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16 on behalf of all others similarly situated

17
18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE
20

21 ALBERT RUDY GARCIA, an individual, on
22 behalf of himself and all others similarly
23 situated,

24 Plaintiff,

25 vs.

26 SKYLINE SOLAR, LLC, a Nevada limited
27 liability company; and DOES 1 through 50,
28 inclusive,

Defendants.

CASE NO.: 24STCV06118

[Assigned for all purposes to the Hon.
Theresa M. Traber, Dept. SSC-1]

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

Date: January 26, 2027
Time: 10:30 a.m.
Dept.: SSC-1

Action Filed: March 11, 2024
Trial Date: None set

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

2 PLEASE TAKE NOTICE that on January 26, 2027, at 10:30 a.m., or as soon thereafter as
3 this matter may be heard, in Department SSC-1 of the Los Angeles County Superior Court,
4 Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, California 90012,
5 Plaintiff Albert Rudy Garcia ("Plaintiff") will, and hereby does, move this Court for entry of an
6 order, pursuant to rules 3.766 and 3.769 of the California Rules of Court and Code of Civil
7 Procedure section 382, as follows:

8 1. Granting preliminary approval of the Class Action and PAGA Settlement
9 Agreement and Amendment to Class Action and PAGA Settlement Agreement (collectively,
10 "Settlement" or "Settlement Agreement");

11 2. Provisionally certifying the following Class for settlement purposes only:

12 All current and former non-exempt employees of Defendant
13 Skyline Solar, LLC in the State of California at any time during
March 11, 2020 through April 4, 2026.

14 3. Appointing Plaintiff Albert Rudy Garcia as the Class Representative;

15 4. Appointing Matern Law Group, PC as Class Counsel;

16 5. Appointing Xpand Legal Consulting LLC as the Administrator;

17 6. Approving the proposed Court Approved Notice of Class Action and PAGA
18 Settlement and Hearing Date for Final Court Approval ("Class Notice"); and

19 7. Scheduling a Final Approval Hearing.

20 Good cause exists to grant this motion as the proposed Settlement is fair, adequate, and
21 reasonable. Additionally, the proposed Class Notice process complies with rules 3.766 and 3.769
22 of the California Rules of Court, and mailing (via regular First-Class U.S. mail) the Class Notice
23 to the Class Members' last known mailing addresses is an appropriate form of giving notice.
24 Provisional certification of the Class is appropriate because the proposed Class is ascertainable,
25 common questions of law and fact predominate over any individualized questions, Plaintiff's
26 claims are typical of those of Class Members, Plaintiff and his counsel have adequately
27 represented, and will continue to adequately represent, the Class, and proceeding as a class action
28 is a superior means of resolving this dispute.

1 This motion is based upon this notice, the attached Memorandum of Points and
2 Authorities, the accompanying Declaration of Matthew W. Gordon, Declaration of Plaintiff
3 Albert Rudy Garcia, and Declaration of Jonathan Paul of Xpand Legal Consulting LLC, and
4 exhibits thereto, the complete files and records of this case, and any other evidence or oral
5 argument which may be considered by the Court at the time of the hearing.

6 DATED: September 24, 2026

Respectfully submitted,

8 MATERN LAW GROUP, PC

9
10 By: Erin Hutchins
11 MATTHEW J. MATERN
12 MATTHEW W. GORDON
13 ERIN R. HUTCHINS
Attorneys for Plaintiff
ALBERT RUDY GARCIA, individually,
and on behalf of all others similarly situated

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Albert Rudy Garcia (“Plaintiff”) reached a settlement with Defendant Skyline
4 Solar, LLC (“Defendant”) of Plaintiff’s wage and hour claims. Those claims are based on, among
5 other things, Defendant’s alleged failure to provide legally compliant meal periods, rest periods,
6 overtime wages, minimum wages, and wage statements. Plaintiff now seeks preliminary approval
7 of the proposed Class Action and PAGA Settlement Agreement (“Settlement Agreement”) and
8 Amendment to Class Action and PAGA Settlement Agreement (“Amendment”) (the Settlement
9 Agreement and Amendment are collectively referred to as the “Settlement”).¹

10 In exchange for a release of claims, Defendant has agreed to an all-inclusive, non-
11 reversionary settlement of \$175,000. A presumption of fairness exists as the proposed Settlement
12 was reached through extensive, arm’s-length negotiations with the assistance of an experienced
13 mediator, sufficient investigation and formal discovery were conducted to allow Plaintiff’s
14 counsel to act intelligently, and Plaintiff’s counsel has extensive experience in similar wage-and-
15 hour class and representative action litigation.

16 Preliminary approval is appropriate because the proposed Settlement is within the
17 “ballpark” of reasonableness and is fair, adequate, and reasonable to the Class Members, the State
18 of California, and the Aggrieved Employees. The estimated average gross payment per Class
19 Member is approximately **\$246**, and the estimated average Individual PAGA Payment is **\$6.65**.

20 Provisional certification of the Class for settlement purposes is appropriate because the
21 proposed Class is ascertainable and sufficiently numerous (208 individuals as of February 3,
22 2026), common questions of law and fact predominate over any individualized questions,
23 Plaintiff’s claims are typical of those of the Class Members, Plaintiff and his counsel have
24 adequately represented, and will continue to adequately represent, the Class, and proceeding as a
25 class action is a superior means of resolving this dispute. Accordingly, Plaintiff requests that the
26 Court grant this motion.

27 _____
28 ¹ The proposed Settlement Agreement and the Amendment are attached as Exhibit 2 and
Exhibit 3, respectively, to the Declaration of Matthew W. Gordon.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

Defendant does business as Skyline Smart Energy and provides and installs solar panels to homeowners and businesses throughout California and Texas. Declaration of Matthew W. Gordon (“Gordon Decl.”) ¶ 5.

Plaintiff worked for Defendant in California as an Installation Foreman from in or around April 2023 to in or around July 2023. Declaration of Albert Rudy Garcia (“Garcia Decl.”) ¶ 3; Gordon Decl. ¶ 6.

B. Procedural History

Pursuant to Labor Code § 2699.3, on August 25, 2023, Plaintiff gave written notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Gordon Decl. ¶ 8. The LWDA did not provide notice that it intended to investigate the alleged violations. *Id.* Accordingly, on March 11, 2024, Plaintiff filed a class and representative complaint with the following causes of action: (1) Failure to Provide Meal Periods; (2) Failure to Provide Required Rest Periods; (3) Failure to Pay Overtime Wages; (4) Failure to Pay Minimum Wages; (5) Failure to Pay All Wages Due to Discharged and Quitting Employees; (6) Failure to Furnish Accurate Itemized Wage Statements; (7) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties; (8) Unfair and Unlawful Business Practices; and (9) Penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”). *Id.* ¶ 9.

