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9 RUBEN ORTIZ SALGADO, and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

12 **(UNLIMITED JURISDICTION)**

13 RUBEN ORTIZ SALGADO, on behalf of  
14 himself and all others similarly situated, and  
15 the general public, and as an “Aggrieved  
16 Employee” on behalf of other “Aggrieved  
17 Employees” under the Private Attorneys  
18 General Act of 2004,

19 *Plaintiff(s),*

20 vs.

21 BOB BAFFERT RACING, INC., a  
22 California corporation; and DOES 1 to 25,  
23 inclusive,

24 *Defendants.*

Case No.: 24STCV00686

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF’S UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF JOINT  
STIPULATION OF CLASS ACTION AND  
PAGA SETTLEMENT**

Action filed: 1/9/2024  
Hearing Date: 10/22/2024  
Hearing Time: 10:00 a.m.  
Hearing Dept: SSC-6, Hon. Elihu M.  
Berle

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ruben Ortiz Salgado (“Plaintiff”) submits this memorandum of points and  
4 authorities in support of his unopposed motion for preliminary approval of the Joint Stipulation  
5 of Class Action and PAGA Settlement and Release (the “Settlement”)<sup>1</sup>, which provides for a  
6 Gross Settlement Amount (“GSA”) of \$490,000 in compromise of all disputed claims on behalf  
7 of all current and former non-exempt, hourly paid employees who worked for Defendant Bob  
8 Baffert Racing, Inc. (“Defendant”) in California at any time during the Class Period of January  
9 9, 2020 to the date the Court grants preliminary approval of the Settlement. Through this  
10 Motion, Plaintiff respectfully requests for this Court to (1) provisionally certify the below-  
11 defined Class for settlement purposes only under Code of Civil Procedure § 382; (2)  
12 preliminarily approve the Settlement; (3) preliminarily appoint Plaintiff as Class  
13 Representative; (4) appoint Maralle Messrelian of MM Law, APC as Class Counsel; (5)  
14 approve the proposed notice procedures and related forms; and (6) schedule a final approval  
15 hearing.

16 This Court should grant Plaintiff’s motion because: (1) for settlement purposes, the  
17 Settlement Class meets the requirements for class certification under Code of Civil Procedure §  
18 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,  
19 reasonableness, and adequacy; (3) for settlement purposes, Plaintiff is adequate to serve as  
20 Class Representative; (4) Plaintiff’s attorneys are adequate to serve as Class Counsel; (5) the  
21 proposed notice procedures, and related forms, fully comport with due process and adequately  
22 apprise Class Members of their rights; and (6) a final approval hearing must be scheduled to  
23 allow Settlement Class members an opportunity to be heard regarding the Settlement and to  
24 give it finality. Accordingly, for the reasons detailed below, this Court should grant Plaintiff’s  
25 Motion in its entirety and preliminarily approve the Settlement.

26 ///

27 ///

28 <sup>1</sup> The Settlement is attached as Exhibit (“Ex.”) 1 to the Declaration of Maralle Messrelian (“MM”),  
which is submitted herewith under a separate cover.

1       **II. FACTUAL AND PROCEDURAL BACKGROUND**

2       Defendant Bob Baffert Racing, Inc. first began to employ Plaintiff in or around June  
3       2023 as a horse groomer to work at the Los Alamitos Race Course. Plaintiff's job title was  
4       "Extra Groom" and his job duties included taking care of the same five horses, cleaning the  
5       stable, bathing the horses, and walking the horses, among others. MM, ¶ 4.

6       **A. Plaintiff's Claims and Procedural History**

7       On September 15, 2023 Plaintiff notified Defendant and the California Labor and  
8       Workforce Development Agency ("LWDA"), pursuant to the California Private Attorneys  
9       General Act of 2004, California Labor Code sections 2698, et seq. ("PAGA"), of alleged Labor  
10      Code violations committed by Defendant. MM, ¶ 5, Ex. 2.

11      On January 9, 2024, Plaintiff filed a Class Action Complaint in the Los Angeles  
12      Superior Court, Case No, 24STCV00686 against Defendant on behalf of himself and others  
13      similarly situated, alleging causes of action on a class-wide basis for (1) Failure to Pay All  
14      Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194,  
15      1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198); (3) Failure  
16      to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198); (4) Failure to Indemnify (Lab.  
17      Code § 2802); (5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);  
18      (6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203); (7) Civil  
19      Penalties (Lab. Code §§ 2698, et seq.); and (8) Unfair Competition (Bus. & Prof. Code, §  
20      17200 esq.). MM, ¶ 6, Ex. 3.

21      On January 23, 2024, the Court issued its Initial Status Conference Order staying the  
22      case and Defendant's responsive pleading deadline. On February 27, 2024, Defendant filed a  
23      Notice of Appearance. MM, ¶ 6.

24      The parties met and conferred and agreed that it may be in their mutual interests to  
25      discuss Plaintiff's allegations informally, rather than through litigation, and scheduled private  
26      mediation. MM, ¶ 7.

27      **B. Mediation with Professional Neutral Laurie Quigley Saldaña**

28      On June 4, 2024, the Parties attended and participated in good faith, arms' length  
settlement discussions at a mediation session with Laurie Quigley Saldaña, Esq., a highly

1 experienced professional mediator. At the conclusion of the mediation, the Parties agreed to the  
2 material terms of the Settlement. MM, ¶ 8. Defendant denies any liability or wrongdoing of any  
3 kind whatsoever associated with the lawsuit.

4 In advance of the mediation, and before agreeing to the terms of the Settlement, the  
5 Parties engaged in informal discovery. Through informal discovery, Defendant produced its  
6 employee handbook, copies of Defendant’s relevant company written policies, time-keeping  
7 records, and time and payroll data for a random sample of putative class members specifically  
8 selected by Plaintiff’s counsel. Now that the Parties have finalized the long-form Settlement,  
9 Plaintiff submits it to this Court for preliminary approval. MM, ¶ 9. It is the desire of the parties  
10 to fully, finally, and forever compromise, and discharge all claims known or unknown related  
11 to those alleged in Plaintiff’s lawsuit. MM, ¶ 10.

