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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

STANLEY CAJIGAL, on behalf of himself
and others similarly situated,

Plaintiff,

vs.

HOWMET GLOBAL FASTERNING
SYSTEMS INC. dba HOWMET GLOBAL
FASTENING SYSTEM, a Delaware
corporation; HOWMET USA CORP., an
entity of unknown form; ALCOA
FASTENING SYSTEMS, an entity of
unknown form; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: CIVSB2316824

CLASS ACTION

Assigned for All Purposes To:
Hon. Tony Raphael
Dept.: S36

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

*[filed concurrently with Plaintiff's Notice of
Motion and Motion; Declaration of Enoch J.
Kim; Declaration of Stanley Cajigal;
Declaration of Jodey Lawrence; and
[Proposed] Order]*

Date: July 1, 2025
Time: 8:30 a.m.
Dept.: S36

Original Complaint Filed: July 21, 2023
First Amended Complaint Filed: September 25,
2023
Trial Date: None Set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Stanley Cajigal (“Plaintiff” or “Class Representative”) filed a Consolidated First
4 Amended Class Action Complaint in this Court (“Action”) against Defendant Howmet Global
5 Fastening Systems Inc. dba Howmet Global Fastening System and Defendant Alcoa Fastening
6 Systems (collectively “Defendants,” Defendants and Plaintiff hereinafter collectively referred to
7 as the “Parties”). Plaintiff alleged the following causes of action: (1) Failure to Pay Minimum
8 Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period
9 Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Labor Code § 226.7; (5)
10 Failure to Pay Vacation Wages; (6) Failure to Comply with Labor Code § 245 *et seq.* and 246; (7)
11 Violation of Labor Code § 226(a); (8) Failure to Keep Required Payroll Records Under Labor
12 Code §§ 1174 and 1174.5; (9) Penalties Pursuant to Labor Code § 203; (10) Violation of Business
13 & Professions Code § 17200 *et seq.*; and (11) Penalties under Private Attorney General Act
14 (“PAGA”).

15 After engaging in substantial investigation and extensive negotiations with the assistance
16 of a respected mediator, the Parties agreed to settle all claims alleged in the Action on a class-
17 wide, non-reversionary basis for Four Hundred and Five Thousand Dollars and Zero Cents
18 (\$405,000.00), inclusive of all fees and costs. The Parties’ Class Action and PAGA Settlement
19 Agreement (“Settlement” or “Settlement Agreement”) defines the class as “all persons employed
20 by Defendants in California and classified as non-exempt hourly employee who worked for
21 Defendants during the Class Period,” which is June 1, 2022 through August 2, 2024 (“Class
22 Members”). All 2,147 Class Members will receive a settlement payment unless they opt out of the
23 Settlement.

24 The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and
25 adequate, and in the best interests of the Class. Consequently, Plaintiff, with the consent of
26 Defendants, hereby moves this Court for an order: (1) granting preliminary approval of the
27 proposed class action settlement, as embodied in the Settlement Agreement filed concurrently
28 herewith; (2) approving the Notice of Class Action Settlement and Hearing Date for Final Court

1 Approval (“Class Notice”) to be sent to Class Members; and (3) setting a hearing for final
2 approval of the class action settlement.

3 **II. STATUS OF THE LITIGATION**

4 **A. Procedural History**

5 On July 21, 2023, Plaintiff Cajigal commenced a class action complaint against
6 Defendants alleging ten causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay
7 Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code §
8 226.7; (4) Rest Break Liability Under Labor Code § 226.7; (5) Failure to Pay Vacation Wages;
9 (6) Failure to Comply with labor Code § 245 *et seq.* and 246; (7) Violation of Labor Code §
10 226(a); (8) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5; (9)
11 Penalties Pursuant to Labor Code § 203; and (10) Violation of Business & Professions Code §
12 17200 *et seq.* (Declaration of Enoch J. Kim (“Kim Decl.”), filed concurrently herewith, ¶ 11.)
13 Plaintiff contends that Defendants failed to Plaintiff and Class Members all wages due and owing,
14 including by requiring off the clock work, unlawfully rounding to their detriment, failing to
15 provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay
16 wages including final wages, failing to maintain accurate records, and failing to incorporate all
17 remunerations, including shift differentials, nondiscretionary commissions, incentive pay, and/or
18 nondiscretionary bonuses, into the calculation of the regular rate for purposes of calculating the
19 overtime wage rata, and vacation pay. (*Id.*)

20 Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to
21 Defendants and the Labor Workforce Development Agency (“LWDA”) by sending his Private
22 Attorneys General Act (“PAGA”) Notice on July 21, 2023 (LWDA-CM-968289-23). (Kim Decl.
23 Exhibit 2.) The LWDA did not express an interest in investigating Plaintiff’s claims within the 65-
24 day period. Therefore, on September 25, 2023, Plaintiff filed a First Amended Complaint adding a
25 cause of action for penalties under PAGA. (Kim Decl., ¶ 12.)

26 On December 23, 2023, pursuant to Plaintiff’s Request for Dismissal of Defendant Howmet
27 USA Corp., the Court ordered Defendant Howmet USA Corp. to be dismissed without prejudice
28 as to the claims of Plaintiff and the putative class members. (Kim Decl., ¶ 13.)

1 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any
2 other pending matter or action asserting claims that will be extinguished or affected by the
3 Settlement. (Kim Decl., ¶ 14.)

