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BARRY COLE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MERCED

BARRY COLE, on behalf of himself and on behalf of all similarly situated individuals, Plaintiff, v. XEROX CORPORATION, a New York corporation, and DOES 1 through 10, inclusive, Defendants.	Case No: 24CV-06565 Assigned for all purposes to the Hon. Stephanie L. Jamieson <u>CLASS ACTION</u> **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: July 25, 2025 Time: 8:15 a.m. Dept: 8 Complaint filed: December 16, 2024 Trial Date: TBD

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PLEASE TAKE NOTICE THAT on July 25, 2025 at 8:15 a.m., or as soon thereafter as the matter may be heard, in in Department 8 of the above-entitled Court, located at Old Merced Courthouse, 627 West 21st Street, Merced, California, 95340, Plaintiff Barry Cole will and hereby does move for the entry of an Order and Judgment Granting Final Approval of Class and PAGA Action Settlement.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a class action. The basis for this Motion is that the proposed settlement is fair, adequate, and reasonable and in the best interests of the settlement class, and that the procedures utilized were adequate to ensure the opportunity of the proposed settlement Class Members to participate in, opt out of, or object to the settlement.

This Motion will be based on the Memorandum of Points and Authorities set forth herein, Joint Stipulation of Class and PAGA Action Settlement and Release of Claims, Declarations of Eric A. Grover, Robert Spencer, Daniel F. Gaines, Plaintiff Barry Cole, and Lisa Pavlik of Simpluris Inc., the pleadings and papers filed in this case, and such evidence or oral argument as may be presented at the hearing, and on the complete records and file herein.

Respectfully submitted,

Dated: July 3, 2025

KELLER GROVER LLP

By: ______________________________

ERIC A. GROVER
ROBERT W. SPENCER
Attorneys for Plaintiff and Co-Class Counsel

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By this unopposed motion, Barry Cole ("Plaintiff" or "Class Representative") seeks final approval of the proposed class and Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA"), action settlement reached with Xerox Corporation ("Xerox" or "Defendant"). On March 28, 2025, the Court granted preliminary approval of the proposed settlement, the terms of which are set forth in the Joint Stipulation of Class and PAGA Action Settlement and Release of Claims ("Stipulation") executed by Plaintiff and Defendant (the "Parties").[1]

The proposed settlement satisfies all the criteria for final settlement approval under California law because it is fair, adequate, and reasonable.[2] The notice of the settlement was distributed via U.S. mail.[3] The Class Members' response to the settlement confirms that final settlement approval is appropriate. No Class Member has objected and, to date, only one class member is in the process of correcting his deficient request for exclusion.[4] Assuming the class member corrects his deficient request for exclusion, 307 Settlement Class Members will receive Individual Settlement Payments averaging $1,223.32.[5]

Class Members were not required to submit claim forms to participate in the settlement.[6] The Net Settlement Amount ("NSA") will be distributed to all Settlement Class Members (*i.e.*, those Class Members who did not submit a valid Request for Exclusion).[7] Each Settlement Class Member will receive an Individual Settlement Payment based on the ratio of his or her number of Qualified Workweeks divided by the total number of Qualified Workweeks for the entire

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[1] Declaration of Eric A. Grover submitted herewith, at ¶ 5-6, 15-16, Ex. A (the Stipulation); Ex. B (the Court's March 28, 2025 Order Granting Motion for Preliminary Approval of Class and PAGA Action Settlement ("Preliminary Approval Order"). All "Ex." references are exhibits to the Grover Declaration unless otherwise stated.

[2] *See* Ex. A; *see also*, *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.

[3] Declaration of Lisa Pavlik on behalf of Simpluris, Inc. ("Simpluris") filed with this brief, ("Simpluris Decl.") at ¶ 8.

[4] Simpluris Decl. at ¶¶ 11-13, Grover Decl. at ¶ 28.

[5] Simpluris Decl. at ¶¶ 11; Grover Decl. at ¶ 30, ($375,559.87 estimated Net Settlement Amount/307 Class Members = $1,223.32), *see also*, ¶¶ 32-33, Ex. A at §§ I.H, I.S, I.W, I.QQ.

[6] Ex. A at § III.M.2.a; Grover Decl. at ¶ 28.

[7] Ex. A at § III.M.2.a; *see also*, §§ I.W, I.QQ.

Settlement Class, according to the formula set forth in the Stipulation.[8]

The Settlement also provides that the representative PAGA claims will be settled for $25,000, referred to as the PAGA Payment.[9] As Labor Code § 2699(i) requires, the PAGA Payment will be distributed 75% ($18,750) to the California Labor and Workforce Development Agency ("LWDA") and 25% ($6,250) to Aggrieved Employees.[10] From the $6,250 allocated to Aggrieved Employees, each Aggrieved Employee will receive an Individual PAGA Payment based the number of Qualified PAGA Pay Periods worked.[11] All Aggrieved Employees are also Class Members because none has opted out of the class action portion of the Settlement.[12]

Because the settlement achieves excellent results for the Settlement Class, Plaintiff respectfully requests, without opposition from Defendant, that the Court approve the settlement as fair, adequate, and reasonable, and enter judgment.

