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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

CESAR GUILLEN HERNANDEZ,
individually and on behalf of others similarly
situated, and as an aggrieved employee and
Private Attorney General;
Plaintiff,

vs.

SIMPSON CHEVROLET OF IRVINE, a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 30-2024-01376148-CU-OE-CXC

*Assigned for All Purposes to: Hon. William D.
Claster, Dept. CX-101*

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

Date: December 20, 2024
Time: 9:00 A.M.
Dept: CX-101

Reservation No.: 74428864

Complaint Filed: January 25, 2024
Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on December 20, 2024, at 9:00 A.M., in Department CX-101 of the above-captioned Court, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, Plaintiff CESAR GUILLEN HERNANDEZ (“Plaintiff”) will and hereby does move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant SIMPSON CHEROLET OF IRVINE (“Defendant”).

Specifically, Plaintiff requests that the Court enter an Order:

1. Preliminarily approving the Class Action and PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”) attached as Exhibit 2 to the Declaration of Susan Huerta in support of Motion for Preliminary Approval (“Huerta Decl.”);
2. Certifying a Class for Settlement purposes;
3. Appointing Plaintiff Cesar Guillen Hernandez as the Class Representative for settlement purposes;
4. Appointing Heather Davis, Amir Nayebdadash, Susan Huerta, Brendan J. Burton, and Shadi Sahebghalam of Protection Law Group, LLP as Class Counsel for Settlement purposes;
5. Approving the proposed Class Settlement Notice (“Class Notice”), Request for Exclusion Form, and Objection Form (collectively the “Notice Packet”) attached as Exhibits A-C to Exhibit 2, the Settlement Agreement to be mailed to the Class;
6. Approving the opt-out and objection procedures provided in the Settlement Agreement set forth in the Notice Packet;
7. Directing Defendant to furnish the Class List to the Settlement Administrator within fourteen (14) calendar days after the Court grants preliminary approval of the Settlement;
8. Approving the proposed deadlines for the settlement administration process; and
9. Setting a date for a hearing on final approval of the proposed settlement.

Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Class Action and PAGA Settlement Agreement, as well as information regarding the preliminary approval hearing on this matter, were submitted to the California Labor Workforce Development Agency via online filing at <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html> on

1 November 18, 2024. *See* Davis Decl. ¶24, Ex. 3.

2 The motion is based upon this Notice, the attached memorandum of points and authorities;
3 the Declaration of Heather Davis filed concurrently herewith and exhibits thereto; the pleadings and
4 other records on file with the Court in this matter; and any other further evidence or argument that
5 the Court may properly receive at or before the hearing.

6 Respectfully submitted,

7
8 DATED: November 18, 2024

PROTECTION LAW GROUP, LLP

9
10 By:



11 Heather Davis
12 Amir Nayebdadash
13 Susan Huerta
14 Brendan J. Burton
15 Shadi Sahebghalam
16 *Attorneys for Plaintiff*
17 CESAR GUILLEN HERNANDEZ
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Cesar Guillen Hernandez ("Plaintiff") seeks preliminary approval of a Class Action
4 and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") on behalf of all current
5 and former hourly-paid, non-exempt employees who worked for Defendant Simpson Chevrolet of
6 Irvine in California at any time from January 25, 2020, through October 29, 2024. The Settlement
7 terms are outlined as follows:

- 8
- Size of the Class: 257 employees.
 - Number of PAGA Members: 97 employees.
 - Gross Settlement Amount: \$565,000.00, exclusive of employer-side payroll taxes.
 - Settlement Administration Costs: not to exceed \$9,250.00.
 - Requested Class Representative Incentive Payment: \$7,500.00 to Plaintiff Hernandez.
 - PAGA Payment: \$60,000.00; 75% of which (\$45,000.00) will be paid to the California
14 Labor and Workforce Development Agency ("LWDA") with the remaining 25%
15 (\$15,000.00) distributed to PAGA Members.
 - Requested Class Counsel's Fees and Costs: \$197,750.00 plus actual litigation costs and
17 expenses not to exceed \$20,000.00.
 - Net Settlement Amount: approximately \$272,500.00 to be distributed to Participating
19 Class Members.

20 As set forth herein, the Settlement is the product of informed discovery, arms-length
21 negotiations, and provides a fair, adequate, and reasonable recovery for the Class in light of the
22 relative strength of Plaintiff's claims, the risk, expense and uncertainty of further litigation, and the
23 benefit conferred by the Settlement. Plaintiff therefore respectfully requests that the Court grant
24 preliminary approval of the proposed Settlement, conditionally certify the Class, approve the
25 proposed Notice Packet, and set a hearing date for final approval of the settlement, among other
26 requested relief.