4 **B. Investigation**

5 Before filing the lawsuit, Class Counsel investigated and researched the facts and
6 circumstances underlying the pertinent issues and the law applicable thereto. (Kim Decl., ¶ 15.)
7 This required thorough discussions and interviews between Class Counsel and Plaintiff, as well as
8 preliminary research into the various legal issues involved in the case. (*Id.*) After conducting their
9 initial investigation, Class Counsel determined that Plaintiff's claims were well-suited for class
10 and representative action adjudication owing to what appeared to be a common course of conduct
11 affecting a similarly situated group of employees. (*Id.*)

12 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
13 claims giving rise to the action, including: (1) conducting informal discovery and meeting and
14 conferring with defense counsel about the same; (2) reviewing and analyzing a sampling of time
15 and payroll data for Class Members and the necessary policy documents as well as employment
16 handbook, Plaintiff's personnel files, relevant policies and other documentation; (3) researching
17 the applicable law and potential defenses; (4) constructing damage models based on
18 interpretations of California law; and (5) reviewing information provided by Defendants at
19 mediation. (Kim Decl., ¶ 16.) The Class enumerated in this action is ascertainable because the
20 Class Members may be readily identified by reference to Defendants' records. (*Id.*) Defendants
21 have agreed to share the information from these records with the Settlement Administrator in
22 order to identify and contact the Class Members. (*Id.*) Defendants have represented that there are
23 approximately 2,147 total Class Members. (*Id.*)

24 Defendants, for their part, vigorously contested liability, the amount of claimed damages,
25 and the propriety of class certification. (Kim Decl., ¶ 17.) After Class Counsel analyzed the
26 relevant documents and other gathered data, Class Counsel believed that this case was appropriate
27 for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the Parties
28 elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

1 **C. Settlement Efforts**

2 On June 3, 2024, the Parties attended mediation with Tripper Ortman, a respected and
3 highly experienced mediator in wage and hour class actions. (Kim Decl., ¶ 18.) During mediation,
4 Plaintiff and Defendants’ counsel discussed all aspects of the case, including the risks of
5 continued litigation and the risks to both parties of proceeding with a motion for class
6 certification as well as the law relating to unpaid wages, meal periods, rest periods, wage
7 statements, and final pay. (*Id.*) As a result of the mediation, the Parties agreed to settle the lawsuit
8 according to the terms set forth in the Settlement Agreement. (Kim Decl., Exhibit 1.)

9 From Class Counsel’s review of the strengths and weaknesses of the case, the risks and
10 delays posed by further litigation, and Class Counsel’s own prior litigation experience, Class
11 Counsel believes that the recovery for each Class Member is fair and reasonable taking into
12 consideration the amounts received in other wage and hour class actions, the risks inherent in
13 litigation of this genre, and the reasonable tailoring of each Class Member’s claim to the
14 settlement award he or she will receive. (Kim Decl., ¶ 19.) Further, and based on the settlement
15 negotiations, which were extensive and conducted in good faith and at arm’s length between
16 attorneys with substantial experience litigating class actions and wage and hour cases, the
17 Settlement Agreement was the product of a non-collusive settlement process in which the Parties
18 were forced to make significant compromises in the interest of reaching a full and complete
19 settlement of the lawsuit. (*Id.*)

20 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

21 Under the terms of the proposed Settlement Agreement, Defendants have agreed to pay
22 Four Hundred and Five Thousand Dollars and Zero Cents (\$405,000.00) (“Gross Settlement
23 Amount” or “GSA”) on a non-reversionary basis to settle and release all claims asserted by
24 Plaintiff in the Action and PAGA Notice. (Kim Decl., ¶ 20; Exh. 1, §3.1.)

25 The Settlement Agreement defines the “Class” as “all persons employed by Defendants in
26 California and classified as non-exempt hourly employee who worked for Defendants during the
27 Class Period,” which is from June 1, 2022 through August 2, 2024. (Kim Decl., ¶ 21; Exh. 1, §1.5
28 and §1.13.) The Settlement Agreement also defines “Aggrieved Employees” as “all individuals

1 who were or have been employed by Defendants in California as non-exempt hourly employees
2 at any time during the PAGA Period,” which is from July 21, 2022 through August 2, 2024. (Kim
3 Decl., ¶ 22; Exh. 1, §§ 1.4 and 1.33.)

4 The “Net Settlement Amount” shall be the Gross Settlement Amount, less the PAGA
5 Penalties payment (allocated to the Aggrieved Employees and to the LWDA), Class
6 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
7 Expenses Payment, and Administration Costs Payment. (Kim Decl., ¶ 23; Exh. 1, §1.29.) The
8 remainder is to be paid to Participating Class Members as Individual Class Payments. (Kim Decl.,
9 ¶ 23, Exh. 1, § 1.29.) These amounts are detailed as follows:

- 10 • Class Counsel Fees Payment of not more than one-third of the GSA, which is
11 currently estimated to be \$135,000.00 and Class Counsel Litigation Expenses
12 Payment of not more than \$25,000.00; (Kim Decl., ¶ 23; Exh. 1, §3.2.2.)
- 13 • Administration Expenses Payment of not more than \$19,500.00; (Kim Decl., ¶ 23;
14 Exh. 1, §3.2.3.)
- 15 • Class Representative Service Payment of not more than \$5,000.00 to Plaintiff;
16 (Kim Decl., ¶ 23; Exh. 1, §3.2.1.)
- 17 • PAGA Penalties in the amount of Thirty Thousand Dollars and Zero Cents
18 (\$30,000.00) for civil penalties under PAGA, with 75% (\$22,500.00) paid to the
19 LWDA for the LWDA PAGA Payment and 25% (\$7,500.00) paid to Aggrieved
20 Employees for their Individual PAGA Payments. (Kim Decl., ¶ 23; Exh. 1, §3.2.5)

