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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF KERN**

10 JUAN HINOJOS CAMPOS, an individual and
11 on behalf of all others similarly situated;

12 Plaintiff,

13 vs.
14

15 APPLIED TECHNOLOGY GROUP, INC., a
California corporation; and DOES 1 through
16 50,

17 Defendants.
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Case No.: BCV-23-103067-BCB

[Assigned for All Purposes:
Hon. Bernard C. Barmann, Jr., Dept. H]

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT
AND ATTORNEY'S FEES AND COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

[Filed Concurrently with Declarations of
William C. Sung, Tiffany L. Luu, Juan
Hinojos Campos, and Phoenix Settlement
Administrators in Support Thereof, and
[Proposed] Order]

DATE: March 11, 2025

TIME: 8:30 a.m.

DEPT: H

Action Filed: September 11, 2023

Trial Date: Not Set

1 TO THE HONORABLE COURT, DEFENDANT, AND ITS COUNSEL OF RECORD:
2 PLEASE TAKE NOTICE THAT on March 11, 2025 at 8:30 a.m. in Department H of the
3 Superior Court of the State of California for the County of Kern located at 1215 Truxtun Avenue,
4 Bakersfield, California, before the Honorable Bernard C. Barmann, Jr., Judge presiding, Plaintiff
5 JUAN HINOJOS CAMPOS (“Plaintiff”) will and hereby does move the Court for an Order: (1)
6 granting final approval of the Class Action and PAGA Settlement Agreement between Plaintiff and
7 Defendant APPLIED TECHNOLOGY GROUP, INC. (“Defendant”); (2) approving distribution of
8 the settlement funds to Class Members pursuant to the terms of the Settlement Agreement; (3)
9 approving Class Counsel’s request for an award to Class Counsel in the amount of \$66,666.67 for
10 attorneys’ fees and reimbursement of actual costs in the amount of \$10,446.24; (4) approving
11 Plaintiff’s request for payment of the settlement administration costs to Phoenix Settlement
12 Administrators in the amount of \$4,500.00; (6) entering final judgment as to all members of the
13 Class and Aggrieved Employees in this Action; and (7) setting a Compliance Hearing date on or
14 after February 6, 2026 with a deadline to file a compliance declaration seven days prior to the
15 Compliance Hearing.

16 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
17 provides for court approval of the settlement of a class action and authorizes the Court to grant final
18 certification of a class for settlement purposes. The basis for this Motion, filed without any
19 opposition from Defendant, is that the proposed settlement is fair, adequate, and reasonable and the
20 procedures proposed by the Parties are adequate to ensure the opportunity of class members to
21 participate in, opt out of, or object to the settlement.

22 This Motion will be based on this Notice, concurrently filed herewith, the Memorandum of
23 Points and Authorities, the Settlement Agreement, the supporting Declarations of William C. Sung,
24 Tiffany L. Luu, Plaintiff Juan Hinojos Campos, and Mayra Gonzalez on behalf of Phoenix
25 Settlement Administrators, and upon the oral arguments of counsel (should there be any) and on the
26 complete records and file herein.

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1 DATED: January 31, 2025

Respectfully submitted,

2 **JUSTICE FOR WORKERS, P.C.**

3
4
5 By:



6 William C. Sung

Tiffany L. Luu

7 Attorneys for Plaintiff JUAN HINOJOS CAMPOS

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On September 11, 2023, Plaintiff JUAN HINOJOS CAMPOS (“Plaintiff”) filed the Class
4 Action Complaint against Defendant APPLIED TECHNOLOGY GROUP, INC. (“Defendant”) on
5 behalf of himself and all similarly situated individuals against Defendant. (Declaration of William
6 C. Sung in Support of Motion for Final Approval [“Sung Decl.”], ¶ 2.) Previously, on August 1,
7 2023, Plaintiff sent a notice letter under the PAGA to the Labor and Workforce Development
8 Agency (“LWDA”). (Sung Decl., ¶ 3.) In the operative First Amended Complaint (“FAC”),
9 Plaintiff alleges the following causes of action: (1) Minimum Wage Violations; (2) Overtime Wage
10 Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Penalties;
11 (6) Waiting Time Penalties; (7) Unfair Competition; and (8) Civil Penalties Under the California
12 Private Attorneys General Act, California Labor Code § 2699.3, *et seq.* (the “PAGA”). (*Id.* at ¶ 4.)

13 On July 26, 2024, the Parties participated in a full-day mediation with Tagore Subramaniam,
14 Esq., a well-respected wage and hour class action mediator. (Sung Decl., ¶ 5.) During mediation,
15 the Parties vigorously debated their opposing legal positions, the likelihood of certification of
16 Plaintiff’s claims, and the legal basis for the claims and defenses and reached a tentative class and
17 PAGA settlement at the mediation. (*Ibid.*) Thereafter, the Parties memorialized the Settlement in the
18 Class Action and PAGA Settlement Agreement (“Settlement Agreement” or “Agreement”). (Sung
19 Decl., ¶ 6, Ex. 1 – Agreement.) The terms of the Settlement provide that Defendant shall pay a
20 Gross Settlement Amount of \$200,000.00, which will be distributed to the Class on a non-
21 reversionary basis without the need to submit claim forms. (*Ibid.*)

22 This Court preliminarily approved this Settlement on October 31, 2024. (*See* Order Granting
23 Preliminary Approval of Class Action Settlement [“Preliminary Approval Order”].) The
24 Preliminary Approval Order directed distribution of Class Notice and scheduling the hearing for
25 final approval of settlement. As directed by the Court, the Administrator distributed the Class
26 Notice. (Declaration of Mayra Gonzalez on behalf of Phoenix Settlement Administrators [“Admin
27 Decl.”] ¶¶ 2-5, Ex. A.) There are no objections and no Class Members opted out of the Settlement.
28 (*Id.* at ¶¶ 7-8.) Thus, there is a 100% participation rate. Therefore, the Court can infer that the Class

1 supports the Court’s Preliminary Approval Order finding that the Settlement was fair and
2 reasonable. In sum, the Court may confirm its preliminary approval as this process supports the
3 Court’s initial finding that the Settlement is fair and reasonable.

