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Attorneys for Plaintiff Bernardo Duran
and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF IMPERIAL

BERNARDO DURAN, on behalf of
himself all others similarly situated, the
general public, and all “aggrieved
employees” pursuant to Labor Code § 2698
et seq.,

Plaintiff,

v.

J.S. HOMEN TRUCKING, INC., a
California corporation, and DOES
through 10, inclusive,

Defendants.

CASE NO: ECU004017

Assigned to the Hon. L. Brooks Anderholt, Dept. 9

**NOTICE OF MOTION AND UNOPPOSED
MOTION FOR FINAL APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT**

DATE: November 3, 2025

TIME: 8:30 a.m.

DEPT.: 9

Complaint Filed: March 25, 2025

1 **PLEASE TAKE NOTICE THAT** on November 3, 2025 at 8:30 a.m., or as soon
2 thereafter as the matter may be heard, in Department 9 of the above-entitled Court, located at 939
3 Main St, El Centro, CA 92243, Plaintiff Bernardo Duran will and hereby does move unopposed
4 for an Order granting final approval of this class action settlement. This application is made
5 pursuant to California Rules of Court Rule 3.769, which requires court approval of the settlement
6 of class actions. This Motion, unopposed by Defendant J.S. Homen Trucking, Inc., will be based
7 on the Memorandum of Points and Authorities, the Settlement Agreement and Release of Claims,
8 the Declarations of Evan S. Gaines, the Declaration of Jarrod Salinas of Phoenix Class Action
9 Administration Solutions, the Declaration of Bernardo Duran, such evidence or oral argument as
10 may be presented at the hearing, and on the complete records and file herein.¹

11
12 DATED: October 9, 2025

Respectfully submitted,

13 GAINES LAW CORPORATION

14
15 By: 

16 EVAN S. GAINES

17 Attorneys for Plaintiff Bernardo Duran and Proposed
18 Class Counsel
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28 ¹ This motion should not be construed as a waiver of any attorney-client or attorney work-product privileges.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 By this unopposed motion, Plaintiff Bernardo Duran (“Duran” or “Plaintiff”) and the
4 settlement class (collectively “Class Members” or “Class”) seek final approval of the class action
5 settlement reached with Defendant J.S. Homen Trucking, Inc. (“Defendant”) (all together, the
6 “Parties”). Subject to Court approval, Plaintiff has settled the Released Claims, as defined in the
7 Parties’ Settlement Agreement and Release of Claims, for a settlement package worth \$66,000.
8 See Declaration of Evan S. Gaines (“Gaines Decl.”), Exhibit (“Ex.”)² B (collectively, the
9 “Settlement”).

10 As discussed herein, the proposed Settlement satisfies all of the criteria for final
11 settlement approval under California law because it is fair, adequate, and reasonable. Ex. B. See
12 also *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor*
13 *Company* (1996) 48 Cal.App.4th 1794, 1801. The response of the Settlement Class to the
14 Settlement confirms that final settlement approval is appropriate. *There have been no objections*
15 *and zero opt-outs* out of 66³ total Class Members. Declaration of Jarrod Salinas of Phoenix
16 Settlement Administrators (“Phoenix”) (“Salinas Decl.”) ¶¶ 8, 9.

17 The Parties have agreed upon a settlement class defined as: “all non-exempt employees of
18 Defendant J.S. Homen Trucking, Inc. in California at any time between April 16, 2022 and April 30,
19 2025.”

20 The Settlement is “direct distribution” – there is no claims process, and all Qualified
21 Settlement Class Members who do not submit an opt-out request will automatically be mailed a
22 settlement check when the Settlement is granted final approval.

23 The Settlement Administrator has calculated pro rata settlement payments to Class
24 Members from the Net Settlement Amount based on the total number of Qualified Workweeks
25 worked by each Class Member during the applicable class period. The average settlement share

26 ² Unless otherwise noted, all “Ex.” references are to the exhibits attached to the Declaration of
27 Evan S. Gaines in Support of the Motion for Final Approval of Class Settlement submitted
herewith.

28 ³ The actual number of Class Members exceeded the amount provided for in the Settlement (59).

1 to be paid to the 66 Qualified Class Members is approximately \$400.95 and the highest
2 settlement share to be paid is approximately \$789.13 Salinas Decl. ¶ 13.

3 The Labor & Workforce Development Agency (“LWDA”) shall be paid \$4,500 (75%) of
4 the \$6,000 total allocated to settle the Class’s claims brought pursuant to Labor Code § 2698 *et*
5 *seq.*, the Private Attorneys General Act of 2004 (“PAGA”), and the remaining 25%, or \$1,500,
6 will be included in the Net Settlement Amount to be distributed among PAGA Members based on
7 their total Qualifying Work Weeks during the PAGA Period. Settlement at ¶ C(1)(e).

