

Lilit Tunyan (SBN 329351)
ltunyan@tunyanlaw.com
Artur Tunyan (SBN 349174)
atunyan@tunyanlaw.com
TUNYAN LAW, APC
535 N. Brand Blvd., Suite 285
Glendale, California 91203
Telephone: (323) 410-5050

Attorneys for Plaintiff URIEL OREGEL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

URIEL OREGEL, as an individual and on behalf
of all employees similarly situated,

Plaintiff,

v.

DIABLO RANGE FRAMING, INC., a
California Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: C23-00697

[Assigned for all purposes to Hon. Charles S
Treat, Dept. 12]

**CLASS AND PAGA REPRESENTATIVE
ACTION**

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA REPRESENTATIVE
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: January 9, 2025
Time: 9:00 a.m.
Courtroom: Dept. 12
Judge: Hon. Charles S Treat

Action Filed: March 29, 2023
Trial: Not Set

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

2 PLEASE TAKE NOTICE that on January 9, 2025, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard, in Department 12 of the above-captioned Court, located at 725 Court Street,
4 Martinez, California 94553, Plaintiff URIEL OREGEL (“Plaintiff”) will and hereby does move this
5 Court for an order:

6 1. Granting class certification of the Class, solely for settlement purposes pursuant to
7 Code of Civil Procedure § 382;

8 2. Finally approving the AMENDED JOINT STIPULATION OF CLASS AND
9 PAGA REPRESENTATIVE ACTION SETTLEMENT (“Settlement” or “Agreement”);

10 3. Appointing counsel for Plaintiff, Tunyan Law, APC, as Class Counsel;

11 4. Appointing Plaintiff as the Class Representative;

12 5. Approving Simpluris Inc. as the third-party administrator;

13 6. Ruling that Settlement Class Members who did not timely submit requests for
14 exclusion from the settlement as set forth in the Agreement have released their claims against
15 Defendant and the other releasees as set forth in the Agreement;

16 7. Ruling that Settlement Class Members who did not timely object to the settlement
17 pursuant to the terms set forth in the Agreement are barred from prosecuting or pursuing any
18 appeal of the Court’s Order;

19 8. Awarding the sums requested in the Motion;

20 9. Entering a Final Judgment; and,

21 10. Without affecting the finality of the final judgment, reserving continuing
22 jurisdiction over the parties for the purposes of implementing, enforcing and/or administering
23 the settlement as set forth in the Agreement or enforcing the terms of the Final Judgment.

24 Good cause exists to grant this Motion because:

25 1. The Class meets all of the requirements for class certification for settlement
26 purposes under Code of Civil Procedure § 382;

27 2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the
28 disputed wage and hour claims asserted by Plaintiff;

3. Plaintiff and Class Counsel are adequate to represent the Class;

4. The notice procedures and related forms complied with California Rules of Court 3.766(d) and (e), and adequately apprised Class Members of their rights and fully comport with due process.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of Lilit Tunyan, Plaintiff and the Settlement Administrator in support thereof, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

Dated: December 13, 2024

TUNYAN LAW, APC

By:

Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff URIEL OREGEL

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiff URIEL OREGEL
3 (“Plaintiff”) respectfully requests that this Court preliminarily approve the proposed amended settlement
4 set forth in the AMENDED JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE
5 ACTION SETTLEMENT (“Settlement” or “Agreement”) with Defendant DIABLO RANGE
6 FRAMING, INC. (“Defendant”).

7 Defendant operates a business in the construction industry in the State of California. Plaintiff was
8 employed by Defendant and alleged various wage and hour violations, which Defendant denies. After
9 formal discovery, the exchange of documents, and an arm’s-length mediation session with an
10 experienced mediator, Hon. Cecily Bond (Ret.), Plaintiff and Defendant (collectively referred to herein
11 as the “Parties”) reached a proposed class action settlement with a gross settlement amount (“GSA”) of
12 **\$255,000.00** in compromise of disputed claims asserted which was approved by this court. The
13 Settlement included an Escalator Clause which stated that if it is later determined that the number of
14 workweeks in the Class Period is more than 10% greater than the estimated number of workweeks on
15 December 8, 2023 (16,163 workweeks), Defendant can either have the Gross Settlement Amount
16 increased by 1% for each percent over the 10% threshold that the actual number of workweeks exceeds
17 the estimated number of workweeks, or have the Class Period end on the date that the estimated number
18 of workweeks exceed 10% threshold or 17,780 workweeks. Upon receipt of class data, the Parties have
19 been informed by the Settlement Administrator that the Escalator Clause was triggered as based on the
20 updated class data provided by Defendant to the Settlement Administrator the number of workweeks
21 during the Class Period was 17,970.28 and the number of class members was 1,028 which exceeded
22 16,163 by 11.18%. Defendant has chosen to increase the Gross Settlement Amount from **\$255,000.00** to
23 **\$258,009.00** instead of cutting back the Class Period, and the class notices mailed to class members and
24 all calculations included the increased Gross Settlement Amount of **\$258,009.00** for **1,028** class
25 members.

26 Plaintiff now submits this Motion for Final Approval of Class and PAGA Representative Action
27 Amended Settlement, along with the Settlement (attached to the Declaration of Lilit Tunyan [“Tunyan
28 Decl.”], **Exhibit 1** thereto).

1 **II. THE NOTICE PROCESS WAS SUCCESSFULLY COMPLETED AFTER**
2 **PRELIMINARY APPROVAL**

3 Plaintiff and Defendant have fulfilled the class notice procedures set forth in the Settlement. The
4 Settlement Administrator, Simpluris Inc., sent individual Notices to 1,028 Class Members on September
5 23, 2024. (Declaration of Gillian McCreedy [“McCreedy Decl.”], ¶8.) Of the Notices that were mailed,
6 189 were returned after mailing. (McCreedy Decl., ¶ 9.) Skip tracing found new addresses for 77 Class
7 Members. 77 Notices were remailed with updated addresses. *Id.* Ultimately, 112 notices are considered
8 undeliverable. *Id.* No Class Members requested to be excluded from the Settlement, and no Class
9 Members objected or disputed Workweeks in writing. (McCreedy Decl., ¶¶ 11-13.)

