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Attorneys for Plaintiff Eva Lopez
and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

EVA LOPEZ, on behalf of herself and all
“aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

QUALITY BUILT, LLC, a Delaware
limited liability company, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: 23CU0207

Assigned to the Hon. Valerie Chrissakis, Dept. 8

CLASS ACTION

**NOTICE OF MOTION AND UNOPPOSED
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: October 30, 2024

Time: 8:15 a.m.

Dept.: 8

Complaint Filed: June 5, 2023

1 **PLEASE TAKE NOTICE THAT** on October 30, 2024 at 8:15 A.M., or as soon
2 thereafter as the matter may be heard, in Department 8 of the above-entitled Court, located at
3 1640 Kings County Drive, Hanford, California 93230, Plaintiff Eva Lopez will and hereby does
4 move unopposed for an Order granting final approval of this class action settlement. This
5 application is made pursuant to California Rules of Court Rule 3.769, which requires court
6 approval of the settlement of class actions, and Labor Code section 2699, which requires court
7 approval of PAGA settlements. This Motion is unopposed by Defendant Quality Built, LLC and
8 will be based on the Memorandum of Points and Authorities, the Settlement Agreement and
9 Release, the Declarations of Daniel F. Gaines and Alex P. Katofsky, the Declaration of Jarrod
10 Salinas of Phoenix Settlement Administrators, the Declaration of Plaintiff Eva Lopez, such
11 evidence or oral argument as may be presented at the hearing, and on the complete records and
12 file herein.¹

13
14 Dated: October 9, 2024

GAINES & GAINES, APLC

15 By: *Daniel Gaines*
16 DANIEL F. GAINES
17 ALEX P. KATOFSKY
18 Attorneys for Plaintiff Eva Lopez and
19 Proposed Class Counsel
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27 ¹ This motion should not be construed as a waiver of any attorney-client or attorney work-
28 product privileges.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 By this unopposed motion, Plaintiff Eva Lopez (“Lopez” or “Plaintiff”) and the settlement
4 class (collectively “Settlement Class” or “Settlement Class Members”) seek final approval of the
5 class and PAGA action settlement reached with Defendant Quality Built, LLC (“Defendant”).
6 Subject to Court approval, Plaintiff has settled her claims as detailed in the parties’ Settlement
7 Agreement and Release for a settlement in the amount of \$200,000. *See* Declaration of Daniel F.
8 Gaines (“Gaines Decl.”), Exhibit (“Ex.”)² B (collectively, the “Settlement”).

9 As discussed herein, the proposed Settlement satisfies all of the criteria for final
10 settlement approval under California law because it is fair, adequate, and reasonable. Exhibit B;
11 *see also, Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford*
12 *Motor Company* (1996) 48 Cal.App.4th 1794, 1801. The response of the Settlement Class to the
13 Settlement confirms that final settlement approval is appropriate. *There have been no objections*
14 *and one (1) opt-out* out of 86 total Class Members. Declaration of Jarrod Salinas of Phoenix
15 Settlement Administrators (“Phoenix”) (“Salinas Decl.”) at ¶¶ 8, 9.

16 The Parties have agreed upon a settlement class: All current and former non-exempt
17 employees of Defendant, who were employed by Defendant in California at any time during the
18 Class Period [June 5, 2019 through February 27, 2024]. The Aggrieved Employees are defined
19 as all current and former non-exempt employees of Defendant, who were employed by Defendant
20 in California at any time during the PAGA Period [March 28, 2022 through February 27, 2024].

21 The Settlement is “direct distribution” – there is no claims process, and all Participating
22 Settlement Class Members (those who did not submit an opt-out request) and Aggrieved
23 Employees will automatically be mailed a settlement check when the Settlement is granted final
24 approval.

25
26 ² Unless otherwise noted, all “Ex.” references are to the exhibits attached to the Declaration of
27 Daniel F. Gaines in Support of the Motion for Final Approval of Class Settlement submitted
28 herewith.

1 The Net Settlement Amount is the amount remaining from the Gross Settlement Amount
2 (from which Individual Settlement Payments are to be made) after payment of all of the
3 following: Attorneys' Fees and Costs, with Attorneys' Fees not to exceed thirty-five percent of
4 the Gross Settlement Amount; actual Costs incurred; Settlement Administration Costs; the Class
5 Representative Enhancement Payment to the Named Plaintiff Eva Lopez; and the PAGA
6 Allocation. Stip. at ¶ I(T). Each Participating Class Member who does not opt out will receive
7 an Individual Payment Amount. Based upon the calculations stipulated in the Settlement, the
8 highest Individual Payment Amount to be paid to Class Members is approximately \$4,052.23, the
9 lowest Individual Payment Amount to be paid to Class Members is approximately \$16.42, while
10 the average Individual Payment Amount to be paid to Class Members is approximately
11 \$1,071.99. Salinas Decl. at ¶ 13.

12 The Labor & Workforce Development Agency ("LWDA") shall be paid \$7,500 (75%) of
13 the \$10,000 total allocated to settle the LWDA's claims brought pursuant to Labor Code § 2698
14 *et seq.*, the Private Attorneys General Act of 2004 ("PAGA"), and the remaining 25%, or \$2,500,
15 shall be paid to Aggrieved Employees. Stip. at ¶ I(Y). There are 85 Aggrieved Employees who
16 worked a total of 3,192 Workweeks during the PAGA Period. The highest Individual PAGA
17 Payment to be paid is approximately \$78.44, and the average Individual PAGA Payment to be
18 paid is approximately \$41.67. Salinas Decl. ¶ 14.