8 Because the Settlement achieves outstanding results for the Settlement Class, Defendant’s
9 past and current employees, Plaintiff respectfully requests, on behalf of the Class and without
10 opposition from Defendant, that the Court approve the Settlement as fair, adequate, and
11 reasonable, and enter judgment in accordance with the Settlement’s terms.⁴

12 **II. STATEMENT OF FACTS**

13 **A. Case Summary and Procedural History**

14 On March 25, 2025, Plaintiff filed his Complaint alleging putative class claims for
15 Labor Code section 203 waiting time penalties, Labor Code section 226 wage statement
16 violations, and unfair competition pursuant to Business and Professions Code section 17200.
17 Gaines Decl. at ¶ 8.

18 This Complaint followed a December 14, 2023 letter to the Labor and Workforce
19 Development Agency (“LWDA”) to exhaust Plaintiff’s remedies pursuant to the PAGA
20 alleging that Defendant violated Labor Code sections 201-203 due to the purported failure to
21 pay all wages due upon separation, and Labor Code sections 226 and 226.3 for failure to
22 provide accurate itemized wage statements. The Parties thereafter tolled the applicable statute
23 of limitations pending settlement discussions. Gaines Decl. at ¶ 9.

24 **B. Investigation and Settlement Discussions**

25 Since the inception of the Action, the Parties have engaged in informal discovery.
26 Among other things, Defendant provided Plaintiff with copies of policies applicable to Class

27 ⁴ Plaintiff is filing a separate application for the Court’s approval of Class Counsel’s attorneys’
28 fees and costs, claims administration fees, and Plaintiff’s enhancement award.

1 Members and Plaintiff's claims and relevant pay data for Class Members. Gaines Decl. at ¶ 10.

2 The Parties engaged in extensive discussions about the respective strengths and
3 weaknesses of their claims and defenses. On January 14, 2025, the Parties met with mediator
4 David Moeck, Esq. to attempt to resolve the lawsuit, including the individual claims brought by
5 Bernardo Duran. The Parties agreed, subject to approval by the Court, to the Settlement of the
6 lawsuit, as well as Plaintiff's individual wage and hour claims and termination-related claims.
7 The Parties further agreed to enter into their Settlement Agreement to memorialize their
8 settlement of the lawsuit. Gaines Decl. at ¶ 11.

9 The settlement discussions were conducted at arm's-length. Based on his own
10 independent investigation and evaluation, Class Counsel is of the opinion (and will so represent
11 to the Court) that settlement for the consideration and on the terms set forth in this Settlement
12 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
13 light of all known facts and circumstances, including the risk of significant delay, the risk the
14 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.
15 Defendant and its counsel also agree (and will so represent to the Court) that this settlement is
16 fair and in the best interests of the Defendant and the Settlement Class. Gaines Decl. at ¶ 12.

17 The Parties thereafter jointly prepared the Settlement. Gaines Decl. at ¶ 13; Ex. B.

18 **C. Summary of Settlement Terms**

19 **1. Benefits to the Class and the Public**

20 The Settlement provides that (a) the Court may certify the Settlement Class as described
21 in the Settlement on a provisional, non-mandatory basis for the purposes of this settlement
22 only, conditioned upon the Court granting final approval of the Settlement; and (b) Defendant
23 shall pay the total, non-reversionary sum of \$66,000 (the "Gross Settlement Amount"). The
24 Gross Settlement Amount includes all attorneys' fees and costs/expenses petitioned by Class
25 Counsel; an enhancement award; costs of administration of the Settlement; and payment for the
26 PAGA claims asserted in his letter to the LWDA. In no event shall Defendant be liable for the
27 payment of any amounts exceeding the Gross Settlement Amount with the exception of the
28 employer's share of payroll taxes due and payable as a result of the Settlement, which shall be

1 paid separately from the Gross Settlement Amount. Gaines Decl. at ¶ 14; Settlement at ¶
2 C(1)(a).

3 The Parties have agreed upon a settlement class: “all non-exempt employees of
4 Defendant J.S. Homen Trucking, Inc. in California at any time between April 16, 2022 and April
5 30, 2025. Gaines Decl. at ¶ 15; Settlement at ¶ A(4).

6 **2. Preliminary Approval, Notice, and the Claims Process**

7 By Order dated July 21, 2025, this Court granted Plaintiff’s unopposed motion for
8 preliminary approval of the Settlement and provisionally certified the Settlement Class, finding
9 that the Settlement appeared to be within the range of reasonableness of settlements that could
10 ultimately be given final approval. *See* Ex. C. The Court approved the distribution of the
11 Notice of Proposed Class Action Settlement and set the Final Fairness and Approval Hearing.
12 Gaines Decl. at ¶ 16.

