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Individually and on behalf of the Certified Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
(UNLIMITED JURISDICTION)

PARKER CRAWLEY, CASSIA CARRAWAY,
CHARLES DAVIS, AND HUCKLEBERRY
TAYLOR individually and on behalf of others
similarly situated,

Plaintiffs,
vs.

RISE ENERGY, LLC, a limited liability
company; NUSUN POWER, LLC, a limited
liability; JORDAN KENT BINNING, an
individual; and DOES 1 through 100, inclusive,
Defendants.

CASE NO. 30-2023-01336866-CU-OE-CXC
Assigned to: Hon. Melissa R. McCormick

CLASS ACTION

Complaint Filed: July 17, 2023
FAC Filed: August 15, 2023
SAC Filed: December 7, 2023
TAC Filed: May 17, 2024

**PLAINTIFF'S NOTICE OF MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATIONS OF PARKER CRAWLEY,
CASSIA CARRAWAY, CHARLES DAVIS,
HUCKLEBERRY TAYLOR, ANDREW C.
ELLISON; [PROPOSED] ORDER**

DATE: August 21, 2025
TIME: 2:00 P.M.
PLACE: Dept. CX 104

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4 **TO ALL INTERESTED PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

5 PLEASE TAKE NOTICE that on August 21, 2025 at 2:00 P.M. in Department CX 104 of the
6 above-entitled Court, located at 751 West Santa Ana Blvd. Santa Ana, CA 92701, Plaintiffs Parker
7 Crawley, Cassia Carraway, Charles Davis, and Huckleberry Taylor, for themselves and the Putative Class
8 (“Plaintiffs”) will be bringing a Motion to seek an order of this Court as follows:

9 1. Preliminarily approving the Class Action and PAGA Settlement Agreement
10 (“Settlement” or “Settlement Agreement”) attached as Exhibit A to the Declaration of Andrew C.
11 Ellison (“Ellison Decl.”);

12 2. Appointing Plaintiffs Parker Crawley, Cassia Carraway, Charles Davis, and
13 Huckleberry Taylor as the Class Representatives for settlement purposes;

14 3. Appointing Andrew C. Ellison of Ellison Law Group, APC, Lilit Solmer, Thomas
15 Solmer, and Christopher Adams of Solmer Law Corporation as Class Counsel for settlement purposes;

16 4. Approving the proposed Notice of Class Action Settlement and Hearing Date for Final
17 Court Approval (“Class Notice”) attached as Exhibit 1 to the Settlement Agreement to be mailed to
18 the Class;

19 5. Directing Defendants Nusun Power LLC formerly known as Rise Energy, LLC, and
20 Jordan Kent Binning (“Defendants”) to provide, not later than 10 days after the Court grants
21 Preliminary Approval of the Settlement, to the Settlement Administrator the Class Members’ names,
22 last-known addresses, e-mail addresses, and last-known telephone numbers, and the Parties shall
23 jointly provide the workweek data during the Class Period; and,

24 6. Setting a date for a hearing on final approval of the proposed settlement.

25 Pursuant to California Labor Code § 2699(1)(2), a copy of the Class Action and PAGA
26 Settlement Agreement, as well as information regarding the preliminary approval hearing on this
27 matter, were submitted to the California Labor Workforce Development Agency via online filing at
28 <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html> on April
11, 2025. (See Ellison Dec. ¶ 9).

1 This request is made pursuant to Rule 3.769 of the *California Rules of Court*. This Motion is
2 made on the grounds that the parties have reached a mediated settlement that they believe to be fair,
3 reasonable and adequate, and in the best interests of the Class Members and parties.

4 This Motion is based upon the Memorandum of Points and Authorities, the Parties' Class Action
5 and PAGA Settlement Agreement, the Declaration of Andrew C. Ellison, the Declaration of Parker
6 Crawley, Cassia Carraway, Charles Davis, and Huckleberry Taylor, as well as all other papers filed in
7 this matter, and oral argument or other evidence that the Court may consider at such hearing.

8 Dated: April 11, 2025

Ellison Law Group, APC

9
10 

11 By: _____

12 Andrew C. Ellison

13 Attorneys for Plaintiffs Parker Crawley, Cassia
14 Carraway, Charles Davis, and Huckleberry Taylor and
15 the Certified Class
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a common fund settlement reached in this case after
3 extensive negotiations and private mediation between the parties (the “Settlement”). The parties reached
4 this Settlement through arm’s-length bargaining, after litigation, sufficient investigation and discovery
5 relating to the scope of class damage, and with the involvement of a professional mediator. The main
6 elements of the Settlement are:

