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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 PRELIMINARY APPROVAL
OF CLASS AND PAGA REPRESENTATIVE
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: -----, 2024

Time: ----- a.m.

Courtroom: Dept. 12

Judge: Hon. Charles S Treat

Action Filed: March 29, 2023

Trial: Not Set

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

3 PLEASE TAKE NOTICE that on -----, 2024, at ----a.m., or as soon thereafter as the matter
4 may be heard, in Department 12 of the above-captioned Court, located at 725 Court Street, Martinez,
5 California 94553, Plaintiff URIEL OREGEL (“Plaintiff”) will and hereby does move this Court for an
6 order:

- 7 1. Granting class certification of the Class, solely for settlement purposes pursuant to
8 Code of Civil Procedure § 382;
- 9 2. Preliminarily approving the JOINT STIPULATION OF CLASS AND PAGA
10 REPRESENTATIVE ACTION SETTLEMENT (“Settlement” or “Agreement”);
- 11 3. Appointing counsel for Plaintiff, Tunyan Law, APC, as Class Counsel;
- 12 4. Appointing Plaintiff as the Class Representative;
- 13 5. Approving the use of the proposed notice procedure and related notice form;
- 14 6. Approving Simpluris Inc. as the third-party administrator;
- 15 7. Directing that notice be mailed to the Class; and,
- 16 8. Scheduling a hearing date for motion for final approval of class action settlement
17 and awards of attorneys’ fees and costs.

18 Good cause exists to grant this Motion because:

- 19 1. The Class meets all of the requirements for class certification for settlement
20 purposes under Code of Civil Procedure § 382;
- 21 2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the
22 disputed wage and hour claims asserted by Plaintiff;
- 23 3. Plaintiff and Class Counsel are adequate to represent the Class;
- 24 4. The proposed notice procedures and related forms comply with California Rules of
25 Court 3.766(d) and (e), adequately apprise Class Members of their rights, and fully comport
26 with due process; and
- 27 5. Based on the foregoing, notice should be directed to the Class Members and a final
28 fairness hearing should be scheduled (Plaintiff suggests about 140 days after preliminary

1 approval is granted).

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

5 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points
6 and Authorities, the Declarations of Lilit Tunyan, Plaintiff, and the Settlement Administrator in support
7 thereof, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and
8 on such oral and documentary evidence as may be presented in connection with the hearing on the
9 Motion. Plaintiff will provide additional notice on the date of the settlement preliminary approval motion
10 hearing date as soon as the court sets a date for preliminary approval motion hearing.

11
12 Respectfully submitted,

13 Dated: January 22, 2024

TUNYAN LAW, APC

14
15 By: _____

Lilit Tunyan
Artur Tunyan

17 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 class action
4 settlement set forth in the 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 **\$220,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class consisting
13 of approximately 720 members. Plaintiff believes that this settlement is a fair, adequate, and reasonable
14 compromise of the disputed claims for alleged unpaid wage and hour violations and penalties asserted in
15 this case.

16 Plaintiff now submits this Motion for Preliminary Approval of Class and PAGA Representative
17 Action Settlement, along with the Settlement (attached to the Declaration of Lilit Tunyan [“Tunyan
18 Decl.”], **Exhibit 1** thereto). For the Court’s convenience, below is a summary of the key provisions of
19 the Settlement.

20 **II. THE MAJOR TERMS OF SETTLEMENT**

21 The provisions of the proposed Settlement include the following:

- 22 • Defendant agrees not to oppose certification of a Class for purposes of Settlement only
23 (Settlement, ¶ 19);
- 24 • **Settlement Amount:** Defendant will pay a maximum of **\$220,000.00**, referred to as the
25 Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross**
26 payment per Class Member of approximately **\$305.56** (Settlement, ¶ 26(c));
- 27 • **Class Size:** approximately **720** individuals as of the date of mediation. (Tunyan Decl., ¶ 16.)
- 28 • **PAGA Group Size:** approximately **180** individuals as of the date of mediation (Tunyan

Decl., ¶ 17);

- **Escalator Clause**: On December 8, 2023, Defendant represented that the number of workweeks worked in the Class Period for Class Members was approximately 9,173. If it is later determined that, on the date of preliminary approval, the number of workweeks in the Class Period is more than 10% greater than the estimated number of workweeks on December 8, 2023, Defendant can either have 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 10,090 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 10,090 workweeks (the “Escalator Clause”). (Settlement, ¶ 26(d).)
- **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

