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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **IN AND FOR THE COUNTY OF CONTRA COSTA**

17 FERNANDO RAMOS and KEVIN
18 NIKAIDO, individuals; all others
similarly situated, and on behalf of the
19 general public,

20 Plaintiffs,

21 v.

22 DAVIDON HOMES a California limited
partnership; DAVIDON
23 CORPORATION; and
DOES 1-100, inclusive,
24

25 Defendants.

Case No. C23-01240

*[Assigned for All Purposes to the
Hon. Edward G. Weil, Dept. 39]*

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

Date:
Time:

Complaint Filed: May 24, 2023
Trial Date: None Set

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 2

III. INVESTIGATION AND LITIGATION HISTORY 3

 a. Discovery and Investigation 3

 b. The Parties Agreed to Attend Mediation..... 4

 c. The Parties’ Staunchly Conflicting Positions 4

 i. Rest Periods 4

 ii. Meal Periods 6

 iii. Unpaid Wages 7

 iv. Wage Statements and Waiting Time Penalties 7

 v. PAGA Penalties..... 9

IV. TERMS OF THE PROPOSED SETTLEMENT 9

 a. Deductions from the Settlement 9

 b. Calculation of Settlement Payments to Class Members 10

 c. Notice to the Class..... 11

 i. Requests for Exclusion 12

 ii. Objections 13

 iii. Disputes 13

 d. Returned Notices 13

 e. Distribution of Funds..... 14

 f. Release of Claims 15

V. ARGUMENT 15

 a. Class Action Settlements Are Subject to Court Review and Approval Under the
California Rules of Court 15

 b. The Settlement is Fair, Reasonable, and Adequate 16

 i. The Settlement was Reached as a Result of Arm’s-Length Negotiations 16

1	ii. The Settlement is the Result of Thorough Investigation and Discovery.....	17
2	iii. Counsel for Both Parties are Experienced in Similar Litigation	17
3	iv. The Proposed Settlement is a Reasonable Compromise of Claims.....	18
4	1. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiffs’ Case	
5	and the Risks and Costs of Further Litigation	18
6	2. Potential Exposure on Plaintiffs’ Claims	19
7	3. The Settlement Amount of \$900,000 is Reasonable	23
8	c. Provisional Certification Should be Granted.....	23
9	d. Notice to the Class Complies with California Rule of Court 3.769(f)	24
10	VI. CONCLUSION	25
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

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Cases

<i>Aguilar v. Cintas Corp. No. 2</i> (2006) 144 Cal. App. 4th 121	19
<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157	8
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<i>Avila v. Cold Spring Granite Co.</i> (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142	9, 22
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F. Supp. 610	17
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<i>Dunbar v. Albertson’s Inc.</i> (2006) 141 Cal. App. 4th 1422	19
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	16, 17, 24
<i>Duran v. U.S. Bank National Assn.</i> (2014) 59 Cal.4th 1	9
<i>Glob. Minerals & Metals Corp. v. Superior Court</i> (2013) 113 Cal.App.4th 836	24
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126	15
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	24
<i>Harris v. Superior Court</i> (2007) 154 Cal. App. 4th 164	19
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<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i> (1981) 452 U.S. 905	16
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	18
<i>Maldonado v. Epsilon Plastics, Inc.</i> (2018) 22 Cal.App.5th 1308	8, 21
<i>Mendiola v. CPS Security Solutions, Inc.</i> (2015) 60 Cal.4th 833	7
<i>Morillion v. Royal Packing Co.</i> (2000) 22 Cal.4th 575	7
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	18
<i>Naranjo v. Spectrum Security Services, Inc.</i> (2024) 15 Cal.5th 1056	8
<i>Officers for Justice v. Civil Serv. Comm’n</i> (9th Cir. 1982) 688 F.2d 615	23
<i>Rebney v. Wells Fargo Bank</i> (1990) 220 Cal.App.3d 1117	23

1	<i>Sav-On v. Superior Court</i> (2004) 34 Cal.4th 319.....	19
2	<i>Tech-Bilt v. Woodward-Clyde & Associates</i> (1985) 38 Cal.3d 488	18
3	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	15
4	<i>Walsh v. IKON Solutions, Inc.</i> (2007) 148 Cal. App. 4th 1440.....	19
5	<i>Wershba v. Apple Computers, Inc.</i> (2001) 91 Cal.App.4th 2	23, 24
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1 **I. INTRODUCTION**

2 Plaintiffs Fernando Ramos and Kevin Nikaido (hereinafter “Plaintiffs”), on behalf of
3 themselves and the approximately 209 Class Members, respectfully request that this Court
4 preliminarily approve the Joint Stipulation and Settlement Agreement (hereinafter “Agreement”¹)
5 entered into between Plaintiffs and Davidon Homes and Davidon Corporation (hereinafter
6 “Defendants” or “Davidon”) (hereinafter Plaintiffs and Defendants are collectively referred to as
7 the “Parties”). The Parties’ Agreement seeks to resolve claims raised against Defendants in this
8 matter in exchange for a non-reversionary \$900,000 Gross Settlement Amount. The proposed
9 Class is comprised of all hourly, non-exempt employees who were employed by Defendants at
10 any time during March 19, 2020, to October 29, 2024 within the State of California.² It is
11 requested that the Court grant preliminary approval as, when analyzing the strengths and
12 vulnerabilities of the claims and Defendants’ potential liability exposure, this proposed settlement
13 of \$900,000 is well within the range of reasonableness. This settlement is estimated to pay Class
14 Members an average payment of approximately \$2,368.³ The proposed Agreement satisfies all
15 the criteria for preliminary approval under Rule 3.769 of the California Rules of Court.