- 7 • Size of the Class: approximately 2,074 individuals
- 8 • Gross Settlement Amount: \$875,000.00
- 9 • Requests Class Representative Enhancement Award not to exceed \$10,000.00, for
10 each of the 4 class representatives, subject to Court approval.
- 11 • Plaintiffs’ counsel requests attorneys’ fees from the Gross Settlement Sum of not
12 more than 35% of the Gross Settlement Amount, or \$306,250.00, subject to Court
13 approval.
- 14 • Plaintiffs’ counsel requests reasonable reimbursement of litigation costs of \$25,000
15 from the Gross Settlement Sum, subject to Court approval.
- 16 • All class administration costs shall be paid from the Gross Settlement Sum, not to
17 exceed \$25,000.
- 18 • An Individual Class Payment will be calculated by (a) dividing the Net Settlement
19 Amount by the total number of Workweeks worked by all Participating Class
20 Members during the Class Period and (b) multiplying the result by each Participating
21 Class Member’s Workweeks.
- 22 • A payment to the LWDA and Aggrieved Employees of PAGA Penalties in the
23 amount of \$50,000 to be paid from the Gross Settlement Amount, with 75%
24 (\$37,500.00) allocated to the LWDA PAGA Payment and 25% (\$12,500.00)
25 allocated to the Individual PAGA Payments.

26 The Settlement is fair and reasonable and confers a substantial benefit upon the Class Members.
27 Accordingly, pursuant to *California Rule of Court* 3.769, Plaintiffs request that the Court grant
28 preliminary approval of the Settlement, set the deadline for filing objections to the Settlement, schedule
a final approval hearing, and approve the proposed Notice.

1 **II. STATEMENT OF THE CASE**

2 **A. Plaintiffs’ Allegations and Procedural History.**

3 This case results from the joinder of two similar class action and PAGA matters; Plaintiff Taylor's
4 claims were first brought in Ventura County Superior Court, but he was since added to this case filed by
5 the other plaintiffs, and the Ventura action was dismissed.

1 The original class action complaint was filed July 17, 2023. The applicable PAGA notice was
2 filed and served on September 6, 2023, so the relevant period for the PAGA claim begins on September
3 6, 2022. The operative complaint is the Third Amended Complaint, filed May 17, 2024, it alleged 10
4 causes of action: (1) Failure To Pay Minimum Wages; (2) Failure To Pay Overtime Wages; (3) Failure
5 To Provide Rest Periods; (4) Failure To Provide Meal Periods; (5) Improper Deductions From Wages;
6 (6) Violation Of Wage Order - Rent Charged To Employees; (7) Failure To Provide Accurate Itemized
7 Wage Statements; (8) Failure To Reimburse Business Expenditures And Losses; (9) Unfair Competition;
8 And (10) Private Attorney General Act (California Labor Code § 2698, Et Seq. [Paga]). Defendants
9 Nusun Power LLC formerly known as Rise Energy, LLC, and Jordan Kent Binning (“Defendants”)
10 demurred and filed a motion to strike. (Ellison Decl. ¶ 6).

11 The parties agreed to mediate with Hon. Amy D. Hogue (Retired). The full day mediation took
12 place on July 29, 2024 and was ultimately successful. (Ellison Decl. ¶¶ 7- 9).

13 **B. Investigation and Discovery.**

14 Class Counsel have conducted investigation, discovery, and research during the prosecution of
15 the Action. Such efforts included, among other things: (a) conducting a thorough pre-filing investigation;
16 (b) In lieu of formal discovery, the parties agreed to informally exchange information in advance of
17 mediation. Class Counsel received and reviewed all available records of their own periods of work, as
18 well as a 25% sampling of class members (identified as "setters," "setter captains," "closers," and
19 "managers"). (c) Class Counsel inspected and analyzed voluminous data and documents produced by
20 Defendants and pertaining to Plaintiffs and the class members, including over 36,000 lines of pay and
21 expenses data for the sampling of class members; (d) Class Counsel interviewed class members including
22 several individuals who did not ultimately join the action as plaintiffs; (e) Class Counsel analyzed the
23 legal arguments made by Defendants and engaged in meaningful information exchange at mediation
24 regarding the purpose and effect of each type of transaction noted in Nusun's records; (f) Class Counsel
25 prepared an analysis of potential class-wide damages and constructing a damages model; (g) Class
26 Counsel researched the applicable law with respect to the claims asserted in this Action and the potential
27 defenses thereto. Class Counsel evaluated the arguments in Defendants demurrer and Motion to Strike
28 and outlined an opposition. (Ellison Decl. ¶ 8).

1 Thus, the Parties have engaged in sufficient investigation, discovery, and research to assess the
2 relative merits of the claims of the Class, associated damages and Defendants' defenses.

3 **C. The Settlement.**

4 The case settled at mediation, as memorialized in the Class Action and PAGA Settlement
5 Agreement, for the sum total of \$875,000.00. (Ex. A, Ellison Decl., Settlement Agreement, ¶¶ 1.23.;
6 3.1.) The Gross Settlement Amount is based on the potential damages for alleged claims and penalties,
7 and attorneys' fees and costs, as identified through the mediation process and investigation, along with
8 additional sums for civil penalties, administration costs and derivative *Labor Code* penalties, indexed
9 against the risk of Defendants' prevailing, and Defendants' ability to afford an eventual judgment. The
10 Parties' counsel and the mediator believe that the terms of the Settlement reflect a fair and equitable
11 compromise between the Parties. The parties also relied on review of class action settlements involving
12 similar claims against similar entities in the same industry, which had similar business models, and agreed
13 that this settlement is comparable on a per-employee and per-workweek basis to the settlements reached
14 in those matters. (Ellison Decl., ¶¶ 11, 12).

