

Eric K. Yaeckel [CSB No. 274608]
yaeckel@sullivanlawgroupapc.com
Ryan T. Kuhn [CSB No. 324538]
ryan@sullivanlawgroupapc.com
SULLIVAN & YAECKEL LAW GROUP, APC
2330 Third Avenue
San Diego, California 92101
(619) 702-6760 * (619) 702-6761 FAX

Counsel for Plaintiffs SHEILA LOPEZ, GEORGINA BAUTISTA and FE ADRIANO, Individually, on
behalf of the Proposed FLSA Collective and Class Action
(ADDITIONAL COUNSEL ON SIGNATURE PAGE)

SUPERIOR COURT OF STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

SHEILA LOPEZ, GEORGINA BAUTISTA,
and FE ADRIANO, on behalf of themselves
and all those similarly situated,

Plaintiffs,

v.

WILLISTON FINANCIAL GROUP, LLC, a
Delaware Limited Liability Company; WFG
NATIONAL TITLE INSURANCE
COMPANY, a Florida Corporation; MY
HOME, A WILLISTON FINANCIAL
GROUP COMPANY, LLC, a Delaware
Limited Liability Company; WFG
NATIONAL TITLE COMPANY OF
CALIFORNIA, a California Corporation;
WFG NATIONAL TITLE COMPANY OF
CLARK COUNTY WA, LLC, a business
entity unknown; WFG NATIONAL TITLE
COMPANY OF WASHINGTON, a business
entity unknown; WFG NATIONAL TITLE
COMPANY OF TEXAS, LLC, a business
entity unknown; WFG LENDER SERVICES,
LLC, a business entity unknown; and DOES 1-
10, inclusive

Defendants.

Case No.: 24CU015835C

NOTICE OF MOTION AND *UNOPPOSED*
MOTION FOR ORDER
PROVISIONALLY CERTIFYING
SETTLEMENT CLASS AND
APPROVING CLASS SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES

Date: March 14, 2025
Time: 9:00 a.m.
Dept: C-66
Judge: Hon. Wendy M. Behan

Complaint Filed: October 8, 2024
Trial Date: Not Yet Set

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

This motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities, and the Declaration of Eric Yaeckel, Paolo Meireles, and Benjamin Galdston filed herewith, and oral argument on the motion.

Dated: November 1, 2024

SULLIVAN & YAECKEL LAW GROUP, APC

*Counsel for Plaintiffs and the Proposed FLSA
Collective and Class*

TABLE OF CONTENTS

I. Introduction	2
II. Factual and Procedural Background.....	2
A. Summary of the Claims	2
B. Overview of Investigation and Litigation	3
C. Settlement Negotiations.....	3
III. Summary of the Settlement Terms.....	5
A. Settlement Fund.....	5
B. Eligible Employees	5
C. Allocation Formula	6
D. Settlement Procedure	6
E. Tax Characterization	7
F. Release	7
G. PAGA Allocation to LWDA	8
H. Attorneys' Fees & Costs; Enhancement Payment	8
I. Settlement Administrator	9
J. Settlement Approval and Administration Schedule	9
IV. Argument	11
A. Certification of the Settlement Class is Appropriate.....	11
1. The Proposed Class Is Ascertainable and Sufficiently Numerous.....	11
a.The Class Is Sufficiently Numerous	11
b. The Class Is Ascertainable	11
2. There Is a Well-Defined Community of Interest.....	12
a. Common Questions of Law and Fact Predominate.....	12
b. The Named Plaintiffs' Claims Are Typical of the Class.....	13
c. The Named Plaintiffs and Their Counsel Will Fairly and Adequately Represent the Class.....	13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. A Class Action Is Superior to Other Available Methods.....	14
a. Conditional Certification of the FLSA Collective Is Appropriate.....	14
B. The Settlement Meets the Requirements for Preliminary Approval.....	15
1. The Strength of Plaintiffs’ Case (<i>Kullar</i> Factor 1).....	15
2. The Risk, Expense, Complexity and Likely of Further Litigation (<i>Kullar</i> Factor 2).....	18
3. The Risk of Maintaining Class Action Status Through Trial (<i>Kullar</i> Factor 3)....	18
4. The Amount Offered in Settlement (<i>Kullar</i> Factor 4)	19
5. The Extent of Discovery Completed and Stage of the Proceedings (<i>Kullar</i> Factor 5)	20
6. The Experience and Views of Counsel (<i>Kullar</i> Factor 6)	21
7. The Presence of a Governmental Participant (<i>Kullar</i> Factor 7)	21
8. The Reaction of Class Members to the Proposed Settlement (<i>Kullar</i> Factor 8)....	22
C. The Proposed Notices and Settlement Procedure Are Appropriate	22
IV. Conclusion	24

TABLE OF AUTHORITIES

CASES

<i>Aguilar v. Cintas Corp. No. 2</i> (2006) 144 Cal.App.4th 121, 136	11
<i>Bayat v. Bank of the West</i> 2015 WL 1744342, at *4	18
<i>Betancourt v. Advantage Human Resourcing, Inc.</i> (N.D. Cal. Jan. 28, 2016) No. 14-cv-1788, 2016 WL 344532, at *5	20
<i>Brinker v. Sup. Court</i> (2012), 53 Cal.4th 1004, 1033	11,12
<i>Bufile v. Dollar Fin. Grp., Inc.</i> (2008) 162 Cal.App.4th 1193, 1208.	14
<i>Campbell v. City of Los Angeles</i> (9th Cir. 2018) 903 F.3d 1090, 1109.....	15
<i>Cartt v. Super. Ct.</i> (1975) 50 Cal.App.3d 960, 974.....	23
<i>Duran v. U.S. Bank National Association</i> (2014) 59 Cal.4th 1	17
<i>Ebarle v. Lifelock, Inc.</i> (N.D. Cal. Jan. 20, 2016) No. 15 Civ. 258, 2016 WL 234364, at *8	19
<i>Fireside Bank v. Super. Ct.</i> (2006) 40 Cal.4th 1069, 1089.....	12
<i>Global Minerals & Metals Corp. v. Super. Ct.</i> (2003) 113 Cal.App.4th 836, 859.....	14
<i>Hanon v. Dataproducts Corp.</i> (9th Cir. 1992) 976 F.2d 497, 508	13
<i>Hernandez v. Restoration Hardware, Inc.</i> (2018) 4 Cal.5th 260	15
<i>J.P. Morgan & Co., Inc. v. Super. Ct.</i> (2003) 113 Cal.App.4th 195, 212	13
<i>In re LinkedIn User Privacy Litig.</i> (N.D. Cal. 2015) 309 F.R.D. 573, 587	19
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	15
<i>Laffitte v. Robert Half Int'l Inc.</i> (2016) 1 Cal.5th 480, 488-506	8