II. PROCEDURAL BACKGROUND AND SUMMARY OF CLAIMS

On March 24, 2023, Plaintiff filed a putative class action complaint in state court that was removed to the U.S. District Court for the Central District of California.[13] After formal and informal discovery, the parties reached a mediated settlement, as discussed below in more detail. Because the settlement covers only California class members and causes of action, the parties stipulated to dismiss the federal court action without prejudice and seek settlement approval in state court.[14] On December 16, 2024, Plaintiff filed the operative complaint in the Merced County Superior Court. Plaintiff brought the action on behalf of himself and a putative class of approximately 308 current and former hourly, non-exempt field service technicians who worked for Defendant in California on or after March 24, 2019.[15] Plaintiff alleged that Defendant failed to pay at least minimum wage for all hours worked, failed to pay overtime wages for hours worked over eight in a shift, did not provide all required meal periods and rest breaks, failed to

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[8] Ex. A at § III.M.2.a; *see also*, §§ I.KK, I.QQ.
[9] Ex. A at §§ I.Z, III.M.5. *See* Lab. Code § 2699(l)(2).
[10] Ex. A at §§ I.Z, III.M.5.
[11] Ex. A at §§ I.C, I.R, I.II, III.M.2.b, III.M.5; Grover Decl. at ¶¶ 35-36.
[12] Ex. A at §§ I.C, I.H, I.R; Grover Decl. at ¶ 35.
[13] Grover Decl. at ¶ 6.
[14] *Id.*
[15] *Id.*

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provide accurate wage statements, did not pay all wages due on termination, did not keep accurate payroll records, and did not reimburse necessary business expenses.[16] Plaintiff asserted that Defendant's practices and policies violated Labor Code §§ §§ 201-203, 226(a), 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1198, and 2802, related sections of the applicable Wage Order, and Business & Professions Code §§ 17200, *et seq.*[17] Plaintiff also alleged related representative PAGA claims.[18]

Defendant denies all the allegations in their entirety. To date, no class has been certified and no court has made any findings that Defendant engaged in any wrongdoing or in any wrongful conduct or otherwise acted improperly or in violation of any state law, rule or regulation, with respect to the issues presented in the litigation.[19]

The Parties engaged in formal discovery, which included written discovery and document production. While conducting discovery, the Parties decided to explore the possibility of settlement. Plaintiff provided Defendant with a detailed information request in response to which Defendant provided information and documents necessary for Plaintiff to engage in settlement discussions.[20]

At the time the final settlement was reached, Defendant had provided relevant documents and information, including:

(A) The number of Class Members:

- o There are approximately 308 Class Members.

(B) The total workweeks worked by Class Members:

- o Class Members worked a total of approximately 61,000 workweeks during the Class Period.

(C) Class Members' average hourly wage:

Class Members were hourly employees and the average hourly wage during the Class Period was approximately $23.86.

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[16] *Id.*
[17] *Id.*
[18] *Id.* at ¶
[19] Ex. A at § II.D; Grover Decl. at ¶ 7.
[20] Grover Decl. at ¶¶ 9-10.

(D) The total pay periods during the PAGA Period:

- Aggrieved Employees worked a total of approximately 1,375 pay periods during the PAGA Period.[21]

On September 30, 2024, the Parties participated in an all-day mediation session with skilled mediator Daniel J. Turner, Esq., who has significant experience mediating wage and hour class actions.[22] The mediated negotiations resulted in the Parties reaching an agreement to settle the entire action, subject to the Court's approval.[23] All terms of the Parties' settlement are set forth in the Stipulation.[24]

On March 3, 2025, Plaintiff moved for preliminary approval of the proposed settlement, including the Stipulation.[25]

III. THE PRELIMINARY APPROVAL AND NOTICE PROCESS

On March 28, 2025, the Court issued an order granting preliminary approval of the proposed class and PAGA action settlement, including the Stipulation, and provisionally certified the Settlement Class.[26] In granting preliminary approval, the Court found that the settlement appeared to be within the range of reasonableness of settlements that could ultimately be given final approval and implicitly found Class Counsel's proffered arguments and explanations supporting the Settlement to be reasonable.[27] The Court also approved the distribution of the Notice of Class Action ("Notice").[28]

From its records, Defendant identified 308 Class Members and provided the information to Simpluris, Inc. ("Simpluris"), the Court-approved Settlement Administrator.[29] As the deadline approached to file the final approval motion, it came to the attention of the Parties that there was an issue with the class data that caused a slight delay in the mailing of the Notice. To allow time to address the issue and ensure that the Class Members had the appropriate time to respond, Class

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[21] *Id.* at ¶ 14.
[22] Ex. A at § II.B; Grover Decl. at ¶ 15.
[23] Ex. A at § II.B; Grover Decl. at ¶ 16.
[24] Grover Decl. at ¶¶ 5, 15-16; Ex. A.
[25] Grover Decl. at ¶ 16.
[26] Ex. B; *see* Grover Decl. at ¶ 16.
[27] *See* Ex. B at ¶ 4.
[28] Ex. B at ¶¶ 9-13.
[29] Simpluris Decl. at ¶ 6.