16 As the following sections show, Class Counsel are convinced that the proposed settlement
17 is in the best interests of the Class based on the negotiations and a detailed knowledge of the
18 issues presented in this action. The length and risks of trial and perils of litigation that affect the
19 value of the claims were all carefully weighed. The defenses asserted by Defendants, the
20 uncertainty of class certification, the difficulties of complex litigation, the lengthy process of
21 establishing specific damages and various possible delays and appeals, were also carefully
22 considered by Class Counsel in arriving at the proposed settlement. The Agreement was the
23 product of an all-day mediation with experienced mediator Jill R. Sperber, Esq. and was the
24 product of non-collusive, arm’s-length negotiations by informed counsel and Parties. The
25

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

28 ² Exhibit 1 at Paragraph 6.

³ The Net Settlement Amount is approximately \$495,000. \$495,000 divided by 209 class
members = \$2,368.42.

1 settlement is fair, reasonable, and adequate. Accordingly, Plaintiffs seek: (1) preliminary approval
2 of the terms contained in the Agreement; (2) provisional certification of the Class; (3)
3 appointment of Plaintiffs as Class Representatives; (4) appointment of Molteni Employment Law,
4 The Byrne Law Group, and Mara Law Firm, PC, as Class Counsel; (5) approval of the Parties'
5 Notice of Class Action Settlement⁴ (referred to herein as the "Class Notice" or "Notice") and
6 method of notifying the Class about the settlement; and (6) a hearing date for final approval.

7 **II. BACKGROUND**

8 Defendants are apartment management companies that manage apartment complexes
9 throughout the state of California. Defendants employ hourly, non-exempt employees, such as
10 Plaintiffs, to work at the complexes they manage.

11 On May 24, 2023, Plaintiff Ramos filed a PAGA complaint in the Contra Costa County
12 Superior Court asserting the following causes of action: (1) Failure to Pay Regular and Minimum
13 Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to
14 Authorize and Permit Rest Periods; (5) Failure to Reimburse for Business Expenses; (6) Failure
15 to Provide Itemized Accurate Wage Statements; (7) Continuing Wages Penalty; (8) Failure to
16 Provide Employment Records; (9) Unfair Competition; (10) Private Attorneys General Act of
17 2004; (11) Retaliation for Using Accrued Sick Days; and (12) Wrongful Termination in Violation
18 of Public Policy. This case was designated with Case Number C23-01240.

19 A class action complaint was filed by Plaintiff Nikaido on March 19, 2024, Defendants
20 and Apartment Management Consultants, LLC⁵ in the Contra Costa County Superior Court (Case
21 No. C24-00721). The complaint alleges the following causes of action against Defendant: (1)
22 Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to
23 Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Adopt a
24 Compliant Sick Pay/Paid Time Off Policy; (6) Knowing and Intentional Failure to Comply with
25 Itemized Employee Wage Statement Provisions; (7) Failure to Pay all Wages Due at the Time of
26 Termination; and (8) Violation of Unfair Competition Law.

27 ⁴ The Class Notice is attached to the Agreement as Exhibit A.

28 ⁵ Apartment Management Consultants is not a part of the Parties' settlement and Plaintiff Nikaido
will continue to pursue his class action case against Apartment Management Consultants, LLC.

1 Plaintiff Nikaido submitted his Notice of Labor Code Violations to the LWDA on March
2 6, 2024. On June 12, 2024, Plaintiff Nikaido filed a PAGA representative action complaint against
3 Defendants and Apartment Management Consultants, LLC⁶ in the Contra Costa County Superior
4 Court (Case No. C24-01530). The complaint sought civil penalties under the PAGA in relation
5 to the following alleged violations: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay
6 All Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods;
7 (5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement
8 Provisions; (6) Failure to Pay all Wages Due at the Time of Termination; and (7) Failure to Adopt
9 a Compliant Sick Pay/Paid Time Off Policy and Failure to Provide Written Notice Setting Forth
10 Amount of Sick Leave Available.

11 As part of the Parties' settlement, the Parties stipulated to allow Plaintiff Ramos to file a
12 First Amended Complaint to (1) add Kevin Nikaido as a named Plaintiff; (2) add David Mara and
13 Jill Vecchi of Mara Law Firm, PC as class counsel; and (3) add the additional class and PAGA
14 claims against Defendants that are pled in Plaintiff Nikaido's class and PAGA actions.⁷ The
15 Parties filed a stipulation to allow Plaintiff Ramos to file a First Amended Complaint on March
16 19, 2025 and the First Amended Complaint was filed on April 2, 2025.

17 **III. INVESTIGATION AND LITIGATION HISTORY**

18 **a. Discovery and Investigation**

19 The Parties conducted significant investigation and discovery of the facts and law both
20 before and after this action was filed. Through informal discovery, Defendants produced over
21 7,000 pages of documents. These included relevant policy documents that covered employees'
22 employment with Defendants, such as employee handbooks. Included within these documents
23

24 ⁶ Just as with his class case, Plaintiff will continue to pursue his PAGA claims against Apartment
Management Consultants, LLC.

25 ⁷ Pursuant to the Parties' Agreement, upon receipt of a copy of the stamped First Amended
26 Complaint, Plaintiff Nikaido will dismiss without prejudice the class and PAGA claims against
27 Defendants Davidon Homes and Davidon Corporation only in the matters of *Kevin Nikaido v.*
Apartment Management Consultants LLC; Davidon Homes; and DOES 1-100 (C24-00721);
28 *Kevin Nikaido v. Apartment Management Consultants LLC; Davidon Homes; and Davidon*
Corporation; and DOES 1-100 (C24-01530). (Exhibit 1 at Paragraph 4). This will leave these
matters pending against only Apartment Management Consultants, LLC.

1 were Defendants’ wage and hour policies, including their meal and rest period policies.
2 Defendants also produced a sampling of time and wage records for Class Members. Plaintiffs also
3 requested, and Defendants provided, the number of current and former employees, as well as the
4 number of workweeks worked by Class Members during the relevant time period, to establish a
5 potential exposure model in preparation for mediation. From this discovery, Plaintiffs and their
6 Counsel were able to analyze Defendants’ liability in this action and prepare a realistic damage
7 model. (Mara Dec. ¶ 10).

