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CATHERINE ANDERSON and the Proposed Class

(ADDITIONAL COUNSEL ON NEXT PAGE)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CATHERINE ANDERSON, as an
individual and on behalf of all others
similarly situated; JOSE RODRIGUEZ, as
an individual on behalf of himself and all
other similarly situated,

Plaintiffs,

vs.

KINDER MORGAN, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO. 23STCV25789

Assigned to the Hon. Laura A. Seigle, Dept.
SSC-17

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

Hearing Information:

Date: December 5, 2025

Time: 9:00 AM

Dept.: 17

[Filed concurrently with: (1) Declaration of
George S. Azadian, Esq.; (2) Declaration of
Scott M. Lidman, Esq.; (3) Declaration of Milan
Moore, Esq.; (4) Declaration of Tiara Gose-
Hardy; (5) Declaration of Paul K. Haines, Esq.;
(6) Declaration of Jodey Lawrence on Behalf of
Phoenix Settlement Administrators; (7)
Declaration of Plaintiff Catherine Anderson; (8)
Declaration of Plaintiff Jose Rodriguez and (9)
[Proposed] Order.]

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Attorneys for Plaintiff, JOSE RODRIGUEZ and the Proposed Class

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on December 5, 2025, at 9:00 AM, or as soon
3 thereafter as this matter may be heard by the Court in Department 17 of the Los Angeles
4 Superior Court, located at 312 N. Spring St., Los Angeles, CA 90012, Plaintiffs Catherine
5 Anderson and Jose Rodriguez (collectively, "Plaintiffs"), on behalf of themselves and a
6 Settlement Class, will and hereby does move for an Order:

- 7 1) Preliminarily approving the proposed class action settlement and PAGA
8 settlement in the above-captioned case;
- 9 2) Preliminarily certifying the Settlement Class;
- 10 3) Preliminarily approving the appointment of Plaintiffs as Class Representatives;
- 11 4) Preliminarily approving the appointment as Class Counsel of: George S. Azadian
12 and Ani Azadian of Azadian Law Group, PC; Scott M. Lidman, Tiara Gose-
13 Hardy, and Milan Moore of Lidman Law, APC; and Paul K. Haines of Haines
14 Law Group, APC;
- 15 5) Approving appointment of Phoenix Settlement Administrators as the Settlement
16 Administrator;
- 17 6) Approving and directing distribution of notice to the Settlement Class; and
- 18 7) Setting a final fairness and approval hearing [the Parties request a date that is 130
19 days after the Court grants Preliminary Approval].

20 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
21 provides for Court approval of the settlement of a purported class action and allows the Court to
22 preliminarily certify a class for settlement purposes.

23 //

24 //

1 The basis for this Motion is that the proposed settlement is fair, adequate, and reasonable
2 and in the best interests of the settlement class as a whole, and that the procedures proposed by
3 the parties are adequate to ensure the opportunity of class members to participate in, opt out of,
4 or object to the settlement.

5 Dated: October 23, 2025

AZADIAN LAW GROUP, PC

6 
7

8 By: _____
9 George S. Azadian
10 Attorneys for Plaintiff,
11 JOSE RODRIGUEZ and the Proposed Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Catherine Anderson and Jose Rodriguez (collectively, “Plaintiffs”) and
4 Defendant Kinder Morgan, Inc. (“Defendant”), have reached a proposed class action and PAGA
5 settlement. Plaintiffs and Defendant (collectively, the “Parties”) submit the Class Action and
6 PAGA Settlement Agreement (the “Settlement” or “Settlement Agreement”) to the Court for its
7 preliminary approval. The Settlement Agreement and Exhibit A attached thereto (the Class
8 Notice) are attached to the Declaration of George S. Azadian, Esq. (“Azadian Decl.”) as Exhibit
9 1.¹ The Settlement Agreement and Class Notice are based on the Los Angeles Superior Court
10 Model Form and a redline showing the changes from the Model Form is attached to Azadian
11 Decl. as Exhibit 2.

12 The Settlement provides for a non-reversionary payment of \$375,000 and Defendant will
13 be separately responsible for any employer payroll taxes. Approximately \$182,500² will be
14 available for disbursement to all Participating Class Members (the Settlement’s “Net Settlement
15 Amount”). There are approximately 485 Class Members who worked a total of 79,624
16 Workweeks. Based on these 79,624 Workweeks worked by all Class Members, each week
17 worked would have a net value of approximately \$2.29 and a gross value of approximately
18 \$4.71. The Agreement also contains an escalator clause to ensure that if the number of
19 Workweeks materially changes, Defendant will either increase the settlement amount or cut-off
20 the class period. (Azadian Decl. ¶ 7.)

21

¹ For ease of reference and consistency, defined terms from the Settlement Agreement are
22 utilized below.

23 ² The estimated Net Fund Value of \$182,500 is calculated by taking the \$375,000 Gross
24 Settlement Amount and subtracting: the requested Class Counsel Fees Payment of 1/3 of the
25 Gross Settlement Amount (\$125,000), Class Counsel Litigation Expenses Payment (in the
maximum amount of \$30,000), Class Representative Service Payment of \$5,000 to Plaintiff
Rodriguez, Class Representative Service Payment of \$2,500 to Plaintiff Anderson, \$20,000 in
PAGA Penalties, and Administration Expenses Payment of \$10,000.

1 The Settlement occurred as a result of extensive arm's length negotiations by experienced
2 counsel after sufficient discovery and investigation into the facts, and after a mediation with
3 Michael Ludwig, Esq., a highly experienced and well-respected class action mediator. As
4 detailed below, the Settlement is fair, reasonable, and in the best interests of the Settlement
Class. (Id. ¶ 8.)

5 **II. BACKGROUND AND PROCEDURAL HISTORY**

6 **A. The Pleadings & Nature Of The Action**

7 Defendant is an energy infrastructure company whose pipelines transport natural gas,
8 gasoline, crude oil, carbon dioxide (CO₂) and more. Defendant's terminals store and handle
9 renewable fuels, petroleum products, chemicals, vegetable oils and other products. (Id. ¶ 9.)

10 Plaintiff Anderson was employed by Defendant in California between approximately
11 September 9, 2001 and February 1, 2023. Plaintiff Anderson worked as a non-exempt Customer
12 Service Representative and her job duties included without limitation, training truck drivers on
13 how to load gas and overseeing inventory. (Id. ¶ 10.; Declaration of Catherine Anderson
("Anderson Decl., ¶ 2).

14 Plaintiff Rodriguez was employed by Defendant in California between approximately
15 January of 2022 and approximately July 26, 2023. Plaintiff Rodriguez worked for Defendant as
16 a non-exempt employee, in the position of Operator 12. In this position, Plaintiff Rodriguez
17 monitored Defendant's pipelines and metrics, as well as opening and closing valves. (Id. ¶ 11.)

18 This Action was filed on October 30, 2023. The Second Amended Complaint is the
19 operative complaint in this action and was filed on August 5, 2025. The Second Amended
20 Complaint alleges claims for: (1) Violations of Labor Code §§ 1194, 1194.2, and 1197, for
21 unpaid wages; (2) Violations of Labor Code §§ 204, 510, 558, 1194, and 1198 for overtime
22 wages; (3) Violations of Labor Code §§ 221-223 for failure to pay all wages at the agreed-upon
23 rate; (4) Violations of Labor Code §§ 226.7, 512, and 558 for non-compliant meal periods; (5)
24 Violations of Labor Code §§ 226.7, 516, 558 and Wage Order for non-compliant rest periods; (6)
Violations of Labor Code § 226 for non-compliant wage statements; (7) Violations of Labor

1 Code §§ 201-203 for failure to pay all wages owed upon termination or resignation of
2 employment; (8) Violations of Labor Code § 2802 for failure to indemnify all necessary business
3 expenses; (9) Violations of Business and Professions Code § 17200; and (10) Civil Penalties
4 pursuant to the Private Attorney General Act of 2004 (“PAGA”) (Lab. Code§ 2698 et seq.). (Id.
5 ¶ 12.)

