

Miriam Schimmel (State Bar No. 185089)
mschimmelblackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff Joseph Amyot

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SHASTA**

JOSEPH AMYOT, individually, and on behalf of
other similarly situated employees and aggrieved
employees pursuant to the California Private
Attorneys General Act,

Plaintiff,

vs.

SILVERTHORN RESORT, INC., a California
corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No.: 23CV-0203487

Honorable Benjamin L. Hanna
Department 63

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

Date: June 23, 2025
Time: 8:30 a.m.
Dept.: 63

Complaint Filed: October 23, 2023
FAC Filed: May 9, 2025
Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE THAT** on **June 23, 2025 at 8:30 a.m.** in Department 63 of the above-
3 captioned Court located at Redding Main Courthouse, 1515 Court Street, Redding, California 96001,
4 pursuant to California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of
5 Court, Plaintiff Joseph Amyot (“Plaintiff”) will and hereby does move the Court for an Order granting
6 preliminary approval of the proposed class action and PAGA settlement between Plaintiff and Defendant
7 Silverthorn Resort, Inc. (“Defendant”).

8 Plaintiff requests that the Court enter an Order:

9 1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement
10 (“Settlement” or “Settlement Agreement”) attached as Exhibit 3 to the Declaration of Alexandra Rose in
11 Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement (“Rose
12 Decl.”);

13 2. Certifying the Class for Settlement purposes;

14 3. Appointing Plaintiff Joseph Amyot as the Class Representative for Settlement purposes;

15 4. Appointing Jonathan M. Genish, Miriam L. Schimmel, Joana Fang, and Alexandra Rose
16 of Blackstone Law, APC as Class Counsel for Settlement purposes;

17 5. Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as
18 Exhibit A to the Settlement Agreement, to be mailed to the Class;

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

21 7. For each Class Member, directing Defendant to furnish their full name, last known mailing
22 address, Social Security number, dates worked for Defendant during the Class Period, and such other
23 information as is necessary for the Settlement Administrator to calculate Workweeks and PAGA
24 Workweeks to the Settlement Administrator within fourteen (14) calendar days after entry of the order
25 granting preliminary approval of the Settlement;

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

27 9. Setting a Final Approval Hearing.

28 ///

1 Pursuant to California Labor Code section 2699(1)(2), on April 15, 2025, a copy of the Settlement
2 was submitted to the California Labor and Workforce Development Agency (“LWDA”) via online
3 submission through the LWDA’s website. (Rose Decl., ¶ 49 and Exh. 4).

4 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the
5 Declaration of Alexandra Rose, the Declaration of Plaintiff Joseph Amyot, the Declaration of Lisa
6 Mullins of ILYM Group, Inc., the pleadings and other records on file with the Court in this matter, and
7 any other further evidence or argument that the Court may properly receive at or before the hearing.

8
9 Respectfully submitted,

10 Dated: May 27, 2025

BLACKSTONE LAW, APC

11 
12 By: _____
13 Alexandra Rose
14 Attorneys for Plaintiff Joseph Amyot
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	2
III.	THE SETTLEMENT TERMS	3
	A. Class Definition	3
	B. Amount of Settlement.....	4
	C. Allocation and Funding of the Gross Settlement Amount	4
	D. Released Claims	6
IV.	STANDARD OF REVIEW FOR PRELIMINARY APPROVAL	7
V.	THE SETTLEMENT IS PRESUMED FAIR	8
	A. The Settlement Was Reached as a Result of Arm’s-Length Bargaining	8
	B. Sufficient Investigation and Discovery by Experienced Class Counsel	9
	C. The Settlement is Fair and Reasonable in Light of the Parties’ Respective Legal Positions and Recovery Risks.....	9
	1. Class Counsel’s Analysis of the Maximum Available Liability and Damages.....	10
VI.	CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED	14
	A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is Impracticable.....	15
	B. The Class Shares a Well-Defined Community of Interest	15
	C. A Class Action is Superior to a Multiplicity of Litigation.....	17
VII.	THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE.....	17
VIII.	THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE	18
IX.	THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS.....	18
X.	CONCLUSION	21

TABLE OF AUTHORITIES

Cases

<i>Aguirre v. Genesis Logistics</i> , 2013 WL 10936035 (C.D. Cal. 2013)	13
<i>Armstrong v. Board of School Directors of City of Milwaukee</i> , 616 F.2d 305 (7th Cir. 1980).....	8
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987)	16
<i>Bradley v. Networkers Int’l, LLC</i> , 211 Cal.App.4th 1129 (2012)	11
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1051 (2012);	10, 11
<i>Carrington v. Starbucks Corp.</i> 30 Cal.App.5th 504, 529 (2018)	14
<i>Castillo v. ADT, LLC</i> , 2017 WL 363108 (E.D. Cal. Jan. 25, 2017)	13
<i>Choate v. Celite Corp.</i> , 215 Cal App. 4th 1460, 1468 (2013)	12
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009)	8
<i>Clothesrigger, Inc. v. GTE Corp.</i> , 191 Cal.App.3d 605 (1987).....	15
<i>Cotter v. Lyft, Inc.</i> , 193 F.Supp.3d 1030 (N.D. Cal. 2016).....	13
<i>Daar v. Yellow Cab Co.</i> , 67 Cal. 2d 695 (1967).....	15, 16
<i>Duran v. U.S. Bank Nat. Assn.</i> , 59 Cal.4th 1 (2014).....	10
<i>Elliot v. Spherion Pac. Work, LLC</i> , 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008).....	13
<i>Gaudin v. Saxon Mortgage Servs., Inc.</i> , 2015 WL 7454183 (N.D. Cal. Nov. 23, 2015)	17
<i>Hebbard v. Colgrove</i> , 28 Cal.App.3d 1017, 1030 (1972).....	15
<i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010).....	19
<i>In re Online DVD Rental</i> , 779 F.3d 934 (9th Cir. 2014)	17
<i>Jaimez v. DAIOHS USA, Inc.</i> , 181 Cal.App.4th 1286 (2010).....	12
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	9
<i>Lealao v. Beneficial Cal, Inc.</i> , 82 Cal.App.4th 19 (2000)	18
<i>Linder v. Thrifty Oil Co.</i> , 23 Cal.4th 429 (2000)	17
<i>McGee v. Bank of America</i> , 60 Cal.App.3d 442 (1976)	16
<i>Miller v. Woods</i> , 148 Cal.App.3d 862 (1983).....	15
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal.App.4th 399 (2010)	17
<i>Naranjo v. Specturm Security Services, Inc.</i> , 40 Cal.App.5th 444 (2019).....	12

