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as an individual and on behalf of all employees similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

KARINA HUIZAR RODRIGUEZ, as an individual and on behalf of all employees similarly situated,

Plaintiff,

v.

TFC MANUFACTURING INC., a California Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 24STCV02351

[Assigned for all purposes to Hon. Elihu M. Berle]

CLASS AND PAGA REPRESENTATIVE ACTION

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

Date: February 24, 2025
Time: 10 a.m.
Courtroom: Dept. 6
Judge: Hon. Elihu M. Berle

Action Filed: January 30, 2024
Trial: Not Set

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 24, 2025, at 10 a.m., or as soon thereafter as the matter may be heard, in Department 6 of the above-captioned Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff KARINA HUIZAR RODRIGUEZ ("Plaintiff") will and hereby does move this Court for an order:

1. Granting class certification of the Class, solely for settlement purposes pursuant to Code of Civil Procedure § 382;

2. Preliminarily approving the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT ("Settlement" or "Agreement");

3. Appointing counsel for Plaintiff, Tunyan Law, APC and The Sentinel Firm, APC, as Class Counsel;

4. Appointing Plaintiff as the Class Representative;

5. Approving the use of the proposed notice procedure and related notice form;

6. Approving Simpluris, Inc. as the third-party administrator;

7. Directing that notice be mailed to the Class; and,

8. Scheduling a hearing date for motions for final approval of class action settlement and awards of attorneys' fees and costs.

Good cause exists to grant this Motion because:

1. The Class meets all of the requirements for class certification for settlement purposes under Code of Civil Procedure § 382;

2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted by Plaintiff;

3. Plaintiff and Class Counsel are adequate to represent the Class;

4. The proposed notice procedures and related forms comply with California Rules of Court 3.766(d) and (e), adequately apprise Class Members of their rights, and fully comport with due process; and

5. Based on the foregoing, notice should be directed to the Class Members and a final fairness hearing should be scheduled (Plaintiff suggests about 135 days after preliminary

approval is granted).

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of Plaintiff's counsel, Plaintiff, Defendant and Defendant's counsel and the Settlement Administrator in support thereof, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

Dated: January 17, 2025

TUNYAN LAW, APC

By: ______________________________
Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff KARINA HUIZAR RODRIGUEZ

Dated: January 17, 2025

THE SENTINEL FIRM, APC

By: ______________________________
Seung Yang
Tiffany Hyun

Attorneys for Plaintiff KARINA HUIZAR RODRIGUEZ

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I. INTRODUCTION

Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiff KARINA HUIZAR RODRIGUEZ ("Plaintiff") respectfully requests that this Court preliminarily approve the proposed class action settlement set forth in the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT ("Settlement", "Settlement Agreement" or "Agreement") with Defendant TFC MANUFACTURING INC. ("Defendant"). The CLASS ACTION AND PAGA SETTLEMENT AGREEMENT used by the Parties is based upon the model agreement template made available by the Los Angeles Superior Court.

After informal discovery, the exchange of documents, and an arm's-length mediation session with an experienced mediator Michael Ludwig, Esq. Plaintiff and Defendant (collectively referred to herein as the "Parties") reached a proposed class action settlement with a gross settlement amount ("GSA") of **$275,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class consisting of approximately **175** members who did not sign individual settlement and release agreements with Defendant during the Class Period. Plaintiff believes that this settlement is a fair, adequate, and reasonable compromise of the disputed claims for alleged unpaid wage and hour violations and penalties asserted in this case.

Plaintiff now submits this Motion for Preliminary Approval of Class Action and PAGA Settlement, along with the Settlement (attached to the Declaration of Lilit Tunyan ["Tunyan Decl."], **Exhibit 1** thereto). For the Court's convenience, below is a summary of the key provisions of the Settlement.

II. THE MAJOR TERMS OF SETTLEMENT

The provisions of the proposed Settlement include the following:

- Defendant agrees not to oppose certification of a Class for purposes of Settlement only (Settlement, ¶ 12.1);
- <u>Class</u>: All non-exempt, hourly employees of Defendant who worked for Defendant in California during the Class Period (the "Class Period" is January 30, 2020 through October 25, 2024). (Settlement, ¶ 1.5, 1.11.) "Participating Class Members" are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶ 1.9, 1.35);