C. Investigation and Discovery

Prior to filing the Action, Plaintiff’s counsel interviewed Plaintiff, investigated Plaintiff’s claims, and conducted legal research regarding Plaintiff’s claims and Defendant’s anticipated defenses. *Id.* ¶ 10.

Prior to mediation, Plaintiff’s counsel obtained relevant written employment policy documents in effect during the Class Period and PAGA Period as well as a random sample of time and payroll records from October 11, 2021 through January 29, 2025. *Id.* ¶ 11. While the

1 Class Period begins on March 11, 2020, Defendant began its operations in October 2021, so there
2 are no class members prior to October 2021. *Id.* The time and payroll data contained records for
3 29 employees and 3,283 shifts. *Id.*

4 Plaintiff retained an expert in data analysis to conduct an analysis of the time and payroll
5 data and to create a damages and penalties model for the mediation, which allowed Plaintiff's
6 counsel to act intelligently and effectively in negotiating the proposed Settlement. *Id.* ¶ 12.

7 **D. Settlement Negotiations**

8 On February 24, 2025, the Parties attended mediation with a well-respected and
9 experienced mediator, Todd A. Smith, Esq. *Id.* ¶ 13. The mediation was not successful because
10 Defendant raised financial issues during the mediation. *Id.* In order to facilitate further
11 meaningful settlement negotiations, Defendant provided Plaintiff with certain confidential
12 financial information subject to a confidentiality agreement on February 28, 2025. *Id.* ¶ 14. After
13 Plaintiff's forensic accountant reviewed Defendant's financial information, Plaintiff requested
14 additional financial information on March 7, 2025, which Defendant provided to Plaintiff on
15 March 27, 2025. *Id.* The Parties attended a call between Plaintiff's forensic accountant and
16 Defendant's CFO on July 17, 2025. *Id.* ¶ 15. Plaintiff requested further financial documents from
17 Defendant, which Defendant provided and Plaintiff's forensic accountant analyzed. *Id.* Following
18 Plaintiff's forensic accountant's review of the additional financial documents, the Parties
19 reengaged the mediator. *Id.* ¶ 16.

20 On February 3, 2026, the Parties settled the case by accepting a mediator's proposal,
21 subject to entering into a long-form settlement agreement. *Id.* ¶ 17. On July 22, 2026, the Parties
22 fully executed the Settlement Agreement. *Id.* ¶ 18, Exh. B. On September 23, 2026, the Parties
23 fully executed the Amendment because paragraph 4.3.5 regarding uncashed Individual PAGA
24 Payment checks was erroneously excluded from the Settlement Agreement and paragraphs 1.37,
25 1.38, 7.5.3, and 7.5.4 erroneously referenced the wrong paragraph number for the Released Class
26 Claims or the Released PAGA Claims in the Settlement Agreement. *Id.* ¶ 19, Exh. C.

27 On September 24, 2026, Plaintiff submitted copies of the Settlement Agreement and
28 Amendment to the LWDA. *Id.* ¶ 20, Exh. D.

1 The settlement discussions were hard-fought, conducted at arm's length and not collusive
2 as demonstrated by the fact that the Parties, through their experienced counsel, worked with an
3 objective and experienced mediator and were fully informed of the relative strengths of the claims
4 and the defenses thereto. *Id.* ¶ 21. The Settlement is the result of an informed analysis of
5 Defendant's potential liability exposure in relation to the costs and risks associated with
6 continued litigation. *Id.* The Parties went into the mediation willing to explore the potential for a
7 settlement of the lawsuit, but Plaintiff was also prepared to litigate his position through trial and
8 appeal if a settlement was not reached. *Id.*

9 **III. SUMMARY OF SETTLEMENT**

10 **A. The Class Members and the Aggrieved Employees**

11 There are approximately 208 Class Members who worked 7,865 Workweeks from March
12 11, 2020 to February 3, 2026.² Settlement Agreement ¶¶ 1.12, 8. The proposed Class is defined
13 as:

14 All current and former non-exempt employees of Defendant
15 Skyline Solar, LLC in the State of California at any time during
16 between March 11, 2020 to April 4, 2026.

17 Settlement Agreement ¶¶ 1.5, 1.12, 1.16.

18 "Aggrieved Employees" mean all current and former non-exempt employees of Defendant
19 in the State of California at any time during the PAGA Period, which is defined as the period
20 between January 5, 2023 to April 4, 2026. *Id.* ¶¶ 1.4, 1.30. There are approximately 188
21 Aggrieved Employees who worked 3,549 PAGA Pay Periods from January 5, 2023 to February 3,
22 2026. *Id.* ¶¶ 1.30, 8.

23 **B. Settlement Terms**

24 Defendant has agreed to pay a non-reversionary Gross Settlement Amount ("GSA") of
25 \$175,000, which includes the Individual Class Payments, the Individual PAGA Payments, the
26 LWDA PAGA Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses

27 ² Before the hearing date, Plaintiff's counsel anticipates filing a supplemental declaration
28 with the updated number of Class Members and Workweeks through the end of the Class Period
(April 4, 2026) and the updated number of Aggrieved Employees and PAGA Pay Periods through
the end of the PAGA Period (April 4, 2026).

1 Payment, the Class Representative Service Payment, and the Administration Expenses Payment.
2 Settlement Agreement ¶¶ 1.21, 3.1. The employer's share of applicable payroll tax payments will
3 be paid separately from and in addition to the GSA. *Id.* ¶ 3.1.

4 Defendant shall fully fund the GSA, and also fund the amounts necessary to fully pay
5 Defendant's share of payroll taxes, by transmitting fifty percent (50%) of the funds to the
6 Administrator within 14 days of the Effective Date and the remaining fifty percent (50%) of the
7 funds to the Administrator no later than six (6) months after the Effective Date. *Id.* ¶ 4.2. Within
8 14 days after Defendant fully funds the GSA, the Administrator will mail checks or transmit funds
9 for the Individual Class Payments, the Individual PAGA Payments, the LWDA PAGA Payment,
10 the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
11 Litigation Expenses Payments, and the Class Representative Service Payment. *Id.* ¶ 4.3.