27 **II. FACTUAL AND PROCEDURAL BACKGROUND**

28 Defendant is a Chevrolet dealership that offers vehicles for sale or lease, maintenance,

1 upgrades and provides services to clients throughout California. Plaintiff worked for Defendant as a
2 Sales Porter and Service Porter at its location at 21 Auto Center Drive, Irvine, California 92618.
3 Declaration of Susan Huerta in support of Motion for Preliminary Approval (“Huerta Decl.”) ¶12.

4 On December 13, 2024, Plaintiff provided notice to Defendant and the LWDA of the alleged
5 wage and hour violations and his intent to seek civil penalties pursuant to the Private Attorneys
6 General Act of 2004 (“PAGA”). Huerta Decl. ¶13, Ex. 1. On January 25, 2024, Plaintiff filed a class
7 action complaint with the Orange County Superior Court, Case No. 30-2024-01376148-CU-OE-CXC
8 (“the Action”), against Defendant, alleging the following causes of action: (1) Unpaid Overtime; (2)
9 Unpaid Meal Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5)
10 Final Wages Not Timely Paid; (6) Wages Not Timely Paid During Employment; (7) Failure to
11 Provide Accurate Wage Statements; (8) Failure to Reimburse Expenses; and (9) Violation of
12 California Business & Professions Code §§ 17200, *et. seq.* Huerta Decl. ¶14. On February 20, 2024,
13 Plaintiff filed a First Amended Complaint adding a separate individual representative Action alleging
14 one cause of action for violation of California Labor Code § 2699 – the Private Attorneys General
15 Act of 2004 (“PAGA Action”). Huerta Decl. ¶15.

16 On February 21, 2024, Plaintiff propounded the following discovery: (i) Form Interrogatories
17 – General, Set One, (ii) Special Interrogatories, Set One, (iii) Requests for Production of Documents,
18 Set One, and (iv) a Deposition Notice of Defendant’s Person(s) Most Qualified. Huerta Decl. ¶16.

19 Thereafter, the Parties engaged in discussions to attend a formal private mediation. Plaintiff
20 requested certain documents and data be produced in order to accurately and fairly evaluate the claims
21 and damages, so that any approval motion would be granted. The Parties agreed, and decided to
22 mediate with Kevin Barnes, Esq., on the nearest available date, August 21, 2024. On April 4, 2024,
23 the Parties filed a Joint Stipulation regarding Discovery and Mediation, setting forth duties and
24 responsibilities of each party prior to mediation. Huerta Decl. ¶17.

25 In advance of mediation, Defendant provided Plaintiff’s Counsel with extensive informal
26 discovery including all relevant policies and handbooks in place during the Class Period, which
27 included all applicable policies relating to meal breaks, rest breaks, timekeeping, the payment of
28 wages and other relevant areas of investigation, a randomly selected 20% sampling of time and

1 payroll data for the putative class, and figures and information regarding the class size and
2 composition. The randomly-selected 20% sampling included records for putative class members
3 who were employed throughout different time periods during the Class Period, that is representative
4 of the Class. With this data for the Class, Plaintiff's Counsel and their retained expert were able
5 to perform a comprehensive damages analysis and estimate Defendant's potential violations,
6 liability, and exposure, including, and not limited to, analyzing time and pay data, considering
7 potential meal period violations, potential rest period violations, potential synthetic meal period
8 recordings, unpaid and rest period premiums, rounding, overtime and premium payments, etc.
9 This discovery and investigation allowed Plaintiff's Counsel to perform a comprehensive damages
10 analysis and estimate Defendant's potential liability. Huerta Decl. ¶18.

11 After extensive review of the mediation documents and other information, on August 21,
12 2024, the Parties attended a full day mediation before Kevin Barnes, Esq. At the mediation, the Parties
13 engaged in intensive settlement discussions during which they debated their respective positions
14 and exchanged views regarding the strengths and weaknesses of the alleged claims, but despite the
15 help of the mediator were unable to reach an agreement. Huerta Decl. ¶19. The Parties endeavored to
16 diligently continue discussions through the mediator, and on August 30, 2024, the Parties each agreed
17 to a mediator's proposal, assenting to the essential terms of settlement. Huerta Decl. ¶20.