1	<i>Linder v. Thrifty Oil Co.</i>	
2	(2000) 23 Cal.4th 429, 435.....	11
3	<i>Linner v. Cellular Alaska P'ship</i>	
4	(9th Cir. 1998) 151 F.3d 1234, 1239).....	20
5	<i>Luckey v. Super. Ct.</i>	
6	(2014) 228 Cal.App.4th 81, 94	14
7	<i>McGhee v. Bank of Am.</i>	
8	(1976) 60 Cal.App.3d 442, 450	13
9	<i>Mullane v. Cent. Hanover Bank & Trust Co.</i>	
10	(1950) 339 U.S. 306, 314	22
11	<i>Richmond v. Dart Industries</i>	
12	(1981) 29 Cal.3d at 469	14
13	<i>Roos v. Honeywell Int'l, Inc.</i>	
14	(2018) 241 Cal.App.4th 1472, 1482	15
15	<i>Rose v. City of Hayward</i>	
16	(1981) 126 Cal.App.3d 926, 934	11
17	<i>Sav-on Drug Stores v. Sup Ct</i>	
18	(2004) 34 Cal.4th at 334	14
19	<i>Seastrom v. Neways, Inc.</i>	
20	(2007) 149 Cal.App.4th 1496, 1502	13
21	<i>Vasquez v. Super. Ct.</i>	
22	(1971) 4 Cal.3d 800, 821	19
23	<i>Walsh v. IKON Office Solutions, Inc.</i>	
24	(2007) 148 Cal.App.4th 1440, 1444, <i>as modified</i> (Mar. 28, 2007).....	19
25	<i>Wershba v. Apple Computer, Inc.</i>	
26	(2001) 91 Cal.App.4th 224, 251-52.....	22,23
27	<i>Wesson v. Staples the Office Superstore, LLC</i>	
28	(2021) 68 Cal.App.5th 746, 864-67.....	18
	STATUTES, RULES AND REGULATIONS	
	California Labor Code § 2698, <i>et seq.</i>	8
	California Rule of Court § 3.769(d)	11
	Cal. Code Civ. Proc. § 382	11
	Rule of Court 3.766(d)	23
	Rule of Court 3.766(e)	23

1	Federal Rule of Civil Procedure 23. <i>Id.</i> at 1109-12.....	15
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Sheila Lopez (“Lopez”), Georgina Bautista (“Bautista”), and Fe Adrinao (“Adriano”)
4 (collectively, “Plaintiffs”) seek preliminary approval of a \$1,000,000.00 (One Million Dollar) wage and
5 hour class action settlement on behalf of non-exempt employees who worked for Defendants WFG
6 National Title Insurance Company, Williston Financial Group, LLC and all related entities named in the
7 Complaint (“Defendants”) (collectively, the “Parties”) in California and elsewhere in the United States as
8 non-exempt classified Escrow Officers for their claims under the federal Fair Labor Standards Act
9 (“FLSA”) and the California Labor Code.¹

10 The \$1,000,000.00 (One Million Dollar) Gross Fund represents an excellent outcome for Class
11 Members, Collective Members, and PAGA Group Members and satisfies all of the criteria for preliminary
12 approval, particularly in light of the risks of continued litigation. Accordingly, Plaintiffs respectfully
13 request that the Court: (1) grant preliminary approval of the Joint Stipulation of Settlement and Release
14 (“Settlement Agreement”), attached as **Exhibit A** to the Declaration of Eric K. Yaeckel (“Yaeckel
15 Decl.”);² (2) provisionally certify the proposed Class for settlement purposes; (3) appoint Omnum Law
16 APC, Shavitz Law Group, P.A., and Sullivan & Yaeckel as Class Counsel; and (4) approve the proposed
17 Notice of Class Action Settlement and Fairness Hearing (“Proposed Class Notice”) and proposed Notice
18 of Collective Action Settlement (“Proposed Collective Notice”) (together with the Proposed Class Notice,
19 the “Proposed Notices”) and direct their distribution to Class, Collective, and PAGA Group Members.

20 **II. FACTUAL AND PROCEDURAL BACKGROUND**

21 **A. Summary of the Claims**

22 Pursuant to the Settlement Agreement, for purposes of settlement, the Parties agreed to file
23

24
25 ¹ All capitalized terms have the meaning as defined in the Settlement Agreement unless indicated
26 otherwise.

27 ² All exhibits referenced in this Notice of Motion and Motion are Exhibits to the Yaeckel
28 Declaration unless indicated otherwise.

1 Plaintiffs’ Collective, Class, and Representative Action Complaint (the “Complaint”) in this Court.
2 Yaeckel Decl. ¶ 4. The Complaint asserts eight causes of action, including all of the claims to be resolved
3 by the Settlement Agreement. *Id.* The First through Seventh Causes of Action (seven claims) arise out
4 of California law: (1) Failure to Provide Meal Breaks and Rest Periods, California Labor Code §§ 218.5,
5 226.7, 512, 1198, and IWC Order No. 10-2001; (2) Failure to Provide Minimum Wage and Overtime
6 Wages, California Labor Code §§ 510, 1194, 1197, 1197.1, and Industrial Welfare Commission (“IWC”)
7 Order No. 10-2001; (3) Failure to Provide Itemized Wage Statements, California Labor Code § 226; (4)
8 Failure to Reimburse Business Expenses, California Labor Code § 2802; (5) Failure to Pay Earned Wages
9 Timely and upon Discharge, California Labor Code §§ 201-204, 210; (6) Unlawful and/or Unfair Business
10 Practices, California Business & Professions Code §§ 17200, *et seq.* (“Unfair Competition Law”); and (7)
11 Civil Penalties Under the Private Attorneys General Act (“PAGA”), California Labor Code §§ 2698, *et*
12 *seq.* *Id.* The Eight Cause of Action arises out of federal law for Failure to Pay Overtime Wages in
13 violation of the FLSA, 29 U.S.C. §§ 201 *et seq.* *Id.*

14 **B. Overview of Investigation and Litigation**

15 Before initiating this action, Plaintiffs’ Counsel conducted a thorough investigation into the merits
16 of the potential claims and defenses. Yaeckel Decl. ¶¶ 5-8. Plaintiffs’ Counsel focused their investigation
17 and legal research on the underlying merits of Class Members’ claims, the damages to which they were
18 entitled, and the propriety of class certification. *Id.* As part of their investigation, Plaintiffs’ Counsel
19 conducted multiple in-depth interviews with Named Plaintiffs Lopez, Bautista, and Adriano and other
20 witnesses to establish that other Class Members were also impacted by Defendants’ policy and/or practice
21 of failing to pay overtime wages and failing to reimburse necessary business expenses, and to assess the
22 extent of their damages. *Id.* Additionally, Plaintiffs’ Counsel conducted in-depth background research
23 on Defendants, including obtaining and reviewing documents from Plaintiffs to assess the merits of the
24 claims and defenses. *Id.*

25 **C. Settlement Negotiations**

26 On March 24, 2022, Plaintiffs’ Counsel sent a demand letter to Defendants to explore a potential
27 pre-litigation global resolution of this matter. Meireles Decl. ¶ 13. Shortly thereafter, the Parties agreed
28

1 to participate in mediation to explore settlement of the claims of the Class, Collective, and PAGA Group
2 Members. *Id.* As part of the agreement, the Parties entered into a tolling agreement on behalf of all Class,
3 Collective, and PAGA Group Members and exchanged data and documents sufficient for Plaintiffs’
4 Counsel to conduct damages calculations for the Class, Collective, and PAGA Group. *Id.* Defendants
5 produced employee handbooks, meal and rest periods policies, timekeeping policies, hours and scheduling
6 policies, telework/cellphone policies, and data regarding class size and number of pay periods/workweeks
7 needed calculate an estimate of the maximum theoretical damages for Class, Collective, and PAGA Group
8 Members. *Id.*

9 On January 24, 2023, the Parties participated in a full-day mediation with David Rotman, a well-
10 known mediator with substantial experience in wage and hour class actions. Meireles Decl. ¶ 15-16.
11 Although the case did not resolve on that day, the Parties continued to discuss settlement with the
12 mediator’s assistance. *Id.*

13 On October 19, 2023, the Parties participated in another full-day mediation, this time with Lou
14 Marlin, another well-known mediator with substantial experience in wage and hour class actions. *Id.*
15 Once again, the parties were unable to resolve the claims. *Id.* However, they continued to discuss
16 resolution over the course of the ensuing, several months. *Id.*

17 On November 13, 2023, pursuant to PAGA, Plaintiffs’ Counsel filed a PAGA Notice with the
18 California Labor & Workforce Development Agency (“LWDA”), notifying the LWDA of Plaintiffs’
19 intent to seek PAGA penalties for Defendants’ alleged labor violations, including failure to pay all wages
20 (including overtime, straight-time, and minimum wages), failure to provide meal periods and premium
21 payments in lieu thereof, failure to provide rest periods and premium payments in lieu thereof, failure to
22 timely pay wages, failure to timely pay wages upon termination, failure to provide compliant wage
23 statements, and failure to maintain accurate payroll records. *Id.* To date, Plaintiffs have not received any
24 response from the LWDA. Meireles Decl. ¶ 17, Galdston Decl. ¶ 10.