21 The “Individual Class Payment” is each Class Member’s share of the Net Settlement
22 Amount and will be calculated and apportioned from the Net Settlement Amount based on the
23 number of Workweeks a Class Member worked during the Class Period. (Kim Decl., ¶ 24; Exh.
24 1, §1.24.) Under the Settlement, each of the approximately 2,147 Class Members will receive,
25 using a straight average and assuming they worked throughout the Class Period, \$88.78 for their
26 Individual Class Payment. (Kim Decl., ¶ 66.) The estimated lowest amount for a Class Member
27 who worked for one workweek is \$1.38 and the estimated highest amount for a Class Member
28 who worked for 104 workweeks is \$142.20. (Kim Decl., ¶ 26.) The “Individual PAGA Payment”

1 is the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties, calculated according
2 to the number of PAGA Pay Periods worked during the PAGA Period. (Kim Decl., ¶ 25; Exh. 1,
3 §1.25)

4 Defendants will pay their employer-side payroll tax obligations on the Wage Portion of
5 the Individual Class Payments in addition to the Gross Settlement Amount. (Kim Decl., ¶ 27;
6 Exh. 1, §3.1.) Twenty percent (20%) of each Participating Class Member's Individual Class
7 Payment will be allocated to the settlement of wage claims (the "Wage Portion") and will be
8 subject to tax withholding and will be reported on an IRS W-2 Form. (Kim Decl., ¶ 28; Exh. 1,
9 §3.2.4.1.) The remaining 80% of each Participating Class Member's Individual Class Payment
10 will be allocated to the settlement of claims for interest and penalties (the "Non-Wage Portion").
11 (*Id.*) The Non-Wage Portions are not subject to wage withholding and will be reported on IRS
12 1099 Forms. (*Id.*)

13 The Settlement Administrator will send the Class Notice with Spanish translation via first
14 class mail to all Class Members identified in the Class Data. (Kim Decl., ¶ 31; Exh. 1, §7.4.2.) No
15 later than five (5) calendar days after after the receipt of any Class Notice returned by the USPS as
16 undelivered, the Settlement Administrator shall re-mail the Class Notice using any forwarding
17 address provided by the USPS. (*Id.*; Exh. 1, § 7.4.3.) If the USPS does not provide a forwarding
18 address, the Settlement Administrator shall conduct a Class Member Address Search, and re-mail
19 the Class Notice to the most current address obtained. (*Id.*; Exh. 1, § 7.4.3.)

20 Each Class Member shall have 45 days after the Settlement Administrator mails the Class
21 Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge
22 the number of Class Workweeks and PAGA Pay Periods allocated to the Class Member in the Class
23 Notice. (Kim Decl., ¶ 32; Exh. 1, § 7.6.) In the absence of any contrary documentation, the
24 Settlement Administrator is entitled to presume that the Workweeks and PAGA Pay Periods
25 contained in the Class Notice are correct so long as they are consistent with the Class Data. (*Id.*;
26 Exh. 1, § 7.6.)

27 Class Members wishing to opt out from the Settlement Agreement must send a signed
28 written request for exclusion to the Settlement Administrator within 45 days from the initial

1 mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice
2 was re-mailed). (Kim Decl., ¶ 33; Exh. 1, §7.5.) Participating Class Members will also have the
3 opportunity to object to the Settlement Agreement by serving a copy of the objection to the
4 Settlement Administrator within 45 days after the mailing of the Class Notice (plus an additional
5 14 days for Class Members whose Class Notice was re-mailed). (*Id.*; Exh. 1, §7.7.2.) In the
6 alternative, Participating Class Members may appear in Court (or hire an attorney to appear in
7 Court) to present verbal objections at the Final Approval Hearing. (*Id.*; Exh. 1, § 7.7.2.)

8 Class Counsel received quotes from Phoenix Class Action Administration Solutions
9 (“Phoenix”) for \$19,500.00, and from Apex Class Action Administration for \$19,990.00. The
10 Parties agreed to use Phoenix in this matter, which provided the lower bid. (Kim Decl., ¶ 29.)
11 Phoenix has extensive experience in administering employment class action settlements and Class
12 Counsel has worked with Phoenix in the past. (*Id.*) Phoenix has procedures in place to protect the
13 security of class data, sufficient insurance in the event of a data breach or mishandling of the
14 settlement funds, and is qualified to administer the Settlement. (Declaration of Jodey Lawrence
15 “Lawrence Decl.,” ¶¶ 9-11.) The procedures for mailing notice and processing exclusions and
16 objections as well as distribution of the Net Settlement fund are detailed in the Settlement
17 Agreement. (Kim Decl., Exh. 1, § 7.)

18 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

19 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince*
20 *v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.*
21 (1981) 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved
22 in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at
23 473-75.) The decision to certify a class is a procedural one, and should be based on the allegations
24 in the operative complaint, and not in the perceived factual or legal merit of the class claims.
25 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

26 To certify a settlement class, the Court must find the two primary requirements for
27 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
28 defined community of interest in the questions of law and fact involving the parties to be

1 represented. (*See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
2 *Company* (1967) 67 Cal. 2d 695, 704.) These criteria are met here for the reasons set forth below.

3 **A. There Is A Numerous and Ascertainable Class**

4 Whether a class is ascertainable is determined by examining the class definition, the size
5 of the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d
6 at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263,
7 1271.) Class members are “ascertainable” where they may be readily identified without
8 unreasonable expense or time. *See Rose v. City of Hayward*, 126 Cal. App. 3d 926, 932 (1981)
9 (finding that “class members are ‘ascertainable’ where they may be readily identified without
10 unreasonable expense or time by reference to official records).

11 Plaintiff contends, and Defendants do not dispute for settlement purposes only, this
12 requirement and the requirement of numerosity are met. Class Members are “all persons
13 employed by Defendants in California and classified as non-exempt hourly employee who
14 worked for Defendants during the Class Period,” which is June 1, 2022 through August 2, 2024.
15 (Kim Decl., ¶ 83(a).) Documents and information exchanged between the Parties reflect a class of
16 approximately 2,147 Class Members. (Kim Decl., ¶ 83(a).) The Class Members have already been
17 identified by reference to Defendants’ payroll and personnel records. (Kim Decl., ¶ 16.)