18 Thereafter the Parties diligently worked to draft and negotiate a long form Joint Stipulation
19 of Class Action and PAGA Settlement ("Settlement Agreement"). On September 20, 2024, the Parties
20 fully-executed the long form Settlement Agreement. Huerta Decl. ¶21. Now, following substantial
21 investigation and extensive settlement negotiations, Plaintiff moves for preliminary approval of this
22 Settlement and has provided notice of the proposed settlement to the LWDA. Huerta Decl. ¶¶22-23,
23 Ex. 3.

24 **III. THE SETTLEMENT TERMS**

25 **A. Class and PAGA Members Definition**

26 For purposes of settlement only, the Parties have agreed that the Class shall be defined as: all
27 current and former hourly-paid, non-exempt employees of Simpson Chevrolet of Irvine who were
28 employed by Simpson Chevrolet of Irvine in the state of California at any time between January 25,

2020, and October 29, 2024. Huerta Decl. ¶25; Settlement Agreement ¶¶3, 7. The Class Period and release of class claims covers the time period from January 25, 2020, and October 29, 2024. *See* Settlement Agreement ¶28. The proposed Class consists of 1,260 Class Members. Huerta Decl. ¶27. For purposes of settlement only, the Parties have agreed that PAGA Members shall be defined as: all current and former hourly-paid, non-exempt employees of Simpson Chevrolet of Irvine who were employed by Simpson Chevrolet of Irvine in the state of California at any time between December 13, 2022, and October 29, 2024. Huerta Decl. ¶26; Settlement Agreement ¶¶20, 22. The PAGA Period and release of PAGA claims covers the time period from December 13, 2022, to October 29, 2024. Huerta Decl. ¶26; Settlement Agreement ¶22. There are 486 PAGA Members. Huerta Decl. ¶27.

B. Amount of Settlement

The Parties have agreed to settle the Class and PAGA claims at issue in the Action for a non-reversionary Gross Settlement Amount of \$565,000.00, exclusive of any employer-side payroll taxes. Huerta Decl. ¶30; Settlement Agreement ¶¶42, 43, 44, 45.

C. Escalator Clause

The Gross Settlement Amount is based on Defendant's representation that the Class Members worked a total of 23,296 workweeks during the Class Period. Should the qualifying workweeks by the Class Members during the Class Period ultimately increase by more than 10% (i.e., exceed more than 25,625 workweeks), Defendant shall have the right its sole discretion to either (1) reduce the Class Period such that the workweeks to not exceed 25,625, or (2) pay a pro-rata increase in the GSA equal to the percentage increase in workweeks above 25,625. For example, if the workweek count increases by 12%, then Defendant may, at its sole discretion, elect to pay a 2% increase to the GSA. Defendant shall confirm, through the Settlement Administrator, that the number of workweeks did not increase by more than 10%. Davis Decl. ¶29; Settlement Agreement ¶40

D. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a common fund and therefore, includes all requested costs, fees, and other allocations. As stated above, the Gross Settlement Amount includes: (1) attorneys' fees in the amount of \$197,750.00; (2) actual litigation costs, not to exceed \$20,000.00; (3) settlement administration costs, not to exceed \$9,250.00; (4) a class representative incentive payment to Plaintiff

1 Hernandez in the amount of \$7,500.00; and (5) PAGA Payment of \$60,000.00, 75% of which will be
2 paid to the LWDA and 25% of which will be distributed to PAGA Members. Huerta Decl. ¶30; *see*
3 *also* Settlement Agreement ¶¶42, 43, 44, 45.

4 After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net
5 Settlement Amount of approximately \$272,500.00 shall be distributed to the Participating Class
6 Members. Huerta Decl. ¶31; Settlement Agreement ¶46. The Net Settlement Amount will be
7 distributed and paid to Participating Class Members on a *pro-rata* basis based on the number of weeks
8 worked during the Class Period. Settlement Agreement ¶46. In addition, PAGA Members shall
9 receive a *pro-rata* share of the 25% portion of the PAGA Payment allocated for aggrieved employees.
10 PAGA Members shall receive their portion of the PAGA Payment regardless of their decision to opt-
11 out of the Class Settlement. Huerta Decl. ¶32; Settlement Agreement ¶45.

12 The payment to each Class Member will vary based on the number of Workweeks the Class
13 Member worked, and whether they are entitled to a share of the PAGA Payment, but will provide an
14 average estimated payment of \$162.20. Huerta Decl. ¶33. PAGA Members shall receive their portion
15 of the PAGA Payment regardless of their decision to opt-out of the Class Settlement. Huerta Decl.
16 ¶34; Settlement Agreement ¶¶ 47(b).