19 Because the Settlement achieves outstanding results for the Settlement Class, Aggrieved
20 Employees, Defendant's past and current employees, and the State of California, Plaintiff
21 respectfully requests, on behalf of the Settlement Class and without opposition from Defendant,
22 that the Court approve the Settlement as fair, adequate, and reasonable, and enter judgment in
23 accordance with the Settlement's terms.³

24
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26
27 ³ Plaintiff is filing a separate application for the Court's approval of Class Counsel's attorneys'
28 fees and costs, claims administration fees, and Plaintiff's service award.

II. STATEMENT OF FACTS

A. Case Summary and Procedural History

On March 8, 2023, Plaintiff Lopez exhausted the pre-filing requirements of the PAGA. On June 5, 2023, Plaintiff Lopez initiated her Action in the Kings County Superior Court by filing a PAGA complaint. Gaines Decl. at ¶ 8.

On September 25, 2023, Plaintiff filed a First Amended Complaint Class Action Complaint (the “FAC”). The FAC asserts claims against Defendant for (1) Failure to Pay All Minimum and Overtime Wages Due (Labor Code §§ 510, 1194, and 1194.2); (2) Failure to Provide Rest Periods Or Compensation In Lieu Thereof (Labor Code § 226.7; IWC Wage Order 4-2001); (3) Failure to Provide Meal Periods Or Compensation In Lieu Thereof (Labor Code §§ 226.7 and 512; IWC Wage Order 4-2001); (4) Failure to Reimburse All Business-Related Expenses (Labor Code § 2802); (5) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions (Labor Code § 226(a), (e)); (6) Failure to Timely Pay Wages Due at Separation of Employment (Labor Code §§ 201-203); (7) Violation of Business and Professions Code § 17200; and (8) Penalties Pursuant to Labor Code § 2699(f) for Violations of Labor Code §§ 201, 202, 226(a), 226.7, 246, 510, 512, 1194, and 2802, and Pursuant To Labor Code § 2699(a) for Violations of Labor Code §§ 226.3 and 558. Gaines Decl. at ¶ 9.

Defendant disputes all claims alleged in the Action and does not by the Settlement admit any liability or wrongdoing whatsoever. Gaines Decl. at ¶ 10.

The Class Representative contends that Defendant violated the California Labor Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class certification. Gaines Decl. at ¶ 11.

B. Investigation and Settlement Discussions

Class Counsel have conducted a thorough investigation into the facts and law during the prosecution of this class action case, including the exchange of extensive informal discovery and the review and verification of statistical data and other facts and information provided by Defendant. Counsel for the Parties also represent that they have investigated the applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses

1 thereto, and the damages and other losses claimed by Plaintiff. Gaines Decl. at ¶ 12.

2 On February 27, 2024, following their exchange of information and documents regarding
3 the Settlement Class and the claims and defenses asserted by the Parties, the Parties engaged in
4 arm's-length negotiations with the assistance of an experienced wage and hour mediator, Hon.
5 Dickran M. Tevrizian (Ret.), where the Parties were able to reach the resolution of the Action.
6 Gaines Decl. at ¶ 13.

7 Based on their own independent investigation and evaluation, Class Counsel are of the
8 opinion (and will so represent to the Court) that settlement for the consideration and on the terms
9 set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest
10 of the Settlement Class in light of all known facts and circumstances, including the risk of
11 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
12 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
13 that this settlement is fair and in the best interest of the Settlement Class. Gaines Decl. at ¶ 14.

14 The Parties agree that the Settlement Class may be certified for settlement purposes only
15 and that any motion for approval seeking, *inter alia*, certification of the Settlement Class is for
16 purposes of the settlement only. If for any reason the settlement is not approved, the certification
17 will have no force or effect and will immediately be revoked. The Parties further agree that
18 certification for purposes of the settlement is in no way an admission that class certification is
19 proper under the more stringent standard applied for litigation and that evidence of this limited
20 Settlement Agreement for settlement purposes only will not be admissible for any purpose in this
21 or any other proceeding. Gaines Decl. at ¶ 15.

22 **C. Summary of Settlement Terms**

23 **1. *Benefits to the Settlement Class and the Public***

24 The Settlement provides that (a) the Court may certify the Settlement Class as described
25 in the Stipulation on a provisional, non-mandatory basis for the purposes of this settlement only,
26 conditioned upon the Court granting final approval of the Settlement; and (b) Defendant shall pay
27 the total, non-reversionary sum of \$200,000 (the "Gross Settlement Amount"). All payments
28 associated with the Settlement shall be paid by the Settlement Administrator from the Gross

1 Settlement Amount, including all payments to Participating Settlement Class Members, the
2 Named Plaintiff, the Class Representative Enhancement Payment, Class Counsel (for Attorneys’
3 Fees and Costs), the LWDA pursuant to the PAGA claim, all taxes (except Defendant’s share of
4 employer-side payroll taxes, which include FICA (Social Security and Medicare) and
5 unemployment insurance (FUTA and SUTA/SUI) on the amount allocated as wages to be paid to
6 Participating Settlement Class Members), and all payments to the Settlement Administrator. The
7 Gross Settlement Amount does not include Defendant’s share of “employer-side payroll taxes,”
8 which Defendant shall be responsible for paying separately. Stip. at ¶ I(Q).

9 The State of California and the public will receive a benefit in the allocation of \$7,500 to
10 the LWDA. The amount payable to the LWDA is required to go to education of employers and
11 employees about their obligations and rights under the Labor Code, the enforcement of the
12 State’s labor laws, and as supplementary funds to operate the LWDA. Cal. Lab. Code § 2699(i).
13 This is a significant value to the State of California and its employers and employees. The
14 remaining amount allocated to PAGA – \$2,500, shall be paid to Aggrieved Employees. Stip. at ¶
15 I(Y).