10 **PAYMENTS:** The Net Settlement Amount (including both Class and PAGA Settlement payments) is
11 estimated to be at least **\$127,266.73** (increased from estimated \$117,500.00 at the preliminary approval
12 stage), resulting in an average net payment per Class Member of at least **\$123.8** (including PAGA
13 Settlement payments), before any tax withholdings. (McCreedy Decl., ¶¶ 17-18.) The highest net
14 payment (including PAGA Settlement payments) is estimated to be **\$ 1.683.32** (McCreedy Decl., ¶ 18.)

15 For the Court’s convenience, below is a summary of the key provisions of the Settlement.

16 **III. THE MAJOR TERMS OF SETTLEMENT**

17 The provisions of the proposed Settlement include the following:

- 18 • Defendant agrees not to oppose certification of a Class for purposes of Settlement only
19 (Settlement, ¶ 19);
- 20 • **Settlement Amount:** Defendant will pay a maximum of **\$258,009.00**, referred to as the
21 Gross Settlement Amount (or GSA herein) (Settlement, ¶ 26(c));
- 22 • **Class Size:** approximately **1,028** individuals as of the date of mediation. (Tunyan Decl., ¶
23 16.)
- 24 • **Escalator Clause:** On December 8, 2023, Defendant represented that the number of
25 workweeks worked in the Class Period for Class Members was approximately 16,163. If it is
26 later determined that, the number of workweeks in the Class Period is more than 10% greater
27 than the estimated number of workweeks on December 8, 2023, Defendant can either have
28 the Gross Settlement Amount increased by 1% for each percent over the 10% threshold that

the actual number of workweeks exceeds the estimated number of workweeks, i.e. exceeds 17,780 workweeks (if the number of workweeks increases by 11%, the Gross Settlement will increase 1%), or have the Class Period end on the date that the estimated number of workweeks exceed 10% threshold or 17,780 workweeks (the “Escalator Clause”). (Settlement, ¶ 26(d).) ***The Escalator Clause was triggered resulting in increase of GSA from \$255,000.00 to \$258,009.00.***

- **Kullar/Munoz Analysis:** Plaintiff addresses the claims analysis herein, at Part V.B.3, and in more detail the Declaration of Tunyan, at Paragraph 18;
- **No Reversion:** The Settlement is a ***non-reversionary*** settlement (Settlement, ¶ 26(e));
- **Certification:** Plaintiff addresses certification requisites herein, at Part V.A., and in the Declaration of Tunyan, at Paragraphs 34-40;
- **No Claim Form:** No claim form is required (Settlement, ¶ 26(f));
- **Class Release:** The Settlement will release specified wage-and-hour claims for Class Members (those Class Members who do not opt out of the Settlement) as defined by the First Amended Complaint (Settlement, ¶ 37);
- **PAGA Release:** The Class Members will release the PAGA Claims set forth in this Action, that were identified in the Complaint and Plaintiff’s LWDA Notice Letter, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 11, 14, 15 and 37(c)(3));
- **Release Effective Date:** The Release is not active until Defendant tenders all payments required under the Settlement to the Settlement Administrator (Settlement, ¶ 37(b));
- **Net Settlement Amount Available to the Class:** After deducting Class Counsel’s attorneys’ fees and costs, service payment to Plaintiff, administration costs, and the payment to the LWDA, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of workweeks each Class Member worked for a Defendant within the Class Period. The Net Settlement Amount is estimated to be at least **\$127,266.73**, resulting in an average **net** payment per Class Member of at least **\$123.8**, before any tax withholdings. (Settlement, ¶

26(g));

- **Tax Allocation:** The amounts distributed to Class Members will be characterized as 20% alleged unpaid wages, 40% as unpaid penalties and 40% as unpaid interest, and PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶ 26(k));
- **Employer’s Portion of Payroll Taxes Paid Separately:** Defendant’s portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 26(h));
- **Settlement Administrator:** The notice portion of the Settlement and distribution of funds will be administered by a third-party Administrator, Simpluris Inc., and the Parties estimated that the costs of administration should not reasonably exceed \$15,000.00. Simpluris Inc.’s low bid for settlement administration services in the amount of **\$8,000.00** was selected as the lowest bid from a competitive bidding process. (Settlement, ¶ 26(p));
- **Class Data for Administration:** The Settlement Administrator will receive the Class List within 15 calendar days of Preliminary Approval, use the NCOA database to update the Class List, and then use skip tracing on returned Notices (Settlement, ¶ 32(a));
- **Notice:** The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 32(b)). The Notice describes how to dispute workweeks, submit and objection in writing, in person, or through an attorney, or request exclusion (Settlement, ¶ 26(s)).
- **Notice Language:** Notice will issue in English and Spanish (Settlement, ¶ 26(t));
- **Objections:** Objections can be submitted in person, through an attorney, or in writing to the Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ 26(x));
- **Exclusion Requests:** The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a writing objection (Settlement, ¶¶ 26(w) and 26(x));
- **PAGA Allocation:** From the GSA, **\$30,000** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.* (“PAGA”), and seventy-five percent (75%), or **\$22,500**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶ 9.)

