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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 PRELIMINARY
APPROVAL OF CLASS AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Reservation ID: 476474190603

Date: July 26, 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 July 26, 2024, at 8:30 a.m., or as soon thereafter as the matter
3 may be heard, in Department 56 of the above-captioned Court, located at 111 N Hill St, Los Angeles,
4 CA 90012, Plaintiff JORGE L. VASQUEZ HERNANDEZ (“Plaintiff”) will and hereby does move this
5 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. Preliminarily 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 as the Class Representative;

12 5. Approving the use of the proposed notice procedure and related notice form;

13 6. Approving Phoenix Class Action Administration Solutions as the third-party
14 administrator;

15 7. Directing that notice be mailed to the Class; and,

16 8. Scheduling a hearing date for motions for final approval of class action settlement
17 and awards of attorneys’ fees and costs.

18 Good cause exists to grant this Motion because:

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

21 2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the
22 disputed wage and hour claims asserted by Plaintiff;

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

24 4. The proposed notice procedures and related forms comply with California Rules of
25 Court 3.766(d) and (e), adequately apprise Class Members of their rights, and fully comport
26 with due process; and

27 5. Based on the foregoing, notice should be directed to the Class Members and a final
28 fairness hearing should be scheduled (Plaintiff suggests about 120 days after preliminary

1 approval is granted).

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

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

10 Respectfully submitted,

11 Dated: May 1, 2024

TUNYAN LAW, APC

12
13 By: _____


Lilit Tunyan
Artur Tunyan

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15 Attorneys for Plaintiff JORGE L. VASQUEZ HERNANDEZ
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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. THE MAJOR TERMS OF SETTLEMENT	1
III. FACTUAL AND PROCEDURAL BACKGROUND	5
A. Plaintiff's Claims	5
B. Pre-Settlement Data Production and Analysis	6
C. Settlement.....	6
IV. CLASS DEFINITION	7
V. DISCUSSION.....	8
A. The Court Should Conditionally Certify the Class Because It Meets All the Requirements for Certification for Settlement Purposes Under CCP § 382.....	8
1. The Members of the Class Are Both Objectively Ascertainable and Sufficiently Numerous.	8
2. There Are Common Questions That Predominate Over Any Questions That May Be Unique to Individual Class Members.....	9
3. Plaintiff's Claims Are Typical of Those of the Class.	10
4. Plaintiff and Plaintiff's Counsel Will Adequately Represent the Class.....	11
5. Proceeding as a Class Action is Superior to Individual Actions.....	11
6. The Proposed Class Notice Complies with Rule 3.766(d) and (e)	11
a) The Notice Procedure Satisfies Due Process	12
b) The Notice is Accurate and Informative	12
B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims in View of Defendants' Potential Liability Exposure and the Risks of Continued Litigation	13
1. Class Action Settlements Are Subject to Review and Approval.	13

2.	The Parties Reached the Settlement Through Arms’ Length Negotiations Between Experienced Counsel After Sufficient Data Was Exchanged to Evaluate Settlement.	13
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.	15
4.	The Proposed Method for Allocating Settlement Funds Is Fair, Adequate, and Reasonable.	18
5.	The Proposed Enhancement Award to Plaintiff Is Fair, Adequate, and Reasonable and Warrants Preliminary Approval.....	19
6.	The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Preliminary Approval.	19
7.	The Proposed Payment to the Administrator Is Fair and Reasonable.....	20
8.	The PAGA Allocation is Reasonable.....	20
VI.	THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING.....	24
VII.	CONCLUSION	24