25 On May 21, 2024 the parties finally reached an agreement on the material terms of a settlement.
26 (Yaeckel Decl. ¶ 9). During the following months, the Parties negotiated the remaining terms of settlement
27
28

1 and formally memorialized their agreement in the Settlement Agreement. *Id.* At all times, settlement
2 negotiations were conducted vigorously and, on an arm's-length basis. *Id.*

3 Plaintiffs provided a copy of the Settlement Agreement to the LWDA concurrent with the filing
4 of this motion. (See Proof of Service on LWDA).

5 **III. SUMMARY OF THE SETTLEMENT TERMS**

6 **A. Settlement Fund**

7 The Settlement Agreement creates a common fund of \$1,000,000.00 (One Million Dollars) to be
8 paid by Defendants in full resolution of all Released Claims and the Action, which includes all Attorneys'
9 Fees and Costs, Enhancement Payments, PAGA Fund, Net Settlement Fund to be paid to Settlement
10 Class Members and Settlement Collective Members, and Settlement Administration Costs ("Gross
11 Fund"). Ex. A (Settlement Agreement) ¶ 6(r). Defendants will pay employer's share of taxes on the
12 wages portion of Individual Settlement Shares separately and in addition to the Gross Fund. *Id.*

13 **B. Eligible Employees**

14 Individuals who are entitled to receive Individual Settlement Payments from the settlement fund
15 include "Class Members," "Collective Members," and "PAGA Group Members."

16 "Class Members" or the "Class" include "all persons who have been employed by Defendants as
17 non-exempt classified Escrow Officers in California at any time during the Class Period. Ex. A
18 (Settlement Agreement) § 14(e). The "Class Period" is the time period from April 19, 2018 through March
19 1, 2024. *Id.* § 14(f).

20 "Collective Members" or the "Collective" means "all persons who have been employed by
21 Defendants as non-exempt classified Escrow Officers anywhere in the United States during the FLSA
22 Period." Ex. A (Settlement Agreement) § 14(i). The "FLSA Period" is the time period from April 19,
23 2019, through March 1, 2024. *Id.* § 14(p).

24 "PAGA Group Members" include "all persons who have been employed by Defendants as non-
25 exempt classified Escrow Officers in California at any time during the PAGA Period." Ex. A (Settlement
26 Agreement) § 14(y). The "PAGA Period" is the time period from April 3, 2022 through March 1, 2024.
27 *Id.* § 14(z).

1 **C. Allocation Formula**

2 The allocation formula set forth in the Settlement Agreement compensates each Class and
3 Collective Member using a pro-rata formula based on the number of workweeks each Class Member and
4 Collective Member worked during the Class or FLSA Period, respectively. Ex. A (Settlement Agreement)
5 § 22. Each workweek worked during the Class Period shall be assigned two points. *Id.* § 22(a). Each
6 workweek worked during the FLSA Period shall be assigned one point. *Id.* The pro rata portion shall be
7 determined by dividing the total number of points into the Net Settlement Fund to arrive at a value per
8 point and multiplying each Settlement Class and/or Collective Member's total points by the point value.
9 *Id.* For the avoidance of doubt, an employee who qualifies as both a Settlement Collective Member and
10 a Settlement Class Member may receive three total points for the same workweek. *Id.*

11 The allocation formula set forth in the Settlement Agreement compensates PAGA Group Members
12 separately by dividing the total number of workweeks worked during the PAGA Period into the PAGA
13 Settlement Fund to arrive at a value per workweek for each eligible PAGA Group Member. Ex. A
14 (Settlement Agreement) § 22(b). The value per workweek shall be multiplied by the number of
15 workweeks worked by each PAGA Group Member during the PAGA Period. *Id.* Partial weeks will be
16 counted as full workweeks. *Id.*

17 The Settlement Agreement further provides that, in the event of any dispute over a Class Members'
18 recorded hours, the Parties will meet and confer to resolve the dispute. Ex. A (Settlement Agreement) §
19 30. If the Parties cannot resolve it, the Settlement Administrator shall decide the dispute based on
20 objective evidence. *Id.*

21 **D. Settlement Procedure**

22 Settlement Class Members and PAGA Group Members shall not be required to submit a claim in
23 order to receive a share of the Net Settlement Fund and PAGA Settlement Fund, respectively, and no
24 portion of the Gross Fund allocated to Class Members and PAGA Group Members shall revert to
25 Defendants or result in an unpaid residue. Ex. A (Settlement Agreement) § 32. All such uncashed funds
26 associated with Settlement Class Members and PAGA Group Members' checks will escheat to the State
27

of California's Controller, to be held in the name of each expired check payee, pursuant to applicable unclaimed property laws. *Id.*

Collective Members will only release FLSA claims by negotiating their settlement checks before the checks expire. Ex. A (Settlement Agreement) § 29. Portions of the Net Settlement Fund attributed to Collective Members, but not cashed by Collective Members within this time frame, shall revert to Defendants, as no FLSA release will be effectuated as to these individuals. *Id.*

E. Tax Characterization

Each Individual Settlement Share will be allocated as follows: 25% to wages and 75% to penalties and interest. Ex. A (Settlement Agreement) § 38. The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to interest and penalties will be reported on an IRS Form-1099 by the Settlement Administrator. *Id.* The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members and Settlement Collective Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings). *Id.* Any payment for an Individual PAGA Payment will be allocated as penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary. *Id.* Defendants will pay employer's share of taxes and contributions on the wages portion of any distribution from the Net Settlement Fund separately and in addition to the Gross Fund. *Id.*

F. Release

Upon the Effective Date and distribution of Individual Settlement Payments, Plaintiffs and all Class Members who do not submit a valid and timely Request for Exclusion (i.e., Settlement Class Members), will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims during the Class Period, except as to the right to enforce the terms and conditions of this settlement. Ex. A (Settlement Agreement) § 43. Additionally, upon the Effective Date and distribution of Individual Settlement Payments, Plaintiffs and each Settlement Collective Member who timely participates in the settlement by timely cashing, depositing, or otherwise negotiating their Individual Settlement Payment will be deemed to have fully,

1 finally and forever released, settled, compromised, relinquished, and discharged the Released Parties of
2 all Released FLSA Claims during the FLSA Period, except as to the right to enforce the terms and
3 conditions of this settlement. *Id.* Finally, upon the Effective Date and distribution of Individual PAGA
4 Payments, Plaintiffs and all PAGA Group Members will be deemed to have fully, finally and forever
5 released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA
6 Claims during the PAGA Period, except as to the right to enforce the terms and conditions of this
7 settlement. *Id.*

8 “Released Class Claims,” “Released FLSA Claims,” and “Released PAGA Claims” are defined in
9 the Settlement Agreement and are limited to claims that were or could have been pled in the Operative
10 Complaint, arising during the Class, Collective, and/or PAGA Period, respectively. Ex. A (Settlement
11 Agreement) §§ 14(ii)-(jj).