1 payment to the LWDA, the remainder will be available for distribution to Class Members
2 who do not opt out, with each Class Member receiving a share based on the number of
3 workweeks each Class Member worked for a Defendant within the Class Period. The Net
4 Settlement Amount is estimated to be at least **\$94,166.67**, resulting in an average **net**
5 payment per Class Member of at least **\$130.79**, before any tax withholdings. (Settlement, ¶
6 26(g));

- 7 • **Tax Allocation:** The amounts distributed to Class Members will be characterized as 20%
8 alleged unpaid wages, 40% as unpaid penalties and 40% as unpaid interest, and PAGA
9 Settlement Payments will be allocated as 100% penalties. (Settlement, ¶ 26(k));
- 10 • **Employer's Portion of Payroll Taxes Paid Separately:** Defendant's portion of payroll
11 taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that
12 constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 26(h));
- 13 • **Settlement Administrator:** The notice portion of the Settlement and distribution of funds
14 will be administered by a third-party Administrator, Simpluris Inc., and the Parties
15 estimated that the costs of administration should not reasonably exceed \$15,000.00.
16 Simpluris Inc.'s low bid for settlement administration services in the amount of **\$8,000.00**
17 was selected as the lowest bid from a competitive bidding process. (Settlement, ¶ 26(p));
- 18 • **Class Data for Administration:** The Settlement Administrator will receive the Class List
19 within 15 calendar days of Preliminary Approval, use the NCOA database to update the
20 Class List, and then use skip tracing on returned Notices (Settlement, ¶ 32(a));
- 21 • **Notice:** The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶
22 32(b)). The Notice describes how to dispute workweeks, submit and objection in writing,
23 in person, or through an attorney, or request exclusion (Settlement, ¶ 26(s)).
- 24 • **Notice Language:** Notice will issue in English and Spanish (Settlement, ¶ 26(t));
- 25 • **Objections:** Objections can be submitted in person, through an attorney, or in writing to
26 the Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ 26(x));
- 27 • **Exclusion Requests:** The procedure for exclusion requests, mailing a request to the
28 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 (**\$73,333.33**), 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.)

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

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

B. Pre-Mediation Data Production and Analysis

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

After reviewing documents regarding Defendant’s wage and hour policies and practices and other information obtained during the exchange of discovery, Class Counsel were able to evaluate the probability of class certification, success on the merits, and the reasonably obtainable maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses

1 asserted in the litigation. (Tunyan Decl., at ¶ 6.)

2 **C. Settlement**

3 On December 8, 2023 the Parties mediated before a mediator, Hon. Cecily Bond (Ret.), who is a
4 highly experienced and well-regarded mediator for wage and hour class action litigation. (Tunyan Decl.,
5 ¶ 7.) At the mediation, the Parties discussed at length the burdens and risks of continuing with the
6 litigation as well as the merits of the claims and defenses. (*Id.*) The Parties have been able to reach a
7 settlement at the mediation. The Parties have reached an agreement regarding the substantive terms of a
8 class-wide settlement, pending the Parties' agreement on a long-form class settlement agreement. The
9 Parties then signed a long form settlement agreement ("Agreement"). (*Id.*)

10 Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for
11 the claims asserted in the Action, both generally and in response to Defendant's defenses thereto.
12 (Tunyan Decl., ¶ 8.) Plaintiff and Class Counsel have also taken into account Defendant's agreement to
13 enter into a Settlement that confers substantial relief upon the Class.

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

23 **IV. CLASS DEFINITION**

24 The Class is defined as follows:

25 All individuals employed by Defendant in California and classified as "non-exempt" at
26 any time during the Class Period (the "Class Period" is March 29, 2019 through the date
27 upon which the Court grants preliminary approval of this Settlement). "Settlement Class
28 Members" are those Class Members who do not submit timely exclusion requests to the
Settlement Administrator. (Settlement, ¶¶ 3-4.)

(Tunyan Decl., ¶ 34 and Exhibit 1.)

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 the date upon which the Court grants preliminary approval of this Settlement.) 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.)