TABLE OF AUTHORITIES

CASES

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000).....	14
<i>Amaral v. Cintas Corp.</i> , 163 Cal. App. 4th 1157 (2008).....	23
<i>Amaro v. Anaheim Arena Mgmt., LLC</i> , 69 Cal. App. 5th 521 (2021).....	20
<i>Bell v. Farmers Ins. Exchange</i> , 115 Cal. App. 4th 715 (2004).....	19
<i>Bowles v. Superior Court</i> , 44 Cal. 2d 574 (1955).....	9
<i>Brinker Rest. Corp. v. Super. Ct.</i> , 53 Cal. 4th 1004 (2012).....	8, 10, 17
<i>Cartt v. Sup. Ct.</i> , 50 Cal. App. 3d 960 (1975).....	12
<i>Clothesrigger, Inc. v. GTE Corp.</i> , 191 Cal. App. 3d 605 (1987).....	9
<i>Dunk v. Ford Motor Co.</i> 48 Cal. App. 4th 1794 (1996).....	passim
<i>Duran v. US Bank Nat’l Ass’n</i> , 59 Cal. 4th 1 (2014).....	14
<i>Fireside Bank v. Superior Court</i> , 40 Cal. 4th 1069 (2007).....	10
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008).....	10
<i>Global Minerals & Metals Corp. v. Superior Court</i> , 113 Cal. App. 4th 836 (2003).....	8
<i>Hebbard v. Colgrove</i> , 28 Cal. App. 3d 1017 (1972).....	9
<i>Jaimez v. Daiohs USA, Inc.</i> 181 Cal. App. 4th 1286 (2010).....	8, 9
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008).....	13
<i>Laffitte v. Robert Half Intern. Inc.</i> , 1 Cal. 5th 480 (2016).....	20
<i>Linderv. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000).....	8, 11
<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> , 103 Cal. App. 3d 573 (1980).....	13
<i>Mallick v. Superior Court</i> , 89 Cal. App. 3d 434 (1979).....	14, 20
<i>McGhee v. Bank of America</i> , 60 Cal. App. 3d 442 (1976).....	11
<i>Miller v. Woods</i> , 148 Cal. App. 3d 862 (1983).....	9
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal. App. 5th 56 (2021).....	21,22,23
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , 186 Cal. App. 4th 399 (2010).....	13
<i>Noel v. Thrifty Payless, Inc.</i> , 7 Cal. 5th 955, 980 (2019).....	9
<i>Sav-on Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004).....	8,9,10

1	<i>Seastrom v. Neways, Inc.</i> , 149 Cal. App. 4th 1496 (2007).....	10
2	<i>Stambaugh v. Superior Court</i> , 62 Cal. App. 3d 231 (1976).....	13
3	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	14, 15

FEDERAL DECISIONAL AUTHORITY

6	<i>Air Line Stewards & Stewardesses Ass’n, Local 550 v. American Airlines, Inc.</i> , 455 F.2d 101 (7th Cir. 1972).....	15
8	<i>Cotter v. Lyft, Inc.</i> , 176 5 F. Supp. 3d 930 (N.D. Cal. 2016).....	24
9	<i>Miller v. CEVA Logistics U.S.A., Inc.</i> , 2015 WL 729638 (E.D. Cal. Feb. 19, 2015).....	18
10	<i>O’Connor v. Uber Technologies, Inc.</i> , 201 F.Supp.3d 1110 (N.D. Cal. 2016)	21
11	<i>Officers for Justice v. Civil Serv. Comm’n of San Francisco</i> , 688 F.2d 615 (9th Cir. 1982).....	14
12	<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2000).....	18
13	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F.Supp. 294 (N.D. Cal. 1995)	19
14	<i>Viceral v. Mistras Group</i> , 2016 WL 5907869 (N.D. Cal. 2016)	21
15	<i>Willis v. Xerox Bus. Servs., LLC</i> , 2013 WL 6053831 (E.D. Cal. 2013)	23

STATUTES

18	Code of Civil Procedure § 382	8
19	Labor Code § 2699.....	6, 15, 20

RULES

22	Rules of Court, rule 3.766.....	10
23	Rules of Court, Rule 3.769	8, 11, 12

OTHER AUTHORITIES

26	<i>Findings of the Study of California Class Action Litigation</i> , 2000-2006	17
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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 preliminarily 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 approximately **82** class members.
13 Plaintiff believes that this settlement is a fair, adequate, and reasonable compromise of the disputed
14 claims for alleged unpaid wage and hour violations and penalties asserted in this case.

15 Plaintiff now submits this Motion for Preliminary Approval of Class Action and PAGA
16 Settlement, along with the Settlement (attached to the Declaration of Lilit Tunyan [“Tunyan Decl.”],
17 **Exhibit 1** thereto). For the Court’s convenience, below is a summary of the key provisions of the
18 Settlement.