18 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

19 **B. There Is A Well-Defined Community of Interest**

20 A community of interest is established by the predominance of common issues of law and
21 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

22 [D]oes not depend upon an identical recovery, and the fact that each
23 member of the class must prove his separate claim to a portion of any
24 recovery by the class is only one factor to be considered ... The mere
25 fact that separate transactions are involved does not of itself preclude
26 a finding of the requisite community of interest so long as every
27 member of the alleged class would not be required to litigate
28 numerous and substantial questions to determine his individual right
to recover subsequent to the rendering of any class judgment which
determined in plaintiff’ favor whatever questions were common to
the class.

Id. at 809.

1 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that
2 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the
3 Class is united in its proof. (Kim Decl., ¶ 83(e).) Because Plaintiff has alleged a single scheme,
4 “the relevant proof [does] not vary among class members” and “clearly presents a common
5 question fundamental to all class members.” (*See In Re NASDAQ Market-Makers Antitrust*
6 *Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust*
7 *Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no hesitancy” in
8 inferring class-wide causation, class-wide injury, and class-wide damages when a common course
9 of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This inference
10 ““eliminates the need for each class member to prove individually the consequences of the
11 defendants’ actions to him or her.”” (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982)
12 131 Cal. App. 3d 741, 753 [emphasis added]).)

13 This action involves, *inter alia*, a determination about Defendants’ alleged failure to
14 provide meal and rest periods, failure to pay minimum wages, failure to pay all wages due to
15 allegedly common and unlawful policies, failure to provide vacation wages, failure to provide
16 paid sick time, failure to pay final wages when required, failure to keep required payroll records,
17 failure to pay employees on a timely basis, and largely derivative claims under the Business &
18 Professions Code and PAGA. Plaintiff contends these practices affected Class Members in the
19 same way. The outcome of litigation on this matter depends upon questions that are common to
20 Class Members. (Kim Decl., ¶ 83(e).)

21 C. The Named Plaintiff’s Claims Are Typical

22 A class representative’s claims are typical when they arise from the same event, practice,
23 or course of conduct that gives rise to the claims of other putative class members, and if their
24 claims rest on the same legal theories. The class representative’s claims must be “typical” but not
25 necessarily identical to the claims of other class members. It is sufficient that the representative is
26 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
27 (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
28 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class

1 representative must have identical interests with the class members.”) Thus it is not necessary that
2 the class representative should have personally incurred all of the damages suffered by each of the
3 other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

4 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that
5 Plaintiff’s claims are typical of Class Members’ claims because they arose from the same factual
6 basis and are based on the same legal theories. (Kim Decl., ¶ 83(c).) Plaintiff was employed by
7 Defendants during the Class Period, and was subject to the allegedly unlawful meal and rest
8 policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiff is a member of the
9 Class. (*Id.*) The central issues of this litigation (whether Defendants failed to pay all wages,
10 whether Defendant failed to provide meal and rest periods, etc.) apply to the other Class Members
11 as well. The answer to these questions would determine Defendants’ liability to the Class. (*Id.*)
12 Thus, the claims of Plaintiff are typical of the claims of the Class. (*Id.*) Accordingly, the typicality
13 requirement is satisfied.

14 **D. Adequacy of Class Counsel and Class Representative**

15 Class Counsel are experienced in class actions, have represented Plaintiff and the Class
16 zealously and have no conflicts of interest. (Kim Decl., ¶¶ 3-9, 83(d). The Class Representative’s
17 interests are aligned with those of Class Members, he has suffered the same injuries as Class
18 Members, and has no conflicts of interest. (*Id.*) Therefore, Class Counsel and the Class
19 Representative are adequate.

20 **E. Predominance and Superiority**

21 Individualized issues do not predominate over the issues of law and fact that are common
22 to the class as a whole. (Kim Decl., ¶ 83(f).) The class action mechanism is superior to
23 individualized actions because Class Members have little incentive to bring claims that are small.
24 (*Id.*)

25 **V. THE TWO-STEP APPROVAL PROCESS**

26 Any settlement of class action litigation must be reviewed and approved by the Court.
27 This is accomplished in two steps: (1) An early (preliminary) review by the trial court, and (2) a
28 detailed review after the notice has been distributed to the class members for their comments or

1 objections. In this regard, the Manual for Complex Litigation (Second) explains:

2 A two-step process is followed when considering class settlements...
3 If the proposed settlement appears to be the product of serious,
4 informed, non-collusive negotiations, has no obvious deficiencies,
5 does not improperly grant preferential treatment to class
6 representative or segments of the class, and falls within the range of
possible approval, then the court should direct that notice be given to
the class members of a formal fairness hearing, at which evidence
may be presented in support of and in opposition to the settlement.

7 (*Manual for Complex Litigation (Second)* (1985) at § 30.44.) The preliminary approval of the
8 class action settlement by the trial court is simply a conditional finding that the settlement appears
9 to be within the range of acceptable settlements. (*See, e.g., Newberg*, § 11.25; *North County*
10 *Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.)
11 Thus, the preliminary approval of the class action settlement by the trial court is simply a
12 conditional finding that the settlement appears to be within the range of acceptable settlements.

13 Settlements to resolve PAGA claims also require court approval. (Labor Code §
14 2699(1)(2).) There is no articulated standard for approving PAGA settlements. PAGA settlements
15 for as little as \$0 have been approved. (*See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576,
16 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim).) Courts have
17 also approved settlements for \$20,000 or less. (*See, e.g., Hicks v. Toys 'R' Us-Delaware, Inc.*,
18 (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4
19 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645,
20 at *1 (approving PAGA payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson*
21 *Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in
22 \$300,000 settlement).)