12 **III. OVERVIEW OF SETTLEMENT**

13 **A. Settlement Class Definition**

14 The “Settlement Class” or “Class Members” all current and former non-exempt, hourly-  
15 paid employees who worked for Defendant Bob Baffert Racing, Inc. in California at any time  
16 during the Class Period. “Class Member” means a single, non-exempt, hourly-paid employee  
17 who worked for Defendant Bob Baffert Racing, Inc. in California during the Class Period.  
18 “Class Period” means the time from January 9, 2020 through the date the Court grants  
19 Preliminary Approval of the Settlement. Settlement, ¶ 5.

20 **B. Monetary Terms**

21 In consideration for settlement of the Class Action, Defendants agree to pay a total of  
22 Four Hundred Ninety Thousand dollars (\$490,000.00) (the “Gross Settlement Amount” or  
23 “GSA”). The GSA will be all-inclusive and includes: (1) all Individual Settlement Payments to  
24 Class Members; (2) a Class Representative Enhancement Payment to Plaintiff, as class  
25 representative and private attorney general, for up to \$10,000; (3) Class Counsel’s Attorneys’  
26 Fes of not more than one third of the GSA (\$163,333.33) and for litigation costs not to exceed  
27 \$10,000; (4) Settlement Administration Costs of not more than \$7,000; and (5) \$50,000 for the  
28 PAGA Settlement Amount under California Labor Code §§ 2699 et seq. (75% or \$37,500 will  
go to the California Labor & Workforce Development Agency (“LWDA Payment”) and 25%

1 or \$12,500 (“PAGA Fund”) will be disbursed to PAGA Members, regardless of whether they  
2 request to be excluded from the Settlement Class. The GSA is non-reversionary. The  
3 Settlement is not a claims-made settlement. The GSA shall be exclusive of Defendants’  
4 employer-side payroll taxes, which Defendants shall pay in addition to the GSA. Settlement, ¶¶  
5 15, 23. The “Net Settlement Fund” (“NSF”) will equal the net amount available for payment of  
6 claims to Class Members after deducting the above-referenced costs from the Gross Settlement  
7 Amount. Settlement, ¶ 18.

8 Individual Settlement Payment Calculations: Individual Settlement Payments will be  
9 calculated and apportioned from the Net Settlement Fund and PAGA Fund based on the  
10 number of Workweeks a Class Member worked during the Class Period and the number of  
11 PAGA Pay Periods a PAGA Member worked during the PAGA Period, respectively. Specific  
12 calculations of Individual Settlement Payments will be made as follows:

13 Payments from the Net Settlement Fund:

- 14 • Defendant will calculate the total number of Workweeks worked by each Class  
15 Member during the Class Period and the aggregate total number of Workweeks  
16 worked by all Class Members during the Class Period. To determine each Class  
17 Member’s estimated “Individual Settlement Payment” from the Net Settlement  
18 Fund, the Settlement Administrator will use the following formula: The Net  
19 Settlement Fund will be divided by the aggregate total number of Workweeks  
20 during the Class Period, resulting in the “Workweek Value.” The Net Settlement  
21 Fund portion of each Class Member’s “Individual Settlement Payment” will be  
22 calculated by multiplying each individual Class Member’s total number of  
23 Workweeks by the Workweek Value.

24 Payments from the PAGA Fund:

- 25 • Defendant will calculate the total number of PAGA Pay Periods worked by each  
26 PAGA Member during the PAGA Period and the aggregate total number of  
27 PAGA Pay Periods worked by all PAGA Members during the PAGA Period. To  
28 determine each PAGA Member’s estimated “Individual Settlement Payment”  
from the PAGA Fund the Settlement Administrator will use the following  
formula: The PAGA Fund will be divided by the aggregate total number of  
PAGA Pay Periods during the PAGA Period, resulting in the “PAGA Pay  
Period Value.” The PAGA Fund portion of each PAGA Member’s “Individual  
Settlement Payment” will be calculated by multiplying each individual PAGA  
Member’s total number of PAGA Pay Periods by the PAGA Pay Period Value.  
The entire PAGA Fund will be disbursed to all PAGA Members.

Settlement, ¶ 45.

1 All Individual Settlement Payments will be allocated as follows: (a) Ten Percent (10%)  
2 of the Net Settlement Fund portion of each Individual Settlement Payment will be allocated as  
3 wages for which IRS Forms W-2 will be issued; and (b) Ninety Percent (90%) of the Net  
4 Settlement Fund portion of each Individual Settlement Payment will be allocated as penalties  
5 and interest for which IRS Forms 1099-MISC will be issued. One Hundred Percent (100%) of  
6 payments issued to PAGA Members from the PAGA Fund will be treated as non-wages for  
7 which IRS Forms 1099-MISC will be issued. Settlement, ¶ 64.

8 Defendants shall be required to pay the GSA sixty (60) days after the Effective Date of  
9 the Settlement.<sup>2</sup> Settlement, ¶ 37. The date on which Defendant fully funds the Gross  
10 Settlement Amount is referred to herein as the “Funding Date.” *Id.* Within ten (10) calendar  
11 days of the Funding Date, the Settlement Administrator will issue payments to: (a) Participating  
12 Class Members and PAGA Members; (b) the Labor and Workforce Development Agency; (c)  
13 Plaintiff; (d) Class Counsel, and (e) itself, as approved by the Court. Settlement, ¶ 61.

### 14 **C. Release of Claims**

15 Releases by Participating Class Members: Upon the Funding Date, and except as to  
16 such rights or claims as may be created by this Settlement Agreement, each Participating Class  
17 Member, together and individually, on their behalf and on behalf of their respective  
18 representatives, heirs, executors, successors, assignees, administrators, agents, and attorneys,  
19 shall fully and forever release and discharge Defendant, and each of its former and present  
20 directors, officers, principals, trustees, shareholders, owners, managers, managing agents,  
21 attorneys, insurers, predecessors, successors, assigns, DBAs, parents, subsidiaries, and  
22 affiliates)( the “Released Parties”) or any of them, from each of the Released Class Claims  
23 arising during the Class Period. Settlement, ¶¶ 31, 57.