- **Notice to LWDA:** Notice was provided prior to the filing of this Motion. Evidence is attached to Tunyan Declaration.
- **Enhancement/Service Award to Plaintiff:** Defendant will not oppose the application for Class Representative Service Payment of **\$7,000.00** for Plaintiff, to be paid from the GSA (Settlement, ¶ 26(n));
- **Fees and Costs:** Defendant will not oppose Class Counsel’s application for fees not to exceed 33 1/3% of the GSA (**\$85,000.00**), and actual costs, in an amount not to exceed **\$15,000**, to be paid out of the GSA (Settlement, ¶ 26(m)).
- **Check Void Period:** Settlement checks will be valid for 180 days (Settlement, ¶ 34);
- **Uncashed Checks:** Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the California State Controller’s Office for Unclaimed Property in the name of each Class Member who failed to cash their Settlement Payment (Settlement, ¶¶ 34-35);
- **Judgment Notice:** Judgment will be posted on the Settlement Administrator’s website after entry (Settlement, ¶ 30);
- **Confidentiality Provisions:** The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ 58).

(Tunyan Decl., ¶¶ 10-11 and Exhibit 1 thereto.)

IV. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff’s Claims

On March 29, 2023, Plaintiff filed a putative Class Action alleging the following labelled causes of action: (1) failure to pay all wages (Lab. Code §§ 204, 246, 510, 1194, 1998); (2) failure to provide meal periods (Lab. Code §§ 226.7, 512 and Wage Order); (3) failure to provide rest periods (Lab. Code §§ 226.7 and Wage Order); (3); (4) failure to maintain and provide accurate itemized wage statements (Lab. Code §§ 226(a) and 1174); (5) failure to indemnify necessary business expenses (Lab. Code § 2802); (6) failure to timely pay all wages and final wages (Lab. Code §§ 201, 202, 203, 204 and 210); (7) Unfair Business Practices in violation of Bus. & Prof. Code § 17200 et seq. On June 2, 2023, Plaintiff

1 filed his First Amended Complaint adding the eighth case of action for civil penalties under the Labor
2 Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”). (The “Action.”) In
3 the Complaint, Plaintiff sought to represent all persons that worked for Defendant in California as an
4 hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of
5 the initial complaint and ending when Notice to the Class is sent. (Tunyan Decl., ¶ 3.)

6 Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim
7 for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et
8 seq.] (“PAGA”). On June 2, 2023, Plaintiff filed his First Amended Complaint adding the eighth case of
9 action for civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code §
10 2699, et seq.] (“PAGA”). (Tunyan Decl., ¶ 4.)

11 **B. Pre-Mediation Data Production and Analysis**

12 The Parties have conducted formal and informal discovery and investigation of the facts and law.
13 Such discovery and investigation have included, inter alia, the exchange of data and discoverable
14 information in preparation for the mediation session. (Tunyan Decl., ¶ 5.) The Parties have analyzed
15 payroll and other data pertaining to Plaintiff and the Class during the relevant Settlement Period,
16 including but not limited to the numbers of former and current members of the Class, average
17 workweeks, and average rate of hourly pay. (*Id.*) In addition, Defendant also provided documents
18 reflecting their wage and hour policies and practices during the Settlement Period. (*Id.*)

19 After reviewing documents regarding Defendant’s wage and hour policies and practices and
20 other information obtained during the exchange of discovery, Class Counsel were able to evaluate the
21 probability of class certification, success on the merits, and the reasonably obtainable maximum
22 monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis
23 prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses
24 asserted in the litigation. (Tunyan Decl., at ¶ 6.)

25 **C. Settlement**

26 On December 8, 2023 the Parties mediated before a mediator, Hon. Cecily Bond (Ret.), who is a
27 highly experienced and well-regarded mediator for wage and hour class action litigation. (Tunyan Decl.,
28 ¶ 7.) At the mediation, the Parties discussed at length the burdens and risks of continuing with the

litigation as well as the merits of the claims and defenses. (*Id.*) The Parties have been able to reach a settlement at the mediation and re-negotiate the settlement later due to the inaccurate number of workweeks provided at mediation. (Tunyan Decl., ¶ 8.) The Parties have reached an agreement regarding the substantive terms of a class-wide settlement, pending the Parties' agreement on a long-form class settlement agreement. The Parties then signed a long form revised settlement agreement ("Agreement"). (*Id.*)

Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses thereto. (Tunyan Decl., ¶ 10.) Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a Settlement that confers substantial relief upon the Class.

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

V. CLASS DEFINITION

The Class is defined as follows:

All individuals employed by Defendant in California and classified as "non-exempt" at any time during the Class Period (the "Class Period" is March 29, 2019 through December 8, 2023). "Settlement Class Members" are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶¶ 3-4.)

The PAGA Employee is defined as follows:

All Class Members that worked at any time during the PAGA Period (the "PAGA Period" is March 29, 2022 through December 8, 2023.) All PAGA Employees are "aggrieved employees" as defined pursuant to PAGA. PAGA Employees cannot opt out of the settlement of the PAGA claim. (Settlement, ¶¶ 10-11.)

1 **VI. DISCUSSION**

2 **A. The Court Should Certify the Class Because It Meets All the Requirements for**
3 **Certification for Settlement Purposes Under CCP § 382**

4 Under Code of Civil Procedure § 382, class certification is warranted so long as there is a
5 numerous and ascertainable class with a well-defined community of interest among its members and that
6 a “class action proceeding is superior to other means for a fair and efficient adjudication of the
7 litigation.” *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). Any
8 doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to
9 later modification. *Richmond v. Dart Indus. Inc.*, 29 Cal. 3d 462, 473-475 (1981). For purposes of this
10 Settlement only, Defendant has agreed not to oppose conditional certification of the proposed class
11 action. (Settlement ¶ 19.)