13 Pursuant to the Court’s Order, on August 22, 2025, Phoenix mailed Notice packets
14 containing the notice of the terms of the Settlement — including the terms relating to attorneys’
15 fees and costs — to 66 Class Members. Gaines Decl. at ¶ 17; Salinas Decl. at ¶ 5; Exhibit A to
16 the Salinas Decl. Class Members were given 45 days after the Notice was mailed to submit
17 their opt out form or objection to the Settlement. Gaines Decl. at ¶ 18. As of the date of this
18 motion, all Class Members will be issued their share of the Settlement and they will be paid, on
19 average, approximately \$400.95 each; the highest-paid participating Class Member will be paid
20 approximately \$789.13. Gaines Decl. at ¶ 19; Salinas Decl. at ¶ 13. No Class Members have
21 objected to the Settlement, and no Class Members have opted out. Gaines Decl. at ¶ 20; Salinas
22 Decl. at ¶¶ 8, 9.

23 **D. Compliance with Procedural Requirements of PAGA**

24 On October 8, 2025, in compliance with Labor Code § 2699(l)(2), Plaintiff’s counsel
25 submitted copies of the Settlement Agreement, and preliminary approval papers, to the LWDA
26 through its online submission interface. These final approval papers are also being submitted to
27 the LWDA concurrently with their submission to the Court, as evidenced on the attached proof of
28 service. The LWDA has not objected or otherwise responded to any of the submissions thus far.

1 Gaines Decl. at ¶ 60; Ex. E.

2 **3. ARGUMENT**

3 **A. The Class Members Received the Best Practicable Notice**

4 California law vests the Court with broad discretion in fashioning an appropriate notice
5 program. *See* California Civil Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960,
6 973-74. To protect the rights of absent class members, the parties must provide class members
7 with the best notice practicable of a potential class action settlement. *Phillips Petroleum Co. v.*
8 *Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-76
9 (individual notice must be sent to all class members who can be identified through reasonable
10 efforts); *Mullane v. Central Hanover Bank & Garretson Company* (1950) 339 U.S. 306, 314
11 (best practicable notice is that which is “reasonably calculated, under all the circumstances, to
12 apprise interested parties of the pendency of the action and afford them an opportunity to present
13 their objections”). The content and method of the notice should be designed to apprise the class
14 members of the terms of the proposed settlement and of the class members’ rights regarding the
15 settlement. *See Mullane, supra*, 339 U.S. at 314; *Philadelphia Housing Authority v. American*
16 *Radiator & Standard Sanitary Corp.* (E.D. Pa. 1970) 323 F. Supp. 364, 378.

17 The Notice approved by the Court met these requirements: it was transmitted in English
18 and Spanish, it identified the Parties and described the lawsuit, the Class, the settlement amount,
19 the proposed method for distribution of the Gross Settlement Amount, the amount proposed to be
20 paid as an enhancement payment to the named Plaintiff, the amount of administrative costs, and
21 the requested amount for attorneys’ fees and costs. *See* Exhibit A to the Salinas Decl. The Notice
22 described the proposed Settlement with enough specificity to allow each Class Member to make
23 an informed choice whether to accept and participate in it. It also explained how and when Class
24 Members may object to or opt out of the Settlement. Finally, the Notice provided the schedule for
25 the hearing on final approval of the Settlement and informed Class Members how to obtain
26 additional information about the Settlement.

27 The California Supreme Court has held that notice is appropriate if it has a “reasonable
28 chance of reaching a substantial percentage of the class members . . .” *Cartt, supra*, 50

1 Cal.App.3d at 974. Notice was mailed to individual Class Members at their last known address,
2 and in the end, all Notices were successfully mailed to Class Members. *See* Salinas Decl. at ¶¶ 4-
3 6. As Notice actually reached all Class Members and apprised them of all pertinent information
4 regarding the Settlement, under California law, the Notice given to Class Members was more
5 than adequate.

6 **B. Final Settlement Approval is Appropriate**

7 The Settlement is fair, adequate, and reasonable because it provides substantial benefits to
8 Class Members, PAGA Members, and the general public. The fairness, adequacy, and
9 reasonableness of the Settlement are illustrated by the fact that not one of the 66 Class Members
10 objected to, and no Class Members requested exclusion from, the Settlement. Salinas Decl. at ¶¶
11 8, 9. Under the legal standards used by California courts to determine whether class action
12 settlements should be approved, this Settlement warrants approval.

13 **1. The Three-Step Settlement Approval Process**

14 The law favors settlement, particularly in class actions and other complex cases where
15 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
16 *See 4 Newberg on Class Actions* 4th (4th ed. 2002) § 11.41 (and cases cited therein); *Class*
17 *Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.*
18 (9th Cir. 1976) 529 F.2d 943, 950; *see also, Potter v. Pacific Coast Lumber Co.* (1951) 37 Cal.2d
19 592, 602. These concerns apply with particular force in a case such as this, where novel issues of
20 law are at play (including California's complicated requirements for overtime pay).

