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as an individual and on behalf of all employees similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

JORGE L. VASQUEZ HERNANDEZ,
individually, and on behalf of all others similarly
situated,

Plaintiff,

vs.

CALIBER AEROSPACE, LLC, a Texas
Limited Liability Company; EMPLOYER
SOLUTIONS STAFFING GROUP II, LLC, a
Minnesota Limited Liability Company; and
DOES 1 through 10, inclusive,

Defendants

Case No.: 23STCV20323

[Assigned for all purposes to Hon. Holly J.
Fujie, Department 56]

**CLASS AND PAGA REPRESENTATIVE
ACTION**

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: November 5, 2024
Time: 8:30 a.m.
Courtroom: Dept. 56

Action Filed: August 24, 2023
Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on November 5, 2024, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard, in Department 56 of the above-captioned Court, located at 111 N Hill St, Los
4 Angeles, CA 90012, Plaintiff JORGE L. VASQUEZ HERNANDEZ (“Plaintiff”) will and hereby does
5 move this Court for an order:

6 1. Granting class certification of the Class, solely for settlement purposes pursuant to
7 Code of Civil Procedure § 382;

8 2. Finally approving the CLASS ACTION AND PAGA SETTLEMENT
9 AGREEMENT (“Settlement” or “Agreement”);

10 3. Appointing counsel for Plaintiff, Tunyan Law, APC, as Class Counsel;

11 4. Appointing Plaintiff Jorge L. Vasquez Hernandez as the Class Representative;

12 5. Approving Phoenix Class Action Administration Solutions as the third-party
13 administrator;

14 6. Ruling that Settlement Class Members who did not timely submit requests for
15 exclusion from the settlement as set forth in the Agreement have released their claims against
16 Defendants and the other releasees as set forth in the Agreement;

17 7. Ruling that Settlement Class Members who did not timely object to the settlement
18 pursuant to the terms set forth in the Agreement are barred from prosecuting or pursuing any appeal of
19 the Court’s Order;

20 8. Awarding the sums requested in the Motion;

21 9. Entering a Final Judgment; and,

22 10. Without affecting the finality of the final judgment, reserving continuing
23 jurisdiction over the parties for the purposes of implementing, enforcing and/or administering the
24 settlement as set forth in the Agreement or enforcing the terms of the Final Judgment.

25 Good cause exists to grant this Motion because:

26 1. The Class meets all of the requirements for class certification for settlement
27 purposes under Code of Civil Procedure § 382;

28 2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the

disputed wage and hour claims asserted by Plaintiff;

3. Plaintiff and Class Counsel are adequate to represent the Class;

4. The notice procedures and related forms complied with California Rules of Court 3.766(d) and (e), and adequately apprised Class Members of their rights and fully comport with due process.

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

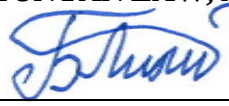
This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of Lilit Tunyan, Plaintiff and the Settlement Administrator in support thereof, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

Dated: October 10, 2024

TUNYAN LAW, APC

By: _____


Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff JORGE L. VASQUEZ HERNANDEZ

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiff JORGE L. VASQUEZ
3 HERNANDEZ (“Plaintiff”) respectfully requests that this Court finally approve the proposed class
4 action settlement set forth in the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT
5 (“Settlement” or “Agreement”) with Defendants CALIBER AEROSPACE, LLC and EMPLOYER
6 SOLUTIONS STAFFING GROUP II, LLC (“Defendants”) (collectively referred to herein as the
7 “Parties”). The Agreement used by the Parties is based upon the model agreement template made
8 available by the Los Angeles Superior Court.

9 After informal discovery, the exchange of documents, and an arm’s-length mediation session
10 with an experienced mediator Michael Young, Esq., Plaintiff and Defendants reached a proposed class
11 action settlement with a gross settlement amount (“GSA”) of **\$110,000.00** in compromise of disputed
12 claims asserted on behalf of the below-defined Class consisting of **78** class members. Plaintiff believes
13 that this settlement is a fair, adequate, and reasonable compromise of the disputed claims for alleged
14 unpaid wage and hour violations and penalties asserted in this case.

15 Plaintiff now submits this Motion for Final Approval of Class Action and PAGA Settlement,
16 along with the Settlement (attached to the Declaration of Lilit Tunyan [“Tunyan Decl.”], **Exhibit 1**
17 thereto).

18 **II. THE NOTICE PROCESS WAS SUCCESSFULLY COMPLETED AFTER**
19 **PRELIMINARY APPROVAL**

20 Plaintiff and Defendants have fulfilled the class notice procedures set forth in the Settlement. The
21 Settlement Administrator, Phoenix Class Action Administration Solutions (“Phoenix”), sent individual
22 Notices to 78 Class Members on August 23, 2024. (Declaration of Mayra Gonzalez [“Gonzalez Decl.”],
23 ¶¶ 3-5.) Of the Notices that were mailed, 0 were returned after mailing. (Gonzalez Decl., ¶ 6.) No Class
24 Members requested to be excluded from the Settlement, and no Class Members objected or disputed
25 Workweeks in writing. (Gonzalez Decl., ¶¶ 8-10.)