4 In addition, for the same reasons as set forth earlier in Plaintiff’s Motion for Preliminary
5 Approval of Class Action Settlement, the following represent the basic points previously covered
6 supporting approval of the Settlement: the total number of Participating Class Members is 61
7 individuals, (*id.* at ¶ 10); the Net Settlement Amount to be paid to Participating Class Members is \$
8 \$98,387.09, (*id.* at ¶ 11); and the estimated average Individual Settlement Amount to Participating
9 Class Members is \$1,612.90 with the highest estimated Individual Settlement Amount of \$4,102.64
10 and lowest of \$45.75, (*id.* at ¶ 12). With this additional information, the Court should grant Final
11 Approval consistent with Preliminary Approval and enter Final Judgment.

12 **II. THE CLASS WAS PROVIDED PROPER NOTICE OF THE SETTLEMENT**

13 The notice procedures required by the Preliminary Approval Order have been followed and
14 satisfy all due process rights of Class Members. The Preliminary Approval Order contemplated that
15 the Class Notice, as approved in the Preliminary Approval Order, be sent to all Class Members by
16 first class mail, as specified in the Agreement. The Preliminary Approval Order approved Phoenix
17 Settlement Administrator (“Administrator”) to serve as the Administrator. Class Notice was
18 provided to Class Members, as required by the Preliminary Approval Order. The Administrator
19 received a Class Member mailing list from Defendant’s counsel that included Class Members, and
20 on November 29, 2024, each of the 61 Class Members identified on the mailing list was sent the
21 Class Notice via first class mail. (Admin Decl. ¶ 5, Ex. A.) None of the Class Notices were
22 returned by the Post Office. (*Id.* at ¶ 6.)

23 The Class Notice specifically directed Class Members to the Court and Class Counsel,
24 where they could further receive information regarding the Settlement. The provision of sending the
25 Class Notice to Class Members as described above meets the requirements for the “best notice
26 practicable” in this case as necessary to protect the due process rights of class members. (*See, e.g.,*
27 *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12 [provision of “best notice practicable”
28 with description of the litigation and explanation of opt-out rights satisfies due process]; *Eisen v.*

1 *Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-75 [individual notice must be sent to class members
2 who can be identified through reasonable means]; *Mullane v. Central Hanover Bank & Trust Co.*
3 (1950) 339 U.S. 306, 314 [best practicable notice is that which is “reasonably calculated, under all
4 the circumstances, to apprise interested parties of the pendency of the action and afford them an
5 opportunity to present their objections”].) The Court, therefore, may proceed to determine the
6 fairness and adequacy of the Settlement and order its approval, secure in the knowledge that all
7 absent Class Members have been given the opportunity to participate fully in the settlement process.

8 **III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE AND REASONABLE, AND**
9 **THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

10 **A. Strength of Plaintiff’s Case and Likelihood of Certifying the Class**

11 Under California law, there are two basic requirements which must exist to sustain a class
12 action: “[t]he first is existence of an ascertainable class, and the second is a well-defined community
13 of interest in the questions of law and fact involved.” (*Vasquez v. Sup. Ct.*(1971) 4 Cal.3d 800, 809.)

14 **1. The Class is Ascertainable and Sufficiently Numerous**

15 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section
16 382 “is determined by examining (1) class definition, (2) the size of the class, and (3) the means
17 available for identifying the class members.” (*Reyes v. San Diego County Board of Supervisors*
18 (1987) 196 Cal. App. 3d 1263, 1271.) Here, the Class is defined as follows:

19 “All persons who were employed by Defendant in California as hourly-paid or non-
20 exempt employees during the Class Period (defined as September 11, 2019 to
October 31, 2024).”

21 (Agreement ¶¶ 1.5, 1.12.)

22 Based on this objective definition, Defendant was able to identify 61 individuals who fall
23 within this definition. As such, the class is ascertainable. Further, as to numerosity, there is no
24 minimum number of class members required as a matter of law for maintenance of a class action.
25 (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926.) The size of the claims involved, and any
26 public interest factors in the case may be determinative. (*Id.* at p. 934.) “Numerosity” is met when a
27 plaintiff demonstrates the “impracticability” of joinder. (Fed. Rules Civ. Proc.23(a)(1); *Harris v.*
28 *Palm Springs Alpine Estates, Inc.* (9th Cir. 1964) 329 F.2d 909, 913-14.) In *Bowles v. Superior*

1 *Court* (1955) 28 Cal.2d 574, a class was certified with only 10 members.

2 Given that there are 61 members that comprise of the Class, this is far more than the
3 minimum required to certify a class. Within the context of manageability, the issue is whether there
4 exists sufficient means for identifying class members at the remedial stage. (*Reyes v. San Diego*
5 *County Board of Supervisors*, supra, 196 Cal.App.3d at pp. 1274-75.) Class members were
6 identified by Defendant, and Class Notice was provided to all of the above class members.

7 **2. There Is a Community of Interest**

8 The “community of interest” requirement embodies three separate factors: (1) predominant
9 common questions of law or fact; (2) class representatives whose claims are typical of the class; and
10 (3) class representatives who can adequately represent the class. (*Richmond v. Dart Industries, Inc.*,
11 (1981) 29 Cal.3d 462, 470; *Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cal. App. 4th 1225, 1234.)
12 “The ultimate question in every case of this type [class actions] is whether ... the issues which may
13 be jointly tried, when compared with those requiring separate adjudication, are so numerous and
14 substantial that the maintenance of a class action would be advantageous to the judicial process and
15 to the litigants.” (*Lockheed Martin Corp. v. Sup. Ct. (Carrillo)* (2003) 29 Cal.4th 1096, 1104-05.)
16 Here, Plaintiff alleges that Defendant has policies or practices that violated the Labor Code by
17 failing to provide meal and rest period, failing to pay minimum and overtime wages for all hours
18 worked, failing to provide accurate itemized wage statements, and failing to pay all wages due upon
19 separation of employment. (*See Sung Decl.*, ¶¶ 8-13.)