1	<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> , 688 F.2d 615 (1982).....	8
2	<i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011).....	12
3	<i>Rose v. City of Hayward</i> , 126 Cal.App.3d 926, 934 (1981)	15
4	<i>Sanchez v. McDonalds Restaurants of California, Inc.</i> , 2017 WL 4620746 (LA Super. Ct. July 6, 2017)	13
5	<i>Seastrom v. Neways, Inc.</i> , 149 Cal.App. 4th 1496 (2007)	16
6	<i>See In re Microsoft I-V Cases</i> , 135 Cal.App.4th 706 (2006).....	8
7	<i>Smith v. Lux Retail North America, Inc.</i> , 2013 WL 2932243 at *3 (N.D. Cal. June 13, 2013).....	13
8	<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1112,1131 (2012)	13
9	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001).....	7, 8, 9
10	<i>Wesson v. Staples the Office Superstore, LLC</i> , 68 Cal.App.5th 746 (2021).....	13
11	Statutes	
12	Code of Civil Procedure Section 382.....	14, 15
13	Labor Code section 203	12
14	Other Authorities	
15	<i>Findings of the Study of California Class Action Litigation</i> , 2000-2006, available at http://www.courts.ca.gov/documents/class-action-lit-study.pdf	10
16	Rules	
17	Cal. Rules of Court, Rule 3.769(c)	7
18	Cal. Rules of Court, Rule3.769(g)	8

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Joseph Amyot (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of Class
4 Action and PAGA Settlement (“Settlement” or “Settlement Agreement”) entered into between Plaintiff
5 and Defendant Silverthorn Resort, Inc. (“Defendant”) (together, with Plaintiff, the “Parties”).
6 (Declaration of Alexandra Rose in Support of Plaintiff’s Motion for Preliminary Approval of Class
7 Action and PAGA Settlement [“Rose Decl.”], Exh. 3). The Settlement terms are outlined as follows:

- 8 • Class Size: Approximately five hundred and thirty-nine (539) individuals (as of February 3,
9 2025).
- 10 • Gross Settlement Amount: Nine Hundred Twenty-Four Thousand Four Hundred Fifty
11 Dollars and Zero Cents (\$924,450.00).
- 12 • Attorneys’ Fees and Costs: Attorneys’ fees of one-third (1/3) of the Gross Settlement Amount
13 (i.e., \$308,150.00 if the Gross Settlement Amount is \$924,450.00) plus actual litigation costs
14 and expenses not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), to
15 be paid from the Gross Settlement Amount.
- 16 • Enhancement Payment: Ten Thousand Dollars and Zero Cents (\$10,000.00), to be paid from
17 the Gross Settlement Amount.
- 18 • Settlement Administration Costs: Not to exceed Eleven Thousand Dollars and Zero Cents
19 (\$11,000.00), to be paid from the Gross Settlement Amount.
- 20 • PAGA Amount: Fifty Thousand Dollars and Zero Cents (\$50,000.00) from the Gross
21 Settlement Amount, 75% of which will be paid to the Labor and Workforce Development
22 Agency (“LWDA”) and the remaining 25% to be paid to the PAGA Employees.
- 23 • Estimated Net Settlement Amount: Five Hundred Twenty Thousand Three Hundred Dollars
24 and Zero Cents (\$520,300.00) to be distributed to Settlement Class Members.

25 As set forth herein, the Settlement is the product of informed discovery and arms-length
26 negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore
27 respectfully requests that the Court grant preliminarily approval of the Settlement, conditionally certify
28 the Class, approve the proposed Notice of Class Action Settlement (“Class Notice”), and set a hearing
date for final settlement approval, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a resort on Shasta Lake, providing lodging rentals, marina services, retail shops, dining facilities, and boat rentals to the public. Plaintiff was employed by Defendant as an hourly-paid, non-exempt Dockhand from approximately May 2023 to approximately June 2023. (Declaration of Plaintiff Joseph Amyot in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement [“Amyot Decl.”], ¶ 2).

On October 20, 2023, Plaintiff provided written notice to the LWDA by online submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendant (“PAGA Letter”). (Rose Decl., ¶ 8 and Exh. 2).

On October 23, 2023, Plaintiff filed a Class Action Complaint for Damages in the action entitled *Joseph Amyot v. Silverthorn Resort, Inc.*, Shasta County Superior Court Case No. 23CV-203487 (“Action”), thereby commencing a putative class action against Defendant. (*Id.*, ¶ 9).

On December 27, 2023, Plaintiff filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq.* in the action entitled *Joseph Amyot v. Silverthorn Resort, Inc.*, Shasta County Superior Court Case No. 23CV-203944 (“PAGA Action”), which alleged one cause of action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698 *et seq.* (“PAGA”) against Defendant. (*Id.*, ¶ 10).

On February 29, 2024, Plaintiff propounded written formal discovery onto Defendant (specifically, Form Interrogatories – General (Set One), Form Interrogatories – Employment Law (Set One), Special Interrogatories (Set One), Requests for Admission (Set One), and Requests for Production of Documents (Set One)), and served a proposed Belaire-West notice in the Action. (*Id.*, ¶ 11).

