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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

10
11 LINDA SALAZAR AYALA, an individual
and on behalf of all others similarly situated;

12 Plaintiff,

13 vs.

14 APPLIED MEMBRANES, INC., a California
15 corporation; and DOES 1 through 50,

16 Defendants.

Case No.: 37-2023-00054420-CU-OE-CTL

[Assigned for All Purposes to:
Hon. Matthew C. Braner, Dept. C-60]

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

(Filed concurrently with Supporting
Declarations; [Proposed] Judgment and Order)

DATE: December 5, 2025

TIME: 9:00 a.m.

DEPT: C-60

Action Filed: November 27, 2023

Trial Date: Not Set

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

3 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court and
4 California Code of Civil Procedure section 382, on December 5, 2025 at 9:00 a.m. in Department
5 C-60 of the San Diego County Superior Court, Hall of Justice, located at 330 W. Broadway, San
6 Diego, CA 92101, Plaintiff Linda Salazar Ayala, individually and on behalf of a class of similarly
7 situated individuals, will and hereby do move this Court for entry of an Order:

8 1. Confirming the certification of the Settlement Class for settlement purposes under
9 Section 382 of the California Code of Civil Procedure;

10 2. Confirming the appointment of Plaintiff as the Class Representative for settlement
11 purposes;

12 3. Confirming the appointment of William C. Sung and Tiffany L. Luu as Class
13 Counsel;

14 4. Granting final approval of the Class Action and PAGA Settlement Agreement
15 (“Settlement” or “Agreement”);

16 5. Approving an award of \$8,690.00 in costs to Apex Class Action LLC for its
17 settlement administration services;

18 6. Approving a payment of \$15,000.00 to the Labor & Workforce Development
19 Agency (“LWDA”) for its share of civil penalties under the Private Attorneys General Act
20 (“PAGA”); and

21 7. Entering final judgment in the form of the Proposed Judgment and Order Granting
22 Final Approval of Class and PAGA Action Settlement, Class Representative Service Payment, and
23 Attorney’s Fees and Costs filed herewith.

24 This Motion is made on the following grounds: (1) the Class continues to meet the
25 requirements for class certification for settlement purposes under Code of Civil Procedure § 382;
26 (2) Plaintiff and Class Counsel continue to be adequate representatives of the Class; (3) the
27 Settlement is a fair, adequate, and reasonable compromise of disputed wage and hour claims; (4) the
28 requested amounts for Class Counsel’s attorneys’ fees and costs, settlement administration costs,

1 and the Class Representative service payment are all fair, adequate, and reasonable; and (5) in light
2 of the foregoing, the Proposed Judgment and Order Granting Final Approval of Class and PAGA
3 Action Settlement submitted herewith should be entered so as to give finality to, and allow for
4 disbursements from, the Settlement.

5 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
6 Authorities; the supporting declarations of William C. Sung, Tiffany L. Luu, Plaintiff Linda Salazar
7 Ayala, and Ryan McNamee of Apex Class Action LLC, and the exhibits attached thereto; the
8 Agreement; the pleadings, and other papers filed in this Action; and on any further oral or
9 documentary evidence or argument presented at the time of the hearing.

10
11 DATED: November 4, 2025

Respectfully submitted,

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

13
14 By: 

15 William C. Sung
16 Tiffany L. Luu
17 Attorneys for Plaintiff
18 LINDA SALAZAR AYALA
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TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	1
II.	<u>SUMMARY OF THE LITIGATION</u>	1
A.	THE PARTIES AND BRIEF PROCEDURAL HISTORY	1
B.	DISCOVERY, MEDIATION, AND PRELIMINARY APPROVAL	2
III.	<u>SUMMARY OF THE SETTLEMENT AND NOTICE ADMINISTRATION</u>	3
A.	CLASS DEFINITION	3
B.	MONETARY TERMS	3
C.	SUMMARY OF THE NOTICE ADMINISTRATION	4
D.	FUNDING OF THE SETTLEMENT AND UNCASHED SETTLEMENT CHECKS	5
IV.	<u>LEGAL ARGUMENT</u>	5
A.	THE SETTLEMENT MEETS ALL REQUIREMENTS FOR CLASS CERTIFICATION UNDER CODE OF CIVIL PROCEDURE § 382	5
B.	THE SETTLEMENT IS A FAIR, ADEQUATE, AND REASONABLE COMPROMISE OF DISPUTED WAGE AND HOUR CLAIMS	6
1.	The Settlement Was Reached Through Arms-Length Negotiation by Experienced Counsel and Presumably Fair, Adequate, and Reasonable	6
2.	The Settlement is Fair, Adequate, and Reasonable in Light of the Risks Faced by Plaintiff	8
3.	The Settlement Fairly, Reasonably, and Adequately Compensates Class Members	12
4.	The Absence of Any Objections or Opt Outs Confirms that the Settlement is Fair, Adequate, and Reasonable	12
C.	THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE REASONABLE	13
D.	THE COURT SHOULD APPROVAL THE REQUESTED SETTLEMENT ADMINISTRATION COSTS	14