19 **II. THE MAJOR TERMS OF SETTLEMENT**

20 The provisions of the proposed Settlement include the following:

- 21 • Defendants agree not to oppose certification of a Class for purposes of Settlement only
22 (Settlement, ¶ 12.1);
- 23 • Class: All current and former non-exempt employees of Defendant Caliber Aerospace,
24 LLC and all current and former non-exempt employees of Defendant Employer Solutions
25 Staffing Group II, LLC placed at Caliber Aerospace, LLC within the State of California
26 during the Class Period (the “Class Period” is June 20, 2022 through the date the
27 Court grants preliminary approval of the Settlement or, at Defendants’ option, the
28 date the number of actual Class Workweeks exceeds 10% of the estimated Class

Workweeks pursuant to paragraph 8 of the Settlement). (Settlement, ¶¶ 1.5, 1.12, 8)
“Participating Class Members” are those Class Members who do not submit timely
exclusion requests to the Settlement Administrator. (Settlement, ¶ 1.9, 1.35);

- Settlement Amount: Defendants will pay a maximum of **\$110,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** payment per Class Member of approximately **\$1,341.46** (Settlement, ¶ 1.22);
- Class Size: approximately **82** individuals who worked approximately **3,326** Class Workweeks as of March 26, 2024. (Settlement, ¶¶ 4.1, 8);
- PAGA Group Size: an estimated **82** individuals, who worked approximately **3,326** pay periods as of March 26, 2024 (Tunyan Decl., ¶ 18);
- PAGA Period: June 20, 2022 through the date the Court grants preliminary approval of the Settlement or, at Defendants’ option, the date the number of actual Class Workweeks exceeds 10% of the estimated Class Workweeks pursuant to paragraph 8 of the Settlement. (Settlement, ¶ 1.31);
- 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);
- 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);

- 1 • Class Release: The Settlement will release specified wage-and-hour claims for Class
2 Members (those Class Members who do not opt out of the Settlement) (Settlement, ¶¶ 1.39,
3 5.2);
- 4 • PAGA Release: The Class Members will release the PAGA Claims set forth in this Action,
5 that were identified in the First Amended Complaint and Plaintiff's LWDA Notice Letter,
6 regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶
7 1.40, 5.3);
- 8 • Release Effective Date: The Release is not active until Defendant Caliber Aerospace, LLC
9 funds the entire GSA and all employer payroll taxes required under the Settlement to the
10 Settlement Administrator (Settlement, ¶ 5);
- 11 • Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys'
12 fees and costs, service payment to Plaintiff, administration costs, and the payment to the
13 LWDA, the remainder will be available for distribution to Class Members who do not opt
14 out, with each Class Member receiving a share based on the number of workweeks each
15 Class Member worked for Defendants within the Class Period. The Net Settlement
16 Amount is estimated to be at least **\$31,588.33**, resulting in an average **gross** payment per
17 Class Member of **\$1,341.46** and **net** payment per Class Member of at least **\$385.16** before
18 any tax withholdings. (Settlement, ¶ 3);
- 19 • Tax Allocation: The amounts distributed to Class Members will be characterized as 20%
20 alleged unpaid wages, 80% to penalties and interest, and PAGA Settlement Payments will
21 be allocated as 100% penalties. (Settlement, ¶¶ 3.2.4.1, 3.2.5.2);
- 22 • Employer's Portion of Payroll Taxes Paid Separately: Defendants' portion of payroll taxes
23 (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that
24 constitute wages will be paid separate and apart from the GSA (Settlement, ¶ 3.1);
- 25 • Settlement Administrator: The notice portion of the Settlement will be administered by a
26 third-party Administrator, Phoenix Class Action Administration Solutions and the Parties
27 estimated that the costs of administration should not reasonably exceed \$10,000.00.
28 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.)

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

1 added class claims. Plaintiff's First Amended Complaint shall be the Operative Complaint in this action
2 (the "Operative Complaint.") (Tunyan Decl., ¶ 3.)

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

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

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

13 After reviewing documents regarding Defendants' wage and hour policies and practices and
14 other information obtained during the informal exchange of discovery, Class Counsel were able to
15 evaluate the probability of class certification, success on the merits, and the reasonably obtainable
16 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
17 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the
18 claims and defenses asserted in the litigation. (Tunyan Decl., ¶ 6.)

19 **C. Settlement**

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

27 Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for
28 the claims asserted in the Action, both generally and in response to Defendants' defenses thereto.

1 Plaintiff and Class Counsel have also taken into account Defendant’s agreement to enter into a
2 Settlement that confers substantial relief upon the Class. (Tunyan Decl., ¶8.)