- Settlement Amount: Defendant will pay a maximum of **$275,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** payment per Class Member of approximately **$1,571.43** (Settlement, ¶ 1.22);
- Class Size: approximately **175** individuals who did not sign individual settlement and release agreements with Defendant during the Class Period and who worked an approximately **18,526** workweeks during the Class Period. (Settlement, ¶ 4.1, 8);
- PAGA Group Size: approximately **84** individuals who did not sign individual settlement and release agreements with Defendant during the PAGA Period and who worked an approximately **1,822** pay periods during the PAGA Period (Settlement, ¶ 4.1);
- PAGA Period: January 30, 2023 through October 25, 2024. (Settlement, ¶ 1.31);
- Escalator Clause: Based on its records, Defendant estimates that, as of October 25, 2024, (1) there are 175 Class Members who did not sign individual settlement and release agreements with Defendant during the Class Period and 18,526 Workweeks during the Class period. If the total number of Workweeks during the Class Period exceeds 18,526 by more than 10%, then Defendant shall increase the Gross Settlement Amount on a pro rata basis a pro-rata dollar value equal to the number of workweeks in excess of 20,379 workweeks. For example, if there is a 1% increase over 10% then the GSA increases by 1 (the "Escalator Clause"). (Settlement, ¶ 8);
- *Kullar/Munoz* Analysis: Plaintiff addresses the claims analysis herein, at Part V.B.3, and in more detail the Declaration of Lilit Tunyan, at Paragraph 18;
- No Reversion: The Settlement is a ***non-reversionary*** settlement (Settlement, ¶ 3.1);
- Certification: Plaintiff addresses certification requisites herein, at Part V.A., and in the Declaration of Lilit Tunyan, at Paragraphs 34-40;
- No Claim Form: No claim form is required (Settlement., ¶ 3.1);
- Class Release: The Settlement will release specified wage-and-hour claims for Class Members (those Class Members who do not opt out of the Settlement) (Settlement, ¶¶ 1.39, 5.2);

- PAGA Release: The Class Members will release the PAGA Claims set forth in this Action, that were identified in the First Amended Complaint and Plaintiff's LWDA Notice Letter, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 1.40, 5.3);
- Release Effective Date: The Release is not active until Defendant tender all payments required under the Settlement to the Settlement Administrator (Settlement, ¶ 5);
- Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys' fees and costs, service award to Plaintiff, administration costs, and the payment to the LWDA, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of workweeks each Class Member worked for Defendant within the Class Period. The Net Settlement Amount is estimated to be at least **$138,833.33**, resulting in an average **gross** payment per Class Member of **$1,571.43** and **net** payment per Class Member of at least **$793.33** before any tax withholdings. (Settlement, ¶ 3);
- Tax Allocation: The amounts distributed to Class Members will be characterized as 20% alleged unpaid wages, 80% to penalties and interest, and PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶ 3.2.4.1, 3.2.5.2);
- Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 3.1);
- Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, Simpluris, Inc. and the Parties estimated that the costs of administration should not reasonably exceed $10,000.00. Simpluris, Inc.'s low bid for settlement administration services in the amount of **$6,500.00** was selected as the lowest bid from a competitive bidding process. (Settlement, ¶ 3.2.3);
- Class Data for Administration: The Settlement Administrator will receive the Class List within 14 calendar days of Preliminary Approval, use the NCOA database to update the Class List, and then use skip tracing on returned Notices (Settlement, ¶ 4.2);

- Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 7.4.2). The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion (Settlement, ¶¶ 7.4 – 7.7);
- Notice Language: Notice will issue in English and Spanish (Settlement, ¶ 1.11);
- Objections: Objections can be submitted in person, through an attorney, or in writing to the Settlement Administrator (Settlement, ¶ 7.7);
- Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a written objection (Settlement, ¶¶ 7.5 and 7.7);
- PAGA Allocation: From the GSA, **$20,000.00** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq*. ("PAGA"), and seventy-five percent (75%), or **$15,000.00**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶¶ 1.34, 3.2.5.);
- Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Declaration of Lilit Tunyan;
- Enhancement/Service Award to Plaintiff: Defendant will not oppose the application for Class Representative Service Award of up to **$5,000.00** for Plaintiff, to be paid from the GSA (Settlement, ¶ 3.2.1);
- Fees and Costs: Defendant will not oppose Class Counsel's application for fees not to exceed 33 1/3% of the GSA **($91,666.67**), and actual costs, in an amount not to exceed **$18,000.00**, to be paid out of the GSA (Settlement, ¶ 3.2.2);
- Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 4.4.3);
- Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the California Controller's Unclaimed Property Fund (Settlement, ¶¶ 4.4.1, 4.4.3);
- Judgment Notice: Settlement Agreement, Class Notice and Judgment will be posted on the Settlement Administrator's website after entry (Settlement, ¶ 7.8.1);

- Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ 12.2).

(Tunyan Decl., ¶¶ 10-11 and Exhibit 1 thereto.)