24 ///

25 ///

26 The Released Class Claims include:

27 <sup>2</sup> “Effective Date” means the means the later of: (a) if no timely objections are filed, or are withdrawn prior to  
28 Final Approval, then the date of Final Approval; or (b) if a Class Member files an objection to the Settlement, the  
Effective Date shall be the sixty-first (61st) calendar day after the date of Final Approval, provided no appeal is  
initiated by an objector; or (c) if a timely appeal is initiated by an objector, then the Effective Date will be the date  
of final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in  
final judicial approval of the Settlement. Settlement, ¶ 12.

1 any and all claims, rights, demands, liabilities, and causes of action, reasonably arising  
2 from, or reasonably related to, the same set of operative facts as those set forth in the  
3 operative Complaint in the Action during the Class Period, including without limitation  
4 with respect to the following claims: (a) failure to pay all wages earned for all hours  
5 worked at the correct rates of pay, including for minimum, regular, overtime, and  
6 doubletime wages; (b) failure to authorize or permit rest periods; (c) failure to authorize  
7 or permit meal periods; (d) failure to indemnify employees for employment related  
8 losses and expenditures; (e) failure to provide accurate itemized wage statements; (f)  
9 failure to pay wages when employment ends; (g) failure to provide sick pay; and (h) all  
10 claims under California Business & Professions Code § 17200 for unfair business  
11 practices that could have been premised on the facts, claims, causes of action or legal  
12 theories described above; (i) violation of or claims under the following sections of the  
13 California Labor Code, sections 201, 202, 203, 204, 210, 226, 226.7, 233, 246, 510,  
14 512, 558, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802; and (j) violation  
15 of the California Industrial Wage Orders that could have been premised on the facts,  
16 claims, causes of action or legal theories described above, as well as any potential  
17 penalties, interest or attorneys' fees associated with all of such causes of action under  
18 California law

19 Settlement, ¶ 29.

20 Releases by PAGA Members. Upon the Funding Date, and except as to such rights or  
21 claims as may be created by this Settlement Agreement, each PAGA Member, together and  
22 individually, on their behalf and on behalf of their respective representatives, heirs, executors,  
23 successors, assignees, administrators, agents, and attorneys, shall fully and forever release and  
24 discharge all of the Released Parties, or any of them, from each of the Released PAGA Claims  
25 during the PAGA Period. The Released PAGA Claims will forever be binding on, and shall  
26 have res judicata and preclusive effect in, all past, pending, and future lawsuits maintained by  
27 either the LWDA or PAGA Members for any and all of the Released PAGA Claims.

28 Settlement, ¶ 58.

“Released PAGA Claims” include:

any and all claims, demands, rights, liabilities and causes of action under the Private  
Attorneys General Act, California Labor Code §§ 2698, et seq., that were alleged or  
could reasonably have been alleged based on the same facts alleged in the operative  
Complaint, the PAGA Notice (and any amendments thereto) and ascertained in the  
course of the Action, arising during or with respect to the PAGA Period. The Released  
PAGA Claims will forever be binding on, and shall have res judicata and preclusive  
effect in, all past, pending, and future lawsuits maintained by either the LWDA or  
PAGA Members for any and all of the Released PAGA Claims.

Settlement, ¶ 30.

1 Plaintiff also provided Defendant with a general release of all claims, whether known or  
2 unknown, including unknown claims covered by Civil Code Section 1542. Settlement, ¶ 75.

3 **D. Class Notice and Settlement Administration**

4 Within twenty (20) calendar days following the Court's entry of its Order Granting  
5 Preliminary Approval of Settlement, Defendant shall provide Phoenix Class Action  
6 Administration Solutions, the appointed Settlement Administrator, the Class List with the  
7 following information about each Class Member: (1) full name; (2) most recent mailing address  
8 and telephone number; (3) Social Security Number; (4) dates of employment; (5) the respective  
9 number of Workweeks that each Class Member worked during the Class Period and the number  
of PAGA Pay Periods worked during the PAGA Period. Settlement, ¶¶ 4, 48.

10 Within ten (10) calendar days after the receipt of the Class List, the Settlement  
11 Administrator shall be responsible for calculating the estimated payouts to the Class Members  
12 assuming all Class Members participate in the Settlement and shall mail the Class Notice, in  
13 both English and Spanish, to all Class Members pursuant to the terms of the Settlement, by  
14 First Class regular U.S. mail using the most current, known mailing addresses identified in the  
15 Class List. Settlement, ¶ 49. Prior to mailing, the Settlement Administrator will perform a  
16 search based on the National Change of Address Database for information to update and correct  
17 any known or identifiable address changes. Settlement, ¶ 50. Any Class Notices returned to the  
18 Settlement Administrator as non-deliverable on or before the Response Deadline will be sent  
19 promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the  
20 Settlement Administrator will indicate the date of such re-mailing on the Class Notice. If no  
21 forwarding address is provided, the Settlement Administrator will promptly attempt to  
22 determine the correct address using a skip-trace, or other search using the name, address and/or  
23 Social Security Number of the Class Member involved, and will then perform a single re-  
24 mailing. Those Class Members who receive a re-mailed Class Notice will have either (a) fifteen  
25 (15) calendar days from the date of re-mailing or (b) until the Response Deadline, whichever is  
later, to submit a Request for Exclusion, disputes concerning the calculation of the Class  
Member's Individual Settlement Payment, or an objection to the Settlement. *Id.*

26 The Response Deadline by which Class Members must postmark or fax to the  
27 Settlement Administrator Requests for Exclusion, postmark or fax disputes concerning the  
28 calculation of Individual Settlement Payments, or postmark Notices of Objection to the

1 Settlement Administrator will be forty-five (45) calendar days from the initial mailing of the  
2 Class Notice by the Settlement Administrator. Settlement, ¶ 33.

3 **1. Procedures for Class Member Disputes**

4 To the extent Class Members dispute their employment dates or the number of  
5 Workweeks or PAGA Pay Periods on record, Class Members may produce evidence to the  
6 Settlement Administrator showing that such information is inaccurate. Defendant's records will  
7 be presumed correct, but the Settlement Administrator shall contact the Parties regarding the  
8 dispute and the Parties will work in good faith to resolve it. All disputes must be submitted by  
9 the Response Deadline, and will be decided within ten (10) business days after the Response  
Deadline. Settlement, ¶ 52.

