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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

CARLOS JIMENEZ, JUAN PINZON,
JUAN MUNOZ, ALBERT GUAZON,
ERNESTO LAINEZ, and MICHAEL
MAGDALENO, individually, and on behalf
of other members of the general public
similarly situated, and as aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiffs,

vs.

ROOFLINE, INC. dba ROOFLINE SUPPLY
& DELIVERY, an Oregon corporation; SRS
DISTRIBUTION INC., a Delaware corporation;
J. B. WHOLESALE ROOFING AND
BUILDING SUPPLIES, INC., a California
corporation; BUILDERS SUPPLY
LOGISTICS, INC., a Delaware corporation;
HERITAGE LANDSCAPE SUPPLY GROUP,
INC., a Delaware corporation, IMPERIAL
SPRINKLER SUPPLY, INC., a California
corporation; SHEAR BUILDERS, INC., a
California corporation; HERITAGE POOL
SUPPLY GROUP, INC., a Delaware
corporation; FWEP ACQUISITION, INC., a
Delaware corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No. 34-2023-00333516-CU-OE-GDS

Assigned to the Hon. Jill H. Talley

RESERVATION # A-333516-001

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: January 24, 2025

Time: 9:00 a.m.

Place: Department 23

Complaint Filed: January 23, 2023

Trial Date: None Set

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TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 24, 2025 at 9:00 a.m., or as soon thereafter as counsel may be heard, in Department 23 of the above-captioned court, located at 720 9th Street Sacramento, California 95814, the Honorable Jill H. Talley presiding, Plaintiffs Carlos Jimenez, Juan Pinzon, Michael Magdaleno, Juan Munoz, Albert Guazon, and Ernesto Lainez will, and hereby do, move this Court to:

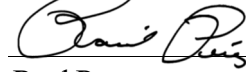
1. Preliminarily approve the settlement set forth in the Class Action and PAGA Settlement Agreement, attached as Exhibit 1 to the Declaration of Raul Perez;
2. Conditionally certify the proposed Settlement Class;
3. Appoint Carlos Jimenez, Juan Pinzon, Michael Magdaleno, Juan Munoz, Albert Guazon, and Ernesto Lainez as the representatives for the Settlement Class;
4. Appoint Capstone Law APC, Haines Law Group APC, and Aequitas Legal Group as Class Counsel;
5. Approve distribution of the proposed Notice of Class Action Settlement to the Settlement Class;
6. Appoint CPT Group, Inc. as the Settlement Administrator; and
7. Set a hearing date for final approval of the settlement.

This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of Points and Authorities in support of Motion for Preliminary Approval of Class Action and PAGA Settlement; (3) the Declaration of Raul Perez; (4) the Declaration of Paul Haines; (5) the Declaration of Ronald H. Bae; (6) the Class Action and PAGA Settlement Agreement; (7) the Notice of Class Action Settlement; (8) the [Proposed] Order Granting Preliminary Approval of Class Action Settlement; (9) the records, pleadings, and papers filed in this action; and (10) upon such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of this Motion. As this Motion is unopposed, the Parties respectfully request relief from the page limit requirement set by California Rules of Court, Rule 3.1113(d).

1 Dated: January 10, 2025

Respectfully submitted,

2 By:



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TABLE OF CONTENTS

I.	INTRODUCTION.....	11
II.	FACTS AND PROCEDURE	13
A.	Brief Overview of the Litigation.....	13
B.	The Proposed Settlement Fully Resolves Plaintiffs’ Claims.....	14
1.	Composition of the Settlement Class	14
2.	Settlement Consideration.....	14
3.	Releases by Participating Class Members and PAGA Members	16
III.	ARGUMENT	16
A.	The Court Should Preliminarily Approve the Proposed Class Action Settlement.....	16
1.	Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable	16
2.	The Investigation and Discovery Are “Sufficient To Allow Counsel and The Court To Act Intelligently”	17
3.	The Settlement Was Reached Through Arms-Length Bargaining in which All Parties Were Represented by Experienced Counsel.....	17
4.	The Consideration Provided for the Class Claims Is Fair and Reasonable in Light of the Amount in Controversy Discounted by the Risks of Continued Litigation	18
B.	The Consideration Provided for the PAGA Claim Is Fair and Reasonable In Light of the Amount in Controversy Discounted by the Risks of Continued Litigation.....	21
C.	The Court Should Preliminarily Approve the Negotiated Incentive Payments	23
D.	The Court Should Preliminarily Approve the Negotiated Attorneys’ Fees and Costs.....	24
E.	California Law Authorizes Provisional Certification for Settlement Purposes.....	25
1.	The California Standard for Class Certification.....	25
2.	The Proposed Settlement Class Is Ascertainable and There Is a Well-Defined Community of Interest Among Class Members.....	26

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2
3
4
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20
21
22
23
24
25
26
27
28