23 A review of the preliminary approval criteria demonstrates a substantial basis for granting
24 the instant Motion and proceeding to a final settlement approval hearing.

25 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

26 As a matter of public policy, courts both encourage the use of the class action device and
27 favor settlement over continued litigation. (*See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th
28 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent

1 a failure of justice in our judicial system.”); *Class Plaintiff v. City of Seattle* (1992) 955 F.2d
2 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class
3 action litigation is concerned.”).)

4 Moreover, courts presume the absence of fraud or collusion in the negotiation of a
5 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
6 negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.*
7 (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir.
8 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents,
9 particularly when settlement has been reached by experienced counsel familiar with the litigation.
10 (*Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp.
11 1087.)

12 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
13 several factors that should be analyzed in determining if a class action settlement should be
14 approved. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,
15 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
16 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
17 stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
18 governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

19 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
20 informal discovery before entering into meaningful settlement negotiations in this matter,
21 including a detailed analysis of Defendants’ policies and a reasonable sample of Defendants’ time
22 and pay records. (Kim Decl., ¶¶ 15-19.) This discovery permitted Class Counsel to fairly evaluate
23 the strengths of the case and the risks associated with ongoing litigation. Class Counsel is very
24 experienced in the handling of wage and hour class actions and supports this Settlement. (Kim
25 Decl., ¶¶ 3-9.)

26 **A. The Strength of Plaintiff’s Case.**

27 Plaintiff alleges that Defendants failed to pay minimum wages and overtime, failed to
28 provide proper meal breaks or provide premium pay in lieu thereof, failed to provide proper rest

1 breaks or provide premium pay in lieu thereof, failed to provide vacation wages, failed to provide
2 paid sick time, failed to provide accurate wage statements, failed to timely pay all wages upon
3 termination, and failed to keep required payroll records. (Kim Decl., ¶ 35.)

4 As further explained below, Plaintiff contended that Defendants' policies and practices
5 relating to pay and meal and rest breaks were unlawful and applied to all Class Members. (Kim
6 Decl., ¶¶ 36-64.) Defendants contended, however, that its policies complied with California law
7 and denied Plaintiff's allegations.

8 **B. The Risks Associated with the Merits.**

9 As with all litigation, there are risks that a party will not prevail on the merits. In this case,
10 Plaintiff contended that Defendants failed to provide compliant, duty-free meal periods to Class
11 Members since they were required to remain on duty during their meal periods. (Kim Decl., ¶ 43.)
12 Defendants contended that Class Members were given a reasonable opportunity to take their meal
13 periods, and in fact received their meal periods most of the time, and any deviations were at the
14 voluntary election of Class Members. (Kim Decl., ¶ 44.) Defendants argued they have a high
15 meal period compliance rate and that they paid premium pay for any non-compliant meal periods.
16 (*Id.*) If Defendants' contentions are proven true and prevail in trial, the likely outcome of this
17 claim would be no recovery for Class Members. (*Id.*) Given the difficulty in certifying this claim,
18 Class Counsel had to apply a significant discount to damages. (*Id.*)

19 Plaintiff also contended that Defendants did not provide Class Members with paid 10-
20 minute rest breaks for every four hours or major fraction thereof. (Kim Decl., ¶ 46.) Plaintiff
21 contended that Class Members consistently worked in excess of consecutive four-hour shifts and
22 were entitled to paid rest breaks of not less than ten minutes for each consecutive four-hour shift
23 but were required to work through their rest breaks during their shifts. (*Id.*) Defendants
24 maintained that they did provide a reasonable opportunity for Class Members to take duty-free
25 rest breaks during their shifts pursuant to their policy and disputed all allegations that rest breaks
26 were not provided. (*Id.*) Defendants further argued that Class Members had multiple opportunities
27 to report non-compliant rest breaks and that Defendants provided premium pay for any reported
28 non-compliant rest breaks. (*Id.*) Defendants also pointed out that, unlike meal periods, rest breaks

1 need not be recorded, so any rest break violations would likely be difficult to certify and prove at
2 trial. (*Id.*) As these considerations would likely depress the damages *vel non* ultimately awarded,
3 Class Counsel applied appropriate discounts to the rest break claim. (*Id.*)

4 Plaintiff alleged that Defendants failed to pay Plaintiff and Class Members at least
5 minimum wages for all hours worked and proper overtime wages for hours worked in excess of
6 eight hours in a day and 40 hours in a week. (Kim Decl., ¶ 38.) Specifically, Plaintiff alleged that
7 Plaintiff and Class Members were required to go through lengthy temperature checks each day
8 before clocking in and after returning back from their meal breaks, but were not compensated for
9 the time spent underdoing temperature checks. (*Id.*) Additionally, Plaintiff and Class Members
10 had to wait in lines prior to being permitted to clock in at one of the few timeclocks provided by
11 Defendants. (*Id.*) In addition to an hourly wage, Defendants paid Plaintiff and Class Members
12 shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses.
13 (Kim Decl., ¶ 39.) However, Plaintiff alleged that Defendants failed to incorporate all
14 remunerations, including shift differentials, nondiscretionary commissions, incentive pay, and/or
15 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
16 calculating the overtime wage rate. (*Id.*) Therefore, during times when Plaintiff and Class
17 Members worked overtime and received shift differentials, nondiscretionary commissions,
18 incentive pay, and/or nondiscretionary bonuses, Plaintiff alleged that Defendants failed to pay all
19 overtime wages by paying a lower overtime rate than required. (*Id.*)

20 Defendants contended that they paid for all reported hours worked, that Class Members
21 were trained and required to record all hours worked, that any “off the clock” work was
22 performed without Defendants’ knowledge and was de minimis, and that they paid wages at the
23 proper rates, including for overtime. (Kim Decl., ¶ 40.) Defendants also argued that given their
24 written policies and practices, any unrecorded hours were likely subject to individualized inquiry
25 and unlikely to be certified. (*Id.*) Given the difficulty in certifying this claim, Class Counsel had
26 to apply a significant discount to damages. (*Id.*)

27 Plaintiff also alleged that Defendants failed to compute the amount due for paid sick time
28 in conformance with the pay calculation under California Labor Code § 246. (Kim Decl., ¶ 49.)

