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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MELLISSA MARIE DELGADO and TERRANCE FLETCHER, on behalf of themselves and others similarly situated,

Plaintiffs,

vs.

LAKIN TIRE WEST, LLC; LAKIN TIRE WEST, INC.; ELS OF FLORIDA, INC. (DBA LABOR FINDERS); LF STAFFING SERVICES, INC. (DBA LABOR FINDERS); and DOES 1 through 100, inclusive,

Defendants.

Case No. 24STCV14080

Honorable Samantha P. Jessner
Department 7

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date:	July 28, 2026
Time:	10:00 a.m.
Dept.:	7

Complaint Filed:	June 6, 2024
FAC Filed:	December 29, 2025
Trial Date:	Not Set

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Attorneys for Plaintiff TERRANCE FLETCHER,
individually, and on behalf of others similarly situated

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on **July 28, 2026 at 10:00 a.m.** in Department 7 of the above-captioned Court located at 312 North Spring Street, Los Angeles, California 90012 pursuant to California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiffs Mellissa Marie Delgado and Terrance Fletcher (together, "Plaintiffs") will and hereby do move the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiffs and Defendants Lakin Tire West, LLC; Lakin Tire West, Inc.; ELS of Florida, Inc. (dba Labor Finders); and LF Staffing Services, Inc. (dba Labor Finders) (collectively, "Defendants").

Plaintiffs request that the Court enter an Order:

1. Preliminarily approving the Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") attached as Exhibit 5 to the Declaration of James S. Winn Jr. in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ("Winn Decl.");

2. Certifying the Class for Settlement purposes;

3. Appointing Plaintiffs Mellissa Marie Delgado and Terrance Fletcher as the Class Representatives for Settlement purposes;

4. Appointing Joseph Lavi, Vincent C. Granberry, and Malcolm E. Clayton of Lavi & Ebrahimian, LLP and Jonathan M. Genish, Karen I. Gold, Marissa A. Mayhood, Alexnadra Rose, and James S. Winn Jr. of Blackstone Law, APC as Class Counsel for Settlement purposes;

5. Approving the proposed Notice of Proposed Class and PAGA Action Settlement ("Class Notice"), attached as <u>Exhibit A</u> to the Settlement Agreement, to be mailed to the Class;

6. Approving the opt-out and objection procedures provided in the Settlement Agreement and set forth in the Class Notice;

7. For each Class Member, directing Defendants to furnish their full names, last-known mailing addresses, Social Security numbers, and the number of Workweeks in the Class Settlement Period and the number of PAGA Pay Periods in the PAGA Settlement Period to the Administrator within twenty-one (21) calendar days after the Court grants preliminary approval of the Settlement;

8. Approving the proposed deadlines for the settlement administration process; and

9. Setting a Final Approval Hearing.

Pursuant to California Labor Code section 2699(s)(2), on March 23, 2026, a copy of the Settlement was submitted to the California Labor and Workforce Development Agency ("LWDA") via online submission through the LWDA's website. (Winn Decl., ¶ 61 and Exh. 6).

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declaration of James S. Winn Jr., the Declaration of Malcolm Clayton, the Declaration of Plaintiff Mellissa Marie Delgado, the Declaration of Plaintiff Terrance Fletcher, the Declaration of the Administrator (Kimberly Sutherland of Apex Class Action LLC), the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: March 23, 2026

BLACKSTONE LAW, APC

By: James Winn
James S. Winn Jr.
Attorneys for Plaintiff Terrance Fletcher

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Mellissa Marie Delgado ("Plaintiff Delgado") and Terrance Fletcher ("Plaintiff Fletcher") (together, "Plaintiffs") seek preliminary approval of the Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") entered into between Plaintiffs and Defendants Lakin Tire West, LLC; Lakin Tire West, Inc.; ELS of Florida, Inc. (dba Labor Finders); and LF Staffing Services, Inc. (dba Labor Finders) (collectively, "Defendants") (collectively, with Plaintiffs, the "Parties"). (Declaration of James S. Winn Jr. in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ["Winn Decl."], Exh. 5). The Settlement terms are outlined as follows:

- Class Size: Approximately one thousand four hundred forty-four (1,444) individuals.
- Maximum Settlement Amount: One Million Five Hundred Thousand Dollars and Zero Cents ($1,500,000.00).
- Class Counsel Fees Payment: Attorneys' fees of thirty-five percent (35%) of the Maximum Settlement Amount ($525,000.00 if the Maximum Settlement Amount is $1,500,000.00), to be paid from the Maximum Settlement Amount.
- Clas Counsel Litigation Expenses Payment: Actual litigation costs and expenses not to exceed Thirty-Five Thousand Dollars and Zero Cents ($35,000.00), to be paid from the Maximum Settlement Amount
- Class Representative Service Payments: Ten Thousand Dollars and Zero Cents ($10,000.00) each Plaintiffs (total, $20,000.00), to be paid from the Maximum Settlement Amount.
- Administration Expenses Payment: Not to exceed Twelve Thousand Two Hundred Dollars and Zero Cents ($12,200.00), to be paid from the Maximum Settlement Amount.
- PAGA Penalties: Seventy-Five Thousand Dollars and Zero Cents ($75,000.00) from the Maximum Settlement Amount, 75% of which will be paid to the Labor and Workforce Development Agency ("LWDA") and the remaining 25% to be paid to the PAGA Members.
- Estimated Net Settlement Amount: Eight Hundred Thirty-Two Thousand Eight Hundred Dollars and Zero Cents ($832,800.00) to be distributed to Participating Class Members.