17 Payments to Class Members shall be allocated as twenty percent (20%) wages, forty percent
18 (40%) penalties, and forty percent (40%) interest. Huerta Decl. ¶35; Settlement Agreement ¶47(c).
19 Employer-side payroll taxes shall be paid by Defendant separately from and in addition to the Gross
20 Settlement Amount. Huerta Dec. ¶36; Settlement Agreement ¶14.

21 The proposed Settlement is a non-reversionary and non-claims made settlement. All money
22 from the Net Settlement Amount will be distributed to the Class Members. No money from the
23 Settlement will revert to Defendant. Huerta Decl. ¶37; Settlement Agreement ¶39. Any residue from
24 checks issued to Participating Class Members and PAGA Members remaining uncashed after 180
25 days will be distributed to the State Controller's Office Unclaimed Property division as unclaimed
26 property to be held in trust for such Participating Class Members pursuant to California's Unclaimed
27 Property Law. As such, no "unpaid residue" under California Code of Civil Procedure § 384 will
28 result from the settlement. Huerta Decl. ¶38; Settlement Agreement ¶61.

E. Release of Wage and Hour Claims

In exchange for participating in the Settlement, Participating Class Members will release their wage and hour claims against Defendant and the Released Parties, as defined in the Settlement Agreement. The release for Participating Class Members is narrowly tailored to only release claims based upon the facts alleged in the Operative Complaint in the Action, for the Class Period. Huerta Decl. ¶39; Settlement Agreement ¶68. The proposed Settlement also resolves all PAGA Members' claims arising under PAGA that were alleged in the Operative Complaint, or could have been alleged, for the PAGA Period. Huerta Decl. ¶40; Settlement Agreement ¶68.

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

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

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

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

1 Preliminary approval does not require a court to make a final determination that the settlement
2 is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after
3 class members have been given an opportunity to review and voice their views of the settlement or
4 exclude themselves from the settlement. *See* Cal. Rules of Court, Rule 3.769(g). In considering a
5 potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and
6 law which underlie the merits of the dispute. *See Officers for Justice v. Civil Service Comm. of S.F.*,
7 688 F.2d 615, 625 (1982).

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

9 **A. Arm's-Length Bargaining**

10 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
11 reached through arm's-length bargaining.” *Wershba*, 91 Cal. App. 4th at 245 (disapproved on other
12 grounds); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009). Here, the
13 Parties engaged in arm's-length, non-collusive negotiations at all times. This litigation was hotly
14 contested and settlement negotiations were at all times at arm's length and adversarial. The Parties
15 engaged in a full day of private mediation with a highly respected mediator. Thereafter, the Parties
16 engaged in additional negotiations before finalizing the long-form settlement agreement presently
17 before the Court. At all times, Plaintiff was willing and prepared to litigate this matter if the Parties
18 had been unable to reach a favorable resolution. Huerta Decl. ¶45.

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

20 Courts typically assess the status of discovery in determining whether a class action settlement
21 agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. As discussed above, the
22 Parties engaged in extensive formal and informal discovery prior to reaching a settlement. Prior to
23 mediation, Defendant informally produced time and payroll records for all putative class members,
24 written policies including the employee handbooks in effect during the Class Period, stand-alone
25 wage and hour policies, and other relevant documents. Defendant also provided information
26 regarding the number of putative class members, the number of current versus former employees, the
27 total workweeks and pay periods worked by the Class; and the putative class members' average rate
28 of pay. With the time and pay records, Class Counsel and their retained expert were able to perform

1 a comprehensive damage analysis and estimate Defendant's potential violations, liability, and
2 exposure, including, and not limited to analyzing time and pay data, considering potential meal period
3 violations, potential rest period violations, potential synthetic meal period recordings, rounding,
4 overtime and premium payments, etc. The Parties extensively briefed issues regarding class
5 certification and liability and provided their analyses to the mediator for his consideration. Huerta
6 Decl. ¶44.

7 Additionally, settlement negotiations were conducted by highly capable and experienced
8 counsel. Class Counsel are respected members of the bar with strong records of vigorous and effective
9 advocacy, and are experienced in handling complex wage and hour class action litigation. Huerta
10 Decl. ¶¶2-11(a)-(d). Accordingly, Class Counsel had sufficient information and experience to act
11 intelligently in negotiating the Settlement.

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

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

22 Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal
23 and factual grounds for defending the Action. Based upon Class Counsel's experience litigating
24 similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class
25 certification and the merits absent a settlement. Huerta Decl. ¶¶2-11(a)-(d).