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

9 The Parties attended an all-day mediation presided over by respected wage and hour
10 mediator Jill R. Sperber on August 26, 2024. This meditation was successful. The Parties then
11 met and conferred over all the terms of the settlement and finalized their settlement in the Parties’
12 Agreement. The Parties seek preliminary approval of the Agreement in the instant motion. (Mara
13 Dec. ¶ 11).

14 **c. The Parties’ Staunchly Conflicting Positions**

15 **i. Rest Periods**

16 Plaintiffs allege that that for a portion of the class period employees are not provided with
17 lawful rest periods. Employers have an obligation to provide employees with ten (10) minute rest
18 periods. An employer’s obligation to provide its employees with rest periods arises under the
19 Industrial Welfare Commission Wage Orders. Wage Order 5-2001, Section 12(A) states, “[e]very
20 employer shall authorize and permit all employees to take rest periods, which insofar as
21 practicable shall be in the middle of each work period. The authorized rest period time shall be
22 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
23 hours or major fraction thereof.” (Mara Dec. ¶ 12).

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

1 relinquish any control over how employees spend their break time.” *Augustus*, 2 Cal.5th at 260.
2 At a minimum, to relinquish employer control over how employees spend their break time, the
3 employee must be “free to leave the premises.” *Brinker*, 53 Cal.4th at 1036. As the *Augustus*
4 Court reasoned, the employee must be free to travel five minutes away from the work site so that
5 they can get back within the allotted ten-minute time frame of the break. *Augustus*, 2 Cal.5th at
6 270. Plaintiffs contend that for a portion of the class period, Defendants do not permit employees
7 to leave the premises during rest periods. (Mara Dec. ¶ 13).

8 Defendants contend that they do not require employees to remain on the premises during
9 rest periods and have never required employees to remain on the premises. Defendants argue that
10 to resolve this claim, the factfinder would have to ask whether employees thought they could
11 leave the premises during rest breaks. In addition, Defendants contend that employees did, in fact,
12 leave the premises during rest periods. Defendants assert that should litigation continue, it would
13 present declarations from employees stating that they were free to leave the premises, and did
14 leave the premises, during rest periods. (Mara Dec. ¶ 14).

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

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

28 *Augustus*, *supra*, 2 Cal.5th at 270. (Mara Dec. ¶ 15).

1 Defendants further assert that employees are relieved of all work and employer control
2 during rest periods. And, to the extent there is any limitation placed on rest periods, it is something
3 that arises solely out of the fact that ten (10) minutes is a short amount of time. Therefore,
4 Defendants assert that the limitations placed on employees, if any, are merely inherent to rest
5 periods and not an exertion of employer control. (Mara Dec. ¶ 16).

6 **ii. Meal Periods**

7 Plaintiffs contend that Defendants do not provide employees with meal periods that
8 conform with California law for a portion of the class period. Employers have an obligation under
9 California law to provide employees with thirty (30) minute meal periods. Under California Labor
10 Code section 512(a), “[a]n employer may not employ an employee for a work period of more than
11 five hours per day without providing the employee with a meal period of not less than 30 minutes
12” Cal. Lab. Code § 512(a). An employer “satisfies this obligation [to provide meal periods]
13 if it relieves its employees of all duty, relinquishes control over their activities and permits them
14 a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or
15 discourage them from doing so.” *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
16 1004, 1040. Here, Plaintiffs contend that Defendants did not provide duty-free meal periods for a
17 portion of the class period because Plaintiffs assert that employees are always interrupted during
18 their meal periods by work related phone calls relating to tenant issues, new tenants, vendors, or
19 administrative issues from management. (Mara Dec. ¶ 17).

20 Defendants assert that its meal period policy is and was at all times during the class period
21 lawful and that they have always provided employees with duty-free meal periods in compliance
22 with California law. Defendants contend that they informed employees that they were relieved of
23 all duties during meal periods and did not have to take phone calls during breaks. Defendants
24 contend that if litigation were to continue, the Court would have to ask each employee whether
25 they felt like they had to perform any work duties during meal periods. Therefore, Defendants
26 assert, that class certification is not proper as individualized issues would predominate. (Mara
27 Dec. ¶ 18).

28 ///

1 **iii. Unpaid Wages**

2 Employees must be paid for all “hours worked,” as that phrase is defined in the Wage
3 Order and interpreted by California courts. Hours worked is defined in Wage Order 5-2001 —
4 the Wage Order that governs the class members in this case- as “the time during which an
5 employee is subject to the control of an employer, and includes all the time the employee is
6 suffered or permitted to work, whether or not required to do so.” Wage Order 5-2001, Subd.
7 2(L); *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833. Under this
8 standard, “it is only necessary that the worker be subject to the control of the employer in order
9 to be entitled to compensation.” *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 584.
10 (Mara Dec. ¶ 19).

11 Here, Plaintiffs contend that Defendants fail to pay employees for all hours worked.
12 Plaintiffs allege that employees were not permitted to record more than eight (8) hours of work
13 per day. Plaintiffs contend that employees, however, would have to work additional hours doing
14 work related tasks such as tending to and resolving tenant issues, drafting leases, finishing
15 interviews with potential tenants and communicating with vendors. Plaintiffs assert that because
16 Defendants do not permit employees to record these hours, Defendants do not pay employees for
17 these hours. (Mara Dec. ¶ 20).

18 Defendants contend that they inform employees that all hours must be recorded and that
19 they do not limit employees to recording only eight (8) hours per day. Defendants assert that they
20 have a policy that prohibits off the clock work. Defendants contend that they pay employees for
21 all hours worked, including hours worked over eight (8) in a day. Defendants assert that if
22 litigation were to continue, the Court would have to ask each employee whether they recorded
23 hours in excess of eight (8) in a day and, if not, why they did not record all of their hours worked.
24 Defendants contend that doing so would create individualized issues that would defeat class
25 certification. (Mara Dec. ¶ 21).

26 **iv. Wage Statements and Waiting Time Penalties**

27 Plaintiffs also pursued claims for failure to provide accurate itemized wage statements and
28 waiting time penalty claims. These claims are derivative of Plaintiffs’ meal period, rest period,

1 and unpaid wages claims. Should Plaintiffs’ meal period, rest period, and unpaid wages claims
2 fail, these claims would also fail. (Mara Dec. ¶ 22).