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As set forth herein, the Settlement is the product of informed discovery and arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiffs therefore respectfully request that the Court grant preliminarily approval of the Settlement, conditionally certify the Class, approve the proposed Notice of Proposed Class and PAGA Action Settlement ("Class Notice"), and set a hearing date for final settlement approval, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants Lakin Tire West, LLC and Lakin Tire West, Inc. ("Lakin Defendants") are a nationwide and local scrap tire collection service. Defendants ELS of Florida, Inc. (dba Labor Finders) and LF Staffing Services, Inc. (dba Labor Finders) are a temporary staffing and employment agency that places individuals at different job sites, including at the Lakin Defendants. Plaintiff Delgado was employed by Defendant Lakin Tire West, LLC, as an hourly-paid, non-exempt employee from approximately September 12, 2023 to December 7, 2023. (Declaration of Plaintiff Mellissa Marie Delgado in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement ["Delgado Decl."]. ¶ 3). Plaintiff Fletcher was employed by Defendants ELS of Florida, Inc. (dba Labor Finders) and LF Staffing Services, Inc. (dba Labor Finders) and placed to work at the Lakin Defendants as an hourly-paid, non-exempt employee in the positions of Helper and Driver from approximately 2021 to approximately December 2022. (Declaration of Plaintiff Terrance Fletcher in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement ["Fletcher Decl."], ¶ 2).

On October 30, 2023, Plaintiff Fletcher provided written notice to the LWDA by online submission and to the Lakin Defendants by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated ("Fletcher LWDA Letter 1"). (Winn Decl., ¶ 9 and Exh. 2).

On November 16, 2023, Plaintiff Fletcher filed a Class Action Complaint in the action entitled *Terrance Fletcher v. Lakin Tire West, LLC, formerly known as Lakin Tire West, Inc.*, Alameda County Superior Court Case No. 23CV051505 ("Fletcher Class Action"), thereby commencing a putative class action against Defendant Lakin Tire West, LLC. (*Id.*, ¶ 10).

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On November 22, 2023, Plaintiff Fletcher provided an amended written notice to the LWDA by online submission and to the Lakin Defendants and LF Staffing Services, Inc. (dba Labor Finders) by U.S. Certified Mail ("Fletcher LWDA Letter 2"). (*Id*., ¶ 11 and Exh. 3).

On December 26, 2023, Plaintiff Fletcher filed a Doe Amendment in the Fletcher Class Action, which identified DOE 1 as Defendant LF Staffing Services, Inc. (dba Labor Finders). (*Id*., ¶ 12).

On January 3, 2024, Plaintiff Fletcher filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq.* in the action entitled *Terrance Fletcher v. Lakin Tire West, LLC*, Alameda County Superior Court Case No. 24CV058197 ("Fletcher PAGA Action"). (*Id*., ¶ 13). On January 29, 2024, Plaintiff Fletcher filed a Doe Amendment in the Fletcher PAGA Action, which identified DOE 1 as LF Staffing Services, Inc. (dba Labor Finders). (Ibid).

On April 19, 2024, Defendants Lakin Tire West, LLC and LF Staffing Services, Inc. (dba Labor Finders) filed a Joint Motion to Compel Arbitration of Individual Claims and Dismiss Putative Class Claims ("Class Motion to Compel Arbitration") and supporting documents in the Fletcher Class Action. (*Id*., ¶ 14). On April 19, 2024, Defendants Lakin Tire West, LLC and LF Staffing Services, Inc. (dba Labor Finders) filed a Joint Motion to Compel Arbitration of Non-Representative PAGA Claims and Stay Proceedings ("PAGA Motion to Compel Arbitration") and supporting documents in the Fletcher PAGA Action. (Ibid).

On May 16, 2024, Plaintiff Fletcher filed an Opposition to the Class Motion to Compel Arbitration and supporting documents in the Fletcher Class Action. (*Id*., ¶ 15). On May 22, 2024, Defendants Lakin Tire West, LLC and LF Staffing Services, Inc. (dba Labor Finders) filed a Reply in support of the Class Motion to Compel Arbitration and supporting documents in the Fletcher Class Action. (Ibid).

On June 6, 2024, Plaintiff Fletcher filed an Opposition to the PAGA Motion to Compel Arbitration and supporting documents in the Fletcher PAGA Action. (*Id*., ¶ 16).

On June 6, 2024, Plaintiff Delgado provided written notice to the LWDA by online submission and to Defendant Lakin Tire West, LLC by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated ("Delgado LWDA Letter"). (*Id*., ¶ 17 and Exh. 4). Collectively, the Fletcher LWDA Letter 1, Fletcher

LWDA Letter 2, and Delgado LWDA Letter are referred to as the "LWDA Letters." (Ibid).

On June 6, 2024, Plaintiff Delgado filed a Class Action Complaint for Damages and Restitution in the action entitled *Mellissa Marie Delgado v. Lakin Tire West, LLC*, Los Angeles County Superior Court Case No. 24STCV14080 ("Action"), thereby commencing a putative class action against Defendant Lakin Tire West, LLC. (*Id*., ¶ 18).

On June 12, 2024, Defendants Lakin Tire West, LLC and LF Staffing Services, Inc. (dba Labor Finders) filed a Reply in support of the PAGA Motion to Compel Arbitration and supporting documents in the Fletcher PAGA Action. (*Id*., ¶ 19).

On June 20, 2024, Defendants Lakin Tire West, LLC and LF Staffing Services, Inc. (dba Labor Finders) filed a Joint Supplemental Brief in support of the Class Motion to Compel Arbitration and supporting documents in the Fletcher Class Action. (*Id*., ¶ 20). On June 24, 2024, Plaintiff Fletcher filed a Supplemental Brief in support of his Opposition to the Class Motion to Compel Arbitration in the Fletcher Class Action. (Ibid).

On June 27, 2024, Plaintiff Fletcher filed a Doe Amendment in the Fletcher Class Action and Fletcher PAGA Action, which identified DOE 2 as ELS of Florida, Inc. (dba Labor Finders). (*Id*., ¶ 21).