12 **G. PAGA Allocation to LWDA**

13 Pending approval by the Court, the Parties agree that the amount of fifty thousand dollars (\$50,000)
14 from the Gross Fund will be allocated toward penalties under the Private Attorneys General Act, California
15 Labor Code Section 2698, *et seq.* (“PAGA Fund”), of which sixty-five percent (65%), or \$32,500, will be
16 paid to the LWDA (i.e., the LWDA Payment) and thirty-five percent (35%) or, \$17,500 (“PAGA
17 Settlement Fund”), will be distributed to PAGA Group Members. Ex. A (Settlement Agreement) § 21.
18 The amount allocated to the PAGA claims (\$50,000) represents 5% of the Gross Fund.

19 **H. Attorneys’ Fees & Costs; Enhancement Payment**

20 At the Fairness Hearing, Plaintiffs’ Counsel will apply for up to 35% of the Gross Fund (up to
21 \$350,000.00) as attorneys’ fees. Yaeckel Decl. ¶ 12; Ex. A (Settlement Agreement) § 18. Plaintiffs’
22 Counsel’s retainers with Named Plaintiffs provide that Plaintiffs’ Counsel may apply for up to thirty-five
23 percent of any class settlement as attorneys’ fees. *Id.* The requested percentage of fees are in line with
24 market rates, *id.*, and are appropriate under the percentage-of-recovery method, *Laffitte v. Robert Half*
25 *Int’l Inc.* (2016) 1 Cal.5th 480, 488-506. Plaintiffs’ Counsel will further address the justifications for their
26 fee request after preliminary approval is granted when they file their motion for attorneys’ fees. *Id.*
27 Plaintiffs have reviewed and approved in writing Plaintiffs’ Counsel’s fee-splitting agreement. *Id.*

1 Additionally, Plaintiffs' Counsel will seek reimbursement from the Gross Fund of their reasonable and
2 actual litigation costs and expenses. *Id.* ¶ 13; Ex. A (Settlement Agreement) § 18.

3 Plaintiffs will also move for Court approval of an Enhancement Payment of \$5,000.00 for each
4 Named Plaintiff in recognition of (1) the services they rendered and risk they undertook on behalf of the
5 Class, Collective, and PAGA Group, and (2) the general release they are agreeing to in the Settlement
6 Agreement, which is broader than those of other Class Members. Yaeckel Decl. ¶ 14; Ex. A (Settlement
7 Agreement) § 19. This modest enhancement is reasonable in view of the time and effort spent, and the
8 risks undertaken, by the Named Plaintiffs. Plaintiffs' Counsel will further address the justifications for
9 their request for an Enhancement Payment award after preliminary approval is granted when Plaintiffs file
10 their motion for approval of their requested Enhancement Payments, which will be supported by a
11 declaration from each Named Plaintiff attesting to the time and efforts spent and risks undertaken in this
12 litigation. Yaeckel Decl. ¶ 14.

13 **I. Settlement Administrator**

14 The Settlement Administrator will be CPT Group, ("CPT"), which the parties mutually selected.
15 selected. Yaeckel Decl. ¶ 15. CPT is a well-established class action settlement administrator and has
16 substantial experience administering wage and hour class action settlements. *Id.* CPT has agreed to
17 administer the settlement for an amount not to exceed \$14,000.00. *Id.* ¶ 16; Ex. B. The Settlement
18 Administrator's fees will be paid from the Gross Fund. Ex. A (Settlement Agreement) § 20.

19 **J. Settlement Approval and Administration Schedule**

20 The following schedule sets forth a proposed sequence for the relevant dates and deadlines as
21 specified in the Settlement Agreement. This schedule is also incorporated in the Proposed Order lodged
22 herewith.

DATE	EVENT
7 calendar days after entry of order granting Preliminary Approval of Settlement	Defendants provide the Class List to the Settlement Administrator (Ex. A (Settlement Agreement) § 24)
14 calendar days after entry of order granting Preliminary Approval of Settlement	Settlement Administrator shall send Preliminary Approval Notice to each Class Member by First-Class U.S. Mail after performing a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes in the Class List (<i>Id.</i> § 25)
30 calendar days after the Settlement Administrator mails the Preliminary Approval Notice	Response Deadline to opt-out, object, or dispute number of Workweeks credited (<i>Id.</i> §§ 14(mm), 33, 35)
15 calendar days after Response Deadline	Deadline to respond if Preliminary Approval Notice re-mailed (<i>Id.</i> § (14(mm)))
Within 14 calendar days after the Effective Date	Defendants shall transfer the Gross Fund to a Qualified Settlement Fund (“QSF”) to be established by the Settlement Administrator (<i>Id.</i> § 16)
21 calendar days after the Effective Date	Settlement Administrator shall issue an Approval Notice to Collective Members residing outside of California, providing them a 60-day Opt-in Period to return a Consent to Join and Release Form (<i>Id.</i> § 27).
30 days after mailing of the Approval Notice to Collective Members	Settlement Administrator shall distribute reminder postcards via U.S. Mail to any Non-California Collective Member who has not returned a Consent to Join and Release Form so (<i>Id.</i> § 27).
21 calendar days after the close of the Collective Members’ Opt-in Period.	Settlement Administrator shall issue payments, as follows: (a) Individual Settlement Payments to Settlement Class Members and Settlement Collective Members; (b) Individual PAGA Payments to PAGA Group Members; (c) LWDA Payment to the Labor and Workforce Development Agency; (d) Enhancement Payment to Plaintiffs; and (e) Attorneys’ Fees and Costs to Class Counsel (<i>Id.</i> at § 17)
120 calendar days after all settlement checks are mailed	Settlement checks expire (<i>Id.</i> § 31)
30 days and 60 days after all settlement checks are mailed	Settlement Administrator shall distribute reminder postcards via U.S. Mail to all Collective Members, all Settlement Class Members who did not timely opt-out of the settlement, and all PAGA Group

DATE	EVENT
	Members, who have yet to deposit or otherwise negotiate their settlement checks, reminding them of the deadline to do so (<i>Id.</i> § 27, 31.

IV. ARGUMENT

A. Certification of the Settlement Class is Appropriate.

Plaintiffs seek certification, for settlement purposes only, pursuant to California Rule of Court 3.769(d), of a provisional Class defined as: “all persons who have been employed by Defendants as non-exempt classified Escrow Officers in California at any time during the Class Period.” Ex. A (Settlement Agreement) § 14(e).

The Class should be provisionally certified for purposes of settlement because (1) the Class is ascertainable and sufficiently numerous; (2) there exists a well-defined community of interest; and (3) a class action is a superior method of adjudication for this settlement case. Cal. Code Civ. Proc. § 382; *Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1021; *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

1. The Proposed Class Is Ascertainable and Sufficiently Numerous.

(a) The Class Is Sufficiently Numerous.

Plaintiffs contend the numerosity requirement is satisfied because the Class is of such a size that is “it is impracticable to bring them all before the court.” Cal. Code Civ. Proc. § 382. No set number is required by law, but courts generally presume the numerosity requirement is satisfied when the class exceeds forty members. *See, e.g., Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 (finding numerosity requirement satisfied with class of 42). Based on data provided by Defendants, there are approximately 640 Class Members during the Class Period. Yaeckel Decl. ¶. 17. This does not include the FLSA Collective Members, addressed below.

(b) The Class Is Ascertainable.

A class is ascertainable when its members may be readily identified by reference to official records. *Aguiar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121, 136; *Rose*, 126 Cal.App.3d at 934. Class Members may be readily ascertained in this case by using Defendants’ employment records to identify

1 individuals who worked in qualifying positions during the Class Period.