15 Here, dividing the Total Settlement Amount by the 2,074 Putative Class Members provides for a
16 mean settlement value of \$421.89 before deduction of fees and costs. Individual class member settlement
17 payments will vary significantly, based on workweeks worked within the Class Period. (Ellison Decl. ¶¶
18 11, 13).

19 The Plaintiffs and Class Counsel believe that the claims, allegations, and contentions asserted in
20 the action have merit. However, the Plaintiffs and Class Counsel recognize and acknowledge the expense
21 and delay of the lengthy proceedings necessary to prosecute the Action against Defendants through trial
22 and appeals. Furthermore, Class Counsel have taken into account the risks inherent in any litigation, and
23 the additional risk of continued litigation in complex actions such as this, including the Defendants' likely
24 appeal. Uncertainty in Plaintiffs' ability to secure from a jury a better outcome relative to the settlement
25 amounts the parties have agreed upon, as well as a significant delay in Class Members receiving
26 settlement awards after a trial for damages presented significant risk in the matter. (Ellison Decl. ¶ 16).

27 In reaching this settlement, Plaintiffs and Class Counsel carefully considered the defenses
28 asserted by Defendants and the risks associated with continued litigation. Defendants denied all material

1 allegations and asserted several substantive defenses, including that the individuals at issue were properly
2 classified as independent contractors and, even if deemed employees, were exempt under the outside
3 sales exemption. Defendants also contended that class certification would be inappropriate due to the
4 individualized nature of the putative class members' door-to-door sales activities, and raised a good faith
5 dispute defense to the claims for wage statement penalties, waiting time penalties, and willful
6 misclassification.

7 Moreover, Class Counsel have also considered the potential for reduction (or elimination) of
8 penalties recoverable under PAGA, given that case law permits a discretionary reduction to said penalties
9 where "unjust, arbitrary, oppressive or confiscatory." Similarly, an award of penalties under *Labor Code*
10 sections 203 and 226 requires a demonstration of "willfulness" on the part of the Defendants. (Ellison
11 Decl. ¶ 15). Similarly, Defendants denied any "willful" misclassification, which would be required to
12 recover penalties under Labor Code section 226.8. These defenses presented significant litigation risks
13 that were taken into account in negotiating the proposed settlement.

14 In light of the preceding potential risks, Class Counsel believe that the Settlement set forth in the
15 Stipulation confers substantial benefits upon the Plaintiffs and each of the members of the Putative Class,
16 and that an independent review of the Class Action and PAGA Settlement Agreement by the Court in the
17 approval process will confirm this conclusion. Based on their own independent investigation and
18 evaluation, Class Counsel have determined that the Settlement set forth in the Settlement Agreement is
19 in the best interests of the Plaintiffs and the members of the class. (Ellison Decl., ¶ 16).

20 **III. THE PARTIES' ATTORNEYS**

21 Class Counsel are experienced lawyers with substantial complex litigation experience and have
22 extensive experience in successful prosecution of numerous class actions. They, including cases they
23 have co-counseled and been assigned to, have recovered more than ten million dollars on behalf of
24 thousands of individuals in California and have successfully handled numerous significant wage-and-
25 hour class and representative actions. (Ellison Decl., ¶¶ 17 - 27). Class Counsel committed significant
26 firm resources to the prosecution of this action. Plaintiffs' counsel for this action were retained based
27 upon a contingency fee arrangement wherein they agreed to advance all costs and receive no fee unless
28 recovery was accomplished. Because of the anticipated need of resources for the prosecution of this

1 case, they had to forego other work and face considerable financial risk in this Action. (Ellison Decl., ¶
2 24).

3 Counsel for Defendants are also experienced lawyers with substantial complex litigation
4 experience, and are part of a major, nationwide law firm, BUCHALTER, with robust labor and
5 employment expertise. Counsel for Defendants have extensive experience in defending wage-and-hour
6 class actions. (Ellison Decl. ¶ 29).

7 **III. THE CLASS ACTION AND PAGA SETTLEMENT AGREEMENT**

8 **A. General Description of the Settlement Agreement**

9 The Settlement, filed concurrently with this Motion as **Exhibit A** to the Declaration of Andrew
10 C. Ellison, generally provides for the following (the “Agreement”):

11 **1. Settlement Class**

12 In the Agreement, the Settlement Class is defined as:

13 Setters, Setter Captains, Closers, or Managers who worked for Nusun in California,
14 between July 17, 2020 and the date of Preliminary Approval.¹

15 (Ex. A, Ellison Decl., Settlement, Definitions, ¶ 1.5)).