6 **B. Discovery Taken By The Parties**

7 Prior to mediation, Plaintiffs obtained, through formal and informal discovery: (a) time
8 and payroll records for a random sample of 20% of the putative class members; (b) putative class
9 data points, including, *inter alia*, the number of Class Members and Aggrieved Employees, the
10 number of employees in the waiting time penalty period, the average hourly rate of pay, the
11 number of Workweeks during the Class and PAGA Periods, and the number of shifts through
12 mediation; (c) Defendant’s wage and hour policy documents, including all written policies
13 relating to meal and rest breaks, overtime, clocking in and out, and recording of work time; and
14 (d) all documents pertaining to Plaintiffs available to Defendant. (Id. ¶ 13.) Class Counsel
15 retained a consultant to assist with a review of the time and pay records in creating a damages
16 model for purposes of the mediation. (Id. ¶ 14.)

17 Class Counsel also was able to obtain from Plaintiffs a number of additional documents
18 and electronically stored information utilized for the mediation, including wage statements and
19 time records. (Id. ¶ 15.)

20 **C. Mediation With Michael Ludwig, Esq.**

21 On September 5, 2024, the Parties participated in a mediation with Michael Ludwig, Esq.
22 Mr. Ludwig was agreed to by the parties based on his excellent skills and experience as a
23 mediator in wage-and-hour class actions. The mediation was not successful but the Parties
24 continued to negotiate following the mediation with the assistance of Mr. Ludwig. Through
25 these further negotiations facilitated by Mr. Ludwig, the Parties were able to come to an
agreement to settle the Action. Thereafter, the Parties negotiated the long-form Settlement
Agreement, which is now presented to the Court for preliminary approval. (Id. ¶ 16.)

III. THE PROPOSED SETTLEMENT

A. The Settlement Class & Released Claims

Class & Class Size: The “Class” is defined as: “all non-exempt, hourly paid employees who are or were employed by Defendant in California during the Class Period.” (Settlement Agreement (“SA”), § 1.5.) “Class Period” means the period from September 28, 2019 to January 6, 2025 or the date of preliminary approval, whichever is later. (SA § 1.12.) Defendant estimates there are 485 Class Members who worked a total of 79,624 Total Workweeks between September 28, 2019 and January 6, 2025. (SA § 4.1.) The Agreement also contains an escalator clause to ensure that if the number of Workweeks materially changes through the date of Preliminary Approval, Defendant will either increase the settlement amount or cut-off the class period. (SA § 8.)

“Aggrieved Employee” means “a person employed by Defendant in California and classified as a non-exempt employee who worked for Defendant during the PAGA Period.” (SA § 1.4.) “PAGA Period” means the period from September 28, 2022 to January 6, 2025 or the date of preliminary approval, whichever is later. (SA § 1.31.) Defendant estimates there are 392 Aggrieved Employees who worked a total 16,949 of PAGA Pay Periods between September 28, 2022 and January 6, 2025. (SA § 4.1.) All PAGA Settlement Members are also Class Members.

Class Members who do not submit a valid and timely Request for Exclusion from the Settlement are referred to as the “Participating Class Members.” (SA § 1.35.)

Release by Participating Class Members Who Are Not Aggrieved Employees:

The scope of the release for Participating Class Members who are not Aggrieved Employees is limited only to those claims that were brought by Plaintiffs in this Action or those that could have been raised based on the facts alleged in the Operative Complaint, including, but not limited to, any and all claims involving any alleged Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all

1 claims that were alleged, or reasonably could have been alleged, based on the Class Period facts
2 stated in the Operative Complaint and ascertained in the course of the Action including, but not
3 limited to: minimum wages; overtime and double time wages; meal and rest breaks; failure to
4 maintain accurate employment records; failure to reimburse expenses, wage statement violations;
5 separation pay violations; and unfair business practices. (SA § 5.2.)

6 **Release by Aggrieved Employees:** All Participating and Non-Participating Class
7 Members who are Aggrieved Employees are deemed to release, on behalf of themselves and
8 their respective former and present representatives, agents, attorneys, heirs, administrators,
9 successors, and assigns, the Released Parties from all claims all claims for PAGA penalties that
10 were alleged, or reasonably could have been alleged, based on the facts stated in the PAGA
11 Notice and Operative Complaint, including, PAGA penalties premised on violations of Labor
12 Code sections 201, 202, 203, 204, 210, 223, 226, 226.3 226.7, 510, 512, 516, 558, 1174, 1194,
13 1194.2, 1197, 1197.1, 1198, and 2802 and the IWC Wage Orders. (SA § 5.3.)

14 The releases shall become effective upon payment of the Gross Settlement Amount.
15 (SA § 5.)

16 Plaintiff Rodriguez has agreed to a broader, full general release, which only applies to
17 Plaintiff Rodriguez. Plaintiff Anderson has also agreed to a broader release, which only
18 applies to Plaintiff Anderson, but excludes individual claims under the Fair Employment and
19 Housing Act that are set forth in Plaintiff Anderson's complaint filed with the California
20 Civil Rights Department on or around August 14, 2024. (SA §§ 5.1.)

21 **B. The Settlement Payment**

22 Defendant will, through the Administrator, create a **non-reversionary** settlement fund in
23 the amount of \$375,000 ("Gross Settlement Amount"). The employer share of payroll taxes
24 shall be paid separate and apart from the Gross Settlement Amount by Defendant. (SA § 3.1.)
25 Payment shall be made no later than 30 calendar days of the Effective Date.³ (SA § 4.3.)

³ "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment

1 **C. Settlement Payment Distribution Plan**

2 All expenses associated with the Settlement are to be paid from the Gross Settlement
3 Amount, including up to \$125,000 to Class Counsel for attorneys' fees (1/3 of the Gross
4 Settlement Amount), up to \$30,000 to Class Counsel for reimbursement of litigation expenses
5 incurred (SA § 3.2.2); Administrator Expenses Payment not to exceed \$10,000.00 (SA § 3.2.3);
6 Class Representative Service Payment of \$5,000 to Plaintiff Rodriguez and \$2,500 to Plaintiff
7 Anderson for their service as the Class Representatives and in consideration for a general release
8 of all claims against Defendant provided by Plaintiff Rodriguez (SA § 3.2.1) and a limited
9 general release provided by Plaintiff Anderson; and PAGA Penalties in the amount of
10 \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated to
11 the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA Payments
(SA § 3.2.5.)⁴

12 Pursuant to California Labor Code § 2699(l), *the Settlement Agreement has been*
13 *provided to the Labor and Workforce Development Agency* and proof of submission is attached
14 as Exhibit 3 to Azadian Decl. (Azadian Decl. ¶ 6.)

15 **1. Calculating Participating Class Members' Individual Class Payments**

16 All Participating Class Members will receive an Individual Class Payment, which will be
17 the Class Member's pro rata share of the Net Settlement Amount calculated according to the
18 number of Workweeks worked during the Class Period. (SA § 1.23.) After deducting the

19 is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating
20 Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more
21 Participating Class Members objects to the Settlement, the day after the deadline for filing a
22 notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day
23 after the appellate court affirms the Judgment and issues a remittitur. (SA § 1.18.)

24 ⁴ The amount to be paid to the LWDA comports with PAGA settlement amounts approved by
other courts. See Chu v. Wells Fargo Investments, LLC, 2011 WL 67245, at *1 (N.D. Cal., Feb.
16, 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund);
Lazarin v. Pro Unlimited, Inc., 2013 WL 3541217 (N.D. Cal., July 11, 2013) (approving PAGA
payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); Hicks v. Toys 'R'
Us-Delaware, Inc., 2014 WL 4703915, at *1 (C.D. Cal. Sept. 2, 2014) (approving \$5,000 PAGA
payment in a case involving \$4 million settlement); Franco v. Ruiz Food Prods., Inc., 2012 WL
5941801 at *14 (E.D. Cal. Nov. 27, 2012) (approving PAGA penalties of \$10,000 as part of \$2.5
million settlement).