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

12 **IV. CLASS DEFINITION**

13 The Class is defined as follows:

14 All current and former non-exempt employees of Defendant Caliber Aerospace, LLC
15 and all current and former non-exempt employees of Defendant Employer Solutions
16 Staffing Group II, LLC placed at Caliber Aerospace, LLC within the State of
17 California during the Class Period (the “Class Period” is June 20, 2022 through the date
18 the Court grants preliminary approval of this settlement or, at Defendants’ option, the
19 date the number of actual Class Workweeks exceeds 10% of the estimated workweeks
20 pursuant to paragraph 8 of the Settlement.) “Participating Class Members” are those
21 Class Members who do not submit timely exclusion requests to the Settlement
22 Administrator. (Settlement, ¶ 1.35.)(Tunyan Decl., ¶ 34 and Exhibit 1.)

23 The Aggrieved Employees are defined as follows:

24 All current and former non-exempt employees of Defendant Caliber Aerospace, LLC
25 and all current and former non-exempt employees of Defendant Employer Solutions
26 Staffing Group II, LLC placed at Caliber Aerospace, LLC within the State of
27 California during the PAGA Period (the “PAGA Period” is June 20, 2022 through the
28 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.)

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1 **V. DISCUSSION**

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

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

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

13 “The certification question is ‘essentially a procedural one that does not ask whether an action is
14 legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
15 (2000). Indeed, the certification question simply asks whether the theory of recovery advanced by the
16 plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal.
17 App. 4th 1286, 1298 (2010). “[I]t is also well established that trial courts should use different standards
18 to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically,
19 a lesser standard of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior*
20 *Court*, 113 Cal. App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n.
21 19 (1996). As the court noted in *Dunk*, although certification requirements are intended “to protect the
22 interests of the non-representative class members,” that concern is “protected by the trial court’s fairness
23 review of the settlement.” *Dunk*, 48 Cal. App. 4th at 1807 n.19.

24 In view of these standards, and as shown below, the Class should be certified for purposes of
25 settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

26 **1. The Members of the Class Are Both Objectively Ascertainable and**
27 **Sufficiently Numerous.**

28 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of

1 the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal. App. 3d
2 862, 873 (1983). In this case, Plaintiff contends that all three considerations favor class certification.

3 A class is ascertainable when “it is defined ‘in terms of objective characteristics and common
4 transactional facts’ that make ‘the ultimate identification of class members possible when that
5 identification becomes necessary.’” *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019). No set
6 number of class members is required to maintain a class action. *Hebbard v. Colgrove*, 28 Cal. App. 3d
7 1017, 1030 (1972). In fact, the California Supreme Court has upheld a class of as few as ten members.
8 *Bowles v. Superior Court*, 44 Cal. 2d 574 (1955).

9 The class definition is sufficiently specific to enable the Parties, Class Members, and the Court to
10 readily determine the parameters of the class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d
11 605, 617 (1987). In this case, there are approximately 82 Class Members, all of whom may be identified
12 by reference to Defendants’ records that pertain to non-exempt status and dates of employment. In
13 addition, to facilitate the administration of the Settlement, Defendants have agreed to share the
14 information from their records and have already demonstrated that they can do so when providing class-
15 wide discovery to Plaintiff to facilitate settlement discussions and respond to discovery. Accordingly,
16 the Class is not only ascertainable, but also sufficiently numerous. (Tunyan Decl., ¶ 35.)

17 **2. There Are Common Questions That Predominate Over Any Questions That**
18 **May Be Unique to Individual Class Members.**

19 The community of interest requirement embodies three factors: (1) predominant questions of law
20 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
21 representatives who can adequately represent the class. *Dunk*, 48 Cal. App. 4th at 1806; *Richmond*, 29
22 Cal. 3d at 473-75. A question of law or fact is common to the members of a class if it may be resolved
23 through common proof. *See, Jaimez*, 181 Cal.App.4th at 1305. As for predominance, it “is a comparative
24 concept, and ‘the necessity for class members to individually establish eligibility and damages does not
25 mean individual fact questions predominate.’” *Sav-on*, 34 Cal. 4th at 334, quoting *Reyes v. Los Angeles*
26 *County Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1278 (1979).