1 Plaintiff alleged that Defendants paid shift differentials, nondiscretionary commissions, incentive
2 pay, and/or nondiscretionary bonuses to Plaintiff and Class Members but Defendants failed to
3 include these forms of remuneration in the regular rate of pay upon which sick pay was calculated
4 and paid. (Kim Decl., ¶ 50.) Accordingly, Defendants paid sick leave to Plaintiff and Class
5 Members at a lower rate in violation of the law. (*Id.*)

6 Defendants contended that they provided paid sick leave at the proper regular rates when
7 applicable. (Kim Decl., ¶ 51.) Defendants further contended that bonuses were discretionary in
8 nature and not required to be included in the regular rate at all. (*Id.*)

9 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties.**

10 In order to establish liability for these penalties, Plaintiff would first have to establish
11 liability for the underlying claims. Plaintiff would then have to establish that Defendants' conduct
12 was willful and knowing. (Labor Code §§ 203, 226(e).)

13 With waiting time penalties, there is always the risk that the trier of fact would not have
14 held that Defendant's actions were done "willfully." A good faith belief in a legal defense can
15 preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36,
16 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleged that Defendants failed to pay for all
17 hours worked and premiums for non-compliant meal breaks due to the underreporting of hours
18 and off the clock work. Plaintiff contended that Class Members are entitled to these wages and
19 premiums, which they allege were not paid at the time of their termination or resignation. If
20 Plaintiff is successful on his claims, the penalties pursuant to Labor Code § 203 shall attach.
21 Defendants, however, contend they provided employees with the reasonable opportunity to take
22 meal breaks, asked Class Members to confirm the accuracy of their time records, and therefore
23 had good-faith defenses under *Brinker* and its progeny. Defendants likewise contended that they
24 properly paid all hours worked by its employees. Based upon Defendants' potential success in
25 establishing both that a good faith dispute existed with regard to unpaid wages, and Defendants
26 endeavored in good faith to supply accurate wage statements, Defendants argued the claims for
27 paystub violations and waiting time penalties have little or no value. *See Maldonado v. Epsilon*
28 *Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage statements that accurately report

1 wages paid to employees do not violate Labor Code § 226, even if it is later determined that
2 employer did not properly pay all wages due). As such, there was risk associated with wage
3 statement and waiting time penalties that Class Counsel had to consider. (Kim Decl., ¶¶ 53-59.)

4 **D. The Risks Associated with the PAGA Penalties.**

5 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
6 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
7 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
8 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
9 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount
10 by the Labor Code section relating to the underlying alleged Labor Code violation, that amount
11 shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
12 maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil
13 penalty amount specified by this part if, based on the facts and circumstances of the particular
14 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
15 confiscatory.”]); *See, e.g., Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev.*
16 *denied* (2018), (recognizing court’s ability to reduce PAGA penalties). Courts have held that
17 situations similar to the current one (e.g. injuryless violations, technical errors, and substantial
18 compliance) should lead to reductions in penalties. *See Thurman v. Bayshore Transit*
19 *Management, Inc.*, 203 Cal. App. 4th 1112, 1134-1135 (2012) (holding that reduction was
20 justified when employer “attempted to comply with the law”); *Fleming v. Covdien, Inc.*, No. ED
21 CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011)
22 (reducing PAGA penalties more than 80% – from \$2.8 million to \$500,000 – when “employees
23 suffered no injury” employers were “not aware” of the violation and “took prompt steps to correct
24 all violations once notified”).

25 Plaintiff discounted potential penalties under this claim given this authority, and for
26 reasons already discussed. The PAGA claims are premised on the same underlying unpaid wages,
27 meal and rest break, wage statement, and waiting time claims, and thus subject to the same
28 disputes and defenses. There is also a dispute as to whether violations in later pay periods trigger

1 the \$200 penalty under PAGA as a “subsequent violation.” (*Amaral v. Cintas Corp. No. 2*, 163
2 Cal. App. 4th 1157, 1203 (2008).) As such, there is a fair amount of risk associated with PAGA
3 claims makes the settlement’s proposed PAGA payment of \$30,000.00 appropriate. (Kim Decl.,
4 ¶¶ 60-63.)

5 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

6 Given the risks outlined above, the issues in this case were complex and the risk for
7 Plaintiff and Class Members associated with this litigation was significant. (Kim Decl., ¶¶ 67-70.)
8 A class trial would have required the retention of expensive expert witnesses, the accrual of
9 extensive litigation costs, and the parties would have had to spend a substantial amount of time
10 litigating this matter. (*Id.*)

11 Finally, given the complexity and unsettled nature of the issues, it is likely that any
12 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
13 further delay for Class Members who will have already waited considerable time for resolution in
14 this matter.

15 **F. The Risk of Maintaining Class Action Status Through Trial.**

16 In class actions, decertification is always a possibility. There is always a risk that a trial of
17 this magnitude can become unmanageable. (Kim Decl., ¶ 70.) Given cases like *Duran v. U.S.*
18 *Bank Nat. Assn.*, 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical
19 samples in class actions, decertification is a real risk that Class Counsel must take into account.