1 Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service
2 Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the
3 Administration Expenses Payment, the remaining “Net Settlement Amount” will be distributed
4 to the Participating Class Members through “Individual Class Payments.” (SA § 1.28.)

5 An Individual Class Payment will be calculated by (a) dividing the Net Settlement
6 Amount by the total number of Workweeks worked by all Participating Class Members during
7 the Class Period and (b) multiplying the result by each Participating Class Member’s
8 Workweeks. (SA § 3.2.4)

9 The estimated Net Settlement Amount will be approximately \$182,500.⁵ There are
10 approximately 485 Class Members who worked a total of 79,624 Workweeks between
11 September 28, 2022 and January 6, 2025. Based on these 79,624 Workweeks worked by all
12 Class Members, each week worked would have a net value of approximately \$2.29 and a gross
13 value of approximately \$4.71. (Azadian Decl. ¶ 7.)

14 33% of each Participating Class Member’s Individual Class Payment will be allocated to
15 settlement of wage claims (the “Wage Portion”). The Wage Portions are subject to tax
16 withholding and will be reported on an IRS W-2 Form. The Remaining 67% of each
17 Participating Class Member’s Individual Class Payment will be allocated to interest and
18 penalties (the “Non-Wage Portion”). The formula for allocating the Individual Class Payment to
19 Participating Class Members is reasonable and that the payments provided herein are designed
20 to provide a fair settlement to such persons in light of the uncertainties regarding the calculation
21 of alleged wages, penalties, interest, and expense reimbursement to each Participating Class
22 Member. (SA § 3.2.4.1.)

23 ⁵ The estimated Net Fund Value of \$182,500 is calculated by taking the \$375,000 Gross
24 Settlement Amount and subtracting: the requested Class Counsel Fees Payment of 1/3 of the
Gross Settlement Amount (\$125,000), Class Counsel Litigation Expenses Payment (in the
maximum amount of \$30,000), Class Representative Service Payment of \$5,000 to Plaintiff
Rodriguez, Class Representative Service Payment of \$2,500 to Plaintiff Anderson, the \$20,000
PAGA Penalties, and Administration Expenses Payment of \$10,000.

2. Calculating Aggrieved Employees' Individual PAGA Payments

The Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (SA § 3.2.5.1.) Due to the Individual PAGA Payments being allocated to penalties, the entire Individual PAGA Payment to each PAGA Settlement Member shall be reported on IRS Forms 1099-MISC and there will not be tax withholdings on this amount. (SA § 3.2.5.2.)

3. Payments To Participating Class Members and Aggrieved Employees

No claim form will be required for the Individual Class Payment or Individual PAGA Payment to be sent. Within 14 days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will pay all claims to Participating Class Members and Aggrieved Employees. (SA § 4.4.) The payments shall be transmitted by U.S. Mail to the last-known addresses utilized for sending the Class Notice or any updated address provided by the Participating Class Member or Aggrieved Employee. (SA § 4.4.1.)

4. California Code of Civil Procedure Section 384

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date (180 days after the date of mailing), the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). The Settlement is compliant with California Code of Civil Procedure § 384 because any unclaimed shall remain available to the recipient through the California State Controller's Office Unclaimed Property Fund. (SA § 4.4.3.)

D. Notice To The Class Members

The Class Notice was drafted based on the requirements of the Court’s Model Class Notice. The Class Notice is attached as Exhibit A to the Settlement Agreement. The Notice

1 will be provided in English only as Defendant has confirmed that its workforce speaks and reads
2 English.⁶ (SA §§ 1.11, 7.42.)

3 The Class Notice includes: (i) information regarding the nature of the Action; (ii) a
4 summary of the Settlement's principal terms; (iii) the definitions of the Class Members and
5 Aggrieved Employees; (iv) the total number of Workweeks each respective Class Member
6 worked for Defendant during the Class Period and PAGA Period are separately stated; (v) each
7 Class Member's estimated Individual Class Payment and Individual PAGA Payment and the
8 formula for calculating the payments are separately stated; (vi) the dates which comprise the
9 Class Period and PAGA Period; (vii) instructions on how to submit Requests for Exclusion or
10 Notices of Objection; (viii) the deadlines by which the Class Member must postmark or fax
11 Request for Exclusions, or postmark Notices of Objection to the Settlement; and (ix) the claims
to be released. (SA §§ 1.11, 7.4.2-7.4.4; Class Notice (attached as Exhibit A to the Settlement
Agreement).)

12 The Class Notice also provides instructions on how to dispute the number of Workweeks
13 or Pay Periods stated in the Class Notice and how to participate in the Final Approval Hearing
14 either in person or virtually. (Class Notice (attached as Exhibit A to the Settlement
15 Agreement).)

16 Within 30 calendar days of Preliminary Approval, Defendant will provide the Class Data
17 to the Administrator. To protect Class Members' privacy rights, the Administrator must
18 maintain the Class Data in confidence, use the Class Data only for purposes of the Settlement
19 and for no other purpose, and restrict access to the Class Data to Administrator employees who
20 need access to the Class Data to effect and perform under this Agreement. (SA § 4.2.) Within
21 14 calendar days after receiving the Class Data from Defendant, the Administrator will mail
22 the Class Notice to all Class Members (including all Aggrieved Employees) via regular
First-Class U.S. Mail. Before mailing Class Notices, the Administrator shall update Class

23 ⁶ Although the Settlement Agreement itself indicates that the Notice will be sent in both English
24 and Spanish, after execution of same the Parties confirmed that the Notice be sent only in
English.

1 Member addresses using the National Change of Address database. (SA § 7.4.2.) Any Class
2 Notice returned to the Administrator as non-deliverable on or before the Response Deadline⁷
3 shall be re-mailed the Class Notice using any forwarding address provided by the USPS. If
4 the USPS does not provide a forwarding address, the Administrator shall conduct a Class
5 Member Address Search, and re-mail the Class Notice to the most current address obtained.
(SA § 7.4.3.)

6 **E. Requests For Exclusion**

7 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
8 send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later
9 than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class
10 Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class
11 Member or his/her representative that reasonably communicates the Class Member's election to
12 be excluded from the Settlement. A Request for Exclusion must be postmarked by the Response
Deadline. (SA § 7.5.1.)

13 The Administrator shall accept any Request for Exclusion as valid if the
14 Administrator can reasonably ascertain the identity of the person as a Class Member and the
15 Class Member's desire to be excluded. (SA § 7.5.2.)

16 The Class Notice instructs Class Members on how to exclude themselves from the Class
17 by submitting a simple letter with their name, address, phone number, and a statement that they
18 do not want to participate in the Settlement. (Class Notice (attached as Exhibit A to the
Settlement Agreement).)

19 Class Members who are Aggrieved Employees may not request exclusion from the
20 PAGA Settlement and shall receive an Individual PAGA Payment regardless of their exclusion

21
22 ⁷ The "Response Deadline" means 60 days after the Administrator mails Notice to Class
23 Members and Aggrieved Employees and shall be the last date on which Class Members may: (a)
24 fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or
her Objection to the Settlement. Class Members to whom Notice Packets are resent after having
been returned undeliverable to the Administrator shall have an additional 14 calendar days
beyond the Response Deadline has expired. (SA § 1.45.)

1 from the Class. (SA § 7.5.4.) See Robinson v. S. Ctys. Oil Co., 53 Cal. App. 5th 476, 482
2 (2020) (“[T]here is no mechanism for opting out of the judgment entered on the PAGA claim.”).