12 The "Net Settlement Amount" means the portion of the GSA remaining after deducting
13 the Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service
14 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the
15 Administration Expenses Payment. *Id.* ¶ 1.27. The Net Settlement Amount is to be paid to
16 Participating Class Members as Individual Class Payments, and there will be no reversion to
17 Defendant. *Id.* ¶¶ 1.27, 3.1.

18 The GSA will be allocated as follows, subject to Court approval:

19 1. Individual Class Payments. Individual Class Payments are the Participating Class
20 Members' pro rata share of the Net Settlement Amount calculated according to the number of
21 Workweeks worked during the Class Period. *Id.* ¶ 1.22. Individual Class Payments will be
22 allocated as follows: 20% as wages and 80% as penalties and interest. *Id.* ¶ 3.2.4.1. Each
23 Individual Class Payment will be calculated by: (a) dividing the Net Settlement Amount by the
24 total number of Workweeks worked by all Participating Class Members during the Class Period
25 and (b) multiplying the result by each Participating Class Member's number of Workweeks. *Id.* ¶
26 3.2.4.

27 2. Class Representative Service Payment. Subject to Court approval, in addition to
28 his Individual Class Payment and Individual PAGA Payment, Plaintiff will be paid a Class

1 Representative Service Payment not to exceed \$7,500, for his time, effort, and risks undertaken in
2 bringing and prosecuting the Action and for his general release of all claims, including a waiver
3 of rights under Civil Code section 1542. Settlement Agreement ¶¶ 3.2.1, 5.1, 5.2; Gordon Decl. ¶¶
4 33-39.

5 3. Class Counsel Fees Payment. Class Counsel shall be entitled to receive reasonable
6 attorney's fees in an amount not to exceed one-third of the GSA, for a total of \$58,333.33.
7 Settlement Agreement ¶ 3.2.2.

8 4. Class Counsel Litigation Expenses Payment. Class Counsel shall be entitled to
9 reimbursement for their litigation expenses in an amount not to exceed \$45,000. *Id.* ¶ 3.2.2.

10 5. Administration Expenses Payment. The Parties have chosen Xpand Legal
11 Consulting LLC ("Xpand") to administer the proposed Settlement. *Id.* ¶ 7.1. Xpand will receive
12 no more than \$8,000 for its services. *Id.* ¶ 3.2.3. This amount is reasonable given the size of the
13 Class and the scope of the Administrator's duties. Gordon Decl. ¶ 51. There is no conflict of
14 interest between Plaintiff's counsel and Xpand. *Id.*

15 6. PAGA Penalties. The Parties have allocated \$5,000 from the GSA to PAGA
16 Penalties, of which 75% (\$3,750) will be allocated to the LWDA PAGA Payment and the
17 remaining 25% (\$1,250) will be allocated to the Individual PAGA Payments. Settlement
18 Agreement ¶ 3.2.5. The Administrator will calculate Individual PAGA Payments by (a) dividing
19 \$1,250 by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the
20 PAGA Period and (b) multiplying the result by each Aggrieved Employee's number of PAGA
21 Pay Periods. *Id.* ¶ 3.2.5.1.

22 For any Class Member whose Individual Class Payment check is uncashed and
23 cancelled after the void date, the Administrator shall transmit the funds represented by such check
24 to the California State Controller's Office of Unclaimed Property in the name and the amount of
25 the Class Member who did not cash their check, thereby leaving no "unpaid residue" subject to
26 the requirements of Code of Civil Procedure section 384, subdivision (b). *Id.* ¶ 4.3.3. For any
27 Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the
28 void date, the Administrator shall transmit the funds represented by such check to the California

1 Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Amendment ¶
2 4.3.5.

3 **C. The Releases**

4 Effective upon the date that Defendant fully funds the entire GSA, all Participating Class
5 Members will release the following Released Class Claims against the Released Parties:

6 [A]ll claims that were alleged, or reasonably could have been
7 alleged, based on the facts and allegations in the Operative
8 Complaint that are alleged to have occurred during the Class
9 Period, including but not limited to claims for failure to pay
10 minimum wages, failure to pay overtime wages, failure to provide
11 meal periods, failure to provide rest periods, failure to reimburse
12 business expenses, failure to provide accurate wage statements,
13 failure to timely pay wages at termination, and violations of
California Business and Professions Code section 17200, et seq.
Except as set forth in Section 5.3 of this Agreement, Participating
Class Members do not release any other claims, including claims
for vested benefits, wrongful termination, violation of the Fair
Employment and Housing Act, unemployment insurance,
disability, social security, or workers' compensation or claims
based on events occurring outside the Class Period.

14 Settlement Agreement ¶ 5.3; Amendment ¶ 1.37.

15 The Released PAGA Claims include "all claims for PAGA Penalties that were alleged, or
16 reasonably could have been alleged, based on the facts and allegations in the Operative Complaint
17 and the PAGA Notice that are alleged to have occurred during the PAGA Period, including but
18 not limited to claims for failure to pay minimum wages, failure to pay overtime wages, failure to
19 provide meal periods, failure to provide rest periods, failure to reimburse business expenses,
20 failure to provide accurate wage statements, and failure to timely pay wages at termination." *Id.* ¶
21 5.4.

22 In addition, Plaintiff agrees to a general release of all claims against the Released Parties
23 and a waiver of the rights under Civil Code § 1542. *Id.* ¶¶ 5.1, 5.2.

24 **D. Notice and Settlement Administration**

25 Not later than 15 days after the Court grants Preliminary Approval, Defendant will deliver
26 the Class Data to the Administrator, identifying each Class Member's name, last-known mailing
27 address, Social Security number, and number of Class Period Workweeks and PAGA Pay
28 Periods. *Id.* ¶¶ 1.8, 7.4.1.

1 No later than 14 days after receiving the Class Data, the Administrator will send the Class
2 Notice via first-class US mail to all Class Members identified in the Class Data. *Id.* ¶ 7.4.2.
3 Before mailing the Class Notice, the Administrator shall update Class Member addresses using
4 the National Change of Address database. *Id.* Not later than three (3) business days after the
5 Administrator's receipt of any Class Notice returned by the USPS as undelivered, the
6 Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.
7 *Id.* ¶ 7.4.3. If the USPS does not provide a forwarding address, the Administrator shall conduct a
8 Class Member Address Search and re-mail the Class Notice to the most current address obtained.
9 *Id.*

10 Class Members will have 60 calendar days after the Administrator mails the Class Notice
11 to request exclusion from the Settlement, object to the Settlement, or challenge their number of
12 Workweeks ("Response Deadline"). *Id.* ¶ 1.41. For those Class Members whose Class Notice is
13 re-mailed, the deadline will be extended an additional 14 calendar days beyond the Response
14 Deadline to take any of those actions. *Id.* ¶ 7.4.4.