V. DISCUSSION

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

Under Code of Civil Procedure § 382,¹ class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest among its members and that a “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). Any doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to later modification. *Richmond v. Dart Indus. Inc.*, 29 Cal. 3d 462, 473-475 (1981). For purposes of this Settlement only, Defendant has agreed not to oppose conditional certification of the proposed class action. (Settlement ¶ 19.)

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

¹ Code Civ. Proc. § 382, which is the statutory basis for the maintenance of class actions under California law, states in relevant part, “[W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.”

1 adjudicating plaintiffs' claims in a class action and the costs and benefits of proceeding by numerous
2 separate actions"See, e.g., *id.*

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

10 Indeed, numerous courts have certified settlement classes. For example, the court in *In re Drexel*
11 *Burnham Lambert Group, Inc.*, 960 F.2d 285 (2d Cir. 1992), cert. dismissed, 506 U.S. 1088, 122 L. Ed.
12 497, 113 S. Ct 1070 (1993), addressed settlement before a class was certified. After a hearing, the
13 "district court issued an order certifying the class and approving the settlement agreement." *Id.* at 289;
14 see also *Alaniz v. California Processors, Inc.*, 73 F.R.D. 269, 278 (N.D. Cal. 1976) ("the use of the
15 tentative settlement class procedure was appropriate in this case"), *aff'd*, 572 F.2d 657 (9th Cir.), cert.
16 denied, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action
17 litigation and an approved procedure which ought to be followed in this case. See Newberg on Class
18 Actions (3d ed. 1991) § 11.27, pp. 11-40 to 11-56; Manual for Complex Litigation, 2d (1993) § 30.45.

19 In view of these standards, and as shown below, the Class should be certified for purposes of
20 settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

21 **1. The Members of the Class Are Both Objectively Ascertainable and**
22 **Sufficiently Numerous.**

23 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
24 the class, and (3) the means of identifying class members. See *Miller v. Woods*, 148 Cal. App. 3d 862,
25 873 (1983). In this case, Plaintiff contends that all three considerations strongly favor class certification.

26 A class is ascertainable when "it is defined 'in terms of objective characteristics and common
27 transactional facts' that make 'the ultimate identification of class members possible when that
28 identification becomes necessary.'" *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019). No set

1 number of class members is required to maintain a class action. *Hebbard v. Colgrove*, 28 Cal. App. 3d
2 1017, 1030 (1972). In fact, the California Supreme Court has upheld a class of as few as ten members.
3 *Bowles v. Superior Court*, 44 Cal. 2d 574 (1955).

4 The class definition is sufficiently specific to enable the Parties, Class Members, and the Court to
5 determine makeup of the class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 617 (1987)
6 (proposed class defined as all persons nationwide subscribing to telephone service since January 1, 1981,
7 who were charged for one or more unanswered long distance calls, deemed “plainly” ascertainable).

8 The question of whether class members are easily identifiable turns on whether a plaintiff can
9 establish “the existence of an ascertainable class,” not whether the plaintiff can “identify the individual
10 members of such class as prerequisite to the class suit.” *Daar*, 67 Cal.2d at 706; *see also, Reyes v. San*
11 *Diego County Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1275 (1987).

12 In this case, there are approximately 720 Class Members, all of whom may be identified by
13 reference to Defendant’s records. In addition, to facilitate the administration of the Settlement, Defendant
14 has agreed to share the information from records and has already demonstrated that it can do so when
15 providing class-wide discovery to Plaintiff to facilitate settlement discussions. Accordingly, the Class is
16 not only ascertainable, but also sufficiently numerous. (Tunyan Decl., ¶ 35.)

17 **2. There Are Common Questions That Predominate Over Any Questions That**
18 **May Be Unique to Individual Class Members.**

19 The community of interest requirement embodies three factors: (1) predominant questions of law
20 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
21 representatives who can adequately represent the class. *Dunk*, 48 Cal. App. 4th at 1806; *Richmond*, 29
22 Cal. 3d at 473-75. In this case, Plaintiff’s claims satisfy all three factors.