3 The Class Notice includes the URL to the website maintained by the Administrator that
4 will have links to the Class Notice, Settlement Agreement, and Preliminary Approval Order.
5 The Class Notice will advise Class Members that the Final Approval order and Judgment will be
6 posted to the website maintained by the Settlement Administrator related to the Settlement. (SA
§ 7.8.1.)

7 **F. Objections To The Settlement**

8 The Class Notice instructs Class Members on how to object to the Settlement.
9 Participating Class Members may send written objections to the Administrator, by fax, email, or
10 mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to
11 appear in Court) to present objections at the Final Approval Hearing. A Participating Class
12 Member who elects to send a written objection to the Administrator must do so not later than 60
13 days after the Administrator’s mailing of the Class Notice (plus an additional 14 days for Class
Members whose Class Notice was re-mailed). (SA § 7.7.2.)

14 Any Class Member who does not submit a timely written objection to the Settlement may
15 still appear at the Final Approval Hearing and make an objection. (SA § 7.7.2; Class Notice §
16 7.)

17 **G. Notice Of The Order Granting Final Approval And Judgement To The Settlement**
18 **Class**

19 The Class Notice will advise Class Members that the Final Approval order and Judgment
20 will be posted to the website maintained by the Administrator related to the Settlement. (SA §
21 7.8.1; Class Notice § 7.)
22
23
24

IV. LEGAL ANALYSIS

A. Two-Step Settlement Process

Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct. 3.769; Fed. R. Civ. P. 23(e).⁸ This is done in two steps: (1) a preliminary review by the trial court, and (2) a final review after notice has been distributed to the Settlement Class informing them of the terms of the settlement and allowing them to exclude themselves from, participate in, and/or object to the settlement. The Manual for Complex Litigation (Third) § 30.41 states:

Approval of class action settlements involves a two-step process. First, counsel submit the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice . . . be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.

Thus, the preliminary approval by the Court is a conditional finding that the settlement appears to be within the range of acceptable settlements. See Wershba v. Apple Computer, 91 Cal. App. 4th 224, 234-35 (2001). “The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

The procedures for the Parties’ submission of a proposed settlement for preliminary approval by the Court also are discussed in 4 Newberg on Class Actions:

When the parties to an action reach a monetary settlement, they will usually prepare and execute a joint stipulation of settlement, which is submitted to the court for preliminary approval. The stipulation should set forth the essential terms of the

⁸ The California Supreme Court has authorized California’s trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. See Vasquez v. Superior Court, 4 Cal. 3d 800, 821 (1971); Green v. Obledo, 29 Cal.3d 126, 145-146 (1981). Where appropriate, Plaintiffs cites Federal Rule 23 and federal case law in addition to California law.

1 agreement, including but not limited to, the amount of settlement, form of payment,
2 manner of determining the effective date of settlement and any recapture clause.

3 Id. at § 11.24.

4 Here, the Parties have reached such an agreement and have submitted the Settlement
5 Agreement herewith fully setting forth the agreement reached among the Parties. (See Azadian
6 Decl., Exhibit 1.)

7 **B. The Settlement Warrants Preliminary Approval Because It Is Fair And Reasonable.**

8 The approval of a proposed settlement of a class action suit is a matter within the broad
9 discretion of the trial Court. Wershba, 91 Cal. App. 4th at 234-35; Dunk v. Ford Motor Co., 48
10 Cal. App. 4th 1794 (1996). Pursuant to California Rules of Court, Rule 3.769(d), parties also
11 may, at the preliminary approval stage, request that the Court provisionally approve certification
12 of the class conditional upon final approval of the settlement. “[P]re-certification settlements are
13 routinely approved if found to be fair and reasonable.” Wershba, 91 Cal. App. 4th at 240. A
14 number of factors are to be considered in evaluating a settlement for purposes of preliminary
15 approval. No one factor should be determinative, but rather all factors should be considered.
16 These criteria have been summarized as follows:

17 If the proposed settlement appears to be the product of serious, informed, noncollusive
18 negotiations, has no obvious deficiencies, does not improperly grant preferential
19 treatment to class representatives or segments of the class, and falls within the range of
20 possible approval, then the court should direct that notice be given to the class members
21 of a formal fairness hearing, at which evidence may be presented in support of and in
22 opposition to the settlement.

23 Manual of Complex Litigation, Second §30.44, at 229.

24 Moreover, a proposed settlement is presumptively fair and reasonable where: (1) the
25 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
litigation; and (4) the percentage of objectors is small. In re Cellphone Fee Termination Cases,
186 Cal. App. 4th 1380, 1389 (2010) (citations omitted). Here, the Settlement meets all these
criteria.

1 **C. The Kullar Requirements**

2 In Kullar v. Foot Locker Retail, Inc., 168 Cal. App. 4th 116 (2008), the Court of Appeals
3 explained that, although “not exhaustive,” a determination of whether a settlement is “fair,
4 adequate and reasonable” should take into account the strength of a plaintiff’s case, the risk,
5 expense, complexity and the likely duration of further litigation. Id. at 127-28. Subsequently, in
6 Munoz v. BCI Coca-Cola Bottling Co., 186 Cal. App. 4th 399 (2010), the Court of Appeals
clarified:

7 [Appellant] misunderstands Kullar, apparently interpreting it to require the record
8 in all cases to contain evidence in the form of an explicit statement of the maximum
9 amount the plaintiff class could recover if it prevailed on all its claims—a number
10 which appears nowhere in the record of this case. But Kullar does not, as
[Appellant] claims, require any such explicit statement of value; it requires a record,
which allows “an understanding of the amount that is in controversy and the
realistic range of outcomes of the litigation.”

11 Id. at 409 (quoting Kullar, 168 Cal. App. 4th at 120).

12 Here, the potential damages for each cause of action asserted in the Action along with the
13 relative risks, complexities, and expenses are detailed below. The key data points upon which
14 Plaintiffs relied in analyzing the exposure at the mediation are below:

- 15 • Total Class Size: 485
- 16 • Former Employees in Class: 96
- 17 • Workweeks Between September 28, 2022 and January 6, 2025: 79,624
- 18 • Aggrieved Employees: 392
- 19 • PAGA Pay Periods Between September 28, 2022 and January 6, 2025: 16,949
- 20 • Average Hourly Rate Between September 28, 2022 and January 6, 2025: \$35.80
- Between September 28, 2022, and January 6, 2025, Defendant paid premiums to the
Class, as follows:

- 21 ○ Number of meal premiums paid: 138,288
- 22 ○ Dollar value of meal premiums paid: \$4,951,312.83
- 23 ○ Number of rest premiums paid: 64,263
- 24 ○ Dollar value of rest premiums paid: \$2,403,348.35

(Azadian Decl. ¶ 17.)

1. Failure to Pay All Wages Owed (Lab. Code §§ 1194, 1194.2, and 1197)

Plaintiffs allege that they worked off-the-clock, which, along with other issues, resulted in underpayment of hourly wages. (*Id.* ¶ 18.) Assuming 10 minutes of off-the-clock work per Workweek, potential exposure would be \$474,899.83 [79,624 Workweeks x 10 minutes x \$35.80 Average Hourly Rate]. (*Id.*)

The risks related to proving the off-the-clock claims are significant. Defendant has produced facially compliant written policies and trainings related to employees being required to accurately record all hours worked. Given the nature of off-the-clock work, there are also no time records substantiating that such work occurred. (*Id.* ¶ 19.)

2. Underpayment of Overtime Wages (Lab. Code §§ 204, 510, 558, 1194, and 1198)

Under both California and Federal law, the determination of the regular rate of pay for purposes of determining the amount of overtime pay must include all remuneration earned by the employee including the employee's commissions, bonuses, shift-differential pay or other non-hourly compensation. *See* DLSE Manual § 49.2.1.2 ("Compute the regular rate by dividing the total earnings for the week, including earnings during overtime hours, by the total hours worked during the week, including the overtime hours."); *see also* 29 C.F.R. § 778.118-120 ("When the commission is paid on a weekly basis, it is added to the employee's other earnings for that workweek . . . and the total is divided by the total number of hours worked in the workweek to obtain the employee's regular hourly rate for the particular workweek."). (Azadian Decl. ¶ 20.)