27 In this case, common questions include, but are not limited to: i. Whether or not Defendants paid
28 proper wages to the Class; ii. Whether or not Defendants provided meal periods to the Class; iii. Whether

1 or not Defendants provided rest periods to the Class; iv. Whether or not Defendants paid compensation
2 timely upon separation of employment to former Class Members; v. Whether or not Defendants paid
3 compensation timely throughout Class Members' employment; vi. Whether or not Defendants provided
4 accurate itemized wage statements to the Class; vii. Whether or not Defendants reimbursed necessary
5 business expenses in compliance with California Labor Code §2802; viii. Whether or not waiting-time
6 penalties are available to the Class for violation of California Labor Code § 203; ix. Whether or not
7 Defendants engaged in unlawful or unfair business practices affecting the Class in violation of California
8 Business and Professions Code §§ 17200-17208; and x. Whether or not Plaintiff and the Class are
9 entitled to penalties pursuant to PAGA (Tunyan Decl., ¶¶ 37-38.)

10 In the Action, Plaintiff's claims present sufficient common issues of law and fact that
11 predominate over individual issues and warrant class certification. From their review of the
12 documentation provided, Class Counsel determined that for purposes of these claims, Defendants
13 policies and practices are either identical, or sufficiently similar, to raise the same questions of liability,
14 and applied to all Class Members. Because Class Members would have to prove the same issues of law
15 and fact to prevail, and because their potential legal remedies are identical, it would be preferable to
16 resolve all Class Members' claims by means of the Settlement than to require each Class Member to
17 litigate his or her individual claims. Therefore, common questions predominate over any questions that
18 may be unique to individual Class Members, and class-wide settlement is superior to any other method
19 of resolution.

20 **3. Plaintiff's Claims Are Typical of Those of the Class.**

21 Typicality "requires a showing that the class representative has claims or defenses typical of the
22 class." *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1534 (2008), citing
23 *Fireside Bank v. Superior Court*, 40 Cal. 4th 1069, 1089 (2007), and *Sav-On*, 34 Cal. 4th at 326,
24 approved by *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004 (2012). California law does not require
25 that plaintiffs have claims identical to the other class members. Rather, the test of typicality for a class
26 representative is whether other members have the same or similar injury, whether the action is based on
27 conduct which is not unique to the named plaintiffs, and whether other class members have been injured
28 by the same course of conduct. *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007).

1 In light of these standards, Plaintiff is typical of class members. Like other Class Members,
2 Defendants employed Plaintiff in a non-exempt position during the Class Period, and Plaintiff claims that
3 he was subject to the same policies alleged to have impacted the entire class. (Tunyan Decl., ¶ 36.)
4 Plaintiff alleges that he and other Class Members share the same claims stemming from Defendants'
5 alleged violations of the Labor Code and relevant wage order. In addition, Defendants' main defenses,
6 including that the wage and hour policies and practices fully comply with California law, apply equally
7 to the claims of all Class Members. Thus, Plaintiff is typical of the Class.

8 **4. Plaintiff and Plaintiff's Counsel Will Adequately Represent the Class.**

9 The adequacy requirement is met where the plaintiff is represented by counsel qualified to
10 conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to class members'
11 interests. *McGhee v. Bank of America*, 60 Cal.App.3d 442, 451(1976). In other words, where the plaintiff
12 has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest
13 that might hinder the plaintiff's ability to represent the class. (Tunyan Decl., ¶ 36.)

14 In the Action, Plaintiff has no conflicts of interest with other Class Members and has agreed to
15 place Class interests above Plaintiff's own. (Hernandez Decl., ¶¶ 4-22; Tunyan Decl., ¶ 39.) Moreover,
16 Plaintiff's counsel are experienced in wage and hour class action litigation and have no conflicts of
17 interest with absent Class Members. (Tunyan Decl., ¶¶ 20-26, 39.) As such, this Court should appoint
18 Plaintiff as Class Representative for the Class and appoint Plaintiff's Counsel as Class Counsel.

19 **5. Proceeding as a Class Action is Superior to Individual Actions**

20 Plaintiff contends that proceeding as a class action is a superior means of resolving this dispute,
21 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
22 the only means to deter and redress the alleged Labor Code violations. *See Linder v. Thrifty Oil Co.* 23
23 Cal. 4th at 434. Furthermore, individual actions arising out of the same operative facts would unduly
24 burden the courts and could result in inconsistent results, which may be avoided by class certification.

25 **6. The Proposed Class Notice Complies with Rule 3.766(d) and (e)**

26 Notice requirements are set forth in Rules of Court, Rule 3.766. In determining the manner of
27 the notice, the court must consider the interests of the class, the type of relief requested, the stake of the
28 individual class members, the cost of notifying class members, the resources of the parties, the possible

1 prejudice to class members who do not receive notice, and the *res judicata* effect on class members.
2 Rules of Court, Rule 3.766(e).