2 **2. There Is a Well-Defined Community of Interest.**

3 A well-defined community of interest exists when there are “(1) predominant common questions
4 of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
5 representatives who can adequately represent the class.” *Fireside Bank v. Super. Ct.* (2006) 40 Cal.4th
6 1069, 1089.

7 **(a) Common Questions of Law and Fact Predominate.**

8 Common questions predominate where the legal theory of recovery “is, as an analytical matter,
9 likely to prove amenable to class treatment,” such that the resolution of claims “in a single class proceeding
10 would be both desirable and feasible.” *Brinker*, 53 Cal.4th at 1021-22 (quoting *Sav-on Drug Stores, Inc.*
11 *v. Super. Ct.* (2004) 34 Cal. 4th 319, 327). A legal challenge to an employer’s uniform policy is
12 “eminently suited for class treatment.” *Brinker*, 53 Cal.4th at 1034.

13 In this case, which focuses on a number of alleged common, company-wide policies, common
14 questions of law and fact predominate. The central issues in this case turn on whether Defendants’
15 timekeeping policies and practices required Named Plaintiffs and Class, Collective, and PAGA Group
16 Members to work substantial amounts of overtime off-the-clock, including but not limited to working
17 during uncompensated meal and rest breaks to assist clients; responding to emails, text messages, and
18 phone calls; participating in zoom conferences; and engaging in other remote work activities outside of
19 regular work hours; whether Defendants had common, company-wide policies and/or practices of failing
20 to relieve Plaintiffs and Class, Collective, and PAGA Group Members of all duties so that they were able
21 to take the meal and rest periods to which they are entitled by law; whether, as a matter of common,
22 company-wide policy and/or practice, Defendants failed to ensure that it paid Plaintiffs and Class,
23 Collective, and PAGA Group Members proper meal and rest break penalties when they did not receive
24 the meal and rest breaks to which they are entitled by law; whether Defendants required Plaintiffs and
25 Class, Collective, and PAGA Group Members to incur necessary business-related expenses in the
26 performance of their duties, including but not limited to charges associated with cell phone/data usage and
27 home internet usage as a result of being obligated to, among other things, respond to work related e-mails,

1 texts and phone calls, and take zoom conferences, on their personal devices; and whether Defendants’
2 reimbursement policies and/or practices failed to provide Plaintiffs and Class, Collective, and PAGA
3 Group Members with adequate reimbursement for these reasonable and necessary business expenses.
4 Yaeckel Decl. ¶ 18.

5 **(b) The Named Plaintiffs’ Claims Are Typical of the Class.**

6 The claims of the Named Plaintiffs are typical of the Class Members they seek to represent. Where
7 the Named Plaintiffs’ injuries are of the same nature as other class members and arise from the same
8 general course of conduct, the typicality requirement is satisfied. *See, e.g., Seastrom v. Neways,*
9 *Inc.* (2007) 149 Cal.App.4th 1496, 1502. Here, Plaintiffs allege that they suffered the same principal
10 violations of law as Class Members: unpaid minimum and overtime wages, failure to provide meal and
11 rest breaks, failure to reimburse business expenses, and the same derivative claims stemming from those
12 claims (e.g., inaccurate wage statements, waiting time penalties, etc.). Therefore, the Named Plaintiffs’
13 claims are typical of those of absent Class Members, and his interests are aligned with the interests of the
14 Class. *Seastrom*, 149 Cal.App.4th at 1502; *see Hanon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d
15 497, 508 (purpose of the typicality requirement is to ensure that interest of named plaintiff aligns with
16 interests of the class).

17 **(c) The Named Plaintiffs and Their Counsel Will Fairly and Adequately**
18 **Represent the Class.**

19 The adequacy requirement serves to ensure there are not conflicts of interest between named
20 plaintiffs and class members that go to the ““very subject matter of the litigation.”” *J.P. Morgan & Co.,*
21 *Inc. v. Super. Ct.* (2003) 113 Cal.App.4th 195, 212 (quoting *Richmond v. Dart Indus., Inc.* (1981) 29
22 Cal.3d 462, 470). A named plaintiff is an adequate class representative so long as the named plaintiff’s
23 claim “is not inconsistent with the claims of other members of the class,” and the named plaintiff’s
24 attorneys are qualified to conduct the litigation. *J.P. Morgan & Co.*, 113 Cal.App.4th at 212; *McGhee v.*
25 *Bank of Am.* (1976) 60 Cal.App.3d 442, 450.

26 Here, the Named Plaintiffs are an adequate representative because they have no known conflicts
27
28

of interest with the Class, and their claims are consistent with the claims of other Class Members. Yaeckel; Decl. ¶ 19. Plaintiffs' Counsel are adequate because they are skilled and experienced in wage and hour class action litigation. Yaeckel Decl. ¶ 20-25; Meireles Decl. ¶ 8-10; Galdston Decl. ¶ 4-8. Additionally, Plaintiffs' Counsel have been appointed as Class Counsel in numerous wage and hour class actions both in California and across the United States. Yaeckel Decl. ¶ 23-25; Meireles Decl. ¶ 8-10; Galdston Decl. ¶ 4-8.

3. A Class Action Is Superior to Other Available Methods.

Class treatment is superior to individual adjudication of class members' claims when it eliminates the possibility of repetitious litigation and "provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation." *Richmond*, 29 Cal.3d at 469 (internal quotation marks and citation omitted). Although each Class Member's claim in this case is relatively small, each would consume substantial judicial resources if litigated to trial. *See Bufile v. Dollar Fin. Grp., Inc.* (2008) 162 Cal.App.4th 1193, 1208. It would therefore be inefficient to resolve these claims in separate trials.

Moreover, courts do not apply as much scrutiny to the superiority factor when class certification is sought for settlement purposes (versus ongoing litigation), because the case will not proceed to trial, thereby avoiding case management issues related to trial. *Luckey v. Super. Ct.* (2014) 228 Cal.App.4th 81, 94; *Global Minerals & Metals Corp. v. Super. Ct.* (2003) 113 Cal.App.4th 836, 859. In any event, class treatment of this case for settlement purposes is eminently manageable. Individual variation in the quantity of damages incurred can be managed by awarding claims based upon the allocation formula described *supra* in Section III(C). *See Sav-on Drug Stores*, 34 Cal.4th at 334 ("Individual issues do not render class certification inappropriate so long as such issues may effectively be managed.").

(a) Conditional Certification of the FLSA Collective Is Appropriate.

Conditional certification of the Collective under the FLSA is appropriate here because Plaintiffs have alleged that he and Collective Members are similarly situated. A court grants conditional certification of an FLSA collective where plaintiffs have alleged that they and putative collective members

are similarly situated. *Campbell v. City of Los Angeles* (9th Cir. 2018) 903 F.3d 1090, 1109. The level of consideration is “lenient,” and is a lower bar than the commonality and predominance standards set by Federal Rule of Civil Procedure 23. *Id.* at 1109-12. For the same reasons that the Named Plaintiffs meet the “commonality of interest” factors, discussed in Section IV(A)(2), *supra*, the Named Plaintiffs have established that he and Collective Members are similarly situated.

B. The Settlement Meets the Requirements for Preliminary Approval.

Because the \$1,000,000.00 (One Million Dollar) settlement in this case meets all the relevant criteria for preliminary approval of a class action settlement, it should be preliminarily approved. “A trial court may approve only a settlement of a class action that is fair, adequate, and reasonable.” *Roos v. Honeywell Int’l, Inc.* (2018) 241 Cal.App.4th 1472, 1482, *disapproved of on another ground by Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260. “The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include ‘[1] the strength of plaintiffs’ case, [2] the risk, expense, complexity and likely duration of further litigation, [3] the risk of maintaining class action status through trial, [4] the amount offered in settlement, [5] the extent of discovery completed and stage of the proceedings, [6] the experience and views of counsel, [7] the presence of a governmental participant, and [8] the reaction of the class members to the proposed settlement.’” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 (numbers inserted) (the “Kullar Factors”)).