12 “The certification question is ‘essentially a procedural one that does not ask whether an action is
13 legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
14 (2000). Indeed, the certification question simply asks whether the theory of recovery advanced by the
15 plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal.
16 App. 4th 1286, 1298 (2010). In ruling on certification, a trial court’s task is to determine “whether ... the
17 issues which may be jointly tried, when compared with those requiring separate adjudication, are so
18 numerous or substantial that the maintenance of a class action would be advantageous to the judicial
19 process and to the litigants.” *Id.* Thus, “[t]he relevant comparison lies between the costs and benefits of
20 adjudicating plaintiffs’ claims in a class action and the costs and benefits of proceeding by numerous
21 separate actions” *See, e.g., id.*

22 “[I]t is also well established that trial courts should use different standards to determine the
23 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard
24 of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal.
25 App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). As
26 the court noted in *Dunk*, although certification requirements are intended “to protect the interests of the
27 non-representative class members,” that concern is “protected by the trial court’s fairness review of the
28 settlement.” *Dunk*, 48 Cal. App. 4th at 1807 n.19.

1 Indeed, numerous courts have certified settlement classes. For example, the court in *In re Drexel*
2 *Burnham Lambert Group, Inc.*, 960 F.2d 285 (2d Cir. 1992), cert. dismissed, 506 U.S. 1088, 122 L. Ed.
3 497, 113 S. Ct 1070 (1993), addressed settlement before a class was certified. After a hearing, the
4 “district court issued an order certifying the class and approving the settlement agreement.” *Id.* at 289;
5 *see also Alaniz v. California Processors, Inc.*, 73 F.R.D. 269, 278 (N.D. Cal. 1976) (“the use of the
6 tentative settlement class procedure was appropriate in this case”), *aff’d*, 572 F.2d 657 (9th Cir.), cert.
7 denied, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action
8 litigation and an approved procedure which ought to be followed in this case. *See Newberg on Class*
9 *Actions* (3d ed. 1991) § 11.27, pp. 11-40 to 11-56; *Manual for Complex Litigation*, 2d (1993) § 30.45.

10 In view of these standards, **as discussed more thoroughly as part of the preliminary approval**
11 **motion already granted by the Court**, the Class should be certified for purposes of settlement. Code
12 Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

13 **B. The Court Should Finally Approve the Settlement Because It Is a Fair, Adequate,**
14 **and Reasonable Compromise of Disputed Wage Claims in View of Defendant’s**
15 **Potential Liability Exposure and the Risks of Continued Litigation**

16 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
17 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
18 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
19 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary
20 settlement approval, notice being given to class members, and a final fairness and approval hearing being
21 held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed
22 below, this Court should this Court should finally approve the Settlement and enter Judgment.

23 **1. Class Action Settlements Are Subject to Review and Approval.**

24 Any settlement of class litigation must be reviewed and approved by the presiding court. Rules
25 of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial
26 court and (2) a subsequent (final) review after notice has been distributed to the class members. The
27 Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present
28 motion seeks final *approval* and the entry of a Judgment.

1 To evaluate a settlement, the trial court must receive “basic information about the nature and
2 magnitude of the claims in question and the basis for concluding that the consideration being paid for the
3 release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
4 App. 4th 116, 133 (2008). However, the record need *not* contain an explicit statement of the maximum
5 theoretical amount that the class could recover:

6 Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all
7 cases to contain evidence in the form of an explicit statement of the maximum amount
8 the plaintiff class could recover if it prevailed on all its claims—a number which
9 appears nowhere in the record of this case. But *Kullar* does not, as Greenwell claims,
require any such explicit statement of value; it requires a record which allows “an
understanding of the amount that is in controversy and the realistic range of outcomes
of the litigation.”

10 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

11 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
12 **Between Experienced Counsel with the Assistance of a Highly Qualified**
13 **Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

14 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
15 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
16 experienced in similar litigation, and the percentage of objectors is small.¹ *Dunk*, 48 Cal.App.4th at 1802;
17 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
18 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a
19 trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g.,*
20 *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding
21 concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801,
22 quoting *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

23 Relevant factors in making this determination, include, but are not limited to:

24 [T]he complexity and likely duration of further litigation, the risk of maintaining class
25 action status through trial, the amount offered in settlement, the extent of discovery
26 completed and the state of the proceedings, the experience and views of counsel, the
presence of a governmental participant, and the reaction of the class members to the

27 ¹ Because the fourth prerequisite for the presumption to arise cannot be addressed until the final
28 approval hearing, only the first three prerequisites are relevant at this preliminary stage of the settlement
approval process.

1 proposed settlement.

2 *Id.* These factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the factors
3 considered to each case and give due regard to “what is otherwise a private consensual agreement
4 between the parties.” *Id.*

5 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
6 counsel with the assistance of highly regarded mediator. (Tunyan Decl., ¶¶7-10.) With respect to the
7 claims at issue in this case, Plaintiff obtained data from Defendant and then carefully reviewed that
8 information. Counsel for Plaintiff also examined relevant policies in detail about their work experiences
9 and Defendant’s practices.

10 Based on the totality of that review, Plaintiff estimated the potential exposure and then estimated
11 risk factors to adjust the reasonable expected outcome. The investigation and discovery that Plaintiff’s
12 counsel conducted were sufficient to provide them with enough information to intelligently evaluate the
13 estimated exposure in this action for purposes of negotiating the Settlement in view of the risks discussed
14 below and are also sufficient to allow this Court to do the same. *See, e.g., Wershba v. Apple Computer,*
15 *Inc.*, 91 Cal. App. 4th 224, 245 (2001).

16 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**
17 **of Class Members’ Claims Based on Defendant’s Estimated Liability**
18 **Exposure Given the Risks Continued Litigation Would Entail.**

19 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
20 trial and does not have to provide 100% of damages sought to be fair and reasonable. “In the context of a
21 settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the
22 complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91
23 Cal.App.4th at 250. Accordingly, because settlements involve compromise, even one that provides for
24 substantially narrower relief than would likely be obtained if the suit were successfully litigated can be
25 reasonable given that “the public interest may indeed be served by a voluntary settlement in which each
26 side gives ground in the interest of avoiding litigation.” *Id.*, quoting *Air Line Stewards & Stewardesses*
27 *Ass’n, Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).