1	V. <u>CONCLUSION</u>	14
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

STATE CASES

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	6, 12
<i>Ali v. U.S.A. Cab Ltd.</i> (2009) 176 Cal.App.4th 1333	9
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	11
<i>Clark v. Am. Residential Svcs. LLC</i> (2009) 175 Cal.App.4th 785	7
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794.....	7, 12
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	7, 8
<i>Magadia v. Wal-Mart Associates, Inc.</i> (9th Cir. 2021) 999 F.3d 668	9
<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> (1980) 103 Cal.App.3d 573	6
<i>Mallick v. Superior Court</i> (1979) 89 Cal.App.3d 434.....	7
<i>Naranjo v. Spectrum Security Services, Inc.</i> (2024) 15 Cal.5th 1056	11
<i>O'Conner v. Uber Technologies, Inc.</i> (9th Cir. 2018) 904 F.3d 1087	9
<i>Price v. Starbucks Corp.</i> (2011) 192 Cal.App.4th 1136	11
<i>Richmond v. Dart Industries, Inc.</i> (1981) 29 Cal.3d 462	6
<i>Stambaugh v. Superior Court</i> (1976) 62 Cal.App.3d 231	6
<i>Thurman v. Bayshore Transit Mgmt., Inc.</i> (2012) 203 Cal.App.4th 1112	11
<i>Tien v. Tenet Healthcare Corp.</i> (2012) 209 Cal.App.4th 1077	9
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	7

FEDERAL CASES

<i>Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.</i> (7th Cir. 1972) 455 F.2d 101	7
<i>Brown v. Fed Express Corp.</i> (C.D. Cal. 2008) 249 F.R.D. 580	9
<i>Campbell v. Best Buy Stores, L.P.</i> (C.D. Cal. 2013) 2013 WL 5302217	9
<i>Duran v. U.S. Bank National Association</i> (2014) 59 Cal.4th 1	9
<i>Fleming v. Covidien Inc.</i> (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047	11
<i>Hopson v. Hanesbrands Inc.</i> (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133 ..	13
<i>In re Austrian & German Bank Holocaust Litigation</i> (S.D.N.Y. 2000) 80 F.Supp.2d 164	12

1	<i>Jack v. Hartford Fire Ins. Co.</i> (S.D. Cal. Oct. 13, 2011) No. 09cv1683 MMA (JMA), 2011 WL 4899942	13
2		
3	<i>McKenzie v. Fed. Express Corp.</i> (C.D. Cal. Jan. 23, 2012) No. CV 10-02420 GAF (PLAx), 2012 WL 12882124.....	13
4	<i>Stoetznner v. U.S. Steel Corp.</i> (3d. Cir. 1990) 897 F.2d 115.....	12

STATUTES

6	Code Civ. Proc. § 382.....	1
7	Lab. Code § 2699(e)(2)	11
8	Labor Code § 203	11
9	Labor Code § 226(e).....	11

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Linda Salazar Ayala (“Plaintiff”) submits this Memorandum of Points and
4 Authorities in support of Plaintiff’s Motion for Final Approval of Class and PAGA Action
5 Settlement (the “Motion”) with Defendant Applied Membranes, Inc. (“Defendant”) (together with
6 Plaintiff, the “Parties”). Under the Settlement, Defendant has agreed to pay a non-reversionary
7 Gross Settlement Amount of \$375,000.00 to the following Class comprised of 375 individuals:

8 All current and former hourly paid or non-exempt employees of Defendant Applied
9 Membranes, Inc. in California during the Class Period of November 27, 2019 to
November 17, 2024.