26 **PAYMENTS:** For 78 Settlement Class Members, the average gross payment per Class Member is
27 **\$1,410.25**. The Net Settlement Amount (including both Class and PAGA Settlement payments) is
28 estimated to be at least **\$32,519.09**, resulting in an average net payment per Class Member of at least

1 **\$416.91** (including PAGA Settlement payments), before any tax withholdings. (Gonzalez Decl., ¶ 16.)
2 The highest net payment (including PAGA Settlement payments) is estimated to be **\$857.41** (Gonzalez
3 Decl., ¶ 16.) For the Court’s convenience, below is a summary of the key provisions of the Settlement.

4 **III. THE MAJOR TERMS OF SETTLEMENT**

5 The provisions of the proposed Settlement include the following:

- 6 • Defendants agree not to oppose certification of a Class for purposes of Settlement only
7 (Settlement, ¶ 12.1);
- 8 • Class: All current and former non-exempt employees of Defendant Caliber Aerospace,
9 LLC and all current and former non-exempt employees of Defendant Employer Solutions
10 Staffing Group II, LLC placed at Caliber Aerospace, LLC within the State of California
11 during the Class Period (the “Class Period” is June 20, 2022 through the date the
12 Court grants preliminary approval of the Settlement or, at Defendants’ option, the
13 date the number of actual Class Workweeks exceeds 10% of the estimated Class
14 Workweeks pursuant to paragraph 8 of the Settlement). (Settlement, ¶¶ 1.5, 1.12, 8)
15 “Participating Class Members” are those Class Members who do not submit timely
16 exclusion requests to the Settlement Administrator. (Settlement, ¶ 1.9, 1.35);
- 17 • Settlement Amount: Defendants will pay a maximum of **\$110,000.00**, referred to as the
18 Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross**
19 payment per Class Member of approximately **\$1,410.25** (Settlement, ¶ 1.22);
- 20 • Class Size: **78** individuals who worked approximately **3,641** Class Workweeks as of April
21 11, 2024 when the Escalator Clause was triggered. (Settlement, ¶¶ 4.1, 8);
- 22 • PAGA Group Size: **78** individuals, who worked approximately **3,641** pay periods as of
23 April 11, 2024 when the Escalator Clause was triggered. (Tunyan Decl., ¶ 18);
- 24 • PAGA Period: June 20, 2022 through the date the Court grants preliminary
25 approval of the Settlement or, at Defendants’ option, the date the number of actual
26 Class Workweeks exceeds 10% of the estimated Class Workweeks pursuant to
27 paragraph 8 of the Settlement. (Settlement, ¶ 1.31);
- 28 • Escalator Clause: Based on its records, Defendants estimates that, as of March 26, 2024
there are 3,326 total Class Workweeks during the Class period. If the total number of Class

Workweeks during the Class Period exceed 3,326 by more than 10%, then Defendants can either have the Class Period end on the date that Class Workweeks exceed 3,659 or increase the Gross Settlement Amount on a pro rata basis a pro-rata dollar value equal to the number of Class Workweeks in excess of 3,659 workweeks. Any escalator payment will be the sole responsibility of Defendant Caliber Aerospace, LLC. (the “Escalator Clause”). (Settlement, ¶ 8); ***The escalator clause was triggered and pursuant to paragraph 8 of the Settlement Defendants chose to end the Class and PAGA Period on the date the Escalator Clause was triggered, i.e. on April 11, 2024.***

- Kullar/Munoz Analysis: Plaintiff addresses the claims analysis herein, at Part V.B.3, and in more detail the Declaration of Lilit Tunyan, at Paragraph 18;
- No Reversion: The Settlement is a ***non-reversionary*** settlement (Settlement, ¶ 3.1);
- Certification: Plaintiff addresses certification requisites herein, at Part V.A., and in the Declaration of Lilit Tunyan, at Paragraphs 34-40;
- No Claim Form: No claim form is required (Settlement., ¶ 3.1);
- Class Release: The Settlement will release specified wage-and-hour claims for Class Members (those Class Members who do not opt out of the Settlement) (Settlement, ¶¶ 1.39, 5.2);
- PAGA Release: The Class Members will release the PAGA Claims set forth in this Action, that were identified in the First Amended Complaint and Plaintiff’s LWDA Notice Letter, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 1.40, 5.3);
- Release Effective Date: The Release is not active until Defendant Caliber Aerospace, LLC funds the entire GSA and all employer payroll taxes required under the Settlement to the Settlement Administrator (Settlement, ¶ 5);
- Net Settlement Amount Available to the Class: After deducting Class Counsel’s attorneys’ fees and costs, service payment to Plaintiff, administration costs, and the payment to the LWDA, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of workweeks each

Class Member worked for Defendants within the Class Period. The Net Settlement Amount is estimated to be at least **\$32,519.09**, resulting in an average **gross** payment per Class Member of **\$1,410.25** and **net** payment per Class Member of at least **\$416.91** before any tax withholdings. (Settlement, ¶ 3);