On February 29, 2024, Plaintiff propounded written formal discovery onto Defendant (specifically, Form Interrogatories – General (Set One), Form Interrogatories – Employment Law (Set One), Special Interrogatories (Set One), Requests for Admission (Set One), and Requests for Production of Documents (Set One)), and served a proposed Belaire-West notice in the PAGA Action. (*Id.*, ¶ 12).

///

///

1 On February 3, 2025, the Parties participated in a formal mediation conducted by Tagore
2 Subramaniam, Esq. (“Mediator”), a neutral and respected mediator with extensive experience in complex
3 wage and hour matters, and with the assistance of the Mediator’s evaluations, the Parties were able to
4 reach an agreement to resolve this dispute on a class and representative basis. (*Id.*, ¶ 13). The Parties
5 then worked diligently to negotiate and memorialize the terms in a long form settlement agreement.
6 (*Ibid*).

7 On April 14, 2025, the Parties executed the Settlement Agreement. (*Id.*, ¶ 14 and Exh. 3).

8 On May 9, 2025, Plaintiff filed a First Amended Class and Representative Action Complaint
9 (“Operative Complaint”) in the Action, which added the PAGA claims alleged in the PAGA Action. (*Id.*,
10 ¶ 15). The Operative Complaint alleges ten (10) causes of action for violations of the California Labor
11 Code for failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal
12 periods and premium payments in lieu thereof, failure to provide compliant rest periods and premium
13 payments in lieu thereof, failure to timely pay wages during employment, failure to provide accurate
14 wage statements, failure to timely pay wages upon termination, and failure to reimburse necessary
15 business expenses, for violations of California Business & Professions Code Section 17200, *et seq.* based
16 on the aforementioned California Labor Code violations, and for civil penalties under PAGA based on
17 the aforementioned California Labor Code violations. (*Ibid*).

18 On May 22, 2025, Plaintiff dismissed the PAGA Action without prejudice. (*Id.*, ¶ 16).

19 **III. THE SETTLEMENT TERMS**

20 **A. Class Definition**

21 For purposes of settlement only, the Parties have agreed that the Class shall be defined as “all
22 current and former hourly paid and/or non-exempt employees who worked for Defendant in the State of
23 California at any time during the Class Period” (“Class Member(s)” or “Class”). (Rose Decl., ¶ 17;
24 Settlement Agreement, ¶ 10.b). The Class Period is defined as the period from October 23, 2019 through
25 April 4, 2025. (Rose Decl., ¶ 17; Settlement Agreement, ¶ 10.f). Based on information provided by
26 Defendant, as of February 3, 2025, it is estimated that there are a total of five hundred and thirty-nine
27 (539) Class Members. (Rose Decl., ¶ 17).

28 ///

1 **B. Amount of Settlement**

2 The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint
3 for a non-reversionary Gross Settlement Amount of Nine Hundred Twenty-Four Thousand Four Hundred
4 Fifty Dollars and Zero Cents (\$924,450.00), exclusive of employer-side payroll taxes. (Rose Decl., ¶ 18;
5 Settlement Agreement, ¶ 10.p).

6 **C. Allocation and Funding of the Gross Settlement Amount**

7 The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees,
8 and other allocations. (Rose Decl., ¶ 18; Settlement Agreement, ¶ 10.p). The Gross Settlement Amount
9 includes: (1) Attorneys' fees in the amount of one-third (1/3) of the Gross Settlement Amount (i.e.,
10 \$308,150.00 if the Gross Settlement Amount is \$924,450.00); (2) Attorneys' actual litigation costs and
11 expenses, not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00); (3) Settlement
12 Administration Costs, not to exceed Eleven Thousand Dollars and Zero Cents (\$11,000.00); (4)
13 Enhancement Payment in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00); and (5)
14 PAGA Amount in the amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00). (Rose Decl., ¶ 18;
15 Settlement Agreement, ¶¶ 10.p, 13, 14, 15, and 16). After the above-estimated amounts are deducted
16 from the Gross Settlement Amount, the Net Settlement Amount that will be available for Class Members
17 is currently estimated to be Five Hundred Twenty Thousand Three Hundred Dollars and Zero Cents
18 (\$520,300.00). (Rose Decl., ¶ 18). Additionally, 25% of the PAGA Amount ("PAGA Employee
19 Amount"), which is \$12,500.00 out of \$50,000.00, will be fully distributed to "all current and former
20 hourly paid and/or non-exempt employees who worked for Defendant in the State of California at any
21 time during PAGA Period" ("PAGA Employee(s)"). (Rose Decl., ¶ 18; Settlement Agreement, ¶¶ 10.w,
22 10.x, 10.y, and 15). The "PAGA Period" is defined as the period from October 20, 2022 through April
23 4, 2025. (Rose Decl., ¶ 18; Settlement Agreement, ¶ 10.z).

24 Defendant has represented that the Class Members worked a total of 18,489 weeks for Defendant
25 as hourly-paid and/or non-exempt employees in California during the Class Period ("Workweeks").
26 (Rose Decl., ¶ 19; Settlement Agreement, ¶¶ 10.mm and 17). If it is determined by the Settlement
27 Administrator that the total number of Workweeks worked by the Class Members during the Class Period
28 actually exceeds 18,489 by more than 10% (i.e., by more than 20,338 Workweeks), then the Gross

1 Settlement Amount will be increased on a *pro rata* basis equal to the percentage increase in the number
2 of Workweeks worked by the Class Members above 10%. (Rose Decl., ¶ 19; Settlement Agreement, ¶
3 17). For example, if the number of Workweeks increases by 11% to 20,523 Workweeks, then the Gross
4 Settlement Amount will increase by 1%. (Rose Decl., ¶ 19; Settlement Agreement, ¶ 17).