3 In addition, Defendants contend that even if Plaintiffs were successful in their meal and
4 rest period and unpaid wages claims, they would have to prove Defendants “willfully” failed to
5 pay employees the appropriate wages due upon separation of employment. “A willful failure to
6 pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally
7 fails to pay wages to an employee when those wages are due. However, a good faith dispute that
8 any wages are due will preclude imposition of waiting time penalties under Section 203.” Cal.
9 Code Regs. Tit. 8 § 13520. “A ‘good faith dispute’ that any wages are due occurs when an
10 employer presents a defense, based in law or fact, which would preclude any recovery on the part
11 of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that
12 a good faith dispute did exist.” *Id.* (Mara Dec. ¶ 23).

13 Defendants contend that any failure to pay meal period premiums, rest period premiums,
14 or additional wages was not willful. Defendants argue that it would not be liable for waiting time
15 penalties because a “good faith dispute” exists over the payment of those premium wages. *See*
16 Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157,
17 1201. Further, Defendants contend that Plaintiffs would also have to prove that Defendants
18 “knowingly and intentionally” failed to comply with the wage statement requirements under
19 Labor Code § 226. *See Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056.
20 Defendants maintain that they reasonably, and in good faith believe that they were providing a
21 complete and accurate wage statement in compliance with California law. (Mara Dec. ¶ 24).

22 Defendants also argue that Plaintiffs’ meal period, rest period, and unpaid wages claims
23 cannot form the basis of their wage statement claim. Defendants rely on the case *Maldonado v.*
24 *Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the position that employees do not suffer
25 injury under California Labor Code § 226(a) so long as the wage statements correctly reflected
26 the hours worked and the pay received even if the pay is later determined to be inaccurate. (Mara
27 Dec. ¶ 25).

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In addition, Defendants maintain that Plaintiffs' PAGA claims face manageability concerns consistent with the class certification challenges. Specifically, Defendants have due process rights which would not permit Plaintiffs to attempt to generalize violations from disparate anecdotal evidence. *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1. (Mara Dec. ¶ 27).

IV. TERMS OF THE PROPOSED SETTLEMENT

a. Deductions from the Settlement

The Parties have agreed (subject to and contingent upon the Court's approval) that this action be settled and compromised for the non-reversionary total sum of \$900,000 ("Gross

Settlement Amount” or “GSA”), which includes, subject to Court approval: (a) attorneys’ fees of up to \$300,000 (one third of the GSA)⁸ to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administering the settlement, and securing Court approval; (b) actual litigation expenses estimated not to exceed \$40,000;⁹ (c) a Class Representative Enhancement Payment to each of the named class representatives in a sum not to exceed \$5,000 each (\$10,000 total) in consideration for prosecuting this class action, serving as Class Representatives, work performed, and risks undertaken for the payment of attorneys’ fees and costs in the event they had been unsuccessful in the matter; (d) settlement administration fees and expenses to APEX, estimated not to exceed approximately \$10,000;¹⁰ and (e) \$45,000 allocated to Plaintiffs’ claims under the PAGA. Of this payment, 75%, or \$33,750 will be provided to the LWDA, and 25%, or \$11,250, will be available for distribution to Aggrieved Employees.¹¹

b. Calculation of Settlement Payments to Class Members

After all Court-approved deductions from the GSA, it is estimated that \$495,000 (“Net Settlement Amount” or “NSA”), less employee taxes on the “wage portion” of the settlement payment, will be distributed to Participating Class Members.¹² Subject to the terms and conditions of the settlement, Participating Class Members will receive a pro-rated share of the Net Settlement Amount, less applicable withholdings, based on the number of workweeks they worked in California while employed by Defendants during the Class Period. The formula for distribution

⁸ Although Class Counsel seeks attorneys’ fees under the percentage method, Class Counsel will also provide the Court with their lodestar information at final approval.

⁹ These will be tabulated and presented to the Court at final approval. Plaintiffs will only seek the amount of actual costs incurred during litigation. Should the actual costs be lower than \$40,000, the difference will be added to the Net Settlement Amount for disbursement to Participating Class Members.

¹⁰ APEX will present to the Court a declaration in conjunction with the final approval motion outlining the costs of the settlement administration process. If the settlement administration costs are lower than the amount allocated in the Agreement, the difference will be added to the Net Settlement Amount for distribution to Participating Class Members.

¹¹ Aggrieved Employees are all Class Members who worked for Defendants at any time from March 6, 2022 to October 29, 2024. (Exhibit 1 at Paragraph 3).

¹² Participating Class Members are all Class Members who do not submit a valid and timely request to exclude themselves from this Settlement. (Exhibit 1 at Paragraph 35).

1 to Participating Class Members shall be calculated as follows: Defendants shall provide the
2 Settlement Administrator with the total number of work weeks worked by all Class Members
3 during the Class Period; the Settlement Administrator shall then divide the Net Payment by the
4 total number of work weeks resulting in a value for each work week attributable to Class Members
5 (“Work Week Value”); the Settlement Administrator shall then take the number of work weeks
6 worked by each Class Member and multiply it by the Work Week Value. (Exhibit 1 at Paragraph
7 61.1.1). This payment will be divided into a “wage portion” to compensate Participating Class
8 Members for alleged unpaid wages and a “non-wage portion” to compensate Participating Class
9 Members for alleged interest and penalties. The wage portion will make up one-third of each
10 Participating Class Members’ individual settlement payment, and the non-wage portion will make
11 up two-thirds of each Participating Class Members’ individual settlement payment. (Exhibit 1 at
12 Paragraph 61.2).