10 In this non-reversionary class and PAGA action settlement, all Participating Class Members
11 will receive automatic payments without the need to submit a claim form, **resulting in an average**
12 **Individual Class Payment of approximately \$535.55 to each Participating Class Member.** This
13 is an excellent result for the Class, especially in light of the significant litigation risks that Plaintiff
14 faced. Moreover, after receiving notice of the proposed Settlement and projected estimated
15 Individual Class Payments, **not a single Class Member has objected to the Settlement or elected**
16 **to opt-out of the Settlement, resulting in a 100% participation rate.**

17 The relief offered by the Settlement is immediate and is particularly impressive when
18 viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases as
19 discussed below. Indeed, by settling now rather than proceeding to trial, the Class will not have to
20 wait (possibly years) for relief, nor will they have to bear the risks associated with prolonged and
21 uncertain litigation

22 As explained further below, the Court should grant Plaintiff’s Motion in its entirety because
23 (1) the Class continues to meet the requirements for certification for settlement purposes under
24 Code Civ. Proc. § 382; (2) the Settlement is a fair, adequate, and reasonable compromise of the
25 disputed claims in this case; and (3) the requested amounts for attorneys’ fees and costs, settlement
26 administration costs, and class representative service payment are all fair, adequate, and reasonable.
27 In light of the foregoing, Plaintiff respectfully submits that the Court grant this Motion.

28 ///

1 **II. SUMMARY OF THE LITIGATION**

2 **A. THE PARTIES AND BRIEF PROCEDURAL HISTORY**

3 Defendant owns and operates a Reverse Osmosis systems manufacturing and distributing
4 company in Vista, California. Declaration of William C. Sung in Support of Plaintiff’s Motion for
5 Final Approval of Class Action and PAGA Settlement (“Sung Decl.”), ¶ 9. Defendant hired Plaintiff
6 as a non-exempt employee on approximately August 10, 2020 as a vacuum tester. Declaration of
7 Linda Salazar Ayala in Support of Motion for Approval, ¶ 2 . At all times during their employment,
8 Plaintiff was paid an hourly wage and were entitled to legally compliant meal and rest periods.

9 On November 27, 2023, Plaintiff commenced this Action by filing a Class Action Complaint
10 alleging causes of action against Defendant for (1) Minimum Wage Violations; (2) Overtime Wage
11 Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Penalties;
12 (6) Waiting Time Penalties; and (7) Unfair Competition. Sung Decl., ¶ 10. On the same day,
13 November 27, 2023, Plaintiff sent a notice letter under the California Private Attorneys General Act
14 (“PAGA”) to the Labor and Workforce Development Agency (“LWDA”). *Id.* at ¶ 11. On January
15 30, 2024, Plaintiff filed the First Amended Complaint (“FAC”) alleging a cause of action for Civil
16 Penalties Under the PAGA. *Id.* at ¶ 12.

17 **B. DISCOVERY, MEDIATION, AND PRELIMINARY APPROVAL**

18 In connection with mediation, the Parties engaged in informal discovery. Sung Decl., ¶ 13.
19 Defendant produced (1) a class list with unique identifying numbers for each Class Member and the
20 Class Member’s hourly rate, job title, and dates of employment; (2) class and PAGA statistics
21 including workweeks worked during the Class Period and pay periods worked during the PAGA
22 Period through mediation; (3) a random sampling of employee time and payroll records exported on
23 Excel; (4) various policies and procedural documents, including employee handbooks, in effect
24 during the Class Period; and (5) Plaintiff’s personnel records. *Ibid.* Defendant produced a random
25 sampling of time and payroll records for 125 Class Members, including Plaintiff, which amounted
26 to a 33.33% sampling. *Ibid.*

27 In preparation for mediation, Class Counsel worked with an expert data analyst to analyze
28 the records and Class Counsel conducted a comprehensive analysis and extrapolation of the payroll

1 and timekeeping data produced by Defendant to create a detailed exposure analysis for all claims at
2 issue. Sung Decl., ¶ 14. This discovery and analysis allowed the Parties to assess the merits and
3 value of Plaintiff’s claims, the chances of certification of Plaintiff’s claims, and Defendant’s
4 potential defenses. *Ibid.*

5 On October 18, 2024, the Parties participated in a full-day mediation with Jason Marsili,
6 Esq. a well-respected wage and hour class action mediator. Sung Decl., ¶ 15. During mediation, the
7 Parties vigorously debated their opposing legal and factual positions, the likelihood of certification
8 of Plaintiff’s claims, and the legal basis for the claims and defenses. *Ibid.* The Parties did not settle
9 at mediation but continued to engage in settlement talks through Mr. Marsili and reached a tentative
10 class and PAGA settlement on November 15, 2024. *Ibid.* The terms of the Settlement are in the
11 operative Class Action and PAGA Settlement Agreement (“Settlement” or “Agreement”). *Ibid.*, **Ex.**
12 **1 (Agreement).**

13 On December 20, 2024, Plaintiff submitted the proposed Settlement to this Court with
14 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. Sung Decl., ¶ 16. On
15 August 21, 2025, this Court issued its Order Granting Preliminary Approval of Class Action
16 Settlement. *Ibid.*, **Ex. 2 (Order Granting Preliminary Approval).**

17 **III. SUMMARY OF THE SETTLEMENT AND NOTICE ADMINISTRATION**

18 **A. CLASS DEFINITION**

19 As noted, the Class is comprised of: “All current and former hourly paid or non-exempt
20 employees of Defendant Applied Membranes, Inc. in California during the Class Period of
21 November 27, 2019 to November 17, 2024.” Order Granting Preliminary Approval, ¶ 1 (Ex. 2 to
22 Sung Decl.).