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

27 Prior to mediation, Class Counsel analyzed the time and payroll records for all putative class
28 members provided by Defendant and other relevant documents and discovery. With this data, Class

Counsel and their retained expert were able to perform a comprehensive damages analysis and estimate Defendant's potential violations, liability, and exposure, including, and not limited to, analyzing time and pay data, considering potential meal period violations, potential rest period violations, potential synthetic meal period recordings, potential unpaid meal or rest period premiums, overtime and premium payments, etc. This discovery and investigation allowed Class Counsel to perform a comprehensive damages analysis and estimate Defendant's potential liability. Huerta Decl. ¶45. Based on the discovery provided, Class Counsel estimated with respect to the claims at issue, with all claims adjudicated in favor of the Class, Defendant faced a maximum potential liability of \$16,094,703.37. This estimated maximum liability includes: \$1,479,792.55 for meal period violations; \$3,034,849.37 for rest period violations; \$910,453.45 for unpaid wages; waiting time penalties in the amount of \$735,816.00; and penalties for inaccurate wage statements in the amount of \$1,813,400.00. Plaintiff also estimated non-duplicative PAGA penalties of approximately \$8,120,392.00 including penalties for violations of Labor Code §§ 204 and 1174(d). Huerta Decl. ¶47.

2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments

While Plaintiff believes Defendant faced significant exposure, substantial barriers to a class recovery existed and Plaintiff faced numerous challenges attempting to bring the alleged claims on a class and representative basis. Defendant contended that Plaintiff's claims were not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1051 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014). While Plaintiff and Class Counsel disagree with Defendant's predictions, they also recognize that there is a significant risk that the Court may deny class certification. Huerta Decl. ¶49; *see also, Findings of the Study of California Class Action Litigation*, 2000-2006, available at <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding only 21.4% of all class actions were certified either as part of a settlement *or* as part of a contested certification motion).

A large portion of Defendant's overall estimated liability lies in Plaintiff's meal period claim. Plaintiff's meal period theory of liability was based upon Defendant's failure to provide timely, full,

1 and/or uninterrupted meal periods. Defendant argued that it had compliant policies and practices and
2 that there were individualized issues with respect to the alleged violations. Meal period claims have
3 become increasingly difficult to certify in recent years and Defendant contended its practices were
4 lawful. *See Brinker*, 53 Cal.4th at 1034-35. Accordingly, Class Counsel had to consider the risk that
5 the Court would find validity in this individualized proof defense to the certification of Plaintiff's
6 meal period claim. Huerta Decl. ¶50.

7 Similarly, Plaintiff would likely face difficulties proving the alleged rest period violations, as
8 Defendant were not required to record these breaks. Plaintiff contended that Defendant failed to
9 provide Class Members with timely, full, and uninterrupted rest periods and also failed to implement
10 a compliant rest period policy during the class period. Plaintiff believed that Defendant's written
11 policy requiring employees remain on premises during their rest breaks was unlawful and violated
12 California law. *See Augustus v. ABM Securities*, 2 Cal. 5th 257, 270 (2016) (holding that employers
13 must relieve employees of all duties during rest breaks and relinquish control over how employees
14 spend their time). Defendant claimed it allowed employees to take their state mandated rest periods
15 and that their practices complied with California law. Given the lack of records demonstrating rest
16 period violations, there were legitimate concerns Plaintiff would not be able to certify this claim or
17 prove substantial damages even assuming a uniform practice could be established. Huerta Decl. ¶¶53-
18 54.

19 Plaintiff also faced challenges certifying and proving liability for his minimum wage and
20 overtime claims. These claims were largely based on alleged unrecorded, off-the-clock work
21 performed by Class Members both before and after their shifts and during purported meal periods.
22 Defendant contended it did not permit off-the-clock work and that they were not aware off-the-clock
23 work was being performed. Defendant argued even if a class could be certified, the individualized
24 nature of the claims presented substantial concerns regarding the manageability of the case and the
25 risk the Court could find these issues prevented certification. Huerta Decl. ¶¶56-57.

26 There are also substantial risks associated with Plaintiff's waiting time penalties,
27 recordkeeping, and wage statement claims. First, these claims were largely derivative of Plaintiff's
28 previous claims and if certification was denied on those underlying claims, these claims would also

likely fail. Further, even if Plaintiff prevailed on his underlying off-the-clock claims, he would still be required to demonstrate that Defendant's violations of Labor Code § 203 were willful violations, a difficult prospect. *See, e.g., Choate v. Celite Corp.*, 215 Cal.App.4th 1460, 1468 (2013) (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding of willfulness"). Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them rather than a pure calculation of damages after liability is proven. *Cf., Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011). Accordingly, these derivative claims, which comprised a substantial portion of Defendant's estimated liability, are extremely risky. Huerta Decl. ¶¶59, 60, 62.

Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the amount of wages due to each Class Member would be an expensive, time-consuming, and extremely uncertain proposition. In order to prove liability and damages, Class Counsel would be required to spend hundreds of additional hours obtaining discovery and likely substantial motion practice. Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. On the other hand, Defendant would likely be able to obtain the cooperation of its employees. Moreover, even if Plaintiff prevailed, possible appeals would substantially delay recovery by the Class. Huerta Decl. ¶73.

Class Counsel also separately contemplated the risks of proceeding with the PAGA cause of action and potential penalties Defendant could face under this cause of action. As part of the valuation of the potential PAGA claims, Class Counsel included claims under Labor Code §§ 204 and 1174(d). Plaintiff's claim under Labor Code § 204 could be recovered either through Labor Code § 210 or PAGA, but as a matter of law, Plaintiff is not entitled to a duplicative recovery. *See* Labor Code § 210(c) (permitting recovery of penalties through § 210 or PAGA, but not both). Plaintiff's claims under Labor Code § 1174(d) were arguably only recoverable under PAGA. *See Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal.4th 365, 383 (2005).

The Parties agreed during settlement negotiations to allocate \$60,000.00 of the Settlement towards the PAGA claims, which represents approximately 10.6% of the Gross Settlement Amount.

1 This percentage of the settlement is well-within the range of wage and hour settlements regularly
2 approved in both state and federal court for cases that include both a class and PAGA action.
3 Settlements that allocate only 1% of the total settlement value to resolve PAGA claims is typical of
4 wage and hour settlements and PAGA allocations as little as 0.27% of the total settlement amount
5 have been approved as reasonable by courts. Huerta Decl. ¶¶66. Class Counsel also recognizes that
6 the PAGA claims would be subject to the same defenses and risks as Plaintiff's class claims, as well
7 as defenses unique to PAGA, that PAGA penalties may not be stacked for violations based on the
8 same conduct, and the substantial risk that PAGA penalties may be reduced where they are
9 duplicative, arbitrary or oppressive. Huerta Decl. ¶¶67-68. *See Thurman v. Bayshore Transit*
10 *Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory and civil
11 penalties for same conduct is impermissible double recovery) (disapproved on other grounds);
12 *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA
13 penalties by 80%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (reducing
14 penalties from \$50 per pay period to \$5 per pay period based on good faith attempt to comply with
15 obligations and minimal violations).

16 Therefore, in consideration of risks regarding certification of the class claims, as well as the
17 unique risk posed to the Class, Class Counsel discounted Defendant's estimated potential liability by
18 75%. In light of merits-based risk factors, even if a class were certified and the claims were brought
19 to trial, Class Counsel reduced Defendant's estimated liability for Plaintiff's meal and rest period
20 claims, and unpaid wages claims by 75%. In light of the fact that Plaintiff's waiting time penalties
21 and wage statement penalty claims were not only derivative and reliant upon the prior claims but
22 faced their own unique risks, Plaintiff discounted these claims by 75% for merits related defenses.
23 Huerta Decl. ¶¶52, 55, 58, 60, 62. Finally, as to Plaintiff's PAGA claims, there was a 75% discount
24 applied to account for the risks associated with establishing manageability, a discount of 75% was
25 applied to account for the risks associated with succeeding on the merits, establishing liability, and
26 proving the extent of penalties that are warranted, and a discount of 80% was applied in light of the
27 unique risks to PAGA including the likely discretionary reduction of penalties by the Court given the
28 circumstances of the Action and outside considerations. Huerta Decl. ¶72. This resulted in an

adjusted liability of \$559,097.86. The slightly higher figure achieved on behalf of the Settlement Class is warranted not only because it benefits the Class, but it may address any conservative calculations that cannot be accounted for from off-the-clock work as this time was unrecorded. Moreover, the Settlement Amount of \$565,000.00 achieves about 3.5% of the total exposure, which in Class Counsel's opinion is fair, adequate, and reasonable. Huerta Decl. ¶74.

In light of the Parties' respective legal positions and the risks to potential recovery, it is clear that the proposed settlement is fair, adequate, and reasonable. Huerta Decl. ¶75.

VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

Code of Civil Procedure § 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, *i.e.*, proceeding as a class is superior to other methods. *See Dunk*, 48 Cal.App.4th at 1806. Plaintiff contends that this Action, which is primarily based upon Defendant's wage and hour policies and practices, satisfies the class certification requirements under California Code of Civil Procedure § 382. Defendant deny Plaintiff's allegations, but for purposes of this Settlement, Defendant have stipulated to certification of the proposed class.

A. An Ascertainable Class Exists Which Is So Numerous That Joinder Of All Members Is Impracticable

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is defined as all current and former hourly-paid, non-exempt employees of Simpson Chevrolet of Irvine who were employed by Simpson Chevrolet of Irvine in the state of California at any time between January 25, 2020, and October 29, 2024. Settlement Agreement ¶¶3, 7. This provides a clear and definite scope for the proposed class.

Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Under the Federal Rules, the minimum number of a class is one-hundred individuals. Under California law, that number is significantly less. *See e.g., Rose v. City of Haywood*,

1 126 Cal.App.3d 926, 934 (1981) (holding forty-two class members sufficient to satisfy numerosity).
2 Here, the fact that the Class consists of 1,260 Class Members plainly favors class certification.

3 Finally, the question whether class members are easily identifiable turns on whether a plaintiff
4 can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 706
5 (1967). The existence of an ascertainable class in this case can be established through Defendant’s
6 payroll records, and the class definition is sufficiently specific to enable the Parties, potential Class
7 Members, and the Court to determine the parameters of the Class. *See Clothesrigger, Inc. v. GTE*
8 *Corp.*, 191 Cal.App.3d 605, 617 (1987) (proposed class defined as all persons nationwide subscribing
9 to telephone service since January 1, 1981, who were charged for long distance calls deemed “plainly”
10 ascertainable).

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

12 The community of interest requirement embodies three factors: (1) predominant questions of
13 law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
14 representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. Plaintiff easily
15 satisfies all three requirements.

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

23 Here, the claims present sufficient common issues of law and fact that predominate and
24 warrant class certification. Plaintiff alleges that Defendant denied compliant meal and rest periods to
25 employees, failed to properly compensate employees for missed meal or rest periods, required
26 employees to perform work off-the-clock, and failed to fully compensate employees for all time
27 worked. Plaintiff alleges that these policies and practices mean that Defendant failed to pay minimum
28 and overtime wages, and other related claims. Plaintiff alleges that Defendant’s policies and practices

1 were uniform as to all Class Members. Thus, class treatment is appropriate.

2 To satisfy the typicality requirement, California law does not require that Plaintiff has claims
3 identical to the other class members. Rather, the test of typicality for a class representative is whether
4 other members have the same or similar injury, whether the action is based on conduct, which is not
5 unique to the named plaintiff, and whether other class members have been injured by the same course
6 of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality
7 requirement for a class representative refers to the nature of the claim or defense of the representative,
8 and not to the specific facts from which it arose, or the relief sought. *See Id.*

9 Here, Plaintiff alleges that his claims are similar to that of the other Class Members. Plaintiff
10 alleges his claims arise out of the same alleged facts and course of conduct giving rise to the claims
11 of the other Class Members. Finally, Plaintiff's claims are typical of the other Class Members because
12 he seeks the exact same relief for the alleged violations. Because Plaintiff's claims are based upon
13 the same alleged conduct and practices as those of Class Members, the typicality requirement has
14 been satisfied.

15 Finally, the question of adequacy of representation "depends on whether the plaintiff's
16 attorney qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to
17 the interests of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these
18 considerations are satisfied. Counsel for Plaintiff include well-regarded and accomplished lawyers
19 who are qualified and experienced in employment-related, class-action litigation. Huerta Decl. ¶¶2-
20 11(a)-(d). Plaintiff will vigorously, adequately, and fairly represent the interests of the class. Because
21 Plaintiff's claims are typical of other class members and are not based on unique circumstances, there
22 is no antagonism between the interests of Plaintiff and the Class.

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

24 Under the circumstances, proceeding as a class action is a superior means of resolving this
25 dispute, as the class members and the court will derive substantial benefits. Class certification would
26 serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23
27 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will
28 come forward to prove his or her separate claim and whether the class approach would actually serve

1 to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same
2 operative facts would unduly burden the courts and could result in inconsistent results. Therefore,
3 class action proceedings are superior to individual litigation.