21 A class action, however, may not be dismissed, compromised, or settled without the
22 approval of the court. California Rules of Court Rule 3.769; Federal Rules of Civil Procedure,
23 Rule 23(e).⁵ Judicial proceedings under Federal Rule of Civil Procedure Rule 23 have led to a
24 defined procedure and specific criteria for settlement approval in class action settlements,
25 described in the Federal Judicial Center, *Manual for Complex Litigation*, Fourth (4th ed. 2004)

26 _____
27 ⁵ The California Supreme Court has authorized California's trial courts to use Federal Rule 23
28 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court*
(1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate,
therefore, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

1 ("Manual") § 21.632, *et seq.* The *Manual's* settlement approval procedure describes three
2 distinct steps:

- 3 (1) Preliminary approval of the proposed settlement at an informal hearing;
- 4 (2) Dissemination of mailed and/or published notice of the settlement to all affected
5 Class members; and
- 6 (3) A "formal fairness hearing," or final settlement approval hearing, at which Class
7 members may be heard regarding the settlement, and at which evidence and
8 argument concerning the fairness, adequacy, and reasonableness of the settlement
9 may be presented.

10 *Manual*, § 21.632-34.

11 The first two steps of this process are now complete. The first step was completed on July
12 21, 2025, when this Court granted preliminary approval of the Settlement. See Ex. C. In doing so,
13 the Court determined that the Settlement was within the range of possible final approval and that
14 notice to the Class Members of the Settlement's terms and of the scheduling of the formal
15 fairness hearing should be distributed. See *Wershba v. Apple Computer* (2001) 91 Cal.App.4th
16 224, 234-35; 4 *Newberg*, *supra*, § 11.25.

17 The second step in the class action settlement approval process, the dissemination of the
18 Notice, is complete as well. In accordance with the Court's Preliminary Approval Order, the
19 Parties worked with Phoenix to implement the Court-approved notice program, which employed
20 the best practicable means to disseminate to all Class Members notices of the Settlement's terms
21 and of the date and time of the final approval hearing. *C.C.P.* § 382; *see also*, Ex. A to Salinas
22 Decl.; *see generally*, Salinas Declaration.

23 The third and last step in the class action settlement approval process is the final approval
24 hearing at which the Court shall determine whether the Settlement is fair, adequate, and
25 reasonable. At the final approval hearing, scheduled for November 3, 2025, Class Members will
26 have the opportunity to be heard regarding the Settlement, and Class Counsel will present
27 evidence and argument in support of the Settlement. See *Manual*, § 21.634. At the conclusion of
28 the final approval hearing, this Court will decide whether to grant final approval of the Settlement

1 and whether to enter a final order and enter judgment in the action.

2 **2. The Terms of the Settlement Disclose No Grounds to Doubt**
3 **Its Fairness**

4 When faced with a motion for final approval of a class action settlement under Code of
5 Civil Procedure § 382, a court inquires whether the settlement is “fair, adequate, and reasonable.”
6 *See Wershba, supra*, 91 Cal.App.4th at 244-45; *Dunk, supra*, 48 Cal.App.4th at 1801. A
7 preliminary review of the terms of the proposed Settlement shows that it is fair. Indeed, this
8 Court should begin its analysis with a presumption that the proposed Settlement is fair:

9 [A] presumption of fairness exists where: (1) the settlement is
10 reached through arm's-length bargaining; (2) investigation and
11 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.

12 *Dunk, supra*, 48 Cal.App.4th at 1802; *Wershba, supra*, 91 Cal.App.4th at 245.

13 During the course of this litigation, the Parties have engaged in significant investigation
14 into the factual and legal claims presented in the complaint. Substantial discovery into the merits
15 of Plaintiff's claims and the nature of Defendant's practices took place between the Parties in
16 which Defendant and Plaintiff exchanged a considerable amount of information and
17 documentation and further apprised each other of their respective factual contentions, legal
18 theories, and defenses. In short, the Parties have engaged in extensive good faith, arms-length
19 negotiations, telephone conferences, and substantial correspondence further aimed at settling their
20 disputes. *Gaines Decl.* at ¶¶ 10-13.

21 The Settlement reached by the Parties provides substantial payments to Class Members
22 and PAGA Members, particularly in relation to the harm alleged. The presumption of fairness
23 and adequacy is especially appropriate here because the reaction of Class Members has been
24 uniformly positive – not one Class Member objected to, and no Class Members have requested
25 exclusion from, the Settlement. *Salinas Decl.* at ¶¶ 8, 9. Accordingly, because the four
26 circumstances identified in *Dunk* are present here, it is appropriate for the Court to presume that
27 the Settlement is worthy of final approval. *See Dunk, supra*, 48 Cal.App.4th at 1802; *see also*,
28 *Kullar, supra*, 168 Cal.App.4th at 129-30.

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1 employees and a \$22.00 average hourly rate). Defendant contends that it properly paid all wages
2 due upon separation of employment. It further asserted that Plaintiff could not certify this claim
3 based on manageability and commonality concerns, including that Plaintiff's claims were unique
4 to him. Based on these risks, the compromised settlement amount here is fair and reasonable.
5 Gaines Decl. ¶ 30.