15 A Participating Class Member may object to the proposed Settlement by mailing, faxing,
16 or e-mailing written objections to the Administrator on or before the Response Deadline or
17 extended deadline. *Id.* ¶¶ 7.4.4, 7.7.2. Alternatively, a Participating Class Member can object
18 orally (or hire an attorney to appear in Court) at the Final Approval Hearing. *Id.* ¶ 7.7.2.

19 A Class Member may opt out of the proposed Settlement by sending the Administrator,
20 by fax, e-mail, or mail, a signed written Request for Exclusion by the Response Deadline or
21 extended deadline, requesting to be excluded from the Settlement. *Id.* ¶¶ 7.4.4, 7.5.1. Because
22 future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
23 Participating Class Members who are Aggrieved Employees are deemed to release the Released
24 PAGA Claims and are eligible for an Individual PAGA Payment. Amendment ¶ 7.5.4.

25 Participating Class Members may challenge the number of Workweeks allocated to them
26 by informing the Administrator via fax, e-mail or mail by the Response Deadline or extended
27 deadline. Settlement Agreement ¶¶ 7.4.4, 7.6.

28 ///

1 **IV. ARGUMENT**

2 **A. The Court Should Provisionally Certify the Class for Settlement Purposes**

3 Code of Civil Procedure section 382 provides that three basic requirements must be met in
4 order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-
5 defined community of interest in the question of law or fact affecting the parties to be
6 represented; and (3) certification will provide substantial benefits to litigants and the courts, i.e.,
7 proceeding as a class is superior to other methods. *Fireside Bank v. Superior Court* (2007) 40
8 Cal.4th 1069, 1089; *see also Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319,
9 326. Courts utilize a less stringent standard for class certification during settlement. *Global*
10 *Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859. The reason: “no
11 trial is anticipated in a settlement class case, so the case management issues inherent in the
12 ascertainable class determination need not be confronted.” *Id.*; *see also Amchem Prods, Inc. v.*
13 *Windsor* (1997) 521 U.S. 591, 620.

14 **1. The Settlement Class Is Ascertainable and Sufficiently Numerous**

15 To determine whether a class is ascertainable, courts look at: (1) the class definition; (2)
16 the size of the class; and (3) the means available for identifying class members. *Reyes v. Board of*
17 *Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263, 1271. A class is ascertainable
18 where it is “defined in terms of ‘objective characteristics and common transactional facts.’”
19 *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531-32; *see also Sevidal v.*
20 *Target Corp.* (2010) 189 Cal.App.4th 905, 919.

21 Here, the Settlement Class is defined based on objective criteria, as it includes all of
22 Defendant’s current and former nonexempt employees in California at any time during the Class
23 Period from March 11, 2020 through April 4, 2026. Settlement Agreement ¶¶ 1.5, 1.12.

24 Class members are ascertainable where “they may be readily identified without
25 unreasonable expense or time by reference to official [or business] records.” *Sevidal*, 189
26 Cal.App.4th at 919. Here, the identity of Class Members may be easily ascertained from
27 Defendant’s personnel records. Gordon Decl. ¶ 7.

28 The Class is also sufficiently numerous. In California, no set number is required as a

1 matter of law for the maintenance of a class action. *Rose v. City of Hayward* (1981) 126
2 Cal.App.3d 926, 934 (finding that class of 42 was sufficiently numerous). The Class consists of
3 208 individuals through February 3, 2026. Gordon Decl. ¶ 7. Thus, the Class is ascertainable and
4 the numerosity requirement is satisfied.

5 **2. The Settlement Class Shares a Well-Defined Community of Interest**

6 The community of interest requirement embodies three factors: (1) predominant questions
7 of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
8 representatives who can adequately represent the class. *Dunk v. Ford Motor Co.* (1996) 48
9 Cal.App.4th 1794, 1806; *Richmond v. Dart Indus. Inc.* (1981) 29 Cal.3d 462, 473-475. In this
10 case, all three factors are met.

11 **a. Common Issues of Law and Fact Predominate**

12 The commonality criterion requires the existence of a common question of law or fact and
13 is generally established with the issues of predominance and typicality. *Daar v. Yellow Cab Co.*
14 (1967) 67 Cal.2d 695, 713-14. All that is required is a common question of fact or law exists
15 which predominates over issues unique to an individual plaintiff. The existence of individual
16 issues or facts is not a bar to class certification as long as they do not render class litigation
17 unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v. Owens-*
18 *Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1354 (“presence of individual damages issues cannot
19 bar certification”).

20 Here, Plaintiff’s claims present common issues of law and fact that predominate over
21 individual issues and thus warrant class certification. Among other allegations, Plaintiff contends
22 that Defendant failed to provide meal and rest periods. Gordon Decl. ¶¶ 9, 22. Plaintiff further
23 alleges that Defendant failed to pay overtime and minimum wages, failed to pay all wages due to
24 discharged and quitting employees, failed to furnish accurate itemized wage statements, failed to
25 indemnify employees for necessary expenditures incurred in discharge of duties, unfair and
26 unlawful business practices, and penalties under PAGA. *Id.* Plaintiff contends that these alleged
27 violations were the result of common policies and practices implemented by Defendant that were
28 uniform as to all of its non-exempt employees in California. *Id.* Thus, class treatment is

appropriate.

b. *Plaintiff's Claims Are Typical of the Claims of the Class*

To satisfy the typicality requirement, California law does not require that plaintiffs have claims 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. *Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502. 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. *Id.* Here, as Plaintiff's and the Class Members' claims are based on the same legal theories, and arise out of the same unlawful policies and practices, the typicality requirement is satisfied. Gordon Decl. ¶ 32; Garcia Decl. ¶ 6.

c. *Plaintiff and Counsel Will Fairly and Adequately Represent the Class*

The question of adequacy of representation "depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of the class." *McGee v. Bank of Am.* (1976) 60 Cal.App.3d 422, 450. Here, Plaintiff's counsel are well-regarded and accomplished attorneys who are qualified and experienced in wage-and-hour class action litigation. *See* Gordon Decl. ¶¶ 40-47. Furthermore, because Plaintiff's claims are typical of those of the other Class Members and are not based on unique circumstances that might jeopardize the claims of the Class, there is no conflict of interest between Plaintiff and the other Class Members. Gordon Decl. ¶ 32; Garcia Decl. ¶¶ 6, 13. Plaintiff will make an adequate Class Representative based on his commitment to the Action and the time, effort, risks, and waiver of rights he has undertaken. Gordon Decl. ¶¶ 32-39; Garcia Decl. ¶¶ 4-15.