16 **2. Preliminary Approval, Notice, and the Claims Process**

17 On July 8, 2024, this Court granted Plaintiff’s unopposed motion for preliminary approval
18 of the Settlement and provisionally certified the Settlement Class, finding that the Settlement
19 appeared to be within the range of reasonableness of settlements that could ultimately be given
20 final approval. *See* Exhibit C. The Court approved the distribution of the Notice of Proposed
21 Class Action Settlement and set the Final Fairness and Approval Hearing. *Id.*

22 Pursuant to the Court’s Order, on August 2, 2024, Phoenix mailed Notice packets
23 containing the notice of the terms of the Settlement — including the terms relating to attorneys’
24 fees and costs — to 86 Settlement Class Members. Salinas Decl. at ¶ 5, Salinas Decl., Ex. A. As
25 the Court required, Settlement Class Members were given 45 days after the Notice was mailed to
26 submit their opt out form or objection to the Settlement. As of the date of this motion, 85
27 Settlement Class Members will be issued their share of the class settlement. Based upon the
28 methodology stipulated in the Settlement, the highest Individual Payment Amount to be paid to

1 Settlement Class Members is approximately \$4,052.23, the lowest Individual Payment Amount to
2 be paid to Settlement Class Members is approximately \$16.42, while the average Individual
3 Payment Amount to be paid to Settlement Class Members is approximately \$1,071.99. Salinas
4 Decl. at ¶ 13. No Settlement Class Members have objected to the Settlement, and one (1)
5 Settlement Class Member has opted out; there were no untimely objections or requests to opt-out.
6 *Id.* at ¶¶ 8, 9.

7 **D. Compliance with Procedural Requirements of PAGA**

8 On June 7, 2024, in compliance with Labor Code § 2699(1)(2), Plaintiff's counsel
9 submitted a copy of the Settlement Agreement and Release of Claims to the LWDA through its
10 online submission interface. The LWDA has not objected or otherwise responded to the
11 submission. Gaines Decl. at ¶ 59; Exhibit D.

12 **III. ARGUMENT**

13 **A. The Settlement Class Members Received the Best Practicable Notice**

14 California law vests the Court with broad discretion in fashioning an appropriate notice
15 program. *See* California Civil Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960,
16 973-74. To protect the rights of absent class members, the parties must provide class members
17 with the best notice practicable of a potential class action settlement. *Phillips Petroleum Co. v.*
18 *Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-76
19 (individual notice must be sent to all class members who can be identified through reasonable
20 efforts); *Mullane v. Central Hanover Bank & Garretson Company* (1950) 339 U.S. 306, 314
21 (best practicable notice is that which is “reasonably calculated, under all the circumstances, to
22 apprise interested parties of the pendency of the action and afford them an opportunity to present
23 their objections”). The content and method of the notice should be designed to apprise the class
24 members of the terms of the proposed settlement and of the class members’ rights regarding the
25 settlement. *See Mullane, supra*, 339 U.S. at 314; *Philadelphia Housing Authority v. American*
26 *Radiator & Standard Sanitary Corp.* (E.D. Pa. 1970) 323 F. Supp. 364, 378.

27 The Notice approved by the Court met these requirements: it identified the Parties and
28 described the lawsuit, the Settlement Class, the settlement amount, the proposed method for

1 distribution of the Gross Fund, the amount proposed to be paid as service payment to the named
2 Plaintiff, the amount of administrative costs, and the requested amount for attorneys' fees and
3 costs. Salinas Decl., Ex. A. The Notice was described the proposed Settlement with enough
4 specificity to allow each Settlement Class Member to make an informed choice whether to accept
5 and participate in it. It also explained how and when Settlement Class Members may object to or
6 opt out of the Settlement. Finally, the Notice provided the schedule for the hearing on final
7 approval of the Settlement and informed Settlement Class Members how to obtain additional
8 information about the Settlement.

9 The California Supreme Court has held that notice is appropriate if it has a "reasonable
10 chance of reaching a substantial percentage of the class members ..." *Cartt, supra*, 50 Cal.App.3d
11 at 974. Notice was mailed to individual Settlement Class Members at their last known address,
12 and in the end, all of the Notices were successfully mailed to nearly all Settlement Class
13 Members. Salinas Decl. at ¶¶ 4-10. As Notice reached all Settlement Class Members and
14 apprised them of all pertinent information regarding the Settlement, under California law, the
15 Notice given to Settlement Class Members was more than adequate.

16 **B. Final Settlement Approval is Appropriate**

17 The Settlement is fair, adequate, and reasonable because it provides substantial benefits to
18 Settlement Class Members and the general public. The fairness, adequacy, and reasonableness of
19 the Settlement are illustrated by the fact that none of the 86 Settlement Class Members objected
20 to, and one (1) has requested exclusion from, the Settlement. Salinas Decl. at ¶¶ 8, 9. In
21 addition, the State of California will receive \$7,500 for education and enforcement purposes
22 pursuant to Labor Code Sections 2699(i) and (j). Under the legal standards used by California
23 courts to determine whether class action settlements should be approved, this Settlement warrants
24 approval.