10 **2. Procedures for Opting Out of the Class**

11 Any Class Member wishing to opt-out from the Settlement Agreement must sign and  
12 fax or postmark a written Request for Exclusion to the Settlement Administrator within the  
13 Response Deadline. In the case of Requests for Exclusion that are mailed to the Settlement  
14 Administrator, the postmark date will be the exclusive means to determine whether a Request  
15 for Exclusion has been timely submitted. Those Class Members who receive a re-mailed Class  
16 Notice will have either (a) fifteen (15) calendar days from the date of re-mailing or (b) until the  
Response Deadline, whichever is later, to submit a Request for Exclusion. Settlement, ¶ 54.

17 **3. Procedures for Objecting to the Settlement**

18 To object to the Settlement Agreement, a Class Member may either postmark a valid  
19 Notice of Objection to the Settlement Administrator on or before the Response Deadline, or  
20 appear in person at the Final Approval Hearing. Settlement, ¶ 59. For the Notice of Objection to  
21 be valid, it must include: (a) the objector's full name, signature, address, and telephone number,  
22 (b) a written statement of all grounds for the objection accompanied by any legal support for  
23 such objection; (c) copies of any papers, briefs, or other documents upon which the objection is  
24 based; and (d) a statement whether the objector intends to appear at the final fairness hearing.  
Settlement, ¶ 19.

25 **E. Uncashed Checks**

26 Proceeds represented by Individual Settlement Payment checks returned as  
27 undeliverable and Individual Settlement Payment checks remaining un-cashed for more than  
28 one hundred and eighty (180) calendar days after issuance will be transmitted to the State

1 Controller Unclaimed Property Fund in the name of the Class Member thereby leaving no  
2 “unpaid residue” subject to the requirements of California Code of Civil Procedure Section  
3 384, subd. (b). Settlement, ¶ 62.

4 **IV. CERTIFICATION OF THE PROPOSED CLASS IS APPROPRIATE.**

5 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable  
6 and its members are too numerous for joinder to be practical; (2) the representative and absent  
7 class members share a community of interest and questions of law and fact common to the class  
8 predominate over questions unique to individual class members; (3) the representative’s claims  
9 are typical of the class’ claims; and (4) the representative will fairly and adequately represent  
10 the class’ interests. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.  
11 Moreover, in the settlement context, the Court can use a lesser standard to determine the  
12 appropriateness of a settlement class as opposed to a litigated class certification. *Dunk v. Ford*  
13 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1807. As explained below, all of these requirements  
14 are met in this case.

15 **1. The Settlement Class Is Objectively Ascertainable.**

16 A class is ascertainable when it may be readily identified without unreasonable expense  
17 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,  
18 932 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the  
19 above-defined Class is ascertainable because its members may be identified by reference to  
20 Defendant’s records and Defendant has agreed to share the relevant information from its  
21 records to facilitate the settlement process. MM, ¶ 11; Settlement, ¶ 4. Therefore, the  
22 Settlement Class is ascertainable.

23 **2. The Membership of the Settlement Class Is Sufficiently Numerous.**

24 The Settlement Class has sufficiently numerous members to render joinder impractical.  
25 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*  
26 (1972) 28 Cal.App.3d 1017, 1030. Defendant estimates that there are approximately 143 Class  
27 Members. MM, ¶ 12. Plaintiff maintains that it would be impractical and economically  
28 inefficient to require each Class Member to separately maintain an individual action or be  
joined as a named plaintiff in this action. The California Supreme Court has upheld a class of  
as few as 10 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these

1 considerations, the Settlement Class' membership is sufficiently numerous. MM, ¶ 12. See  
2 *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695.

3 **3. Class Members Share a Well-Defined Community of Interest.**

4 The community of interest requirement “embodies three factors: (1) predominant  
5 common questions of law or fact; (2) class representatives with claims or defenses typical of  
6 the class; and (3) class representatives who can adequately represent the class.” *Sav-On Drug*  
7 *Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326. It “does not mandate that class  
8 members have uniform or identical claims.” *Capitol People First v. Dept. of Developmental*  
9 *Servs.* (2007) 155 Cal. App. 4th 676, 692. Rather, courts focus on the defendant’s internal  
10 policies and “pattern and practice . . . in order to assess whether that common behavior toward  
11 similarly situated plaintiffs renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal.  
12 4th at 333).

13 To justify certification, the class proponent “must show ... that questions of law or fact  
14 common to the class predominate over the questions affecting the individual members ....”  
15 *See, Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington*  
16 *Mut. Bank, FA v. Superior Court*, 248 Cal. 4th 906, 913 (2001)). In light of the more lenient  
17 standard for certification of a settlement class, the Parties agree that for the purposes of the  
18 Settlement only, the claims of the Class Members all stem from the same sources. MM, ¶ 13.

19 In this case, Plaintiff asserts all class members were subject to the same or similar  
20 operations and employment policies, practices, and procedures. The claims arise from  
21 Defendants’ alleged uniform policy of failing to properly account for all time worked and  
22 failing to, among other things, properly pay minimum and overtime wages, provide off-duty  
23 meal and rest periods, indemnify Class Members for business expenses, timely pay wages upon  
24 termination, and provide compliant wage statements, all of which Plaintiff claims constitute  
25 unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common  
26 questions include, but are not limited to: (1) Whether Defendant failed to pay all wages earned  
27 to Class Members for all hours worked at the correct rates of pay; (2) Whether Defendant failed  
28 to provide the Class with all meal and rest periods in compliance with California law; (3)  
Whether Defendant failed to pay the Class one additional hour of pay on workdays they failed

1 to provide the class with one or more meal or rest periods in compliance with California law;  
2 (4) Whether Defendant failed to indemnify the Class for all necessary business expenditures  
3 incurred during the discharge of their duties including, but not limited to, personal mobile  
4 phones; (5) Whether Defendant failed to provide the Class with paid sick leave and/or  
5 statements of sick leave available; Whether Defendant knowingly and intentionally failed to  
6 provide the Class with accurate and complete itemized wage statements; (6) Whether  
7 Defendant willfully failed to provide the Class with timely final wages; and (7) Whether  
8 Defendant engaged in unfair competition within the meaning of Business and Professions Code  
9 section 17200, et seq., with respect to the class. MM, ¶ 13. Therefore, common questions  
10 predominate.