The "regular rate of pay" must include all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary commissions and bonuses. *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) ("regular rate of pay" in section 510(a) . . . encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee."); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1130 (C.D. Cal. 2011). "Thus, when an employer calculates 1.5 times an employee's regular rate of pay to pay overtime, the

1 employer must include bonuses, commissions, or any other income not subject to an exception in
2 that calculation.” Brum v. Marketsource, Inc., No. 2:17-cv-241-JAM-EFB, 2017 U.S. Dist.
3 LEXIS 94079, at *10 (E.D. Cal. June 16, 2017). (Azadian Decl. ¶ 21.)

4 Here, Plaintiff alleged that he and other Class Members earned non-discretionary bonuses
5 related to achieving set bonus standards that Defendant did and shift differentials. (Azadian
6 Decl. ¶ 22.)

7 However, Plaintiffs’ expert analysis of this regular rate issue revealed that additional
8 overtime compensation was paid to cover this non-discretionary incentive compensation and
9 shift differentials. While it is possible, this additional non-discretionary incentive compensation
10 and shift differentials were not consistently taken into account in calculating the overtime rate,
11 Class Counsel was not able to locate any examples where that occurred. Accordingly, Class
12 Counsel does not believe that this cause of action has value and has assigned a \$0 value based on
13 the analysis performed. (Azadian Decl. ¶ 23.)

14 **3. Failure to Pay All Wages At The Agreed-Upon Rate (Labor Code §§ 221-223)**

15 California Labor Code sections 221-223 provide that all non-exempt employees are
16 entitled to be paid all wages owed at the rate agreed upon with their employer. Plaintiffs
17 originally believed that they may not have been paid at the correct rates of pay they were
18 provided notice of during their employment. However, the information provided by Defendant,
19 including the personnel files for both Plaintiffs) showed that Plaintiffs received notice of their
20 hourly rates of pay and were paid consistently with the notice provided. Class Counsel was not
21 able to corroborate the allegations in the Complaint and, therefore, Counsel does not believe that
22 this cause of action has value and has assigned a \$0 value based on the analysis performed.
23 (Azadian Decl. ¶ 24.)

24 **4. Failure to Provide Compliant Meal Periods (Lab. Code §§ 226.7, 512, and** 25 **558)**

26 California Labor Code section 512(a) and section 11 of the applicable Industrial Welfare
27 Commission Wage Order both provide that “[a]n employer may not employ an employee for a

1 work period of more than five hours per day without providing the employee with a meal period
2 of not less than 30 minutes” See Cal. Lab. Code § 512; see also IWC Wage Order No. 4–
3 2001, subds. 10. “If an employer fails to provide an employee a meal period or rest period in
4 accordance with an applicable order of the Industrial Welfare Commission, the employer shall
5 pay the employee one additional hour of pay at the employee’s regular rate of compensation for
6 each work day that the meal or rest period is not provided.” See Cal. Lab. Code § 226.7(b); see
7 also Brinker Restaurant Corp. v. Superior Court, 53 Cal. 4th 1004 (2012). (Azadian Decl. ¶ 25.)

8 If time records show missed, short, or delayed meal periods with no indication of proper
9 compensation, then a rebuttable presumption arises of meal period violations. Employers can
10 rebut the presumption by presenting evidence that employees were compensated for
11 noncompliant meal periods or that they had in fact been provided compliant meal periods during
12 which they chose to work. Donohue v. AMN Servs., LLC, 11 Cal. 5th 58, 77 (2021). (Azadian
13 Decl. ¶ 26.)

14 An analysis of the time and pay records shows Defendant has paid a significant amount
15 of meal period penalties (\$4,951,312.83) between September 28, 2022 and January 6, 2025.
16 However, an analysis of the time and pay data shows that even taking into account the meal
17 period penalties paid, there is a 14.2% net meal break violation rate. (Azadian Decl. ¶ 27.)

18 Damages for non-compliant meal periods are \$966,646.54 (14.2% net violation rate x
19 190,150 shifts longer than 5 hours between September 28, 2022 and January 6, 2025 x \$35.80
20 Average Hourly Rate). Meal break damages were calculated as one hour of meal premiums for
21 each unpaid meal break violation at the average hourly rate. (Azadian Decl. ¶ 28.)

22 The risks of establishing liability related to the meal period claim are significant.
23 Defendant contends that, to establish a violation for missed meal periods, a plaintiff must do
24 more than show that a meal break was not taken. Brinker, 53 Cal. 4th at 1004. So long as an
25 employer provides employees with a “reasonable opportunity” to take a duty-free meal period, it
has no further duty to “police meal breaks and ensure no work thereafter is performed.” Id. at
1040-41. Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the

1 employee from taking a proper break, or otherwise failed to release the employee of all control.
2 Id. “Thus, the crucial issue with regard to the meal break claim is the reason that a particular
3 employee may have failed to take a meal break.” Washington v. Joe’s Crab Shack, 271 F.R.D.
4 629, 641 (N.D. Cal. 2010). Further, Defendant paid a very significant number of meal periods
5 premium payments (\$4,951,312.83) between September 28, 2022 and January 6, 2025.
6 Accordingly, Defendant will argue that it made significant efforts to keep track of and
7 compensate the Class for any non-compliant meal periods. (Azadian Decl. ¶ 29.)

8 **5. Failure to Provide Rest Periods (Lab. Code §§ 226.7, 516, 558)**

9 Employers in California are also required to authorize and permit all employees to take a
10 net 10-minute rest break for every four hours of work, or major fraction thereof, which insofar as
11 practicable shall be in the middle of each work period. 8 Cal. Code Reg. § 11050, subd. 12(A);
12 Brinker, 53 Cal. 4th at 1028. As the California Supreme Court held, an employer has an
13 obligation to “relieve [its] employees of all work-related duties and employer control during
14 [their] 10-minute rest periods.” Augustus v. ABM Sec. Servs., Inc., 2 Cal. 5th 257, 272 (2016).
15 Employers must compensate employees with an additional one hour of pay for each workday
16 that a rest period is not provided. Lab. Code § 226.7(b). (Azadian Decl. ¶ 30.)

17 Class Counsel applied the same 14.2% net violation rate for meal periods in estimating
18 the violation rate for rest periods. While employees do not clock out for rest periods the way
19 they do for meal periods, applying this net rate seemed appropriate given the relatively large
20 amount (\$2,403,348.35) Defendant paid for non-compliant rest periods. Based on this analysis,
21 damages for non-compliant rest periods are \$1,716,431.79 (14.2% net violation rate x 337,641
22 shifts longer than 3.5 hours between September 28, 2022 and January 6, 2025 x \$35.80 Average
23 Hourly Rate). Rest break damages were calculated as one hour of rest premiums for each unpaid
24 rest break violation at the average hourly rate. (Azadian Decl. ¶ 31.)

25 However, there are also unique risks to the rest period claim. Defendant has facially
compliant written rest period policies. Employers are not required to record rest periods and
such rest periods are paid. Thus, unlike meal periods, where there are records showing whether

1 an employee clocked out or not, there is no such evidence to prove a missed rest period or that
2 the employer refused to authorize and permit one. Managing such claims at trial may be
3 exceedingly difficult. Plaintiffs would depend on sample witness testimony and surveys to prove
4 the claims. While a victory with such evidence is certainly possible, relevant caselaw makes
5 such claims risky from a trial management and due process perspective. See Duran v. U.S. Bank
6 National Assn., 59 Cal. 4th 1, 31 (2014) (explaining “[I]f sufficient common questions exist to
7 support class certification, it may be possible to manage individual issues through the use of
8 surveys and statistical sampling.”). Further, Defendant paid a very significant number of rest
9 periods premium payments (\$2,403,348.35) between September 28, 2022 and January 6, 2025.
10 Accordingly, Defendant will argue that it made significant efforts to keep track of and
11 compensate the Class for any non-compliant rest periods. (Azadian Decl. ¶ 32.)