3. The Proposed Notice Properly Informs Class Members about the Case and the
Settlement.....28

IV. CONCLUSION.....29

TABLE OF AUTHORITIES

STATE CASES

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000).....	17
<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal. App. 4th 1157 (2008)	22
<i>Amaro v. Anaheim Arena Mgmt., LLC</i> , 69 Cal. App. 5th 521 (2021)	25
<i>Brinker Rest. Corp. v. Super. Ct.</i> , 53 Cal. 4th 1004 (2012).....	27
<i>Bufile v. Dollar Financial Group, Inc.</i> , 162 Cal. App. 4th 1193 (2008)	25
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018).....	22
<i>Cartt v. Super. Ct.</i> , 50 Cal. App. 3d 960 (1975).....	28
<i>Cellphone Termination Fee Cases</i> , 180 Cal. App. 4th 1110 (2010).....	16, 17
<i>Cellphone Termination Fee Cases</i> , 186 Cal. App. 4th 1380 (2010).....	23
<i>Chance v. Super. Ct.</i> , 58 Cal. 2d 275 (1962)	28
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008).....	25
<i>Clark v. American Residential Services LLC</i> , 175 Cal. App. 4th 785 (2009).....	24
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996).....	17, 26
<i>Gunther v. Alaska Airlines, Inc.</i> , 72 Cal. App. 5th 334 (2021).....	21
<i>Kass v. Young</i> , 67 Cal. App. 3d 100 (1977).....	28
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008).....	18, 19
<i>Laffitte v. Robert Half Internat. Inc.</i> , 1 Cal. 5th 480 (2016).....	25
<i>Laffitte v. Robert Half Internat. Inc.</i> , 231 Cal. App. 4th 860 (2016).....	25
<i>Lee v. Dynamex, Inc.</i> , 166 Cal. App. 4th 1325 (2008).....	25, 26
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal. App. 4th 399 (2010)	19
<i>Nordstrom Com. Cases</i> , 186 Cal. App. 4th 576 (2010)	23
<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i> , 27 Cal. App. 4th 1085 (1994)	16
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004).....	25
<i>Skulnick v. Roberts Express, Inc.</i> , 2 Cal. App. 4th 884 (1992)	17

1	<i>Stambaugh v. Super. Ct.</i> , 62 Cal. App. 3d 231 (1976).....	17
2	<i>State of Cal. v. Levi Strauss</i> , 41 Cal. 3d 460 (1986).....	17, 29
3	<i>Trotsky v. Los Angeles Fed. Savings & Loan Assn.</i> , 48 Cal. App. 3d 143 (1975).....	28
4		
5	FEDERAL CASES	
6	<i>Balderas v. Massage Envy Franchising, LLP</i> , 2014 WL 3610945. (N.D. Cal. July 21,	
7	2014).....	21
8	<i>Bernstein v. Virgin Am., Inc.</i> , 990 F.3d 1157 (9th Cir. 2021)	22
9	<i>Chen v. Morgan Stanley Smith Barney, LLC</i> , No. 8:14-CV-01077 ODW (FFMx), 2014	
10	WL 4961182 (C.D. Cal., October 2, 2014).....	22
11	<i>Chu v. Wells Fargo Invst., LLC</i> , No. C 05–4526 MHP, 2011 WL 672645 (N.D. Cal Feb.	
12	16, 2011)	23
13	<i>Cotter v. Lyft, Inc.</i> , 193 F. Supp. 3d 1030 (N.D. Cal. 2016).....	22
14	<i>D’Amato v. Deutsche Bank</i> , 236 F.3d 78, 85 (2d Cir. 2001)	18
15	<i>Dearaujo v. Regis Corp.</i> , No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 (E.D. Cal.	
16	June 29, 2016)	23, 26
17	<i>Fleming v. Covidien Inc.</i> , No. ED CV 10-01487 RGK (OPx) (OPX), 2011 WL 7563047	
18	(C.D. Cal. Aug. 12, 2011)	22
19	<i>Fontana v. Elrod</i> , 826 F.2d 729 (7th Cir. 1987).....	28
20	<i>Garcia v. Gordon Trucking, Inc.</i> , No. 1:10–CV–0324 AWI SKO, 2012 WL 5364575	
21	(E.D. Cal. Oct. 31, 2012).....	23
22	<i>Hopson v. Hanesbrands Inc.</i> , No. CV-08-0844 EDL, 2009 WL 928133 (N.D. Cal. Apr.	
23	3, 2009)	23
24	<i>In re Amtrak Train Derailment in Philadelphia, Pennsylvania</i> , No. 15-MD-2654, 2016	
25	WL 1359725 (E.D. Pa. Apr. 6, 2016).....	26
26	<i>In re Apple Computer, Inc. Derivative Litig.</i> , No. C 06-4128 JF (HRL), 2008 WL	
27	4820784 (N.D. Cal. Nov. 5, 2008).....	18
28	<i>In re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979).....	21

1	<i>In re Bluetooth Headset Prod. Liab. Litig.</i> , 654 F.3d 935 (9th Cir. 2011).....	18
2	<i>In re Four Seasons Secs. Laws Litig.</i> , 58 F.R.D. 19 (W.D. Okla.1972).....	21
3	<i>In re Omnivision Tech., Inc.</i> , 559 F. Supp. 2d 1036 (N.D. Cal. 2008).....	21
4	<i>In re Processed Egg Prod. Antitrust Litig.</i> , No. 08-MD-2002, 2014 WL 828083 (E.D. Pa.	
5	Feb. 28, 2014).....	26
6	<i>In re Warfarin Sodium Antitrust Litig.</i> , 212 F.R.D. 231 (D. Del. 2002).....	21
7	<i>Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.</i> , 303 F.R.D. 337 (E.D.	
8	Cal. 2014).....	18
9	<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2009).....	23
10	<i>Trang v. Turbine Engine Components Technologies Corp.</i> , No. CV 12–07658 DDP	
11	(RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012).....	22
12	<i>Vieyara-Flores v. Sika Corp.</i> , No. EDCV19606JVSKKX, 2019 WL 2436998 (C.D. Cal.	
13	June 10, 2019)	22
14	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. 09–00261, 2012 WL 5878390 (N.D. Cal.	
15	Nov.21, 2012).....	18
16		
17	STATE STATUTES	
18	Cal. Civ. Proc. Code § 382	25, 27
19	Cal. Lab. Code § 2699(h).....	22
20	Cal. R. Ct. 3.769.....	16
21	Cal. R. Ct. 3.769(c)	16
22	Cal. R. Ct. 3.769(d).....	16
23	Cal. R. Ct. 3.769(e)	16
24	Cal. R. Ct. 3.769(f)	16
25	Cal. R. Ct. 3.769(g).....	16
26	Cal. R. Ct. 3.776(e)	29
27	Cal. R. Ct. 3.776(f)	29
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Carlos Jimenez, Juan Pinzon, Michael Magdaleno, Juan Munoz, Albert Guazon, and Ernesto Lainez (collectively “Plaintiffs”) seek preliminary approval of the Class Action and PAGA Settlement Agreement,¹ which if approved, would provide considerable monetary relief for approximately 2,000 current and former employees of Defendants Roofline, Inc., SRS Distribution, Inc., J.B. Wholesale Roofing and Building Supplies, Inc., Builders Supply Logistics, Inc., Imperial Sprinkler Supply, Inc., Shear Builders, Inc., Heritage Pool Supply Group, Inc., and FWEP Acquisition, Inc. (“Defendants”) (collectively with Plaintiffs, the “Parties”). The principal terms of the Settlement provide for the following:

- (1) Conditional certification of a settlement class comprised of: (a) all California non-exempt employees of Roofline, Inc. and J.B. Wholesale Roofing and Building Supplies, Inc. who worked at any time between June 29, 2021 through and including the Date of Preliminary Approval (“Roofline Class Members”); and (b) all California non-exempt employees of Heritage Landscape Supply Group, Inc., SRS Distribution, Inc., Builders Supply Logistics, Inc., Imperial Sprinkler Supply, Inc., Shear Builders, Inc., Heritage Pool Supply Group, Inc., and FWEP Acquisition, Inc. who worked at any time between February 21, 2019 through and including the Date of Preliminary Approval (“Heritage Class Members”) (“Class Members”).
- (2) A **non-reversionary** Gross Settlement Amount of \$1,300,000. The Gross Settlement Amount includes:
 - (a) A Net Settlement Amount of approximately \$666,667 (the Gross Settlement Amount minus the requested attorneys’ fees and litigation costs, settlement administration costs, the \$80,000 PAGA settlement, and the Incentive Payments), which will be allocated to all Class Members on a pro-rata basis according to the number of workweeks each Class Member worked during the

¹ Hereinafter “Settlement Agreement” or “Settlement.” Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

Class Period. **The entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class, and without the need to submit claims for payment.**

- (b) Attorneys' fees in the amount of one-third of the Gross Settlement Amount (or \$433,333), and actual out-of-pocket litigation costs and expenses not to exceed \$45,000, to Capstone Law APC, Haines Law Group APC, and Aequitas Legal Group ("Plaintiffs' Counsel").
- (c) Settlement administration costs in a reasonable amount, which are estimated at \$15,000, to be paid to the jointly selected Settlement Administrator, CPT Group, Inc.
- (d) An \$80,000 PAGA settlement, of which 75% (i.e., \$60,000) will be paid to the Labor & Workforce Development Agency ("LWDA"), and the remaining 25% (i.e., \$20,000) ("PAGA Fund"), will be paid to PAGA Members, defined as: All California non-exempt employees of Roofline, Inc., J.B. Wholesale Roofing and Building Supplies, Inc., Heritage Landscape Supply Group, Inc., SRS Distribution, Inc., Builders Supply Logistics, Inc., Imperial Sprinkler Supply, Inc., Shear Builders, Inc., Heritage Pool Supply Group, Inc., and FWEP Acquisition, Inc. who worked between December 8, 2021 through and including the Date of Preliminary Approval. **The entire PAGA Fund will be paid to all PAGA Members, even if they opt out of the class portion of the settlement, and without the need to submit claims for payment.**
- (e) Incentive Payments of \$10,000, each, to Carlos Jimenez, Juan Pinzon, Michael Magdaleno, Juan Munoz, Albert Guazon, and Ernesto Lainez for their service on behalf of the Settlement Class, the risks they took in bringing the action on behalf of the class, and for general releases of all known and unknown claims arising out of their employment with Defendants, including waiver of Civil Code section 1542.

An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement

Class’s behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s length with helpful guidance from Michael E. Dickstein, Esq., an experienced and well-respected class action mediator, and the Settlement confers substantial benefits to Class Members. The Settlement Class Payment—averaging approximately \$333.33 per Class Member from the Net Settlement Amount—is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial, or of Plaintiffs prevailing at trial but losing on appeal.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. Accordingly, Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement Agreement.

II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation

Defendants are a national distributor of roofing, building, pool, and other related materials and products. Plaintiffs all worked for Defendants as non-exempt employees in California during the Class Period. (Second Amended Complaint ¶¶ 5-10.)

Plaintiffs Jimenez and Pinzon filed this wage and hour action against Defendants on January 23, 2023. (Declaration of Raul Perez [“Perez Decl.”] ¶ 2.) Plaintiffs’ operative Second Amend alleges that Defendants violated the following sections of the California Labor Code² and Business and Professions Code: (1) Sections 510 and 1198 (unpaid overtime); (2) Sections 1182.12, 1194, 1197, 1197.1, and 1198 (unpaid minimum wages); (3) Sections 226.7, 512(a), 516, and 1198 (failure to provide meal periods); (4) Sections 226.7, 516, and 1198 (failure to authorize and permit rest periods); (5) Violation of Labor Code §§ 226.7, 516, and 1198 (failure to provide recovery periods); (6) Sections 226(a), 1174(d), and 1198 (non-compliant wage statements and failure to maintain payroll records); (7) Sections 201 and 202 (wages not timely paid upon termination); (8) Section 204 (failure to timely pay wages during employment); (9) Section 2802 (unreimbursed business expenses); (10) Sections 2698, *et seq.* (PAGA);

² Unless indicated otherwise, further statutory references are to the California Labor Code.