3. *Proceeding as a Class Action Is Superior to Individual Actions*

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

1 and the imposition of civil penalties would serve as the only means to deter and redress the
2 alleged Labor Code violations. *See Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434 (relevant
3 considerations include the probability that each class member will come forward ultimately to
4 prove his or her separate claim to a portion of the total recovery and whether the class approach
5 would actually serve to deter and redress the alleged wrongdoing). Furthermore, individual
6 actions arising out of the same operative facts would unduly burden the courts and could produce
7 inconsistent results, which may be avoided by proceedings on a classwide basis.

8 **B. The Court Should Grant Preliminary Approval of the Proposed Settlement**

9 Review of a proposed class action settlement is a two-step process. The first step is a
10 preliminary hearing to determine whether the proposed settlement is “within the range of possible
11 approval” and whether notice to the class of the settlement terms and scheduling of a final
12 fairness hearing should be approved. *Armstrong v. Bd. of Sch. Directors of City of Milwaukee* (7th
13 Cir. 1980) 616 F.2d 305, 314, overruled on other grounds by *Felzen v. Andreas* (7th Cir. 1998)
14 134 F.3d 873; *Wershba v. Apple Computer Inc.* (2001) 91 Cal.App.4th 224, 234-35, disapproved
15 on other grounds in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269. To
16 determine whether a class settlement is fair, adequate, and reasonable a court must be provided
17 with basic information about the nature and magnitude of the claims in question and the basis for
18 concluding that the consideration being paid for the release of those claims represents a
19 reasonable compromise. *Clark v. Am. Residential Svcs. LLC* (2009) 175 Cal.App.4th 785, 790,
20 802-03. The trial court must exercise its discretion through the application of several well-
21 recognized factors when deciding whether a class action settlement is fair. *Id.*

22 The list of factors, which “is not exhaustive and should be tailored to each case,” includes
23 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
24 litigation, the risk of maintaining class action status through trial, the amount offered in
25 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
26 views of counsel, the presence of a governmental participant, and the reaction of the class
27 members to the proposed settlement.” *Kullar v. Foot Locker Retail Inc.* (2008) 168 Cal.App.4th
28 116, 128 (quoting *Dunk*, 48 Cal.App.4th at 1801). The most important factor the trial court should

1 consider in determining whether to approve a class action settlement is the strength of the case on
2 the merits balanced against the amount offered in settlement. *Munoz v. BCI Coca Cola Bottling*
3 *Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408; *Kullar*, 168 Cal.App.4th at 130. In order to
4 approve a class action settlement, the court must satisfy itself that the class settlement is within
5 the “ballpark” of reasonableness. *Kullar*, 168 Cal.App.4th at 133.

6 Here, the proposed Settlement merits preliminary approval as it is supported by
7 experienced counsel, it was preceded by informal discovery and investigation, it was reached with
8 the assistance of an experienced mediator, it extinguishes the risks of continued litigation, it
9 provides significant financial recovery to Participating Class Members, and provides a fair,
10 adequate and reasonable distribution of settlement proceeds to Participating Class Members that
11 is in their best interests. *See* Gordon Decl. ¶¶ 10-17, 28-31, 40-47.

12 **1. The Proposed Settlement Is Entitled to a Presumption of Fairness**

13 A presumption of fairness exists where: (1) the settlement is reached through arm’s-length
14 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
15 intelligently; (3) counsel are experienced in similar litigation; and (4) the percentage of objectors
16 is small. *Dunk*, 48 Cal.App.4th at 1806; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706,
17 723; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
18 1146. Based on the arm’s-length negotiations, the extensive investigation and discovery that
19 allowed Plaintiff’s counsel to act intelligently, and the fact that Plaintiff’s counsel are experienced
20 in wage-and-hour class actions, the proposed Settlement is entitled to a presumption of fairness.³

21 **a. The Proposed Settlement Was Reached through Arm’s-Length** 22 **Bargaining**

23 Here, the proposed Settlement is the product of hard-fought and arm’s-length negotiations
24 between experienced counsel with the assistance of a respected mediator over the course of a full-
25 day mediation. Gordon Decl. ¶¶ 13-21, 40-47. Counsel were fully informed of the relative
26

27 ³ At preliminary approval, the fourth factor—the percentage of objectors—is not
28 applicable, as notice has not yet been provided and Class Members have not yet had an
opportunity to object.

1 strengths of the claims and defenses thereto and the proposed Settlement is the result of an
2 informed analysis of Defendant’s potential liability exposure in relation to the costs and risks
3 associated with continued litigation. *Id.* ¶ 21.

4 ***b. Plaintiff Conducted Extensive Investigation and Formal Discovery***

5 Prior to mediation, Plaintiff investigated and researched Plaintiff’s claims and
6 Defendant’s anticipated defenses, obtained Defendant’s relevant written wage and hour
7 policies, and obtained a random sample of time and payroll records of Defendant’s non-exempt
8 employees in California from October 11, 2021 through January 29, 2025. Gordon Decl. ¶¶ 10-
9 11. The time and payroll data contained records for 29 employees and 3,283 shifts. *Id.* ¶ 11.

10 Plaintiff retained an expert in data analysis to review and analyze this data sample and to
11 prepare a damages and penalties model for the mediation. *Id.* ¶ 12. Accordingly, Plaintiff’s
12 counsel were able to act intelligently and effectively in negotiating the proposed Settlement. *Id.*

13 ***c. Plaintiff’s Counsel Have Extensive Experience in Class Actions***

14 The settlement negotiations were conducted by highly capable and experienced counsel.
15 See Gordon Decl. ¶¶ 40-47. Plaintiff’s counsel have a strong and lengthy record of vigorous and
16 effective advocacy for their clients and are experienced in handling complex wage and hour class
17 action and PAGA litigation. *See id.*

18 **2. The Proposed Settlement Is Fair, Adequate, and Reasonable**

19 The trial court has “broad discretion to determine “whether a settlement [is] fair and
20 reasonable.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389. In
21 order to evaluate whether a class settlement is fair, adequate, and reasonable, courts must be
22 provided with “basic information about the nature and magnitude of the claims in question and
23 the basis for concluding that the consideration being paid for the release of those claims
24 represents a reasonable compromise.” *Kullar*, 168 Cal.App.4th at 133; *Clark*, 175 Cal.App.4th at
25 802-03. A settlement is not judged against what might have been recovered had a plaintiff
26 prevailed at trial, nor does the settlement need to recoup the maximum amount of damages
27 available to be found fair and reasonable. *Wershba*, 91 Cal.App.4th at 246, 250.