23 **B. MONETARY TERMS**

24 The Settlement provides for Defendant to pay a non-reversionary Gross Settlement Amount
25 of \$375,000.00. Agreement, § 3.1 (Ex. 1 to Sung Decl.). The Net Settlement Amount is the amount
26 remaining from the Gross Settlement Amount after deducting requested attorneys’ fees
27 (\$125,000.00) and litigation costs (\$10,478.18), requested Class Representative Service Award
28 (\$10,000.00), settlement administration costs (\$8,690.00), and the amount set aside as PAGA civil

1 penalties (\$20,000.00). Agreement, § 3.2; Sung Decl., ¶ 17, Ex. 3. Based on these requested
2 amounts, the Net Settlement Amount is estimated at \$200,831.82. Declaration of Ryan McNamee of
3 Apex Class Action LLC in Support of Motion for Final Approval of Class Action and PAGA
4 Settlement (“Admin. Decl.”), ¶ 15.

5 Each Individual Class Payment to Class Members will be determined by (a) dividing the Net
6 Settlement Amount by the total number of Workweeks worked by all Participating Class Members
7 during the Class Period and (b) multiplying the result by each Participating Class Member’s
8 Workweeks. Agreement, § 3.2.4. In addition, 25% of the amount designated as PAGA Penalties
9 (i.e., \$5,000.00) will be distributed to all Aggrieved Employees who worked for Defendant from
10 November 27, 2022 to November 17, 2024 (the “PAGA Period”) based on the proportionate
11 number of pay periods worked during the PAGA Period. Agreement, §§ 1.31, 1.35, 3.2.5.1.

12 All Individual Class Payments from the Net Settlement Amount will be classified as 20%
13 wages to be reported on a W-2 form, and 80% penalties and interest to be reported on a 1099 form.
14 Agreement, § 3.2.4.1. Defendant’s share of employer-side payroll taxes shall be paid by Defendant
15 separate, and in addition to, the Gross Settlement Amount. Agreement, § 3.1.

16 **C. SUMMARY OF THE NOTICE ADMINISTRATION**

17 On September 5, 2025, Defendant’s counsel provided the Administrator with the Class List
18 consisting of 375 Class Members’ names, social security numbers, last known mailing addresses,
19 and total number of Workweeks worked by each Class Member. Admin. Decl., ¶ 5. The
20 Administrator conducted a National Change of Address (“NCOA”) search to ensure the accuracy
21 and validity of the addresses before mailing Class Notices. Admin. Decl., ¶ 6. If an updated address
22 was found in the NCOA database, the Administrator utilized that address; if no updated address was
23 found, the Administrator utilized the original address. *Ibid.* On September 19, 2025, the
24 Administrator mailed the Class Notice in English and Spanish to the Class Members via U.S. First
25 Class Mail. Admin. Decl., ¶ 7, **Ex. A** (Class Notice).

26 The Administrator received 27 returned Class Notices as undeliverable. Admin. Decl., ¶ 8.
27 The Administrator conducted a computerized skip trace on the returned Class Notices, found 18
28 updated addresses, and re-mailed the Class Notices to the updated addresses. *Ibid.* Ultimately, 9

1 Class Notices is considered undeliverable as an updated address could not be found through a skip
2 trace. Admin. Decl., ¶ 10.

3 The Administrator received no objections, no requests for exclusion, and no workweek
4 disputes. Admin. Decl., ¶¶ 11-13. Thus, the participation rate by Class Member is **100%**. Admin.
5 Decl., ¶ 14. The average estimated Individual Class Payment is approximately **\$525.55**, with the
6 highest estimated payment being **\$1,889.11** and lowest estimated payment being **\$7.32**. Admin.
7 Decl., ¶ 16. Additionally, 187 Aggrieved Employees who were employed during the PAGA Period
8 will receive a portion of the \$5,000.00 PAGA Penalties. Admin. Decl., ¶ 17. The average Individual
9 PAGA Payment is approximately **\$26.74**, with the highest estimated payment being **\$44.27** and the
10 lowest estimated payment being **\$0.85**. Admin. Decl., ¶ 18.