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Counsel worked with Defense Counsel and, on behalf of the Parties, filed a joint stipulation to continue the final approval hearing.[30] On May 23, 2025, the Court approved the Parties' stipulation and reset the final approval hearing for July 25, 2025.[31]

On May 27, 2025, Simpluris mailed the Court-approved Notice of Class Action Settlement ("Notice") via U.S. mail to the 299 Class Members on the list for whom Defendant had mailing addresses.[32] Two Notices were returned by the Post Office as undeliverable. Simpluris was able to find good addresses for both of these returned Notices. Ultimately, Simpluris was able to successfully mail 299 out of 308 Notices; a 97% success rate for the mailing.[33]

Class Members did not have to file a claim to participate in the settlement. All Class Members had 45 days from the date that Simpluris mailed the Notice to opt out of or object to the settlement.[34] Thus, the deadline for Class Members to opt out or object is July 11, 2025.[35]

As of the June 19, 2025, Simpluris received no objections, timely or late.[36] Simpluris and Class Counsel are aware of one Class Member who is presently correcting his deficient request for exclusion. Simpluris and Class Counsel are presently aware of no other opt-outs.[37] Class Counsel received no objections, timely or late.[38] Simpluris will provide a supplemental declaration after the response deadline expires.

The Notices were individualized to state each Class Member's number of Qualified Workweeks and Qualified Pay Periods.[39] The Notices also stated the Settlement Administrator's calculation of each Class Member's estimated gross Individual Settlement Payment if that Class

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[30] Grover Decl. at ¶ 15.
[31] Grover Decl. at ¶ 15; Ex. C.
[32] Simpluris Decl. at ¶ 8.
[33] Simpluris Decl. at ¶ 9; Grover Decl. at ¶ 27.
[34] Ex. A at §§ I.NN, III.L.7.a. and III.L.8.a.
[35] Simpluris Decl. at ¶ 10; Grover Decl. at ¶ 28.
[36] Simpluris Decl. at ¶ 11 Grover Decl. at ¶ 28.
[37] Simpluris Decl. at ¶ 11; Grover Decl. at ¶ 28.
[38] Grover Decl. at ¶ 28.
[39] Ex. A at § III.L.2.b; *see also*, §§ I.II, I.KK.

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Member did not request exclusion from the Settlement and each Aggrieved Employee's estimated Individual PAGA Payment.[40]

The Notice provided Class Members with information on how to dispute the number of Qualified Workweeks stated on their individualized Notice.[41] No disputes were submitted, timely or late.[42]

IV. SUMMARY OF SETTLEMENT TERMS

A. The Settlement Class

As set forth in the Preliminary Approval Order, the settlement Class is defined as:

> All current and former non-exempt Field Technical Service Representatives who worked for Defendant in California at any time or times during the Class Period.[43]

The Class Period is the period from and including March 24, 2019 through October 31, 2024.[44] In this memorandum, the members of the proposed Class are referred to as the "Class Members."

Also as set forth in the Preliminary Approval Order, for the PAGA claims, the Settlement defines "Aggrieved Employees" to mean "all current and former non-exempt Field Technical Service Representatives who worked for Defendant in California at any time or times during the PAGA Period."[45] The PAGA Period is the period from and including March 13, 2022 through October 31, 2024.[46] All Aggrieved Employees are also Class Members unless they opt-out of participation in the class action portion of the Settlement.[47]

B. Benefits to the Class

The settlement is a good compromise for the alleged damages of the absent Class Members. Defendant will pay a Maximum Settlement Amount of $650,000, plus the employer-side payroll taxes, to resolve the claims covered by the settlement.[48] After subtracting out the

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[40] Ex. A at § III.L.2.b; s*ee also*, §§ I.R., I.S.
[41] Ex. A at § III.L.5.
[42] Simpluris Decl. at ¶ 13; Grover Decl. at ¶ 29.
[43] Ex. B at ¶ 2.
[44] Ex. A at § I.I; *see also*, Grover Decl. at ¶ 19.
[45] Ex. B at ¶ 3; Ex. A at § I.C.
[46] Ex. A at § I.AA.
[47] Ex. A at §§ I.C, I.H; Grover Decl. at ¶ 20.
[48] Ex. A at §§ I.V, III.M; Grover Decl. at ¶ 32.

