:

18 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per  
19 pay period for the initial violation and two hundred dollars (\$200) for each  
aggrieved employee per pay period for each subsequent violation.

20 The statute of limitations for PAGA violations go back one year. The potential damages under  
21 Plaintiff's PAGA claim is \$1,788,800.<sup>18</sup> (Mara Dec. ¶ 40). As Plaintiff's PAGA claims are based  
22 on the same alleged unlawful conduct as his class claims, Plaintiff's PAGA claims are subject to  
23 the same risks on the merits as Plaintiff's class claims. In addition, the Court may reduce any  
24 PAGA penalties awarded under Section 2699, subdivision (e)(2). The likelihood of the Court  
25 reducing the PAGA penalties awarded to Plaintiff and the PAGA Aggrieved Employees –  
26 assuming liability is proven as to each of Plaintiff's claims – is higher in this case where these

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27  
28 <sup>18</sup> \$100 x 3 PAGA violations (meal periods, rest periods, and wage statements) x 5,889 pay periods  
= \$1,766,700 plus \$100 x 1 PAGA violation (waiting time penalties) x 221 pay periods = \$22,100.

1 same individuals may also be receiving money for the same unlawful conduct under the class  
2 claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-  
3 AWI-SKO, 2018 U.S. Dist. LEXIS 6142 \*17 (“Because the PAGA penalties sought are at least  
4 partially duplicative of penalties granted by the underlying Labor Code violations, *see, e.g.*, Cal.  
5 Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what  
6 amount to award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the  
7 potential PAGA penalties are highly uncertain.”). As such, the Court may reduce any PAGA  
8 penalty amount awarded to Plaintiff and the PAGA Aggrieved Employees. (Mara Dec. ¶ 41).

9       Thus, not taking into account any of its defenses or arguments, Plaintiff estimated that if  
10 he were successful in his core claims, Defendant’s total exposure would be approximately  
11 \$1,364,026 [\$838,219 (rest period exposure) + \$525,807 (meal period exposure) = \$1,364,026]. If  
12 the fact finder were to side with Defendant on these claims, Plaintiff and the Class Members would  
13 not be entitled to any damages for wage statements, waiting time penalties, or PAGA penalties  
14 that are derivative of and dependent on Plaintiff prevailing on his meal and rest period claims. In  
15 addition, if the Court were to find that Defendant’s arbitration agreement is enforceable and  
16 dismiss Plaintiff’s class claims, the damages for Plaintiff’s class claims would be reduced to zero.  
17 If Plaintiff is successful in his unpaid wages claim, and is able to prove that Defendant’s wage  
18 statement violations were knowing and intentional and that the waiting time penalties violations  
19 were willful, he may also be entitled to damages for wage statements and waiting time penalties  
20 in the amount of \$1,390,078 [\$464,000 (wage statements) and \$926,078 (waiting time penalties)  
21 = \$1,390,078]. Plaintiff and the Aggrieved Employees may also be entitled to PAGA penalties in  
22 the amount of \$1,788,800, subject to Court reduction. (Mara Dec. ¶ 42).

### 23                                   **3. The Settlement Amount of \$500,000 is Reasonable**

24       In light of the risks Plaintiff’s claims faced, Plaintiff and his Counsel believe that the  
25 settlement amount of \$500,000 – with an average settlement share amount estimated at \$1,081.70  
26 – is a reasonable and fair settlement amount. (Mara Dec. ¶ 43).

27       It should be noted that a settlement is not judged solely against what might have been  
28 recovered, had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the

1 damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91  
2 Cal.App.4th 224, 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139;  
3 “Compromise is inherent and necessary in the settlement process...even if the relief afforded by  
4 the proposed settlement is substantially narrower than it would be if the suits were to be  
5 successfully litigated, this is no bar to a class settlement because the public interest may indeed be  
6 served by a voluntary settlement in which each side gives ground in the interest of avoiding  
7 litigation.” *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688  
8 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a fraction of the  
9 potential recovery does not...render the settlement inadequate or unfair”); *see also In re*  
10 *Omnivision Technologies, Inc.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 95616, \*21 , (noting that  
11 certainty of recovery in settlement of 6% of maximum potential recovery after reduction for  
12 attorneys’ fees was higher than median percentage for recoveries in shareholder class action  
13 settlements, averaging 2.2%-3% from 2002 through 2006).

14 **c. Provisional Certification Should be Granted**

15 Under California law, a class action is appropriate when the class is ascertainable and there  
16 is “a well defined community of interest in the questions of law and fact involved affecting the  
17 parties to be represented.” Cal. Civ. P. Code § 382. State law requirements under California Code  
18 of Civil Procedure section 382 for class certification follow federal law according to Rule 23 of  
19 the Federal Rule of Civil Procedure: numerosity, typicality of the class representatives’ claims,  
20 adequacy of representation, predominance of common issues, and superiority. Fed. R. Civ. P.  
21 23(a); *see also Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted  
22 that while a court must certify a class for settlement purposes if a class has not already been  
23 certified, “it is well established that trial courts should use different standards to determine the  
24 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser  
25 standard of scrutiny is used for settlement cases.” *Glob. Minerals & Metals Corp. v. Superior*  
26 *Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th  
27 1794, 1807, fn. 19. Plaintiff contends, and Defendant does not dispute for settlement purposes  
28 only, each of these elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal. App.

1 4th 224, 237-38. Plaintiff seeks approval of the following Class for settlement purposes only: all  
2 individuals who are employed or have been employed by CELS in the State of California as hourly  
3 non-exempt employees and worked at one of CELS's warehouses in California at any time from  
4 April 14, 2019, to October 12, 2024.

5 **d. Notice to the Class Complies with California Rule of Court 3.769(f)**

6 California Rule of Court 3.769(f), provides:

7 If the court has certified the action as a class action, notice of the final approval  
8 hearing must be given to class members in the manner specified by the court. The  
9 notice must contain an explanation of the proposed settlement and procedures for  
class members to follow in filing written objections to it and in arranging to appear  
at the settlement hearing and state any objections to the proposed settlement.

10 The proposed Class Notice meets all of these requirements. The proposed Class Notice  
11 advises the class of their rights to participate in the settlement, how to and when to object to or  
12 request exclusion from the settlement, and the date, time, and location of the final approval hearing.  
13 The proposed Class Notice is attached as Exhibit A to the Agreement.

14 **VI. CONCLUSION**

15 Plaintiff respectfully submits that the proposed settlement is in the best interests of the  
16 Class and Class Members, as it is fair, adequate, and reasonable, and one that should ultimately be  
17 granted final approval. Under the applicable class action criteria and guidelines, the proposed  
18 settlement should be preliminarily approved by the Court, the class should be conditionally  
19 certified for purposes of settlement only, and the Class Notice should be approved. Plaintiff also  
20 respectfully requests the Court set a final approval hearing date of March 13, 2025, or other  
21 available date for the Court.

22  
23 Dated: October 29, 2024

**MARA LAW FIRM, PC**

24 

25 David Mara, Esq.

26 Jill Vecchi, Esq.

27 Representing Plaintiff ERIC CALDERON,  
28 on behalf of himself, all others similarly situated,  
and on behalf of the general public