25 **1. The Three-Step Settlement Approval Process**

26 The law favors settlement, particularly in class actions and other complex cases where
27 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
28 *See 4 Newberg on Class Actions* 4th (4th ed. 2002) § 11.41 (and cases cited therein); *Class*

1 *Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.*
2 (9th Cir. 1976) 529 F.2d 943, 950; *see also, Potter v. Pacific Coast Lumber Co.* (1951) 37 Cal.2d
3 592, 602. These concerns apply with particular force in a case such as this, where complex issues
4 of law are at play (including California's complicated requirements for overtime pay).

5 A class action, however, may not be dismissed, compromised, or settled without the
6 approval of the court. California Rules of Court Rule 3.769; Federal Rules of Civil Procedure,
7 Rule 23(e).⁴ Judicial proceedings under Federal Rule of Civil Procedure Rule 23 have led to a
8 defined procedure and specific criteria for settlement approval in class action settlements,
9 described in the Federal Judicial Center, *Manual for Complex Litigation*, Fourth (4th ed. 2004)
10 ("*Manual*") § 21.632, *et seq.* The *Manual's* settlement approval procedure describes three
11 distinct steps:

- 12 (1) Preliminary approval of the proposed settlement at an informal hearing;
- 13 (2) Dissemination of mailed and/or published notice of the settlement to all affected
14 Class members; and
- 15 (3) A "formal fairness hearing," or final settlement approval hearing, at which Class
16 members may be heard regarding the settlement, and at which evidence and
17 argument concerning the fairness, adequacy, and reasonableness of the settlement
18 may be presented.

19 *Manual*, § 21.632-34.

20 The first two steps of this process are complete. The first step was completed on July 8,
21 2024, when this Court granted preliminary approval of the Settlement. *See* Exhibit C. In doing
22 so, the Court determined that the Settlement was within the range of possible final approval and
23 that notice to the Settlement Class Members of the Settlement's terms and of the scheduling of
24 the formal fairness hearing should be distributed. *See Wershba v. Apple Computer* (2001) 91
25

26 ⁴ The California Supreme Court has authorized California's trial courts to use Federal Rule 23
27 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, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

1 Cal.App.4th 224, 234-35; 4 *Newberg*, *supra*, § 11.25.

2 The second step in the class action settlement approval process, the dissemination of the
3 Notice, is complete as well. In accordance with the Court's Preliminary Approval Order, the
4 Parties worked with Phoenix to implement the Court-approved notice program, which employed
5 the best practicable means to disseminate to all Settlement Class Members notices of the
6 Settlement's terms and of the date and time of the final approval hearing. *C.C.P.* § 382; *see also*,
7 Ex. A to Salinas Decl.; *see generally*, Salinas Declaration.

8 The third and last step in the class action settlement approval process is the final approval
9 hearing at which the Court shall determine whether the Settlement is fair, adequate, and
10 reasonable. At the final approval hearing, scheduled for October 30, 2024, Settlement Class
11 Members will have the opportunity to be heard regarding the Settlement⁵, and Class Counsel will
12 present evidence and argument in support of the Settlement. *See Manual*, § 21.634. At the
13 conclusion of the final approval hearing, this Court will decide whether to grant final approval of
14 the Settlement and whether to enter a final order and enter judgment in the action.

15 **2. The Terms of the Settlement Disclose No Grounds to Doubt Its** 16 **Fairness**

17 When faced with a motion for final approval of a class action settlement under Code of
18 Civil Procedure § 382, a court inquires whether the settlement is "fair, adequate, and reasonable."
19 *See Wershba*, *supra*, 91 Cal.App.4th at 244-45; *Dunk*, *supra*, 48 Cal.App.4th at 1801. A
20 preliminary review of the terms of the proposed Settlement shows that it is fair. Indeed, this
21 Court should begin its analysis with a presumption that the proposed Settlement is fair:

22 [A] presumption of fairness exists where: (1) the settlement is
23 reached through arm's-length bargaining; (2) investigation and
24 discovery are sufficient to allow counsel and the court to act
intelligently; (3) counsel is experienced in similar litigation; and
(4) the percentage of objectors is small.

25 *Dunk*, *supra*, 48 Cal.App.4th at 1802; *Wershba*, *supra*, 91 Cal.App.4th at 245.

26 During the course of this litigation, the Parties have engaged in significant investigation

27 ⁵ There were no written objections filed to the Settlement; it is anticipated that no Class Members
28 will appear to voice any objections at the final fairness hearing.

1 into the factual and legal claims presented in the complaint. Substantial discovery into the merits
2 of Plaintiff's claims and the nature of Defendant's practices took place between the Parties in
3 which Defendant and Plaintiff exchanged a considerable amount of information and
4 documentation and further apprised each other of their respective factual contentions, legal
5 theories, and defenses. In short, the Parties have engaged in extensive good faith, arms-length
6 negotiations, telephone conferences, and substantial correspondence further aimed at settling their
7 disputes. Gaines Decl. at ¶¶ 12-15.

8 The Settlement reached by the Parties provides substantial payments to Participating
9 Settlement Class Members, particularly in relation to the harm alleged. The presumption of
10 fairness and adequacy is especially appropriate here because the reaction of Settlement Class
11 Members has been uniformly positive – not one Settlement Class Member objected to, and one
12 (1) Settlement Class Member has requested exclusion from, the Settlement. Salinas Decl. at ¶¶ 8,
13 9. Accordingly, because the four circumstances identified in *Dunk* are present here, it is
14 appropriate for the Court to presume that the Settlement is worthy of final approval. *See Dunk*,
15 *supra*, 48 Cal.App.4th at 1802; *see also, Kullar, supra*, 168 Cal.App.4th at 129-30.