5 The Net Settlement Amount will be distributed and paid to all Class Members who do not submit
6 a timely and valid Request for Exclusion (“Settlement Class Members”) on a *pro rata* basis based on
7 their number of Workweeks. (Rose Decl., ¶ 20; Settlement Agreement, ¶ 10.11). The *pro rata* share of
8 the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement
9 (“Individual Settlement Share”) will be calculated by the Settlement Administrator, in accordance with
10 the Settlement Agreement. (Rose Decl., ¶ 20; Settlement Agreement, ¶¶ 10.s and 18).

11 The PAGA Employee Amount will be distributed and paid to all PAGA Employees on a *pro rata*
12 basis based on the number of weeks each PAGA Employee worked for Defendant as an hourly-paid
13 and/or non-exempt employee in California during the PAGA Period (“PAGA Workweeks”). (Rose Decl.,
14 ¶ 21; Settlement Agreement, ¶¶ 10.bb and 15). The *pro rata* share of the PAGA Employee Amount that
15 a PAGA Employee may be eligible to receive under the PAGA Settlement (“Individual PAGA Payment”)
16 will be calculated by the Settlement Administrator, in accordance with the Settlement Agreement. (Rose
17 Decl., ¶ 21; Settlement Agreement, ¶¶ 10.q and 19).

18 Each Individual Settlement Share will be allocated as twenty percent (20%) wages and eighty
19 percent (80%) penalties, interest, and non-wage damages (Rose Decl., ¶ 22; Settlement Agreement, ¶ 20).
20 The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to
21 penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the
22 Settlement Administrator. (Rose Decl., ¶ 22; Settlement Agreement, ¶ 20). The Settlement Administrator
23 will withhold the employee’s share of taxes and withholdings with respect to the wages portion of the
24 Individual Settlement Shares, and issue checks to Settlement Class Members for their net payment of
25 their Individual Settlement Share (“Individual Settlement Payment”). (Rose Decl., ¶ 22; Settlement
26 Agreement, ¶¶ 10.r and 20). The employer’s share of taxes and contributions in connection with the
27 wages portion of Individual Settlement Shares will be paid by Defendant separately and in addition to the
28 Gross Settlement Amount. (Rose Decl., ¶ 22; Settlement Agreement, ¶¶ 10.p and 20). Each Individual

1 PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an
2 IRS Form 1099 (if applicable) by the Settlement Administrator. (Rose Decl., ¶ 22; Settlement
3 Agreement, ¶ 20).

4 The Settlement Agreement is a non-reversionary and non-claims made settlement. (Rose Decl.,
5 ¶ 23; Settlement Agreement, ¶¶ 10.p and 38). The Net Settlement Amount will be fully distributed to
6 Settlement Class Members and the PAGA Amount will be fully distributed to the LWDA and PAGA
7 Employees, in accordance with the Settlement Agreement. (Rose Decl., ¶ 23; Settlement Agreement, ¶¶
8 18 and 19). No money will revert to Defendant. (Rose Decl., ¶ 22; Settlement Agreement, ¶ 10.p).

9 Each Individual Settlement Payment and Individual PAGA Payment check will be valid and
10 negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
11 thereafter, shall be canceled. (Rose Decl., ¶ 24; Settlement Agreement, ¶ 38). Any funds associated with
12 such canceled checks shall be distributed by the Settlement Administrator to the State of California's
13 Unclaimed Property Fund in the name of the Settlement Class Member and/or PAGA Employee. (Rose
14 Decl., ¶ 24; Settlement Agreement, ¶ 38).

15 **D. Released Claims**

16 Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff and all
17 Settlement Class Members will be deemed to have fully, finally, and forever released, settled,
18 compromised, relinquished, and discharged the Released Parties of all Released Class Claims.
19 (Settlement Agreement, ¶ 39).

20 Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff, the State of
21 California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully,
22 finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of
23 all Released PAGA Claims. (*Id.*, ¶ 40).

24 "Released Class Claims" means any and all claims, which were alleged or which could have been
25 alleged based on the factual allegations in the Operative Complaint, arising during the Class Period, and
26 shall specifically include claims for Defendant's alleged failure to pay minimum and overtime wages,
27 provide compliant meal and rest periods and associated premium payments, timely pay wages during
28 employment and upon termination, provide accurate wage statements, and reimburse necessary business-

1 related expenses in violation of California Labor Code Sections 201, 202, 203, 204, 210, 226(a), 226.7,
2 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, the applicable Industrial Welfare Commission
3 Wage Order(s), and California Business and Professions Code sections 17200, *et seq.* (*Id.*, ¶ 10.ee).

4 “Released PAGA Claims” means any and all claims arising from any of the factual allegations in
5 the Operative Complaint and PAGA Letter, arising during the PAGA Period, for civil penalties under the
6 Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq.*, including all claims
7 for attorneys’ fees and costs related thereto, for Defendant’s alleged failure to pay minimum and overtime
8 wages, provide compliant meal and rest periods and associated premium payments, timely pay wages
9 during employment and upon termination, provide accurate wage statements, maintain accurate payroll
10 records, and reimburse necessary business-related expenses in violation of California Labor Code
11 Sections 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800,
12 and 2802, and the applicable Industrial Welfare Commission Wage Order(s). (*Id.*, ¶ 10.ff).

13 “Released Parties” means Defendant and its current and former officers, directors, members,
14 insurers, shareholders, subsidiaries, affiliates, predecessors, successors, and assigns. (*Id.*, ¶ 10.gg).

15 **IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL**

16 The settlement of a class action requires court approval. (*See Dunk v. Ford Motor Co.*, 48 Cal.
17 App. 4th 1794 (1996)). “In general, questions whether a settlement was fair and reasonable, whether
18 notice to the class was adequate, whether certification of the class was proper, and whether the attorney
19 fee award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
20 *Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds)).