1. The Strength of Plaintiffs’ Case (Kullar Factor 1)

Although Plaintiffs’ Counsel believe Plaintiffs have strong claims, they recognize the significant risks involved in continuing litigation, including the risks of class and/or collective certification being denied, losing on the merits of their claims, proving damages, and procedural attacks relating to standing and statutes of limitations. Yaeckel Decl. ¶ 27.

On class and conditional certification, the Named Plaintiffs faced significant risk that he would not obtain certification of the Class and/or Collective. Yaeckel Decl. ¶ 27. Numerous courts have denied class and conditional certification where the employers’ policies expressly required compliance with the FLSA and state law, reasoning that commonality would be defeated by the individualized inquiries that

would be required to determine whether and to what extent employees deviated from those policies.³ Although the Named Plaintiffs believe that all Class and Collective Members in these job titles were impacted by the same common, company-wide policies and practices described in the Complaint and in this Motion, Defendants would likely have argued that individualized differences between Class and Collective Members' different job titles and in their individual circumstances predominated over the common questions, and therefore should have defeated class certification. Yaeckel Decl. ¶ 28. Given that many courts have denied certification in the presence of such individualized differences,⁴ Plaintiffs' Counsel acknowledges that they faced risk that their claims would not be certified. *Id.* Likewise, with respect to the expense reimbursement claims, while some courts have granted class certification of expense reimbursement claims,⁵ numerous other courts have denied certification.⁶

³ *Brinker*, 53 Cal.4th at 1051-52 (affirming vacatur of off-the-clock claims where employer's formal policy prohibited off-the-clock work, reasoning that "proof of off-the-clock liability would have had to continue in an employee-by-employee fashion, demonstrating who worked off-the-clock, how long they worked, and whether Brinker knew or should have known of their work"); *see also In re AutoZone, Inc., Wage and Hour Employment Practices Litig.* (9th Cir. 2019) 789 Fed.Appx. 9, 12 ("[B]ecause AutoZone had a written policy prohibiting off-the-clock work during the class period, a determination of why some employees were under-compensated would have entailed an employee-by-employee analysis."); *Ordonez v. Radio Shack, Inc.* (C.D. Cal. 2013) No. CV 10-7060-CAS (JCGx), 2013 WL 210223, at *6-9 (denying class certification of meal break and off-the-clock claims where employer had facially compliant policies); *Velasquez v. HSBC Finance Corp.* (N.D. Cal. 2010) 266 F.R.D. 424, 428-32 (denying conditional certification of plaintiffs' off-the-clock claims under FLSA).

⁴ *Moore v. Addus Healthcare, Inc.* (N.D. Cal. 2021) Case No. 19-cv-01519-HSG, 2021 WL 1022875, *10-12 (denying class certification of off-the-clock, meal and rest break, expense reimbursement, and related wage and hour claims where the court found it would need to make individualized inquiries on multiple issues, including staffing levels at various branches, employees' personal preferences, client volume, and employees' motivations for using a personal cellphone); *Ordonez*, 2013 WL 210223, at *8 (denying meal break and off-the-clock claims based on "disparate employment settings" among putative class members), *Gonzalez v. Millard Mall Servs., Inc.* (S.D. Cal. 2012) 281 F.R.D. 455, 461-64 (denying class certification of meal and rest break claims, among others, and listing similar cases).

⁵ *Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137 (reversing denial of class certification in a case involving failure to reimburse cellphone expenses); *McLeod v. Bank of Am., N.A.* (N.D. Cal. Dec. 13, 2017) Case No. 16-cv-03294-EMC, 2017 WL 6373020 (granting motion for class certification in favor of plaintiffs alleging that the employer failed to reimburse plaintiffs and class members for use of their personal vehicles); *Trosper v. Stryker Corp.* (N.D. Cal. Aug. 21, 2014) Case No. 13-CV-0607-LHK, 2014 WL 4145448 (granting class certification of claims for failure to reimburse mileage, cellphone, and out-of-office expenses); *see also* fn. 4, *supra*, at 11.

⁶ *See, e.g., Tokoshima v. Pep Boys-Manny Moe & Jack of California* (N.D. Cal. Apr. 28, 2014) No. C-12-4810-CRB, 2014 WL 1677979, at *10 (denying class certification of claims alleging failure to

1 Even if Plaintiffs obtained certification of a class and/or FLSA collective, Plaintiffs still faced
2 substantial risks on the merits of his claims. Yaeckel Decl. ¶ 29. Defendants would likely have argued
3 that many Class, Collective, and PAGA Group Members did not actually work much, if any, overtime,
4 and that they actually paid Class, Collective, and PAGA Group Members for overtime hours that they
5 reported. *Id.* ¶ 30. As for off-the-clock hours, Defendants would likely have argued that Defendants did
6 not have actual or constructive notice of hours worked off-the-clock by Class, Collective, and PAGA
7 Group Members and that it was therefore not liable for their off-the-clock damages. *Id.* ¶ 31. On the meal
8 and rest break claims, Defendants would likely have argued that it provided Class, Collective, and PAGA
9 Group Members with the opportunity to take duty-free meal and rest breaks, and therefore was not liable
10 for meal or rest break penalties. *Id.* ¶ 32. Defendants would also likely have argued that Plaintiffs’
11 expense reimbursement claim would have failed because Class, Collective, and PAGA Group Members
12 were provided with company-issued cell phones, had no need to use their personal devices, and were
13 afforded the opportunity to submit their business expenses for reimbursement. *Id.* ¶ 33.

14 Finally, Plaintiffs faced risk in proving the extent of damages. Class, Collective, and PAGA Group
15 Members generally do not have independent records of hours they worked off-the-clock, and therefore
16 would have had challenges quantifying their damages on a class-wide or individual basis. Yaeckel Decl.
17 ¶ 34. Similarly, Class, Collective, and PAGA Group Members generally did not maintain records that
18 would establish the frequency of alleged meal and rest break violations, making it difficult to quantify
19 those damages on a class-wide or individual basis. *Id.* ¶ 35. A certified class or collective could have
20 been decertified because of manageability issues, *see Duran v. U.S. Bank National Association* (2014) 59
21 Cal.4th 1 (affirming reversal of class certification, where variability among class members was too great,
22 and trial plan was unworkable); and a PAGA representative group could have been vulnerable to similar

23
24
25 reimburse for tool expenses); *Morgan v. Wet Seal, Inc.* (2012) 210 Cal.App.4th 1341 (affirming denial of
26 class certification involving failure to reimburse gas mileage for travel between store locations); *Chavez*
27 *v. Lumber Liquidators, Inc.* (N.D. Cal. Mar. 26, 2012) No. CV-09-4812, 2012 WL 1004850, at *9-10
(denying in part portion of plaintiffs’ motion for class certification seeking certification of unpaid
reimbursement claims based on failure to reimburse employees for mileage and cellphone usage).

manageability challenges, *see Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 864-67 (holding that trial court did not abuse its discretion in striking a PAGA claim as unmanageable).

In light of the numerous risks the Named Plaintiffs faced on class and conditional certification, the merits, and damages, this factor weighs heavily in favor of preliminary approval.