20 The purported class representative’s claim must be “typical” but not necessarily identical to
21 the claims of other class members; it is sufficient that the representative is similarly situated so that
22 he or she will have the motive to litigate on behalf of the class. (*Classen v. Weller* (1983) 145
23 Cal.App.3d 27, 45.) Courts look to whether class members have similar injuries, “whether the
24 action is based on conduct which is not unique to the named Plaintiff,” and whether other class
25 members were injured by the same conduct. (*Hannon v. Dataproducts Corp.* (9th Cir. 1992) 976
26 F.2d 497, 508; *Schwartz v. Harp* (C.D.Cal. 1985) 108 F.R.D. 279, 282.) The purpose of the
27 typicality requirement “is to assure that the interest of the named representative aligns with the
28 interests of the class.” *Hannon v. Dataproducts Corp.*, supra, 976 F.2d at p. 508.) Here, Plaintiff

1 was employed by Defendant and, like all of the other Class Members, he alleges he was not paid all
2 minimum and overtime wages due on account of Defendant's rounding practice, was not paid all
3 overtime due because Defendant failed to calculate his overtime rate using the weighted average
4 method when he earned multiple rates in the same week, was not provided with all meal and rest
5 breaks, not provided with accurate itemized wage statements, and was not paid all wages due upon
6 separation of employment. (Sung Decl., ¶¶ 8-13; Declaration of Juan Hinojos Campos, ¶¶ 2-3.)
7 Thus, Plaintiff's claims are typical to those of Class Members.

8 **3. Plaintiff Adequately Represented the Class**

9 The class representative, through qualified counsel, must be capable of "vigorously and
10 tenaciously" protecting the interests of the class members. (*Simons v. Horowitz* (1984) 151
11 Cal.App.3d 834, 846.) Since the judgment rendered in a class action will bar further relief to the
12 class members, the representative plaintiff must assert all claims reasonably expected to be raised
13 by members of the class. (*City of San Jose v. Sup. Ct. (Lands Unlimited)* (1974) 12 Cal.3d 447,
14 464.) Here, Plaintiff has taken all necessary steps to represent the interests of the Class by giving up
15 potential individual claims to proceed with this action as a class action. (Sung Decl., ¶15.) Plaintiff
16 has made himself available to answer questions, gather and provide documents, review and execute
17 the settlement agreement and declarations filed with the court. (*Ibid.*) Plaintiff will continue to make
18 himself available to review any other documents needed to bring this matter to conclusion. (*Ibid.*)
19 Thus, Plaintiff has adequately represented the Class.

20 To proceed as a class, there are two requirements which must be met: ascertainability and
21 community of interest. (*See Daar v. Yellow Cab Co.* (1967) 67 Cal.2d. 695, 704) "The community
22 of interest requirement embodies three factors: (1) predominant common questions of law or fact;
23 (2) class representatives with claims or defenses typical of the class; and (3) class representatives
24 who can adequately represent the class." (*Richmond v. Dart Industries* (1981) 29 Cal.3d. 462, 470.)
25 This Court previously granted conditional certification of the Class pursuant to the Preliminary
26 Approval Order. Thus, Plaintiff meets all of the factors for class certification.

27 ///

28 ///

B. The Terms of the Settlement and Its Reception By Class Members Support the Conclusion that the Settlement Is Fair, Adequate, and Reasonable

Without reiterating Plaintiff's showing that the Settlement and the negotiation process that led up to it was fair and adequate as set forth in detail in the Motion for Preliminary Approval of Class Action Settlement, Plaintiff highlights the following facts. The Agreement was the product of negotiation between highly able and experienced attorneys on both sides who possessed the relevant data and extensive legal research which they had carefully analyzed. (Sung Decl., ¶¶ 7-13.) The resolution of this case was reached only after the parties engaged in substantial investigation and mediation. (*Ibid.*) The results after mailing of the Class Notice support confirmation of the Court's preliminary approval of the Settlement with final approval, as there are no objections or disputes to the current Settlement and no requests for exclusion. (Admin Decl., ¶¶ 7-9.) Thus, the Court may appropriately infer that the class action settlement is fair, adequate and reasonable when, among other reasons, few class members object to it. (*See Class Plaintiff v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291.) The Court should further construe the lack of any objection to this current settlement as an indication that Class Members themselves view the settlement as fair, adequate, and reasonable.

C. Under Well-Established Legal Principles, the Court Should Grant Final Approval of the Settlement

1. Standard Of Review

On a motion for final approval of a class action settlement under Civil Code §1781(f), a court’s inquiry is whether the settlement is “fair, adequate and reasonable.”¹ (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, cert. denied subnom., *Byrd v. Civil Serv. Comm’n*, (1983) 459 U.S. 1217.) A settlement is fair, adequate and reasonable, and therefore merits final approval, when “the interests of the class are better served by the settlement than by further litigation.” (*See Manual for Complex Litigation Fourth* (Fed. Judicial Center 2004) (“Manual”), § 21.6 at 309.) The law favors settlement, particularly in class actions and other complex cases, where

¹ Both Civil Code §1781(f) and Rule 23 have been expressly authorized by the California Supreme Court for use in all California class action litigation. (See *Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 820-821.)

1 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
2 (See 4 Newberg on Class Actions 4th § 11.41 (2008); *Chemical Bank v. City of Seattle*, 955 F.2d
3 1268, 1276; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950.)