13 In addition, Aggrieved Employees will receive a pro-rated share of the Net Settlement
14 Amount based on the number of pay periods they worked in California while employed by
15 Defendants during the PAGA Period. The formula for distribution to Aggrieved Employees shall
16 be calculated as follows: Defendants shall provide the Settlement Administrator with the total
17 number of pay periods worked by all Aggrieved Employees during the PAGA Period; the
18 Settlement Administrator shall then divide the Net PAGA Settlement Amount by the total number
19 of pay periods resulting in a value for each pay period attributable to Aggrieved Employees (“Pay
20 Period Value”); the Settlement Administrator shall then take the number of pay periods worked
21 by each Aggrieved Employee and multiply it by the Pay Period Value. (Exhibit 1 at Paragraph
22 62.1.1). This payment will be treated as 100% penalties. (Exhibit 1 at Paragraph 62.2).

23 Under no circumstances will any portion of the \$900,000 settlement revert to Defendants.

24 **c. Notice to the Class**

25 Within ten (10) calendar days after entry of the Preliminary Approval Order, Defendants
26 shall deliver to the Settlement Administrator an electronic database, which will list the Class
27
28

1 Data¹³ and PAGA Data¹⁴. (Exhibit 1 at Paragraph 65.4.1).

2 Within ten (10) calendar days after receipt of the Class and PAGA Data, the Settlement
3 Administrator will mail via first-class regular U.S. Mail the Class Notice to all identified Class
4 Members and Aggrieved Employees using the mailing address information provided by
5 Defendants and the results of the search of the National Change of Address Database on all Class
6 Members and Aggrieved Employees. (Exhibit 1 at Paragraph 65.4.3).

7 After notices are mailed, Class Members will have forty-five (45) days to respond to the
8 settlement (this is referred to as the “Response Deadline”). (Exhibit 1 at Paragraph 41). Class
9 Members may respond to the settlement by requesting to be excluded from it or objecting to it.
10 Class Members can also file a dispute as to the number of workweeks attributed to them.

11 **i. Requests for Exclusion**

12 The Class Notice will provide that Class Members who wish to exclude themselves from
13 the settlement must mail to the Settlement Administrator a written request for exclusion. The
14 written request for exclusion must: (a) state the Class Member’s name, address, telephone
15 number, and the last four digits of the Class Member’s social security number or employee
16 identification number; (b) state the Class Member’s intention to exclude themselves from or opt-
17 out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class
18 Member or his or her lawful representative; and (e) be postmarked no later than the Response
19 Deadline. (Exhibit 1 at Paragraph 65.6).

20 ///

21
22 ¹³ The Class Data is the electronic database Defendants shall deliver to the Settlement
23 Administrator which will list the following information for each Class Member: (1) first and last
24 name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5)
25 the total number of weeks during which the Class Member performed work during the Class
Period. The Class Data shall be based on Defendants’ payroll, personnel, and other business
records. (Exhibit 1 at Paragraph 8).

26 ¹⁴ The PAGA Data is the electronic database Defendants shall deliver to the Settlement
27 Administrator which will list the following information for each Aggrieved Employee: (1) first
28 and last name; (2) last known mailing address; (3) social security number; (4) telephone number;
and (5) the total number of pay periods during which the Aggrieved Employee performed work
during the PAGA Period as an Aggrieved Employee. The PAGA Data shall be based on
Defendants’ payroll, personnel, and other business records. (Exhibit 1 at Paragraph 31).

1 **ii. Objections**

2 The Class Notice will provide that the Class Members who wish to object to the settlement
3 must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no
4 later than the Response Deadline. Any Objections shall state: (a) the objecting person's full name,
5 address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c)
6 describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d)
7 list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e)
8 provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval
9 hearing. (Exhibit 1 at Paragraph 65.5).

10 **iii. Disputes**

11 If a Class Member or Aggrieved Employee who receives a Class Notice wishes to dispute
12 the number of work weeks listed on the Class Notice, the Class Member or Aggrieved Employee
13 may notify the Settlement Administrator by mail or telephone no later than the Response Deadline
14 and should produce any available supporting evidence, such as wage statements, offers of
15 employment, termination letters, and/or other employment records, to the Settlement
16 Administrator. The documentation should provide evidence of the dates the Class Member or
17 Aggrieved Employee contends he or she worked for Defendants during the Class or PAGA
18 Period. The Settlement Administrator shall then provide the documentation provided by the Class
19 Member or Aggrieved Employee to Defendants. Defendants shall review their records, the
20 documentation provided by the Class Member or Aggrieved Employee, and shall provide
21 information to the Settlement Administrator in response to any such disputed claim. Defendants'
22 records shall be presumed to be determinative, but the Settlement Administrator shall evaluate
23 the evidence submitted by the Class Member or Aggrieved Employee and make the decision as
24 to which dates should be applied. The determination by the Settlement Administrator shall be
25 final and binding. (Exhibit 1 at Paragraph 65.7).

26 **d. Returned Notices**

27 If a Class Notice is returned because of an incorrect address, within five (5) calendar days
28 from receipt of the returned notice, the Settlement Administrator will conduct a search for a more

1 current address for the Class Member and re-mail the Class Notice to the Class Member. The
2 Settlement Administrator will use the National Change of Address Database and skip traces to
3 attempt to find the current address. The Settlement Administrator will be responsible for taking
4 reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is
5 returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a
6 minimum, the tracking of all undelivered mail, performing address searches for all mail returned
7 without a forwarding address, and promptly re-mailing to Class Members for whom new
8 addresses are found. (Exhibit 1 at Paragraph 65.4.4).

9 **e. Distribution of Funds**

10 Defendants shall wire or otherwise provide to the Settlement Administrator the Gross
11 Settlement Amount no later forty-five (45) calendar days after the Effective Final Settlement
12 Date.¹⁵ (Exhibit 1 at Paragraph 22; *see also* Exhibit 1 at Paragraph 65.12.1).

13 Within ten (10) calendar days after the Settlement Administrator's receipt of the Gross
14 Settlement Amount, the Settlement Administrator shall disburse: (1) the Net Settlement Amount
15 to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to Aggrieved
16 Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and
17 costs, as approved by the Court; (4) the Class Representative Service Payments paid to the Class
18 Representatives, as approved by the Court; (5) the Administration Costs, as approved by the
19 Court; and (6) the LWDA Payment to the LWDA. (Exhibit 1 at Paragraph 18; *see also* Exhibit 1
20 at Paragraph 65.12.2).