11 **D. FUNDING OF THE SETTLEMENT AND UNCASHED SETTLEMENT**
12 **CHECKS**

13 Defendant shall deposit the Gross Settlement Amount and the employer side payroll taxes
14 with the Administrator within 15 calendar days of the Effective Date or January 2, 2026, whichever
15 date is later. Agreement, § 4.3. Within 14 calendar days after Defendant funds the Gross Settlement
16 Amount and employer's share of payroll taxes, the Administrator will disburse all Individual Class
17 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
18 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
19 Payment, and the Class Representative Service Payments. Agreement, § 4.4. After disbursement,
20 Class Members will have 180 days to cash their checks. Agreement, § 4.4.1. Funds remaining
21 unclaimed after 180 days shall be sent to the California State Controller's Office in the Class
22 Member's name to be held as unclaimed property for the Class Member. Agreement, § 4.4.3.

23 **IV. LEGAL ARGUMENT**

24 **A. THE SETTLEMENT MEETS ALL REQUIREMENTS FOR CLASS**
25 **CERTIFICATION UNDER CODE OF CIVIL PROCEDURE § 382**

26 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and
27 its members are too numerous for joinder to be practical; (2) the representative and absent class
28 members share a community of interest, and questions of law and fact common to the class

1 predominate over questions unique to individual class members; (3) the representative's claims are
2 typical of the class's claims; and (4) the representative will fairly and adequately represent the
3 class's interests. *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.

4 Here, this Court found that the Class meets all the requirements for class certification for
5 settlement purposes when it granted preliminary approval of the Settlement. *See generally* Sung
6 Decl., Ex. 2. Subsequent to the Court's Order granting preliminary approval, no events have cast
7 doubt on the propriety of this determination, and in fact, the reaction of the Class has been
8 overwhelmingly supportive of the Settlement, with not a single objection and not a single request
9 for exclusion submitted, resulting in a 100% participating rate. *See* Admin. Decl., ¶¶ 11-12. This
10 Court should therefore confirm its conditional certification of the Class.

11 **B. THE SETTLEMENT IS A FAIR, ADEQUATE, AND REASONABLE**
12 **COMPROMISE OF DISPUTED WAGE AND HOUR CLAIMS**

13 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*
14 *Court* (1976) 62 Cal.App.3d 231, 236. In evaluating settlements, the courts have long recognized
15 that compromise is particularly appropriate since such litigation is difficult and notoriously
16 uncertain. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
17 1151 ("voluntary conciliation and settlement are the preferred means of dispute resolution. This is
18 especially true in complex class action litigation").

19 Unlike individual settlements, class action settlements involve a court approval process that
20 exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of*
21 *Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-79. This approval process consists of
22 preliminary settlement approval, notice being given to class members, and a final fairness and
23 approval hearing being held, at which class members have the opportunity to be heard with respect
24 to the settlement. *Ibid.* Now that notice has been provided to the Class, Plaintiff respectfully
25 requests that this Court finally approve the Settlement as fair, adequate, and reasonable.

26 **1. The Settlement Was Reached Through Arms-Length Negotiation by**
27 **Experienced Counsel and Presumably Fair, Adequate, and Reasonable**

28 A class settlement is presumptively fair where it is reached through arm's-length bargaining,

1 based on sufficient discovery and investigation to allow counsel and the court to act intelligently,
2 counsel is experienced in similar litigation, and the percentage of objectors to the settlement is
3 small. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. In deciding whether to approve a
4 proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair
5 under the circumstances of the case. *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438. In
6 exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair,
7 adequate, and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant
8 factors for the Court to consider include, but are not limited to:

9 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
10 further litigation, the risk of maintaining class action status through trial, the amount
11 offered in settlement, the extent of discovery completed and the stage of the
proceedings, the experience and views of counsel, the presence of a governmental
participant, and the reaction of the class members to the proposed settlement.

12 *Id.* These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the
13 factors to each case and give due regard to “what is otherwise a private consensual agreement
14 between the parties.” *Id.*

15 “In the context of a settlement agreement, the test is not the maximum amount a plaintiff
16 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under
17 all of the circumstances.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.
18 Because settlements inherently involve compromise, even settlements providing for substantially
19 narrower relief than likely would be obtained if the suit were successfully litigated can be
20 reasonable because “the public interest may indeed be served by a voluntary settlement in which
21 each side gives ground in the interest of avoiding litigation.” *Id.* (quoting *Air Line Stewards, etc.,*
22 *Local 550 v. Am. Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109).