#### 11 **4. Plaintiff Is Typical of the Settlement Class.**

12 The class representative must be similarly situated to the rest of the purported class. *See*  
13 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating “it has never been the law in  
14 California that the class representative must have identical interests with the class members.  
15 The only requirements are ... that the class representative be *similarly* situated”) (emphasis in  
16 original); *See also* Newberg, § 3:29 (typicality “focuses on whether there exists a relationship  
17 between the Plaintiffs claims and the claims alleged on behalf of the class”). Plaintiff contends  
18 that his claims are typical for the purposes of certifying the Settlement Class. Plaintiff asserts  
19 that he, like absent Class Members was subject to the same relevant policies and procedures  
20 governing his compensation, hours of work and meal and rest periods. Because Plaintiff  
21 contends that he was subject to the same general course of conduct as absent Class Members,  
22 resolving the common questions as they apply to Plaintiff will determine Defendants’ *prima*  
23 *facie* liability to all Class Members. Moreover, Plaintiff’s claims could potentially be subject to  
24 the same primary affirmative defenses as those of absent Class Members. Accordingly,  
25 Plaintiff’s claims are typical of the Class. MM, ¶ 14.

#### 26 **5. Plaintiff Will Adequately Represent the Settlement Class.**

27 The adequacy requirement is met where the plaintiff is represented by counsel qualified  
28 to conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to the  
class’ interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words,

1 where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any  
2 disabling conflicts of interest that might hinder the plaintiff's ability to represent the class. MM,  
3 ¶ 15.

4 First, Plaintiff's counsel has supplied the Court with declarations to show that they are  
5 adequate to represent the Settlement Class and that they have significant experience in  
6 employment litigation generally, and wage and hour and employment-related class action  
7 litigation specifically. See MM, ¶¶ 17-21. Thus, Plaintiff's counsel is adequate to serve as Class  
8 Counsel.

9 Second, Plaintiff contends that he is an adequate class representative. Plaintiff and the  
10 Class Members have strong and co-extensive interests in this litigation because they all worked  
11 for Defendant during the relevant time period, allegedly suffered the same alleged injuries from  
12 the same alleged course of conduct, and there is no evidence of any conflict of interest between  
13 Plaintiff and the Class Members. MM, ¶ 16. Moreover, Plaintiff has demonstrated his  
14 commitment to the Settlement Class by, among other things, retaining experienced counsel,  
15 providing counsel with documents and extensively speaking with them to assist in identifying  
16 the claims asserted in this case, and exposing himself to the risk of attorneys' fees and costs  
17 awards against him if this lawsuit had been unsuccessful. MM, ¶15; See *generally* Declaration  
18 of Ruben Ortiz Salgado submitted herewith under separate cover. Thus, Plaintiff is adequate to  
19 serve as Class Representative. Accordingly, this Court should find that Plaintiff and his counsel  
20 are adequate to represent the Settlement Class as required under Code of Civil Procedure § 382.

21 **6. Class Action Treatment Is the Superior Means For Resolving The**  
22 **Claims Of The Class Members.**

23 Plaintiff further contends that a class action is also superior to other means adjudicating  
24 the issues in this action. The predominance of common legal and factual questions shows that  
25 this Court could fairly adjudicate the claims of Class Members through a single class action. In  
26 view of the *theoretical* alternatives that proposed class members could potentially utilize—  
27 representative PAGA action (where there is less relief available), individual civil lawsuits or  
28 wage claims through the Division of Labor Standards Enforcement (where there would be  
relatively little money at stake, but the claims would be time-consuming to litigate)—a class

1 action is plainly superior to all of them. Thus, this consideration supports conditional class  
2 action treatment for purposes of this Settlement only. MM, ¶ 22.

3 **V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE, AND THE**  
4 **COURT SHOULD GRANT PRELIMINARY APPROVAL.**

5 **A. Legal Standard**

6 A class action settlement requires court approval. California Rules of Court (“CRC”),  
7 Rule 3.769 provides three steps for approval:

- 8 1) Preliminary approval after submission of a written motion for preliminary  
approval, the proposed class settlement, and the proposed class notice;
- 9 2) Issuance of notice of settlement to class members; and
- 10 3) A final settlement approval hearing where class members may be heard  
11 regarding the settlement, and at which evidence and argument concerning the  
fairness, adequacy, and reasonableness of the settlement is presented.

12 The decision to approve or reject a class settlement is committed to the Court’s broad  
13 discretion. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision  
14 to approve class settlement may be reversed only upon a showing of “clear abuse of  
15 discretion.” *Id.*

16 **B. The Settlement Is Presumptively Fair**

17 In assessing preliminary approval, a court evaluates if the settlement process has certain  
18 indicia of fairness. A “presumption of fairness exists where (1) the settlement is reached  
19 through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel  
20 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the  
21 percentage of objectors is small.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford*  
*Motor Co.*, (1996) 48 Cal.App.4th at 1794.

22 The class settlement here satisfies all of these factors. MM, ¶ 23. The Settlement  
23 resulted from thorough, arms’ length, negotiations between experienced counsel with the  
24 assistance of a respected mediator after sufficient discovery was exchanged to assess the  
25 relative strengths and weaknesses of their respective cases and Defendant’s estimated exposure.  
26 *Id.* Both defense counsel and Plaintiff’s counsel are particularly experienced in employment  
27 law and wage and hour class actions and are experienced and qualified to evaluate the class  
28 claims, the viability of the defenses, and the risks and benefits of settlement versus trial on a

1 fully informed basis. Counsel on both sides share the view that the Settlement is a fair and  
2 reasonable settlement in light of the complexities of the case and uncertainties of class  
3 certification and litigation, and a fair result for the Class Members. *Id.*

4 **C. The Settlement Satisfies the *Kullar* Factors for Approval.**

5 The *Kullar* case sets forth several factors a court should consider in determining  
6 whether to approve a class settlement. These factors include: (1) the strength of plaintiff's  
7 case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of  
8 maintaining class action status through trial; (4) the amount offered in settlement; (5) the  
9 extent of discovery completed and stage of the proceedings; (6) the experience and views of  
10 counsel; (7) the presence of a governmental participant; and (8) the reaction of the class  
11 members to the proposed settlement. 168 Cal.App.4th at 128. As demonstrated herein, the  
12 Settlement satisfies each of these factors.