6 Plaintiff also argues that Defendant failed to issue Class Members accurately itemized
7 wage statements, in violation of Labor Code section 226(a) and (e). The wage statements issued
8 to Plaintiff and Class Members failed to set forth the accurate total hours worked by the
9 employee, in violation of Labor Code section 226(a)(2). Specifically, the wage statements
10 improperly include the piece-rate unit earned for transporting a load into the hours worked
11 calculation, failed to include accurate paid sick leave calculations, and failed to include the
12 complete address of the employer. The maximum value of this statutory penalty claim is
13 approximately \$94,250. Defendant, however, contends that it properly issued accurate, itemized
14 wage statements. Gaines Decl. ¶ 31.

15 Class Members also sought PAGA penalties derivative of the underlying violations
16 alleged. The value of these penalties – which are derivative, discretionary, and subject to defenses
17 of their own – could be up to \$95,700 for wage statement violations (pursuant to Labor Code
18 section 226.3, which was alleged under PAGA only), and up to \$2,700 for waiting time penalties,
19 but their recovery carried substantial risk, particularly with respect to the waiting time penalties
20 because Plaintiff's claims may have been individualized to Plaintiff only and Defendant may not
21 have maintained a pattern and practice to not pay all wages due upon separation of employment.
22 Gaines Decl. ¶ 32.

23 The discount negotiated for settlement here is a reasonable compromise, particularly
24 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
25 a very high hurdle. Class certification is a substantial risk in any class action case. Here, while
26 Plaintiff maintains that the requirements of class certification are met, Defendant proffers various
27 arguments why class treatment is not appropriate, including but not limited to that individualized
28 inquires among class members predominate over common ones. If Defendant was to defeat

1 Plaintiff's class certification motion, there would be no class wide relief whatsoever, and most
2 class members would likely not file individual claims. Gaines Decl. ¶ 33.

3 Plaintiff also faced the risk of a loss on the merits on his claims. It is very possible that the
4 Court would agree with Defendant's position that its policies and practices complied with the
5 requirements of California law or could not be certified. In such a case, the value of the majority
6 of Plaintiff's claims would be zero. Gaines Decl. ¶ 34.

7 Plaintiff faced the risk that he would not obtain a maximum damage/penalty award on all
8 (or any of) his claims. For example, Plaintiff seeks wage statement penalties. Even if Plaintiff did
9 prevail on these claims, it is possible that the Court would not impose all penalties pursuant to its
10 discretionary power to reduce them or consider defenses which could minimize their value.
11 Gaines Decl. ¶ 35.

12 Defendant strongly contends that its policies and practices do not violate any laws. When
13 the costs and risks of non-certification and loss on the merits are considered, Plaintiff's counsel is
14 of the opinion that the settlement reached is clearly a favorable one. Gaines Decl. ¶¶ 30-39.

15 The settlement for each Class Member is fair, reasonable and adequate, given the inherent
16 risk of litigation, the risk relative to class certification and the costs of pursuing such litigation.
17 The settlement shall finally resolve all claims of the Class Members as alleged in the Action.
18 Gaines Decl. ¶ 39.

19 ***b. The Risks Inherent in Continued Litigation Are***
20 ***Substantial***

21 Of particular relevance to the proposed Settlement's reasonableness is the fact that the
22 Defendant has legal and factual grounds for defending this action. Defendant consistently
23 asserted that, throughout the relevant time period, it adhered to the legal requirements embodied
24 in California's labor laws at all times. Defendant also contended that a class action could not be
25 properly maintained because Plaintiff could not satisfy the criteria to certify a class under C.C.P.
26 § 382.

27 The areas of law at issue in this lawsuit are dynamically changing. An adverse appellate
28 court decision or change in law by the legislature may defeat certification of some or all of the

1 claims alleged in Plaintiff's complaint. *See Keller v. Tuesday Morning, Inc.* (2009) 179 Cal. App.
2 4th 1389 (affirming the decertification of a class two years after it was originally certified).
3 Plaintiff's counsel is familiar with many class action cases where certification and/or liability
4 were immediately defeated as a result of an adverse appellate court ruling, or a change in law by
5 the California legislature or Supreme Court of the United States. Gaines Decl. at ¶ 41. In short,
6 the risks inherent in continued litigation here, including the risks of maintaining class certification
7 in the event it was obtained, are substantial.

8 ***c. Plaintiff Would Likely Have Succeeded in Proving***
9 ***Class Certification Was Proper Yet a Risk of Non-***
10 ***Certification Is Always Present***

11 Class Counsel is confident that they could have proven that this case is appropriate for
12 class certification; Defendant, in contrast, adamantly opposed certification.

13 *C.C.P.* § 382 sets forth the class certification criteria:

14 [W]hen the question is one of a common or general interest, of
15 many persons, or when the parties are numerous, and it is
16 impracticable to bring them all before the court, one or more may
17 sue or defend for the benefit of all.