3 *a) The Notice Procedure Satisfies Due Process*

4 The proposed procedure for distributing the Proposed Notice is robust and more than meets the
5 minimal requirement that it have “a reasonable chance of reaching a substantial percentage of the class
6 members.” *Cartt v. Sup. Ct.*, 50 Cal.App.3d 960, 974 (1975). There is no statutory or due process
7 requirement that all class members receive actual notice, but in this matter, the Class Members will
8 receive direct mailed notice. Here, the proposed procedure includes safeguards, including, but not
9 limited to, mailing notice to Class Members’ last known addresses; skip tracing; searches for address
10 changes; and the re-mailing of returned notices to any forwarding addresses. This manner of giving
11 notice complies with Rule of Court 3.766(c) because it provides a reasonable chance that Class Notice
12 will reach most if not all Class Members.

13 *b) The Notice is Accurate and Informative*

14 The proposed Notice of Class Action Settlement should be approved for dissemination to the
15 Class Members because its content complies with Rule of Court 3.766(d) in that it contains a brief
16 explanation of the case, including the basic contentions or denials of the Parties, detailed information
17 about Class Members’ rights to be excluded from the Settlement and object to the Settlement; a
18 statement that the Settlement will bind all members who do not timely opt-out. Thus, the Notice also
19 satisfies Rule of Court 3.769(f) regarding the contents of settlement notices.

20 The Notice also fulfills the requirement of neutrality in class notices. 3 NEWBERG § 8.39. It
21 summarizes the proceedings and the terms and conditions of the proposed Settlement, in an informative
22 and coherent manner, in compliance with the Manual for Complex Litigation (“MANUAL”), (2d Ed.
23 1993), which states that “the notice should be accurate, objective, and understandable to Class Members .
24 . . .” MANUAL, § 30.211. It makes clear that the Settlement does not constitute an admission of liability
25 by Defendants and recognizes that this Court has not ruled on the merits. It also states that the final
26 settlement approval decision has yet to be made. Accordingly, the Notice complies with the standards of
27 fairness, completeness, and neutrality required of a combined settlement-certification class notice.

28 ///

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

4 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
5 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
6 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
7 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary
8 settlement approval, notice being given to class members, and a final fairness and approval hearing being
9 held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed
10 below, this Court should preliminarily approve the Settlement, allow the Parties to give notice to the
11 Class as proposed, and schedule a final fairness and final approval hearing.

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

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

18 To evaluate a settlement, the trial court must receive “basic information about the nature and
19 magnitude of the claims in question and the basis for concluding that the consideration being paid for the
20 release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
21 App. 4th 116, 133 (2008). However, the record need *not* contain an explicit statement of the maximum
22 theoretical amount that the class could recover. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*,
23 186 Cal. App. 4th 399, 409 (2010).

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

27 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
28 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is

1 experienced in similar litigation, and the percentage of objectors is small.¹ *Dunk*, 48 Cal.App.4th at 1802;
2 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
3 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a
4 trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g.,*
5 *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding
6 concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801,
7 quoting *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

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

9 [T]he complexity and likely duration of further litigation, the risk of maintaining class
10 action status through trial, the amount offered in settlement, the extent of discovery
11 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.

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

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

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

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

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

4 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
5 trial and does not have to provide 100% of damages sought to be fair and reasonable. “In the context of a
6 settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the
7 complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91
8 Cal. App. 4th at 250. Accordingly, because settlements involve compromise, even one that provides for
9 substantially narrower relief than would likely be obtained if the suit were successfully litigated can be
10 reasonable given that “the public interest may indeed be served by a voluntary settlement in which each
11 side gives ground in the interest of avoiding litigation.” *Id.*, quoting *Air Line Stewards & Stewardesses*
12 *Ass’n, Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).

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

1 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
2 reasonable recovery for the Class Members. (Tunyan Decl. ¶¶ 12-19.) The settlement amount is, of
3 course, a compromise figure. (Tunyan Decl. ¶ 16.) By necessity it took into account risks related to
4 liability, damages, and the defenses asserted by Defendants. (*Id.*) Moreover, each Class Member will be
5 given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are
6 greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the
7 approximately **82** members of the Class, the average **gross** recovery is at least **\$1,341.46** per class
8 member, and the estimated average **net** recovery for each Class Member is approximately **\$385.16** (*Id.*)
9 Given that Defendants could challenge certification and liability, this is a significant sum to have
10 achieved in settlement. Moreover, a Class Member who worked a greater number of weeks for
11 Defendants will receive a larger share of the Settlement than a Class Member who worked for a shorter
12 amount of time during the class period. (*Id.*)