16 **2. Settlement Amounts**

17 This is a common fund settlement. The common fund is \$875,000.00 (the “Gross Settlement
18 Amount”). (Ex. A, Ellison Decl., Settlement, ¶ 1.22). Out of that fund, the following is requested to be
19 paid: Administration costs not to exceed \$25,000.00; attorney’s fees to Class Counsel herein in the
20 amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$306,250.00; litigation Expenses
21 Payment of not more than \$25,000.00; Service Payment to Class Representatives of not more than
22 \$10,000.00 to each of the four named Class Representatives; \$50,000.00 in PAGA penalties, pursuant to
23 *Labor Code* section 2698, et seq., with 75% of this portion, \$37,500.00, being paid to the State of
24 California and the remaining 25%, \$12,500.00 allocated to the Individual PAGA Payments. (Ex. A,
25 Ellison Decl., Settlement, ¶¶ 3.1 – 3.25).

26 ¹ If the number of work weeks at the time of preliminary approval exceeds the 23,140 cumulative class work weeks at the
27 time of mediation by more than 10% (i.e. exceeds 25,545) then Defendants shall have the option to exercise in their sole
28 discretion whether to (i) increase the gross settlement amount proportionally by the percentage by which the total
number of work weeks exceeds 25,454 or (ii) end the Class Period and PAGA Period on the last day of the work week the
causes the number of released work weeks to exceed 25,545.

1 **3. Calculation of the Individual Settlement Amounts**

2 Plaintiffs and Defendants have agreed upon the following payment formula to resolve all disputes
3 of the Settlement Class during the Settlement Period:

4 After deducting for the amounts for Settlement Administrator’s fees, Plaintiff’s Service Payment,
5 the PAGA Fund, and Class Counsel’s awarded attorneys’ fees and costs, the balance of the Gross
6 Settlement Payment (the “Net Settlement Amount”) will be distributed as follows:

7 An Individual Class Payment is calculated by (a) dividing the Net Settlement Amount by
8 the total number of Workweeks worked by all Participating Class Members during the
9 Class Period and (b) multiplying the result by each Participating Class Member’s
Workweeks. (Ex. A to Ellison Decl., Settlement, ¶ 3.2.4).

10 The Administrator will calculate each Individual PAGA Payment by (a) dividing the
11 amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$12,500.00) by the
12 total number of PAGA Period Pay Periods worked by all Aggrieved Employees during
13 the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA
14 Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any
taxes owed on their Individual PAGA Payment.
(Ex. A to Ellison Decl., Settlement, ¶ 3.2.5.1).

15 For any Class Member whose Individual Class Payment check or Individual PAGA Payment
16 check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented
17 by such checks to the California Controller’s Unclaimed Property Fund in the name of the Class Member
18 and name of the Aggrieved Employee thereby leaving no “unpaid residue” subject to the requirements
19 of *Code of Civil Procedure* Section 384, subd. (b). (Ex. A to Ellison Decl., Settlement, ¶ 4.4.3).

20 **B. Individuals May Select to Object to the Class Settlement**

21 The Settlement provides for both (i) an objection process for all participating Class Members, as
22 well as (ii) an opt-out procedure to any Settlement Class Members who were not previously sent a Class
23 Certification Notice. (Ex. A to Ellison Decl., Settlement, ¶¶ 7.5, 7.7). Any Settlement Class Members
24 who were not previously sent a Class Certification Notice and who wish to exclude themselves (opt-out
25 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
26 Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14
27 days for Settlement Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter
28 from a Settlement Class Member or his/her representative that reasonably communicates the Settlement

1 Class Member's election to be excluded from the Settlement and includes the Settlement Class Member's
2 name, address and email address or telephone number. To be valid, a Request for Exclusion must be
3 timely faxed, emailed, or postmarked by the Response Deadline. (Ex. A to Ellison Decl., Settlement, ¶
4 7.5.1).

5 **C. The Settlement Administrator**

6 ILYM Group will act as the Settlement Administrator. The Settlement Administrator will
7 perform address verification measures, formatting, preparing, translating and mailing of the Notice
8 Packets; accounting for Opt-Outs and objections; calculation and determination of payments to
9 Participating Settlement Employees; accounting and maintenance of Settlement Fund Account; posting
10 of the necessary information (*e.g.*, regarding the judgment) on the administrators' website; resolution of
11 any differences between Defendants' records and information provided by Participating Settlement
12 Employees; distribution of payments to Participating Settlement Employees; preparation of a report for
13 the Court indicating the total amount that was actually paid to Participating Settlement Employees;
14 administration and payment of unclaimed and/or uncashed checks pursuant to Code of Civil Procedure
15 § 384; preparation and issuance of checks to Class Counsel for attorneys' fees and costs; preparation and
16 issuance of the checks to Class Representative for his Service Payment; calculation, administration, and
17 submission of all tax-related documents concerning the Settlement; and any other issues related to the
18 Settlement administration. (Ex. A. to Ellison Decl., ¶ 4.4-4.4.3).

19 On a weekly basis, the Settlement Administrator will provide written reports to Class Counsel
20 and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed,
21 Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received,
22 objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks
23 mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly
24 Reports must include the Administrator's assessment of the validity of Requests for Exclusion and attach
25 copies of all Requests for Exclusion and objections received.
26 (Ex. A. to Ellison Decl., Settlement ¶ 7.8.3).

27 The Parties have agreed to reimbursement of the Settlement Administrator's costs, estimated not
28 to exceed \$25,000.00. (Ex. A. to Ellison Decl., Settlement, ¶ 3.2.3).