20 **G. The Amount Offered in Settlement.**

21 Based on an analysis of Plaintiff’s time and pay records and a sampling of time and pay
22 records for the Class, Plaintiff estimated the potential realistic exposure for the main claims as
23 follows: unpaid wages claims at **\$197,450.23**, meal period claim at **\$222,142.60**, rest period claim
24 at **\$179,496.56**, wage statement claim at **\$126,797.00**, waiting time penalties at **\$65,124.70**, unpaid
25 sick time claim at **\$15,248.80**, and on PAGA at **\$64,385.00**. (Kim Decl., ¶ 70.) As such, the total
26 estimated realistic exposure Defendant could face is **\$870,644.89**. (*Id.*)

27 The Gross Settlement Amount of \$405,000.00 represents a recovery for the Class of
28 approximately 46.52% of the total realistic exposure Plaintiff estimated that Defendant could face

1 on the primary claims in this case. (Kim Decl., ¶ 66.) Plaintiff and Class Counsel submit that this
2 is an excellent result in the face of uncertainty and the prospects of protracted and contested
3 litigation through class certification, summary judgment, and trial, and particularly in light of all
4 of the factors described above. (*Id.*)

5 Class Counsel believes that the settlement is fair and reasonable and serves the best
6 interests of Class Members. Although the recommendations of counsel proposing the class
7 settlement are not conclusive, the Court can properly take the recommendations into account,
8 particularly if counsel has been involved in litigation for some period of time, appear to be
9 competent, and have experience with this type of litigation, and significant discovery has been
10 completed. *See Newberg*, §11.47.

11 **VII. THE CLASS REPRESENTATIVE SERVICE PAYMENT IS FAIR AND** 12 **REASONABLE**

13 It is appropriate to provide a relatively modest additional incentive payment to the class
14 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901
15 F.Supp. 294.

16 Plaintiff is entitled to a reasonable service payment for his efforts and initiative in
17 bringing and helping to prosecute this class action. Plaintiff spent significant time better apprising
18 himself of his rights, deciding whether remedial action should be taken, how it should be taken,
19 searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff
20 discussing the case and the law. (Kim Decl., ¶ 78.) In the end, Plaintiff decided to vindicate not
21 only his own rights but also those of his co-workers by filing a class action lawsuit. (*Id.*)

22 The courage it took to do this should not be underestimated. (Kim Decl., ¶ 79.) By suing
23 Defendants and serving as the class representative in this case, Plaintiff contends he increased his
24 risk of retaliation by prospective employers and put his own future employment prospects at risk.
25 (*Id.*) But Plaintiff did not allow his fear of the potential repercussions of being a class
26 representative deter him from acting for the benefit of Class Members. (Kim Decl., ¶ 80.) To the
27 contrary, Plaintiff has been intimately involved in this case since its inception. (*Id.*) He has
28 devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute

1 this action at every stage of the litigation. (*Id.*) Both before and after the filing of this lawsuit,
2 Plaintiffs conferred with Class Counsel to discuss every aspect of this case; Plaintiff provided
3 Class Counsel with information about Defendants and about the industry generally, reviewed
4 documents, identified witnesses, consulted Class Counsel throughout the litigation, participated in
5 the mediation process, monitored the progress of the litigation with Class Counsel, and reviewed
6 and signed the Settlement Agreement. (*Id.*)

7 In sum, Plaintiff has diligently, adequately, and fairly represented Class Members, and has
8 not placed his interests above any member of the putative class. (Kim Decl., ¶ 81.) This sort of
9 payment to a class representative has been a common feature of settlements negotiated by Class
10 Counsel and has been routinely approved by trial courts. (Kim Decl., ¶ 81.)

11 The Settlement allocates an incentive award in the amount of \$5,000.00 to Plaintiff. (Kim
12 Decl., ¶ 23.) This amount is a far cry from the \$50,000 of enhancement awards to the two named
13 plaintiffs approved by the trial court in *Clark*. See *Clark Clark v. American Residential Services,*
14 *LLC* (2009) 175 Cal.App.4th at 807. Although Class Counsel appreciate that the Court has a duty
15 to ensure that class representatives are not overcompensated at the expense of the class, modest
16 incentive awards in employment class actions, such as the one here, are necessary not only to
17 compensate class representatives for the time they spend in the case, but also, and more
18 importantly, to encourage aggrieved employees to challenge questionable employment practices
19 notwithstanding the very real consequences they may face.

20 In light of the foregoing, Class Counsel believes that the Class Representative Service
21 Payment in the amount of \$5,000.00 to Plaintiff is fair and reasonable. (Kim Decl., ¶ 82.)

22 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE** 23 **CLASS MEMBERS.**

24 Constitutional due process requires that class members be provided with notice sufficient
25 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
26 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
27 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*
28 at 314.) The notice must apprise the class members of the pendency of the action; reasonably

1 convey information regarding the settlement and the class members' rights, entitlements, and
2 obligations; and afford class members the opportunity to present their objections. (*Id.*)

3 The Class Notice meets constitutional standards because it provides all the information a
4 reasonable person would need to make a fully informed decision about the settlement. It will
5 notify all class members of the terms of the settlement, of its effect on their rights, of their options
6 as class members (i.e., participate, object, opt out, do nothing), and of the consequences of
7 exercising those options. (Kim Decl., ¶¶ 71-73.) Moreover, the Class Notice will specifically
8 direct any class members who have questions or concerns to contact the Settlement Administrator
9 or Class Counsel. (*Id.*)

10 The standard for determining the adequacy of notice is whether the notice has "a
11 reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior*
12 *Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California's Deskbook on the
13 Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual
14 notice by mail is preferred when possible and dissemination of combined certification/settlement
15 notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820,
16 828.)

17 Here, the Class Notice will be sent via first-class mail to each Class Member. (Kim Decl.,
18 ¶¶ 31, 71.) If any Class Notices are returned undeliverable without a forwarding address, the
19 Settlement Administrator will use the national change of address database and perform a skip
20 trace to locate the Class Member and mail a new Class Notice to him or her at the correct address.
21 (*Id.*) Thus, most, if not all, Class Members will likely receive the Class Notice.