18 As interpreted by the California Supreme Court, *C.C.P.* § 382 requires the existence of an
19 "ascertainable class" whose members share a "well-defined community of interest" in the basic
20 issues of the suit. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435; *Richmond v. Dart*
21 *Industries, Inc.* (1981) 29 Cal.3d 462, 470; *Vasquez, supra*, 4 Cal.3d at 808. The "community of
22 interest" requirement embodies three factors: "(1) predominant common question of law or fact;
23 (2) class representatives with claims or defenses typical of the class; and (3) class representatives
24 who can adequately represent the class." *Linder*, 23 Cal.4th at 435, quoting *Richmond*, 29 Cal.3d
25 at 470. "Other relevant considerations include the probability that each class member will come
26 forward to prove his or her separate claim to part of the total recovery and whether the class
27 approach would actually serve to deter and redress alleged wrongdoing." *Id.* Lastly, as a general
28 rule, if a defendant's liability can be determined by facts common to the class members, a class
will be certified even if such members must individually prove their damages. *Employment*
Development Dept. v. Superior Court (1981) 30 Cal.3d 256, 266.

1 ***i. The Proposed Class is Ascertainable***

2 The proposed Settlement Class is clearly ascertainable as it is defined by concrete factors
3 – whether the class members were non-exempt employees of Defendant during a specified time
4 frame. In this case, the Class Members are identifiable from Defendant’s records. Further, the
5 settlement class is sufficiently numerous to warrant certification. According to Defendant’s
6 records, the final Class is comprised of 66 individuals. Gaines Decl. at ¶ 44.

7 ***ii. Numerosity is Satisfied***

8 A class will be certified when it is impracticable to join all class members in the case.
9 “Impracticability means difficulty or inconvenience of joinder; the rule does not require
10 impossibility of joinder.” *German v. Federal Home Loan Mortgage Corp.* (S.D.N.Y. 1995) 885
11 F. Supp. 537, 552. The numerosity requirement has been liberally construed.⁶ According to
12 Defendant’s records, the final Class is comprised of 66 individuals. Gaines Decl. ¶ 46.

13 ***iii. Common Issues of Law and Fact***
14 ***Predominate***

15 In determining whether sufficient common questions of law and fact predominate, for the
16 purposes of meeting the commonality criterion, the Court’s inquiry is directed towards a review
17 of “what type of questions - common or individual - are likely to arise in the action” in
18 considering “whether the theory of recovery advanced by the proponents of certification is, as an
19 analytical matter, likely to prove amenable to class treatment.” *Sav-On Drug Stores v. Superior*
20 *Court* (2004) 34 Cal.4th 319, 327. Here, the evidence overwhelmingly shows that common issues
21 of law or fact predominate.

22 Plaintiff alleges, and discovery revealed, that Defendant applies the same policies and
23 procedures pertaining to the payment of wages to all members of the Settlement Class. *See Sav-*
24 *On, supra*, 34 Cal. 4th at 329-331 (finding trial court did not err in certifying the class where
25 common employment practices and uniform policies were at issue). The Class Members’ claims

26 _____
27 ⁶ *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 (42-member class “quantitatively
28 sufficient for a class action”); *Lazar v. Hertz Corp.* (1983) 143 Cal.App.3d 128, 138 (class of 5
million).

1 all stem from a common source: members of the Settlement Class allege that Defendant violated
2 the same Labor Code provisions in connection with their employment. All members of the Class
3 seek the same relief under the same California laws (related to waiting time penalties and
4 inaccurate or incomplete wage statements). Under these circumstances, the commonality
5 requirement is satisfied for purposes of certifying the Settlement Class for settlement purposes.
6 Gaines Decl. ¶ 47.

7 To the extent that a few individual issues exist, they do not predominate and, therefore,
8 would not have defeated class certification. As the California Supreme Court has stated, “even if
9 some individualized proof of such facts ultimately is required to parse class members’ claims,
10 that such will predominate in the action does not necessarily follow.” *See Sav-On, supra*, 34
11 Cal.4th at 334. Individual issues do not render class certification inappropriate so long as such
12 issues may effectively be managed. *Richmond, supra*, 29 Cal.3d at 473; *Occidental Land v.*
13 *Superior Court* (1976) 18 Cal.3d 355, 363-64; *Washington Mutual Bank, FA v. Superior Court*
14 (2001) 24 Cal.4th 906, 922.