On July 8, 2024, Defendants Lakin Tire West, LLC and LF Staffing Services, Inc. (dba Labor Finders) filed a Joint Supplemental Brief in support of the Class Motion to Compel Arbitration in the Fletcher Class Action. (*Id*., ¶ 22). On July 8, 2024, Defendant ELS of Florida, Inc. (dba Labor Finders) filed a Joinder in the Class Motion to Compel and supporting documents in the Fletcher Class Action. (Ibid). On July 9, 2024, Defendants Lakin Tire West, LLC and LF Staffing Services, Inc. (dba Labor Finders) filed a Joint Supplemental Brief in support of the PAGA Motion to Compel Arbitration in the Fletcher PAGA Action. (Ibid). On July 9, 2024, Defendant ELS of Florida, Inc. (dba Labor Finders) filed a Joinder in the PAGA Motion to Compel and supporting documents in the Fletcher PAGA Action. (Ibid).

On August 13, 2024, Plaintiff Delgado filed a Complaint for Civil Penalties Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code Sections 2698, Et Seq. in the action entitled *Mellissa Marie Delgado v. Lakin Tire West, LLC*, Alameda County Superior Court Case No. 24STCV20425 ("Delgado PAGA Action"). (*Id*., ¶ 23).

On September 16, 2024, the Alameda Superior Court entered an Order in the Fletcher Class Action, which granted the Class Motion to Compel Arbitration and dismissed the class claims alleged in the Fletcher Class Action without prejudice and compelled Plaintiff Fletcher's individual claims to arbitration. (*Id*., ¶ 24). On September 16, 2024, the Alameda Superior Court entered an Order in the Fletcher PAGA Action, which granted the PAGA Motion to Compel Arbitration and compelled Plaintiff Fletcher's individual claims to arbitration. (Ibid).

On March 20, 2025, the Parties participated in a formal mediation conducted by Carl West, Esq. ("Mediator"), a neutral and respected mediator with extensive experience in complex wage and hour matters, which did not result in a settlement. (*Id*., ¶ 25).

On July 24, 2025, the Parties participated in another formal mediation conducted by Carl West, Esq., and the Parties were able to reach an agreement to resolve this dispute on a class and representative basis. (*Id*., ¶ 26). The Parties then worked diligently to negotiate and memorialize the terms in a long form settlement agreement. (Ibid).

On December 29, 2025, Plaintiffs filed a First Amended Complaint for Damages and Restitution ("Consolidated Amended Complaint") in the Action, which added Plaintiff Fletcher as a named plaintiff and the claims alleged in the Fletcher PAGA Action, Delgado PAGA Action, and LWDA Letters. (*Id*., ¶ 27). The Consolidated Amended Complaint alleges ten (10) causes of action for violations of the California Labor Code for failure to pay wages for all hours worked at minimum wage, failure to pay overtime wages for daily overtime worked, failure to authorized or permit meal periods, failure to authorize permit rest periods, failure to provide complete and accurate wage statements, failure to timely pay all paychecks due to at time of separation of employment, failure timely pay all earned wages during employment, failure to reimburse necessary business expresses, for violations of California Business & Professions Code Section 17200, *et seq.* based on the aforementioned California Labor Code violations, and for civil penalties under PAGA based on the aforementioned California Labor Code violations. (Ibid).

On January 13, 2026, the Parties executed the Settlement Agreement. (*Id*., ¶ 28 and Exh. 5).

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III. THE SETTLEMENT TERMS

A. Class Definition

For purposes of settlement only, the Parties have agreed that the Class shall be defined as "all current and former hourly, non-exempt employees who worked as direct employees for Defendants Lakin Tire West, LLC and/or Lakin Tire West, Inc. in California at any time during the Class Settlement Period, as well as temporary employees employed through temporary employment agencies who were placed to work at Defendants Lakin Tire West, LLC and/or Lakin Tire West, Inc. in California at any time during the Class Settlement Period, including all current and former employees who were placed with Defendants Lakin Tire West, LLC and/or Lakin Tire West, Inc. by ELS of Florida Inc. (dba Labor Finders) and LF Staffing Services, Inc. (dba Labor Finders)" ("Class" or Class Member(s)"). (Winn Decl., ¶ 29; Settlement Agreement, ¶ 1.8). The Class Settlement Period is defined as the period from June 6, 2020 through August 23, 2025. (Winn Decl., ¶ 29; Settlement Agreement, ¶ 1.12). Based on information provided by Defendants, it is estimated that there are a total of one thousand four hundred forty-four (1,444) Class Members. (Winn Decl., ¶ 29).

B. Amount of Settlement

The Parties have agreed to settle the class and PAGA claims at issue in the Consolidated Amended Complaint for a non-reversionary Maximum Settlement Amount of One Million Five Hundred Thousand Dollars and Zero Cents ($1,500,000.00), exclusive of employer-side payroll taxes. (Winn Decl., ¶ 30; Settlement Agreement, ¶ 1.28).

C. Allocation and Funding of the Maximum Settlement Amount

The Maximum Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. (Winn Decl., ¶ 30; Settlement Agreement, ¶ 1.28). The Maximum Settlement Amount includes: (1) Class Counsel Fees Payment in the amount of thirty-five percent (35%) of the Maximum Settlement Amount (i.e., $525,000.00 if the Maximum Settlement Amount is $1,500,000.00); (2) Class Counsel Litigation Expenses Payment, not to exceed Thirty-Five Thousand Dollars and Zero Cents ($35,000.00); (3) Administration Expenses Payment, not to exceed Twelve Thousand Two Hundred Dollars and Zero Cents ($12,200.00); (4) Class Representative Service Payments in the aggregate amount of Twenty Thousand Dollars and Zero Cents ($20,000.00); and (5) PAGA Penalties in the amount of Seventy-Five Thousand Dollars and Zero Cents ($75,000.00). (Winn Decl., ¶ 30; Settlement Agreement, ¶¶ 1.28, 3.1.1, 3.2.1, 3.2.2, and 3.2.3,). After the above-estimated amounts are deducted from the Maximum Settlement Amount, the Net Settlement Amount that will be available for Class Members is currently estimated to be Eight Hundred Thirty-Two Thousand Eight Hundred Dollars and Zero Cents ($832,800.00). (Winn Decl., ¶ 30).