4 Although the Court possesses “broad discretion” in determining that a proposed class action
5 settlement is fair, the Court’s role must be limited to the extent necessary to reach a reasoned
6 judgment that the agreement is not the product of fraud or overreaching by, or collusion between,
7 the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to
8 all concerned. (See *Officers for Justice v. Civil Serv. Comm’n*, supra 688 F.2d at 625.) Accordingly,
9 the Court should give due regard to what is otherwise a “private consensual agreement” between the
10 parties. (*Id.*; see also *Church v. Consolidated Freightways, Inc.* (N.D. Cal. 1993) 1993 WL 149840;
11 *In re Wash. Pub. Power Supply Sys. Sec. Litig.* (D. Ariz. 1989) 720 F.Supp. 1379, aff’d sub nom.,
12 *Class Plaintiff v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268; Manual § 21.61 at 309 [“The
13 judicial role in reviewing a proposed settlement is critical, but limited to approving the proposed
14 settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement”].)

15 A court’s approval of a class action settlement will only be reversed for a clear abuse of
16 discretion. (See *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; see also *Officers for*
17 *Justice v. Civil Serv. Comm’n*, supra, 688 F.2d at p. 626 (“reverse only upon a strong showing that
18 the district court’s decision was a clear abuse of discretion”); *Chemical Bank*, supra, 955 F.2d at
19 1276; *Ackerman v. Kassar*, 1993 WL 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship* (9th
20 Cir. 1998) 151 F.3d 1234, 1238.)

21 “It cannot be overemphasized that neither the trial court in approving the settlement
22 nor this Court in reviewing that approval have the right or duty to reach any ultimate
23 conclusions on the issues of fact and law which underlie the merits of the dispute. It
24 is well settled that in the judicial consideration of proposed settlements, ‘the [trial]
judge does not try out or attempt to decide the merits of the controversy,’ [citation]
and the appellate court ‘need not and should not reach any dispositive conclusions
on the admittedly unsettled legal issue.’”

25 (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1146.)

26 **2. The Settlement Is Presumed to Be Fair**

27 The Court should begin its analysis with the presumption that the settlement is fair and
28 should be approved:

1 [A] presumption of fairness exists where : (1) the settlement is reached through
2 arm's-length bargaining; (2) investigation and discovery are sufficient to allow
3 counsel and the court to act intelligently; (3) counsel is experienced in similar
4 litigation; and (4) the percentage of objectors is small.

5 (*Dunk v. Ford Motor Co.*(1996) 48 Cal. App. 4th 1794, 1802; *7-Eleven Owners for Fair*
6 *Franchising*, supra, 85 Cal. App. 4th at p. 1146; accord, *Ellis v. Naval Air Rework Facility* (N.D.
7 Cal. 1980) 87 F.R.D. 15, 18; *In re Wash. Pub Power Supply*, supra, 720 F.Supp. at p. 1387.)

8 Here, the Settlement warrants approval and carries a presumption of fairness. As stated in
9 the Motion for Preliminary Approval, this Settlement was negotiated after engaging in informal and
10 formal written discovery, including class records and statistics that allowed Plaintiff to extrapolate
11 the potential damages that could be awarded to Plaintiff and the Class. (Sung Decl., ¶¶ 7-8.)
12 Furthermore, Class Counsel are highly experienced in this type of litigation. (Sung Decl., ¶¶ 16-21;
13 and Declaration of Tiffany L. Luu ("Luu Decl."), ¶¶ 2-6.)

14 **3. Two-Way Fees and Costs and Other Risks Inherent in Continued** 15 **Litigation Favor Final Approval**

16 To assess the fairness, adequacy and reasonableness of a class action settlement, the Court
17 also should weigh the immediacy and certainty of substantial settlement proceeds against the risks
18 inherent in continued litigation. (*See also In re General Motors Corp.* (3d Cir. 1995) 55 F.3d 768,
19 806 ["present value of the damages Plaintiff would likely recover if successful, appropriately
20 discounted for the risk of not prevailing, should be compared with the amount of the proposed
21 settlement" (internal citations omitted)]; *Girsh v. Jepson* (3d Cir. 1975) 521 F.2d 153, 157; *Boyd v.*
Bechtel Corp. (N.D. Cal. 1979) 485 F. Supp. 610, 616-17.)

22 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff may have
23 faced liability for Defendant's costs. As such, should any Class Members want to bring individual
24 claims on the same causes of action, they would each face the uncertainty of prevailing and the
25 possibility of paying costs to Defendant. Accordingly, such claims likely would not be brought by
26 many of these current and former employees of Defendant. Thus, this lawsuit achieves a true benefit
27 for the Class that they might not otherwise get or seek as individuals. Here, given that a fair and
28 reasonable settlement has been reached, neither Plaintiff nor any Class Members will be required to

1 pay for Defendant's litigation fees and costs.

2 The risks of this case were weighed by Class Counsel and should be considered a significant
3 issue by the Court in its determination of final approval. Class Counsel obtained a very substantial
4 settlement for the Class that results in a fair recovery which at the same time provides for finality
5 and no risk of costs by the Class or Plaintiff.

6 The Settlement also affords the Class prompt, fair relief, while avoiding significant legal and
7 factual battles that otherwise may have prevented the Class from obtaining any recovery at all.
8 Class Counsel believe that the case that they have litigated against Defendant involved a significant
9 violation of Labor Codes under various theories of liability. While Class Counsel believe the Class
10 Members' claims are meritorious and can be successfully litigated, they are experienced and fully
11 understand the inherent risks and uncertainty involved with such matters as the resolution of class
12 certification, the outcome of a potential trial, and the outcome of any appeals that would inevitably
13 follow should the Class prevail at trial. Class Counsel has also assessed the same risks in connection
14 with the Settlement. Because the Settlement provides immediate and substantial relief, without the
15 attendant risks and delay of continued litigation – not to mention the threat of litigation costs –
16 Class Counsel believes that the Settlement warrants the Court's final approval.