28 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that

1 support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that
2 Plaintiff would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v.*
3 *US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC*
4 2014 WL 205039 (S.D. Cal. 2014); (ii) the risk that Defendant's meal and rest period policies might not
5 ultimately support class certification or a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28
6 (citing Court of Appeal decisions favorable on class certification issue without expressing opinion as to
7 ultimate viability of proposition); (iii) the risk that uncertainties pertaining to the ultimate legality of
8 Defendant's policies and practices could preclude class-wide awards of statutory penalties under Labor
9 Code §§ 203 and 226(e); (iv) the risk that individual differences between Class Members could be
10 construed as pertaining to liability and not solely to damages, *see Duran*, 59 Cal. 4th at 19; (v) the risk
11 that any civil penalties award under the PAGA could be reduced by the Court in its discretion, *see Labor*
12 *Code § 2699(e)(1)*; (vi) the risk that class treatment could be deemed improper as to one or more claims,
13 except for settlement purposes; and, (vii) the risk that lengthy appellate litigation could ensue. (Tunyan
14 Decl., ¶ 16.) These risks are non-exhaustive.

15 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
16 reasonable recovery for the Class Members. (Tunyan Decl. ¶¶ 13-18.) The settlement amount is, of
17 course, a compromise figure. (Tunyan Decl. ¶ 17.) By necessity it took into account risks related to
18 liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member has
19 been given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that
20 are greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For
21 the approximately 1,028 members of the Class, the estimated average **net** recovery for each Class
22 Member is approximately **\$123.8**. Given that Defendant could challenge certification and liability, this is
23 a significant sum to have achieved in settlement. Moreover, a Class Member who worked a greater
24 number of weeks for Defendant will receive a larger share of the Settlement than a Class Member who
25 worked for a shorter amount of time during the class period.

26 After analyzing the claims in this matter, Plaintiff has concluded that the value of this Settlement
27 is fair, adequate, and reasonable. (Tunyan Decl., ¶ 17.) The Gross Settlement Amount of **\$258,009.00** is
28 about 61% of the **\$419,713.00** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the

litigation. On that basis, it would be unwise to pass up this settlement opportunity. This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. The maximum calculated reasonable exposure is **\$2,938,032.33**, *including* PAGA penalties.

- A reasonably estimated exposure for unpaid wages for the off-the clock work was calculated, with the assistance of an expert, to be approximately **\$339,423.00**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff’s counsel to be approximately **\$30,548.07**, assuming certification probability of 30% and merits success at 30%.
- A reasonably estimated exposure for rest break violations over the class period was calculated at **\$339,423.00**, but with chances of certification and proof of liability (50% and 40% respectively) for a risk-adjusted exposure of **\$67,884.60**.
- A reasonably estimated exposure for meal break violations over the class period was calculated at **\$339,423.00**, with chances of certification and liability risks (50% and 40% respectively) resulting in a risk-adjusted exposure of **\$67,884.60**.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties with chances of certification and liability risks (50% and 20% respectively) were estimated to be approximately **\$28,143.33** and, respectively **\$58,590.00**, on maximum exposures of **\$281,433.33** and **\$585,900.00**, respectively.
- A reasonably estimated exposure for unreimbursed expenses over the class period was calculated at **\$161,630.00**, with chances of certification and liability risks (60% and 80% respectively) resulting in a risk-adjusted exposure of **\$77,582.40**.
- Performing risk-adjusted valuations for all claims yields a total value in the range of **\$330,633.00**, excluding PAGA.²

² In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of “very high risk” or “high risk” to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel.

- PAGA penalties were calculated as having a maximum realistic exposure of \$890,800.00, but a risk adjusted value of \$89,080.00, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

This result here is fully supportable as reasonable. Here, the recovery which falls within the expected outcome under the likelihood of success metric. This Settlement achieves the goals of the litigation.

4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate, and Reasonable.

The proposed method of allocating the Settlement Fund to Class Members also is fair and reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members based on time worked by the Class Member during the Class Period, in relation to the total amount of time worked by all participating Class Members collectively during the class period. This proposed method is fair and reasonable because each Class Member's actual potential damages vary based on the number of workweeks he or she actually worked (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when a higher number of incidents occur). A Class Member who worked a greater number of weeks for Defendant will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time during the relevant period. (Tunyan Decl., ¶17.)

5. The Proposed Enhancement Award to Plaintiff Is Fair, Adequate, and Reasonable and Warrants Final Approval.

The proposed enhancement payment to Plaintiff is intended to recognize the substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D.Cal. 1995) (approving a \$50,000 enhancement award). Plaintiff contributed significant time to the prosecution of this matter, including

1 assistance prior to the mediation with formal discovery including responding to *240 formal discovery*
2 *requests and verifying 240 discovery responses* and providing necessary documents responsive to
3 discovery requests, information and substantial time conferring with counsel over the course of this
4 litigation and before it was filed. (Oregel Decl., ¶¶ 4-19; Tunyan Decl., ¶ 34.) The enhancement also
5 recognizes the considerable risks Plaintiff undertook on behalf of the Class to be personally liable for all
6 costs incurred regardless of the success of the litigation or class certification, as well as the personal risk
7 of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued a former
8 employer, making future employment prospects uncertain and considering Plaintiff gives a general
9 release of all claims beyond wage-and-hour claims released by class members in this action. The
10 accompanying Declaration of Plaintiff confirms his involvement and supports his appointment as the
11 Settlement Class Representative.