Additionally, 25% of the PAGA Penalties, which is $18,750.00 out of $75,000.00, will be fully distributed to "all current and former hourly, non-exempt employees who worked as direct employees for Defendants Lakin Tire West, LLC and/or Lakin Tire West, Inc. in California at any time during the PAGA Settlement Period, as well as temporary employees employed through temporary employment agencies who were placed to work at Defendants Lakin Tire West, LLC and/or Lakin Tire West, Inc. in California at any time during the PAGA Settlement Period, including all current and former employees who were placed with Defendants Lakin Tire West, LLC and/or Lakin Tire West, Inc. by ELS of Florida Inc. (dba Labor Finders) and/or LF Staffing Services, Inc. (dba Labor Finders)" ("PAGA Member(s)"). (Winn Decl., ¶ 31; Settlement Agreement, ¶¶ 1.22, 1.32, and 1.34). The "PAGA Settlement Period" is defined as the period from October 30, 2022 through August 23, 2025. (Winn Decl., ¶ 31; Settlement Agreement, ¶ 1.35).

The Net Settlement Amount will be distributed and paid to all Class Members who do not submit a valid and timely Request for Exclusion ("Participating Class Member(s)") on a *pro rata* basis based on the number of workweeks in which each Class Member worked for any amount of time for the Lakin Defendants during the Class Settlement Period, as shown by the Lakin Defendants' timekeeping data ("Workweeks"). (Winn Decl., ¶ 32; Settlement Agreement, ¶¶ 1.36 and 1.44). The *pro rata* payment to each Participating Class Member from the Net Settlement Amount based on their number of Workweeks worked during the Class Settlement Period ("Individual Class Payment") will be calculated by the Administrator, in accordance with the Settlement Agreement. (Winn Decl., ¶ 32; Settlement Agreement, ¶¶ 1.21 and 3.3.1).

The twenty-five percent (25%) of the PAGA Penalties will be distributed and paid to all PAGA Members on a *pro rata* basis based on the number of pay periods in which each PAGA Member worked for any amount of time for the Lakin Defendants during the PAGA Settlement Period as shown by the

Lakin Defendants' timekeeping data ("PAGA Pay Periods") (Winn Decl., ¶ 33; Settlement Agreement, ¶ 1.33). The *pro rata* payment to each PAGA Member from the twenty-five percent (25%) of the PAGA Penalties based on their number of PAGA Pay Periods worked during the PAGA Settlement Period ("Individual PAGA Payment") will be calculated by the Administrator, in accordance with the Settlement Agreement. (Winn Decl., ¶ 33; Settlement Agreement, ¶¶ 1.22 and 3.3.3).

Each Individual Class Payment will be allocated as twenty percent (20%) wages ("Wage Portion") and eighty percent (80%) penalties and/or interest ("Non-Wage Portion"). (Winn Decl., ¶ 34; Settlement Agreement, ¶ 3.3.2). The Wage Portion will be reported on an IRS Form W-2 and the Non-Wage Portion will be reported on an IRS Form 1099 (if applicable) by the Administrator. (Winn Decl., ¶ 34; Settlement Agreement, ¶ 3.3.2). The Administrator will withhold the employee's share of taxes and withholdings with respect to the Wage Portion of the Individual Class Payments, and issue checks to Participating Class Members for their net payment of their Individual Class Payment. (Winn Decl., ¶ 34; Settlement Agreement, ¶¶ 3.3.2 and 3.3.3). The employers' share of taxes and contributions in connection with the Wage Portion of Individual Class Payments will be paid by Defendants separately and in addition to the Maximum Settlement Amount. (Winn Decl., ¶ 34; Settlement Agreement, ¶ 1.28). Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Administrator. (Winn Decl., ¶ 234; Settlement Agreement, ¶ 3.3.3).

The Settlement Agreement is a non-reversionary and non-claims made settlement. (Winn Decl., ¶ 35; Settlement Agreement, ¶¶ 1.28 and 3.1). The Net Settlement Amount will be fully distributed to Participating Class Members and the PAGA Penalties will be fully distributed to the LWDA and PAGA Members, in accordance with the Settlement Agreement. (Winn Decl., ¶ 35; Settlement Agreement, ¶¶ 1.29 and 3.2.5). No money will revert to Defendants. (Winn Decl., ¶ 35; Settlement Agreement, ¶¶ 1.28 and 3.1).

Each Individual Class Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. (Winn Decl., ¶ 36; Settlement Agreement, ¶ 4.4.1). Any funds associated with such canceled checks will be distributed by the Administrator to The Justice Gap Fund maintained by The State Bar of California as the *cy pres* recipient. (Winn Decl., ¶ 36; Settlement Agreement, ¶ 4.4.3). The

Parties, Class Counsel, and Defense Counsel have no interest or relationship with the *cy pres* recipient. (Winn Decl., ¶ 36; Settlement Agreement, ¶ 4.4.3).

D. Released Claims

Effective on the date when Defendants fully fund the Maximum Settlement Amount and fund all employer payroll taxes owed on the Wage Portions, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims and/or causes of action that were or could have been alleged based on the facts and allegations in the Consolidated Amended Complaint during the Class Settlement Period, including, without limitation, claims based on the failure to pay wages for all hours worked at minimum wage; the failure to pay overtime wages for daily overtime worked; the failure to authorize or permit meal periods; the failure to authorize or permit rest periods; the failure to provide complete and accurate wage statements; the failure to timely pay all earned wages and final paychecks due at time of separation of employment; and unfair business practices, and claimed violation(s) of California Labor Code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, and 2802, as well as violations of the applicable Industrial Welfare Commission Wage Orders (including but not limited to Wage Order No. 4), and the California Business and Professions Code sections 17200 *et seq*. (Settlement Agreement, ¶¶ 5 and 5.2). This release does not include claims outside the Class Settlement Period or claims for vested benefits, wrongful termination, discrimination, harassment, retaliation, unemployment insurance, disability, social security, workers' compensation, or any claims to enforce the Settlement Agreement. (*Id*., ¶ 5.2).