(11) California Business & Professions Code sections 17200, *et seq.* (unlawful business practices); and
(12) California Business & Professions Code sections 17200, *et seq.* (unfair business practices). (*Id.* at ¶ 3.)

Following the exchange of informal discovery, including the production of Defendants' California labor policies and procedures materials, and a sample of Class Members' time and wage records, the Parties participated in a mediation with mediator Michael E. Dickstein, Esq., on December 5, 2023. (*Id.* at ¶ 4.) At all times, the Parties' negotiations were adversarial and non-collusive. (*Id.*) Mr. Dickstein helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*Id.*) With Mr. Dickstein's guidance, the Parties were eventually able to negotiate a complete settlement of Plaintiffs' claims. (*Id.* at ¶ 5.) The terms of the settlement are now set forth in complete and final form in the Class Action and PAGA Settlement Agreement. (*Id.* at ¶ 6, Ex. 1.)

B. The Proposed Settlement Fully Resolves Plaintiffs' Claims

1. Composition of the Settlement Class

The proposed settlement class consists of: (a) all California non-exempt employees of Roofline, Inc. and J.B. Wholesale Roofing and Building Supplies, Inc. who worked at any time between June 29, 2021 through and including the Date of Preliminary Approval; and (b) all California non-exempt employees of Heritage Landscape Supply Group, Inc., SRS Distribution, Inc., Builders Supply Logistics, Inc., Imperial Sprinkler Supply, Inc., Shear Builders, Inc., Heritage Pool Supply Group, Inc., and FWEP Acquisition, Inc. who worked at any time between February 21, 2019 through and including the Date of Preliminary Approval. (Settlement Agreement ¶ 3.)

2. Settlement Consideration

Plaintiffs and Defendants have agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$1,300,000. The Gross Settlement Amount includes: (1) automatic payments to all Participating Class Members—meaning, all Class Members except those who submit timely and valid Requests for Exclusion—from the Net Settlement Amount; (2) \$433,333 in attorneys' fees (i.e., one-third of the common fund) and up to \$45,000 actual out-of-pocket litigation costs to Plaintiffs' Counsel; (3) settlement administration costs in a reasonable amount, which is estimated at \$15,000; (4) a \$60,000 payment to the LWDA and a \$20,000 payment to PAGA Members; and (5)

1 Incentive Payments of \$10,000, each, for Plaintiffs' service on behalf of the Settlement Class, the risks
2 they took in bringing their representative claims, and for general releases of all claims arising out of their
3 employment with Defendants. (Settlement Agreement ¶¶ 15-16, 20, 26, 32.)

4 Payments to Participating Class Members will be made from the Net Settlement Amount.
5 (Settlement Agreement ¶ 68.) The individual allocations will be calculated on a pro-rata basis using the
6 number of workweeks worked by each Class Member during the Class Period. (*Id.*) This is a fair and
7 equitable means of apportioning the Net Settlement Amount to Class Members. Class Members who
8 worked for a longer duration during the Class Period will receive proportionally larger payments than
9 those employees who worked for shorter durations. Given that there are approximately 2,000 Class
10 Members, the average net recovery will be approximately \$333.33. This average net recovery is
11 significantly greater than many other wage and hour class action settlements approved by California state
12 and federal courts.³

13 In addition, payments to PAGA Members will be made from the PAGA Fund. (Settlement
14 Agreement ¶ 69.) The individual allocations will be calculated on a pro-rata basis using the number of
15 workweeks worked by each PAGA Member during the PAGA Period. (*Id.*) This is a fair and equitable
16 means of apportioning the PAGA Fund to PAGA Members. PAGA Members who worked for a longer
17 duration during the PAGA Period will receive proportionally larger payments than those employees who
18 worked for shorter durations.

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21 ³ See, e.g., *Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County
22 Super. Ct. Dec. 7, 2010) (average net recovery of approximately \$145); *Fukuchi v. Pizza Hut*, Case No.
23 BC302589 (L.A. County Super. Ct. Sept. 29, 2006) (average net recovery of approximately \$120);
24 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct. Sept. 10, 2009)
25 (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No.
26 BC335018 (L.A. County Super. Ct. Jan. 27, 2009) (average net recovery of approximately \$90); *Doty v.*
27 *Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net
28 recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D.
Cal. Dec. 17, 2008) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*,
Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately
\$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct. July 23, 2010) (average net
recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW
(C.D. Cal. July 11, 2016) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only*
Stores, No. 34-2010-00079619 (Sacramento County Super. Ct. Oct. 11, 2012) (average net recovery of
approximately \$80).

1 **3. Releases by Participating Class Members and PAGA Members**

2 In exchange for the Gross Settlement Amount, Plaintiffs and Participating Class Members will
3 release the Released Class Claims during the Class Period. (Settlement Agreement ¶ 79.) And in
4 exchange for the PAGA Settlement Amount, Plaintiffs, the LWDA, and PAGA Members will release
5 the Released PAGA Claims during the PAGA Period. (*Id.* at ¶ 80.)

6 **III. ARGUMENT**

7 **A. The Court Should Preliminarily Approve the Proposed Class Action Settlement**

8 **1. Courts Review Class Action Settlements to Ensure that the Terms Are**
9 **Fair, Adequate, and Reasonable**

10 California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of class
11 action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and
12 (2) a subsequent “final” review after notice of the settlement has been distributed to class members for
13 their comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal.
14 App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a
15 final approval hearing to inquire into the fairness of the proposed settlement”). The motion for
16 preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the
17 class, and (3) the proposed order. *Id.* at 3.769(c). The motion must also identify any agreement
18 concerning the payment of attorneys’ fees. *Id.* at 3.769(b).