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amounts allocated to pay the Settlement Administration Costs (capped at no more than $7,500), the PAGA Payment ($25,000), the Class Counsel Award (estimated to be $216,667 in fees and no more than $15,273.13 in actual out-of-pocket costs), and the Class Representative Incentive Award/General Release Payment (estimated to be $10,000) from the Maximum Settlement Amount, each of which is subject to the Court's approval, the Net Settlement Amount ("NSA") is an estimated $375,559.87.[49] The NSA will be distributed to all Settlement Class Members, *i.e.*, all Class Members who did not timely opt out, based on the formula set forth in the Stipulation, summarized below.[50] The settlement is non-reversionary.[51]

The Stipulation provides that NSA will be distributed proportionally based on the number of Qualified Workweeks each Settlement Class Member worked during the Class Period.[52] Each Settlement Class Member will be assigned a share calculated by dividing his or her total number of Qualified Workweeks by the total number of Qualified Workweeks for the entire Settlement Class, which is that person's Payment Ratio.[53] The Payment Ratio then will be multiplied by the NSA to determine that Settlement Class Member's Individual Settlement Payment, except that no gross Individual Settlement Payment will be less than $25.[54] Settlement Class Members were not required to submit a claim to receive an Individual Settlement Payment.[55]

Because no Class Member opted-out, the average Individual Settlement Payment will be approximately $1,223.32 ($375,559.87/307).[56]

C. Payments to the Aggrieved Employees and State.

Parties have agreed to allocate $25,000 of the MSA to settle the PAGA claims, referred to as the PAGA Payment.[57] Labor Code § 2699(i) requires that the LWDA receive 75% ($18,750) of the PAGA settlement amount and Aggrieved Employees receive 25% ($6,250).[58]

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[49] Ex. A at § I.W; Grover Decl. at ¶ 33.
[50] Ex. A at § III.M.2.a; *see also*, §§ I.H, I.S, I.W, I.QQ; Grover Decl. at ¶¶ 32, 34.
[51] Ex. A at § III.M; *see also*, § I.V.
[52] Ex. A at § III.M.2.a; *see also*, §§ I.I, I.S, I.KK, I.QQ; Grover Decl. at ¶ 34.
[53] Ex. A at § III.M.2.a; *see also*, §§ §§ I.I, I.S, I.EE, I.KK, I.QQ.
[54] Ex. A at § III.M.2.a; *see also*, §§ I.S, I.EE.
[55] Ex. A at § III.M.2.a; Grover Decl. at ¶ 28.
[56] Grover Decl. at ¶ 30; *see* Ex. A at § I.S, I.W, I.QQ, III.M.2.a.
[57] Lab. Code § 2699(f); Ex. A at §§ I.Z, III.M.5.
[58] Lab. Code § 2699(i); *see* Ex. A at § I.Z.

To distribute the 25% allocated to the Aggrieved Employees, the Settlement Administrator will distribute Individual PAGA Payments according to the formula set forth in the Settlement Agreement.[59] The Settlement Administrator will divide the respective Qualified PAGA Pay Periods for each Aggrieved Employees by the total Qualified PAGA Pay Periods for all Aggrieved Employees, resulting in the Payment Ratio for each Aggrieved Employee.[60] Each Aggrieved Employee's Payment Ratio then will be multiplied by the $6,250 portion of the PAGA Payment allocated to the Aggrieved Employees to calculate each Individual PAGA Payment.[61]

D. Other settlement terms.

All Individual Settlement Payment settlement checks will be valid for 180 days from the date of issuance.[62] The settlement provides that, after the check void date, the Settlement Administrator will send any funds from uncashed checks to Legal Aid at Work.[63] Legal Aid at Work provides pro bono representation in various areas including workers' rights.[64]

V. LEGAL ARGUMENT

When deciding whether to grant final approval of a class-action settlement, California courts ensure that notice was given consistent with the preliminary approval and then examine whether the settlement is fair, adequate and reasonable. Here, the notice given was consistent with the Court's Preliminary Approval Order.[65] The response of Class Members confirms the Court's preliminary determination that the settlement is fair, adequate and reasonable.

A. The notice procedure was adequate and reasonable.

California law vests the Court with broad discretion in fashioning an appropriate notice program.[66] To protect the rights of absent class members, the parties must provide class members

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[59] Ex. A at § III.M.2.b; *see* §§ I.C, I.R.
[60] Ex. A at § III.M.2.b; *see also*, §§ I.R, I.Z, I.DD, I.II; Grover Decl. at ¶ 36. Qualified PAGA Pay Periods any and all pay periods (as reflected in Defendant's records) during which one or more Aggrieved Employees performed work for Defendant in California during the PAGA Period. Ex. A at § I.II.
[61] Ex. A at § III.M.2.b; *see also*, §§ I.C, I.R, I.Z, I.DD; Grover Decl. at ¶ 36.
[62] Ex. A at § III.M.2.e.
[63] Ex. A at § III.M.2.e; Grover Decl. at ¶ 41. *See* https://legalaidatwork.org.
[64] Grover Decl. at ¶ 41. *See* https://law.scu.edu/kgaclc/.
[65] Ex. B; Simpluris Decl. at ¶ 8, Ex. A (Notice).
[66] *See* Cal. Civ. Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74.