12 **6. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226(a))**

13 California Labor Code section 226(a) provides that every employer shall furnish each of
14 its employees an accurate itemized statement in writing that includes: (1) gross wages earned, (2)
15 total hours worked by the employee, except as provided in subdivision (j), (3) the number of
16 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
17 (4) all deductions, provided that all deductions made on written orders of the employee may be
18 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
19 which the employee is paid, (7) the name of the employee and only the last four digits of his or
20 her social security number or an employee identification number other than a social security
21 number, (8) the name and address of the legal entity that is the employer and, if the employer is a
22 farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the
23 legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect
24 during the pay period and the corresponding number of hours worked at each hourly rate.”
(Azadian Decl. ¶ 33.)

25 Plaintiffs contend the wage statements also did not provide accurate information by
omitting the lack of meal/rest break premium pay that should have been paid to Plaintiffs and the

1 other Class Members and incorrectly stating the hours worked due to alleged off-the-clock
2 work. See Naranjo v. Spectrum Sec. Servs., Inc., 13 Cal. 5th 93 (2022) (Because premium pay
3 for missed meal and rest breaks under Lab. Code, § 226.7, compensated employees for the work
4 performed during a break period and therefore constituted wages within the meaning of Lab.
5 Code, §§ 200, subd. (a), 203, 226, penalties could be available for an employer’s alleged failure
6 to timely pay or report such payments.). (Azadian Decl. ¶ 34.)

7 Pursuant to Labor Code section 226(e), statutory damages are “fifty dollars (\$50) for the
8 initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for
9 each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand
10 dollars (\$4,000).” As proving actual damages for each employee on a class-wide basis is
11 unlikely, this claim would likely be subject to a one-year statutory period.⁹ Thus, the maximum
12 amount of the penalty would be \$566,040.00 [\$4,000 maximum penalty x 392 employees one-
13 year statutory period in one year period].

14 (Azadian Decl. ¶ 35.)

15 Defendant contends that the wage statements were accurate in all material respects and
16 that Labor Code section 226 requires “a knowing and intentional failure by an employer to
17 comply with subdivision (a).” See Cal. Lab. Code § 226(e); see also Cal. Lab. Code § 226(e)(3)
18 (For purposes of this subdivision, a “knowing and intentional failure” does not include an
19 isolated and unintentional payroll error due to a clerical or inadvertent mistake.”) In this regard,
20 Defendant contends that any failure to include information on wage statements was an
21 inadvertent or isolated mistake. (Azadian Decl. ¶ 36.)

22 ⁹ “Courts that have recognized that two limitations periods apply to Section 226 have uniformly
23 found that the \$50 and \$100 figures recoverable under Section 226(e)(1) are penalties, subject to
24 a one-year limitation period.” Novoa v. Charter Communs., Ltd. Liab. Co., 100 F. Supp. 3d
1013, 1025 (E.D. Cal. 2015) (citing Taylor v. W. Marine Prods., No. C 13-04916 WHA, 2014
U.S. Dist. LEXIS 133728, at *7 (N.D. Cal. Sep. 19, 2014); Sarkisov v. Stonemor Partners, L.P.,
No. C 13-04834 WHA, 2014 U.S. Dist. LEXIS 47021, at *2 (N.D. Cal. Apr. 3, 2014); Mouchati
v. Bonnie Plants, Inc., No. EDCV 14-00037-VAP (SPx), 2014 U.S. Dist. LEXIS 60855, at *8-9
(C.D. Cal. Mar. 6, 2014); Singer v. Becton, Dickinson & Co., Med.-Safe Sys., No. 08cv821 IEG
(BLM), 2008 U.S. Dist. LEXIS 56326, at *4-5 (S.D. Cal. July 23, 2008).

1 **7. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203)**

2 Labor Code sections 201-203 provide that if an employer discharges an employee, the
3 wages earned and unpaid at the time of discharge are due and payable immediately, and if an
4 employee quits his or her employment, his or her wages shall become due and payable not later
5 than seventy-two (72) hours thereafter. Plaintiffs contend that former employees were denied
6 wages owed to them due to not receiving all regular wages, overtime wages, and premium pay
7 for non-compliant meal/rest periods (discussed above). See Naranjo, 13 Cal. 5th 93 (Because
8 premium pay for missed meal and rest breaks under Lab. Code, § 226.7, compensated employees
9 for the work performed during a break period and therefore constituted wages within the
10 meaning of Lab. Code, §§ 200, subd. (a), 203, 226, penalties could be available for an
11 employer's alleged failure to timely pay or report such payments.). "Failure to pay an employee
12 all premium pay required by the Labor Code and Wage Orders as required by Labor Code §§
13 201 and 202, such as overtime premium, reporting time pay, meal period/rest period premium,
14 and split shift premium pay, may entitle an employee to waiting time penalties." See DLSE
15 Manual § 4.3.4.1. Labor Code section 203 provides that if an employer willfully fails to pay
16 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
17 continue as a penalty from the due date thereof at the same rate until paid or until an action is
18 commenced; but the wages shall not continue for more than thirty (30) days. (Azadian Decl. ¶
19 37.)

20 Maximum damages for statutory penalties would be \$824,832. Waiting time penalties
21 were calculated pursuant to California Labor Code Section 203 for the 96 Class Members who
22 are former employees. The penalty was calculated as 30 days of wages per employee (96 former
23 employees x \$35.80 Average Hourly Rate x 8 Hours x 30 Days). However, to prevail under
24 section 203, Plaintiffs must establish not only the underlying violations addressed above and that
25 the wages were paid late, but also that Defendant's failure to timely pay such wages was willful.
Lab. Code § 203(a). A good faith belief in a legal defense precludes any finding of willfulness.

1 Gonzalez v. Downtown LA Motors, 215 Cal. App. 4th 36, 54 (2013). All of the obstacles to
2 proving liability present the same challenges for this claim. (Azadian Decl. ¶ 38.)

3 **8. Failure to Indemnify (Lab. Code § 2802)**

4 Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee for
5 all necessary expenditures or losses incurred by the employee in direct consequence of the
6 discharge of his or her duties, or of his or her obedience to the directions of the employer.”

7 Labor Code § 2802(a). The purpose of the statute is to “prevent employers from passing their
8 operating expenses on to their employees.” Gattuso v. Harte-Hanks Shoppers, Inc., 42 Cal. 4th
9 554, 562 (2007). The right to reimbursement of business expenses cannot be waived or released;
10 any contract or policy that tries to do so is void. Labor Code § 2804. Whether or not an expense
11 is reimbursable does not depend on whether the employee made a request for reimbursement.
12 The obligation to reimburse is triggered once employers have actual or constructive knowledge
13 of the employee’s expense. Stuart v. RadioShack Corp., 641 F.Supp.2d 901 (N.D. Cal. 2009).
14 (Azadian Decl. ¶ 39.)

15 Plaintiffs alleged this claim to preserve all rights related to potential unreimbursed cell
16 phone expenses. However, discovery revealed that use of cell phones was not needed by
17 Plaintiffs or the Class Members for work purposes. Accordingly, there is no realistic exposure
18 related to this cause of action. (Azadian Decl. ¶ 40.)

19 **9. Unfair Competition (Bus. & Prof. Code § 17200 et seq.)**

20 To establish a claim under the UCL, a plaintiff must show that the defendant’s conduct
21 was unlawful, unfair, or fraudulent. South Bay Chevrolet v. General Motors Acceptance Corp.,
22 72 Cal. App. 4th 861, 878 (1999). “[A]n action under the UCL is not an all-purpose substitute
23 for a tort or contract action.” Korea Supply Co. v. Lockheed Martin Corp., 29 Cal. 4th 1134,
24 1150 (2003). Though a plaintiff may assert a UCL claim for purported wage violations,
25 remedies are still limited to restitutionary and injunctive relief. See Korea Supply, 29 Cal. 4th at
1148-51; see also Cortez v. Purolator Air Filtration Products Co., 23 Cal. 4th 163, 173 (2000).