- Tax Allocation: The amounts distributed to Class Members will be characterized as 20% alleged unpaid wages, 80% to penalties and interest, and PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶¶ 3.2.4.1, 3.2.5.2);
- Employer's Portion of Payroll Taxes Paid Separately: Defendants' portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSA (Settlement, ¶ 3.1);
- Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, Phoenix Class Action Administration Solutions and the Parties estimated that the costs of administration should not reasonably exceed \$10,000.00. Phoenix Class Action Administration Solutions' low bid for settlement administration services in the amount of **\$6,500.00** was selected as the lowest bid from a competitive bidding process. (Settlement, ¶ 3.2.3);
- Class Data for Administration: The Settlement Administrator will receive the Class List within 14 calendar days of Preliminary Approval, use the NCOA database to update the Class List, and then use skip tracing on returned Notices (Settlement, ¶ 4.2);
- Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 7.4.2). The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion (Settlement, ¶¶ 7.4 – 7.7);
- Notice Language: Notice will issue in English and Spanish (Settlement, ¶ 1.11);
- Objections: Objections can be submitted in person, through an attorney, or in writing to the Settlement Administrator (Settlement, ¶ 7.7);
- Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a written objection (Settlement, ¶¶ 7.5 and 7.7);

- PAGA Allocation: From the GSA, **\$15,000.00** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.* (“PAGA”), and seventy-five percent (75%), or **\$11,250.00**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶¶ 1.34, 3.2.5.);
- Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Declaration of Lilit Tunyan;
- Enhancement/Service Award to Plaintiff: Defendants will not oppose the application for Class Representative Service Payment of up to **\$10,000.00** for Plaintiff, to be paid from the GSA (Settlement, ¶ 3.2.1);
- Fees and Costs: Defendants will not oppose Class Counsel’s application for fees not to exceed 33 1/3% of the GSA (**\$36,666.67**), and actual costs, in an amount not to exceed **\$16,000.00**, to be paid out of the GSA (Settlement, ¶ 3.2.2);
- Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 4.4.3);
- Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the California Controller's Unclaimed Property Fund (Settlement, ¶ 4.4.3);
- Judgment Notice: Settlement Agreement, Class Notice and Judgment will be posted on the Settlement Administrator’s website after entry (Settlement, ¶ 7.8.1);
- Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ 12.2).

(Tunyan Decl., ¶¶ 10-11 and Exhibit 1 thereto.)

IV. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff’s Claims

On August 24, 2023, Plaintiff commenced this action by filing a complaint seeking civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.* (“PAGA”) stemming from Defendants’ alleged failure to pay all wages due in violation of Labor Code Sections 204, 510 and 1194, including both regular and overtime wages; failure to pay sick leave and provide employees with written notice of accrued sick leave in violation of Labor Code Section 246; failure to

1 provide meal periods or compensation in lieu thereof pursuant to Labor Code Sections 226.7 and 512, the
2 applicable Industrial Welfare Commission Wage Orders, and Code of Regulations, Title 8, Section
3 11000 et seq.; failure to provide rest periods or compensation in lieu thereof pursuant to Labor Code
4 Sections 226.7 and 512, the applicable Industrial Welfare Commission Wage Orders, and Code of
5 Regulations, Title 8, Section 11000 et seq.; failure to provide accurate itemized wage statements upon
6 payment of wages pursuant to Labor Code Sections 226, subdivision (a), 1174, and 1175; failure to
7 reimburse for necessary expenditures pursuant to Labor Code Section 2802; failure to pay wages of
8 terminated or resigned employees pursuant to Labor Code Sections 201, 202, and 203. As a condition
9 of settlement, the Parties have also reached an agreement to add class claims to this action for the same
10 wage and hour violations and for the statutory PAGA period and settle both PAGA claims brought in
11 Plaintiff's original complaint and class claims for the same PAGA statutory period. The Parties filed a
12 joint stipulation seeking leave of the court to file Plaintiff's First Amended Complaint which was
13 granted. On April 8, 2024, Plaintiff filed his First Amended Complaint with eight causes of action with
14 added class claims. Plaintiff's First Amended Complaint shall be the Operative Complaint in this action
15 (the "Operative Complaint.") (Tunyan Decl., ¶ 3.)

16 Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendants and the
17 LWDA by sending the PAGA Notice. (Tunyan Decl., ¶ 4.)

18 **B. Pre-Settlement Data Production and Analysis**

19 The Parties have conducted informal discovery and investigation of the facts and law. Such
20 discovery and investigation have included, inter alia, the exchange of informal data and discoverable
21 information in preparation for the settlement negotiations. (Tunyan Decl., ¶ 5.) The Parties have
22 analyzed payroll and other data pertaining to Plaintiff and the Class during the relevant Settlement
23 Period, including but not limited to the numbers of former and current members of the Class, average
24 workweeks, sample size time and pay records and average rate of hourly pay, wage and hour policies.
25 (*Id.*)

26 After reviewing documents regarding Defendants' wage and hour policies and practices and
27 other information obtained during the informal exchange of discovery, Class Counsel were able to
28 evaluate the probability of class certification, success on the merits, and the reasonably obtainable

1 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
2 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the
3 claims and defenses asserted in the litigation. (Tunyan Decl., ¶ 6.)

4 **C. Settlement**

5 On March 26, 2024, the Parties mediated before a mediator Michael Young, Esq. who is a highly
6 experienced and well-regarded mediator for wage and hour class action litigation. (Tunyan Decl., ¶ 7.)
7 At the mediation, the Parties discussed at length the burdens and risks of continuing with the litigation as
8 well as the merits of the claims and defenses. (*Id.*) The Parties have been able to reach a settlement at the
9 mediation. The Parties have reached an agreement regarding the substantive terms of a class-wide
10 settlement, pending the Parties' agreement on a long-form class settlement agreement. The Parties then
11 signed a long form settlement agreement ("Agreement"). (*Id.*)

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

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

25 **V. CLASS DEFINITION**

26 The Class is defined as follows:

27 All current and former non-exempt employees of Defendant Caliber Aerospace, LLC
28 and all current and former non-exempt employees of Defendant Employer Solutions
Staffing Group II, LLC placed at Caliber Aerospace, LLC within the State of
California during the Class Period (the "Class Period" is June 20, 2022 through the date

the Court grants preliminary approval of this settlement or, at Defendants’ option, the date the number of actual Class Workweeks exceeds 10% of the estimated workweeks pursuant to paragraph 8 of the Settlement.) “Participating Class Members” are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶ 1.35.)