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Claims

2.1. On January 30, 2024, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for: (1) Violation of Labor Code §§ 204, 510, 1194, 1198 (Failure to Pay All Wages); (2) Violation of Labor Code §§ 226.7, 512 (Failure to Provide Meal Periods; (3) Violation of Labor Code § 226.7 (Failure to Provide Rest Periods); (4) Violation of Labor Code § 226, (Failure to Keep Accurate Itemized Wage Statements); (5) Violation of Labor Code §§ 201-203 (Failure to Pay Wages Upon Termination of Employment); (6) Violation of Labor Code § 2802 (Failure to Reimburse For Necessary Expenditures); and (7) Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practices). On April 5, 2024, Plaintiff filed his First Amended Complaint adding the eighth cause of action adding a cause of action for civil penalties Under PAGA [Cal. Lab. Code § 2699, et seq.] ("PAGA") (the "Operative Complaint.") (Tunyan Decl., ¶ 3.)

Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice. (Tunyan Decl., ¶ 4.)

B. Pre-Settlement Data Production and Analysis

The Parties have conducted formal discovery and investigation of the facts and law. Such discovery and investigation have included, inter alia, the exchange of data including class members' contact information and discoverable information in preparation for the settlement negotiations. (Tunyan Decl., ¶ 5.) The Parties have analyzed payroll and other data pertaining to Plaintiff and the Class during the relevant Settlement Period, including but not limited to the numbers of former and current members of the Class, average workweeks, class members' time and pay records and average rate of hourly pay, wage and hour policies, class members' signed declarations and individual settlement and release agreements releasing claims alleged in this action. (*Id.*)

After reviewing documents regarding Defendant's wage and hour policies and practices and other information obtained during the exchange of discovery and interviewing class members, Class

Counsel were able to evaluate the probability of class certification, success on the merits, and the reasonably obtainable maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis prior to engaging in settlement negotiations. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (Tunyan Decl., ¶ 6.)

C. Settlement

On October 25, 2024, the Parties mediated before a mediator Michael Ludwig, Esq. who is a highly experienced and well-regarded mediator for wage and hour class action litigation. (Tunyan Decl., ¶ 7.) At the mediation, the Parties discussed at length the burdens and risks of continuing with the litigation considering Defendant's defenses and executed by some class members individual settlement and release agreements and declarations. (Tunyan Decl., ¶ 7.) The Parties have been able to reach a settlement at the mediation. The Parties have reached an agreement regarding the substantive terms of a class-wide settlement, pending the Parties' agreement on a long-form class settlement agreement. The Parties then signed a long form settlement agreement ("Agreement"). (*Id.*)

Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses thereto. Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a Settlement that confers substantial relief upon the Class. (Tunyan Decl., ¶8.)

Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class. (Tunyan Decl., ¶ 9.) Solely for the purpose of settling this case, the parties agree that the requirements for establishing class action certification with respect to this class have been met and are met. (*Id.*) If this Settlement is not approved by the Court for any reason, Defendant reserves its right to contest class certification. (*Id.*) This Settlement, if approved by the Court, will result in the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

IV. CLASS DEFINITION

The Class is defined as follows:

> All persons who worked for Defendant in California as an hourly paid, non-exempt employee and who did not sign individual settlement and release agreements with Defendant during the Class Period (the "Class Period" is January 30, 2020 through October 25, 2024.) "Participating Class Members" are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶ ¶1.5, 1.12, 1.35.)(Tunyan Decl., ¶ 34 and Exhibit 1.)

The PAGA Group Members are defined as follows:

> All persons who worked for Defendant in California as an hourly paid, non-exempt employee and did not sign individual settlement and release agreements with Defendant during the PAGA Period. (the "PAGA Period" is January 30, 2023 through October 25, 2024.) PAGA Group Members cannot opt out of the settlement of the PAGA claim. (Settlement, ¶¶ 1.4, 1.31.)

V. DISCUSSION

A. The Court Should Conditionally Certify the Class Because It Meets All the Requirements for Certification for Settlement Purposes Under CCP § 382

The Class should be provisionally certified for settlement because: (1) the Class is ascertainable and sufficiently numerous; (2) there exists a well-defined community of interest; and (3) a class action is the superior method of adjudication for this settlement. Code of Civ. Proc. § 382; *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012); *Linder v. Thrifty Oil Co*., 23 Cal. 4th 429, 435 (2000).

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest among its members and a "class action proceeding is superior to other means for a fair and efficient adjudication of the litigation." *See, e.g*., *Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement *only*, Defendant stipulated to conditional certification. (Settlement ¶ 12.1.)

"The certification question is 'essentially a procedural one that does not ask whether an action is legally or factually meritorious.'" *Id*., at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2000). Indeed, the certification question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment. *See, e.g*., *Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). "[I]t is also well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Global Minerals & Metals Corp. v. Superior*

Court, 113 Cal. App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). As the court noted in *Dunk*, although certification requirements are intended "to protect the interests of the non-representative class members," that concern is "protected by the trial court's fairness review of the settlement." *Dunk*, 48 Cal. App. 4th at 1807 n.19.