12 **6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate,**
13 **and Reasonable and Merits Final Approval.**

14 *a) Plaintiff's Counsel Should be Awarded Fees Based on a Percentage of*
15 *the Fund Recovered, Consistent with the Common Fund Method*

16 The request for attorneys' fees as a percentage of the settlement fund is supported by the
17 "common fund theory," where "one who expends attorneys' fees in winning a suit which creates a fund
18 from which others derive benefits, may require those passive beneficiaries to bear a fair share of the
19 litigation costs." *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977). The lodestar may be cross-checked against
20 the percentage-of-recovery. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

21 The purpose of the common fund approach is to "spread litigation costs proportionally among all
22 the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v. Hughes*
23 *Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). Thus, the common fund doctrine has been applied
24 "consistently in California when an action brought by one party creates a fund in which other persons are
25 entitled to share." *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995); *see Quinn v.*
26 *State of California*, 15 Cal. 3d 162, 167 (1975) ("[O]ne who expends attorneys' fees in winning a suit
27 which creates a fund from which others derive benefits may require those passive beneficiaries to bear a
28 fair share of the litigation costs.").

1 The California Supreme Court removed any lingering doubt about the use of the percentage of
2 the fund method to award attorney's fees in California Courts:

3 We join the overwhelming majority of federal and state courts in holding that when
4 class action litigation establishes a monetary fund for the benefit of the class members,
5 and the trial court in its equitable powers awards class counsel a fee out of that fund, the
6 court may determine the amount of a reasonable fee by choosing an appropriate
7 percentage of the fund created. The recognized advantages of the percentage method—
8 including relative ease of calculation, alignment of incentives between counsel and the
9 class, a better approximation of market conditions in a contingency case, and the
10 encouragement it provides counsel to seek an early settlement and avoid unnecessarily
11 prolonging the litigation (See pt. I, *ante*; *Lealao, supra*, 82 Cal.App.4th at pp. 48–49, 97
12 Cal.Rptr.2d 797; *Rawlings v. Prudential–Bache Properties, Inc., supra*, 9 F.3d at p.
13 516)—convince us the percentage method is a valuable tool that should not be denied
14 our trial courts.

15 *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).³ Thus, this Court may and, as strongly
16 encouraged by the California Supreme Court, *should* award attorney's fees to Plaintiff's counsel based
17 upon the percentage of the fund methodology.

18 “Empirical studies show that, regardless whether the percentage method or the lodestar method is
19 used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162
20 Cal. App. 4th 43, 47 n. 11 (2008). This is also consistent with Plaintiff's counsels' experience in these
21 types of cases. Here, Plaintiff's attorneys request attorneys' fees of up to \$85,000.00 (one-third of the
22 GSA), and costs of \$8,242.27 (*significantly below the cap or \$15,000*), which includes payment for
23 mediation, filing fees, and other standard expenses. (Tunyan Decl., ¶¶ 30–33.) Given the efforts and risks
24 involved in this case, as well as the results achieved, these amounts are within the range of
25 reasonableness and warrant *final approval*.

26
27 a) *Class Counsel Is Entitled to Attorneys' Fees and Costs under the*
28 *California Labor Code and California's Private Attorney General Statute*

Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

[A]ny employee receiving less than the legal minimum wage or the legal overtime
compensation applicable to the employee is entitled to recover in a civil action the
unpaid balance of the full amount of this minimum wage or overtime compensation,

³ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method
inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport
to bar its usage generally in common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

1 including interest thereon, reasonable attorney's fees, and costs of suit.

2 Lab. Code § 1194. As this litigation culminated in a Settlement that provides for a recovery of unpaid
3 wages, including unpaid minimum and overtimes wages, Plaintiff is entitled to recover reasonable
4 attorneys' fees and costs under the Labor Code.

5 Class Counsel is also entitled to a fee under California's private attorney general statute, Code of
6 Civil Procedure § 1021.5. "The award of attorney's fees is proper under section 1021.5 if '(1) plaintiffs'
7 action 'has resulted in the enforcement of an important right affecting the public interest,' (2) 'a
8 significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a
9 large class of persons' and (3) 'the necessity and financial burden of private enforcement are such as to
10 make the award appropriate.'" *Press v. Lucky Stores*, 34 Cal. 3d 311, 317-318 (1983). The objective of
11 the statute is "to encourage suits enforcing public policies by providing substantial attorneys' fees to
12 successful litigants in such cases." *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 565 (2004).

13 The Action resulted in the enforcement of an important right affecting the public interest, as
14 Plaintiff sought to enforce Class Members' rights to recover statutory wages arising from Defendants'
15 failure to pay all wages and failure to provide meal and rest breaks. *See Murphy v. Kenneth Cole*
16 *Productions, Inc.*, 40 Cal. 4th 1094, 1113 (2007) (noting that "health and safety concerns" are what
17 motivated the Industrial Wage Commission to adopt mandatory meal and rest periods).

18 The Action also conferred a significant benefit on a class of persons who worked for Defendant
19 during the Class Period and were, according to allegations, not properly compensated for all hours
20 worked and were not provided meal and rest periods or compensation therefor.