The Aggrieved Employees are defined as follows:

All current and former non-exempt employees of Defendant Caliber Aerospace, LLC and all current and former non-exempt employees of Defendant Employer Solutions Staffing Group II, LLC placed at Caliber Aerospace, LLC within the State of California during the PAGA Period (the “PAGA Period” is June 20, 2022 through the date the Court grants preliminary approval of this settlement or, at Defendants’ option, the date the number of actual Class Workweeks exceeds 10% of the estimated workweeks pursuant to paragraph 8 of the Settlement.) Aggrieved Employees cannot opt out of the settlement of the PAGA claim. (Settlement, ¶ 7.5.4.)

VI. DISCUSSION

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

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest among its members and a “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement *only*, Defendants stipulated to conditional certification. (Settlement ¶ 12.1.)

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

1
2 “[I]t is also well established that trial courts should use different standards to determine the
3 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard
4 of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal.
5 App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). As
6 the court noted in *Dunk*, although certification requirements are intended “to protect the interests of the
7 non-representative class members,” that concern is “protected by the trial court’s fairness review of the
8 settlement.” *Dunk*, 48 Cal. App. 4th at 1807 n.19.

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

18 In view of these standards, **as discussed more thoroughly as part of the preliminary approval**
19 **motion already granted by the Court**, the Settlement Class should be certified for purposes of
20 settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

21 **B. The Court Should Finally Approve the Settlement Because It Is a Fair, Adequate,**
22 **and Reasonable Compromise of Disputed Wage Claims in View of Defendants’**
23 **Potential Liability Exposure and the Risks of Continued Litigation**

24 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
25 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
26 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
27 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary
28 settlement approval, notice being given to class members, and a final fairness and approval hearing being

held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed below, this Court should finally approve the Settlement and enter Judgment.

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

Any settlement of class litigation must be reviewed and approved by the presiding court. Rules of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial court and (2) a subsequent (final) review after notice has been distributed to the class members. The Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks final *approval* and the entry of a Judgment.

To evaluate a settlement, the trial court must receive “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). However, the record need *not* contain an explicit statement of the maximum theoretical amount that the class could recover. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

2. The Parties Reached the Settlement Through Arms’ Length Negotiations Between Experienced Counsel After Sufficient Data Was Exchanged to Evaluate Settlement.

A settlement is presumptively fair where it is reached through arms’ length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors is small.¹ *Dunk*, 48 Cal.App.4th at 1802; *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g., Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801,

¹ Because the fourth prerequisite for the presumption to arise cannot be addressed until the final approval hearing, only the first three prerequisites are relevant at this preliminary stage of the settlement approval process.

quoting *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

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

[T]he complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

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

Here, the Settlement resulted from thorough, arms’ length negotiations between experienced counsel with the assistance of highly regarded mediator. (Tunyan Decl., ¶¶ 8-10.) With respect to the claims at issue in this case, Plaintiff obtained employees’ pay and time data from Defendants and then carefully reviewed that information. Counsel for Plaintiff also examined relevant policies.

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

Finally, there are no objectors as of the completion of the notice process.

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

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial and does not have to provide 100% of damages sought to be fair and reasonable. “In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91 Cal. App. 4th at 250. Accordingly, because settlements involve compromise, even one that provides for substantially narrower relief than would likely be obtained if the suit were successfully litigated can be

1 reasonable given that “the public interest may indeed be served by a voluntary settlement in which each
2 side gives ground in the interest of avoiding litigation.” *Id.*, quoting *Air Line Stewards & Stewardesses*
3 *Ass’n, Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).

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

20 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
21 reasonable recovery for the Class Members. (Tunyan Decl. ¶¶ 12-19.) The settlement amount is, of
22 course, a compromise figure. (Tunyan Decl. ¶ 16.) By necessity it took into account risks related to
23 liability, damages, and the defenses asserted by Defendants. (*Id.*) Moreover, each Class Member will be
24 given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are
25 greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the
26 **78** members of the Class, the average **gross** recovery is at least **\$1,410.25** per class member, and the
27 estimated average **net** recovery for each Class Member is approximately **\$416.91** (*Id.*) Given that
28 Defendants could challenge certification and liability, this is a significant sum to have achieved in

1 settlement. Moreover, a Class Member who worked a greater number of weeks for Defendants will
2 receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time
3 during the class period. (*Id.*)

4 After analyzing the claims in this matter, Plaintiff has concluded that the Gross Settlement
5 Amount of **\$110,000.00** is about 74% of the **\$148,367.80** estimate of risk-adjusted recovery (excluding
6 interest) at this stage in the litigation. (Tunyan Decl., ¶ 17.) This assessment is based on a carefully
7 constructed model of the current fair value of the case, using estimated risks, average wage rates,
8 numbers of employees, and the amount of time covered by the class period. (*Id.*) The maximum
9 calculated reasonable exposure is **\$1,072,979.00**, including PAGA penalties. (*Id.*)