17 **4. The Complexity, Expense and Likely Duration of Continued Litigation**
18 **Against Defendant Favor Final Approval**

19 Another factor considered by courts in approving a settlement is the complexity, expense,
20 and likely duration of the litigation. (*See Officers for Justice v. Civil Serv. Comm'n, supra*, 688 F.2d
21 at 625; *Girsh v Jepson, supra*, 521 F.2d at 157.) In applying this factor, the Court must weigh the
22 benefits of the settlement against the expense and delay involved in achieving an equivalent or more
23 favorable result at trial. (*See Young v. Katz* (5th Cir. 1971) 447 F.2d 431, 433-434.)

24 As noted above, continued litigation could have led to appeals even if the Class prevails. On
25 the other hand, the Settlement that was reached provides to all Class Members – regardless of their
26 means – fair relief in a prompt and efficient manner. Were the Court to deny final approval, the
27 Class Members would be left without a remedy as a practical matter and courts across the State
28 would have to address the issues presented here in a piecemeal, costly, and time-consuming manner.

1 The Settlement in this case is therefore consistent with the “overriding public interest in settling and
2 quieting litigation” that is “particularly true in class action suits.” (*See Van Bronkhorst v. Safeco*
3 *Corp.*, *supra*, 529 F.2d at 950 (footnote omitted); *see also* 4 Newberg at § 11.41.) Thus, had the
4 case not settled, the case would have proceeded to trial with potentially longer litigation for appeals.

5 **5. The Opinion of Experienced Counsel Favors Final Approval**

6 The endorsement of qualified and well-informed counsel of a settlement as fair, reasonable,
7 and adequate is entitled to significant weight by the Court in its final approval determination. *See*,
8 *e.g.*, *Officers for Justice v. Civil Serv. Comm’n*, *supra*, 688 F.2d at p. 625.) Class Counsel support
9 the Settlement as fair, reasonable and adequate, and in the best interest of the Class Members as a
10 whole. (Sung Decl. ¶ 14.) Defendant’s counsel is also in favor of this Settlement.

11 **6. Investigation, Mediation, and the Settlement Discussions Undertaken in** 12 **This Action Favor Final Approval**

13 Plaintiff contends that although Defendant’s timekeeping system recorded hours worked to
14 the minute, Defendant rounded all time punches to the nearest quarter-hour from September 11,
15 2019 (the start of the Class Period) to August 1, 2023, resulting in an underpayment of wages,
16 including overtime wages, to Class Members. (Sung Decl., ¶ 8.) However, Defendant argues that its
17 rounding policies/practices were lawful, since it was both neutral on its face and resulted, over time,
18 in employees being paid for all hours worked. (*Ibid.*) Defendant also contends that multiple Courts
19 of Appeal have found rounding mechanisms to be lawful under similar circumstances. (*Ibid*; *see*,
20 *e.g.*, *Ferra v. Loews Hollywood Hotel, LLC* (2019) 40 Cal.App.5th 1239, 1254; *AHMC Healthcare,*
21 *Inc. v. Superior Court* (2018) 24 Cal.App.5th 1014, 1028.) Additionally, Defendant asserts Plaintiff
22 would be unable to certify a rounding class given the individualized inquiries as to whether Class
23 Members were in fact underpaid, or potentially overpaid, for each workday in question. (Sung
24 Decl., ¶ 8.) Plaintiff estimated the maximum exposure for underpaid wages for rounding to be
25 approximately \$31,026.24. (*Ibid.*) Based on Defendant’s defenses and arguments, Plaintiff
26 discounted Defendant’s maximum exposure by 25% for the risk of non-certification, and an
27 additional 40% to account for Defendant’s defenses on the merits or failing to recover the full
28 amount sought to arrive at an estimated potential recovery for these claims of approximately

1 \$13,961.81. (*Ibid.*)

2 Plaintiff alleges that Defendant failed to pay all overtime wages owed to Plaintiff and Class
3 Members by failing to calculate the overtime rate of dual-rate employees based on the weighted
4 average method. (Sung Decl., ¶ 9.) Specifically, Plaintiff and Class Members sometime work on
5 prevailing wage jobs and Defendant calculated the regular rate based on the “rate-in-effect” method.
6 (*Ibid.*) While the law requires overtime on prevailing wage jobs to be paid at the prevailing wage
7 rate, Class Members sometimes work on prevailing wage jobs without any overtime worked while
8 working non-prevailing wage jobs with overtime in the same pay period. (*Ibid.*) In this situation,
9 Plaintiff contends that Defendant was obligated to pay overtime based on the weighted average
10 method but failed to do so and paid overtime based on the non-prevailing wage hourly rate only.
11 (*Ibid.*) Defendant contends that it properly utilized the rate-in-effect method when calculating the
12 overtime rate for dual-rate Class Members. (*Ibid.*) Specifically, Defendant argues that California
13 law does not mandate the use of the weighted average method, and where dual rate employees
14 received net greater overtime pay under the rate-in-effect method than they would have received
15 under the weighted average method, the rate-in-effect method may be used. (*Ibid.*; see *Levanoff v.*
16 *Dragas* (2021) 280 Cal.Rptr.3d 610, 614 (review denied and depublished on Sept. 29, 2021).)
17 Plaintiff estimated the maximum exposure for underpaid overtime to be approximately \$82,214.66.
18 (Sung Decl., ¶ 9.) Based on Defendant’s defenses and arguments, Plaintiff discounted Defendant’s
19 maximum exposure by 25% for the risk of non-certification, and an additional 40% to account for
20 Defendant’s defenses on the merits or failing to recover the full amount sought to arrive at an
21 estimated potential recovery for these claims of approximately \$36,996.60. (*Ibid.*)