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

27 ///

28 ///

1 The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.”
2 (*Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980)).
3 Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the
4 proposed settlement is within the range of possible approval and, as a result, “whether there is any reason
5 to notify the class members of the proposed settlement and to proceed with a fairness hearing.” A
6 presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2)
7 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
8 is experienced in similar litigation; and (4) the percentage of objectors is small. (*See In re Microsoft I-V*
9 *Cases*, 135 Cal. App. 4th 706, 723 (2006)).

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

17 **V. THE SETTLEMENT IS PRESUMED FAIR**

18 **A. The Settlement Was Reached as a Result of Arm’s-Length Bargaining**

19 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
20 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
21 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties’ settlement negotiations
22 were at all times made at arm’s-length and were adversarial. (Rose Decl., ¶ 25). The Settlement was
23 reached following a full day of mediation with a highly respected mediator with substantial experience
24 mediating wage and hour cases. (Ibid). At all times, Plaintiff was willing and prepared to litigate this
25 matter through class certification and trial if the Parties had been unable to reach a favorable resolution.
26 (*Id.*, ¶ 46).

27 ///

28 ///

1 **B. Sufficient Investigation and Discovery by Experienced Class Counsel**

2 Courts typically assess the status of discovery in determining whether a class action settlement
3 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation,
4 Defendant produced a random sampling of putative class members' time and pay data as well as
5 Defendant's relevant wage and hour policies, and the putative class members' data points. (Rose Decl.,
6 ¶ 26).

7 This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and
8 weaknesses of the claims and the potential class-wide damages. (*Id.*, ¶ 27). Based on information
9 exchanged, the Parties extensively briefed issues regarding class certification and liability and provided
10 their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective
11 positions. (*Id.*, ¶ 28). Additionally, settlement negotiations were conducted by highly capable and
12 experienced counsel. (Rose Decl., ¶¶ 1-7). Accordingly, Class Counsel had sufficient information and
13 experience to act intelligently in negotiating the Settlement.

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

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

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

28 ///

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

2 Class Counsel analyzed all available data and estimated Defendant’s maximum potential exposure
3 to be approximately \$3,450,451, assuming the litigation was successful at trial on all claims at issue and
4 every employee had a violation for each claim on every shift worked. (Rose Decl., ¶ 29). This maximum
5 potential analysis was then reduced based on the challenges facing the likelihood of obtaining class
6 certification, prevailing at trial, and other attendant risks. (Ibid). This estimate is based off an estimated
7 maximum liability for all claims at issue and the total aggregate workweeks during the relevant time
8 period, less interest, and based on the analysis of the data which was extrapolated out for all class
9 members across the entire putative class period, which included: \$668,294 for meal period violations;
10 \$1,284,415 for rest period violations at a 100% violation rate; \$311,381 for unpaid off-the-clock work
11 for 1 hour per workweek of off-the-clock work; \$146,010 for unreimbursed business expenses; \$644,651
12 for waiting time penalties; and \$395,700 for wage statement penalties. (Ibid). Plaintiff further estimated
13 that Defendant faced an additional exposure of \$418,600 in potential, non-stacked (i.e., one penalty, per
14 employee, per pay period during the PAGA statutory period) PAGA penalties. (Ibid). Together with the
15 PAGA penalties, Defendant’s maximum potential exposure totaled \$3,869,051 in damages. (Ibid).

16 **2. Class Counsel’s Risk-Based Analysis and Risk-Based Adjustments**

17 While Plaintiff believes that Defendant faced significant exposure, substantial barriers to a
18 recovery existed. Defendant contended that Plaintiff’s claims are not suitable for class certification
19 because individual issues and affirmative defenses would predominate should this case go to trial. (Rose
20 Decl., ¶ 32; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank*
21 *Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011)).
22 While Plaintiff and Class Counsel disagree with Defendant’s predictions, they also recognize that there
23 is a significant risk that the Court may deny class certification. (Rose Decl., ¶ 32; *see also, Findings of*
24 *the Study of California Class Action Litigation*, 2000-2006, available at
25 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class
26 actions were certified either as part of a settlement or as part of a contested certification motion)).

27 ///

28 ///

1 For example, Plaintiff's meal period claims, which were based on Defendant's alleged failure to
2 provide lawful meal periods, have been increasingly difficult to certify in recent years. (Rose Decl., ¶
3 33; *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiff's theory of liability for meal period violations was
4 based on allegations that Defendant had failed to implement its policies and that its practices failed to
5 allow Class Members to take meal breaks in the manner required under California law. (Rose Decl., ¶
6 33; *See Bradley v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129, 1150 (2012) (holding that "the lack of
7 a meal/rest break policy and uniform failure to authorize such breaks are matters of common proof.")).
8 Defendant contended that its policies and practices at all times during the Class Period were lawful. (Rose
9 Decl., ¶ 33). Indeed, Plaintiff's analysis revealed only a 54.2% violation rate for unique meal period
10 violations. (Ibid). Defendant further argued that the rate of purported meal period violations reflected in
11 the data would require individualized inquiry and that such inquiry would prohibit a class from being
12 certified. (Ibid). Class Counsel also had to consider the risk that the Court would find validity in an
13 individualized proof defense to certification of Plaintiff's meal period claim. (Ibid).

14 Additionally, a large portion of Defendant's overall liability lies in Plaintiff's rest period
15 allegations. (*Id.*, ¶ 34). As with the meal period allegations, Defendant contended that it had a lawful
16 written rest period policy, provided compliant rest breaks, and relieved Class Members of all duties as
17 required under California law. (Ibid). Additionally, this claim was even more uncertain given the
18 difficulties associated with proving the alleged rest period violations, as Defendant was not required to
19 record these breaks. (Ibid). Given the lack of records demonstrating rest period violations, there were
20 legitimate concerns Plaintiff would not be able to certify these claims or prove substantial damages with
21 requisite certainty, which made the estimated value of this claim subject to much challenge. (Ibid).