Effective on the date when Defendants fully fund the Maximum Settlement Amount and fund all employer payroll taxes owed on the Wage Portions, all PAGA Members (including Non-Participating Class Members), on behalf of themselves and the State of California, release the Released Parties from all claims for PAGA civil penalties that were or could have been alleged based on the facts and allegations in the LWDA Letters and Consolidated Amended Complaint during the PAGA Settlement Period, including, without limitation, claims based on the failure to pay for all time worked at correct rates of pay, including minimum wages, straight time wages, and overtime compensation; the failure to provide meal periods and pay meal period premiums; the failure to authorize and permit rest periods and pay rest period premiums; the failure to timely pay wages during employment; the failure to provide accurate itemized wage statements; the failure to maintain accurate records; the failure to reimburse necessary expenditures; and the failure to timely pay all wages upon termination of employment; and claimed violation(s) of California Labor Code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Orders (including but not limited to Wage Order No. 4), as well as any and all other Labor Code violations as permitted by PAGA based on the allegations. (*Id*., ¶¶ 5 and 5.3).

Effective on the date when Defendants fully fund the Maximum Settlement Amount and fund all employer payroll taxes owed on the Wage Portions, in addition to the releases applicable to Participating Class Members and PAGA Members, Plaintiffs, for consideration of the Class Representative Services Payments, each grants a general release to the Released Parties of all claims, known or unknown, through the date of Plaintiffs' execution of the Settlement Agreement, to the maximum extent permitted by law, excluding only claims to enforce the Settlement Agreement and claims for vested benefits, unemployment insurance, disability benefits, social security benefits, and workers' compensation. (*Id*., ¶¶ 5 and 5.1) Each Plaintiff expressly waives the provisions of Civil Code 1542, which provides:

> **"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."** (Ibid.).

"Released Parties" means Defendants and their past, present, and/or future, direct and/or indirect, owners, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, parent companies, subsidiaries, affiliates, successors, and assigns. (*Id*., ¶ 1.39).

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The settlement of a class action requires court approval. (*See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996)). "In general, questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple*

Computer, Inc., 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds)).

The review and approval of a proposed class action settlement involves a two-step process. (*See* Cal. Rules of Court, Rule 3.769(c)). First, counsel submit the proposed terms of the settlement and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the range of a fair settlement to justify providing notice of the proposed settlement to class members. After notice is provided to the class, the Court must conduct a second inquiry into whether the proposed settlement is fair, reasonable, and adequate. (Ibid).

The initial evaluation of the settlement at the preliminary approval step "is not a fairness hearing." (*Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980)). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed settlement is within the range of possible approval and, as a result, "whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing." A presumption of fairness exists where: (1) the settlement is reached through arm's 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. (*See In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006)).

Preliminary approval does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to object or exclude themselves from the settlement. (*See* Cal. Rules of Court, Rule 3.769(g)). In considering a potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. (*See Officers for Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982)).

V. THE SETTLEMENT IS PRESUMED FAIR

A. The Settlement Was Reached as a Result of Arm's-Length Bargaining

California courts recognize that "a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining." (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties' settlement negotiations were at all times made at arm's-length and were adversarial. (Winn Decl., ¶ 37). The Settlement was reached following a second day of mediation with a highly respected mediator with substantial experience mediating wage and hour cases. (Ibid). At all times, Plaintiffs were willing and prepared to litigate this matter through class certification and trial if the Parties had been unable to reach a favorable resolution. (*Id*., ¶ 58).

B. Sufficient Investigation and Discovery by Experienced Class Counsel

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation, Defendants Lakin Tire West, LLC and Lakin Tire West, Inc. produced a random twenty percent (20%) sampling of putative class members' time and pay data and Defendants ELS of Florida, Inc. (dba Labor Finders) and LF Staffing Services, Inc. (dba Labor Finders) produced all of the putative class members' time and pay data. (Winn Decl., ¶ 38). Defendants also produced their relevant wage and hour policies, and information regarding the total number of putative class members, the number of current versus former employees, the total workweeks worked by the putative class members, and the average rate of pay for the putative class members. (Ibid).

This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and weaknesses of the claims and the potential class-wide damages. (*Id*., ¶ 39). Based on information exchanged, the Parties extensively briefed issues regarding class certification and liability and provided their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective positions. (*Id*., ¶ 40). Additionally, settlement negotiations were conducted by highly capable and experienced counsel. (Winn Decl., ¶¶ 1-8). Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court must consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).

Here, the reasonableness of the Settlement is underscored by the fact that Defendants have legal and factual grounds for defending the Action. Based upon Class Counsel's experience litigating similar complex matters, Plaintiffs reasonably expected a vigorous and lengthy defense to both class certification and the merits of the Action absent a settlement.

1. Class Counsel's Analysis of the Maximum Available Liability and Damages

Class Counsel analyzed all available data and estimated Defendants' maximum potential exposure to be approximately $12,124,569, assuming the litigation was successful at trial on all claims at issue and every employee had a violation for each claim on every shift worked. (Winn Decl., ¶ 41). This maximum potential analysis was then reduced based on the challenges facing the likelihood of obtaining class certification, prevailing at trial, and other attendant risks. (Ibid). This estimate is based off an estimated maximum liability for all claims at issue and the total aggregate workweeks during the relevant time period, less interest, and based on the analysis of the data which was extrapolated out for all class members across the entire putative class period, which included: $1,343,626 for meal period violations (less meal period premiums paid); $1,384,133 for rest period violations; $1,730,335 for unpaid off-the-clock work; $338,750 for unreimbursed business expenses; $3,255,725 for waiting time penalties; and $4,072,000 for wage statement penalties. (Ibid). Plaintiffs further estimated that Defendants faced an additional exposure of $4,723,500 in potential, non-stacked (i.e., one penalty, per employee, per pay period during the PAGA statutory period) PAGA penalties. (Ibid). Together with the PAGA penalties, Defendants' maximum potential exposure totaled $16,848,069 in damages. (Ibid).