16 **3. Each of the Relevant Criteria Supports Final Approval of the** 17 **Settlement**

18 In deciding whether to grant final approval to a class action settlement, California courts
19 consider several factors, including the following: (1) the value of the settlement; (2) the risks
20 inherent in continued litigation; (3) the extent of discovery completed and the stage of the
21 proceedings when settlement was reached; (4) the complexity, expense, and likely duration of the
22 litigation in the absence of settlement; (5) the experience and views of class counsel; and (6) the
23 reaction of class members. *See Wershba, supra*, 91 Cal.App.4th at 244-45; *Dunk, supra*, 48
24 Cal.App.4th at 1801. As described below, each of these criteria supports final approval of the
25 Settlement.

26 **a. The Value of the Settlement Favors Final Approval**

27 Under the Settlement, Defendant has agreed to a settlement in the amount of \$200,000
28 (including attorneys' fees and costs) to resolve this Action. The entire Net Settlement Amount

1 shall be paid to Participating Settlement Class Members. The settlement amount is
2 commensurate with the value of the claims adjusted for risk; the amounts to be paid are not
3 nominal or symbolic. Based on the claims received to date, participating Settlement Class
4 Members will be paid, on average, approximately \$1,071.99 each – comprised of compensation
5 for unpaid wages, unpaid meal and rest periods, unreimbursed expenses, and penalties and
6 interest for Defendant’s alleged failure to pay all wages, provide meal and rest periods, timely
7 pay wages, reimburse business expenses, and provide compliant wage statements. This is a fair
8 result.

9 Plaintiff contends that Defendant failed to pay Class Members all minimum and overtime
10 wages earned, in violation of Labor Code §§ 510, 558, 1194, and 1194.2. Class Members were
11 allegedly not paid for time spent training, for travel time, or for time spent when they were unable
12 to retrieve data from a jobsite. An employer is obligated to pay the wages of an hourly employee
13 for all time that the employee is under the control of the employer, and this includes all the time
14 the employee is suffered or permitted to work, whether or not required to do so. When Class
15 Members allegedly worked off-the-clock, they were under the control of Defendant and required
16 to be compensated for all hours worked. Defendant, however, allegedly failed to do so, in
17 violation of Labor Code §§ 510, 558, 1194, and 1194.2. Plaintiff calculates Defendant’s damages
18 for the alleged unpaid wages at up to \$329,464 and PAGA civil penalty liability for unpaid wages
19 up to \$148,500. Defendant disagrees with Plaintiff’s calculations and analysis, and denies that
20 liability exists. Gaines Decl. ¶ 32.

21 Plaintiff argues that Defendant failed to permit or authorize Class Members to take timely
22 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor Code
23 §§ 226.7, 512, and 558 and IWC Wage Order 4-2001. Labor Code § 512 provides that employers
24 may not employ employees for work periods of more than five (5) hours without providing a 30-
25 minute meal period starting no later than the end of the 5th hour. Plaintiff alleges that Class
26 Members were routinely unable to take a proper meal period when they worked shifts in excess of
27 five (5) hours in duration and a second meal period when they worked shifts in excess of ten (10)
28 hours in duration. Plaintiff contends that the wage and time data provided by Defendant through

1 informal discovery results in meal period damages at up to \$114,220 and PAGA civil penalty
2 liability for meal periods of up to \$75,000. Defendant disagrees with Plaintiff's calculations and
3 analysis, and denies that liability exists. Gaines Decl. ¶ 33.

4 Plaintiff further contends that Defendant failed to provide Class Members with legally
5 compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required by Labor
6 Code §§ 226.7 and IWC Wage Order 4-2001. Class Members were allegedly denied, and
7 therefore unable to take, 10-minute rest periods for every four hours of work or major fraction
8 thereof, but were not paid premium wages of one hour's pay for each allegedly missed, denied,
9 and unauthorized rest period. When they were able to take a rest period, Plaintiff contends that
10 the rest periods were often late, cut short, or on-duty. Plaintiff calculates Defendant's maximum
11 rest period damages at \$768,565 and PAGA civil penalty liability for rest period damages at up to
12 \$148,500. Defendant disagrees with Plaintiff's calculations and analysis, and denies that liability
13 exists. Gaines Decl. ¶ 34.

14 Class Members were allegedly required to incur expenses in the performance of their job
15 duties for which they were not fully reimbursed, in violation of Labor Code § 2802. Defendant
16 purportedly required Class Members to use their personal vehicles while working for Defendant,
17 for work-related purposes, but allegedly failed to fully reimburse them for their use. This
18 purported practice would violate Labor Code § 2802. Plaintiff calculates Defendant's potential
19 damages at \$48,254 (based on \$30/month/employee) for allegedly unreimbursed expenses and
20 PAGA civil penalty liability for allegedly unreimbursed expenses as up to \$148,500. Defendant
21 disagrees with Plaintiff's calculations and analysis, and denies that liability exists. Gaines Decl. ¶
22 35.

23 Defendant allegedly failed to provide Class Members with wage statements or a separate
24 document at the time of the payment of wages that set forth all accrued sick leave, in violation of
25 Labor Code § 246. Plaintiff calculates Defendant's potential PAGA civil penalty liability for this
26 claim as up to \$148,500. Defendant disagrees with Plaintiff's calculations and analysis, and
27 denies that liability exists. Gaines Decl. ¶ 36.

28 Defendant also allegedly failed to issue Class Members accurately itemized wage

1 statements. Plaintiff argues that Class Members were not paid all wages due, as detailed above.
2 As a result, Plaintiff alleges the wage statements issued by Defendant to Class Members fail to
3 accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours
4 worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code §
5 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding
6 number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9). Plaintiff
7 calculates the potential damages for this the alleged failure to provide itemized wage statements
8 at up to \$130,900 in addition to up to \$148,500 in possible PAGA civil penalties. Gaines Decl. ¶
9 37. Defendant disagrees with Plaintiff's calculations and analysis, and denies that liability exists.