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with the best notice practicable of a potential class action settlement.[67] The content and method of the notice should be designed to apprise the class members of the terms of the proposed settlement and of the class members' rights regarding the settlement.[68]

The Notice, which was approved by the Court, met these requirements: it identified the parties and described the lawsuit, the Class, the settlement amount, the proposed method for distribution of the MSA, the proposed amount of the incentive award/general release payment to the named Plaintiff, and the requested amount for attorneys' fees and costs.[69] The Notice described the proposed settlement with enough specificity to allow Class Members to make an informed choice whether to opt-out or object and how and when they could do so. Finally, the Notice provided the schedule for the hearing on final approval of the settlement and informed Class Members how to obtain additional information about the settlement.[70]

The California Supreme Court has held that notice is appropriate if it has a "reasonable chance of reaching a substantial percentage of the class members …"[71] Notice must be reasonable under the circumstances.[72] In this case, the Notice was successfully mailed to 299 out of 308 Class Members, a 97% success rate.[73] The Notice was reasonable and adequate.

B. Final settlement approval is appropriate.

The settlement is fair, adequate, and reasonable because it provides substantial benefits to Class Members. The fairness, adequacy, and reasonableness of the settlement are illustrated by the fact that not one of the 308 Class Members objected to the settlement, one Class Member is in the process of correcting his deficient request for exclusion, and there are presently no other opt-outs.[74] Under the legal standards used by California courts to determine whether class action

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[67] *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-76 (individual notice must be sent to all class members who can be identified through reasonable efforts).
[68] *See Mullane, supra*, 339 U.S. at 314*; Philadelphia Housing Auth. v. Am. Radiator & Std. Sanitary Corp.* (E.D. Pa. 1970) 323 F. Supp. 364, 378.
[69] *See* Simpluris Decl., Ex. A.
[70] *Id.*
[71] *Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 861, citing *Cartt*, *supra*, 50 Cal.App.3d at 974.
[72] *Mullane*, *supra*, 339 U.S. at 314.
[73] Simpluris Decl. at ¶¶ 8-9.
[74] Simpluris Decl. at ¶¶ 11; Grover Decl. at ¶¶ 28, 40. Simpluris will provide a supplemental
(Cont'd)

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settlements should be approved, this settlement warrants approval.

1. <u>The three-step approval process</u>

The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.[75] "Where complex class action litigation is concerned," there exists a "strong judicial policy that favors settlements."[76] A class action, however, may not be dismissed, compromised, or settled without the approval of the court.[77] Judicial proceedings under Federal Rule of Civil Procedure Rule 23 have led to a defined procedure and specific criteria for settlement approval in class action settlements, described in the Federal Judicial Center, Manual for Complex Litigation, Fourth (4th ed. 2004) ("Manual") § 21.632, *et seq*.[78] The Manual's settlement approval procedure describes three distinct steps:

(1) Preliminary approval of the proposed settlement at an informal hearing;

(2) Dissemination of mailed and/or published notice of the settlement to all affected Class members; and

(3) A "formal fairness hearing," or final settlement approval hearing.[79]

The first two steps of this process are now complete. The first step was completed when the Court granted preliminary approval.[80] In doing so, the Court determined that the settlement was within the range of possible final approval and that notice to the Class Members of the settlement's terms and of the scheduling of the formal fairness hearing should be distributed.[81]

The second step in the class action settlement approval process, the dissemination of the

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declaration after the response deadline expires.

[75] *See e.g.*, 4 <u>Newberg on Class Actions</u> 4th (4th ed. 2002) § 11.41 (and cases cited therein); *Campbell v. Facebook, Inc.* (9th Cir. 2020) 951 F.3d 1106, 1120-21 (internal quotes omitted); *In re Hyundai & Kia Fuel Econ. Litig.* (9th Cir. 2019) 926 F.3d 539, 556 (en banc); *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950.

[76] *Campbell*, *supra*, 951 F.3d at 1120-21, quoting *In re Hyundai*, 926 F.3d at 556.

[77] Cal. Rule of Court 3.769; Fed. R. Civ. Proc. 23(e).

[78] "California courts may look to federal authority for guidance on matters involving class action procedures." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1392.

[79] <u>Manual</u>, § 21.632-34.

[80] Ex. B.

[81] *See Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 234-35, overruled on other grounds by Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269-70; 4 <u>Newberg</u>, supra, § 11.25.