**(2) The Risk, Expense, Complexity and Likely Duration of Further Litigation
(Kullar Factor 2)**

The proposed settlement will confer a substantial benefit on Class, Collective, and PAGA Group Members, while further litigation would create significant risks and cause additional expense and delay. Settlement confers the assurance of a recovery in favor of the Class, Collective, and PAGA Group, while further litigation risks the potential for a more limited recovery or potentially no recovery at all. Yaeckel Decl. ¶¶ 36-37. If litigated through trial, the case would likely involve significant motion practice, including motions to dismiss, motions to compel discovery, motions for class and collective certification and decertification, motions for summary judgment, and motions *in limine*. *Id.* At each one of these phases, Plaintiffs could lose on a key issue, and/or the scope of the case could be substantially limited. Even if Plaintiffs obtained class and/or conditional certification and survived summary judgment, a fact-intensive trial would still be necessary to determine liability and damages. *Id.* A trial would be lengthy and complex and would consume tremendous time and resources for all Parties and the Court. *Id.* Any judgment would likely be appealed, further extending the litigation. *Id.*

Given the substantial risks, expense, complexity, and delay that further litigation of this case would entail, preliminary approval is especially appropriate. *See Bayat*, 2015 WL 1744342, at *4 (“Absent settlement, the costs and complexity of this case will certainly increase as motions to dismiss, summary judgment motions, and class certification motions (along with associated discovery) will need to be litigated.”).

(3) The Risk of Maintaining Class Action Status Through Trial (Kullar Factor 3)

The fact that Plaintiffs have not yet obtained class or conditional certification in this case weighs strongly in favor of preliminary approval. As set forth in detail in Section IV(B)(1) *supra*, Plaintiffs faced numerous obstacles to obtaining class and conditional certification on his claims. Even if Plaintiffs had obtained certification of the Class and/or Collective on all claims, Defendants could have sought, and the

1 Court could have granted, decertification of the Class and/or Collective in whole or in part at any point up
2 through the trial date. *See Vasquez v. Super. Ct.* (1971) 4 Cal.3d 800, 821; *Walsh v. IKON Office Solutions,*
3 *Inc.* (2007) 148 Cal.App.4th 1440, 1444, *as modified* (Mar. 28, 2007). Given the substantial risks
4 Plaintiffs faced in obtaining and/or maintaining class and conditional certification, this factor weighs
5 heavily in favor of granting preliminary approval.

6 **(4) The Amount Offered in Settlement (*Kullar* Factor 4)**

7 The proposed settlement amount of \$1,000,000.00 (One Million Dollars) weighs in favor of
8 preliminary approval because it offers substantial, timely, and guaranteed relief to Class Members.
9 Yaeckel Decl. ¶ 38.

10 Based on the data and documents obtained from Plaintiffs and Defendants prior to mediation,
11 Plaintiffs' Counsel calculated that Class, Collective, and PAGA Group Members' total theoretical
12 maximum recovery was approximately **\$5,325,451.16**, broken down as **\$4,228,091.16** for their FLSA and
13 state law claims, and **\$1,097,360.00** for the PAGA claims. Meireles Decl. ¶ 14. The proposed
14 \$1,000,000.00 (one million dollar) settlement amount is equal to 18.7 % of the total theoretical maximum
15 recovery. Even though Class Members' total theoretical maximum recovery is greater than the
16 \$1,000,000.00 (One Million Dollar) settlement amount, "the tangible, immediate benefits of . . .
17 [s]ettlement outweigh continued litigation and the uncertainty of a trial." *Ebarle v. Lifelock, Inc.* (N.D.
18 Cal. Jan. 20, 2016) No. 15 Civ. 258, 2016 WL 234364, at *8 (internal quotation marks omitted) (citing *In*
19 *re LinkedIn User Privacy Litig.* (N.D. Cal. 2015) 309 F.R.D. 573, 587 ("Immediate receipt of money
20 through settlement, even if lower than what could potentially be achieved through ultimate success on the
21 merits, has value to a class, especially when compared to risky and costly continued litigation.")).

22 Given the factors described above, the \$1,000,000.00 (One Million Dollar) settlement is an
23 outstanding result for the Class and compares favorably to other cases in which courts have granted
24 approval of class wage and hour settlements representing a smaller fraction of the maximum theoretical
25
26
27
28

1 damages.⁷

2 The portion of the settlement amount allocated to PAGA claims—5.0% of the Gross Fund—is also
3 well within the range of possible approval. Here, the maximum theoretical PAGA penalties were
4 approximately \$1,097,360.00, or approximately 20% of the total theoretical maximum recovery. Meirles
5 Decl. ¶ 14. Because the total settlement amount, as well as the proportion of the settlement allocated to
6 PAGA penalties, fall within the range of possible approval, this factor weighs in favor of preliminary
7 approval.

8 **(5) The Extent of Discovery Completed and Stage of the Proceedings (*Kullar***
9 **Factor 5)**

10 The fifth *Kullar* factor examines “the extent of discovery the parties have completed and the
11 current stage of the litigation to evaluate whether ‘the parties have sufficient information to make an
12 informed decision about settlement.’” *Betancourt v. Advantage Human Resourcing, Inc.* (N.D. Cal. Jan.
13 28, 2016) No. 14-cv-1788, 2016 WL 344532, at *5 (quoting *Linner v. Cellular Alaska P’ship* (9th Cir.
14 1998) 151 F.3d 1234, 1239).

15 Although the Parties in this case did not engage in formal written discovery or depositions, they
16 participated in robust pre-mediation discovery. Yaeckel Decl. ¶¶ 5-8; Meireles Decl. ¶ 13. Defendants

17
18
19 ⁷ See, e.g., *Ferrell v. Buckingham Property Mgmt.* (E.D. Cal. Jan. 21, 2020) Case No. 1:19-cv-
20 00332-LJO-SAB, 2020 WL 291042, *17-20 (granting preliminary approval of \$600,000 wage and hour
21 class and collective action settlement that represented 5.2% of the original valuation of the claims); *Cooley*
22 *v. Indian River Transp. Co.* (E.D. Cal. Jan. 24, 2019) No. 1:18- CV-00491, 2019 WL 316634, at *8
23 (granting preliminary approval of \$1.4 million wage and hour class settlement representing 11% of
24 potential liability); *Singh v. Roadrunner Intermodal Servs., LLC* (E.D. Cal. May 29, 2018) No.
25 115CV01497DADBAM, 2018 WL 2412325, at *7 (granting preliminary approval of \$9.25 million wage
26 and hour class settlement representing approximately 12% of potential liability, excluding the value of the
27 PAGA claims), *modified*, No. 115CV01497DADBAM, 2018 WL 4382202 (E.D. Cal. Sept. 13, 2018);
28 *Thompson v. Costco Wholesale Corp.* (S.D. Cal. May 11, 2017) No. 14-CV-2778-CAB-WVG, 2017 WL
1957552, at *8 (granting preliminary approval of \$2 million wage and hour class settlement reflecting
approximately 10% of exposure); *Ma v. Covidien Holding, Inc.* (C.D. Cal. Jan. 31, 2014) No. SACV 12-
02161- DOC, 2014 WL 360196, at *5 (granting preliminary approval of \$2.5 million wage and hour class
settlement that represented 9.1% of total exposure as within “range of reasonableness”); *Thomas v.*
Cognizant Tech. Sols. U.S. Corp. (C.D. Cal. June 24, 2013) No. SACV111123JSTANX, 2013 WL
12371622, at *6 (granting final approval of \$4 million wage and hour class settlement that encompassed
between 4.4% and 5% of the maximum estimated liability).