13 **1. Evaluation of Plaintiff's Case**

14 The Parties reached the Settlement through arm's-length bargaining with the aid of a  
15 respected mediator. The Parties conducted sufficient investigation and discovery to allow  
16 Counsel and the Court to act intelligently. Plaintiff considered various sources of information in  
17 the lead-up to and during the mediation of June 4, 2024 that enabled Plaintiff to achieve the  
18 Settlement at issue.

- 19 • Defendant produced and Plaintiff's counsel reviewed Plaintiff's payroll records.
- 20 • Plaintiff's counsel requested that Defendant produce any and all policies on "off the  
21 clock" work, meal and rest periods, sick leave, and reimbursement of expenses in effect  
22 during the relevant time period. Defendant produced policies as part of its employee  
23 handbook.
- 24 • Plaintiff's counsel requested that Defendant provide the total number of employees,  
25 paychecks, and the pay cycles during the relevant period. Defendant provided the  
26 answers to each of these questions.
- 27 • Plaintiff's counsel requested sample time and payroll records for the relevant time  
28 period. Defendant produced time and pay records for all of its employees for 36 pay  
periods throughout the Class Period that I randomly selected from a list provided by the  
defense.
- Plaintiff's counsel then retained a professional data analyst, James Toney, to examine  
the records and determine if there was any pay discrepancy in timesheet hours versus

1 paid hours, meal violations, and if there was any rounding/time shaving issues. Plaintiff  
2 is prepared to provide the Court with the data analysis for *in camera* inspection upon its  
request.

- 3 • Plaintiff's counsel analyzed the state of caselaw on meal and rest break claims, claims  
4 for off-the-clock work, claims for unreimbursed expenses, and claims for not providing  
5 sick leave.

6 MM, ¶ 24.

7 Defendant disclosed that there were approximately 14,959 workweeks during the Class  
8 Period (which translates to approximately 7,480 bi-weekly paychecks). Based on this  
9 information and with the aid of the data analyst, Plaintiff's counsel prepared "damages"  
10 estimates to determine Defendant's maximum exposure in connection with the settlement  
11 negotiations. Plaintiff's counsel calculated the maximum potential damages for meal period  
12 violations, rest period violations, unreimbursed expenses violations, and minimum wage  
13 violations, to be approximately \$1,390,209.13 (exclusive of penalties and interest) and  
14 maximum damages for derivative claims of \$270,000 for wage statement penalties and  
15 \$330,876 for waiting time penalties. The estimates are in essence "home run" projections that  
16 do not factor in any of the risks involved in litigating this Action and are not in line with reality,  
especially when considering Defendant's policies and its position on the issues. MM, ¶ 25.

17 Plaintiff also estimated approximately \$1,246,850 in potential civil penalties under the  
18 PAGA. MM, ¶ 25. This estimate does not reflect the realities of this case and did not take into  
19 account any of the risks discussed above and assumed a violation for every single pay period.  
20 As such, the Parties discounted potential civil penalties for multiple reasons. For one, Plaintiff's  
21 PAGA claims are predicated on the wage underpayment, meal, rest, business expense  
22 reimbursement, and wage statement violations described above, and thus subject to the same  
23 disputes and defenses. Plaintiff's counsel also assessed multiple penalties for the same pay  
24 period for the same alleged violations of different Labor Code provisions and derivative  
25 violations. Plaintiff's counsel is not aware of any California state courts awarding plaintiffs  
26 multiple PAGA penalties for the same violation for the same pay period under different Labor  
27 Code provisions. This may be because the PAGA does not provide for what many employers  
28 characterize as claim splitting and not merely stacking. Additionally, PAGA states a court has  
discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2);  
*Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing

1 PAGA award).

2 The Settlement obviates the significant risk that this Court may deny certification of  
3 some or all of Plaintiff's claims. Even if Plaintiff obtained certification of some or all of the  
4 claims, continued litigation would be expensive, involving a trial and possible appeals, and  
5 would substantially delay and reduce any recovery by the Class Members. While Plaintiff is  
6 confident in the merits of his case, a legitimate controversy exists as to each cause of action.  
7 MM, ¶ 26. To illustrate this consideration, below is brief summary of some of Defendant's  
8 arguments, all of which Plaintiff disputes, but nevertheless acknowledges as potential threats to  
the Settlement Class' claims.

- 9 • Defendant contends that, to establish a violation for missed meal periods, a plaintiff  
10 must do more than show that a meal break was not taken. *Brinker Restaurant Corp. v.*  
11 *Superior Court* (2012) 53 Cal.4th 1004. So long as an employer provides employees  
12 with a "reasonable opportunity" to take a duty-free meal period, it has no further duty  
13 to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41.  
14 Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the  
15 employee from taking a proper break, or otherwise failed to release the employee of all  
16 control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the reason  
17 that a particular employee may have failed to take a meal break." *Washington v. Joe's*  
18 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Defendant contends that  
19 individualized proof will be needed to establish liability on Plaintiff's meal period  
20 claims. Defendant argues that Settlement Class Members will testify that they were  
21 plainly advised by their supervisors, and fully understood, that they were authorized to  
22 take meal periods within each five-hour period worked and, in fact, took such breaks.  
23 Moreover, Defendant's timekeeping data cannot show why a meal break does not  
24 appear in the time records. For example, a meal period may have been authorized and  
25 taken, but simply not punched in and out.
- 26 • Defendant contends that there is no common proof for Plaintiff's claim that he was  
27 required to work off-the clock ("OTC") and that some of that OTC work, if properly  
28 accounted for, would have resulted in work to be compensated at overtime rates. In  
fact, Defendant argues, time records do not provide common proof because, by  
definition, they do not show such time. Defendant argues that one would have to

1 examine, and cross-examine for credibility, each individual's separate claims of  
2 supposed OTC work. Further, Defendant argues, each Class Member would need to  
3 overcome this credibility hurdle in the face of his/her own time records, which show no  
4 OTC work and further would have to prove that his/her individual manager knowingly  
5 suffered or permitted the work.