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Notice, is complete as well.[82] The third and last step in the class action settlement approval process is the final approval hearing at which the Court shall determine whether the settlement is fair, adequate, and reasonable. At the final approval hearing, scheduled for August 7, 2024, Class Members will have the opportunity to be heard regarding the settlement, and Class Counsel will present evidence and argument in support of the settlement.[83]

2. The terms of the settlement disclose no grounds to doubt its fairness.

Under Code of Civil Procedure § 382, a court inquires whether the settlement is "fair, adequate, and reasonable."[84] A preliminary review of the terms of the proposed settlement shows that it is fair. During this litigation, the Parties have engaged in significant investigation into the factual and legal claims presented in the complaint. Defendant and Plaintiff exchanged a considerable amount of information and documentation and further apprised each other of their respective factual contentions, legal theories, and defenses.[85] Moreover, during the information exchange, the Parties have engaged in extensive good faith, arms-length negotiations aimed at settling their disputes.[86]

The settlement reached by the Parties provides monetary payments to Class Members. The presumption of fairness and adequacy is especially appropriate here because the reaction of Class Members has been overwhelmingly positive – not a single person has objected and only one individual is in the process of opting-out of the settlement.[87] Accordingly, because the four circumstances identified in *Dunk* are present here, it is appropriate for the Court to presume that the settlement is worthy of final approval.[88]

3. Each of the relevant criteria supports final approval of the settlement.

In deciding whether to grant final approval to a class action settlement, California courts consider several factors, including the following: (1) the value of the settlement; (2) the

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[82] *See* Ex. B; Simpluris Decl. at ¶ 8, Ex. A. *See also*, Cal. C.C.P. § 382.
[83] *See* Manual, § 21.634.
[84] *See Wershba, supra*, 91 Cal.App.4th at 244-45; *Dunk, supra*, 48 Cal.App.4th at 1801.
[85] Grover Decl. at ¶¶ 9-10.
[86] *Id.*
[87] Simpluris Decl. at ¶¶ _; Grover Decl. at ¶¶ 28, 40.
[88] *See Dunk*, *supra*, 48 Cal.App.4th at 1802; *see also*, *Kullar*, *supra*, 168 Cal.App.4th at 129-30.

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complexity, expense, and likely duration of the litigation in the absence of settlement; (3) the extent of discovery completed and the stage of the proceedings when settlement was reached; (4) the experience and views of class counsel; and (5) the reaction of class members.[89] As described below, each of these criteria supports final approval of the settlement.

a) The value of the settlement favors final approval.

The settlement provides a good result for Class Members in terms of a cash settlement payable in a single payment. The amounts to be paid are not nominal or symbolic.

If there are no additional opt-outs, 307 Settlement Class Members will receive Individual Settlement Payments from the NSA.[90] Each of the Settlement Class Members will receive, on average, a gross settlement payment of $1,223.32.[91] The highest gross Individual Settlement Payment is approximately $1,702.44 and the lowest is $115.60.[92] This a substantial benefit in relation to the claimed harm and justifies the final approval of the settlement.

b) The risk, complexity, expense, and likely duration of continued litigation weigh in favor of final approval.

Courts also consider the risk, expense, and duration of the litigation in the absence of settlement.[93] In applying this factor, a court should weigh the benefits of the settlement against the expense and delay involved in achieving an equivalent or more favorable result at trial.[94]

1. The risks of continued litigation are substantial. Of particular relevance to the proposed settlement's reasonableness is the fact that Defendant has legal and factual grounds for defending this action. Defendant consistently has asserted that it has complied at all times with the California Labor Code, the California Wage Orders, and all applicable California state law. Further, recent California Supreme Court case law has interpreted the "good faith" defense in a manner that makes it more difficult for employees to obtain certain penalties, including Labor

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[89] *See Wershba*, *supra*, 91 Cal.App.4th at 244-45; *Dunk*, *supra*, 48 Cal.App.4th at 1801.
[90] Ex. A at § III.M.2.a; *see also*, §§ I.S, I.QQ; Simpluris Decl. at ¶ 11; Grover Decl. at ¶ 28.
[91] Grover Decl. at ¶ 28.
[92] Simpluris Decl. at ¶ 17.
[93] *See Dunk*, *supra*, 48 Cal.App.4th at 1801; *Briseño v. Henderson* (9th Cir. 2021) 998 F.3d 1014, 1023-24.
[94] *See Young v. Katz* (5th Cir. 1971) 447 F.2d 431, 433.

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Code § 203 waiting time penalties.[95] *Naranjo II* found that, if an employer who reasonably believes that its conduct was lawful, it will not be subject to penalties that are intended to deter willful or intentional misconduct.[96] In other words, *Naranjo II* approved a relatively low bar for establishing a good faith defense to avoid Labor Code § 203 penalties.[97] Defendant also contended that Plaintiff could not satisfy the criteria to certify a class under Code of Civil Procedure § 382 and would lose a contested class certification motion.[98]

Employment class actions are expensive and time-consuming to prosecute. Continued litigation of this action against Defendant would likely be complex and expensive due to the nature of the claims. Plaintiff faced significant uncertainty and risk, both in not prevailing on the merits and in non-certification, as explained above. In contrast, the settlement ensures timely relief and a substantial and risk-free recovery for the settlement Class.[99]

Further, if the Court were to deny the class certification motion, Class Members would be left without a group remedy for their claims. The other issues presented here would need to be litigated individually in Superior Courts in a piecemeal, costly, and time-consuming fashion.

c) Disclosure of documents and data demonstrating the strengths and weaknesses of this action was completed prior to entering into the settlement.