23 In addition, courts review the discovery process and information received through it to aid
24 them in assessing whether the parties sufficiently developed the claims and their supporting factual
25 bases before reaching settlement. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
26 116, 129-31. Information is sufficient where it allows the parties and the court to form “an
27 understanding of the amount that is in controversy and the realistic range of outcomes of the
28 litigation.” *Clark v. Am. Residential Svcs. LLC* (2009) 175 Cal.App.4th 785, 801. This requirement

1 exists so that the parties can provide the Court with “a meaningful and substantiated explanation of
2 the manner in which the factual and legal issues have been evaluated.” *Kullar*, 168 Cal.App.4th at
3 132-33.

4 Here, Class Counsel have extensive wage and hour class action and PAGA experience and
5 has both defended and prosecuted numerous class and/or PAGA action lawsuits. Sung Decl., ¶¶ 6-7;
6 Declaration of Tiffany L. Luu, ¶¶ 5-6. Class Counsel have been approved as class counsel in similar
7 wage and hour class actions throughout the State of California. *Ibid.* As such, courts throughout
8 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
9 Counsel have participated in every aspect of the settlement discussions and has concluded the
10 settlement is fair, adequate, and reasonable and in the best interests of the Class

11 Furthermore, as detailed in Plaintiff’s Motion for Preliminary Approval, Class Counsel
12 thoroughly investigated the proposed Class Members’ claims, applicable law, and potential
13 defenses. Specifically, Class Counsel assessed the value of class claims using data and documents
14 provided by Defendant through informal discovery. Sung Decl., ¶¶ 13-14. Class Counsel obtained
15 time, payroll, and policy records, as well as data regarding the number of Class Members,
16 workweeks, and average rate of pay to assess damages before mediation. Sung Decl., ¶ 13. Class
17 Counsel worked with an expert data analyst to analyze the records and Class Counsel conducted a
18 comprehensive analysis and extrapolation of the payroll and timekeeping data produced by
19 Defendant to create a detailed exposure analysis for all claims at issue. Sung Decl., ¶ 14. Class
20 Counsel’s investigation, research, experience, and damage models informed and guided the
21 mediated negotiations that resulted in this Settlement. Accordingly, Class Counsel fully understood
22 the strengths and weaknesses of the class claims before the parties reached a settlement

23 **2. The Settlement is Fair, Adequate, and Reasonable in Light of the Risks**
24 **Faced by Plaintiff**

25 While Plaintiff steadfastly maintains Plaintiff’s claims are meritorious, Plaintiff
26 acknowledges Plaintiff’s position included substantial risks and uncertainty, which justifies a
27 downward departure from the maximum exposure each claim potentially carried. With respect to
28 the most immediate challenge, i.e., class certification, the risks attendant to the certification of

1 similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176
2 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the trial court’s denial of class
3 certification because employees’ declarations attesting to having taken meal and rest breaks
4 demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best*
5 *Buy Stores, L.P.* (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (denying certification of proposed
6 off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express*
7 *Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period
8 claims based on the predominance of individual issues).

9 Further, even if a class is certified, liability remains uncertain. The risks attendant to the
10 issue of Defendant’s liability in similar wage and hour actions are demonstrated by *Duran v. U.S.*
11 *Bank National Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor
12 plaintiffs in a wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209
13 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were
14 predominantly individualized questions of fact not susceptible to class treatment.”).

15 Finally, even if a class is certified and Defendant is found liable for the class claims alleged,
16 post-certification risks remain, including a reversal of a favorable judgment for Plaintiff and
17 decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart*
18 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and
19 remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying
20 overtime, and directed the trial court to enter judgement in favor of the employer. *See also*
21 *O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and
22 hour misclassification action).

23 Here, as detailed in Plaintiff’s Motion for Preliminary Approval, there is a significant risk of
24 non-certification and/or not prevailing on the merits with respect to each of Plaintiff’s claims. Sung
25 Decl., ¶ 18. For example, Plaintiff contends that Defendant failed to provide Class Members with
26 meal periods, including second meal periods when Class Members worked over 10 hours in a shift.
27 *Ibid.* However, Defendant argues that it maintains compliant written meal period policies
28 throughout the Class Period and has always provided compliant meal periods in line with those