19 If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to
20 (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide
21 notice to the class of the hearing and “an explanation of the proposed settlement.” The court must also
22 approve a procedure for class members to file objections to the settlement. *Id.* at 3.769(f). At the final
23 approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id.* at
24 3.769(g).

25 Although Rule 3.769 does not provide detail as to the scope of review of the proposed
26 settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” *See*
27 *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90
28 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”).

Reasonableness and fairness are presumed where, as here: (1) the settlement is reached through “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act intelligently;” (3) counsel is “experienced in similar litigation;” and (4) the percentage of objectors “is small” (collectively, “*Dunk* Factors”). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).⁴

2. The Investigation and Discovery Are “Sufficient To Allow Counsel and The Court To Act Intelligently”

As set forth in greater detail above, based on their analysis of documents and class data produced by Defendants—including Defendants’ California labor policies and procedures manuals, and a sample of Class Members’ time records—Plaintiffs’ Counsel were able to realistically assess the value of Plaintiffs’ claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. (Perez Decl. ¶¶ 7-11.)

By engaging in a thorough investigation and evaluation of Plaintiffs’ claims, Plaintiffs’ Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendants. (*Id.* at ¶ 12.)

3. The Settlement Was Reached Through Arms-Length Bargaining in which All Parties Were Represented by Experienced Counsel

“[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement’s fairness.” *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume

⁴ The presumption of fairness is consistent with California’s public policy goal of favoring settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation”); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992) (“public policy strongly discourages litigation and encourages settlement [because settlements] can produce peace and goodwill in the community while reducing the expense and persistency of litigation”). Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is “otherwise a private consensual agreement between the parties.” *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1117. The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* at 1118.

1 the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
2 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, §
3 11.51.

4 As explained above, the Parties participated in a mediation with Mr. Dickstein, an experienced
5 mediator of wage and hour class actions. Mr. Dickstein helped manage the Parties' expectations and
6 provided a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod.*
7 *Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in
8 favor of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL),
9 2008 WL 4820784, at *3 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against
10 any inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a
11 "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings
12 were free of collusion and undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09-00261, 2012
13 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation "tends to support the
14 conclusion that the settlement process was not collusive"); *Ogbuehi v. Comcast of*
15 *California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (accord). At all times, the
16 Parties' negotiations were adversarial and non-collusive. (Perez Decl. ¶ 4.)

17 The Parties were represented by experienced class action counsel throughout the negotiations
18 resulting in this Settlement. Plaintiffs are represented by Capstone Law APC, Haines Law Group APC,
19 and Aequitas Legal Group. Plaintiffs' Counsel employ seasoned class action attorneys who regularly
20 litigate wage and hour claims through certification and on the merits, and have considerable experience
21 settling wage and hour class actions. (Perez Decl. ¶¶ 13-21, Ex. 2; Haines Decl. ¶¶ 2-8; Bae Decl. ¶¶ 2-
22 9.) Defendants are represented by Morgan, Lewis & Bockius LLP, a respected defense firm.

23 **4. The Consideration Provided for the Class Claims Is Fair and Reasonable**
24 **in Light of the Amount in Controversy Discounted by the Risks of**
25 **Continued Litigation**

26 In seeking approval, a settling party must provide sufficient information to "enable the court to
27 make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker Retail,*
28 *Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law that a cash settlement

amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair.” *See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). “The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years).” *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.

Settling parties are not, however, required to partake in a hypothetical accounting exercise: “**Kullar does not ... require any such explicit statement of [maximum] value**; it requires a record which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most important factor” in determining “whether a settlement is fair and reasonable” is the “strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As explained in detail below, the Gross Settlement Amount is within the range of reasonableness in light of the nature and magnitude of the claims being settled and the various potential impediments to recovery.

Defendants’ Exposure for the Class Claims	
Off-the-Clock Claim ⁵	\$659,410.00
Meal Period Claim ⁶	\$2,637,640.00
Heat Recovery Claim ⁷	\$131,882.00
Rest Period Claim ⁸	\$2,637,640.00

⁵ ≈ 92,000 workweeks worked in aggregate during the Class Period × ≈ \$28.67 average hourly wage × conservatively estimating at least 15 minutes of off-the-clock work per week.

⁶ ≈ 92,000 workweeks worked in aggregate during the Class Period × ≈ \$28.67 average hourly wage × conservatively estimating at least 1 meal period violation per week.

⁷ Conservatively assuming 5% of all weeks worked during the Class Period had heat recovery violations × \$28.67 average hourly wage.

⁸ ≈ 92,000 workweeks worked in aggregate during the Class Period × ≈ \$28.67 average hourly wage × conservatively estimating at least 1 rest period violation per week.

Defendants' Exposure for the Class Claims	
Business Expense Reimbursement Claim ⁹	\$230,000.00
Wage Statement Claim ¹⁰	\$125,000.00
Final Pay Claim ¹¹	\$172,020.00
Total	\$6,593,592.00

This estimate assumes that each and every one of Plaintiffs' claims would have been certified for class-wide resolution, that Plaintiffs' would have prevailed at trial, and that the jury's verdict would have been affirmed on appeal. Understandably, for purposes of evaluating the settlement's reasonableness, this estimate must be "tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).