1 Accordingly, as this is a derivative claim it would not result in additional recovery above and
2 beyond the recovery permitted by the other claims at issue. (Azadian Decl. ¶ 41.)

3 **10. Civil Penalties pursuant to the Private Attorney General Act of 2004**

4 **(“PAGA”) (Lab. Code § 2698 et seq.)**

5 Under the PAGA an “aggrieved employee” may bring a civil action personally and on
6 behalf of other current or former employees to recover civil penalties for Labor Code violations.
7 Cal. Lab. Code § 2699; see also Arias v. Superior Court, 46 Cal. 4th 969, 980-81 (2009). Of the
8 civil penalties recovered, 75 percent goes to the Labor and Workforce Development Agency,
9 leaving the remaining 25 percent for the “aggrieved employees.” Id. (Azadian Decl. ¶ 42.)

10 The amount of the penalty under PAGA is one hundred dollars (\$100) for each aggrieved
11 employee per pay period for the initial violation and two hundred dollars (\$200) for each
12 aggrieved employee per pay period for each subsequent violation. Labor Code § 2699(f)(2).
13 Courts have held that there is no “subsequent violation” until an employer has been notified by
14 the Labor Commissioner or a court that its practices are in violation of the law, and Defendant
15 denies having received such notification. Amaral v. Cintas, 163 Cal. App. 4th 1157 (2008). A
16 Court also may award a lesser amount “if, based on the facts and circumstances of the particular
17 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
18 confiscatory.” Labor Code § 2699(e)(2). The statute of limitations under PAGA is one year.
19 (Azadian Decl. ¶ 43.)

20 Exposure for PAGA penalties, assuming a single violation could be proven, is \$1,694,900
21 [\$100 violation rate x 16,949 PAGA Pay Periods]. If Plaintiffs were able to prove multiple
22 violations and could “stack” PAGA penalties for each, the calculation may increase
23 accordingly.¹⁰ (Azadian Decl. ¶ 43.)

24
25 ¹⁰ California Law is unsettled as to whether PAGA penalties may be stacked (i.e., multiple
PAGA penalties can be assessed for the same pay period for different Labor Code violations)
and courts have gone in different directions. See Merante v. Am. Inst. for Foreign Study, Inc.,
No. 21-cv-03234-EMC, 2022 U.S. Dist. LEXIS 131833, at *18 (N.D. Cal. July 25, 2022) (citing
Hamilton v. Juul Labs, Inc., No. 20-CV-03710-EMC, 2021 U.S. Dist. LEXIS 221416, at *9

1 Plaintiffs' PAGA claims are also predicated on the violations described above, and thus
2 subject to the same disputes and defenses. Additionally, PAGA states that a court has discretion
3 to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); Thurman v.
4 Bayshore Transit Management, Inc., 203 Cal. App. 4th 1112, 1135 (2012) (reducing PAGA
5 award); Carrington v. Starbucks Corp., 30 Cal. App. 5th at 528-529 (2018) (affirming the trial
6 court's PAGA penalty award of \$5 per violation). These uncertainties increased the risks related
7 to the PAGA cause of action. (Azadian Decl. ¶ 44.)

8 Pursuant to California Labor Code § 2699(l), the Settlement Agreement has been
9 provided to the Labor and Workforce Development Agency and proof of submission is attached
10 as Exhibit 3 to Azadian Decl. (Id. ¶ 45.) The amount allocated to settlement of the PAGA
11 claims (\$20,000 of the \$375,000 Gross Settlement Amount) comports with PAGA settlement
12 amounts approved by other courts.¹¹

13 **D. The Settlement Was Reached Only After the Exchange Of Sufficient Information**
14 **Necessary To Make An Informed Decision**

15 Class Counsel conducted an extensive investigation of the facts and the law, including
16 obtaining all time records and earnings records for Class Members, which were analyzed by
17 Plaintiffs' expert. Class Counsel has also obtained all employee handbooks that were applicable
18 during the Class Period and PAGA Period and all written policies relating to meal and rest
19 breaks, overtime, clocking in and out, and recording of work time. Class Counsel also obtained
20 the number of Class Members and Aggrieved Employees (including the number of current and
21 former employees), the average hourly rate between September 28, 2022 and January 6, 2025,

22 _____
(N.D. Cal. Nov. 16, 2021) (noting that the assumption of stacked PAGA penalties "is subject to
23 challenge" based on mixed precedent in federal district courts).

24 ¹¹ See Chu v. Wells Fargo Investments, LLC, 2011 WL 67245, 81 (N.D. Cal., Feb. 16, 2011)
(approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund); Lazarin v.
25 Pro Unlimited, Inc., 2013 WL 3541217 (N.D. Cal., July 11, 2013) (approving PAGA payment of
\$7,500 to LWDA out of \$1.25 million common fund settlement); Hicks v. Toys 'R' Us—
Delaware, Inc., 2014 WL 4703915, at *1 (C.D. Cal. Sept. 2, 2014) (approving \$5,000 PAGA
payment in a case involving \$4 million settlement); Franco v. Ruiz Food Prods., Inc., 2012 WL
5941801 at *14 (E.D. Cal. Nov. 27, 2012) (approving PAGA penalties of \$10,000 as part of \$2.5
million settlement).

the number of Workweeks worked by non-exempt California employees between September 28, 2022 to January 6, 2025, and the number of Pay Periods worked by non-exempt California employees between September 28, 2022 and January 6, 2025. Class Counsel also was able to obtain from Plaintiffs a number of additional documents and electronically stored information utilized for the mediation, including wage statements, time records, and information related to incentive compensation. See Section II.B., above.

E. Due To The Risks Of Continued Litigation, The Settlement Is Fair And In The Best Interests Of The Class.

As detailed above, the estimated maximum exposure, percentage reduction based on the risks detailed above, and realistic exposure in this action are as follows:

Violation	Potential Exposure	% Reduction Based on Risks	Realistic Exposure
Off-The-Clock Wages	\$474,899.83	55%	\$213,704.92
Underpayment of Overtime (Regular Rate Issue)	\$0.00	N/A	\$0.00
Not Paying Wages At Agreed-Upon Rate	\$0.00	N/A	\$0.00
Meal Period Violations	\$966,646.54	45%	\$531,655.60
Rest Period Violations	\$1,716,431.79	55%	\$772,394.30
Wage Statement Penalties	\$1,568,000.00	45%	\$862,400.00
Waiting Time Penalties	\$824,832.00	55%	\$371,174.40
Reimbursement Violations	\$0.00	N/A	\$0.00
PAGA Civil Penalties	\$1,694,900.00	60%	\$677,960.00
Total Potential Exposure	\$7,245,710.16		\$3,429,289.23

The Gross Settlement Amount of \$375,000 provides for recovery of 5.18% of the maximum potential exposure in this action and 10.94% of the realistic exposure in this action when taking into the above percentage reduction for the risks related to the claims. (Azadian Decl. ¶ 46.)

Based on the foregoing data and its own independent investigation and evaluation, Class Counsel believes that the settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, adequate and is in the best interest of the Class in light of all known facts and circumstances. These risks include: the defenses asserted by

1 Defendant, including risks associated with a contested class certification; the prospect of
2 Defendant obtaining releases from the putative Class Members; the risk of significant delay; the
3 potential for the Court to reduce PAGA penalties; and numerous potential appellate issues.
4 (Azadian Decl. ¶¶ 47.)