21 Finally, the necessity and financial burden of private enforcement render an award appropriate.
22 Without the incentive of an attorneys' fee award, Plaintiff could not have afforded to hire counsel to
23 pursue this case, as the cost of litigating this matter far outweighed Plaintiff's potential recovery. *See*
24 *Ryan v. California Interscholastic Federation*, 94 Cal. App. 4th 1033, 1044 (2001) ("As to the necessity
25 and financial burden of private enforcement, an award is appropriate where the cost of the legal victory
26 transcends the claimants' personal interest; in other words, where the burden of pursuing the litigation is
27 out of proportion to the plaintiff's individual stake in the matter.").

b) *A Lodestar Cross Check Confirms that Class Counsel's Requested Attorneys' Fees Are Reasonable*

Plaintiff's fee application is also reasonable based on Class Counsel's lodestar. Under the lodestar method, the court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee requested. *Ramos v. Countrywide Home Loans, Inc.*, 82 Cal. App. 4th 615, 622 (2000). The moving party meets its burden in this regard by submitting "declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case" as "California case law permits fee awards in the absence of detailed time sheets." *Wershba*, 91 Cal. App. 4th at 254-55; *Dunk*, 48 Cal. App. 4th at 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and the reasonable hourly compensation are computed to arrive at a "lodestar" figure which may then be augmented or diminished by the court taking into account various "multiplier" factors. *See Ramos*, 82 Cal. App. 4th at 622 (citing *Serrano*, 20 Cal. 3d at 48-49).

Here, Class Counsel's billed lodestar exceeds **\$103,535.00** which is based on approximately 189.5 *billed* hours (not including final estimated hours) at the attorneys' customary hourly rates. (Tunyan Decl., ¶¶ 30-32.) The actual lodestar is estimated to be **\$106,285.00**. (Tunyan Decl., ¶ 32.) Thus, the request for **\$85,000.00** in attorneys' fees represents a **negative** lodestar multiplier of 1.25, when compared to the recorded and estimated future lodestar of counsel, totaling **\$106,285.00** (\$103,535.00 + \$2,750.00) (using only the billed lodestar, and excluding estimated future work, the negative multiplier is **1.22**), and is reasonable under the lodestar method.

(1) Class Counsel's Hours Are Reasonable

In determining whether the number of hours expended on the litigation was reasonable, the court must determine that "the time spent was reasonably necessary and that [] counsel made 'a good faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary.'" *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The court "should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (noting that "[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too

uncertain, as to both the result and the amount of the fee.”). Here, Class Counsel expended a prudent amount of time litigating the case to achieve the excellent result on behalf of the class. (Tunyan Decl. ¶ 30.)

(2) Class Counsel’s Hourly Rates Are Reasonable

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). “[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’ reputation and status.” *MBNA American Bank, N.A. v. Gorman*, 147 Cal. App. 4th 1, 3 (2006). The trial court may also “find hourly rates reasonable based on evidence of other courts approving similar rates.” *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

Class Counsel are experienced litigators who specialize in employment law, with a substantial wage and hour class action practice. (Tunyan Decl. ¶¶ 19-25.) A number of courts have approved Class Counsel’s hourly rates which are consistent with their practice area, legal market. (Tunyan Decl. ¶ 25.) Given the skill and experience of Class Counsel, and the excellent result achieved, Class Counsel’s hourly rates are reasonable.

c) Class Counsel’s Costs Are Reasonable

The Settlement Agreement provides for reimbursement of costs not to exceed \$15,000.00. To date, Tunyan Law, APC has already incurred actual costs in the amount of at least \$8,242.27 which include future motion filing, proposed final approval order and judgment and final report filing fees. (Tunyan Decl., ¶ 33.) These costs were reasonably incurred in prosecuting the Action on behalf of the Class Members and should be approved by the Court. Accordingly, Class Counsel respectfully requests the Court approve costs in the amount of **\$8,242.27**. (Tunyan Decl., ¶ 33.)

7. The Proposed Payment to the Administrator Is Fair and Reasonable

In deciding whether to approve a proposed settlement, a trial court must determine if the proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In exercising this power, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Simpluris Inc., which has been selected due to its competitive bid, estimates that administration can be performed for \$8,000.00. In

counsel’s experience, based on similar wage-and-hour actions, an estimated cost of \$8,000.00 is a fair and reasonable amount for administration fees and should be finally approved. (Tunyan Decl., ¶ 35.)

8. The PAGA Allocation is Reasonable

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

Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions addressing that question. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA.”); *see also Visceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D. Cal. 2016) (“Applying O’Connor’s sliding scale approach, settlement of the PAGA claim may be substantially reduced below its standalone settlement value without sacrificing its statutory purposes because the non PAGA settlement is relatively substantial.”)

Moniz then provided explicit confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz* said:

[W]hile PAGA does not require the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for settlements that prevents “ ‘fraud, collusion or unfairness’ ” (Dunk, *supra*, 48 Cal.App.4th at pp. 1800–1801, 56 Cal.Rptr.2d 483), and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors used to evaluate class action settlements bear on a settlement’s fairness—including the strength of the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement.

Given PAGA’s purpose to protect the public interest, we also agree with the LWDA

1 and federal district courts that have found it appropriate to review a PAGA settlement to
2 ascertain whether a settlement is fair in view of PAGA's purposes and policies.
3 (*O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1132–
4 1134; *Jordan v. NCI Group, Inc.* (Jan. 5, 2018, No. EDCV 16-1701-JVS) 2018 WL
5 1409590, at *1–*2, 2018 U.S. Dist. Lexis 25297, at *3–*4; *Chamberlain v. Baker*
6 *Hughes, a GE Co., LLC, supra*, 2020 WL 4350207 at *3–*4, 2020 U.S. Dist. Lexis
7 134582 at *10–*11; see *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of*
8 *America* (2006) 141 Cal.App.4th 46, 59, 61–62, 45 Cal.Rptr.3d 647 [where the
9 Legislature required court approval of private settlements of Proposition 65 actions
10 brought to vindicate the public interest, court must evaluate the resulting consent decree
11 to determine if it is “just” and “serves the public interest”].) We therefore hold that a
12 trial court should evaluate a PAGA settlement to determine whether it is fair,
13 reasonable, and adequate in view of PAGA’s purposes to remediate present labor law
14 violations, deter future ones, and to maximize enforcement of state labor laws. (See
15 *Williams, supra*, 3 Cal.5th at p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA “sought
16 to remediate present violations and deter future ones”]; *Arias, supra*, 46 Cal.4th at p.
17 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 [the declared purpose of PAGA was to augment
18 state enforcement efforts to achieve maximum compliance with labor laws].) The trial
19 court below used this standard.