1 **C. The Scope of the Release**

2 Named Class Representatives will release all claims, transactions, or occurrences, including, but
3 not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts
4 contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been,
5 alleged based on facts contained in the Operative Complaint, Plaintiffs' PAGA Notice, or ascertained
6 during the Action and released under 6.2, below, as well as a general release of any and all claims.
7 ("Plaintiffs' Release.") (Ex. A. to Ellison Decl., Settlement ¶ 5.1).

8 All Participating Class Members will release Released Parties from all claims arising during the
9 Class Period that were alleged, or reasonably could have been alleged, based on the facts stated in the
10 Operative Complaint, including, but not limited to: all claims that were or could have been asserted based
11 on the facts and allegations made in the Action, including but not limited to claims asserted under Labor
12 Code sections 201, 202, 203, 218, 218.6, 226, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1197.1,
13 1198, 2775, 2800, 2802, 3357, applicable sections of the Wage Orders, and Business and Professions
14 Code section 17200 *et seq.* (Ex. A. to Ellison Decl., Settlement, ¶ 5.4).

15 All Aggrieved Employees are deemed to release the Released Parties from all claims for PAGA
16 penalties arising during the PAGA Period that were alleged, or reasonably could have been alleged, based
17 on the facts stated in Plaintiffs' September 26, 2023 PAGA Notice, including claims asserted under Labor
18 Code sections 201, 202, 203, 204, 206, 210, 218.5, 221, 224, 226, 226.7, 226.8, 246, 432, 510, 512, 552,
19 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2751, 2800, 2802, 2810.5, and
20 applicable sections of the Wage Orders. Aggrieved Employees may not opt-out of the PAGA Release.
21 The Parties expressly acknowledge that the PAGA released claims are limited to those facts and theories
22 set forth in the Plaintiffs' September 6, 2023 notice letter to the LWDA. (Ex. A. to Ellison Decl.,
23 Settlement, ¶ 5.4).

24 **D. The Claims Procedure**

25 As set forth above, the Settlement provides that Class Members are not required to make claims
26 on the settlement. Instead, the Settlement Administrator will undertake diligent efforts to find a current,
27 accurate address for each Class Member and, after final approval, a check will be mailed to each Class
28 Member that is found and has not opted-out of the action. If, after 180 days elapse, there are mailed

1 checks that are uncashed, the Settlement Administrator will cancel said checks and tender the funds to
2 the California Unclaimed Property Fund in the name of the Class Member thereby leaving no “unpaid
3 residue” subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).
4 Class Counsel has utilized this method in other class action matters, and it is Class Counsel’s belief that
5 this method is more effective at distributing settlement monies to class members than a “claims-made”
6 procedure. (Ex. A. to Ellison Decl., Settlement ¶ 4.4.1-4.4.3).

7 **E. Attorneys’ Fees and Costs**

8 Class Counsel will seek fees of not more than thirty-five percent (35%) of the Gross
9 Settlement Amount, which is currently estimated to be \$306,250.00 and a Class Counsel Litigation
10 Expenses Payment of not more than \$25,000.00. Defendants does not oppose requests for these payments
11 provided that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for
12 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to
13 the Final Approval Hearing. (Ex. A. to Ellison Decl., Settlement ¶ 3.2.2).

14 The attorneys' fees and costs approved by the Court shall encompass (a) all work performed and
15 costs incurred by Class Counsel in representing Plaintiffs and the putative class through the date of the
16 Settlement Agreement; (b) all work to be performed and costs to be incurred in connection with obtaining
17 preliminary and final approval from the Court; and (c) all work and costs, if any, incurred in connection
18 with administering the Settlement through the conclusion of the Action. To the extent the Court approves
19 less than the requested amount of Class Counsel’s fees and costs, the difference between the requested
20 and awarded amounts will be added to the amount to be distributed to the Class Participants. Defendants
21 shall bear its own attorneys’ fees and costs incurred for the Action. (Ex. A, Settlement ¶ 3.2.2).

22 **F. Enhancement Award for Named Plaintiffs**

23 Named Plaintiffs Parker Crawley, Cassia Carraway, Charles Davis, and Huckleberry Taylor will
24 each apply to the Court for a Ten Thousand Dollar (\$10,000.00) Enhancement Award for their substantial
25 efforts on behalf of the members of the Settlement Class in this Action over the past years and their
26 execution of a general release of all claims. Defendants do not oppose such request. Any Enhancement
27 Award approved by the Court will be paid to Class Representatives from the Settlement Amount and be
28 in addition to any distribution to which they may otherwise be entitled to as members of the Settlement

1 Class. The Settlement is not, however, contingent upon the amount awarded as Enhancement Awards to
2 Class Representatives. (Ex. A. to Ellison Decl., Settlement ¶ 3.2.1).

3 **G. Effect on Other Cases and Unique Issues**

4 There are no known other cases that would be affected by this Settlement. There are no other
5 issues unique to this case that deserve mention in this motion.