13 After analyzing the claims in this matter, Plaintiff has concluded that the Gross Settlement
14 Amount of **\$110,000.00** is about 74% of the **\$148,367.80** estimate of risk-adjusted recovery (excluding
15 interest) at this stage in the litigation. (Tunyan Decl., ¶ 17.) This assessment is based on a carefully
16 constructed model of the current fair value of the case, using estimated risks, average wage rates,
17 numbers of employees, and the amount of time covered by the class period. (*Id.*) The maximum
18 calculated reasonable exposure is **\$1,072,9790.00**, including PAGA penalties. (*Id.*)

- 19 • A reasonably estimated exposure for unpaid wages (overtime) for the off-the clock work was
20 calculated, with the assistance of an expert, to be approximately **\$124,725.00**. However, with
21 the risk factor discounts for certification and liability proof, the value of that claim is
22 estimated by Plaintiff's counsel to be approximately **\$14,967.00**, assuming certification
23 probability of 40% and merits success at 30%.
- 24 • A reasonably estimated exposure for rest break violations over the class period was
25 calculated at **\$83,150.00**, but with chances of certification and proof of liability (50% and
26 40% respectively) for a risk-adjusted exposure of **\$16,630.00**.
- 27 • A reasonably estimated exposure for meal break violations over the class period was
28 calculated at **\$166,300.00**, with chances of certification and liability risks (50% and 40%

respectively) resulting in a risk-adjusted exposure of **\$33,260.00**.

- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties with chances of certification and liability risks (50% and 20% respectively) were estimated to be approximately **\$32,850.00** and **\$23,400.00** respectively, on maximum exposures of **\$328,500.00** and **\$234,000.00**.
- A reasonably estimated exposure for unreimbursed expenses over the class period was calculated at **\$13,304.00**, with chances of certification and liability risks (50% and 40% respectively) resulting in a risk-adjusted exposure of **\$2,660.80**.
- 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*,

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.

1 available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page
2 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a
3 settlement **or** as part of a contested certification motion).

4 Here, the estimated certification probabilities are **above** the average rate at which cases were
5 certified in California over the study years, based upon data available through the California Courts
6 websites. (Tunyan Decl., ¶ 18.) In sum, well *under* 20% of all cases filed as proposed class actions are
7 ultimately certified by way of a *contested* motion. (*Id.*) The recovery is roughly 10% of the maximum
8 plausible recovery (estimated to be approximately \$1,072,979.00, including PAGA), which falls within
9 the expected outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to
10 evaluate the result by examining only the premium wages at issue (approximately \$374,175.00 with no
11 risk reduction), excluding penalties and interest; the settlement is about 29.3% of the premium wages
12 (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure value.³
13 This Settlement achieves the goals of the litigation.

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

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

24 ³ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA
25 penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser
26 amount than the maximum civil penalty amount specified by this part...")), and, second, courts evaluate
27 the strength of a proposed settlement without taking potential penalties or interest into consideration. *See*
28 *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).

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 Preliminary 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 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., ¶ 32.) The enhancement also recognizes the considerable risks Plaintiff undertook on behalf of the Class 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.

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

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). This is also consistent with counsels’ experience in class cases. Here, Plaintiff’s attorneys intend to request attorneys’ fees of up to \$36,666.67 (one-third of the GSA), and costs capped at \$16,000 (which includes payment for filing fees, service of process fees, mediation fees, expert fees and other standard expenses). (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 *preliminary approval*.

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

In deciding whether to approve a proposed settlement, a trial court must determine if the proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In exercising this power, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Phoenix Class Action 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., ¶ 33.)