22 Plaintiff alleges that due to Defendant’s rounding policy and operational needs, Class
23 Members’ meal and rest periods were frequently missed, late (commencing after the fifth hour of
24 work), and/or short (i.e., less than a full 30 minutes) and Defendant unlawfully rounded Class
25 Members’ meal period punches. (Sung Decl. ¶ 10; see *Donohue v. AMN Services, LLC* (2021) 11
26 Cal.5th 58, 61. Defendant counters that it has maintained compliant written meal and rest period
27 policies throughout the Class Period and has always provided compliant meal and rest periods in
28 line with those policies. (Sung Decl. ¶ 10.) Defendant further argues that any non-compliant meal or

1 rest periods resulted from lawful employee waiver or choice, rather than any systemic policy and/or
2 practice of Defendant. (*Ibid.*) Defendant maintains Plaintiff’s meal and rest period claims are not
3 suited for class certification since individual inquiries are needed to assess which employees, if any,
4 took non-compliant or missed meal or rest periods, how many were non-compliant, and the reasons
5 why a particular employee did not take a meal or rest period on a particular shift. (*Ibid.*)

6 Plaintiff estimated the maximum exposure for meal period violations to be approximately
7 \$82,214.66. (*Ibid.*) Based on Defendant’s defenses and arguments, Plaintiff discounted Defendant’s
8 maximum exposure by 25% for the risk of non-certification, and an additional 50% to account for
9 Defendant’s defenses on the merits or failing to recover the full amount sought to arrive at an
10 estimated potential recovery for these claims of approximately \$80,878.50. (*Ibid.*) Furthermore,
11 Plaintiff estimated the maximum exposure for rest period violations to be approximately \$118,346.
12 (*Ibid.*) Based on Defendant’s defenses and arguments, Plaintiff discounted Defendant’s maximum
13 exposure by 60% for the risk of non-certification, and an additional 50% to account for Defendant’s
14 defenses on the merits or failing to recover the full amount sought to arrive at an estimated potential
15 recovery for these claims of approximately \$23,669.20. (*Ibid.*)

16 As a result of the unpaid wages and unpaid meal and rest period premium wages described
17 above, Plaintiff contends that Defendant failed to comply with its final pay obligations set forth in
18 Labor Code §§ 201 to 203 to former employees and failed to issue accurate itemized wage
19 statements to Class Members as set forth in Labor Code § 226(a). (Sung Dec., ¶ 11.) Thus, the
20 claims for waiting time and wage statement penalties are derivative of the underlying unpaid wages
21 and meal/rest period claims. (*Ibid.*) Defendant argues that it possesses strong, good faith defenses to
22 Plaintiff’s underlying claims, thus precluding recovery of waiting time penalties, which are only
23 available for the “willful” failure to pay wages. (*Ibid.*) Defendant further argues any alleged wage
24 statement violations were not “knowing and intentional,” and Plaintiff cannot show the Class
25 “suffer[ed] injury” due to the alleged wage statement violations, as required by Labor Code §
26 226(e) for the imposition of penalties. (*Ibid.*; *Naranjo v. Spectrum Security Services, Inc.* (2024) 15
27 Cal.5th 1056, 1065.) Defendant further asserts that Plaintiff’s waiting time and wage statement
28 penalty exposure was grossly inflated as not every employee experienced the alleged Labor Code

1 violations. (Sung Decl., ¶ 11.) Furthermore, Plaintiff estimated the maximum exposure for waiting
2 time penalties to be approximately \$194,400 and for wage statement penalties to be approximately
3 \$60,450. (*Ibid.*) Based on Defendant's defenses and arguments, Plaintiff discounted Defendant's
4 maximum exposure for waiting time and wage statement penalties by 25% for the risk of non-
5 certification, and an additional 5060 to account for Defendant's defenses on the merits or failing to
6 recover the full amount sought to arrive at an estimated potential recovery for these claims of
7 approximately \$58,320 and \$18,135, respectively. (*Ibid.*)

8 As a result of the foregoing Labor Code violations, Plaintiff contends that Defendant is liable
9 for civil penalties under the PAGA. (Sung Decl., ¶ 12.) Since Plaintiff's PAGA claim is derivative
10 of Plaintiff's underlying wage claims, Defendant asserts the PAGA claim would fail with those
11 claims. *Ibid*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) ("Because the
12 underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant
13 further maintains that, given its good faith defenses, this Court would exercise its discretion to
14 substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's
15 claims. (Sung Decl., ¶ 12; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.*
16 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien*
17 *Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing
18 PAGA penalties by over 82% in part because employer "not aware" of violations); *Carrington v.*
19 *Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay
20 period where employer made "good faith attempts" to comply with the law).) Plaintiff estimated the
21 maximum exposure for PAGA penalties to be approximately \$120,900. (Sung Decl., ¶ 12.) Based
22 on Defendant's defenses and arguments, Plaintiff discounted Defendant's maximum exposure by
23 80% for the risk of losing on the merits and/or not recovering a PAGA penalty for each and every
24 pay period and to account for the possibility of this Court reducing penalties, to arrive at an
25 estimated exposure of approximately \$24,180. (*Ibid.*)

26 Using these estimated figures for each of the claims described above, Plaintiff predicted that
27 the potential realistic recovery for the Settlement Class would be approximately of \$256,141.11.
28 (Sung Decl., ¶ 13.) The proposed Settlement of \$200,000 represents approximately 78.08% of the

1 reasonably forecasted recovery for the Class and well within the reasonable range of settlement for
2 class/PAGA actions. While the Parties disagree on the application of the law to the facts, each Party
3 recognized in negotiations that, if taken to class certification and trial, the other Party would at least
4 have reasonable arguments, such that the Gross Settlement Amount to which the Parties ultimately
5 agreed was reasonable. (*Ibid.*)

6 **IV. THE REQUESTED ATTORNEYS' FEES AND COSTS SHOULD BE APPROVED**

7 **A. Class Counsel Seek a Percentage Fee Award Under Well-Established Case Law**

8 Class Counsel seeks a fee award \$66,666.67, calculated as one-third (33 1/3%) of the total
9 value of the Settlement for the successful prosecution and resolution of this Action. Under
10 California law, the award of attorneys' fees in common fund wage and hour class action settlements
11 should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016)
12 ("[W]hen class action litigation establishes a monetary fund for the benefit of the class members,
13 and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may
14 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
15 created.") Under the "percentage of the fund" method, the Court's objective remains to "mimic the
16 market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998)
17 ("When a fee is set by a court rather than by contract, the object is to set it at a level that will
18 approximate what the market will set. . . . The judge, in other words, is trying to mimic the market
19 in legal services.")