2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments

While Plaintiffs believe that Defendants faced significant exposure, substantial barriers to a recovery existed. (Id., ¶ 42). First and foremost, Defendants maintained throughout the litigation process that the majority of the putative class members, including Plaintiffs, signed enforceable arbitration agreements with a class action waiver, which barred Plaintiffs' class claims altogether. (Ibid).

Additionally, Defendants argued that certain employees were covered under collective bargaining agreements. (Ibid). The arbitration agreements and collective bargaining agreements significantly affected the potential size of the putative class, and if Defendants prevailed on these arguments, there would be no class damages. (Ibid). Defendants also contended that Plaintiffs' claims are not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. (Winn Decl., ¶ 44; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011)). While Plaintiffs and Class Counsel disagree with Defendants' predictions, they also recognize that there is a significant risk that the Court may deny class certification. (Winn Decl., ¶ 44; *see also*, *Findings of the Study of California Class Action Litigation*, 2000-2006, available at http://www.courts.ca.gov/documents/class-action-lit-study.pdf (finding that only 21.4% of all class actions were certified either as part of a settlement or as part of a contested certification motion)).

For example, Plaintiffs' meal period claims, which were based on Defendants' alleged failure to provide lawful meal periods, have been increasingly difficult to certify in recent years. (Winn Decl., ¶ 45; *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiffs' theory of liability for meal period violations was based on allegations that Defendants had failed to implement their policies and that their practices failed to allow Class Members to take meal breaks in the manner required under California law. (Winn Decl., ¶ 45; *See Bradley v. Networkers Int'l, LLC,* 211 Cal.App.4th 1129, 1150 (2012) (holding that "the lack of a meal/rest break policy and the uniform failure to authorize such breaks are matters of common proof.")). Defendants contended that their policies and practices at all times during the Class Period were lawful. (Winn Decl., ¶ 45). Defendants further argued that the rate of purported meal period violations reflected in the data would require individualized inquiry and that such inquiry would prohibit a class from being certified. (Ibid). Class Counsel also had to consider the risk that the Court would find validity in an individualized proof defense to certification of Plaintiffs' meal period claim. (Ibid).

Additionally, a large portion of Defendants' overall liability lies in Plaintiffs' rest period allegations. (*Id*., ¶ 46). As with the meal period allegations, Defendants contended that they had a lawful written rest period policy, provided compliant rest breaks, and relieved Class Members of all duties as required under California law. (Ibid). Additionally, this claim was even more uncertain given the difficulties associated with proving the alleged rest period violations, as Defendants were not required to record these breaks. (Ibid). Given the lack of records demonstrating rest period violations, there were legitimate concerns Plaintiffs would not be able to certify these claims or prove substantial damages with requisite certainty, which made the estimated value of this claim subject to much challenge. (Ibid).

Plaintiffs also faced challenges certifying and proving liability for their minimum wage and overtime claims. (*Id*., ¶ 47). These claims were largely based on Defendants' unrecorded, off-the-clock work performed by the Class Members both before and after their shifts and during purported meal periods. (Ibid). For example, Class Members reported that they were required to arrive earlier than the start of their shift to prepare for the day and stay later than the end of their shift to finish tasks all while off-the-clock. (Ibid). However, the individualized nature of why this work was performed and the individualized nature of damages presented substantial concerns regarding the manageability of the case and the risk the Court could find these issues prevented certification. (Ibid).

Plaintiffs also contended that Defendants failed to reimburse Plaintiffs and the other Class Members for necessary business-related expenses, such as the usage of personal cell phones for work-related purposes. (*Id*., ¶ 48). Defendants contended that they had a policy and practice of reimbursing employees for necessary business-related expenses. (Ibid). Defendants further contended that, with respect to the alleged expenses for which Plaintiffs and the other Class Members never requested reimbursement from Defendants, they did not know and had no reason to know that alleged business-related expenses had been incurred. (Ibid). Defendants further contended that the reason for why a Class Member undertook certain expenses, while not others, and failed to receive reimbursement for certain expenses while not others, would raise individual issues that could not be certified. (Ibid).

There are also substantial risks associated with Plaintiffs' waiting time penalties and wage statement claims. (*Id*., ¶ 49). First, these claims were derivative of Plaintiffs' claims for unpaid meal period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages, and if certification was denied on those underlying claims, these derivative claims for penalties would also likely fail. (Ibid). Further, even if Plaintiffs prevailed on their underlying claims, they would still be required to demonstrate that Defendants' violations of California Labor Code section 203 were *willful* violations. (Winn Decl., ¶ 49; *See, e.g.*, *Choate v. Celite Corp*., 215 Cal App. 4th 1460, 1468 (2013) (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding of willfulness")). Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them rather than a pure calculation of damages after liability is proven. (Winn Decl. ¶ 49; *Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which comprised a substantial portion of Defendants' estimated liability, were therefore uncertain. (Winn Decl., ¶ 49).

Class Counsel also recognized that, even if Plaintiffs prevailed at class certification, proving the amount of wages due to Class Members would be an expensive, time-consuming, and uncertain proposition. (*Id.*, ¶ 50). In order to prove liability and damages, Class Counsel will need to request and analyze thousands of pages of documents, obtain the Class Members' contact information, contact them, and obtain their declarations at great expense. (Ibid). Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. (Ibid). On the other hand, Defendants would likely be able to obtain the cooperation of their employees. (Ibid). Moreover, even if Plaintiffs prevailed at class certification and trial, possible appeals would substantially delay any recovery by the Class. (Ibid).