5 Finally, the Settlement was reached after lengthy negotiations, exchange of information,
6 and with the assistance and supervision of an extremely skilled mediator and clearly qualifies to
7 oversee serious and informed negotiations conducted by the Parties. See Toure v. Amerigroup
8 Corp., 2012 WL 1432302, at *1 (E.D. N.Y. 2012) (“The assistance of an experienced mediator,
9 Linda Singer, Esq., reinforces that the Settlement Agreement is non-collusive”); Morales v.
10 Stevco, Inc., 2011 WL 5511767, at *11 (E.D. Cal. 2011) (concluding that the class action
11 settlement was not collusive because “[t]he parties utilized an impartial mediator, and the matter
12 was ‘resolved by means of a mediator’s proposal.’”).)

13 **F. Class Counsel Has Extensive Experience In Class Actions And Similar Cases.**

14 Class Counsel has extensive experience in similar cases and believe that the proposed
15 Settlement is adequate, reasonable, fair, and in the best interests of all class members. (Azadian
16 Decl. ¶¶ 49-52; Lidman Decl. ¶¶ 2-8; Haines Decl. ¶¶ 2-8; Gose-Hardy Decl., ¶¶ 2-4; Moore
17 Decl., ¶¶ 2-5.)

18 **G. The Class Is Properly Certified For Settlement Purposes.**

19 Plaintiffs seek certification of this action for settlement purposes under California Code
20 of Civil Procedure § 382. The California Supreme Court has summarized that:

21 Code of Civil Procedure section 382 authorizes class actions when the question is one
22 of a common or general interest, of many persons, or when the parties are numerous,
23 and it is impracticable to bring them all before the court. The party seeking certification
24 has the burden to establish the existence of both an ascertainable class and a well-
25 defined community of interest among class members. The “community of interest”
requirement embodies three factors: (1) predominant common questions of law or fact;
(2) class representatives with claims or defenses typical of the class; and (3) class
representatives who can adequately represent the class.

Sav-On Drug Stores, Inc. v. Superior Court, 34 Cal. 4th 319, 326 (2004) (internal citations
omitted).

1 While Defendant reserves all rights to dispute Plaintiffs' ability to satisfy any of these
2 requirements, the Parties agree that for purposes of settlement, Defendant will not raise such a
3 dispute. Therefore, the proposed Settlement Class should be certified for purposes of settlement.

4 **1. The Proposed Class Is Ascertainable and Numerous.**

5 Given that the class consists of 485 Class Members with specifically identifiable
6 information, numerosity is satisfied. See Bowles v. Superior Court, 44 Cal. 2d 574 (1955)
7 (class with 10 members sufficiently numerous); see also Rose v. City of Hayward, 126 Cal.
App. 3d 926, 934 (1981)) (class of 48 members satisfies the numerosity requirement).

8 **2. The Community Of Interest Requirement Is Also Satisfied.**

9 As stated above, "[t]he 'community of interest' requirement embodies three factors: (1)
10 predominant common questions of law or fact; (2) class representatives with claims or defenses
11 typical of the class; and (3) class representatives who can adequately represent the class." Sav-
12 On Drug Stores, Inc., 34 Cal. 4th at 326. Here, the common questions of law and fact exist.
13 Plaintiffs are typical of the class they seek to represent because Plaintiffs worked for Defendant
14 and alleged the violations at issue in this action. Plaintiffs have truthfully alleged that they were
15 unpaid wages, did not receive complaint 30-minute meal breaks, did not receive off duty 10
16 minute rest breaks for every 4 hours of work, and did not receive accurate wage statements due
17 to the above issues not being stated correctly on their wage statements. (See Declaration of
Plaintiff Jose Rodriguez ¶ 19; Declaration of Plaintiff Catherine Anderson ¶¶ 2-8.)

18 **H. The Proposed Class Notice Of Settlement Should Be Approved.**

19 The standard in California for judging the means of affecting class notice is not whether
20 all class members will receive notice in fact, but rather whether the notice "has a reasonable
21 chance of reaching a substantial percentage of the class members." Wershba, 91 Cal. App. 4th at
22 251. California Rules of Court, Rule 3.769(f) provides: "If the court has certified the action as a
23 class action, notice of the final approval hearing must be given to the class members in the
24 manner specified by the court. The notice must contain an explanation of the proposed
settlement and procedures for class members to follow in filing written objections to it and in

1 arranging to appear at the settlement hearing and state any objections to the proposed
2 settlement.” Finally, the settlement notice must also “fairly apprise the class members of the
3 terms of the proposed compromise and of the options open to dissenting class members.”
4 Trotsky v. Los Angeles Fed. Sav. & Loan Assn., 48 Cal. App. 3d 134, 151-52 (1975).

5 The proposed Class Notice will be substantially similar to that in Exhibit A attached
6 to the Settlement Agreement. The proposed Class Notice contains all of the information
7 required by Rule 3.769(f) and was drafted based on the requirement so the Court’s Checklist For
8 Approval Of Class Action Settlement. (See § III.D., above.) This individualized notice, along
9 with skip-tracing procedures, provides the best type of notice, protects the due process rights of
10 all Class Members, is highly likely to reach the maximum number of reachable Class Members,
11 and is superior to other forms of notice. Therefore, the proposed Class Notice should be
12 approved and provided to the Class Members.

13 **I. The Proposed Attorneys’ Fees And Costs Are Reasonable.**

14 In connection with the final approval hearing, Class Counsel will request approval of an
15 award of attorneys’ fees of \$125,000 (1/3 of the Gross Settlement Amount), plus reimbursement
16 of costs up to \$30,000, which Defendant does not oppose. The requested fee is the standard
17 range of attorneys’ fee awards under the common fund theory. The requested fee is fair
18 compensation for undertaking a complex, risky, expensive, and time-consuming litigation on a
19 contingent-fee basis, and the benefit achieved for the Class Members through the Settlement.
20 Moreover, in connection with the final approval hearing, Class Counsel will provide declarations
21 regarding the total number of hours expended on the lawsuit and its hourly rates to further
22 support its request.

23 **J. The Proposed Service Payment To Plaintiffs Are Reasonable.**

24 In connection with the final approval hearing, Class Counsel will request approval of the
25 Class Representative Service Payment of \$7,500 to Plaintiff Rodriguez for his service as class
representative and in consideration for a general release of all claims against Defendant. Class
Counsel will request approval of the Class Representative Service Payment of \$2,500 to Plaintiff

1 Anderson who has also agreed to a broader release, which only applies to Plaintiff Anderson,
2 but excludes individual claims under the Fair Employment and Housing Act that are set forth
3 in Plaintiff Anderson's complaint filed with the California Civil Rights Department on or
4 around August 14, 2024.

5 This amount is based on the extent of Plaintiffs' assistance in this lawsuit, including
6 providing relevant documents to Class Counsel, responding to written discovery, reviewing and
7 sorting his own records, participating in mandatory early neutral evaluation conferences with the
8 Court, mediation process, and reviewing the settlement agreement and having related
9 discussions. (See Declaration of Plaintiff Jose Rodriguez; see also Azadian Decl. ¶¶ 49-50; See
10 Declaration of Plaintiff Catherine Anderson, ¶ 11; see also Lidman Decl. ¶ 13.) The requested
11 incentive payments are well within the accepted range of awards for purposes of preliminary
12 approval.

13 V. CONCLUSION

14 For the foregoing reasons, the Parties respectfully submit that the Settlement's terms are
15 fair, adequate, and reasonable and that it is in the best interest of the Class Members. Under the
16 applicable class action criteria and guidelines, this Class should be conditionally certified, the
17 Settlement should be preliminarily approved, the Class should be notified regarding the
18 Settlement, and the Court should schedule a final approval hearing [the Parties request a date that
19 is 130 days after the Court grants Preliminary Approval].

20 Dated: October 23, 2025 AZADIAN LAW GROUP, PC

21 

22 By: _____
23 George S. Azadian
24 Attorneys for Plaintiff,
25 JOSE RODRIGUEZ and the Proposed Class