21 Participating Class Members and Aggrieved Employees must cash or deposit their
22 Individual Settlement Share checks within one hundred and eighty (180) calendar days after the
23 checks are mailed to them. If any checks are not redeemed or deposited within ninety (90)
24 calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating
25 that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and

26 _____
27 ¹⁵ The Effective Final Settlement Date is the later of the time when either: (i) the Judgment of the
28 Court granting final approval of the settlement is final and no longer subject to appeal, if there
are objections, or (ii) the date the Court enters an order on final approval of the settlement, if there
are no objections. (Exhibit 1 at Paragraph 19).

1 become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks
2 remain uncashed or not deposited by the expiration of the 90-day period after mailing the
3 reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after
4 the checks are mailed, cancel the checks. All funds associated with the Individual Settlement
5 Share checks returned as undeliverable and funds associated with those checks remaining un-
6 cashed shall be tendered to the State of California's Unpaid Wage Fund, in the name of the Class
7 Member. In such event, the class member who did not cash his or her check shall nevertheless
8 remain bound by the settlement. (Exhibit 1 at Paragraph 65.14).

9 **f. Release of Claims**

10 In exchange for a portion of the Net Settlement Amount, Participating Class Members will,
11 upon the Effective Final Settlement Date, release and discharge the Released Parties from any
12 and all claims pled in the operative complaint, or claims that could have been pled based on the
13 factual allegations pled in the operative complaint. The Released Claims shall be for the Class
14 Period. (Exhibit 1 at Paragraph 38; *see also* Exhibit 1 at Paragraph 66).

15 In addition, in exchange for a portion of the PAGA Payment, all Aggrieved Employees
16 will, upon the Effective Final Settlement Date, release any and all claims for civil penalties under
17 the California Labor Code and the Private Attorneys General Act of 2004 pled in the operative
18 Notices to the LWDA and the operative complaint. The PAGA Released Claims shall be for the
19 PAGA Period. (Exhibit 1 at Paragraph 39; *see also* Exhibit 1 at Paragraph 67).

20 In addition, Plaintiffs have agreed to a general release of their claims. (Exhibit 1 at
21 Paragraph 68).

22 **V. ARGUMENT**

23 **a. Class Action Settlements Are Subject to Court Review and Approval Under
24 the California Rules of Court**

25 Rule 3.769 requires court approval for class action settlements.¹⁶ "Before final approval,
26 the court must conduct an inquiry into the fairness of the proposed settlement." (California Rules

27 ¹⁶ The California Supreme Court also has authorized California's trial courts to use Federal Rule
28 23 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court*
(1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate,
therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

of Court, Rule 3.769(g)). Rule 3.769 further requires a noticed motion for preliminary approval of class settlements:

- (a) A settlement or compromise of an entire class action, or a cause of action in a class action, or as to a party, requires the approval of the court after hearing.
- ...
- (c) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

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

b. The Settlement is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is **presumed** fair under the following circumstances: (1) the parties reached settlement after arm’s-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Id.* at 1802. As the following shows, all of these elements—with the exception of the percentage of objectors, which cannot be anticipated at this stage of the litigation – bearing on the fairness of the proposed settlement are present here and the Court’s grant of preliminary approval is therefore requested.

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

The settlement was reached as a result of arm’s-length negotiations. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. Prior to, at, and after the mediation, Counsel for the Parties conducted extensive arm’s-length settlement negotiations until the settlement was reached. The terms of the settlement are

1 memorialized in the Agreement which is attached to the Declaration of David Mara, Esq. as
2 Exhibit 1. While Plaintiffs believe in the merits of their case, they also recognize the inherent
3 risks of litigation and understands the benefit of the Class receiving significant settlement funds
4 immediately as opposed to risking continued litigation in achieving class certification, preparing
5 for and conducting a trial, and/or an appeal that may take several more years to litigate.

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

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

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

16 Both Plaintiffs’ Counsel and Defendants’ Counsel are particularly experienced in wage and
17 hour employment law and class actions. Plaintiffs’ Counsel has significant experience in litigating
18 meal period, rest period, unpaid wages, waiting time penalty, and wage statement claims. (Mara
19 Dec. ¶¶ 3-9; Declaration of Cristina Molteni, Esq., ¶¶ 3-5). Plaintiffs’ Counsel has prosecuted
20 numerous wage and hour class action cases on behalf of employees for California Labor Code
21 violations and thus are experienced and qualified to evaluate the class claims and to evaluate
22 settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. This
23 experience instructed Plaintiffs’ Counsel on the risks and uncertainties of further litigation and
24 guided their determination to endorse the proposed settlement.¹⁷ Defendants’ Counsel practices
25 labor and employment law and have represented numerous employers in similar types of claims.
26 Accordingly, both Parties’ Counsel are experienced in wage and hour employment law and class

27 _____
28 ¹⁷ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the
Class Notice has been provided to the class and they have had an opportunity to respond. This
information will be provided to the Court in conjunction with the final approval motion.

1 actions.

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

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

9 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
10 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
11 that of the attorneys.” *Kullar, supra*, 168 Cal.App.4th at 133. *Kullar* does not require an explicit
12 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,
13 provided there is a record which allows “an understanding of the amount that is in controversy
14 and the realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 409. Put
15 differently, “as the court does when it approves a settlement as in good faith under Code of Civil
16 Procedure § 877.6, the court must at least satisfy itself that the class settlement is within the
17 ‘ballpark’ of reasonableness.” *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v.*
18 *Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500. As the following subsections
19 show, the Parties’ investigation and discovery revealed many reasons to discount claims and agree
20 to this settlement.