- 10 • A reasonably estimated exposure for unpaid wages (overtime) for the off-the clock work was
11 calculated, with the assistance of an expert, to be approximately **\$124,725.00**. However, with
12 the risk factor discounts for certification and liability proof, the value of that claim is
13 estimated by Plaintiff's counsel to be approximately **\$14,967.00**, assuming certification
14 probability of 40% and merits success at 30%.
- 15 • A reasonably estimated exposure for rest break violations over the class period was
16 calculated at **\$83,150.00**, but with chances of certification and proof of liability (50% and
17 40% respectively) for a risk-adjusted exposure of **\$16,630.00**.
- 18 • A reasonably estimated exposure for meal break violations over the class period was
19 calculated at **\$166,300.00**, with chances of certification and liability risks (50% and 40%
20 respectively) resulting in a risk-adjusted exposure of **\$33,260.00**.
- 21 • Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties with
22 chances of certification and liability risks (50% and 20% respectively) were estimated to be
23 approximately **\$32,850.00** and **\$23,400.00** respectively, on maximum exposures of
24 **\$328,500.00** and **\$234,000.00**.
- 25 • A reasonably estimated exposure for unreimbursed expenses over the class period was
26 calculated at **\$13,304.00**, with chances of certification and liability risks (50% and 40%
27 respectively) resulting in a risk-adjusted exposure of **\$2,660.80**.
- 28 • Performing risk-adjusted valuations for all claims yields a total value in the range of

\$123,767.80, excluding PAGA.² (*Id.*)

- PAGA penalties were calculated as having a maximum realistic exposure of **\$123,000.00**, but a risk adjusted value of **\$24,600.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

The concurrently-filed Declaration of Lilit Tunyan sets forth claim valuation in additional detail. (*See*, Tunyan Decl., ¶ 17.)

This result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Tunyan Decl., ¶ 18.) Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. (Tunyan Decl., ¶ 18.) Third, the certification rates in California are lower than conventional wisdom holds. See, H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at <http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html>; see also, *Findings of the Study of California Class Action Litigation, 2000-2006*, available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement **or** as part of a contested certification motion).

Here, the estimated certification probabilities are ***above*** the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. (Tunyan Decl., ¶ 18.) In sum, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. (*Id.*) The recovery is roughly 10% of the maximum plausible recovery (estimated to be approximately \$1,072,979.00, including PAGA), which falls within the expected outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately \$374,175.00 with no

² In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of “very high risk” or “high risk” to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel.

risk reduction), excluding penalties and interest; the settlement is about 29.3% of the premium wages (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure value.³ This Settlement achieves the goals of the litigation.

4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate, and Reasonable.

The proposed method of allocating the Settlement Fund to Class Members also is fair and reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members based on time worked by the Class Member during the Class Period, in relation to the total amount of time worked by all participating Class Members collectively during the class period. This proposed method is fair and reasonable because each Class Member's actual potential damages vary based on the number of workweeks he or she actually worked (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when a higher number of incidents occur). A Class Member who worked a greater number of weeks for Defendants will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time during the relevant period. (Tunyan Decl., ¶¶ 11, 17.)

5. The Proposed Enhancement Award to Plaintiff Is Fair, Adequate, and Reasonable and Warrants Final Approval.

The proposed enhancement payment to Plaintiff is intended to recognize the substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D.Cal. 1995) (approving a \$50,000

³ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser amount than the maximum civil penalty amount specified by this part...")), and, second, courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics U.S.A., Inc.*, 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a Defendants' exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).

enhancement award). Plaintiff contributed time to the prosecution of this matter, including assistance prior to the settlement negotiations and during settlement negotiations with information and substantial time conferring with counsel over the course of this litigation and before it was filed. (Hernandez Decl., ¶¶ 4-22; Tunyan Decl., ¶ 35.) The enhancement also recognizes the considerable risks Plaintiff undertook on behalf of the Class to be personally liable for all costs incurred regardless of the success of the litigation or class certification, as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued a former employer, making future employment prospects uncertain and general release of all claims beyond wage-and-hour claims released in this action. The accompanying Declaration of Plaintiff confirms his involvement and supports his appointment as the Settlement Class Representative.

6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Final Approval.

a) Plaintiff's Counsel Should be Awarded Fees Based on a Percentage of the Fund Recovered, Consistent with the Common Fund Method

The request for attorneys' fees as a percentage of the settlement fund is supported by the "common fund theory," where "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977). The lodestar may be cross-checked against the percentage-of-recovery. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

The purpose of the common fund approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). Thus, the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995); *see Quinn v. State of California*, 15 Cal. 3d 162, 167 (1975) ("[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.").

The California Supreme Court removed any lingering doubt about the use of the percentage of

the fund method to award attorney’s fees in California Courts:

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

Laffitte v. Robert Half Intern. Inc., 1 Cal. 5th 480, 503 (2016).⁴ Thus, this Court may and, pursuant to *Laffitte*, should award fees to Plaintiff’s counsel based upon the percentage of the fund methodology.

Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund method or the lodestar method is used, the outcome is roughly the same: “[F]ee awards in class actions average around one-third of the recovery’ regardless of ‘whether the percentage method or the lodestar method is used.’” *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521 (2021). “Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 47 n. 11 (2008). This is also consistent with counsels’ experience in class cases. Here, Plaintiff’s attorneys request attorneys’ fees of up to \$36,666.67 (one-third of the GSA), and costs of \$13,064.24 (below the cap or \$16,000), which includes payment for filing fees, service of process fees, mediation fees, expert fees and other standard expenses and future motion and final report filing fees. (Tunyan Decl., ¶ 31.) Given the efforts and risks involved in this case, as well as the results achieved, these amounts are within the range of reasonableness and warrant *final approval*.

b) *Class Counsel Is Entitled to Attorneys’ Fees and Costs under the California Labor Code and California’s Private Attorney General Statute*

Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

⁴ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

1 [A]ny employee receiving less than the legal minimum wage or the legal overtime
2 compensation applicable to the employee is entitled to recover in a civil action the
3 unpaid balance of the full amount of this minimum wage or overtime compensation,
including interest thereon, reasonable attorney's fees, and costs of suit.

4 Lab. Code § 1194. As this litigation culminated in a Settlement that provides for a recovery of unpaid
5 wages, including unpaid minimum and overtimes wages, Plaintiff is entitled to recover reasonable
6 attorneys' fees and costs under the Labor Code.

7 Class Counsel is also entitled to a fee under California's private attorney general statute, Code of
8 Civil Procedure § 1021.5. "The award of attorney's fees is proper under section 1021.5 if '(1) plaintiffs'
9 action 'has resulted in the enforcement of an important right affecting the public interest,' (2) 'a
10 significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a
11 large class of persons' and (3) 'the necessity and financial burden of private enforcement are such as to
12 make the award appropriate.'" *Press v. Lucky Stores*, 34 Cal. 3d 311, 317-318 (1983). The objective of
13 the statute is "to encourage suits enforcing public policies by providing substantial attorneys' fees to
14 successful litigants in such cases." *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 565 (2004).

15 The Action resulted in the enforcement of an important right affecting the public interest, as
16 Plaintiff sought to enforce Class Members' rights to recover statutory wages arising from Defendants'
17 failure to pay all wages and failure to provide meal and rest breaks. *See Murphy v. Kenneth Cole*
18 *Productions, Inc.*, 40 Cal. 4th 1094, 1113 (2007) (noting that "health and safety concerns" are what
19 motivated the Industrial Wage Commission to adopt mandatory meal and rest periods).

20 The Action also conferred a significant benefit on a class of persons who worked for Defendants
21 during the Class Period and were, according to allegations, not properly compensated for all hours
22 worked and were not provided meal and rest periods or compensation therefor.

23 Finally, the necessity and financial burden of private enforcement render an award appropriate.
24 Without the incentive of an attorneys' fee award, Plaintiff could not have afforded to hire counsel to
25 pursue this case, as the cost of litigating this matter far outweighed Plaintiff's potential recovery. *See*
26 *Ryan v. California Interscholastic Federation*, 94 Cal. App. 4th 1033, 1044 (2001) ("As to the necessity
27 and financial burden of private enforcement, an award is appropriate where the cost of the legal victory
28 transcends the claimants' personal interest; in other words, where the burden of pursuing the litigation is

1 out of proportion to the plaintiff's individual stake in the matter.").

2 c) *A Lodestar Cross Check Confirms that Class Counsel's Requested*
3 *Attorneys' Fees Are Reasonable*

4 Plaintiff's fee application is also reasonable based on Class Counsel's lodestar. Under the
5 lodestar method, the court considers a compilation of the time spent and a reasonable hourly
6 compensation of each attorney to evaluate the reasonableness of the fee requested. *Ramos v.*
7 *Countrywide Home Loans, Inc.*, 82 Cal. App. 4th 615, 622 (2000). The moving party meets its burden in
8 this regard by submitting "declarations evidencing the reasonable hourly rate for their services and
9 establishing the number of hours spent working on the case" as "California case law permits fee awards
10 in the absence of detailed time sheets." *Wershba*, 91 Cal. App. 4th at 254-55; *Dunk*, 48 Cal. App. 4th at
11 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and
12 the reasonable hourly compensation are computed to arrive at a "lodestar" figure which may then be
13 augmented or diminished by the court taking into account various "multiplier" factors. *See Ramos*, 82
14 Cal. App. 4th at 622 (citing *Serrano*, 20 Cal. 3d at 48-49).

15 Here, Class Counsel's billed lodestar exceeds **\$79,095.00** which is based on approximately 144.7
16 billed hours (not including final estimated hours) at the attorneys' customary hourly rates. (Tunyan
17 Decl., ¶¶ 31-33.) The actual lodestar is estimated to be **\$81,845.00**. (Tunyan Decl., ¶ 33.) This
18 represents a **negative** lodestar multiplier of 2.2, when compared to the recorded and estimated future
19 lodestar of counsel, totaling \$81,845.00. Thus, the request for **\$36,666.67** in attorneys' fees is reasonable
20 under the lodestar method.

21 **(1) Class Counsel's Hours Are Reasonable**

22 In determining whether the number of hours expended on the litigation was reasonable, the court
23 must determine that "the time spent was reasonably necessary and that [] counsel made 'a good faith
24 effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary."
25 *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The court "should defer to the
26 winning lawyer's professional judgment as to how much time he was required to spend on the case."
27 *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (noting that "[l]awyers are not likely
28 to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too

1 uncertain, as to both the result and the amount of the fee.”).