23 A question of law or fact is common to the members of a class if it may be resolved through
24 common proof. *See, Jaimez*, 181 Cal.App.4th at 1305. As for predominance, it “is a comparative
25 concept, and ‘the necessity for class members to individually establish eligibility and damages does not
26 mean individual fact questions predominate.’” *Sav-on*, 34 Cal. 4th at 334, quoting *Reyes v. Los Angeles*
27 *County Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1278 (1979). Thus, “[i]ndividual issues do not render
28 class certification inappropriate so long as such issues may effectively be managed.” *Id.* This is

1 especially so where the key difference between class members solely concerns their damages. *See id.*

2 In this case, common questions include, but are not limited to: i. Whether or not Defendant paid
3 proper wages to the Class; ii. Whether or not Defendant provided meal periods to the Class; iii. Whether
4 or not Defendant provided rest periods to the Class; iv. Whether or not Defendant paid compensation
5 timely upon separation of employment to former Class Members; v. Whether or not Defendant paid
6 compensation timely throughout Class Members' employment; vi. Whether or not Defendant provided
7 accurate itemized wage statements to the Class; vii. Whether or not waiting-time penalties are available
8 to the Class for violation of California Labor Code § 203; viii. Whether or not Defendant reimbursed for
9 necessary business expenses pursuant to California Labor Code § 2802; ix. Whether or not Defendant
10 engaged in unlawful or unfair business practices affecting the Class in violation of California Business
11 and Professions Code §§ 17200-17208; and x. Whether or not Plaintiff and the Class are entitled to
12 penalties pursuant to PAGA (Tunyan Decl., ¶¶ 37-38.)

13 In the Action, Plaintiff's claims present sufficient common issues of law and fact that
14 predominate over individual issues and warrant class certification. From their review of the
15 documentation provided, Class Counsel determined that for purposes of these claims, Defendant's
16 policies and practices are either identical, or sufficiently similar, to raise the same questions of liability,
17 and applied to all Class Members. Because Class Members would have to prove the same issues of law
18 and fact to prevail, and because their potential legal remedies are identical, it would be preferable to
19 resolve all Class Members' claims by means of the Settlement than to require each Class Member to
20 litigate his or her individual claims. Therefore, common questions predominate over any questions that
21 may be unique to individual Class Members, and class-wide settlement is superior to any other method
22 of resolution.

23 3. Plaintiff's Claims Are Typical of Those of the Class.

24 Typicality "requires a showing that the class representative has claims or defenses typical of the
25 class." *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1534 (2008), citing
26 *Fireside Bank v. Super. Ct.*, 40 Cal. 4th 1069, 1089 (2007), and *Sav-On*, 34 Cal. 4th at 326, approved by
27 *Jaimez*, 181 Cal. App. 4th at 1298 and *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004 (2012).

28 To satisfy the typicality requirement, California law does not require that Plaintiff has claims

1 identical to the other class members. Rather, the test of typicality for a class representative is whether
2 other members have the same or similar injury, whether the action is based on conduct which is not
3 unique to the named plaintiffs, and whether other class members have been injured by the same course of
4 conduct. *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007). The typicality requirement for
5 a class representative refers to the nature of the claim or defense of the representative, and not to the
6 specific facts from which it arose or the relief sought. *Id.*; *Hanon v. Dataproducts Corp.*, 976 F.2d 497,
7 508 (9th Cir. 1992).

8 The purpose of this requirement is to ensure that the representative plaintiff has interests that are
9 reasonably co-extensive with those of absent class members. *See id.* “The test of typicality ‘is whether
10 other members have the same or similar injury, whether the action is based on conduct which is not
11 unique to the named plaintiffs, and whether other class members have been injured by the same course of
12 conduct.’” *Id.*, quoting *Schwartz v. Harp* 108 F.R.D. 279, 282 (C.D. Cal. 1985). Notably, “it has never
13 been the law in California that the class representative must have *identical* interest with the class
14 members.” *Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983). In light of these standards, Plaintiff is
15 typical of class members.

16 Here, like other Class Members, Defendant employed Plaintiff in a non-exempt position during
17 the Class Period, and Plaintiff was subject to the same policies alleged to have impacted the entire class.
18 (Tunyan Decl., ¶ 36.) Plaintiff and other Class Members share the same claims stemming from
19 Defendant’s alleged violations of the Labor Code and relevant wage order. In addition, Defendant’s
20 main defense, namely that its policies and practices comply with California law, apply equally to the
21 claims of all Class Members. Thus, Plaintiff is typical of the Class.