1 policies. *Ibid.* Class Members, when clocking out, attested in the time clock that they took
2 compliant meal periods. *Ibid.* Defendant further argues that its meal period policies address waiver
3 of meal periods and any missed first meal periods for shifts between 5 to 6 hours and missed second
4 meal periods for shifts between 10 to 12 hours were lawfully waived by Class Members pursuant to
5 its policies. *Ibid.* Defendants maintain Plaintiff's meal period claims are not suited for class
6 certification since individual inquiries are needed to assess which employees, if any, took non-
7 compliant or missed meal periods, how many were non-compliant, and the reasons why a particular
8 employee did not take a meal period on a particular shift. *Ibid.*

9 Plaintiff contends that Defendant failed to provide Class Member with compliant rest
10 periods. Sung Decl., ¶ 19. In response, Defendant argues that it maintains compliant written rest
11 period policies throughout the Class Period and has always provided compliant rest periods in line
12 with those policies. *Ibid.* Class Members attested in the time clock to taking compliant rest periods.
13 *Ibid.* Defendant further maintains Plaintiff's rest period claim is not suited for class certification
14 since individual inquiries would be needed to assess which employees, if any, took non-compliant
15 rest periods, how many rest periods were non-compliant, and the reasons why a particular employee
16 did not take a rest period on a particular shift. *Ibid.*

17 Plaintiff contends that Plaintiff and Class Members were not paid all wages due, including
18 minimum and overtime wages, because they had to wait in line for several minutes to clock in and
19 of their shifts and Plaintiff sometimes was asked to perform work after Plaintiff clocked out for the
20 day. Sung Decl., ¶ 20. In response, Defendant argues that it provided seven time clocks in different
21 parts of the facility for Class Members to use so they did not wait in long lines to clock in and out.
22 *Ibid.* When this action was filed, Defendant's counsel conducted a site visit and did not see more
23 than 3 employees at a time clock to clock in or out. *Ibid.* Thus, Defendant contends that Plaintiff's
24 off-the-clock work theory is not suited for class certification since individual inquiries would be
25 needed to assess which employees, if any, worked off the clock, how often and how much time
26 were spent working off the clock, and the reasons why a particular employee worked off the clock.
27 *Ibid.*

28 ///

1 As to Plaintiff's derivative claims for statutory waiting time and wage statement penalties
2 under Labor Code §§ 203 and 226(e), Defendant denies liability for waiting time and wage
3 statements, and argues that it possesses strong, good faith defenses to Plaintiff's underlying claims,
4 thus precluding recovery of waiting time penalties that are only available for "willful" failure to pay
5 wages. Sung Dec., ¶ 21. Defendant further maintains that any alleged wage statement violations
6 were not "knowing and intentional," and that Plaintiff cannot show the Class "suffer[ed] injury" due
7 to these alleged violations as required by Labor Code § 226(e) for the imposition of penalties. *Ibid.*
8 Defendant relies on *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065, for
9 the proposition that an employer's good-faith defenses precludes a "willfulness" finding under
10 Labor Code § 203 and a "knowing and intentional" finding under Labor Code § 226(e) for the
11 imposition of statutory penalties. Sung Dec., ¶ 21. Defendant also claims that Plaintiff's alleged
12 exposure for waiting time and wage statement penalties was grossly inflated because not every
13 employee experienced an alleged Labor Code violation. *Ibid.*

14 Finally, with respect to Plaintiff's claim for civil penalties under PAGA, since Plaintiff's
15 PAGA claim is derivative of Plaintiff's underlying wage claims, Defendant asserts the PAGA claim
16 would fail with those claims. Sung Dec., ¶ 22; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th
17 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims
18 also fail."). Defendant further maintains that, given its good faith defenses, this Court would
19 exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable
20 for any of Plaintiff's claims. Sung Dec., ¶ 22; *see Lab. Code § 2699(e)(2); Thurman v. Bayshore*
21 *Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties);
22 *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL
23 7563047, at *4 (reducing PAGA penalties by over 82% in part because employer "not aware" of
24 violations); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming PAGA civil
25 penalty of just \$5 per pay period where employer made "good faith attempts" to comply with the
26 law).

27 These considerations not only bore heavily on the Parties' negotiations, but also confirm that
28 the Settlement is a fair and reasonable compromise in view of the risk of further litigation. As

1 detailed in Plaintiff's Motion for Preliminary Approval, Plaintiff carefully vetted the claims at issue
2 and conducted a detailed statistical analysis of classwide data with the help of a retained expert to
3 arrive at the calculated damages figures. Thus, while these risks are far from exhaustive, they
4 demonstrate the Settlement is fair, adequate, and reasonable in view of them.