Class Counsel also contemplated the risks of proceeding with the PAGA claims and potential liability Defendants could face from these claims as part of the global resolution. (*Id.*, ¶ 51). Existing case law makes PAGA claims subject to the same defenses and risks as Plaintiffs' underlying wage claims. (Winn Decl., ¶ 51; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiff's other claims fail as a matter of law, so does her PAGA claim")). Class Counsel also anticipated that even if successful on the merits at trial, the imposition of cumulative civil penalties based on the alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory, and that Defendants would argue that they made a good faith attempt to comply with their legal obligations warranting a reduction in penalties. (Winn Decl., ¶ 51).[1] Class Counsel also anticipated

[1] See, e.g., *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis*

Defendants would argue that the violations per pay period were low, warranting an additional reduction in civil penalties. (Ibid). Finally, Class Counsel was also mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended to facilitate enforcement of California's labor laws by financing state activities and educating and deterring non-compliance. (Ibid).

Therefore, after considering this multitude of factors, Plaintiffs and Class Counsel concluded that it was in the best interest of the State of California and the PAGA Members to enter into the Settlement, and to allocate Seventy-Five Thousand Dollars and Zero Cents ($75,000.00) of the Maximum Settlement Amount towards the PAGA claims, which represents approximately 5% of the Maximum Settlement Amount. (*Id.*, ¶ 52). This percentage of the settlement is well within the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. (Ibid). Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as reasonable by courts. (Ibid). Moreover, the overall relief obtained by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California's labor laws, provide funds to the state, and deter future non-compliance by the employer. (Ibid).

Therefore, taking into account how each of the above risks potentially effected Plaintiffs' ability to first obtain class certification, and then prove the underlying violations, the Court's broad discretion in civil penalties, plus the cost and delay in recovering the alleged potential damages, Class Counsel discounted Defendants' estimated liability based on the challenges facing their ability to succeed on class certification by 70% to $5,054,421. (*Id.*, ¶ 53). The merits-based risk factors further reduced Defendants' estimated liability by an additional 65%. (Ibid). This resulted in an adjusted estimated liability of

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Logistics, 2013 WL 10936035, at *3 (C.D. Cal. 2013) ("duplicative effect" of penalties is a factor in favor of "reducing ...the PAGA penalty"); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez v. McDonalds Restaurants of California, Inc.*, 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties arising out of the same conduct); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (approving reduction in penalties from $50 per pay period to $5 per pay period based on good faith attempts to comply with obligations and minimal violations).

$1,769,047. (Ibid). In light thereof, the settlement amount of $1,500,000 is a significant settlement. (Ibid).

The Settlement is in the best interest of the Class Members, the PAGA Members, and the State of California and is within the accepted range of recoveries for this type of litigation given the inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further litigation. (*Id.*, ¶ 54).

VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

Code of Civil Procedure Section 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class action is superior to other methods. (*See Dunk*, 48 Cal.App.4th at 1806). Plaintiffs contend that the Action, which is based upon Defendants' wage and hour policies and practices, satisfies the class certification requirements under California Code of Civil Procedure section 382. Defendants deny Plaintiffs' allegations, but for purposes of the Settlement only, Defendants have stipulated to certification of the Class.

A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is Impracticable

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. (*See Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983)). In this case, all three considerations strongly favor class certification. Here, the Class is defined as "all current and former hourly, non-exempt employees who worked as direct employees for Defendants Lakin Tire West, LLC and/or Lakin Tire West, Inc. in California at any time during the Class Settlement Period, as well as temporary employees employed through temporary employment agencies who were placed to work at Defendants Lakin Tire West, LLC and/or Lakin Tire West, Inc. in California at any time during the Class Settlement Period, including all current and former employees who were placed with Defendants Lakin Tire West, LLC and/or Lakin Tire West, Inc. by ELS of Florida Inc. (dba Labor Finders) and LF Staffing Services, Inc. (dba Labor Finders)" ("Class" or "Class Member(s)").

(Winn Decl., ¶ 29; Settlement Agreement, ¶ 1.8). This provides a clear and definite scope for the proposed class.

Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Courts have certified classes with as few as ten or twenty-eight class members. (*Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995); *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972)). Here, the estimated Class size of one thousand four hundred forty-four (1,444) meets the numerosity requirement.

Finally, the question of whether class members are easily identifiable turns on whether a plaintiff can establish "the existence of an ascertainable class." (*Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706 (1967)). The existence of an ascertainable class in this case can be established through Defendant's payroll records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and the Court to determine the parameters of the Class. (*See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d 605, 617 (1987)).

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B. The Class Shares a Well-Defined Community of Interest

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. (*Dunk*, 48 Cal.App.4th at 1806). Here, all three requirements are easily satisfied.

The commonality criterion requires the existence of common question of law or fact and is generally established with the issues of predominance and typicality. (*See Daar*, 67 Cal.2d 695, 706). What is required is that a common question of fact or law exists which predominates over issues unique to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising from employment—is not a bar to class certification as long as they do not render class litigation unmanageable or predominate over the common issues. (*See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987)).

Here, Plaintiffs' claims present common issues of law and fact that predominate and warrant class certification. Plaintiffs alleged that Defendants denied compliant meal and rest periods to employees, required employees to perform work off-the-clock, and failed to fully compensate employees for all time actually worked. These policies and practices meant that Defendants allegedly failed to pay minimum and overtime wages, and other related claims. Plaintiffs allege that Defendants' policies and practices were uniform as to all Class Members. Thus, class treatment is appropriate.

To satisfy the typicality requirement, California law does not require that plaintiffs' claims be identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct, which is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct. (*See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007)). The typicality requirement for a class representative refers to the nature of the claim or defense of the representative, and not to the specific facts from which it arose or the relief sought. (*See* Ibid).