2 Here, Class Counsel expended a prudent amount of time litigating the case to achieve the
3 excellent result on behalf of the class. (Tunyan Decl. ¶ 31.)

4 **(2) Class Counsel’s Hourly Rates Are Reasonable**

5 The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group,*
6 *Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). “[I]n assessing a reasonable hourly rate, the trial court is
7 allowed to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’
8 reputation and status.” *MBNA American Bank, N.A. v. Gorman*, 147 Cal. App. 4th 1, 3 (2006). The trial
9 court may also “find hourly rates reasonable based on evidence of other courts approving similar rates.”
10 *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

11 Class Counsel are experienced litigators who specialize in employment law, with a substantial
12 wage and hour class action practice. (Tunyan Decl. ¶¶ 20-26.) A number of courts, including this Court,
13 have approved Class Counsel’s hourly rates which are consistent with my practice area, legal market.
14 (Tunyan Decl. ¶ 26.) Given the skill and experience of Class Counsel, and the excellent result achieved,
15 Class Counsel’s hourly rates are reasonable.

16 **d) Class Counsel’s Costs Are Reasonable**

17 The Settlement Agreement provides for reimbursement of costs not to exceed \$16,000.00. To
18 date, Tunyan Law, APC has already incurred actual costs in the amount of **\$13,064.24** which include
19 future motion and final report filing fees. (Tunyan Decl., ¶ 34.) These costs were reasonably incurred in
20 prosecuting the Action on behalf of the Class Members and should be approved by the Court.
21 Accordingly, Class Counsel respectfully requests the Court approve costs in the amount of **\$13,064.24**.
22 (Tunyan Decl., ¶ 34.)

23 **7. The Proposed Payment to the Administrator Is Fair and Reasonable**

24 In deciding whether to approve a proposed settlement, a trial court must determine if the
25 proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In
26 exercising this power, the overriding concern is to ensure that a proposed settlement is “fair, adequate,
27 and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Phoenix Class Action
28 Administration Solutions, which has been selected due to its competitive bid, estimates that

administration can be performed for **\$6,500.00**. In counsel’s experience, based on similar wage-and-hour actions, an estimated cost of **\$6,500.00** is a fair and reasonable amount for administration fees and should be preliminarily approved. (Tunyan Decl., ¶ 36.)

8. The PAGA Allocation is Reasonable

The ultimate decision as to the amount of PAGA penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions addressing that question. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the Defendants employer and other employers, an objective of PAGA.”); *see also Visceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D. Cal. 2016) (“Applying O’Connor’s sliding scale approach, settlement of the PAGA claim may be substantially reduced below its standalone settlement value without sacrificing its statutory purposes because the non PAGA settlement is relatively substantial.”)

Moniz then provided explicit confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz* said:

[W]hile PAGA does not require the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for settlements that prevents “ ‘ ‘ ‘fraud, collusion or unfairness’ ” (Dunk, supra, 48 Cal.App.4th at pp. 1800–1801, 56 Cal.Rptr.2d 483), and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors used to evaluate class action settlements bear on a settlement’s fairness—including the strength of the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement.

1 Given PAGA’s purpose to protect the public interest, we also agree with the LWDA
2 and federal district courts that have found it appropriate to review a PAGA settlement to
3 ascertain whether a settlement is fair in view of PAGA’s purposes and policies.
4 (*O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1132–
5 1134; *Jordan v. NCI Group, Inc.* (Jan. 5, 2018, No. EDCV 16-1701-JVS) 2018 WL
6 1409590, at *1–*2, 2018 U.S. Dist. Lexis 25297, at *3–*4; *Chamberlain v. Baker*
7 *Hughes, a GE Co., LLC, supra*, 2020 WL 4350207 at *3–*4, 2020 U.S. Dist. Lexis
8 134582 at *10–*11; see *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of*
9 *America* (2006) 141 Cal.App.4th 46, 59, 61–62, 45 Cal.Rptr.3d 647 [where the
10 Legislature required court approval of private settlements of Proposition 65 actions
11 brought to vindicate the public interest, court must evaluate the resulting consent decree
12 to determine if it is “just” and “serves the public interest”].) We therefore hold that a
13 trial court should evaluate a PAGA settlement to determine whether it is fair,
14 reasonable, and adequate in view of PAGA’s purposes to remediate present labor law
15 violations, deter future ones, and to maximize enforcement of state labor laws. (See
16 *Williams, supra*, 3 Cal.5th at p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA “sought
17 to remediate present violations and deter future ones”]; *Arias, supra*, 46 Cal.4th at p.
18 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 [the declared purpose of PAGA was to augment
19 state enforcement efforts to achieve maximum compliance with labor laws].) The trial
20 court below used this standard.

21 *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with the federal courts that have considered how to
22 evaluate a PAGA settlement, concluded that the class action factors are appropriately considered, along
23 with a consideration of whether the settlement furthers “PAGA’s purposes to remediate present labor law
24 violations, deter future ones, and to maximize enforcement of state labor laws.”