22 **4. Plaintiff and Plaintiff’s Counsel Will Adequately Represent the Class.**

23 The adequacy requirement is met where the plaintiff is represented by counsel qualified to
24 conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to class members’
25 interests. *McGhee v. Bank of America*, 60 Cal.App.3d 442, 451(1976). In other words, where the plaintiff
26 has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest
27 that might hinder the plaintiff’s ability to represent the class. *Id.*

28 In the Action, Plaintiff has no conflicts of interest with other Class Members and has agreed to

1 place Class interests above Plaintiff's own. (Oregel Decl., ¶¶ 4-19; Tunyan Decl., ¶ 39.) Moreover,
2 Plaintiff's counsel are experienced in wage and hour class action litigation and have no conflicts of
3 interest with absent Class Members. (Tunyan Decl., ¶¶ 20-26, 39.) As such, this Court should appoint
4 Plaintiff as Class Representative for the Class and appoint Plaintiff's Counsel as Class Counsel.

5 **5. Proceeding as a Class Action is Superior to Individual Actions**

6 Under the circumstances, proceeding as a class action is a superior means of resolving this
7 dispute, as the Class Members and the Court will derive substantial benefits. Class certification would
8 serve as the only means to deter and redress the alleged Labor Code violations. *See Linder v. Thrifty Oil*
9 *Co.* 23 Cal. 4th at 434 (relevant considerations include the probability that each class member will come
10 forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the
11 class approach would actually serve to deter and redress the alleged wrongdoing). Furthermore,
12 individual actions arising out of the same operative facts would unduly burden the courts and could result
13 in inconsistent results, which may be avoided by class certification.

14 **B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair,** 15 **Adequate, and Reasonable Compromise of Disputed Wage Claims in View of** 16 **Defendants' Potential Liability Exposure and the Risks of Continued Litigation**

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

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

26 Any settlement of class litigation must be reviewed and approved by the presiding court. Rules
27 of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial
28 court and (2) a subsequent (final) review after notice has been distributed to the class members. The

1 Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present
2 motion seeks *preliminary approval* and the setting of a Final Approval Hearing.

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

8 Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all
9 cases to contain evidence in the form of an explicit statement of the maximum amount
10 the plaintiff class could recover if it prevailed on all its claims—a number which
11 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.”

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

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

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

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

26
27 ² 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.

[T]he complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the 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 proposed settlement.

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

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

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

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

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial and does not have to provide 100% of damages sought to be fair and reasonable. “In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91 Cal.App.4th at 250. Accordingly, because settlements involve compromise, even one that provides for substantially narrower relief than would likely be obtained if the suit were successfully litigated can be reasonable given that “the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Id.*, quoting *Air Line Stewards & Stewardesses*

1 *Ass'n, Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).

2 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that
3 support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that
4 Plaintiff would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v.*
5 *US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC*
6 2014 WL 205039 (S.D. Cal. 2014); (ii) the risk that Defendant's meal and rest period policies might not
7 ultimately support class certification or a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28
8 (citing Court of Appeal decisions favorable on class certification issue without expressing opinion as to
9 ultimate viability of proposition); (iii) the risk that uncertainties pertaining to the ultimate legality of
10 Defendant's policies and practices could preclude class-wide awards of statutory penalties under Labor
11 Code §§ 203 and 226(e); (iv) the risk that individual differences between Class Members could be
12 construed as pertaining to liability and not solely to damages, *see Duran*, 59 Cal. 4th at 19; (v) the risk
13 that any civil penalties award under the PAGA could be reduced by the Court in its discretion, *see Labor*
14 *Code § 2699(e)(1)*; (vi) the risk that class treatment could be deemed improper as to one or more claims,
15 except for settlement purposes; and, (vii) the risk that lengthy appellate litigation could ensue. (Tunyan
16 Decl., ¶ 15.) These risks are non-exhaustive.

17 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
18 reasonable recovery for the Class Members. (Tunyan Decl. ¶¶ 12-19.) The settlement amount is, of
19 course, a compromise figure. (Tunyan Decl. ¶ 16.) By necessity it took into account risks related to
20 liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be
21 given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are
22 greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the
23 approximately 720 members of the Class, the average **gross** recovery is at least **\$305.56** per class
24 member, and the estimated average **net** recovery for each Class Member is approximately **\$130.79**. (*Id.*)
25 Given that Defendant could challenge certification and liability, this is a significant sum to have achieved
26 in settlement. Moreover, a Class Member who worked a greater number of weeks for Defendant will
27 receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time
28 during the class period. (*Id.*)