28 In considering whether a settlement is reasonable, the trial court should consider relevant

1 factors, which may include the strength of a plaintiff's case, the risk, expense, complexity and
2 likely duration of further litigation, the risk of maintaining class action status through trial, the
3 amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
4 the experience and views of counsel, the presence of a governmental participant, and the reaction
5 of the class members to the proposed settlement. *Kullar*, 168 Cal.App.4th at 128.

6 Plaintiff's counsel has satisfied the *Kullar* analysis by providing the Court with a detailed
7 evaluation of the maximum potential damages and penalties of the claims that were alleged in this
8 matter. *See* Gordon Decl. ¶ 23. In doing so, Plaintiff's counsel calculated the maximum potential
9 damages and penalties to be approximately \$3,946,038 (including \$1,910,637 in damages and
10 penalties for the class claims). *Id.* This amount constitutes a reasonable estimate of the potential
11 recovery, excluding interest, costs, and fees, that could be obtained on behalf of the Class and
12 Aggrieved Employees if Plaintiff prevailed in an "everything-goes-right" scenario. *Id.*

13 Here, the proposed Settlement is fair, adequate, and reasonable. Plaintiff and his counsel
14 considered several factors in reaching the decision to settle at this point in the litigation,
15 including: (a) the risk, expense, time-consuming and uncertain proposition of proving liability,
16 damages and penalties at trial; (b) obtaining the cooperation of current employees would be
17 difficult, given their likely reluctance to aid in the prosecution of a lawsuit against their employer
18 and their likely willingness to assist Defendant; (c) Defendant denies that it committed any Labor
19 Code violations and contends the class claims are not suitable for class certification under the
20 standard applied to contested certification motions because individual issues and affirmative
21 defenses (allegedly) would predominate should this case go to trial; (d) the potential difficulties in
22 establishing and maintaining certification of the class; (e) the risk that the Court could find the
23 trial unmanageable; (f) continued litigation could lead to an unfavorable judgment and/or a
24 lengthy and unsuccessful appeal and delay any positive recovery for the Class Members; and (g)
25 this area of the law is constantly evolving, creating uncertainty for employees. *Id.* ¶ 24. Plaintiff
26 further considered the likelihood that a court would substantially reduce any award of civil
27 penalties on the grounds that they were "unjust, arbitrary and oppressive, or confiscatory"
28 pursuant to Labor Code § 2699(e)(2). *Id.* ¶ 25.

1 While Plaintiff and his counsel are confident in the merits of their claims, a legitimate
2 controversy exists as to each claim. *Id.* ¶ 26. All of these risks are obviated by the Settlement. *Id.*
3 ¶ 28. Because of the proposed Settlement, Class Members will receive timely relief with
4 significant financial recovery. *See id.* ¶¶ 28-30. Based on an estimated Net Settlement Amount of
5 \$51,166.67, each Participating Class Member, on average, stands to receive a gross Individual
6 Settlement Payment of approximately \$246, and each Aggrieved Employee will receive an
7 average Individual PAGA Payment of approximately \$6.65, when using the number of Class
8 Members and Aggrieved Employees through February 3, 2026. *Id.* ¶¶ 29-30. Accordingly, the
9 Settlement is in the best interest of the Class. *Id.* ¶¶ 31.

10 In sum, when the risks of litigation, the uncertainties involved in achieving class
11 certification, the burdens of proof necessary to establish liability, and the probability of appeal of
12 a favorable judgment are balanced against the merits of Plaintiff's claims, it is clear that the
13 Settlement is fair, adequate and within the "ballpark" of reasonableness. *Id.* Although Plaintiff's
14 counsel were prepared to litigate the claims through trial, they support the proposed Settlement as
15 being in the best interests of the Class, the State of California, and the Aggrieved Employees. *Id.*

16 C. **The Proposed Class Notice Is an Appropriate Form of Giving Notice to the**
17 **Class and Satisfies Due Process**

18 "The principal purpose of notice to the class is the protection of the integrity of the class
19 action process." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 970. The notice "'must fairly
20 apprise the class members of the terms of the proposed compromise and of the options open to the
21 dissenting class members.'" *Wershba*, 91 Cal.App.4th at 224, 251. Additionally, the notice given
22 should have a reasonable chance of reaching a substantial percentage of the class members. *Cartt*,
23 50 Cal.App.3d at 974. However, there is no statutory or due process requirement that all class
24 members receive the notice. *Id.*

25 The notice plan in this matter is consistent with class notices approved in state and federal
26 courts, is the best notice practicable, and is the method of dissemination likely to give the best
27 actual notice to the greatest number of Class Members. Direct mail notice to Class Members' last
28 known addresses is the best possible notice under the circumstances. *See Mullane v. Central*

1 *Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 319; *Eisen v. Carlisle & Jacquelin* (1974) 417
2 U.S. 156, 173-176.

3 In accordance with the proposed notice plan, the Administrator will send each Class
4 Member the Class Notice via regular U.S. First-Class mail. Settlement Agreement ¶ 4.3.1. Prior
5 to mailing the Class Notice, the Administrator will perform a search using the National Change of
6 Address List to update and correct any known or identifiable address changes. *Id.*

7 The proposed Class Notice provides all of the information a reasonable person would need
8 to make an informed decision about the Settlement. Settlement Agreement, Exh. A, Class Notice.
9 It sets forth the material terms of the Settlement, the proposed fees and costs of administration;
10 details about the Final Approval Hearing and Class Members' rights and options (and their
11 consequences), including the submission of objections and how Class Members can obtain
12 additional information. *Id.*

13 The Class Notice makes clear that each Class Member will receive an Individual Class
14 Payment unless he or she opts out of the settlement and explains the process for doing so. *Id.*
15 ¶ 6. The Class Notice comports with the requirements of rules 3.766 and 3.769 of the California
16 Rules of Court. Accordingly, the proposed Class Notice should be approved by the Court.