6 **IV. PRELIMINARY APPROVAL SHOULD BE GRANTED**

7 A class action may not be settled without the approval of the Court. (Civ. Code § 1781(f).) Under
8 Federal Rule of Civil Procedure 23(e), upon which California Civil Code section 1781 is modeled², there
9 is a defined procedure and specific criteria for settlement approval in class action settlements, as
10 described in *Manual for Complex Litigation*, Fourth (Fed. Judicial Center 2004) (“*Manual*”) §§ 21.61,
11 21.63. The *Manual*’s settlement approval procedure describes three distinct steps:

- 12 1. Preliminary approval of the proposed settlement at an informal hearing;
- 13 2. Dissemination of mailed and/or published notice of the settlement to all affected class
- 14 members; and
- 15 3. A “formal fairness hearing,” or final settlement approval hearing, at which class members
- 16 may be heard regarding the settlement, and at which evidence and argument concerning
- 17 the fairness, adequacy, and reasonableness of the settlement is presented.

18 At the preliminary approval stage, the Court has broad powers to determine whether the proposed
19 settlement is fair under the circumstances of the case. (See *Wershba v. Apple Computers, Inc.* (2001) 91
20 Cal.App.4th 224, 234-35.) Preliminary approval is warranted if the settlement falls within the “range of
21 reasonableness.” (*North County Contractors Assn. Inc. v. Touchstone Ins. Services* (1994) 27
22 Cal.App.4th 1085, 1089-1090.)

23 For preliminary approval, the Court makes an “initial evaluation” of the fairness of the proposed
24 settlement on the basis of written submissions and informal presentation from the settling parties. The
25 *Manual* summarizes the preliminary approval criteria as follows:

26 The judge should make a preliminary determination that the proposed class satisfies
27 the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b).

28 ² The California Supreme Court has authorized and urged state trial courts to use *Rule 23* and federal case law for
guidance in deciding class issues. (See *Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800, 821.)

1 [...] The judge must make a preliminary determination on the fairness,
2 reasonableness, and adequacy of the settlement terms and must direct preparation of
3 the notice of the certification, proposed settlement, and the date of the final fairness
4 hearing.

5 (*Manual*, § 21.632; see also 4 *Newberg on Class Actions* (4th Ed. 2002) § 11.25.)

6 The California standard for approval of class settlement is similar to the federal standard: the
7 settlement should be fair, reasonable, and adequate for class members overall. (*Dunk v. Ford Motor Co.*
8 (1996) 48 Cal.App.4th 1794, 1801.) So, in making the fairness determination in this case, the Court
9 should consider “the strength of the plaintiffs’ case, the risk, expense, complexity and likely duration of
10 further litigation, the risk of maintaining class action status through trial, the amount offered in
11 settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and
12 views of counsel....” (*Id.* at p. 1801.) A presumption of fairness exists where: (1) the settlement is
13 reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel
14 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
15 of objectors is small. (*Id.* at p. 1802.)

16 **A. The Settlement is Within the Range of Reasonableness**

17 The Settlement herein is well within the range of reasonableness. Each Class Member’s
18 anticipated Settlement Payment, estimated to average about \$422.00 per class member (and \$37.81 per
19 workweek) net of fees and costs, is on the order of the alleged compensation and penalties identified in
20 the comprehensive audit and investigation of the amounts which were potentially at issue in the litigation.
21 (Ellison Decl., at ¶ 13).

22 The investigation and discovery process in this matter revealed that potential liability in the
23 matter, based on the data available and in light of the Defendants’ written policies, was tabulated to be
24 on the order of: unpaid training wages-\$1,013,000; wage statement violations-\$3,609,000.00; unlawful
25 deductions-\$10,336,564; phone reimbursements-\$866,000.00; PAGA misclassification penalties-
26 \$1,697,600.00. (Ellison Decl., at ¶ 12). These categories of alleged violations are, in aggregate, around
27 \$17,522,164.00. (*Id.*). Various other categories of apparent deductions were analyzed and discussed by
28 the parties, but those were shown to be internal transfers rather than actual deductions from pay.

Labor Code Section 203 provides, in relevant part, that “[i]f an employer **willfully** fails to pay,

1 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any
2 wages of an employee who is discharged or who quits, the wages of the employee shall continue as a
3 penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but
4 the wages shall not continue for more than 30 days.” *Cal. Lab. Code* § 203 (emphasis added).

5 Labor Code Section 226 requires an employer to provide accurate itemized wage statements to
6 employees, and an employee suffering injury as a result of a knowing and intentional failure by an
7 employer to comply with this requirement is entitled to recover statutory penalties not exceeding an
8 aggregate penalty of \$4,000. Labor Code § 226. A ‘knowing and intentional failure’ does not include an
9 isolated and unintentional payroll error due to a clerical or inadvertent mistake. *Naranjo v. Spectrum*
10 *Security Services, Inc.* (2024) 15 Cal.5th 1056, 1071.

11 In addition, Labor Code Section 226.8(a)(1) states that “(a) It is unlawful for any person or
12 employer to engage in the willful misclassification of an individual as an independent contractor. Labor
13 Code § 226(a)(1). “Willful misclassification” is defined to mean “avoiding employee status for an
14 individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” (§
15 226.8, subd. (i)(4).) *Noe v. Superior Ct.*, (2015) 237 Cal. App. 4th 316, 328.