10 Defendant allegedly failed to pay Class Members all wages due upon separation of
11 employment, in violation of Labor Code §§ 201-202. As Defendant purportedly failed to pay
12 Class Members all wages due during the course of employment, as discussed above, and these
13 alleged wages remained due and owing upon separation of employment. Plaintiff calculates
14 potential statutory penalties on this claim at up to \$244,336, with PAGA civil penalty liability of
15 up to \$1,400. Defendant disagrees with Plaintiff's calculations and analysis, and denies that
16 liability exists. Gaines Decl. ¶ 38.

17 Notwithstanding Plaintiff's positions, Defendant maintained forceful defenses to
18 Plaintiff's claims. It contends employees were paid for all work, including all mandatory travel
19 time and all training time – and that there is no off-the-clock work or viable claims for such. It
20 maintains that employees were always offered meal periods and any deficiencies shown in the
21 time records represent a waiver by employees rather than Defendant's denial of a meal period.
22 Defendant further contends that it maintained legally compliant rest period policies and practices
23 that ensured all employees received their rest periods. It argues that it complied with all wage
24 statement and wage payment timing provisions at all times, and that it always reimbursed
25 employees' expenses when reimbursement requests were made. It further argues and disputes
26 Plaintiff's potential damages calculations. It also argues that class certification is unlikely on
27 most of Plaintiff's claims because they would allegedly be unmanageable, and employees
28 working across different worksites would have varying experiences, such that Plaintiff's claims

1 could not effectively be tried in representation fashion. Plaintiff and her counsel considered these
2 (and many other) defenses in agreeing to the compromised settlement amount, which they believe
3 represents a fair compromise of the claims alleged. Gaines Decl. ¶ 39.

4 When the costs and risks of non-certification and loss on the merits are considered,
5 Plaintiff's counsel are of the opinion that the settlement reached is clearly a favorable one.
6 Gaines Decl. ¶ 40.

7 The settlement for each Class Member is fair, reasonable and adequate, given the inherent
8 risk of litigation, the risk relative to class certification and the costs of pursuing such litigation.
9 The settlement shall finally resolve all claims of the Class Members as alleged in the Actions.
10 Gaines Decl. ¶ 41.

11 **b. The Risks Inherent in Continued Litigation Are Substantial**

12 Of particular relevance to the proposed Settlement's reasonableness is the fact that the
13 Defendant has legal and factual grounds for defending this action. Defendant consistently
14 asserted that, throughout the relevant time period, it adhered to the legal requirements embodied
15 in California's labor laws at all times. Defendant also contended that a class action could not be
16 properly maintained because Plaintiff could not satisfy the criteria to certify a class under C.C.P.
17 § 382.

18 The areas of law at issue in this lawsuit are dynamically changing. An adverse appellate
19 court decision or change in law by the legislature may defeat certification of some or all of the
20 claims alleged in Plaintiff's complaint. *See Keller v. Tuesday Morning, Inc.* (2009) 179 Cal.App.
21 4th 1389 (affirming the decertification of a class two years after it was originally certified). Class
22 Counsel is familiar with many class action cases where certification and/or liability were
23 immediately defeated as a result of an adverse appellate court ruling, or a change in law by the
24 California legislature. Gaines Decl. at ¶ 43. In short, the risks inherent in continued litigation
25 here, including the risks of maintaining class certification in the event it was obtained, are
26 substantial.

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ii. Numerosity Is Satisfied

A class will be certified when it is impracticable to join all class members in the case. “Impracticability means difficulty or inconvenience of joinder; the rule does not require impossibility of joinder.” *German v. Federal Home Loan Mortgage Corp.* (S.D.N.Y. 1995) 885 F. Supp. 537, 552. The numerosity requirement has been liberally construed.⁶ According to Defendant’s records, the final Class comprises 85 members. Gaines Decl. ¶ 48.

iii. Common Issues of Law and Fact Predominate

In determining whether sufficient common questions of law and fact predominate, for the purposes of meeting the commonality criterion, the Court’s inquiry is directed towards a review of “what type of questions - common or individual - are likely to arise in the action” in considering “whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment.” *Sav-On Drug Stores v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, the evidence overwhelmingly shows that common issues of law or fact predominate.

Plaintiff alleges, and discovery revealed, that Defendant applies the same policies and procedures pertaining to the payment of wages, reimbursement of expenses, and provision of meal and rest breaks to all members of the settlement class. *See Sav-On, supra*, 34 Cal.4th at 329-331 (finding trial court did not err in certifying the class where common employment practices and uniform policies were at issue). The Class Members’ claims all stem from a common source: members of the Settlement Class allege that Defendant violated the same Labor Code provisions in connection with their employment in non-exempt positions. All members of the Class seek the same relief under the same California laws (related to unpaid wages, unpaid meal and rest period premiums, inaccurate or incomplete wage statements, unreimbursed expenses, failure to timely pay wages due upon separation, and derivative claims). Under these

⁶ *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 (42-member class “quantitatively sufficient for a class action”); *Lazar v. Hertz Corp.* (1983) 143 Cal.App.3d 128, 138 (class of 5 million).

1 circumstances, the commonality requirement is satisfied for purposes of certifying the Settlement
2 Class for settlement purposes. Gaines Decl. ¶ 49.