- 6 • Defendant contends that Plaintiff cannot recover waiting time or wage statement  
7 penalties based upon the failure to pay Labor Code section 226.7 premium wages for  
8 meal and rest period violations. *See Naranjo v. Spectrum Sec. Servs., Inc.* (2019) 40  
9 Cal. App. 5th 444 (review granted Jan. 20, 2020) (actions for violations of Labor  
10 Code's meal break provisions do not entitle employees to pursue derivative waiting  
11 time and itemized wage statement penalties).
- 12 • There is a risk that the Court may consider Plaintiff's claims as to Defendant's alleged  
13 failure to indemnify for business expenses to be individual in nature and unfit for class  
14 wide resolution.

15 MM, ¶ 26.

16 As noted above, Defendant contests liability, as well as the propriety of certification,  
17 and is prepared to vigorously oppose certification and to defend against Plaintiff's claims if the  
18 Action is not settled. Given the potential damages, as well as the substantial risks to recovery  
19 discussed herein, including the uncertainties in achieving class certification, Plaintiff's counsel  
20 had to dramatically discount the value of the claims during settlement negotiations. Plaintiff's  
21 counsel estimates a 50 percent likelihood of obtaining and maintaining certification of all of  
22 Plaintiff's claims, which reduces the value of these claims from approximately \$3,237,935.13  
23 to approximately \$1,618,967.57. Defendant, however, asserts that there are significantly lower  
24 prospects of certification. Plaintiff's counsel further estimates that there is a 50 percent chance  
25 that Plaintiff will prevail at trial on his claims, further reducing the value of the claims to  
26 approximately \$809,483.78. Defendant contends that Plaintiff's prospects of success at trial are  
27 much lower. If this case advanced to trial and Class Counsel succeeded on all of Plaintiff's  
28 claims, attorney's fees and costs may have significantly reduced the recovery awarded to the  
Class. Furthermore, there is always a risk that a trial of this magnitude can become  
unmanageable. A settlement of \$490,000 ( approximately 15% of the maximum exposure and  
60% of the potential recovery) is a great result and a proportion sanctioned by existing case

1 law. *See In re Cendant Corp., Derivative Action Litig.*, 232 F. Supp. 2d 327 (D. N.J. 2002)  
2 (approving settlement that only provided a 2% recovery based on the estimated liability  
3 exposure). MM, ¶ 27.

4 While Plaintiff believes the evidence gathered through Plaintiff's discovery supports the  
5 merits of the claims asserted in this lawsuit, Plaintiff recognizes that continued litigation  
6 presents significant risks that support a downward departure from Defendant's estimated  
7 liability exposure. In view of the risks, the Settlement reflects Class Counsel's estimate of the  
8 total amount of damages, monetary penalties or other relief that the class could reasonably  
9 expect to be awarded at trial, taking into account the likelihood of prevailing and other  
10 attendant risks. It also represents a fair, adequate, and reasonable compromise amount for these  
11 claims and warrants preliminary approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-  
12 55479 (9th Cir. June 3, 2014) 2014 WL 2465049, \* 3. MM, ¶ 28.

## 13 **2. Allocation of the PAGA Payment**

14 The settlement of PAGA penalties in the sum of \$50,000, of which 75% (\$37,500) will  
15 be paid to the LWDA and 25% (\$12,500) will be distributed to the Class, is reasonable and  
16 appropriate under the circumstances. MM, ¶ 29. The Parties negotiated a good faith amount for  
17 PAGA penalties to be paid to the LWDA and to the Settlement Class. *Id.* The portion to be paid  
18 to the LWDA was not the result of self-interest at the expense of other Class Members. *Id.*  
19 Where settlements "negotiate[] a good faith amount" for PAGA penalties and "there is no  
20 indication that this amount was the result of self-interest at the expense of other Class  
21 Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*  
22 (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at \*9. Likewise, where the  
23 employer did not act willfully, and made good faith attempts to comply with wage and hour  
24 laws, a reduction or lesser penalty is warranted because imposing maximum PAGA penalty for  
25 each violation would have been unjust, arbitrary, and oppressive. *Id. Carrington v. Starbucks*  
26 *Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial court's award of only 10% of  
27 maximum PAGA penalty for meal break violations). *Id.* The amount to be paid to the LWDA  
28 comports with PAGA settlement amounts approved by other courts. See, e.g., *Chu v. Wells*  
*Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA  
payment of \$7,500 to LWDA out of \$6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.*  
(N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of \$7,500 to LWDA  
out of \$1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8,

2008) 2008 WL 3385452, at \*1 (approving PAGA settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim).

**3. Presence of Governmental Participant**

As required under Labor Code section 2699(1)(2), Plaintiff will provide notice of this settlement to the LWDA. MM, ¶ 39, Ex. 8.

**4. Reaction of Class Members to Proposed Settlement**

If the settlement is preliminarily approved, Class Members will be provided with the Class Notice (attached as Exhibit 1 to the Settlement) and an opportunity to object. MM, ¶ 35. The parties' proposed notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement. *Id.*

**VI. THE SETTLEMENT FAIRLY, REASONABLY, AND ADEQUATELY COMPENSATES CLASS MEMBERS BECAUSE EACH CLASS MEMBER WILL BE PAID BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY COMPARED TO OTHER CLASS MEMBERS.**

Individual Settlement Payments will be calculated and apportioned from the Net Settlement Fund and PAGA Fund based on the number of Workweeks a Class Member worked during the Class Period and the number of PAGA Pay Periods a PAGA Member worked during the PAGA Period, respectively. MM, ¶ 34; Settlement ¶ 45. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendant longer would have been subject to more alleged violations, it is fair, adequate, and reasonable. *Id.*

**VII. ALLOCATION FOR CLASS COUNSEL'S ATTORNEYS' FEES AND COSTS IS APPROPRIATE.**

The settlement states Class Counsel may seek attorneys' fees of \$163,333.33 (one-third of the GSA) and up to \$10,000.00 for actual reasonable litigation costs and expenses incurred in prosecuting the Action. Settlement ¶¶ 2,38. These amounts are reasonable, given the facts and circumstances of the case. MM, ¶¶ 30-32.