15 ***iv. The Proposed Class Representative’s***
16 ***Claims are Typical of the Class’ Claims***

17 Plaintiff alleges that the Named Plaintiff’s claims are typical of the Class Members’
18 claims. The class representative’s claims need not be identical to the claims of other class
19 members and it is only required that the representative be similarly situated so that he or she will
20 have the motive to litigate on behalf of all class members. *Classen v. Weller* (1983) 145
21 Cal.App.3d 47. In this case, named Plaintiff and proposed Class Representative Bernardo Duran
22 is a former non-exempt employee who worked for Defendant in the State of California during the
23 applicable Class Period. He contends that Defendant failed to pay all wages due upon separation
24 of employment and provide compliant wage statements, in violation of Labor Code §§ 201-203,
25 226(a), 226(a)(2), 226(e), 226(h), and 226.3, among other Labor Code provisions. He has the
26 same claims as those that the members of the Settlement Class would reasonably be expected to
27 bring based on the course of conduct alleged herein. Gaines Decl. ¶ 48.

28 Plaintiff has also demonstrated that he will aggressively and competently assert the

1 interests of the proposed Settlement Class; he has taken an active role in this litigation and has no
2 apparent conflicts with other class members. Plaintiff participated actively in the litigation and in
3 the settlement thereof. He has taken significant risks in bringing this lawsuit – he faces the very
4 real risk that because of the stigma associated with this lawsuit, he may be unable to obtain
5 employment in the future. The stigma and risk associated with filing a class action lawsuit
6 against any employer is significant. Gaines Decl. at ¶ 50; *see generally* the Declaration of
7 Bernardo Duran.

8 Finally, Plaintiff has retained competent counsel, experienced in litigating class action
9 claims in the employment context. Gaines Decl. at ¶¶ 2-5.

10 **v. *Class Treatment is the Superior Method of Adjudicating***
11 ***the Claims Asserted in this Case***

12 As outlined above, Defendant’s common policies applicable to all Class Members are at
13 the root of determining the merits – both factually and legally – of Class Members’ claims.
14 Accordingly, there arguably exist significant common questions of law and fact which may be
15 tried by the Court in one proceeding. Judicial efficiency mandates that the class action procedure
16 be utilized to resolve these common issues.

17 The only alternative to certifying a case like this as a class action would be to force more
18 than one hundred current and former employees to file individual actions. As the California
19 Supreme Court has stated, “[t]he relevant comparison lies between the costs and benefits of
20 adjudicating Plaintiff’s claims in a class action and the costs and benefits of proceeding by
21 numerous separate actions – not between the complexity of a class suit that must accommodate
22 some individualized inquiries and the absence of any remedial proceeding whatsoever.” *Sav-On*,
23 *supra*, 34 Cal.4th at 339, fn. 10.

24 Finally, California courts favor class certification in wage and hour cases. The California
25 Supreme Court has expressly endorsed the use of the class action procedure in wage and hour
26 cases. In *Sav-On*, the Court reasoned that, because there exists a “clear public policy ... that is
27 specifically directed at the enforcement of California’s minimum wage and overtime laws for the
28 benefit of workers” (34 Cal.4th at 340), the class action device should be used to enforce these

1 laws wherever this device “would be the most efficient way of adjudicating the class members’
2 overtime claims.” 34 Cal.4th at 330. In *Prince v. CLS Transp., Inc.* (2004) 118 Cal.App.4th
3 1320, 1328, the appellate court noted, “wage and hour disputes (and others in the same general
4 class) routinely proceed as class actions.”

5 Although Class Counsel believe the Class Members’ claims are meritorious, that the Class
6 would have been certified, and that substantial damages could have been proven at trial, they are
7 experienced counsel who understand that liability, class certification, and damage issues — and
8 the outcome of any appeals that would likely follow if the Class were successful at trial —
9 present substantial risks for Class Members. Those risks must be considered in assessing the
10 fairness of this Settlement, which guarantees a substantial recovery for Class Members and
11 eliminates the risk that Class Members would be left without any recovery. Because the
12 Settlement provides immediate and substantial relief without requiring the Class Members either
13 to undergo the risks of losing at trial or to pay additional attorneys’ fees and costs to continue to
14 prosecute this action, it warrants this Court’s approval. See Gaines Decl. at ¶¶ 10-15.

15 ***d. Disclosure of Documents and Data Demonstrating the***
16 ***Strengths and Weaknesses of this Action Was***
17 ***Completed Prior to Entering into the Settlement***

18 The extent of discovery that has been completed and the stage of the litigation are factors
19 that courts consider in determining the fairness of a settlement. See *Dunk, supra*, 48 Cal.App.4th
20 at 1801. Class Counsel conducted a thorough investigation into the claims alleged in the
21 operative complaint prior to commencing settlement discussions. Discovery took place between
22 the Parties in which Defendant and Plaintiff exchanged information and documentation and
23 further apprised each other of their respective factual contentions, legal theories, and defenses.
24 See Gaines Decl. at ¶¶ 10-15. Thereafter, the Parties negotiated the proposed Settlement with
25 knowledge of the strengths and weaknesses of this case and the amounts necessary to compensate
26 Class Members for their estimated damages.
27
28

1 *e. The Complexity, Expense, and Likely Duration of*
2 *Continued Litigation Militate in Favor of Final*
3 *Approval*

4 A fourth factor considered by courts in determining whether a settlement warrants final
5 approval is the complexity, expense, and likely duration of the litigation in the absence of
6 settlement. *See Dunk, supra*, 48 Cal.App.4th at 1801; *Officers for Justice v. Civil Service Com'n*
7 *of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. In applying this factor, a
8 court should weigh the benefits of the settlement against the expense and delay involved in
9 achieving an equivalent or more favorable result at trial. *See Young v. Katz* (5th Cir. 1971) 447
10 F.2d 431, 433.