1 produced hundreds of pages of documentary discovery, including Plaintiffs' personnel file, employee
2 handbooks and guides, job descriptions, and other corporate policy documents, including copies of
3 Defendants' time-keeping, payroll, and reimbursement policies. *Id.* In addition to document production,
4 Defendants also produced comprehensive class data, including unique identifiers, job titles, job locations,
5 dates of employment, rates of pay, hours recorded, wages and penalties paid, and reimbursements paid.
6 *Id.*

7 Plaintiffs' Counsel also performed a significant investigation into the claims and defenses by
8 conducting detailed interviews with Plaintiffs and other witnesses. Yaeckel Decl. ¶ 7. During the
9 investigation of this case and negotiation of this settlement, Plaintiffs' Counsel and Defendants' counsel
10 also participated in numerous conference calls, above and beyond the two mediation sessions, to exchange
11 factual information about the claims and defenses as well as legal arguments. *Id.* This information was
12 more than sufficient for both sides to adequately evaluate the risks and benefits of continued litigation,
13 and to calculate the potential damages. *Id.* ¶ 9. Accordingly, this factor weighs in favor of preliminary
14 approval.

15 **(6) The Experience and Views of Counsel (*Kullar* Factor 6)**

16 The proposed settlement was reached through vigorous arm's-length negotiation between
17 Plaintiffs' Counsel and Defendants' Counsel. Yaeckel Decl. ¶ 9. The firms representing Plaintiffs have
18 extensive experience litigating wage and hour class actions and are recognized nationally as leading
19 employment lawyers. Yaeckel Decl. ¶¶ 20-24; Meireles Decl. ¶¶ 4-10; Galdston Decl. ¶ 4-8. The
20 Settlement Agreement was closely scrutinized and vigorously debated over months of negotiations with
21 Defendants' Counsel. Yaeckel Decl. ¶ 9. Based on Plaintiffs' Counsel's experience litigating wage and
22 hour class actions, and their analysis of settlements and verdicts in other similar cases, Plaintiffs' Counsel
23 believes that the proposed settlement represents an excellent monetary result for the Class, particularly in
24 light of the risks of continued litigation. *Id.* Yaeckel Decl. ¶¶ 25-26; Meireles Decl. ¶ 19; Galdston Decl.
25 ¶ 13. Accordingly, this factor strongly supports preliminary approval. *Id.*

26 **(7) The Presence of a Governmental Participant (*Kullar* Factor 7)**

27 Here, the proposed settlement did not involve the presence of a governmental participant. Yaeckel
28

Decl. ¶ 27. Therefore, this factor is neutral and does not weigh in favor of or against preliminary approval. The Labor and Workforce Development Agency was notified of the settlement as does not object. *Id.*; See Proof of Service on LWDA.

(8) The Reaction of Class Members to the Proposed Settlement (*Kullar* Factor 8)

The final *Kullar* factor examines Class Members’ response to the proposed settlement. Since Class Members have not yet been notified of the settlement, the Court cannot evaluate Class Members’ reaction, including the number and substance of objections, or the number of exclusion requests. The Court can more fully evaluate this factor after notice has been issued to Class Members, and after the Court has had an opportunity to review any objections and the number of opt-out requests.

Because all of the *Kullar* factors (with the exception of Factor 7, which is neutral, and Factor 8, for which it is premature to evaluate) indicate that the settlement is fair, adequate, and reasonable, the Court should grant preliminary approval of the settlement.

C. The Proposed Notices and Settlement Procedure Are Appropriate.

Constitutional due process requires that notice to class members provides sufficient information to make an informed decision to accept or object to a proposed settlement and an opportunity to be heard in the proceedings. *See Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251-52, *disapproved of on another ground in Hernandez*, 4 Cal.5th 260. The Proposed Class Notice and Proposed Collective Notice (“Proposed Notices”) satisfy these requirements.

The Proposed Class Notice informs Class Members of (1) the material terms of the settlement, (2) the proposed fees and costs of Plaintiffs’ Counsel and the Settlement Administrator, (3) the proposed Enhancement Award to the Named Plaintiffs; (4) how Class Members may opt out of or object to the settlement; (5) details about the court hearing on settlement approval and the opportunity to object; and (6) how Class Members can obtain additional information, including documents related to the settlement. Ex. A (Settlement Agreement), Ex A. to Settlement Agreement (Proposed Class Notice). The Proposed

1 Class Notice also contains information about each Class Member's estimated Individual Settlement
2 Payment under the allocation formula, how to challenge the data used in calculating the Individual
3 Settlement Payment, and the tax treatment of the Individual Settlement Payments. *Id.*

4 The content of the Proposed Class Notice also complies with Rule of Court 3.766(d) in that it
5 contains a brief explanation of the case, including the basic contentions or denials of the Parties, detailed
6 information about how to exclude oneself from the settlement, a statement that the settlement will bind all
7 members who do not timely opt out, and a statement that Class Members who do not opt out may enter an
8 appearance through counsel. *Id.*

9 The Proposed Collective Notice is likewise appropriate because it provides Collective Members
10 with (1) the material terms of the settlement, (2) the proposed fees and costs of Plaintiffs' Counsel and the
11 Settlement Administrator, (3) the proposed Enhancement Award to the Named Plaintiffs; and (4) how
12 Collective Members can obtain additional information, including documents related to the settlement. Ex.
13 A (Settlement Agreement), Ex. B to Settlement Agreement (Proposed Collective Notice). The Proposed
14 Collective Notice also contains information about each Collective Member's Individual Settlement
15 Payment under the allocation formula, how to challenge the data used in calculating the Individual
16 Settlement Payment, and the tax treatment of the Individual Settlement Payments. *Id.* The Proposed
17 Collective Notice also explains to Collective Members that they must negotiate their settlement checks to
18 opt into the Collective, that they will release their FLSA Claims by negotiating their checks, and that they
19 will not release their FLSA Claims if they do not negotiate their checks. *Id.*

20 The proposed procedure for distributing the Proposed Notices is robust, and more than meets the
21 requirement that it have "a reasonable chance of reaching a substantial percentage of the class members."
22 *Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 974; *see also Wershba*, 91 Cal.App.4th at 251. The Notice
23 will be sent via U.S. mail to Class, Collective, and PAGA Group Members' last known addresses. Ex. A
24 (Settlement Agreement) § 16. The Settlement Administrator shall further attempt to obtain the correct
25 address for each Class Member whose Notice is returned as undeliverable, including using skip-tracing.
26 *Id.* This manner of giving notice complies with Rule of Court 3.766(e) because it has a likelihood of
27 reaching most Class Members. The Proposed Notices will be issued in English only, given that Class
28

Members are all fluent in English. Ex. A (Settlement Agreement) § 25; Yaeckel Decl. ¶ 28.

Finally, after entry of final judgment, Plaintiffs' Counsel shall be responsible for ensuring that the Settlement Administrator posts on the website for this case that final judgment in the case has been entered, so as to notify Class Members of the same. *Id.* ¶ 28.

V. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion for Order Provisionally Certifying Settlement Class and Preliminarily Approving Class Settlement.

Dated: November 1, 2024

SULLIVAN & YAECKEL LAW GROUP, APC



Eric K. Yaeckel

Ryan T. Kuhn

Attorneys for Plaintiffs SHEILA LOPEZ, GEORGINA BAUTISTA and

FE ADRIANO, Individually, and on behalf of and the Proposed FLSA Collective and Class

/s/ Benjamin Galdston

Benjamin Galdston

OMNUM LAW APC

4350 Executive Dr., Ste. 350

San Diego, CA 92121

(858) 539-9767

bgaldston@omnumlaw.com



Paolo Meireles (*pro hac vice* application forthcoming)

SHAVITZ LAW GROUP P.A.

951 Yamato Road, Ste. 285

Boca Raton, FL 33431

(561) 447-8888; Fax (561) 447-8831

pmeirels@shavitzlaw.com