25 As to the first set of elements (the class-type analysis), it is embodied in Plaintiff’s discussion of
26 the adequacy of the settlement generally. Using class settlements as a source of analogous settlement
27 review standards, to assess the fairness, adequacy, and reasonableness of a settlement, the court should
28 also consider the expense, complexity and likely duration of further litigation. *Dunk*, 48 Cal. App. 4th at
1801. Here, the expense, complexity and likely duration of future litigation as it pertained to Plaintiff’s
PAGA claims was to some extent an unknown. However, what is certain is that to adequately establish
the foundational violations that would support a substantial penalty award, tremendous time and expense
would be invested. To adequately establish that aggrieved employees experience the alleged violations,
and at what frequency, most of the aggrieved employees would need to be interviewed in a systematic
fashion and their testimony cataloged in way sufficiently meaningful to permit the submission of
summary evidence at trial, such as via survey. *First*, the burdensome nature of such a process would be
expensive and time-consuming. *Second*, substantial risk that the Court would either substantially reduce
any penalty ultimately awarded or conclude that the conduct was insufficient to support a penalty award.

1 *Third*, it would be essentially impossible to formulate an objectively reliable means of summarizing
2 testimonial experiences, other than by an extraordinarily detailed survey. And formulating such a survey
3 would have been important, since frequency of violations would need to be established before any
4 penalties could be recovered. At least as to claims such as meal period and rest break violations, the
5 decisions of aggrieved employees are a major factor in assessing liability. In sum, the evidence collected
6 to date leads Plaintiff to conclude that, direct testimony would have been required from as many of the
7 78 aggrieved employees as could be obtained, which would be, at best, very difficult. Proof of this sort
8 gives rise to a manageability argument that could substantially reduce the size of the aggrieved employee
9 group.

10 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
11 PAGA's purposes include (1) remediation of present labor law violations, (2) deterrence of future
12 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
13 portion of settlement funds to class members still advances the goal of labor law violation remediation.
14 Class members benefit from payments intended to offset the harm of alleged violations of wage and hour
15 requirements. The allocation of a major portion of settlement funds to class members also deters future
16 violations, since, from the perspective of an employer, where settlement funds go is less significant than
17 the fact that settlement funds are issuing at all. Finally, allocation of a major portion of settlement funds
18 to class members still advances the goal of enforcement of state labor law. This settlement is, by
19 definition, a response to alleged violations of state labor laws, balanced against the competing factors of
20 uncertainty of proof and other risks.

21 A final note on the analysis discussion in *Moniz* is appropriate. *Moniz* was concerned with the
22 standard applied to a standalone PAGA action, not a settlement in which money was allocated between
23 class and PAGA claims. Here, the adequacy of the settlement as a whole impacts the factors approved of
24 by *Moniz*. It would be misleading to examine only the PAGA portion of the settlement without asking
25 how this Settlement as a whole is consistent with the purposes of PAGA. Second, the discussion of
26 "fairness" to those impacted by the settlement in *Moniz* does not play a role in this matter. In *Moniz*, the
27 Court found the record lacked any support for the disparate allocation of PAGA penalties between
28 different types of employees: "[T]he settlement's allocation of shares of civil penalties to Colleagues that

are fifteen times greater than the shares allocated to Associates does not seem to have been justified below and may be contrary to PAGA's purposes." *Moniz*, 72 Cal. App. 5th at 87. Here, PAGA penalties are allocated by pay period, irrespective of job classification, an equitable method of allocation.

In addition, there is no evidence that a court or a commissioner had informed Defendants that any conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v. Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013) ("Under California law, courts have held that employers are not subject to heightened penalties for subsequent violations until and unless a court or commissioner notified the employer that it is in violation of the Labor Code.") And in *Cotter*, the court found a significant reduction of the PAGA claim would be appropriate because "[t]his does not appear to be a case where a company has deliberately sought to evade the law." *Cotter v. Lyft, Inc.*, 176 5 F. Supp. 3d 930, 941 (N.D. Cal. 2016). Here, Defendants can state a strong case that, as the Court concluded in *Cotter*, the efforts to devise compliant operational policies do not indicate an organization that has deliberately sought to evade the law. This is a very significant risk factor.

Finally, the PAGA allocation is fair. The LWDA is receiving **\$11,250.00**. The Class is receiving, net, at least an estimated **\$32,519.09** for the releases for eight theories of recovery (including the **\$3,750.00** as the aggrieved employees' share of the PAGA Allocation). An allocation to the LWDA equal to approximately 35% of the Net Settlement Amount is not unfair and satisfies the policies underlying California's wage and hour laws.

VII. CONCLUSION

For all the foregoing reasons, because the Class meets the requirements for certification, because the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the notice procedure complied with Rule 3.766 and due process, this Court should grant this Motion for Final Approval.

Respectfully submitted,

Dated: October 10, 2024

TUNYAN LAW, APC

By: _____



Lilit Tunyan

Artur Tunyan

Attorneys for Plaintiff JORGE L. VASQUEZ HERNANDEZ

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 535 N Brand Blvd. Suite 285
7 Glendale, California 91203.

8 On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF
9 MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND PAGA
10 REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND
11 AUTHORITIES** on the interested parties in this action by sending a true copy thereof to interested
12 parties as follows and as stated on the attached service list:

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

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

27 I declare under penalty of perjury under the laws of the State of California that the
28 above is true and correct. Executed on October 10, 2024 at Glendale, California.

Lilit Tunyan

Name



Signature