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney

1 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the  
2 result achieved and risk incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Ca1. 5th 480, 503  
3 (citing *Lealao, supra*, 82 Cal.App.4th at p. 48-49). The Supreme Court has recently approved  
4 fees equal to one-third (1/3) of the common fund. *Laffitte, supra*, 1 Ca1. 5th 480. Many  
5 courts have similarly approved fee awards equal to or greater than the percentage requested  
6 here. *See, e.g., In re Pacific Enterprises* (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of  
7 the common fund); *In re Activision* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the  
8 common fund); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of  
9 settlement fund).

10 The amount of fees and costs requested are commensurate with (1) the risk Class  
11 Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the  
12 case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel  
13 achieved, (5) the value of the Settlement Class Counsel achieved for the class, and (6) the other  
14 cases Class Counsel turned down to devote time to this matter. MM, ¶ 31. Class Counsel met  
15 and conferred with Defendant's counsel on numerous occasions, reviewed and analyzed  
16 hundreds of pages of data and documents provided by Defendant, researched applicable law,  
17 provided estimates of "damages" for purposes of settlement discussions, and engaged in a full  
18 day of mediation, among other tasks. *Id.*

19 Class Counsel have borne all the risks and costs of litigation and will receive no  
20 compensation until recovery is obtained. MM, ¶ 32. Class Counsel is well-experienced in  
21 wage-and-hour class action litigation and used that experience to obtain a fair result for the  
22 Class. *Id.* Considering the amount of the attorney fees requested, the work performed, and the  
23 risks incurred, the requested fees and costs are reasonable and should be awarded. *Id.*

24 **VIII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT TO**  
25 **PLAINTIFF IS FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE**  
26 **PRELIMINARILY APPROVED.**

27 Courts routinely approve enhancement awards to compensate named plaintiffs for the  
28 services they provide and the risks they incur during class action litigation, often in much  
higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115  
Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in  
bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294

1 (approving \$50,000 enhancement award). The Settlement provides that Plaintiff may seek a  
2 Class Representative Enhancement Payment of \$10,000.00. This amount is entirely reasonable  
3 given Plaintiff's efforts in this action and the risks he undertook on behalf of Class Members.  
4 MM, ¶ 33. Plaintiff has devoted many hours advancing the interests of the Settlement Class.  
5 Plaintiff has done this by, among other things, retaining experienced counsel, providing them  
6 with information about his work history with Defendants and Defendants' policies and  
7 practices with respect to the wage and hour claims at issue, and being actively involved in the  
8 settlement process to ensure a fair result for the Settlement Class as a whole. In doing this,  
9 Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendants'  
10 attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6).  
11 The efforts and risks that Plaintiff undertook on behalf of the Settlement Class shows that the  
12 proposed Incentive Award is fair, adequate, and reasonable, and thus warrants preliminary  
13 approval. MM, ¶ 33; *See generally* Declaration of Ruben Ortiz Salgado.

14 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR**  
15 **AND REASONABLE AND SHOULD BE PRELIMINARILY APPROVED.**

16 With regard to the settlement administration costs provision, it is reasonable. Before  
17 agreeing to Phoenix Class Action Administration Solutions, the Parties sought and reviewed  
18 bids from other reputable third-party administrators which provided higher bids. MM, ¶ 37,  
19 Exs. 4-7. Thus, the settlement administration costs provision should be given preliminary  
20 approval.

21 **X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN**  
22 **SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED**  
23 **TO GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT**  
24 **TIME TO EXERCISE THEIR RIGHTS**

25 This Court should approve the proposed plans for giving notice to the Settlement Class  
26 and administering the Settlement. The standard for determining the adequacy of notice is  
27 whether the notice has "a reasonable chance of reaching a substantial percentage of the class  
28 members." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes  
multiple measures to ensure that as many Class Members as practicable receive actual notice of

1 the Settlement and have enough time to exercise their rights. The Settlement requires  
2 distribution of the Notice by First Class U.S. mail only. Settlement, ¶ 49. Although there are  
3 current employee Class Members, it is uncertain whether Defendant's records of their contact  
4 information include email addresses and Class Members, who perform all of their work away  
5 from a desk, are not in a position to check their emails. As such, notice by mail alone is fair,  
6 adequate, and reasonable. MM, ¶ 35.

7         With respect to its content, "[The] notice given to the class must fairly apprise the class  
8 members of the terms of the proposed compromise and of the options open to dissenting class  
9 members." *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.  
10 The purpose of the notice in class settlement context is to give class members sufficient  
11 information to decide whether they should accept the benefits offered, opt out and pursue their  
12 own remedies, or object to the settlement. *Id.* The Class Notice (Exhibit 1 to the Settlement)  
13 provides Class Members with all pertinent information that they need to fully evaluate their  
14 options and exercise their rights under the Settlement. Specifically, it clearly and concisely  
15 explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class  
16 Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be  
17 bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be  
18 allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be  
19 resolved; and (9) the Individual Settlement Class Member's estimated payment. Additionally,  
20 the Class Notice will include the number of Workweeks a Class Member had during the Class  
21 Period and the number of PAGA Periods a PAGA Member had during the PAGA Period.  
22 Accordingly, the Notice should be approved because it describes the Settlement with sufficient  
23 clarity and specificity to explain to Class Members what this action is about, their rights under  
24 the Settlement, and how to exercise those rights. MM, ¶ 35.

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2 **XI. CONCLUSION**

3 For the reasons stated above, this Court should grant Plaintiff's Motion in its entirety  
4 and adopt the proposed order submitted concurrently herewith.

5 Respectfully submitted,

MM LAW, APC

6  
7 Dated: September 18, 2024

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