16 Further, *Labor Code* Section 2698 *et seq.* (the “PAGA”) provides for a mechanism for Plaintiffs
17 to seek an award of civil penalties on behalf of the State of California, which any such penalties recovered
18 being split 75% to the State of California, and 25% to the “aggrieved employees.” *Cal. Lab. Code* §
19 2699(i). However, given that “a court may award a lesser amount than the maximum civil penalty amount
20 specified by [the PAGA] if, based on the facts and circumstances of the particular case, to do otherwise
21 would result in an award that is unjust, arbitrary, and oppressive, or confiscatory,” there is significant
22 uncertainty regarding an award of penalties pursuant to continued litigation. The settlement agreement
23 here allocates an additional \$50,000.00 in funds to PAGA penalties. (Ex. A. to Ellison Decl., Settlement
24 ¶ 3.2.5).

25 Class Counsel believes that the Settlement is fair and reasonable. It approximates the estimated
26 damages for reimbursements owed and unpaid overtime wages allegedly suffered by each Class Member
27 as identified through the discovery and investigation process, and provides for additional consideration
28 above and beyond that amount for penalties alleged in the action, while accounting for risk that

1 Defendants would defeat the claims, and most significantly what Defendants can afford to pay. (*See*
2 further analysis of settlement valuation, Ellison Decl., ¶ 14).

3 Where a proposed settlement appears to be the product of serious, informed, non-collusive
4 negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class
5 representatives or segments of the class, and falls within the range of possible approval, then the court
6 should grant preliminary approval. (*See Newberg on Class Actions*, supra, at § 11.25).

7 Here, the Settlement will result in a substantial benefit to all Class Members. The total settlement
8 is \$875,000.00. After deducting the to-be-requested amounts for attorney’s fees, settlement administrator
9 fees, and actual costs for Class Counsel, the Service Payment to the Class Representative, and the PAGA
10 payment (including the State of California’s portion), the net settlement amount to be divided among the
11 class will be approximately \$428,290.30, with each settling Class Member receiving approximately
12 \$18.51 (net) for each active workweek. PAGA class members (“Allegedly Aggrieve Employees”) will
13 receive their Individual PAGA Payment as well. (Ex. A. to Ellison Decl., Settlement ¶ 1.24, 1.34).

14 **B. The Settlement is the Product of Non-Collusive, Arm’s-Length and Informed Negotiations.**

15 California courts recognize that “a presumption of fairness exists where ... [a] settlement is
16 reached through arm’s-length *bargaining*.” (*Wershba*, supra, 91 Cal.App.4th at 245.) In this case, the
17 Settlement was reached after a full day of mediation with an experienced class-action mediator, Hon.
18 Amy D. Hogue (Ret.). Prior to the mediation, the parties exchanged informal discovery requests,
19 responses, and documents. Defendants produced substantial documentation and data relating to Class
20 Members, for mediation purposes. In reaching the Settlement, counsel on both sides relied on their
21 respective substantial litigation experience in similar employment class actions. Plus, information
22 gleaned from investigation and the discovery processes informed Class Counsel’s assessment of the
23 strengths and weaknesses of the case and the benefits of the Settlement. (Ellison Decl., ¶¶ 12-16).

24 **C. The Service Payment to the Named Plaintiffs is Reasonable.**

25 The proposed Service Payment of \$10,000.00 to Parker Crawley, Cassia Carraway, Charles
26 Davis, and Huckleberry Taylor is intended to recognize their substantial initiative, risk, and effort on
27 behalf of the Class. It is also reflective of the amount of time they spent engaged in the case and acting
28 as representatives. Courts routinely approve incentive awards to compensate plaintiffs for the services

1 they provide and the risks they incur during class action litigation. (See *Bell v. Farmers Ins. Exchange*
2 (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named plaintiffs for their efforts in
3 bringing the case).)

4 Named Plaintiffs initiated this action on behalf of all Class Members when they very well could
5 have done so on their own behalf only. Additionally, the Class Representatives assisted Class Counsel
6 at every stage, from reviewing the pleadings, reviewing documents and data provided, analyzing Class
7 Counsel’s damages model, providing input through repeated questions from Class Counsel regarding
8 every aspect of this case, attending the mediation, reviewing and scrutinizing the settlement agreement,
9 and remaining in close contact with Class Counsel from day one. (Crawley, Carraway, Davis, Taylor
10 Decs., ¶¶ 5 - 7).

11 Moreover, it is important to note that the named Class Representatives, because they are to
12 receive this enhancement payment, are entering into comprehensive general releases of *all claims, known*
13 *and unknown*, unlike the rest of the Class Members, who are releasing only those claims that were or
14 could have been litigated based on the facts alleged in the operative Complaint. (Crawley, Carraway,
15 Davis, Taylor Decs., ¶ 8). Also, due to their fee agreement with Class Counsel, the named Class
16 Representatives would be obligated to pay for all costs arising out of the litigation; if the case had not
17 been resolved, these costs could have been substantial for individuals making a modest living, and their
18 agreement to take on these costs put them at great financial risk. (*Id.*, ¶ 9) Accordingly, the \$10,000.00
19 payment to the named Class Representatives fairly compensate them for the full release, the substantial
20 assistance he provided to Class Counsel and his co-employees/Class Members, and the risk he incurred.