1 After analyzing the claims in this matter, Plaintiff has concluded that the value of this Settlement
2 is fair, adequate, and reasonable. (Tunyan Decl., ¶ 17.) The Gross Settlement Amount of **\$220,000.00** is
3 about 65% of the **\$337,308.25** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the
4 litigation. On that basis, it would be unwise to pass up this settlement opportunity. This assessment is
5 based on a carefully constructed model of the current fair value of the case, using estimated risks,
6 average wage rates, numbers of employees, and the amount of time covered by the class period. (*Id.*)
7 The maximum calculated reasonable exposure is **\$1,956,364**, including PAGA penalties. (*Id.*)

- 8 • A reasonably estimated exposure for unpaid wages for the off-the clock work was
9 calculated, with the assistance of an expert, to be approximately **\$175,217.50**. However,
10 with the risk factor discounts for certification and liability proof, the value of that claim
11 is estimated by Plaintiff's counsel to be approximately **\$9,734.06**, assuming certification
12 probability of 30% and merits success at 30%.
- 13 • A reasonably estimated exposure for rest break violations over the class period was
14 calculated at **\$192,233.00**, but with chances of certification and proof of liability (50%
15 and 40% respectively) for a risk-adjusted exposure of **\$38,449.32**.
- 16 • A reasonably estimated exposure for meal break violations over the class period was
17 calculated at **\$120,155.00**, with chances of certification and liability risks (50% and 40%
18 respectively) resulting in a risk-adjusted exposure of **\$24,031.00**.
- 19 • Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties
20 with chances of certification and liability risks (50% and 20% respectively) were
21 estimated to be approximately **\$236,125.00** and **\$468,000.00**, respectively, on maximum
22 exposures of **\$46,800.00** and **\$23,612.50**, respectively.
- 23 • A reasonably estimated exposure for unreimbursed expenses over the class period was
24 calculated at **\$149,133.33**, with chances of certification and liability risks (60% and 80%
25 respectively) resulting in a risk-adjusted exposure of **\$71,584.00**.
- 26 • Performing risk-adjusted valuations for all claims yields a total value in the range of
27
28

1 **\$214,210.88**, excluding PAGA.³ (*Id.*)

- 2 • PAGA penalties were calculated as having a maximum realistic exposure of
- 3 **\$615,486.86**, but a risk adjusted value of **\$123,097.37**, after factoring in risks of
- 4 reduction in penalties pursuant to Court discretion and the high risk of the inability to
- 5 prove violations for all aggrieved employees.

6 The concurrently filed Declaration of Lilit Tunyan sets forth claim valuation in additional detail.

7 (*See*, Tunyan Decl., ¶ 17.)

8 This result here is fully supportable as reasonable. First, it is important to recognize the

9 wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Tunyan Decl., ¶

10 18.) Second, rest break and meal period claims have been challenging to certify for many years, even

11 after *Brinker*. (Tunyan Decl., ¶ 18.) Third, the certification rates in California are lower than

12 conventional wisdom holds. *See*, H. Scott Leviant, *Second Interim Report on class actions in California*

13 *sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at

14 [http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html)

15 [california-sheds-n.html](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html); *see also*, *Findings of the Study of California Class Action Litigation, 2000-2006*,

16 available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page

17 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a

18 settlement **or** as part of a contested certification motion).

19 Here, the estimated certification probabilities are **above** the average rate at which cases were

20 certified in California over the study years, based upon data available through the California Courts

21 websites. (Tunyan Decl., ¶ 18.) In sum, well *under* 20% of all cases filed as proposed class actions are

22 ultimately certified by way of a *contested* motion. (*Id.*) The recovery is roughly 11% of the maximum

23 theoretical recovery (estimated to be approximately \$1,956,364, including PAGA), which falls within the

24 expected outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to evaluate

25 _____

26 ³ In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a

27 specific method for attempting to reduce the concept of “very high risk” or “high risk” to a quantifiable

28 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.

the result by examining only the premium wages at issue (approximately \$487,619.10, with no risk reduction), excluding penalties and interest. 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., ¶¶ 10, 16.)