22 Plaintiff also faced challenges certifying and proving liability for his minimum wage and overtime
23 claims. (*Id.*, ¶ 35). These claims were largely based on Defendant's unrecorded, off-the-clock work
24 performed by the Class Members both before and after their shifts. (Ibid). For example, Plaintiff reported
25 that Plaintiff and the other Class Members were required to attend pre-shift meetings lasting
26 approximately 30 minutes prior to clocking in and having to clean boats and docks after clocking out.
27 (Ibid). However, the individualized nature of why this work was performed and the individualized nature
28 of damages presented substantial concerns regarding the manageability of the case and the risk the Court

1 could find these issues prevented certification, and the estimated damages for this claim were based on
2 an assumption that all Class Members worked off the clock for at least one hour per week. (Ibid).

3 Plaintiff also contended that Defendant failed to reimburse Plaintiff and the other Class Members
4 for necessary business-related expenses, including the purchase of water shoes and work uniforms for
5 work-related purposes. (*Id.*, ¶ 36). Defendant contended that it had a policy and practice of reimbursing
6 employees for necessary business-related expenses. (Ibid). Defendant further contended that, with
7 respect to the alleged expenses for which Plaintiff and the other Class Members never requested
8 reimbursement from Defendant, it did not know and had no reason to know that alleged business-related
9 expenses had been incurred. (Ibid). Defendant further contended that the reason for why a Class Member
10 undertook certain expenses, while not others, and failed to receive reimbursement for certain expenses
11 while not others, would raise individual issues that could not be certified. (Ibid).

12 There are also substantial risks associated with Plaintiff's waiting time penalties and wage
13 statement claims. (*Id.*, ¶ 37). First, these claims were derivative of Plaintiff's claims for unpaid meal
14 period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages,
15 and if certification was denied on those underlying claims, these derivative claims for penalties would
16 also likely fail. (Ibid). Further, even if Plaintiff prevailed on his underlying claims, he would still be
17 required to demonstrate that Defendant's violations of California Labor Code section 203 were *willful*
18 violations. (Rose Decl., ¶ 37; *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013)
19 (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding
20 of willfulness")). Wage statement claims have also seen varying treatment at the appellate level because
21 such claims have an element of discretion attached to them rather than a pure calculation of damages after
22 liability is proven. (Rose Decl. ¶ 37; *Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with*
23 *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which
24 comprised a substantial portion of Defendant's estimated liability, were therefore uncertain. (Rose Decl.,
25 ¶ 37).

26 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the
27 amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
28 proposition. (*Id.*, ¶ 38). In order to prove liability and damages, Class Counsel will need to request and

1 analyze thousands of pages of documents, obtain the Class Members' contact information, contact them,
2 and obtain their declarations at great expense. (Ibid). Obtaining the cooperation of current employees
3 would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current
4 employer. (Ibid). On the other hand, Defendant would likely be able to obtain the cooperation of their
5 employees. (Ibid). Moreover, even if Plaintiff prevailed at class certification and trial, possible appeals
6 would substantially delay any recovery by the Class. (Ibid).

7 Therefore, taking into account how each of the above risks potentially effected Plaintiff's ability
8 to first obtain class certification, and then prove the underlying violations, plus the cost and delay in
9 recovering the alleged potential damages, Class Counsel discounted Defendant's estimated liability based
10 on the challenges facing his ability to succeed on class certification by 50% to \$1,934,526. (*Id.*, ¶ 39).
11 The merits-based risk factors further reduced Defendant's estimated liability by an additional 50%.
12 (Ibid). This resulted in an adjusted estimated liability of \$967,263. In light thereof, the settlement amount
13 of \$924,450 is a significant settlement. (Ibid).

14 Class Counsel also contemplated the risks of proceeding with the PAGA claims and potential
15 liability Defendant could face from these claims as part of the global resolution. (*Id.*, ¶ 40). Existing
16 case law makes PAGA claims subject to the same defenses and risks as Plaintiff's underlying wage
17 claims. (Rose Decl., ¶ 40; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D.
18 Cal. 2008) ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because all of
19 Plaintiff's other claims fail as a matter of law, so does her PAGA claim")). Class Counsel also anticipated
20 that even if successful on the merits at trial, the imposition of cumulative civil penalties based on the
21 alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory,
22 and that Defendant would argue that it made a good faith attempt to comply with its legal obligations
23 warranting a reduction in penalties. (Rose Decl., ¶ 40).¹ Class Counsel also anticipated Defendant would
24

25 ¹ See, e.g., *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory
26 and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis*
27 *Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) ("duplicative effect" of penalties is a factor in favor of "reducing ...the
28 PAGA penalty"); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to
stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez*
v. McDonalds Restaurants of California, Inc., 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties
arising out of the same conduct); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing
PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is

1 argue that it made a good faith attempt to comply with its legal obligations and that the violations per pay
2 period were low, warranting an additional reduction in civil penalties. (Ibid). Finally, Class Counsel was
3 also mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature but is
4 instead intended to facilitate enforcement of California’s labor laws by financing state activities and
5 educating and deterring non-compliance. (Ibid).

6 Therefore, after considering this multitude of factors, Plaintiff and Class Counsel concluded that
7 it was in the best interest of the State of California and the PAGA Employees to enter into the Settlement,
8 and to allocate Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement Amount
9 towards the PAGA claim, which represents approximately 5.41% of the Gross Settlement Amount. (*Id.*,
10 ¶ 38). This percentage of the settlement is well within the range of wage and hour settlements regularly
11 approved in both state and federal court for cases that include both a class and PAGA action. (Ibid).
12 Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and,
13 indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as
14 reasonable by courts. (Ibid). Moreover, the overall relief obtained by the Settlement is significant, not
15 only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to
16 promote enforcement of California’s labor laws, provide funds to the state, and deter future non-
17 compliance by the employer. (Ibid).