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

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 civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum
2 civil penalty amount specified by this part if, based on the facts and circumstances of the particular case,
3 to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

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

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

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

27 Given PAGA’s purpose to protect the public interest, we also agree with the LWDA
28 and federal district courts that have found it appropriate to review a PAGA settlement to
ascertain whether a settlement is fair in view of PAGA’s purposes and policies.
(*O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1132–
1134; *Jordan v. NCI Group, Inc.* (Jan. 5, 2018, No. EDCV 16-1701-JVS) 2018 WL
1409590, at *1–*2, 2018 U.S. Dist. Lexis 25297, at *3–*4; *Chamberlain v. Baker*
Hughes, a GE Co., LLC, supra, 2020 WL 4350207 at *3–*4, 2020 U.S. Dist. Lexis
134582 at *10–*11; *see Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of*
America (2006) 141 Cal.App.4th 46, 59, 61–62, 45 Cal.Rptr.3d 647 [where the
Legislature required court approval of private settlements of Proposition 65 actions
brought to vindicate the public interest, court must evaluate the resulting consent decree

to determine if it is “just” and “serves the public interest”].) We therefore hold that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws. (See *Williams, supra*, 3 Cal.5th at p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA “sought to remediate present violations and deter future ones”]; *Arias, supra*, 46 Cal.4th at p. 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 [the declared purpose of PAGA was to augment state enforcement efforts to achieve maximum compliance with labor laws].) The trial court below used this standard.

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

As to the first set of elements (the class-type analysis), it is embodied in Plaintiff’s discussion of the adequacy of the settlement generally. Using class settlements as a source of analogous settlement review standards, to assess the fairness, adequacy, and reasonableness of a settlement, the court should 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. *Third*, it would be essentially impossible to formulate an objectively reliable means of summarizing testimonial experiences, other than by an extraordinarily detailed survey. And formulating such a survey would have been important, since frequency of violations would need to be established before any penalties could be recovered. At least as to claims such as meal period and rest break violations, the decisions of aggrieved employees are a major factor in assessing liability. In sum, the evidence collected to date leads Plaintiff to conclude that, direct testimony would have been required from as many of the

roughly 82 aggrieved employees as could be obtained, which would be, at best, very difficult. Proof of this sort gives rise to a manageability argument that could substantially reduce the size of the aggrieved employee group.

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

A final note on the analysis discussion in *Moniz* is appropriate. *Moniz* was concerned with the standard applied to a standalone PAGA action, not a settlement in which money was allocated between class and PAGA claims. Here, the adequacy of the settlement as a whole impacts the factors approved of by *Moniz*. It would be misleading to examine only the PAGA portion of the settlement without asking how this Settlement as a whole is consistent with the purposes of PAGA. Second, the discussion of "fairness" to those impacted by the settlement in *Moniz* does not play a role in this matter. In *Moniz*, the Court found the record lacked any support for the disparate allocation of PAGA penalties between 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

1 held that employers are not subject to heightened penalties for subsequent violations until and unless a
2 court or commissioner notified the employer that it is in violation of the Labor Code.”) And in *Cotter*,
3 the court found a significant reduction of the PAGA claim would be appropriate because “[t]his does not
4 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
6 concluded in *Cotter*, the efforts to devise compliant operational policies do not indicate an organization
7 that has deliberately sought to evade the law. This is a very significant risk factor.

8 Finally, the PAGA allocation is fair. The LWDA is receiving **\$11,250.00**. The Class is
9 receiving, net, at least an estimated **\$31,588.33** for the releases for eight theories of recovery (including
10 the **\$3,750.00** as the aggrieved employees’ share of the PAGA Allocation). An allocation to the LWDA
11 equal to approximately **36%** of the Net Settlement Amount is not unfair and satisfies the policies
12 underlying California’s wage and hour laws.

13 **VI. THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING**

14 The last step in the settlement approval process is the fairness hearing, where the Court makes a
15 final determination about the propriety of settlement. Plaintiff requests that the fairness hearing in this
16 case be scheduled for about 120 days after issuance of the Court’s Order granting preliminary approval
17 of the Settlement. Under the Settlement, the Defendants will have 14 days to provide the mailing data to
18 the Settlement Administrator, which will then have 14 days to mail out class notice. Class Members
19 have 45 days after mailing of the notice to submit exclusions or objections (with a 14-day extension
20 available for late-returned and re-mailed notices). Therefore, Plaintiff proposes a final approval hearing
21 scheduled for the first available hearing date that is about 120 days after preliminary approval is granted.

22 **VII. CONCLUSION**

23 For all the foregoing reasons, because the Class meets the requirements for certification, because
24 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the
25 proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant
26 this Motion for Preliminary Approval, adopt the [Proposed] Order Granting Preliminary Approval of
27 Class Action Settlement submitted herewith, and schedule a Final Fairness Hearing.

Respectfully submitted,

Dated: May 1, 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 PRELIMINARY 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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15 Sarah Fan

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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 May 1, 2024 at Glendale, California.

Lilit Tunyan

Name



Signature