5. The Proposed Enhancement Awards to Plaintiff Is Fair, Adequate, and Reasonable and Warrants Preliminary 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 time to the prosecution of this matter, including assistance prior to the mediation with discovery, information and substantial time conferring with counsel over the course of this litigation and before it was filed. (Oregel Decl., ¶¶ 4-19; Tunyan Decl., ¶ 32.) The enhancement also recognizes the considerable risks Plaintiff undertook on behalf of the Class to be personally liable for all costs incurred regardless of the success of the litigation or class certification, as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that

1 Plaintiff sued a former employer, making future employment prospects uncertain.

2 **6. The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate,**
3 **and Reasonable and Merits Preliminary Approval.**

4 The California Supreme Court removed any lingering doubt about the use of the percentage of
5 the fund method to award attorney’s fees in California Courts:

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

13 *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁴ Thus, this Court may and, as strongly
14 encouraged by the California Supreme Court, *should* award attorney’s fees to Plaintiff’s counsel based
15 upon the percentage of the fund methodology.

16 Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund method or the
17 lodestar method is used, the outcome is roughly the same: “Empirical studies show that, regardless
18 whether the percentage method or the lodestar method is used, fee awards in class actions average
19 around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 47 n. 11 (2008), quoting
20 *Shaw v. Toshiba America Information Systems, Inc.*, 91 F.Supp.2d 942, 972 (E.D. Tex. 2000). This is
21 also consistent with Plaintiff’s counsels’ experience in these types of cases. Here, Plaintiff’s attorneys
22 intend to request attorneys’ fees of up to \$73,333.33 (one-third of the GSA), and costs capped at \$15,000
23 (which includes payment for mediation, filing fees, and other standard expenses). (Tunyan Decl., ¶ 31.)
24 Given the efforts and risks involved in this case, as well as the results achieved, these amounts are within
25 the range of reasonableness and warrant *preliminary approval*.

26 ⁴ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
27 doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method
28 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 **7. The Proposed Payment to the Administrator Is Fair and Reasonable**

2 In deciding whether to approve a proposed settlement, a trial court must determine if the
3 proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In
4 exercising this power, the overriding concern is to ensure that a proposed settlement is “fair, adequate,
5 and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Simpluris Inc., which has
6 been selected due to its competitive bid, estimates that administration can be performed for **\$8,000.00**. In
7 counsel’s experience, based on similar wage-and-hour actions, an estimated cost of **\$8,000.00** is a fair
8 and reasonable amount for administration fees and should be preliminarily approved. (Tunyan Decl., ¶
9 33.)

10 **8. The Proposed Class Notice Complies with Rule 3.766(d) and (e)**

11 Notice requirements are set forth in Rules of Court, Rule 3.766. In determining the manner of
12 the notice, the court must consider the interests of the class, the type of relief requested, the stake of the
13 individual class members, the cost of notifying class members, the resources of the parties, the possible
14 prejudice to class members who do not receive notice, and the *res judicata* effect on class members.
15 Rules of Court, Rule 3.766(e).

16 a) *The Notice Procedure Satisfies Due Process*

17 Plaintiff requests that the Court approve the proposed plan for giving notice to the Class and
18 administering the Settlement. The notice process is set forth in the Settlement. The standard for
19 determining the adequacy of notice is whether the notice has “a reasonable chance of reaching a
20 substantial percentage of the class members.” *Cartt v. Sup. Ct.*, 50 Cal.App.3d 960, 974 (1975).
21 California law vests the Court with broad discretion in fashioning an appropriate notice program. *Cartt*,
22 50 Cal. App. 3d at 973-74. There is no statutory or due process requirement that all class members
23 receive actual notice, but in this matter, the Class Members will receive direct mailed notice. Direct mail
24 notice to Class Members’ last known address is the best possible notice under the circumstances.
25 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

26 As the Court of Appeal has explained, “[t]he notice given should have a reasonable chance of
27 reaching a substantial percentage of the Class Members . . .” *Cartt*, 50 Cal. App. 3d at 974. For class
28 claims “for money damages or similar relief at law, notice sent by first class mail to the last known

address of each member of the plaintiff class is sufficient.” *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811 (1985). Here, the proposed procedure includes safeguards, including, but not limited to, searches for address changes and the re-mailing of returned notices after skip traces. As such, the proposed procedure provides a reasonable chance that Class members will receive notice.

b) The Notice is Accurate and Informative

The proposed Notice of Class Action Settlement should be approved for dissemination to the Class Members. It will be disseminated through direct mail to the last known address for each Class Member. It informs the Class Members of the terms of the settlement and their right to be excluded from the Settlement. If there are Class Members who wish to object to this proposed class action settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing.