Ultimately, Plaintiffs' Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendants' maximum theoretical liability by: (i) the strength of the defenses to the merits of Plaintiffs' claims; (ii) the risk of class certification being denied; (iii) the risk of losing on any of a number of dispositive motions that could have been brought between certification and trial (e.g., motions to decertify the class, motions for summary judgment, and/or motions in limine) that might have eliminated all or some of Plaintiffs' claims, or barred evidence/testimony in support of the claims; (iv) the risk of losing at trial; (v) the chances of a favorable verdict being reversed on appeal; and (vi) the difficulties attendant to collecting on a judgment (collectively, the "Discount Factors").

After taking into account the Discount Factors, Plaintiffs' Counsel determined that it would be reasonable to settle for a fraction of Defendants' maximum potential exposure for the class claims (PAGA discussed in the following section), or approximately 20%. Such a discount is inherently reasonable given that Plaintiffs would have had to overcome **multiple, dependent** contingencies to prevail on their claims. If anything, the projected odds for each of the above contingencies is generous to

⁹ ≈ Conservatively estimating \$10 monthly expenses × 92,000 workweeks worked in aggregate during the Class Period × 1/4 (to convert total workweeks during the Class Period to months).

¹⁰ ≈ 50,000 wage statements issued during the 1-year statute of limitations period × \$50 penalty × 5% chance of establishing "knowing and intentional" violations and defeating all good faith defenses.

¹¹ Approximately ≈ 500 Class Member terminations during the Class Period × 30 days of waiting-time penalties × 8-hour average shift length × ≈ \$28.67 average hourly wage × 5% chance of establishing "willful" violations and defeating all good faith defenses.

the class’s position, since plaintiffs in employment cases rarely prevail on **all of the claims** at any of these dispositive stages. Courts routinely approve settlements that provide a similar discounted range of the maximum potential recovery.¹²

B. The Consideration Provided for the PAGA Claim Is Fair and Reasonable In Light of the Amount in Controversy Discounted by the Risks of Continued Litigation

Pursuant to the Settlement Agreement, \$80,000 from the Gross Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% (i.e., \$60,000) will be paid directly to the LWDA, and the remaining 25% (i.e., \$20,000) will be paid to PAGA Members. (Settlement Agreement ¶ 20.)

This result was reached after good-faith negotiation between the parties. The amount was valued as follows: Based on information and evidence produced by Defendants during discovery, Plaintiffs’ Counsel determined that aggrieved employees worked a combined total of approximately 50,000 pay periods during the PAGA statute of limitations period (“PAGA Period”). Statutory penalties would be calculated according to Labor Code 2699(f)(2): If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

However, a number of courts have found that the “subsequent” penalty under PAGA applies only after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 356 (2021) (“the increased \$200 civil penalty for ‘subsequent violation[s]’ does not apply unless [Plaintiff] presents evidence that the Labor Commission or a court notified [Defendant] that it was in violation of the Labor Code.”); *Bernstein v.*

¹² See, e.g., *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla. 1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).

1 *Virgin Am., Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to “heightened civil
2 penalties” because the defendant was not given notice by the Labor Commissioner when the
3 “subsequent” violations occurred).¹³ Under this line of cases, Defendants’ exposure would be
4 approximately \$5,000,000 = 50,000 violative pay periods × \$100.

5 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil
6 penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result
7 in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In
8 reducing PAGA penalties, courts have considered issues including whether the employees suffered
9 actual injury from the violations, whether the defendant was aware of the violations, and the employer’s
10 willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018)
11 (awarding PAGA penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d
12 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL
13 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

14 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA
15 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—
16 **or 0.21% of the maximum**—and stated that this reduction was warranted because (a) the Court did not
17 believe it was appropriate to impose multiple penalties per pay period in which a violation occurred and
18 (b) imposing the maximum penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s
19 “good faith attempts” to comply with meal period obligations and because the court found the violations
20 were minimal. *Carrington*, 30 Cal. App. 5th at 517-18. The Court of Appeal affirmed the lower court’s
21 reduced award of a \$150,000 penalty under PAGA. *Id.* at 529. If a similar reduction had been applied
22

23 ¹³ *See also Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5
24 (C.D. Cal. June 10, 2019) (“employers are not subject to heightened penalties . . . until a court or
25 commissioner notifies the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered
26 evidence that the Labor Commission or a court has notified them of PAGA violations [thus] PAGA’s
27 heightened penalty of \$200 for subsequent violations will not be calculated to determine the amount in
28 controversy”); *Chen v. Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014
WL 4961182 (C.D. Cal., October 2, 2014) (“Under the Labor Code, if an employer does not have notice
that they are committing a violation, they are not subject to the heightened penalties.”); *Trang v. Turbine
Engine Components Technologies Corp.*, No. CV 12-07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal.
Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for subsequent
violations unless and until a court or commissioner notifies the employer that it is in violation of the
Labor Code”), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

here, Plaintiff would have recovered only approximately \$10,500 (\$5 million $\times$ 0.0021 reduction).

Plaintiffs therefore determined an appropriate range of settlement for PAGA penalties as a percentage of the settlement range that was consistent with other hybrid class/PAGA settlements approved by California courts.¹⁴ Where PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).

C. The Court Should Preliminarily Approve the Negotiated Incentive Payments

Enhancement payments “are fairly typical in class action cases.” *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000); *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) § 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006). Enhancement payments “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez*,

¹⁴ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal. June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons Co.*, Case No. RIC 10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni) (gross settlement fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of PAGA penalties); *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane Johnson) (gross settlement fund of approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated to the settlement of PAGA penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County Super. Ct. Nov. 18, 2014; Judge William F. Highberger) (gross settlement fund of \$3,095,000, of which approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v. Vallarta Food Enterprises, Inc.*, No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge William F. Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%) was allocated to the settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement fund of \$1,535,000, of which \$1,000 (or 0.1%) was allocated to the settlement of PAGA penalties).