5 **3. The Settlement Fairly, Reasonably, and Adequately Compensates Class**
6 **Members**

7 As noted, the Individual Class Payments and Individual PAGA Payments will be calculated
8 based on the proportionate number of workweeks worked by each Participating Class Member
9 during the Class Period and based on proportionate number of pay periods worked by each
10 Aggrieved Employee during the PAGA Period, respectively. Agreement, §§ 3.2.4, 3.2.5.1. This
11 method of distribution compensates Class Members based on the estimated extent of their injuries,
12 as Class Members who worked more workweeks or pay periods would have been subject to more of
13 the alleged wage and hour violations than those who worked fewer workweeks. Thus, the formula
14 for compensating Class Members is fair, adequate, and reasonable, as it is tethered to the damages
15 and penalties that could be recovered by them.

16 **4. The Absence of Any Objections or Opt Outs Confirms that the**
17 **Settlement is Fair, Adequate, and Reasonable**

18 Class members' response to a settlement is relevant in evaluating whether it merits final
19 approval. *Dunk*, 48 Cal.App.4th at 1801. The absence of objections and requests for exclusion
20 supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising*, 85 Cal.App.4th at
21 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a "particularly
22 impressive" favorable response from class members); *See In re Austrian & German Bank Holocaust*
23 *Litigation* (S.D.N.Y. 2000) 80 F.Supp.2d 164, 175 ("If only a small number of objections are
24 received, that fact can be viewed as indicative of the adequacy of the settlement."); *Stoetznner v. U.S.*
25 *Steel Corp.* (3d. Cir. 1990) 897 F.2d 115, 118-119 (29 objections out of 281 member class "strongly
26 favors settlement").

27 Here, not a single Class Member has objected to the Settlement or elected to opt-out,
28 resulting in a **100%** participation rate. Admin. Decl., ¶¶ 11-12. This extremely favorable response

1 of the Class further confirms that the Settlement is fair, adequate, and reasonable. Consequently,
2 Class Counsel respectfully requests the Court to follow the high participation rate of the Class and
3 grant final approval of the Settlement.

4 **C. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF**
5 **2004 ARE REASONABLE.**

6 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
7 indication that this amount was the result of self-interest at the expense of class members,” such
8 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009)
9 No. CV-08-0844 EDL, 2009 WL 928133, at *9. Courts routinely approve of amounts for PAGA
10 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA
11 payment of 0.3%); *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. Oct. 13, 2011) No. 09cv1683 MMA
12 (JMA), 2011 WL 4899942, at *6 (approving a PAGA payment of 0.25%); *McKenzie v. Fed.*
13 *Express Corp.* (C.D. Cal. Jan. 23, 2012) No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5
14 (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of
15 the total settlement).

16 Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of
17 \$20,000.00 which is 5.33% of the Gross Settlement Amount. As illustrated above, this amount falls
18 well within the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA
19 Payment (\$15,000.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-
20 five percent (25%) of the PAGA Payment (\$5,000.00) to be distributed to the Aggrieved Employees
21 (“Individual PAGA Payment”), which is within the range of PAGA Payment approved by courts
22 and should be approved. *See* Agreement, § 3.2.5.

23 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
24 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final
25 approval with the LWDA. Sung Decl., ¶ 23. By not registering an objection with either Plaintiff’s
26 Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

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1 **D. THE COURT SHOULD APPROVAL THE REQUESTED SETTLEMENT**
2 **ADMINISTRATION COSTS.**

3 Plaintiff also requests that this Court approve \$8,690.00 in settlement administration costs to
4 the Administrator. As detailed in the Admin. Decl., the Administrator performed duties that were
5 integral in effectuating the Settlement and the Notice process. Among other things, the
6 Administrator calculated each Class member's Individual Class and PAGA Payments, updated
7 addresses contained in the class data supplied by Defendant, formatted and translated the Class
8 Notice for mailing, mailed Class Notices to all Class Members, kept the Parties informed of any
9 objections or requests for exclusion, and otherwise administered the Settlement. *See Admin. Decl.,*
10 ¶¶ 3-19. For these reasons, the Administrator's requested costs are fair, reasonable, and adequate,
11 and should be finally approved.

12 **V. CONCLUSION**

13 For the foregoing reasons, Plaintiff respectfully submits that this Court should grant
14 Plaintiff's Motion in its entirety and adopt the Proposed Judgment and Order Granting Final
15 Approval of Class Action and PAGA Settlement submitted herewith.

16
17 DATED: November 4, 2025

Respectfully submitted,

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

19
20 By: 

21 William C. Sung
22 Tiffany L. Luu
23 Attorneys for Plaintiff
24 LINDA SALAZAR AYALA