Rule 3.769(f) of the Rules of Court provides as follows:

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

Rules of Court, rule 3.769(f).

The Notice also fulfills the requirement of neutrality in class notices. 3 NEWBERG § 8.39. It summarizes the proceedings and the terms and conditions of the proposed Settlement, in an informative and coherent manner, in compliance with the Manual for Complex Litigation (“MANUAL”), (2d Ed. 1993), which states that “the notice should be accurate, objective, and understandable to Class Members . . .” MANUAL, § 30.211. It makes clear that the Settlement does not constitute an admission of liability by the Defendant and recognizes that this Court has not ruled on the merits. It also states that the final settlement approval decision has yet to be made. Accordingly, the Notice complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

Upon the Court’s approval, the Notice of Class Action Settlement will be mailed by the Administrator to each Class Member, in Spanish as well.

9. The PAGA Allocation is Reasonable

The PAGA allocation is reasonable because 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*,

1 *Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members
2 as employees and substantial monetary relief, a settlement not only vindicates the rights of class
3 members as employees, but may have a deterrent effect upon the defendant employer and other
4 employers, an objective of PAGA.”); *see also Viceria v. Mistras Group*, 2016 WL 5907869 *9 (N.D.
5 Cal. 2016) (“Applying O’Connor’s sliding scale approach, settlement of the PAGA claim may be
6 substantially reduced below its standalone settlement value without sacrificing its statutory purposes
7 because the non PAGA settlement is relatively substantial.”)

8 In addition, there is no evidence that a court or a commissioner had informed Defendant that its
9 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
10 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013) (“Under California law, courts have
11 held that employers are not subject to heightened penalties for subsequent violations until and unless a
12 court or commissioner notified the employer that it is in violation of the Labor Code.”).

13 Finally, the PAGA allocation is fair. The LWDA is receiving **\$22,500**. The Class is receiving,
14 net, an estimated **\$94,166.67** for the releases for eight theories of recovery (including the \$7,500 as the
15 aggrieved employees’ share of the PAGA Allocation). The proportion is tipped slightly in favor of the
16 Class Members, but not markedly so. An allocation to the LWDA equal to 23.9% of the Net Settlement
17 Amount is not unfair and satisfies the policies underlying California’s wage and hour laws.

18 **VI. THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING**

19 The last step in the settlement approval process is the fairness hearing, where the Court makes a
20 final determination about the propriety of settlement. Plaintiff requests that the fairness hearing in this
21 case be scheduled for about 140 days after issuance of the Court’s Order granting preliminary approval
22 of the Settlement. Under the Settlement, Defendant will have 15 days to provide the mailing data to the
23 Settlement Administrator, which will then have 14 days to mail out class notice. Class Members have 60
24 days after mailing of the notice to submit exclusions or objections (with a 14-day extension available for
25 late-returned and re-mailed notices). Therefore, Plaintiff proposes a final approval hearing scheduled for
26 the first available hearing date that is about 140 days after preliminary approval is granted.

27 **VII. CONCLUSION**

28 For all the foregoing reasons, because the Class meets the requirements for certification, because

1 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the
2 proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant
3 this Motion for Preliminary Approval, adopt the [Proposed] Order Granting Preliminary Approval of
4 Class Action Settlement submitted herewith, and schedule a Final Fairness Hearing.

5 Respectfully submitted,

6 Dated: January 22, 2024

TUNYAN LAW, APC

7
8 By:  _____

Lilit Tunyan

Artur Tunyan

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10 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 PRELIMINARY 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 Teresa Boyd
16 teresa.boyd@llg-law.com

17 Shawn C. Looz
18 shawn.loorz@llg-law.com

19 Star Smith
20 star.smith@llg-law.com

21 Madeline Mulky
22 madeline.mulky@llg-law.com

23 Holly Marquard
24 holly.marquard@llg-law.com

25 Christina Nelson
26 christina.nelson@llg-law.com

27 **LEVANGIE LAW GROUP**
28 2969 Prospect Park Drive, Suite 125
Rancho Cordova, CA 95670
Telephone: (916) 443-4849

Attorneys for Defendant DIABLO RANGE FRAMING, INC.

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

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

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

27 Executed on January 22, 2024, at Glendale, California.

28 Lilit Tunyan

Name



Signature