563 F.3d at 958–59. “[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 806 (2009).

Approximately 2,000 current and former employees will share a \$1,300,000 gross settlement fund due entirely to the effort and commitment of Carlos Jimenez, Juan Pinzon, Michael Magdaleno, Juan Munoz, Albert Guazon, and Ernesto Lainez. Subject to Court approval, therefore, the Settlement provides for Incentive Payments of \$10,000, each.¹⁵ The Incentive Payments are fair and reasonable compensation for Plaintiffs’ effort in pursuing the action, serving as private attorneys general under PAGA, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status of their case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class.

Plaintiffs will file a formal motion with supporting declarations for the negotiated Incentive Payments once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Incentive Payments.

D. The Court Should Preliminarily Approve the Negotiated Attorneys’ Fees and Costs

The purpose of an attorneys’ fee award in class action litigation is to reward counsel who took

¹⁵ Such amounts are reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Carter v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10, 2017) (awarding \$10,000 enhancement payments to the named plaintiffs); *Crook v. Barton Healthcare System*, No. SC20150146 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Singh v. American Building Supply, Inc.*, No. 34-2015-00179889-CU-OE-GDS (Sacramento County Super. Ct. Oct. 3, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Alvarez v. MAC Cosmetics Inc.*, No. CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Coffey v. Beverages & More, Inc.*, No. BC477269 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct. April 28, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Cook v. United Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costs County Super. Ct. April 15, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Quintana v. Claire’s Boutiques, Inc.*, No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding \$10,000 enhancement payments to the named plaintiffs); *Paredes v. American Family Care, Inc.*, No. 34-2014-00167060-CU-OE-GDS (Sacramento County Super. Ct. Nov. 17, 2015) (awarding \$10,000 enhancement payment to the named plaintiff).

the risk of non-payment and invested in a case that achieved a substantial positive result for the class. “Fee 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, 545 (2021) (quoting *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008)) (internal quotations omitted). Consistent with that observation, California state and federal courts routinely award attorneys’ fees equaling one-third of the common fund. *See, e.g. Laffitte v. Robert Half Internat. Inc.*, 231 Cal. App. 4th 860, 871 (2016) (“33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits”); *Chavez*, 162 Cal. App. 4th at 66 n.11 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates). Notably, the California Supreme Court in *Laffitte v. Robert Half Internat. Inc.* affirmed a fee award representing one-third of the fund. *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480 (2016).

At final approval, Plaintiffs will seek Court-approval of attorneys’ fees of \$433,333 (one-third of the Class Settlement Amount) and actual out-of-pocket litigation costs and expenses not to exceed \$45,000.

E. California Law Authorizes Provisional Certification for Settlement Purposes

1. The California Standard for Class Certification

Class actions are statutorily authorized “when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.” Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class certification is appropriate when there is an “ascertainable class and a well-defined community of interest among class members.” *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. *Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.

1 Conditional certification of the proposed Settlement Class is particularly warranted here given
2 the relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor*
3 *Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification
4 in settlement cases).¹⁶ In *Dunk*, the California Court of Appeal specifically rejected the argument that the
5 standard for certifying a class for purposes of settlement is identical to the standard for certifying the
6 same class for purposes of litigation:

7 Geer argues the court must use the same standard under Federal Rules of Civil Procedure,
8 rule 23 (28 U.S.C.) to determine the propriety of both settlement and litigation class
9 certifications . . . That rule is contrary to the Ninth Circuit rule, stated in *Officers for Justice*
10 *v. Civil Service Com. supra*, 688 F.2d at p. 633, and the position of the leading
11 commentators (Newberg & Conte, *supra*, § 11.28 at p. 11–58), which allow a lesser
12 standard of scrutiny for settlement cases . . . We agree with the latter. The two basic
13 purposes for the Rule 23 certification requirements, as they relate to questions of a
14 nationwide class, are: (1) to keep the lawsuit manageable for trial; and (2) to protect the
15 interests of the non-representative class members. The first purpose is inapposite in the
16 settlement context, and the second, as it relates to commonality of issues, only makes a
17 difference if the non-representative class members would do much better by litigating on
18 their own or in their own jurisdiction. The second category concerns are protected by the
19 trial court’s fairness review of the settlement.

20 *Id.* at n19.

21 **2. The Proposed Settlement Class Is Ascertainable and There Is a Well-**

22 **Defined Community of Interest Among Class Members**

23 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is
24 “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available
25 for identifying class members.” *Lee*, 166 Cal. App. 4th at 1334. Class members are ascertainable where
26 they may be readily identified without unreasonable expense or time by reference to official records. *Id.*

27 The community of interest requirement embodies three factors: (1) predominant common

28 ¹⁶ *See also* Newberg on Class Actions § 13:18 (5th ed.) (courts “declin[e] to treat formal class
certification as a prerequisite for preliminary approval and undertak[e] a more cursory class certification
analysis at the preliminary approval stage.”); *Dearaujo v. Regis Corp.*, No. 2:14-CV-01408-KJM-AC,
2016 WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions in
Amchem . . . , a cursory approach appears the norm.”); *In re Amtrak Train Derailment in Philadelphia,*
Pennsylvania, No. 15-MD-2654, 2016 WL 1359725, at *4 (E.D. Pa. Apr. 6, 2016) (“[A] settlement class
can be preliminarily certified based on a less rigorous analysis than that necessary for final
certification.”); *In re Processed Egg Prod. Antitrust Litig.*, No. 08-MD-2002, 2014 WL 828083, at *2
(E.D. Pa. Feb. 28, 2014) (at the preliminary approval stage, “the Court must determine whether the
proposed class should be conditionally certified, and leave the final certification decision for the Fairness
Hearing.”).