18 The Settlement is in the best interest of the Class Members, the PAGA Employees, and the State
19 of California and is within the accepted range of recoveries for this type of litigation given the inherent
20 risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further
21 litigation. (*Id.*, ¶ 39).

22 VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

23 Code of Civil Procedure Section 382 provides that three basic requirements must be met in order
24 to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined
25 community of interest in the question of law or fact affecting the parties to be represented; and (3)
26 certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class action
27

28 warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018)
(approving reduction in penalties from \$50 per pay period to \$5 per pay period based on good faith attempts to comply with
obligations and minimal violations).

1 is superior to other methods. (*See Dunk*, 48 Cal.App.4th at 1806). Plaintiff contends that the Action,
2 which is based upon Defendant's wage and hour policies and practices, satisfies the class certification
3 requirements under California Code of Civil Procedure section 382. Defendant denies Plaintiff's
4 allegations, but for purposes of the Settlement only, Defendant has stipulated to certification of the Class.

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

7 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
8 the class, and (3) the means of identifying the class members. (*See Miller v. Woods*, 148 Cal.App.3d 862,
9 873 (1983)). In this case, all three considerations strongly favor class certification. Here, the Class is
10 defined as "all current and former hourly paid and/or non-exempt employees who worked for Defendant
11 in the State of California at any time during the Class Period." (Rose Decl., ¶ 17; Settlement Agreement,
12 ¶ 10.b). This provides a clear and definite scope for the proposed class.

13 Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity
14 requirement. Courts have certified classes with as few as ten or twenty-eight class members. (*Rose v.*
15 *City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995);
16 *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972)). Here, the estimated Class size of five hundred
17 and thirty-nine (539) meets the numerosity requirement.

18 Finally, the question of whether class members are easily identifiable turns on whether a plaintiff
19 can establish "the existence of an ascertainable class." (*Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706
20 (1967)). The existence of an ascertainable class in this case can be established through Defendant's
21 payroll records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and
22 the Court to determine the parameters of the Class. (*See Clothesrigger, Inc. v. GTE Corp.*, 191
23 Cal.App.3d 605, 617 (1987)).

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

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

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

8 Here, Plaintiff’s claims present common issues of law and fact that predominate and warrant class
9 certification. Plaintiff alleges that Defendant denied compliant meal and rest periods to employees,
10 required employees to perform work off-the-clock, and failed to fully compensate employees for all time
11 actually worked. These policies and practices meant that Defendant allegedly failed to pay minimum and
12 overtime wages, and other related claims. Plaintiff alleges that Defendant’s policies and practices were
13 uniform as to all Class Members. Thus, class treatment is appropriate.

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

21 Here, Plaintiff alleges that his claims are similar to that of the other Class Members and that
22 Plaintiff’s claims arise out of the same alleged course of conduct giving rise to the claims of the other
23 Class Members. Because Plaintiff’s claims are based upon the same alleged conduct and business
24 practices as those of Class Members, the typicality requirement has been satisfied.

25 Finally, the question of adequacy of representation “depends on whether the plaintiff’s attorney
26 qualifies to conduct the proposed litigation in the plaintiff’s interest or not antagonistic to the interests of
27 the class.” (*McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976)). Here, these considerations are
28 satisfied. Class Counsel is well-regarded and is qualified and experienced in employment-related, class-

1 action litigation. (Rose Decl., ¶¶ 1-7). Plaintiff will vigorously, adequately, and fairly represent the
2 interests of the Class. Plaintiff has, at all times, throughout the course of the litigation considered the
3 interests of the Class and understood that he must take steps to adequately represent the Class and their
4 interests. (Amyot Decl., ¶ 10). Because Plaintiff's claims are typical of other Class Members and are
5 not based on unique circumstances, there is no antagonism between the interests of Plaintiff and the Class.

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

7 Under the circumstances, proceeding as a class action is a superior means of resolving this dispute,
8 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
9 the only means to deter and redress the alleged violations. (*See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429,
10 434 (2000) (relevant considerations include the probability that each class member will come forward to
11 prove his or her separate claim and whether the class approach would actually serve to deter and redress
12 the alleged wrongdoing)). Further, individual actions arising out of the same operative facts would
13 unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are
14 superior to individual litigation.

15 **VII. THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE**

16 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation
17 “for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz*
18 *v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010)). Courts routinely grant approval of
19 class action settlement agreements containing enhancements for the class representative, which are
20 necessary to provide incentive to represent the class and are appropriate given the benefit the class
21 representatives help to bring about for the class. (*See In re Online DVD Rental*, 779 F.3d 934, 947-948
22 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive
23 award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL
24 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and
25 reasonable”)).

26 Plaintiff initiated this litigation on behalf of his former co-workers who will now be entitled to
27 receive payment from the Settlement. Plaintiff invested substantial time and effort into litigation,
28 including his own research, reviewing documents, and extensive discussions with Class Counsel. (Amyot

Decl., ¶¶ 3-5). Further, the requested amount for Plaintiff is also reasonable given the average award and the benefit gained by other Class Members. For these reasons, Plaintiff requests that an Enhancement Payment of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff be preliminarily approved by the Court. (Rose Decl., ¶ 43; Amyot Decl., ¶ 12).

VIII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE

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.*, 82 Cal.App.4th 19, 41 (2000)). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. (*Id.* at 47). In cases where class members present claims against a common fund and the defendant agrees to a percentage of the fund as part of the settlement, use of the percentage method is appropriate. (*Id.* at 32).