11 Employment class action cases are expensive and time-consuming to prosecute.
12 Continued litigation of this action against Defendant would likely be complex and expensive due
13 to the nature of the claims. It is Class Counsel's opinion that, without settlement, this litigation
14 could endure for at least three more years. Gaines Decl. at ¶ 38. Further, the Settlement avoids
15 the need for a contested class certification motion that would be time consuming and costly for
16 Plaintiff to file, Defendant to oppose, and the Court to decide. In addition, if the Court were to
17 deny such a motion for class certification, Class Members would be left without a group remedy
18 for their claims. The issues presented here would need to be litigated individually in Superior
19 Courts in a piecemeal, costly, and time-consuming fashion. The Settlement also avoids a lengthy
20 trial or trials that likely would have involved testimony by numerous witnesses and experts.

21 The areas of law at issue in this case are novel, dynamic, and change frequently. Gaines
22 Decl. at ¶ 39. Extended litigation equates to substantial risk for class members, many of whose
23 individual claims do not have substantial value from the onset. *Id.*

24 *f. The Experience and Views of Counsel Favor Final*
25 *Approval*

26 Class Counsel supports the Settlement as fair, adequate, reasonable, and in the best
27 interests of the Class as a whole. The endorsement of qualified and well-informed counsel of the
28 settlement as fair is entitled to significant weight. *See Dunk, supra*, 48 Cal.App.4th at 1802; *Ellis*

1 v. *Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18. Class Counsel has over a
2 decade of litigation experience, all of which has been devoted to wage and hour cases in the class
3 and representative action context.

4 Furthermore, Class Counsel is particularly well-suited to gauge the value of the class
5 members' claims here. Class Counsel has litigated many wage and hour class actions addressing
6 the issues presented in this lawsuit. Class Counsel's experience provides a strong basis for his
7 conclusion that the settlement terms here are fair and reasonable. Gaines Decl. at ¶¶ 6-7.

8 ***g. Class Members' Positive Reaction to the Settlement***
9 ***Favors Final Approval***

10 Finally, courts look at the reaction of class members to determine if a settlement that
11 directly affects their interests should be approved as fair, adequate, and reasonable. Of great
12 importance is the fact that no Class Member has objected to, and zero Class Members have
13 opted-out from, the Settlement. Salinas Decl. at ¶¶ 8, 9. Such a positive reaction of the Class
14 Members affected by the Settlement supports its approval. A court may properly infer that a
15 class action settlement is fair, adequate, and reasonable even when class members object to it.
16 Indeed, a court may approve a class action settlement as fair, adequate, and reasonable even over
17 the objections of a significant percentage of class members. *See Reed v. General Motors* (5th
18 Cir. 1983) 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.* (D. Ariz. 1989)
19 720 F. Supp. 1379, 1394 ("settlement is not to be deemed unfair or unreasonable simply because
20 a large number of class members oppose it"). In this action, the Court should construe the
21 overwhelming non-opposition to the Settlement as a strong indication of Class Members' support
22 for the Settlement as fair, adequate, and reasonable.

23 **C. Court Approval of the PAGA Penalty Portion of the Settlement**

24 Pursuant to Labor Code Section 2699(l), the Superior Court shall review and approve the
25 settlement of penalties sought under that Labor Code Section. Lab. Code § 2699(l). For all of
26 the reasons stated above, the Settlement is fair, reasonable and adequate, and should be approved.
27 As part of the Settlement, Defendant has agreed to pay \$6,000 to settle the claims of the
28 Settlement Class brought pursuant to PAGA, of which the payment of \$4,500 will be paid to the

1 LWDA for education and enforcement purposes. Plaintiff's counsel provided copies of the
2 Settlement Agreement, the preliminary approval motion papers, and these final approval papers
3 to the LWDA at the time they were submitted to the Court (*see Labor Code* § 2699(1)(2)) and
4 they have received no objection (or other response) from the LWDA. Gaines Decl. at ¶ 60; Ex. E.
5 As a result, this portion of the Settlement should be approved.

6 **IV. CONCLUSION**

7 For all of the foregoing reasons, Plaintiff requests that the Court grant final approval of
8 this Settlement and approve distribution of the settlement funds to the Settlement Class members
9 as set forth in the Settlement.

10 DATED: October 9, 2025

Respectfully submitted,

GAINES LAW CORPORATION

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12
13
14 By: 

EVAN S. GAINES

Attorneys for Plaintiff Bernardo Duran and Proposed
Class Counsel