17 **D. The PAGA Settlement Is Fair, Adequate, and Reasonable and Fulfills**
18 **PAGA's Underlying Purpose to Benefit the Public**

19 The PAGA statute specifically provides that "[t]he superior court shall review and
20 approve any settlement of any civil action filed pursuant to this part." Lab. Code, § 2699, subd.
21 (s)(2). Although the statute does provide the standard for evaluating a PAGA settlement,
22 California's First District Court of Appeal held that the standard is "fair, adequate, and
23 reasonable" as well as meaningful and consistent with the purposes of PAGA." *Moniz v. Adecco*
24 *USA, Inc.* (2021) 72 Cal.App.5th 56, 64, disapproved of on other grounds by *Turrieta v. Lyft, Inc.*
25 (2024) 16 Cal.5th 664, 710. In ascertaining the fairness of a PAGA settlement, the trial court may
26 consider many of the same factors used to evaluate the fairness of class action settlements,
27 "including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity
28 and likely duration of further litigation, and the settlement amount." *Moniz*, 72 Cal.App.5th at 77.

1 The California Legislature enacted PAGA to “augment the limited enforcement capability
2 of the [LWDA] by empowering employees to enforce the Labor Code as representatives of the
3 Agency.” *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 383, abrogated in
4 part on other grounds by *Viking River Cruises v. Moriana* (2022) 596 U.S. 639, 662. PAGA
5 authorizes an employee to bring an action for “civil penalties on behalf of the state against his or
6 her employer for Labor Code violations committed against the employee and fellow employees.”
7 *Id.* at 360. An action under PAGA to recover civil penalties “is essentially a law enforcement
8 action designed to protect the public and not benefit private parties.” *Id.* at 381. “As the state’s
9 proxy, an employee-plaintiff may obtain civil penalties for violations committed against absent
10 employees [citation], just as the state could if it brought an enforcement action directly.” *Id.*

11 A PAGA action is one of the “primary mechanisms for enforcing the Labor Code.”
12 *Iskanian*, 59 Cal.4th at 383. As the state’s proxy or agent, “the employee plaintiff represents the
13 same legal right and interest as state labor law enforcement agencies—namely, recovery of civil
14 penalties that otherwise would have been assessed by and collected by the [LWDA].” *Id.* “[A]n
15 aggrieved employee’s action under [PAGA] functions as a substitute for an action brought by the
16 government itself.” *Id.* The goal of PAGA is to impose civil penalties for Labor Code violations
17 “significant enough to deter violations.” *Id.* at 379.

18 Here, the Settlement provides for civil penalties that meet the standard enunciated in
19 *Moniz*. The PAGA claims will be settled for \$5,000, which is consistent with PAGA’s goal of
20 deterring future violations and providing a benefit to the public through enforcement of state
21 labor laws. *Moniz*, 72 Cal.App.5th at 77. It is significant enough to deter Defendant from future
22 violations (Defendant denies that it have committed any violations whatsoever), creating an
23 effective disincentive for Defendant to engage in unlawful business practices. The Settlement
24 provides a benefit to the State of California, with the LWDA receiving \$3,750 to assist with the
25 enforcement of labor laws with the remainder (\$1,250) shared among the Aggrieved Employees.
26 Settlement Agreement ¶ 3.2.5. The same factors discussed above with respect to settlement of the
27 class claims apply with equal force to the PAGA settlement. Accordingly, the Settlement fulfills
28 the underlying purpose of the statute and confers a substantial benefit on the public.

1 The PAGA Penalties allocation is 2.86 percent of the GSA, which meets the zero to three-
2 percent range generally approved by courts. *See, e.g., Nordstrom Comm. Cases* (2010) 186
3 Cal.App.4th 576, 589 (no abuse of discretion in approving a settlement that allocated \$0 to the
4 PAGA claims, where the penalty claims were at issue and resolved as part of the overall
5 settlement of the case); *Gilmore v. McMillan-Hendryx Incorporated* (E.D. Cal., Jan. 20, 2022,
6 No. 1:20-CV-00483-HBK) 2022 WL 184004, at *4 (approving 2.3 percent PAGA allocation of
7 total settlement amount); *Martinez v. Helzberg's Diamond Shops* (C.D. Cal., Apr. 12, 2021, No.
8 EDCV201085PSGSHKX) 2021 WL 4730914, at *10 (“PAGA allocation represents
9 approximately two percent of the \$475,000 [settlement fund] which is in the range generally
10 approved by courts.”); *de Cabrera v. Swift Beef Co.* (C.D. Cal., Nov. 23, 2020, No. ED-CV-18-
11 2551-PSG-Ex) 2020 WL 13585929, at *9 (PAGA allocation of 0.1 percent of gross settlement
12 approved); *Alcala v. Meyer Logistics, Inc.* (C.D. Cal., June 17, 2019, No. CV177211PSGAGRX)
13 2019 WL 4452961, at *9 (finding PAGA allocation of 1.25 percent of the \$400,000 settlement
14 fund reasonable); *Erami v. JPMorgan Chase Bank* (C.D. Cal., Dec. 3, 2018, No.
15 CV157728PSGPLAX) 2018 WL 11352374, at *6 (approving PAGA settlement which represents
16 0.9 percent of the total settlement amount).

17 “There is no express or even baseline percentage of recovery required [because] [u]nder
18 the express terms of the PAGA, a verdict value is not guaranteed even if the plaintiff prevails, as
19 courts have discretion to lower the amount of penalties based on the circumstances of a particular
20 case.” *Gilmore*, 2022 WL 184004, at *2 (court “may award a lesser amount than the maximum
21 civil penalty amount [when] to do otherwise would result in an award that is unjust, arbitrary and
22 oppressive, or confiscatory.”), citing Lab. Code, § 2699, subd. (e)(2). Thus, the PAGA portion of
23 the Settlement comports with California law.

24 **E. The Requested Class Representative Service Payment Is Justified**

25 Plaintiffs in class action lawsuits are eligible for reasonable service payments as
26 compensation “for the expense or risk they have incurred in conferring a benefit on other
27 members of the class.” *Munoz*, 186 Cal.App.4th at 412. The Settlement provides for a Class
28 Representative Service Payment not to exceed \$7,500 for Plaintiff. Settlement Agreement ¶ 3.2.1.

1 The requested service award is reasonable according to controlling and persuasive case law. *See*
2 *Clark*, 175 Cal.App.4th at 805-806. The award is intended to recognize the time, effort, and risks
3 Plaintiff undertook on behalf of the Class. Gordon Decl. ¶ 33.