The extent of discovery that has been completed and the stage of the litigation are factors that courts consider in determining the fairness of a settlement.[100] As noted above, informal discovery took place between the Parties in which Defendant and Plaintiff exchanged a considerable amount of relevant information.[101] The information exchanged through informal

[95] *Naranjo v. Spectrum Sec. Serv., Inc.* (2024) 15 Cal.5th 1056, 1077-81 ("*Naranjo II*"). Although the Court addressed whether a good faith defense exists for the "knowing and intentional" requirement for Labor Code § 226(e)(1) penalties, the Court did so by analyzing the "willfulness" requirement for Labor Code § 203 penalties, finding the two should be harmonized. *Id.*
[96] *Id.* at 1077-81.
[97] *Id.* at 1078 ("'[s]o long as no other evidence suggests the employer acted in bad faith, presentation of a good faith defense, based in law or fact, will negate a finding of willfulness,'" quoting *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1204 and citing other cases).
[98] Grover Decl. at ¶ 65.
[99] Grover Decl. at ¶¶ 37-40, 65.
[100] *See Dunk*, *supra*, 48 Cal.App.4th at 1801.
[101] Grover Decl. at ¶¶ 9-10.

discovery enabled Plaintiff to evaluate the strengths, weaknesses and risks of the class claims and defenses and to negotiate a fair, reasonable, and adequate settlement.[102]

d) The experience and views of counsel favors final approval.

Class Counsel supports the settlement as fair, adequate, reasonable, and in the best interests of the Class as a whole.[103] The endorsement of qualified and well-informed counsel of the settlement as fair is entitled to significant weight. [104]

e) Class Members' positive reaction to the settlement favors final approval.

Finally, courts look at the reaction of class members to determine if a settlement that directly affects their interests should be approved as fair, adequate, and reasonable. Of great importance is the fact that, as of this date, no Class Member has objected and only Class Member has indicated he wants to opt-out.[105] In light of such a positive reaction by the Class Members, the Court should construe the overwhelming non-opposition to the settlement as a strong indication of the Class Members' support for the settlement as fair, adequate, and reasonable.

4. <u>The Settlement Class meets all of the requirements for certification for settlement purposes under Code of Civil Procedure § 382.</u>

The proposed settlement class meets all requirements for certification of a settlement class, as summarized below.

a) The proposed settlement Class is ascertainable and too numerous to make joinder practicable.

A class is "ascertainable when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary."[106] In this case, the members of the proposed settlement

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[102] *Id*.

[103] Grover Decl. at ¶¶ 31-40.

[104] *See Dunk*, *supra*, 48 Cal.App.4th at 1802; *In re Omnivision Techs.* (N.D. Cal. 2007) 559 F. Supp. 2d 1036, 1043 ("The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." (internal quotations and citation omitted).

[105] Simpluris Decl. at ¶ 11; Grover Decl. at ¶¶ 28, 40.

[106] *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 961, 980 (internal quotation marks and citation omitted).

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Class are identifiable from Defendant's records.[107] The settlement Class is comprised of 308 current and former employees of Defendant.[108] The Settlement Class is ascertainable sufficiently numerous to warrant certification.[109]

b) Questions of law and fact common to Class Members predominate.

Here, the Class Members' claims all stem from a common set of circumstances. All Class Members worked for Defendant as hourly, non-exempt, field service technician employees working in California during the relevant time period. Plaintiff contends that all Class Members were subject to Defendant's uniform practices and policies, including those regarding pay for on-call/standby time, meal periods, rest breaks, wage statements, termination pay and expense reimbursement. Those uniform policies and practices are at the core of Plaintiff's allegations that Defendant violated the Labor Code and create questions of law and fact common to all Class Members. All Class Members seek the same legal remedies under the same state laws.[110]

Furthermore, the common questions regarding Defendant's wage payment policies and practices for pay for on-call/standby time, meal periods, rest breaks, termination pay and expense reimbursement are among the key issues that will determine Defendant's alleged liability to the proposed settlement Class. Plaintiff contends that common questions will predominate over any individual questions that may arise. Under these circumstances, the requirements that common questions of law and/or fact exist among the proposed Class Members and will predominate over individual questions are satisfied for purposes of certifying the Class for settlement.[111]

c) The proposed Class Representative's claims are typical of the Class Members' claims.

A class representative's claims are typical when they arise from the same event or course of conduct that gives rise to the claims of the class, and are based on the same legal theory.[112] In this case, the named Plaintiff contends that he, like all Class Members, worked for Defendant in

[107] Grover Decl. at ¶ 44; *see* Simpluris Decl. at ¶ 6.
[108] Grover Decl. at ¶ 44.
[109] *See id.*
[110] *Id.* at ¶ 45.
[111] *Id.*
[112] *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47.