20 *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with the federal courts that have considered how to
21 evaluate a PAGA settlement, concluded that the class action factors are appropriately considered, along
22 with a consideration of whether the settlement furthers “PAGA’s purposes to remediate present labor law
23 violations, deter future ones, and to maximize enforcement of state labor laws.”

24 As to the first set of elements (the class-type analysis), it is embodied in Plaintiff’s discussion of
25 the adequacy of the settlement generally. To assess the fairness, adequacy, and reasonableness of a class
26 action settlement, the court should also consider the expense, complexity and likely duration of further
27 litigation. *Dunk*, 48 Cal. App. 4th at 1801. Here, the expense, complexity and likely duration of future
28 litigation was to some extent an unknown. However, what is certain is that to adequately establish the
foundational violations that would support a substantial penalty award, tremendous time and expense
would be invested. To adequately establish that aggrieved employees experience the alleged violations,
and at what frequency, most of the aggrieved employees would need to be interviewed in a systematic
fashion and their testimony cataloged in way sufficiently meaningful to permit the submission of
summary evidence at trial, such as via survey. *First*, the burdensome nature of such a process would be
expensive and time-consuming. *Second*, the individuals already interviewed confirmed substantial risk
that the Court would either substantially reduce any penalty ultimately awarded or conclude that the
conduct was insufficient to support a penalty award. *Third*, it would be essentially impossible to
formulate an objectively reliable means of summarizing testimonial experiences, other than by an

1 extraordinarily detailed survey. And formulating such a survey would have been important, since
2 frequency of violations would need to be established before any penalties could be recovered. At least as
3 to claims such as meal period and rest break violations, the decisions of aggrieved employees are a major
4 factor in assessing liability. Direct testimony would have been required from as many of the 399
5 aggrieved employees as could be obtained, which would be, at best, very difficult.

6 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
7 PAGA's purposes include (1) remediation of present labor law violations, (2) deterrence of future
8 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
9 portion of settlement funds to class members still advances the goal of labor law violation remediation.
10 Class members benefit from payments intended to offset the harm of alleged violations of wage and hour
11 requirements. The allocation of a major portion of settlement funds to class members also deters future
12 violations, since, from the perspective of an employer, where settlement funds go is less significant than
13 the fact that settlement funds are issuing at all. This is a \$258,009.00 settlement, not a trivial sum.
14 Deterrence is fulfilled by the proposed allocation. Finally, allocation of a major portion of settlement
15 funds to class members still advances the goal of enforcement of state labor law. This settlement is, by
16 definition, a response to alleged violations of state labor laws, balanced against the competing factors of
17 uncertainty of proof and other risks.

18 In addition, there is no evidence that a court or a commissioner had informed Defendant that its
19 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
20 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013) ("Under California law, courts have
21 held that employers are not subject to heightened penalties for subsequent violations until and unless a
22 court or commissioner notified the employer that it is in violation of the Labor Code.") And in *Cotter*,
23 the court found a significant reduction of the PAGA claim would be appropriate because "[t]his does not
24 appear to be a case where a company has deliberately sought to evade the law." *Cotter*, 176 F. Supp. 3d
25 at 941. Here, Defendant can state a strong case that, as the Court concluded in *Cotter*, its efforts to
26 devise compliant operational policies do not indicate an organization that has deliberately sought to
27 evade the law. This is a very significant risk factor.

28 Finally, the PAGA allocation is fair. The LWDA is receiving **\$22,500**. The Class is receiving,

1 net, an estimated **\$127,266.73** for the releases for eight theories of recovery (including the \$7,500 as the
2 aggrieved employees' share of the PAGA Allocation). An allocation to the LWDA equal to **17.7 %** of
3 the Net Settlement Amount is not unfair and satisfies the policies underlying California's wage and hour
4 laws.

5 **VII. CONCLUSION**

6 For all the foregoing reasons, because the Class meets the requirements for certification,
7 because the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and
8 because the notice procedure complied with Rule 3.766 and due process, this Court should grant this
9 Motion for Final Approval.

10 Respectfully submitted,

11 Dated: December 13, 2024

TUNYAN LAW, APC

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13 By: 
14 Lilit Tunyan
15 Artur Tunyan

16 Attorneys for Plaintiff URIEL OREGEL
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 535 N Brand Blvd. Suite 285
7 Glendale, CA 91203.

8 On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF**
9 **MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND PAGA**
10 **REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND**
11 **AUTHORITIES IN SUPPORT THEREOF** on the interested parties in this action by sending a
12 true copy thereof to interested parties as follows and as stated on the attached service list:

13 Jeffery C. Long
14 Jeffery.Long@llg-law.com

15 Shawn C. Looz
16 shawn.loorz@llg-law.com
17 sciteam@llg-law.com

18 Tara Looz
19 legal.assistant@llg-law.com

20 **LEVANGIE LONG LOORZ**
21 2969 Prospect Park Drive, Suite 125
22 Rancho Cordova, CA 95670
23 Telephone: (916) 443-4849

24 *Attorneys for Defendant DIABLO RANGE FRAMING, INC.*

25 [✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale,
26 California, by e-mail delivery on the parties listed herein at their most recent known e-
27 mail address or e-mail of record in this action.

28 [✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic
service, I caused the documents to be sent to the persons at the electronic service addresses
listed above via electronic mail. I did not receive an error message.

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

Executed on December 13, 2024, at Glendale, California.

Lilit Tunyan
Name



Signature