4 Throughout this litigation, Plaintiff cooperated with his counsel and took actions to protect
5 the interests of the Class, including undergoing a lengthy intake process; maintaining regular
6 contact with his counsel; searching for and providing his counsel with information and documents
7 to support his claims; discussing his work experiences with his counsel; making himself available
8 to his counsel, including for the full-day of the mediation; keeping himself apprised of
9 developments in the Action; making decisions in the Action, including regarding settlement;
10 asking his counsel questions; making sure he understood everything that was going in the Action
11 so he could make the best informed decisions on behalf of the Class; and reviewing the
12 Settlement documents and declaration in support of this motion. *Id.*; Garcia Decl. ¶ 4.

13 Plaintiff has also provided valuable information regarding his claims, which was
14 instrumental in attempting to establish the alleged wage and hour violations. Gordon Decl. ¶ 33.
15 The recovery provided for in the Settlement would not have been possible to obtain without
16 Plaintiff's participation. *Id.* ¶ 38. Plaintiff also put the interests of the Class ahead of his own
17 personal interests by postponing the prosecution of his own individual wage and hour claims and
18 any recovery for himself alone so that the Actions could be litigated on a classwide or
19 representative basis. *See id.*; Garcia Decl. ¶¶ 10-11.

20 Plaintiff faced many risks in pursuing this case as a class action and a representative
21 action. Gordon Decl. ¶¶ 34-35; Garcia Decl. ¶¶ 7-8. Because of Plaintiff's efforts,
22 approximately 208 as of February 3, 2026 Class Members will now have the opportunity to
23 participate in a settlement and to recover payment for alleged workplace violations they may
24 never have known about on their own or been willing to pursue on their own. Gordon Decl. ¶
25 37. If each Class Member attempted to pursue his or her legal remedies individually, each
26 person would have been required to expend a significant amount of their own time and
27 monetary resources. *Id.* Few individuals are willing to serve as a class representative and
28 assume the substantial risk should the employer prevail in the action. *Id.* ¶ 34.

1 Plaintiff's willingness to assume the financial risk is significant, as California law
2 provides that the losing party must pay the prevailing party's costs. *Id.* As such, if Plaintiff did
3 not prevail, he could have been subjected to a cost award in the amount of several thousands of
4 dollars. *Id.* Additionally, as a result of filing a class and representative action against their
5 former employers, Plaintiff may face reputational harm among potential future employers that
6 could adversely impact their future job opportunities because they may be viewed negatively by
7 bringing this Action. *Id.* ¶ 35. Moreover, Plaintiff is giving up more rights than the other Class
8 Members by agreeing to a general release subject to limited exceptions, and waiving his rights
9 under Civil Code section 1542. *Id.* ¶ 36; Settlement Agreement ¶¶ 5.1, 5.2.

10 The Action and monetary recovery would not have been possible without the aid of
11 Plaintiff, who devoted his personal time and effort to the Action, sacrificed the value of his own
12 individual claims, placed himself at risk for the sake of the other Class Members, the State of
13 California, and the Aggrieved Employees, and relinquished more rights than the other Class
14 Members. Gordon Decl. ¶ 38. Indeed, by actively pursuing the cases, Plaintiff furthered
15 California's public policy goal of enforcing the State's wage and hour laws. *Sav-On Drug*
16 *Stores*, 34 Cal.4th at 340 (recognizing the "clear public policy" that is specifically directed at
17 the enforcement of California wage laws). The requested Class Representative Service Payment
18 is therefore reasonable to compensate Plaintiff for his active participation in the Action, the
19 risks he undertook, and the rights he gave up.

20 **F. The Requested Class Counsel Fees Payment Is Reasonable**

21 The Settlement provides for a Class Counsel Fees Payment in an amount up to one-third of
22 the GSA, for a maximum fee award of \$58,333.33, plus a Class Counsel Litigation Expenses
23 Payment not to exceed \$45,000. Settlement Agreement ¶ 3.2.2.

24 Plaintiff's request for attorney's fees as a percentage of the GSA is supported by the
25 "common fund theory," where "one who expends attorney fees in winning a suit which creates a
26 fund from which others derive benefits, may require those passive beneficiaries to bear a fair
27 share of the litigation costs." *Serrano v. Priest* (1977) 20 Cal.3d 25, 35. This method of
28 calculation is also supported by federal law. *Boeing v. Van Gemert* (1980) 444 U.S. 472, 478 and

1 *In re Pac. Enterprises Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-379. The percentage is
2 properly based upon the maximum settlement amount, rather than upon the amount of funds
3 distributed to class members. *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129
4 F.3d 1026, 1027.

5 The requested fees also are reasonable under the lodestar method, based on the time
6 reasonably spent prosecuting the Action. *Ramos v. Countrywide Home Loans, Inc.* (2000) 82
7 Cal.App.4th 615, 622; *see also In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558,
8 fn. 13 (“Empirical studies show that, regardless whether the percentage method or the lodestar
9 method is used, fee awards in class actions average around one-third of the recovery.”) (internal
10 quotation marks omitted). Plaintiff’s counsel invested significant time and resources into this
11 case, with payment deferred to the end and entirely contingent on the outcome. *Id.* The efforts
12 expended by Plaintiff’s counsel thus far include, but are not limited to, the following: researching
13 Defendant’s wage and hour practices; researching Plaintiff’s claims and Defendant’s anticipated
14 defenses; conducting interviews with Plaintiff and reviewing documents, including wage
15 statements and other information provided by him; preparing a PAGA notice letter; obtaining
16 personnel records for Plaintiff; preparing the complaint; meeting and conferring with Defendant’s
17 counsel to obtain relevant documents and information, including but not limited to, employees’
18 timekeeping and payroll records and Defendant’s policies; communicating with Plaintiff
19 regularly; retaining and working with an expert in data analysis to analyze the timekeeping and
20 payroll data; drafting the mediation brief; preparing for and attending the mediation; retaining and
21 working with a forensic accountant to analyze Defendant’s financial documents; attending a call
22 with Plaintiff’s forensic accountant and Defendant’s CFO; drafting, negotiating, and revising the
23 Settlement Agreement, the Class Notice, and the Amendment; and preparing the motion for
24 preliminary approval papers. Gordon Decl. ¶ 50.

25 The ultimate determination of attorneys’ fees and costs will be properly addressed at the
26 final approval stage, at which time Class Counsel will submit evidence supporting the requested
27 fees as well as the costs.

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Respectfully submitted,

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