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California as an hourly, non-exempt field service technician employee and was subject to Defendant's uniform policies and practices regarding compensation, meal and rest break, wage statements and expense reimbursement. Thus, Plaintiff's claims and the Class Members' claims arise from the same course of conduct.[113]

d) The proposed Class Representative will adequately represent the Class.

The named Plaintiff also has demonstrated that he will aggressively and competently assert the Class Members' interests. Plaintiff has retained competent counsel, experienced in litigating class action claims in the wage and hour context.[114]

e) Class treatment is superior to individual trials.

For purposes of settlement only, the parties have agreed that certification of the settlement Class is appropriate.[115] The only alternative to certifying a case like this for settlement purposes or otherwise as a class action would be to force hundreds of individuals to file individual actions. As the California Supreme Court has stated, "[t]he relevant comparison lies between the costs and benefits of adjudicating plaintiffs' claims in a class action and the costs and benefits of proceeding by numerous separate actions – not between the complexity of a class suit that must accommodate some individualized inquiries and the absence of any remedial proceeding whatsoever."[116] Here, proceeding with 300-plus trials would likely require this and other courts to hear similar testimony regarding Defendant's alleged pay practices over and over again. The inefficiency and resulting inconsistent judgments that could result from numerous individual trials would warrant certifying this case as a class action.

C. The PAGA settlement warrants approval.

Labor Code § 2699(l)(2) requires that the court review and approve any PAGA settlement. Class action requirements do not apply to PAGA actions.[117] For all of the reasons stated above,

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[113] Grover Decl. at ¶ 45.

[114] *See* Grover Decl. at ¶¶ 2-4, 47; *see also* Declaration of Daniel F. Gaines, submitted in support of Plaintiff's motion for final approval and motion for fees and costs, at ¶¶ 2-5, Ex. A.

[115] Ex. A at § II.A.

[116] *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 339, n. 10.

[117] *Arias v. Superior Court* (2009) 46 Cal.4th 969, 974.

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the Settlement is fair, reasonable and adequate, and should be approved. As part of the Settlement, Defendant has agreed to pay $25,000 to settle the PAGA penalty claims, of which a payment of $18,750 will go to the LWDA for education and enforcement purposes.[118]

The circumstances of the settlement, rather than the amount allocated to PAGA claims, determine whether a PAGA settlement is appropriate.[119] In *Nordstrom Com'n Cases*, the state appellate court held that the court can approve a settlement even when the parties did not allocate any dollars to the PAGA claims.[120] Here, Plaintiff believes that the agreed upon allocation between PAGA and direct Class Member payments is appropriate and request that the Court approve this portion of the Settlement.[121]

"PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action."[122] To offer as much information as reasonably possible, the Parties agreed to provide individualized information in the Notice regarding each Aggrieved Employee's estimated Individual PAGA Payment.[123] If the Court grants final approval of the Settlement, all of the Aggrieved Employees will receive Individual PAGA Payments.[124]

Plaintiffs therefore seek the Court's approval of the PAGA portion of the Settlement, including the $25,000 PAGA Payment, the distribution plan for the PAGA Payment, and the PAGA Release.[125]

VI. CONCLUSION

For the foregoing reasons, Plaintiff requests that the Court grant final approval of this settlement. A [Proposed] Order Granting Motions for Final Approval and for Award of

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[118] Ex. A at §§ I.Z, III.M.5; Lab. Code § 2699(i).
[119] *Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589.
[120] *Id.*
[121] Grover Decl. at ¶¶ 35-36.
[122] *See e.g., Turrieta v. Lyft, Inc*. (2021) 69 Cal.App.5th 955, 974 ("PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action."); *Baumann v. Chase Inv. Servs. Corp*. (9th Cir. 2014) 747 F.3d 1117, 1122 (same).
[123] *See* Ex. A at §§ III.L.2.b, III.M.2.b, *see also*, §§ I.R, I.Z.
[124] *See* Ex. A at §§ I.R, III.M.2.b.
[125] Ex. A at §§ I.C, I.R, I.Z, I.AA, I.BB, III.D, III.M.2.b, III.M.5.

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Reasonable Attorneys' Fees and Costs, Class Representative Incentive Award/General Release Payment, and Settlement Administration Fees is submitted herewith.

Respectfully submitted,

Dated: July 3, 2025

KELLER GROVER LLP

By: ______________________________

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PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On **July 3, 2025** in the case of *Cole v. Xerox Corporation*, Merced County Superior Court case number 24CV-06565, I served the foregoing document(s):

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

on the interested party(ies) below, using the following means:

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☒	(BY ELECTRONIC SERVICE) by electronically mailing a true and correct copy in PDF format through our electronic mail system to the email address(es) set forth above, or as stated on the attached service list per agreement between the parties.
☒	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

JOEY GONZALEZ