21 **1. The Settlement is Fair and Reasonable Based on the Strengths**
22 **of Plaintiffs’ Case and the Risks and Costs of Further**
23 **Litigation**

24 The proposed settlement was only possible following significant discovery and an
25 evaluation of Defendants’ relevant policies and procedures, as well as the data that Defendants
26 produced for the putative class as referenced above. This permitted Class Counsel to engage in a
27 comprehensive analysis of liability and potential damages. The discovery conducted allowed
28 Plaintiffs to evaluate the strengths and weaknesses of their theories of liability, which are
predicated on Plaintiffs’ claims that Defendant failed to provide lawful meal and rest periods and

1 failed to pay all wages owed to employees. As explained herein, Defendants maintain that the
2 discovery produced demonstrate that they would succeed at both in denying class certification
3 and on the merits.

4 Although, Plaintiffs believe this case is suitable for certification on the claimed bases that
5 there are company-wide policies that Plaintiffs contend violate California law and uniformly
6 affect the Class Members, Defendants' counterarguments raise uncertainties with respect to both
7 class certification and success on the merits. As the California Supreme Court ruled in *Sav-On v.*
8 *Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's
9 sound discretion. Decisions following *Sav-On* have reached different conclusions, with respect to
10 certification of wage and hour claims.¹⁸ While remaining confident in the strengths of their
11 claims, all of these factors led Plaintiffs to discount the following maximum potential damage
12 exposure.

13 2. Potential Exposure on Plaintiffs' Claims

14 The settlement encompasses approximately 15,507 workweeks. This equates to
15 approximately 62,028 shifts. Employees earned approximately \$31.38 per hour on average. (Mara
16 Dec. ¶ 29).

17 Plaintiffs allege that Defendants failed to provide employees with rest periods in
18 accordance with California law for a portion of the class period. Plaintiffs contend that employees
19 are not permitted to leave the premises during rest periods. If Plaintiffs were to prevail on this
20 claim, Plaintiffs and the Class Members would be entitled to the following potential damages:
21 \$1,693,390. (53,964 affected shifts x \$31.38 = \$1,693,390). (Mara Dec. ¶ 30).

22 Defendants contend that this amount should be zero because they have a lawful rest period
23 policy and practice for the entirety of the class period. Defendants disagree and contend that they
24 do not, and have never, required employees to remain on the premises during rest periods and that

25 ¹⁸ See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of
26 class claiming misclassification and ordering summary adjudication in favor of employees),
27 *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes
28 only); *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 (affirming decertification of
class claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121
(reversing denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal.App.4th 1422
(affirming denial of certification).

1 employees do, in fact, leave the premises during rest periods. Accordingly, Defendants claim
2 Plaintiffs should take nothing on this claim and, if the factfinder agreed, Plaintiffs would take
3 nothing. Although remaining confident in their position, Plaintiffs had no way of knowing how
4 the factfinder would rule on this issue and a substantial discount had to be given to make the
5 settlement possible.

6 In addition, Plaintiffs allege that Defendants failed to provide employees with duty-free
7 meal periods in accordance with California for a portion of the class period. If Plaintiffs were to
8 prevail on this claim, Plaintiffs and the Class Members would be entitled to the following potential
9 damages: \$757,513 (24,140 affected shifts x \$31.38 = \$757,513). (Mara Dec. ¶ 32).

10 Defendants contend that they always provided employees with duty-free meal periods.
11 Defendants further contend that this amount is too high as they have paid meal period premiums
12 to employees. Defendants assert that no damages would be attributable to shifts in which a
13 premium has already been paid. Defendants also contend that that this amount should be zero
14 because they would be able to show that they provided employees with duty-free meal periods
15 during the entire class period.

16 Further, Plaintiffs allege that Defendants failed to pay all wages owed to employees.
17 Plaintiffs allege that employees were only permitted to record eight (8) hours of work per shift
18 but worked hours in excess of this. Plaintiffs believe that employees are owed approximately one
19 hour of pay per workweek. If Plaintiffs were to prevail on this claim, Plaintiffs and Class Members
20 would be entitled to the following potential damages: \$486,609 (15,507 workweeks x \$31.38 =
21 \$486,609). (Mara Dec. ¶ 32).

22 Defendants contend that they paid employees for all hours worked and never required
23 employees to only record eight (8) hours worked. Defendants assert they had policies in place
24 that prohibited off the clock work and informed all employees that they were to accurately record
25 all of their hours worked. As such, Defendants contend that employees have been paid accurately
26 for all of their hours worked.

27 If Plaintiffs were to prevail on their meal period, rest period, or unpaid wages claims,
28 Plaintiffs may be entitled to penalties for inaccurate wage statements. If Plaintiffs were to prevail

1 on this claim, the damages would be \$456,950.¹⁹ (Mara Dec. ¶ 33).

2 If Plaintiffs were to prevail on their meal period, rest period, or unpaid wages claims, they
3 and the Class Members may also be entitled to waiting time penalties. Plaintiffs calculate the
4 potential exposure under their waiting time penalties cause of action as \$1,574,020 (209 former
5 employees x 30 days x 8 hours x \$31.38/hour = \$1,574,020). (Mara Dec. ¶ 34).

6 If Plaintiffs' meal period, rest period, or unpaid wages claims fail, these claims also fail.
7 There is also a possibility that the factfinder could find that these violations are not willful and
8 knowing and intentional. If this were to occur, Plaintiffs and the Class would receive nothing
9 under these claims. In addition, a good faith dispute that any wages are due will preclude
10 imposition of waiting time penalties. Defendants argue that Plaintiffs will not be able to show that
11 any violations were knowing and intentional and willful. Defendants also contend that there is a
12 good faith dispute about whether any wages are due. Defendants further argue that Plaintiffs'
13 unpaid wages, meal period, and rest period claims cannot form the basis of their wage statement
14 claim. Defendants rely on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th
15 1308, for the position that employees do not suffer injury under California Labor Code § 226(a)
16 so long as the wage statements correctly reflected the hours worked and the pay received even if
17 the pay is later determined to be inaccurate. Plaintiffs had to take these arguments into
18 consideration.

19 Plaintiffs also seek PAGA penalties. PAGA allows the private enforcement of certain
20 California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2)
21 reads, in part, as follows:

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

24 The statute of limitations for PAGA violations go back one year. The potential damages under
25 Plaintiffs' PAGA claim are \$1,857,700.²⁰ (Mara Dec. ¶ 35).