Here, the requested attorneys’ fees of one-third (1/3) of the Gross Settlement Amount (i.e., \$308,150.00 if the Gross Settlement Amount is \$924,450.00) is disclosed to Class Members in the proposed Class Notice. (Settlement Agreement, Exh. A). The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel’s request for the reimbursement of litigation costs and expenses not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). (Rose Decl., ¶¶ 44 and 46). The Attorneys’ Fees and Costs that are not ultimately approved by the Court shall instead be included in the Net Settlement Amount to be distributed to Settlement Class Members. (Settlement Agreement, ¶ 13).

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

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

1 Individual PAGA Payment. (Ibid).

2 Within fourteen (14) calendar days after entry of the preliminary approval order, Defendant will
3 provide a list in a formatted readable Microsoft Office Excel spreadsheet to the Settlement Administrator
4 containing the following information for each Class Member: full name; last known mailing address;
5 Social Security number; dates worked for Defendant during the Class Period; and such other information
6 as is necessary for the Settlement Administrator to calculate Workweeks and PAGA Workweeks
7 (collectively referred to as the “Class List”). (*Id.*, ¶¶ 10.d and 27). Within seven (7) calendar days after
8 receiving the Class List from Defendant, the Settlement Administrator will perform a search based on the
9 National Change of Address Database or other similar services available, such as provided by Experian,
10 for information to update and correct for any known or identifiable address changes, and will mail a Class
11 Notice in English and Spanish to all Class Members via First-Class U.S. Mail, using the most current,
12 known mailing addresses identified by the Settlement Administrator. (*Id.*, ¶ 28.a). The Parties have
13 agreed to use ILYM Group, Inc. as the Settlement Administrator. (Rose Decl., ¶ 47; Settlement
14 Agreement, ¶ 10.jj).

15 In determining whether to approve a settlement of a class action, a trial court has virtually
16 complete discretion as to the manner of giving notice to class members, and review on appeal is governed
17 by the abuse of discretion standard. (*See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380
18 (2010)). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which
19 would result in a higher likelihood of actual notice. (Rose Decl., ¶ 48). The original source of the mailing
20 addresses is from Class Members, who provided the information to Defendant. (Ibid).

21 Class Members will have forty-five (45) calendar days from the initial mailing of the Class Notice
22 by the Settlement Administrator to submit a Request for Exclusion, Notice of Objection, and/or
23 Workweeks Dispute (“Response Deadline”). (Settlement Agreement, ¶ 10.ii).

24 Any Class Notice returned to the Settlement Administrator as undeliverable on or before the
25 Response Deadline will be sent promptly via First Class U.S. Mail to the forwarding address affixed
26 thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.
27 (*Id.*, ¶ 28.b). If no forwarding address is provided, the Settlement Administrator will promptly attempt
28 to determine the correct address using a skip-trace or other search, using the name, address, and/or Social

1 Security number of the Class Member, and perform a single re-mailing within five (5) calendar days.
2 (Ibid). In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that
3 Class Member shall be extended fifteen (15) calendar days from the original Response Deadline. (*Id.*, ¶
4 10.ii).

5 Class Members will have an opportunity to dispute the number of Workweeks and/or PAGA
6 Workweeks to which they have been credited, as reflected in their respective Class Notices, by submitting
7 a timely and valid letter (“Workweeks Dispute”) to the Settlement Administrator, by mail, postmarked
8 on or before the Response Deadline. (*Id.*, ¶¶ 10.nn and 29). A Workweeks Dispute must: (a) contain the
9 case name and number of the Action; (b) contain the Class Member’s full name, signature, address,
10 telephone number, and the last four (4) digits of the Class Member’s Social Security number; (c) clearly
11 state that the Class Member disputes the number of Workweeks and/or PAGA Workweeks credited to
12 that Class Member and what the Class Member contends is the correct number; and (d) be returned by
13 mail to the Settlement Administrator at the specified address, postmarked on or before the Response
14 Deadline. (*Id.*, ¶ 10.nn).

15 Any Class Member wishing to be excluded from the Class Settlement must submit a timely and
16 valid letter (“Request for Exclusion”) to the Settlement Administrator, by mail, postmarked on or before
17 the Response Deadline. (*Id.*, ¶¶ 10.hh and 30). A Request for Exclusion must: (a) contain the case name
18 and number of the Action; (b) contain the Class Member’s full name, signature, address, telephone
19 number, and last four (4) digits of the Class Member’s Social Security number; (c) clearly state that the
20 Class Member does not wish to be included in the Class Settlement; and (3) be returned by mail to the
21 Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*,
22 ¶ 10.hh). Notwithstanding the above, all PAGA Employees will be bound to the PAGA Settlement and
23 will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for
24 Exclusion. (*Id.*, ¶ 30).

25 To object to the Class Settlement, Settlement Class Members must submit a timely and complete
26 written objection (“Notice of Objection”) to the Settlement Administrator, by mail, postmarked on or
27 before the Response Deadline. (*Id.*, ¶¶ 10.v and 31). A Notice of Objection must: (a) contain the case
28 name and number of the Action; (b) contain the objector’s full name, signature, address, telephone

1 number, and the last four (4) digits of the objector's Social Security number; (c) contain a written
2 statement of all grounds for the objection accompanied by any legal support for such objection; (d)
3 contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be
4 returned by mail to the Settlement Administrator at the specified address, postmarked on or before the
5 Response Deadline. (*Id.*, 10.v). Settlement Class Members, individually or through counsel, may also
6 present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a
7 Notice of Objection. (*Id.*, ¶ 31).

8 **X. CONCLUSION**

9 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's
10 Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

11 Respectfully submitted,

12 Dated: May 27, 2025

BLACKSTONE LAW, APC

13
14 By:



Alexandra Rose
Attorneys for Plaintiff Joseph Amyot