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

5 Plaintiffs in class action and PAGA lawsuits are eligible for reasonable enhancement
6 payments as compensation “for the expense or risk they have incurred in conferring a benefit on other
7 members of the class.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010).
8 Courts routinely grant approval of class action settlement agreements containing enhancements for
9 the class representative, which are necessary to provide incentive to represent the class and are
10 appropriate given the benefit the class representatives helped obtain. *See In re Online DVD Rental*,
11 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times larger than individual
12 payments).

13 Plaintiff initiated and has stepped forward in this litigation on behalf of his former co-workers
14 and the LWDA, who will now benefit from the settlement. Plaintiff invested substantial time and
15 effort into this litigation including his own research, reviewing documents, and extensive discussions
16 with Class Counsel. Further, the requested amount is also extremely reasonable given the benefit
17 gained by other Class Members. For these reasons, Plaintiff requests that a Class Representative
18 Enhancement Payment of \$7,500.00 to Plaintiff Hernandez be preliminarily approved by the Court.
19 *See Huerta Decl.* ¶76.

20 **VIII. REQUESTED ATTORNEYS’ FEE AND COSTS**

21 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions
22 will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal, Inc.*,
23 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent
24 to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id.* at
25 47. In common fund cases where the defendant agrees to the fees constituting a percentage of the
26 fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

27 The requested attorneys’ fees of \$197,750.00, which is thirty-five percent (35%) of the
28 common fund, are disclosed to Class Members in the proposed Class Settlement Notice (“Notice”).

1 See Settlement Agreement, Ex. A. The requested fee was freely negotiated, is common in the legal
2 marketplace, and is not opposed by Defendant. The Motion for Final Approval will elaborate on the
3 legal services provided the time incurred in performing those services, Class Counsel's hourly rates,
4 in order to demonstrate the fee sought is reasonable under a lodestar analysis. The Motion for Final
5 Approval will also provide additional evidence supporting Class Counsel's request for the
6 reimbursement of litigation costs not to exceed \$20,000.00. Huerta Decl. ¶78.

7 **IX. NOTICE TO THE CLASS, THE OPT OUT AND OBJECTION PROCESS MEETS**
8 **DUE PROCESS REQUIREMENTS**

9 The Parties have jointly drafted the Notice Packet which will be delivered to the Class
10 Members and have agreed to having Phoenix Class Action Administrators administer the Settlement
11 subject to the Court's Approval. Huerta Decl. ¶79; see Settlement Agreement, Exs. A-C. The Notice
12 Packet will include information regarding the nature of the lawsuit, a summary of the terms of the
13 Settlement, the Class definition, information on how to object and opt-out, information regarding the
14 release of the class and PAGA claims, and the date of the Final Approval Hearing. The Notice Packet
15 will also list each Class Member's total workweeks and the approximate Individual Settlement
16 Payment. *Id.* No later than twenty-one (21) days after entry of the Preliminary Approval Order,
17 Defendant will provide the Class List to the Settlement Administrator including the full name, last
18 known home address, last known telephone number, social security number, dates of employment,
19 number of workweeks worked during the Class Period, and number of workweeks worked during the
20 PAGA Period for each Class Member. The Settlement Administrator shall perform any searches
21 necessary to confirm the Class Members' addresses, shall translate the Notice Packet, and shall mail
22 the Notice Packet in both English and Spanish to all Class Members within seven (7) days of receiving
23 the Class List from Defendant. Huerta Decl. ¶80; Settlement Agreement ¶¶50, 51, 52, 53.

24 In determining whether to approve a settlement of a class action, a trial court has complete
25 discretion as to the manner of giving notice to class members, and review on appeal is governed by
26 the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380
27 (2010). Here, Class Counsel is not aware of an alternative method that would result in a higher
28 likelihood of actual notice. The original source of the mailing addresses is from each Class Member,
who provided the information to Defendant. As a fail-safe, additional searches will be performed on

any notice returned as non-deliverable. Huerta Decl. ¶81; Settlement Agreement ¶52.

Any Class Member who wishes to be excluded from the Settlement must mail the Settlement Administrator a written request for exclusion including their name, address, telephone number, signature, and last 4 digits of their social security number or employee ID number. The request for exclusion must be received no later than 60 days after mailing of the Notice Packet. Settlement Agreement, ¶¶54-56, Ex. B. Any Class Member wishing to object to the approval of this Settlement shall provide a signed written statement stating the specific reason for the objection as well as their full name, address, telephone number, and last 4 digits of their social security number or employee ID number. Such written statement must be served on the Settlement Administrator within 60 days following the initial mailing of the Notice Packet. Settlement Agreement ¶59.

X. CONCLUSION

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

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