21 **D. The Attorney’s Fees and Costs are Reasonable Under the Common Fund Doctrine.**

22 The attorney’s fees and costs requested by Class Counsel are reasonable under the common fund
23 doctrine. The common fund doctrine has been approved by California courts. (*Wershba, supra*, 91
24 Cal.App.4th at p. 254; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26-30; *Laffitte v.*
25 *Robert Half Internat. Inc.* (2016) 1 Cal. 5th 480.

26 The doctrine is consistent with U.S. Supreme Court precedent also – in *Boeing Co. v. Van Gentert*
27 (2008) 444 U.S. 472, the court ruled that class counsel are entitled to a reasonable fee based on the funds
28 potentially available to be claimed, regardless of the amount actually claimed. See *Newberg, supra*, §

1 14:6, p. 570. In this case, Class Counsel will request 35% of the common fund for its attorney's fees
2 (for a total of \$306,250.00). As will be set forth in the to be filed motion for attorney fees and costs, this
3 request is appropriate and should be preliminarily approved as fair and reasonable.

4 **E. The Proposed Notice is Reasonable.**

5 To protect the rights of absent Class Members, the Court must provide the best notice practicable
6 of a potential class action settlement. (*Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12.)
7 The primary purpose is to provide affected parties with the right to be heard in a meaningful manner. It
8 does not guarantee any particular procedure; rather it requires only notice reasonably calculated to apprise
9 interested parties of the action affecting their interests, and an opportunity to present objections. (*Ryan*
10 *v. California Interscholastic Federation – San Diego Section* (2001) 94 Cal.App.4th 1048, 1072).

11 In this case each Class Member will be mailed a Notice of Class Action Settlement and Hearing
12 Date for Final Court Approval, a copy of which is attached as **Exhibit 1** to the Settlement. The proposed
13 Notice informs Class Members about the terms of the Settlement; the right to receive compensation
14 thereunder; the right to opt out of the Settlement; the right to object to the Settlement; how claim amounts
15 are calculated; the attorney's fees and costs requested; the administration costs requested; the
16 Enhancement requested; and the date, time, and location of the final approval hearing. The Notice is
17 therefore calculated to ensure that Class Members are apprised of the material terms of the Settlement,
18 in a non-confusing manner.

19 The Settlement Administrator will provide notice to the Class by first class mail. Defendants will
20 provide the last-known addresses for each Class Member to the Settlement Administrator. Prior to
21 mailing the Notice of Settlement (and other documents in the notice packet), the Settlement Administrator
22 shall cross-reference the U.S. Postal Service National Change of Address Database and update any
23 addresses with any new information pertaining to the Class Members. If a notice packet returns as
24 undeliverable, the Settlement Administrator shall perform a skip-trace using the Class Member's social
25 security number (which Defendants shall also provide to the Settlement Administrator) and, once the
26 new address is ascertained, the Administrator shall re-mail the packet. The Settlement Administrator
27 will attempt multiple deliveries to each Class Member by First Class Mail. (Ex. A. to Ellison Decl.,
28 Settlement ¶¶ 7.4.1-7.4.5). For each of these reasons, the proposed Notice is reasonable and should be

1 approved.

2 **IV. CLASS NOTICE AND FINAL APPROVAL HEARING**

3 In addition to requesting approval of the Settlement, Plaintiffs request that the Court approve the
4 form, content, and distribution of the Notice, and set a date for a final approval hearing. *California Rule*
5 *of Court* 3.769(e) provides that if the Court grants Plaintiff's motion for preliminary approval, its order
6 must include the time, date, and place of the final approval hearing; the notice to be given to the Class;
7 and any other matters deemed necessary for the proper conduct of a settlement hearing.

8 Here, if the Court grants this motion, Plaintiffs request that it set a final approval hearing in
9 November 2025 or as soon thereafter as may be convenient to the Court. Plaintiffs further request that
10 the Court approve the Notice form, attached as **Exhibit 1** to the Settlement.

11 **V. CONCLUSION**

12 This arm's-length settlement avoids significant litigation risk and makes the Settlement and
13 individual settlement amounts available to approximately 2,074 Class Members. The proposed
14 attorney's fees of 35% of the fund are reasonable and deserved in light of Class Counsel's efforts, the
15 results obtained, and the case law. For these reasons, Plaintiffs respectfully request that the Court approve
16 the Settlement, approve the proposed Notice and notice plan, and set a hearing on final approval within
17 90 days of the date on which this motion is heard or granted, as specified above.

18
19 Dated: April 11, 2025

Ellison Law Group, APC

20
21
22 

23 By: _____

24 Andrew C. Ellison

25 Attorneys for Plaintiffs Parker Crawley, Cassia
26 Carraway, Charles Davis, and Huckleberry Taylor and
27 the Class
28