20 The California Supreme Court in *Laffitte* affirmed a fee award representing one-third (or 33
21 1/3%) of the fund. (*Laffitte*, 1 Cal. 5th at 506.) This was based on a lodestar amount that required a
22 multiplier of 2.13. (*Id.* at 487.) As the Court held, only when the multiplier is "extraordinarily high
23 or low [should] the trial court [] consider whether the percentage method should be adjusted so as to
24 bring the imputed multiplier within a justifiable range." *Id.* at 505. Moreover, the court observed
25 that "33 1/3 percent of the common fund is consistent with, and in the range of, awards in other
26 class action lawsuits." (*Laffitte v. Robert Half Int'l* (2014) 231 Cal.App. 4th 860, 871.) Here, the fee
27 award representing one-third of the fund clearly falls within that range and is consistent with other
28 comprehensive surveys of class action settlements and fee awards. (*See Fitzpatrick, An Empirical*

1 *Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010)
2 [analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards were between 25
3 percent and 35 percent, with almost no awards more than 35 percent.”]; Eisenberg & Miller,
4 *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg.
5 Stud. 248, 262, fn.16 (2010) [independent studies of class action litigation nationwide conclude that
6 fees representing one-third of the total recovery is consistent with market rates].) The results
7 delivered by Class Counsel supports the requested percentage of the fund as Class Counsel secured
8 a \$200,000 common fund settlement for 61 Class Members.

9 Furthermore, “the response of the class members to attorneys’ fee notice, though not
10 decisive, is relevant to the . . . reasonable determination” regarding fees. (*Swedish Hospital v.*
11 *Shalala* (D.C. Cir. 1993) 1 F.3d 1261, 1272.) A positive response rate tends to suggest that the
12 court’s “approximation of the market” for fees is well supported. (*Id.* at p. 1269.) Here, the Class
13 Notice specifically notified Class Members that Class Counsel would be seeking One-Third of the
14 settlement fund as attorney’s fees. To date, no Class Member has opted out or objected to the
15 settlement. This strong favorable response also supports the requested fees.

16 Finally, for Class Counsel, the fees here were wholly contingent in nature and the case
17 presented far more risk than the usual contingent fee case. Among the risks was the cost inherent in
18 class action litigation, as well as a potentially drawn-out battle with a defendant that has retained
19 premier defense counsel. Moreover, Class Counsel’s main theories of liability challenges
20 Defendant’s rounding practice and regular rate policy when Class Members worked prevailing
21 wage and non-prevailing wage jobs during the same workweek, and these claims present an “all or
22 nothing” proposition to Class Counsel, thereby significantly increasing the risks of litigation to
23 Class Counsel who are prosecuting this class action on a contingency fee basis.

24 **B. Class Counsel’s Lodestar Supports Granting the Attorney’s Fees Requested**

25 As a secondary backup support for the “percentage of the fund” method, courts have
26 discretion to “cross-check” the fees awarded through the lodestar method. However, the California
27 Supreme Court “emphasize[d] [that] the lodestar calculation, when used in this manner, does not
28 override the trial court’s primary determination of the fee as a percentage of the common fund and

1 thus does not impose an absolute maximum or minimum on the potential fee award.” (*Laffitte*, 1
2 Cal. 5th at 505.) The Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a
3 lodestar cross-check is extraordinarily high or low, the trial court should consider whether the
4 percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range,
5 but the court is not necessarily required to make such an adjustment.” (*Ibid.* [emphasis added].)
6 Indeed, cross-checks are not required; in many cases, performing a cross-check “undermines” one
7 of the primary reasons for using the percentage method: aligning counsel’s incentives with the
8 benefits delivered to the class and discouraging protracted litigation. (*Id.* at 506 [finding trial courts
9 “retain the discretion to forgo a lodestar cross-check”].)

10 Class Counsel’s lodestar is more than the fees being sought. To date, 136.3 hours have been
11 expended by Class Counsel in this case. (Sung Decl. at ¶ 22, Ex. 3; Luu Decl. ¶ 8, Ex. 1.) Moreover,
12 Class Counsel expects to incur approximately 20 additional hours of attorney time in finalizing this
13 Settlement. (Sung Decl. at ¶ 22, Ex. 3; Luu Decl. ¶ 8, Ex. 1.) Class Counsel request an hourly rate
14 of \$800 per hour for William Sung and \$450 per hour for Tiffany Luu, which have been previously
15 approved on final approval of class and PAGA action settlement and are reasonable in light of their
16 respective skills, wage and hour class action litigation experience, reputation, and fee awards to
17 other attorneys of similar experience in California. (Sung Decl. at ¶ 21; Luu Decl. ¶¶ 2-7.)

18 Furthermore, courts are quite liberal in the evidence required to prove an attorney’s hours.
19 Detailed time records are not required. An attorney’s testimony alone may suffice: “Testimony of
20 an attorney as to the number of hours worked on a particular case is sufficient evidence to support
21 an award of attorney fees, even in the absence of detailed time records.” (*Martino v. Denevi* (1986)
22 182 Cal. App. 3d 553, 559.) Reasonable hours include, in addition to time spent during litigation,
23 the time spent before the action is filed, including time spent interviewing the clients, investigating
24 the facts and the law, and preparing the initial pleadings. (*New York Gaslight Club, Inc. v. Carey*
25 (1980) 447 U.S. 54, 62.) Further, the fee award should include fees incurred to establish and defend
26 the attorneys’ fee claim. (*Serrano v. Unruh* (1982) 32 Cal. 3d 621, 639.) Thus, Class Counsel
27 requests that the court find that these hours were reasonable in this litigation.