26 _____
27 ¹⁹ 45 initial violations x \$50 for an initial violation = \$2,250

28 4,547 subsequent violations x \$100 for a subsequent violation = \$454,700

\$2,250 + \$454,700 = \$456,950

²⁰ \$100 x 4 PAGA violations (meal periods, rest periods, unpaid wages, and wage statements) x

1 As Plaintiffs' PAGA claims are based on the same alleged unlawful conduct as their class
2 claims, Plaintiffs' PAGA claims are subject to the same risks on the merits as Plaintiffs' class
3 claims. In addition, the Court may reduce any PAGA penalties awarded under Section 2699,
4 subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to Plaintiffs
5 and the PAGA Aggrieved Employees – assuming liability is proven as to each of Plaintiffs' claims
6 – is higher in this case where these same individuals may also be receiving money for the same
7 unlawful conduct under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12,
8 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 (“Because the
9 PAGA penalties sought are at least partially duplicative of penalties granted by the underlying
10 Labor Code violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court
11 has discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code §
12 2699(e)(2), Plaintiffs recognize that the potential PAGA penalties are highly uncertain.”). As
13 such, the Court may reduce any PAGA penalty amount awarded to Plaintiffs and the PAGA
14 Aggrieved Employees. (Mara Dec. ¶ 36).

15 Thus, not taking into account any of Defendants' defenses or arguments, Plaintiffs
16 estimated that if they were successful in their core claims, Defendants' total exposure would be
17 approximately \$2,937,512 [\$1,693,390 (rest period exposure) + \$757,513 (meal period exposure)
18 + \$486,609 (unpaid wages exposure) = \$2,937,512]. If the fact finder were to side with
19 Defendants on these claims, Plaintiffs and Class Members would not be entitled to any damages
20 for wage statements, waiting time penalties, or PAGA penalties that are derivative of and
21 dependent on Plaintiffs prevailing on their meal period, rest period, and unpaid wages claims. If
22 Plaintiffs are successful in their unpaid wages, meal period, or rest period claims, and are able to
23 prove that Defendants' wage statement violations were knowing and intentional and that the
24 waiting time penalties violations were willful, they may also be entitled to damages for wage
25 statements and waiting time penalties in the amount of \$2,030,970 [\$456,950 (wage statements)
26 and \$1,574,020 (waiting time penalties) = \$2,030,970]. Plaintiffs and the Aggrieved Employees
27
28 4,592 pay periods = \$1,836,800 plus \$100 x 1 PAGA violation (waiting time penalties) x 209 pay
periods = \$20,900.

1 may also be entitled to PAGA penalties in the amount of \$1,857,700, subject to Court reduction.
2 (Mara Dec. ¶ 37).

3 **3. The Settlement Amount of \$900,000 is Reasonable**

4 In light of the risks Plaintiffs' claims faced, Plaintiffs and their Counsel believe that the
5 settlement amount of \$900,000 – with an average settlement share amount estimated at \$2,368 –
6 is a reasonable and fair settlement amount. (Mara Dec. ¶ 38).

7 It should be noted that a settlement is not judged solely against what might have been
8 recovered, had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the
9 damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91
10 Cal.App.4th 224, 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139;
11 “Compromise is inherent and necessary in the settlement process...even if the relief afforded by
12 the proposed settlement is substantially narrower than it would be if the suits were to be
13 successfully litigated, this is no bar to a class settlement because the public interest may indeed
14 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
15 litigation.” *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688
16 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a fraction of the
17 potential recovery does not...render the settlement inadequate or unfair”); *see also In re*
18 *Omnivision Technologies, Inc.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 95616, *21 , (noting that
19 certainty of recovery in settlement of 6% of maximum potential recovery after reduction for
20 attorneys’ fees was higher than median percentage for recoveries in shareholder class action
21 settlements, averaging 2.2%-3% from 2002 through 2006).

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

23 Under California law, a class action is appropriate when the class is ascertainable and there
24 is “a well defined community of interest in the questions of law and fact involved affecting the
25 parties to be represented.” Cal. Civ. P. Code § 382. State law requirements under California Code
26 of Civil Procedure section 382 for class certification follow federal law according to Rule 23 of
27 the Federal Rule of Civil Procedure: numerosity, typicality of the class representatives’ claims,
28 adequacy of representation, predominance of common issues, and superiority. Fed. R. Civ. P.

23(a); *see also Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted that while a court must certify a class for settlement purposes if a class has not already been certified, “it is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases.” *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19. Plaintiffs contend, and Defendants do not dispute for settlement purposes only, each of these elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38. Plaintiffs seek approval of the following Class for settlement purposes only: All hourly, non-exempt employees who were employed by Defendants at any time during March 19, 2020, to October 29, 2024 within the State of California.

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

California Rule of Court 3.769(f), provides:

If the court has certified the action as a class action, notice of the final approval hearing must be given to 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.

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

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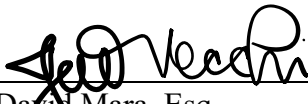
1 **VI. CONCLUSION**

2 Plaintiffs respectfully submit that the proposed settlement is in the best interests of the
3 Class and Class Members, as it is fair, adequate, and reasonable, and one that should ultimately
4 be granted final approval. Under the applicable class action criteria and guidelines, the proposed
5 settlement should be preliminarily approved by the Court, the class should be conditionally
6 certified for purposes of settlement only, and the Class Notice should be approved. Plaintiffs also
7 respectfully request the Court set a final approval hearing date.

8 **MARA LAW FIRM, PC**

9 Date: May 2, 2025

10 Signed: _____


11 David Mara, Esq.
Jill Vecchi, Esq.

12 Cristina Molteni
13 **MOLTENI EMPLOYMENT LAW**

14 Adrian Byrne
15 **THE BYRNE LAW GROUP**
16 Attorneys for Plaintiffs, on behalf of
17 themselves, all others similarly situated,
18 and on behalf of the general public
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