Here, Plaintiffs allege that their claims are similar to that of the other Class Members and that Plaintiffs' claims arise out of the same alleged course of conduct giving rise to the claims of the other Class Members. Because Plaintiffs' claims are based upon the same alleged conduct and business practices as those of Class Members, the typicality requirement has been satisfied.

Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." (*McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976)). Here, these considerations are satisfied. Class Counsel is well-regarded and is qualified and experienced in employment-related, class-action litigation. (Winn Decl., ¶¶ 1-8). Plaintiffs will vigorously, adequately, and fairly represent the interests of the Class. Plaintiffs have, at all times, throughout the course of the litigation considered the interests of the Class and understood that they must take steps to adequately represent the Class and their interests. (Fletcher Decl., ¶ 10; Delgado Decl. ¶ 6). Because Plaintiffs' claims are typical of other Class Members and are not based on unique circumstances, there is no antagonism between the interests of Plaintiffs and the Class.

C. A Class Action is Superior to a Multiplicity of Litigation

Under the circumstances, proceeding as a class action is a superior means of resolving this dispute, as the Class Members and the Court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged violations. (*See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will come forward to prove his or her separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing)). Further, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior to individual litigation.

VII. THE REQUESTED CLASS REPRESENTATIVE SERVICE PAYMENTS ARE REASONABLE

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010)). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representative, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. (*See In re Online DVD Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of $15,000 to be "fair and reasonable")).

Plaintiffs initiated this litigation on behalf of their former co-workers who will now be entitled to receive payment from the Settlement. Plaintiffs invested substantial time and effort into litigation, including their own research, reviewing documents, and extensive discussions with Class Counsel. (Fletcher Decl., ¶¶ 3-5; Delgado Decl. ¶ 7). Further, the requested amounts for Plaintiffs are also reasonable given the average award and the benefit gained by other Class Members. For these reasons, Plaintiffs request that Class Representative Service Payments of Ten Thousand Dollars and Zero Cents ($10,000.00) each to Plaintiffs (total, $20,000.00) be preliminarily approved by the Court. (Winn Decl., ¶ 55; Fletcher Decl., ¶ 12; Delgado Decl. ¶ 7).

VIII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions are "not to be disturbed on appeal absent a manifest abuse of discretion." (*Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 41 (2000)). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. (*Id*. at 47). In cases where class members present claims against a common fund and the defendant agrees to a percentage of the fund as part of the settlement, use of the percentage method is appropriate. (*Id.* at 32).

Here, the requested attorneys' fees of thirty-five percent (35%) of the Maximum Settlement Amount (i.e., $525,000.00 if the Gross Settlement Amount is $1,500,000.00) is disclosed to Class Members in the proposed Class Notice. (Settlement Agreement, Exh. A). The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel's request for the reimbursement of litigation costs and expenses not to exceed Thirty-Five Thousand Dollars and Zero Cents ($35,000.00). (Winn Decl., ¶¶ 56 and 58). The Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment that are not ultimately approved by the Court shall instead be included in the Net Settlement Amount to be distributed to Participating Class Members. (Settlement Agreement, ¶ 3.2.2).

IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS

The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members. (*Id*., Exh. A). The Class Notice will include information regarding the nature of the Action, a summary of the terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the Class Settlement and to dispute Workweeks and/or PAGA Pay Periods, and the date of the Final Approval Hearing. (Ibid). The Class Notice will list each Class Member's total Workweeks and their estimated Individual Class Payment and each PAGA Member's total PAGA Pay Periods and their estimated Individual PAGA Payment. (Ibid).

Within twenty-one (21) calendar days after the Court grants preliminary approval, Defendants will provide the following information for each Class Member to the Administrator: full names, last-known mailing addresses, Social Security numbers, and the number of Workweeks in the Class Settlement Period and the number of PAGA Pay Periods in the PAGA Settlement Period (collectively referred to as the "Class Data"). (*Id.*, ¶¶ 1.6 and 4.1). Within fourteen (14) calendar days after receiving the Class Data from Defendants, the Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes, and will mail a Class Notice in English and Spanish to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Administrator. (*Id.*, ¶ 6.2). The Parties have agreed to use Apex Class Action LLC as the Administrator. (Winn Decl., ¶ 59; Settlement Agreement, ¶ 1.3).

In determining whether to approve a settlement of a class action, a trial court has virtually complete discretion as to the manner of giving notice to class members, and review on appeal is governed by the abuse of discretion standard. (*See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380 (2010)). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which would result in a higher likelihood of actual notice. (Winn Decl., ¶ 60). The original source of the mailing addresses is from Class Members, who provided the information to Defendants. (Ibid).

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Class Members will have forty-five (45) calendar days from the initial mailing of the Class Notice by the Administrator to submit a Request for Exclusion, written objection, and/or dispute ("Response Deadline"). (Settlement Agreement, ¶ 1.41).

Any Class Notice returned to the Administrator as undeliverable on or before the Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto and the Administrator will indicate the date of such re-mailing on the Class Notice. (*Id.*, ¶ 7.2). In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended fourteen (14) calendar days from the original Response Deadline. (*Id.*, ¶ 1.4.1).

Class Members will have an opportunity to challenge the number of Workweeks and/or PAGA Pay Periods to which they have been credited, as reflected in their respective Class Notices. (*Id.*, ¶ 6.6).

Any Class Member wishing to be excluded from the Class Settlement must submit a written request ("Request for Exclusion") to the Administrator, by mail, postmarked on or before the Response Deadline. (*Id.*, ¶¶ 1.40 and 6.4). Notwithstanding the above, all PAGA Members will be bound by the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion. (*Id.*, ¶ 4.5).

To object to the Class Settlement, Participating Class Members may submit a written objection to the Administrator, by mail, postmarked on or before the Response Deadline. (*Id.*, ¶ 6.5). Participating Class Members, individually or through counsel, may also present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a written objection. (*Id.*, ¶ 6.5).

X. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

Respectfully submitted,

Dated: March 23, 2026

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