3 To the extent that a few individual issues exist, they do not predominate and, therefore,
4 would not have defeated class certification. As the California Supreme Court has stated, “even if
5 some individualized proof of such facts ultimately is required to parse class members’ claims,
6 that such will predominate in the action does not necessarily follow.” *See Sav-On, supra*, 34
7 Cal.4th at 334. Individual issues do not render class certification inappropriate so long as such
8 issues may effectively be managed. *Richmond, supra*, 29 Cal.3d at 473; *Occidental Land v.*
9 *Superior Court* (1976) 18 Cal.3d 355, 363-64; *Washington Mutual Bank, FA v. Superior Court*
10 (2001) 24 Cal.4th 906, 922.

11 ***iv. The Proposed Class Representative’s Claims Are Typical***
12 ***of the Settlement Class’ Claims***

13 Plaintiff alleges that the Named Plaintiff’s claims are typical of the Class Members’
14 claims. The class representative’s claims need not be identical to the claims of other class
15 members and it is only required that the representative be similarly situated so that he or she will
16 have the motive to litigate on behalf of all class members. *Classen v. Weller* (1983) 145
17 Cal.App.3d 47. In this case, named Plaintiff and proposed Class Representative Eva Lopez is a
18 former non-exempt employee who worked for Defendant in the State of California during the
19 Class Period. She contends that Defendant failed to pay all wages, failed to provide meal and rest
20 periods, failed to comply with itemized employee wage statement provisions, failed to reimburse
21 expenses, and failed to timely pay wages at the separation of employment, in violation of Labor
22 Code §§ 201, 202, 226(a), 226.3, 226.7, 246, 510, 512, 558, 1194, 2698, 2699, and 2802 among
23 other Labor Code provisions. She has the same claims as those that the members of the
24 Settlement Class would reasonably be expected to bring based on the course of conduct alleged
25 herein. Gaines Decl. ¶ 50.

26 Plaintiff has also demonstrated that she will aggressively and competently assert the
27 interests of the proposed Settlement Class; she has taken an active role in the litigation and has no
28 apparent conflicts with other class members. She has also taken significant risks in bringing this

lawsuit – she faces the very real risk that because of the stigma associated with this lawsuit, she may be unable to obtain employment in the future. The stigma and risk associated with filing a class action lawsuit against any employer is significant. Gaines Decl. at ¶ 56; *see generally* the Declaration of Eva Lopez.

Finally, Plaintiff has retained competent counsel, experienced in litigating class action claims in the employment context. Gaines Decl. at ¶¶ 2-5; Declaration of Alex P. Katofsky at ¶¶ 2-5.

**v. *Class Treatment Is the Superior Method of Adjudicating
the Claims Asserted in this Case***

As outlined above, Defendant’s common policies applicable to all Settlement Class Members are at the root of determining the merits – both factually and legally – of Settlement Class Members’ claims. Accordingly, there arguably exist significant common questions of law and fact which may be tried by the Court in one proceeding. Judicial efficiency mandates that the class action procedure be utilized to resolve these common issues.

The only alternative to certifying a case like this as a class action would be to force nearly 100 current and former employees to file individual actions. As the Supreme Court has stated, “[t]he relevant comparison lies between the costs and benefits of adjudicating Plaintiffs’ claims in a class action and the costs and benefits of proceeding by numerous separate actions – not between the complexity of a class suit that must accommodate some individualized inquiries and the absence of any remedial proceeding whatsoever.” *Sav-On, supra*, 34 Cal.4th at 339, fn. 10.

Finally, California courts favor class certification in wage and hour cases. The California Supreme Court has expressly endorsed the use of the class action procedure in wage and hour cases. In *Sav-On*, the Court reasoned that, because there exists a “clear public policy ... that is specifically directed at the enforcement of California’s minimum wage and overtime laws for the benefit of workers” (34 Cal.4th at 340), the class action device should be used to enforce these laws wherever this device “would be the most efficient way of adjudicating the class members’ overtime claims.” 34 Cal.4th at 330. In *Prince v. CLS Transp., Inc.* (2004) 118 Cal.App.4th 1320, 1328, the appellate court noted, “wage and hour disputes (and others in the same general

1 class) routinely proceed as class actions.”

2 Although Class Counsel believes the Settlement Class Members’ claims are meritorious,
3 that the Settlement Class would have been certified, and that substantial damages could have
4 been proven at trial, they are experienced counsel who understand that liability, class
5 certification, and damage issues — and the outcome of any appeals that would likely follow if the
6 Settlement Class was successful at trial — present substantial risks for Settlement Class
7 Members. Those risks must be considered in assessing the fairness of this Settlement, which
8 guarantees a substantial recovery for Settlement Class Members and eliminates the risk that
9 Settlement Class Members would be left without any recovery. Because the Settlement provides
10 immediate and substantial relief without requiring the Settlement Class Members either to
11 undergo the risks of losing at trial or to pay additional attorneys’ fees and costs to continue to
12 prosecute this action, it warrants this Court’s approval. *See* Gaines Decl. at ¶¶ 12-15

13 **d. Disclosure of Documents and Data Demonstrating the**
14 **Strengths and Weaknesses of this Action Was Completed Prior**
15 **to Entering into the Settlement**

16 The extent of discovery that has been completed and the stage of the litigation are factors
17 that courts consider in determining the fairness of a settlement. *See Dunk, supra*, 48 Cal.App.4th
18 at 1801. Class Counsel conducted a thorough investigation into the claims alleged in the
19 operative complaint prior to commencing settlement discussions. Discovery took place between
20 the Parties in which Defendant and Plaintiff exchanged information and documentation and
21 further apprised each other of their respective factual contentions, legal theories, and defenses.
22 *See* Gaines Decl. at ¶¶ 12-15. Thereafter, the Parties negotiated the proposed Settlement with
23 knowledge of the strengths and weaknesses of this case and the amounts necessary to compensate
24 Settlement Class Members for their estimated damages.