28 ///

1 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
2 experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,
3 1095.) The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the
4 attorney's skill and experience, the nature of the work performed, the relevant area of expertise and
5 the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61
6 Cal.App.4th 629, 632-633.) Here, Class Counsel's skill and experience justify the requested rate. As
7 shown in the supporting declarations, Class Counsel's practice focuses on representing employees
8 in employment matters, particularly wage and hour cases and have been previously certified as class
9 counsel by other courts. (Sung Decl., ¶¶ 15-21, Ex. 2; Luu Decl. ¶¶ 2-7.)

10 Based on the hours and applicable rate, the total lodestar to be expended by Class Counsel
11 through finalizing this settlement will be approximately \$105,720, which is a **negative 0.63**
12 **lodestar multiplier** to the requested fee award of \$66,666.67. The California Supreme Court found
13 that "2 to 4" is a reasonable range for multipliers on a cross-check. (*Laffitte*, 231 Cal. App. 4th at
14 881-82.) Thus, Plaintiff's negative 0.63 multiplier further supports Plaintiff's request for one-third
15 of the common fund. As such, the requested fee award is fair and reasonable and should be awarded
16 in its entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to
17 ensure the successful litigation of this action on behalf of all Class Members. Thus, Class Counsel's
18 request for attorneys' fees in the amount of \$66,666.67 is fair, reasonable, and adequate.

19 **V. THE COURT SHOULD APPROVE THE REQUEST FOR COSTS**

20 In addition to Class Counsel's lodestar, Class Counsel has also expended \$10,446.24 in
21 litigation related costs, which have been detailed in the supporting declaration of Class Counsel.
22 (Sung Decl. ¶ 23, Ex. 4.) Pursuant to the Agreement, Class Counsel may seek reimbursement of
23 costs up to \$12,000, (Agreement at ¶ 3.2.2), and the requests costs are substantially less than the
24 agreed upon \$12,000. Thus, the cost request should be approved.

25 **VI. THE ADMINISTRATOR'S FEES AND COSTS SHOULD BE APPROVED**

26 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Administrator,
27 are to be paid out of the common fund. As shown on the Admin Declaration, the settlement
28 administration fees are based on a flat-sum amount of \$4,500. (Admin Decl. ¶ 15, Ex. B.) To date,

1 the Administrator has spent time (i) preparing, printing, and mailing the Notice Packet, including
2 updating mailing addresses utilizing the National Change of Address Database; (ii) responding to
3 inquiries from Class Members; (iii) calculating the number of weeks each Class Member worked
4 during the Class Period and PAGA Period; (iv) calculating the estimated Net Settlement Amount
5 and Individual Class and PAGA Settlement Payments to Class Members and Aggrieved Employees.
6 (*Id.* at ¶¶ 2-5.) After the final approval, the Administrator will continue with the calculation of the
7 settlement checks, issuance and mailing of those settlement checks, distribution of payments, and
8 preparation of the necessary tax reporting on such payments. (*Id.* at ¶ 2.) The Administrator will
9 post a copy of the Order and Judgment of Final Approval of Class Action Settlement on its website
10 and provide a compliance report and declaration regarding the total amount of uncashed checks and
11 further distribute the uncashed funds consistent with the Settlement Agreement. (Agreement,
12 ¶¶ 4.4.3; 7.4.2, 7.8.8; [Proposed] Order and Judgment of Final Approval of Class Action
13 Settlement.) All of these duties are included in the agreed-upon flat fee of \$4,500. Thus, the
14 Administrator's fees should be approved.

15 **VII. LWDA HAS BEEN PROVIDED WITH NOTICE OF THIS HEARING**

16 Plaintiff gave notice to the LWDA by uploading a copy of the Order Granting Preliminary
17 Approval of Class Action Settlement and this Motion and Proposed Order. (Sung Decl. ¶ 24, Ex. 5.)

18 **VIII. CONCLUSION**

19 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiff
20 respectfully submits that the standards for final approval have been met, and the terms of the
21 Settlement Agreement are fair, adequate and reasonable.

22 Accordingly, Plaintiff respectfully requests that the Court enter an Order in the form
23 proposed and submitted:

- 24 1. Granting final approval to the proposed Settlement;
- 25 2. Approving distribution of the settlement funds to the Class Members pursuant to the
26 terms of the Settlement Agreement;
- 27 3. Approving attorney's fees award in the amount of \$66,666.67 to Justice for Workers,
28 P.C.;

- 1 4. Approving attorney’s costs award in the amount of \$10,446.24 to Class Counsel;
- 2 5. Approving Plaintiff’s request for payment of the settlement administration costs to
- 3 the Administrator in the amount of \$4,500;
- 4 6. Approving that the funds from any checks returned as undeliverable, and any checks
- 5 not negotiated within 180 days, shall be transmitted to the California State Controller’s office in the
- 6 name of the Class Member.
- 7 7. Setting a non-appearance compliance hearing on or after February 6, 2026 with a
- 8 deadline to file a compliance declaration seven days prior to the Compliance Hearing; and
- 9 8. Entering Final Judgment as to all members of the Class and Aggrieved Employees.

10

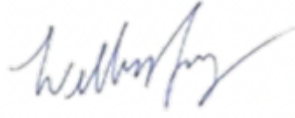
11 DATED: January 31, 2025

Respectfully submitted,

12 **JUSTICE FOR WORKERS, P.C.**

13

14

15 By: 

16 William C. Sung

Tiffany L. Luu

17 Attorneys for Plaintiff JUAN HINOJOS CAMPOS

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