22 Pursuant to controlling authority, the proposed Class Notice and method of distribution
23 fully comport with due process requirements. Therefore, the Court should approve the Class
24 Notice and direct that it be distributed as proposed herein.

25 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

26 Non-settling parties and third parties periodically may attempt to object to proposed class
27 action settlements, but the right of non-settling parties to object at the final settlement approval
28 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class

1 members have standing to object to a proposed settlement. “Beginning from the unassailable
2 premise that settlements are to be encouraged, it follows that to routinely allow non-class
3 members to inject their concerns via objection at the settlement stage would tend to frustrate this
4 goal.” (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being
5 filed to obtain a good faith determination, no persons other than class members have standing to
6 object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d
7 1330.)

8 **X. THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS**
9 **REASONABLE AND SHOULD BE APPROVED.**

10 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will
11 seek an award of fees of no more than \$135,000.00, one-third of the Gross Settlement Amount,
12 and actual reasonable litigation costs in an amount not to exceed \$25,000.00. (Kim Decl. ¶ 75.)
13 The requested fees are fair compensation for a law firm involved in undertaking complex, risky,
14 expensive, and time-consuming litigation solely on a contingent basis. (Kim Decl. ¶¶ 76-77.)
15 Defendants will not oppose Class Counsel’s above fees and cost request. (Kim Decl. ¶ 75.)

16 California courts routinely look to the federal courts on class action approvals. The Ninth
17 Circuit has recognized that an appropriate method for awarding attorneys’ fees in class actions is
18 to award a percentage of the “common fund” created as a result of the settlement. (*Vincent v.*
19 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common
20 fund/percentage approach is to “spread litigation costs proportionally among all the beneficiaries
21 so that the active beneficiary does not bear the entire burden alone.” (*Id.*) Accordingly, courts
22 have discretion to choose either the percentage-of-the-fund method or the lodestar method. (*In re*
23 *Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.)

24 Several courts have, however, expressed frustration with the “lodestar” approach for
25 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
26 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns
27 the interests of class counsel and absent class members; (2) it encourages efficient resolution of
28 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the

1 demands on judicial resources. (*In re Activision Securities Litigation*, (N.D. Cal. 1989) 723
2 F.Supp. 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach
3 to determine the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir.
4 1994) 47 F.3d 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).)

5 Class Counsel's application for attorneys' fees in light of the facts and circumstances
6 surrounding this case is well within the range of reasonableness. Historically, courts have
7 awarded percentage fees in the range of 20% to 50% of the common fund, depending on the
8 circumstances of the case. (*Newberg*, at §14.03; *see also In re Activision Securities Litigation*,
9 723 F. Supp. at 1378.) *Newberg* further notes: "[A]chievement of a substantial recovery with
10 modest hours expended should not be penalized but should be rewarded for considerations of
11 time saved by superior services performed." (*Id.* at §§ 14-10:14-11.)

12 The attorneys' fees request provided for in the Settlement Agreement is commensurate
13 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or
14 greater than the percentage requested in this case. (*See, e.g., In re Pacific Enterprises Securities*
15 *Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common
16 fund); *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding
17 plaintiff' counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin*
18 *Antitrust Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement
19 fund); *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to
20 counsel of one-third (1/3) of recovery achieved).)

21 In wage and hour class actions in particular, California trial courts have customarily
22 approved attorney's fees consistent with or greater than the percentage of the common fund
23 requested in this case. (*See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC
24 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at least
25 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
26 Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
27 Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*
28 *Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon.

1 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County
2 Super.Ct. Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper*
3 *Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).)

4 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive
5 any compensation until recovery is obtained. (Kim Decl., ¶¶ 76-77.) The Court should also
6 consider the benefit obtained by Class Counsel on behalf of Class Members. Thus, the requested
7 award for Class Counsel is reasonable.

8 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
9 **APPROVAL**

10 The Parties respectfully request this Court, as part of the preliminary approval process, to
11 grant the following relief and make the following orders:

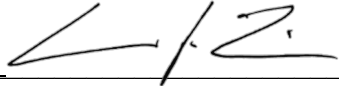
- 12 1. Approve the Settlement Agreement;
- 13 2. Approve the Class Notice, attached to the Settlement Agreement as Exhibit A;
- 14 3. Consider and determine that the proposed class action settlement as set forth in the
15 Settlement Agreement preliminarily appears fair, reasonable, and adequate;
- 16 4. Enter an order conditionally certifying the action as a class action for settlement
17 purposes only and preliminarily approving the proposed class action settlement and the
18 Settlement Agreement;
- 19 5. Approve and appoint Emil Davtyan, David Yeremian, Roman Shkodnik, Enoch Kim,
20 and Norayr Zakaryan of D.Law, Inc. to serve as Class Counsel for settlement purposes;
- 21 6. Approve and appoint Phoenix as the Settlement Administrator to handle the notice and
22 claims procedures as set forth in the Settlement Agreement;
- 23 7. Approve the proposed settlement's allocation of funds to claims made under PAGA;
- 24 8. Order Defendants to disclose to Phoenix the names, last-known addresses, telephone
25 numbers, Social Security numbers, start and end dates of active employment as a non-exempt
26 employee of Defendants in the State of California, and any other information required by the
27 Settlement Administrator to effectuate the terms of the Settlement;
- 28 9. Order that Phoenix mail the Class Notices to Class Members; and

1 10. Set a date for the Final Approval Hearing.
2

3 Dated: April 23, 2025

Respectfully submitted,

4 D.LAW, INC.

5
6 By 

7 Emil Davtyan
8 David Yeremian
9 Roman Shkodnik
10 Enoch Kim
11 Norayr Zakaryan
12 Attorneys for Plaintiff on behalf of
13 himself and others similarly situated
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