25 **e. The Complexity, Expense, and Likely Duration of Continued**
26 **Litigation Militate in Favor of Final Approval**

27 A fourth factor considered by courts in determining whether a settlement warrants final
28 approval is the complexity, expense, and likely duration of the litigation in the absence of

1 settlement. *See Dunk, supra*, 48 Cal.App.4th at 1801; *Officers for Justice v. Civil Service Com'n*
2 *of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. In applying this factor, a
3 court should weigh the benefits of the settlement against the expense and delay involved in
4 achieving an equivalent or more favorable result at trial. *See Young v. Katz* (5th Cir. 1971) 447
5 F.2d 431, 433.

6 Employment class action cases are expensive and time-consuming to prosecute.
7 Continued litigation of this action against Defendant would likely be complex and expensive due
8 to the nature of the claims. It is Class Counsel's opinion that, without settlement, this litigation
9 could endure for at least three more years. Gaines Decl. at ¶ 42. Further, the Settlement avoids
10 the need for a hearing on the Parties' contested class certification motion that would be time
11 consuming and costly for the Court to decide. In addition, if the Court were to deny Plaintiff's
12 motion for class certification, Settlement Class Members would be left without a group remedy
13 for their claims. The issues presented here would need to be litigated individually in Superior
14 Courts in a piecemeal, costly, and time-consuming fashion. The Settlement also avoids a lengthy
15 trial or trials or arbitrations that likely would have involved testimony by numerous witnesses and
16 experts.

17 The areas of law at issue in this case are novel, dynamic, and change frequently. Gaines
18 Decl. at ¶ 46. Extended litigation equates to substantial risk for class members, many of whose
19 individual claims do not have substantial value from the onset. *Id.*

20 **f. The Experience and Views of Counsel Favor Final Approval**

21 Class Counsel supports the Settlement as fair, adequate, reasonable, and in the best
22 interests of the Settlement Class as a whole. The endorsement of qualified and well-informed
23 counsel of the settlement as fair is entitled to significant weight. *See Dunk, supra*, 48
24 Cal.App.4th at 1802; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18. Class
25 Counsel has nearly five decades of collective litigation experience, much of which has been
26 devoted to wage and hour cases in the class action context.

27 Furthermore, Class Counsel is particularly well-suited to gauge the value of the class
28

1 members' claims here. Class Counsel has litigated many wage and hour class actions addressing
2 the issues presented in this lawsuit. Class Counsel's experience provides a strong basis for their
3 conclusion that the settlement terms here are fair and reasonable. Gaines Decl. at ¶¶ 6-7.

4 **g. Class Members' Positive Reaction to the Settlement Favors**
5 **Final Approval**

6 Finally, courts look at the reaction of class members to determine if a settlement that
7 directly affects their interests should be approved as fair, adequate, and reasonable. Of great
8 importance is the fact that no Settlement Class Member has objected to, and one (1) Settlement
9 Class Member has opted-out from, the Settlement. Salinas Decl. at ¶¶ 8, 9. Such a positive
10 reaction of the Settlement Class Members affected by the Settlement supports its approval. A
11 court may properly infer that a class action settlement is fair, adequate, and reasonable even when
12 class members object to it. Indeed, a court may approve a class action settlement as fair,
13 adequate, and reasonable even over the objections of a significant percentage of class members.
14 *See Reed v. General Motors* (5th Cir. 1983) 703 F.2d 170, 174; *In re Wash. Pub. Power Supply*
15 *System Sec. Litig.* (D. Ariz. 1989) 720 F. Supp. 1379, 1394 ("settlement is not to be deemed
16 unfair or unreasonable simply because a large number of class members oppose it"). In this
17 action, the Court should construe the overwhelming non-opposition to the Settlement as a strong
18 indication of Settlement Class Members' support for the Settlement as fair, adequate, and
19 reasonable.

20 **C. Court Approval of the PAGA Penalty Portion of the Settlement**

21 Pursuant to Labor Code Section 2699(l), the Superior Court shall review and approve the
22 settlement of penalties sought under that Labor Code Section. Cal. Lab. Code § 2699(l). For all
23 of the reasons stated above, the Settlement is fair, reasonable and adequate, and should be
24 approved. As part of the Settlement, Defendant has agreed to pay \$10,000 to settle the claims of
25 the Aggrieved Employees brought pursuant to PAGA, of which the payment of \$7,500 will be
26 paid to the LDWA for education and enforcement purposes. Plaintiff's counsel provided a copy
27 of the Settlement Agreement to the LWDA at the time it was submitted to the Court (*see Labor*
28 *Code* § 2699(l)(2)) and they have received no objection (or other response) from the LWDA. As

1 a result, this portion of the Settlement should be approved.

2 **IV. CONCLUSION**

3 For all of the foregoing reasons, Plaintiff requests that the Court grant final approval of
4 this Settlement and approve distribution of the settlement funds to the State of California and the
5 Settlement Class members as set forth in the Stipulation.

6
7 Dated: October 9, 2024

GAINES & GAINES, APLC

8 By: Daniel Gaines
9 DANIEL F. GAINES
10 ALEX P. KATOFISKY
11 Attorneys for Plaintiff Eva Lopez and
12 Proposed Class Counsel
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