1 questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a
2 class representative and counsel who can adequately represent the class. Cal. Civ. Proc. Code § 382.

3 In April of 2012, the California Supreme Court expounded on the element of predominance:

4 The “ultimate question” the element of predominance presents is whether “the
5 issues which may be jointly tried, when compared with those requiring separate
6 adjudication, are so numerous or substantial that the maintenance of a class action
7 would be advantageous to the judicial process and to the litigants.”

8 *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012) (citations omitted).

9 The proposed Settlement Class consists of (a) all California non-exempt employees of Roofline,
10 Inc. and J.B. Wholesale Roofing and Building Supplies, Inc. who worked at any time between June 29,
11 2021 through and including the Date of Preliminary Approval; and (b) all California non-exempt
12 employees of Heritage Landscape Supply Group, Inc., SRS Distribution, Inc., Builders Supply Logistics,
13 Inc., Imperial Sprinkler Supply, Inc., Shear Builders, Inc., Heritage Pool Supply Group, Inc., and FWEP
14 Acquisition, Inc. who worked at any time between February 21, 2019 through and including the Date of
15 Preliminary Approval. Because all Class Members are either current or former employees of
16 Defendants, the class is readily ascertainable from Defendants’ regular business records.

17 Here, Plaintiffs submit that common issues of fact and law predominate because the California
18 statutes relating to each of Plaintiffs’ claims, and Defendants’ defenses thereto, apply with equal force
19 and effect to all Class Members. Factually, Plaintiffs contend that Defendants’ policies and practices
20 apply class-wide and Defendants’ liability can be determined by facts common to all members of the
21 class. The wage and hour issues are both numerous and substantial, and a class action is the most
22 advantageous method of dealing with the claims of the Settlement Class Members.

23 Plaintiffs’ similarly submit that the wage and hour claims are typical of the proposed Settlement
24 Class because they arise from the same factual bases and are based on the same legal theories applicable
25 to the other Class Members. Likewise, Plaintiffs maintain that their interests are entirely coextensive with
26 the interests of the Class. Plaintiffs also maintain that they were injured by the same company-wide
27 practices to which the proposed Settlement Class was subject and seek the same relief. Plaintiffs submit
28 that they have already demonstrated their ability to advocate for the interests of the Class by initiating
this litigation, undertaking representative discovery, and evaluating the proposed settlement to assure that

1 it is fair.

2 Additionally, Plaintiffs are represented by competent counsel who have extensive experience in
3 litigating wage and hour class action cases. (Perez Decl. ¶¶ 13-21, Ex. 2; Haines Decl. ¶¶ 2-8; Bae Decl.
4 ¶¶ 2-9.) Plaintiffs' Counsel have successfully briefed, argued, certified, and gained state and federal court
5 settlement approval of the same class-wide causes of action that are at issue in this case. (*Id.*) Plaintiffs'
6 Counsel's wage and hour class action expertise establishes that they are well qualified to represent the
7 interests of this Class.

8 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
9 each individual Class Member's claim, Class Members likely have little incentive to litigate their claims
10 on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate
11 each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-
12 case adjudication.

13 **3. The Proposed Notice Properly Informs Class Members about the Case and** 14 **the Settlement**

15 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*,
16 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient
17 information to decide whether they should accept the benefits offered, opt out and pursue their own
18 remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d
19 143, 151-52 (1975). The notice must advise class members "that they may be excluded from the class if
20 they so request and that they will be bound by the judgment, whether favorable or not, if they do not
21 request exclusion." *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of
22 class members, California authorities generally require service of the class notice by mail or similar
23 reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d
24 960, 972 (1975).¹⁷

25
26
27 ¹⁷ Due process does not require that each Class Member actually receive a notice, but rather a
28 procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice
and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class Members will be bound
by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th
Cir. 1987).

1 The Parties have jointly drafted the Notice of Class Action Settlement (“Class Notice”) which
2 fairly and neutrally informs Class Members of their rights and remedies in this action. The proposed
3 Class Notice will be mailed to all Class Members by First Class mail and will include information
4 regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class
5 definition, the procedure and time period within which to submit Requests for Exclusions or objections
6 to the Settlement, the date for the final approval hearing, the formula used to calculate settlement
7 payments, and the terms and scope of the Released Claims. (Settlement Agreement, Exhibit A.)

8 In the event Class Notices are returned as undeliverable, the Settlement Administrator will
9 attempt to locate a current address using, among other resources, a skip-trace search. (Settlement
10 Agreement ¶ 64.)

11 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
12 satisfy due process and the requirements of California law. *See* Cal. R. Ct. 3.776(e)-(f); *State of Cal. v.*
13 *Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must “fairly apprise the class members of the
14 terms of the proposed compromise and of the options open to dissenting class members.”).

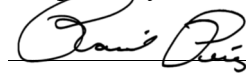
15 **IV. CONCLUSION**

16 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately
17 presented the materials and information necessary for preliminary approval, Plaintiffs request that the
18 Court preliminarily approve the settlement.

19 Dated: January 10, 2025

Respectfully submitted,

20 By:



21 Raul Perez
22 Roxanna Tabatabaeepour
23 Ryan Tish
24 Alexander Wallin
25 **CAPSTONE LAW APC**

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Michael Magdaleno, Juan Munoz, Albert Guazon,
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PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **January 10, 2025**, I served the document described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

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☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

☐ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **January 10, 2025**, at Los Angeles, California.

Stacy Winberg
Type/Print Name

/s/ Stacy Winberg
Signature