In view of these standards, and as shown below, the Class should be certified for purposes of settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

1. The Members of the Class Are Both Objectively Ascertainable and Sufficiently Numerous.

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, Plaintiff contends that all three considerations favor class certification.

A class is ascertainable when "it is defined 'in terms of objective characteristics and common transactional facts' that make 'the ultimate identification of class members possible when that identification becomes necessary.'" *Noel v. Thrifty Payless, Inc*., 7 Cal. 5th 955, 980 (2019). No set number of class members is required to maintain a class action. *Hebbard v. Colgrove*, 28 Cal. App. 3d 1017, 1030 (1972). In fact, the California Supreme Court has upheld a class of as few as ten members. *Bowles v. Superior Court*, 44 Cal. 2d 574 (1955).

The class definition is sufficiently specific to enable the Parties, Class Members, and the Court to readily determine the parameters of the class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 617 (1987). In this case, there are approximately 175 Class Members, all of whom may be identified by reference to Defendant's records that pertain to non-exempt status and dates of employment and who did not sign individual settlement and release agreements. In addition, to facilitate the administration of the Settlement, Defendant has agreed to share the information from their records and has already demonstrated that they can do so when providing class-wide discovery to Plaintiff to facilitate settlement discussions and respond to discovery. Accordingly, the Class is not only ascertainable, but also sufficiently numerous. (Tunyan Decl., ¶ 35.)

2. There Are Common Questions That Predominate Over Any Questions That May Be Unique to Individual Class Members.

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. *Dunk*, 48 Cal. App. 4th at 1806; *Richmond*, 29 Cal. 3d at 473-75. A question of law or fact is common to the members of a class if it may be resolved through common proof. *See, Jaimez*, 181 Cal.App.4th at 1305. As for predominance, it "is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate."' *Sav-on*, 34 Cal. 4th at 334, quoting *Reyes v. Los Angeles County Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1278 (1979).

In this case, common questions include, but are not limited to: i. Whether or not Defendant paid proper wages to the Class; ii. Whether or not Defendant provided meal periods to the Class; iii. Whether or not Defendant provided rest periods to the Class; iv. Whether or not Defendant paid compensation timely upon separation of employment to former Class Members; v. Whether or not Defendant paid compensation timely throughout Class Members' employment; vi. Whether or not Defendant provided accurate itemized wage statements to the Class; vii. Whether or not Defendant reimbursed necessary business expenses in compliance with California Labor Code §2802; viii. Whether or not waiting-time penalties are available to the Class for violation of California Labor Code § 203; ix. Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208; and x. Whether or not Plaintiff and the Class are entitled to penalties pursuant to PAGA (Tunyan Decl., ¶¶ 37-38.)

In the Action, Plaintiff's claims present sufficient common issues of law and fact that predominate over individual issues and warrant class certification. From their review of the documentation provided, Class Counsel determined that for purposes of these claims, Defendant policies and practices are either identical, or sufficiently similar, to raise the same questions of liability, and applied to all Class Members. Because Class Members would have to prove the same issues of law and fact to prevail, and because their potential legal remedies are identical, it would be preferable to resolve all Class Members' claims by means of the Settlement than to require each Class Member to litigate his or her individual claims. Therefore, common questions predominate over any questions that may be unique to individual Class Members, and class-wide settlement is superior to any other method of resolution.

3. Plaintiff's Claims Are Typical of Those of the Class.

Typicality "requires a showing that the class representative has claims or defenses typical of the class." *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1534 (2008), citing *Fireside Bank v. Superior Court*, 40 Cal. 4th 1069, 1089 (2007), and *Sav-On*, 34 Cal. 4th at 326, approved by *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004 (2012). California law does not require that plaintiffs have claims identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct. *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007).

In light of these standards, Plaintiff is typical of class members. Like other Class Members, Defendant employed Plaintiff in a non-exempt position during the Class Period, and Plaintiff claims that he was subject to the same policies alleged to have impacted the entire class. (Tunyan Decl., ¶ 36.) Plaintiff alleges that he and other Class Members share the same claims stemming from Defendant's alleged violations of the Labor Code and relevant wage order. In addition, Defendant's main defenses, including that the wage and hour policies and practices fully comply with California law, apply equally to the claims of all Class Members. Thus, Plaintiff is typical of the Class.

4. Plaintiff and Plaintiff's Counsel Will Adequately Represent the Class.

The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to class members' interests. *McGhee v. Bank of America*, 60 Cal.App.3d 442, 451(1976). In other words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's ability to represent the class. *Id.*

In the Action, Plaintiff has no conflicts of interest with other Class Members and has agreed to place Class interests above Plaintiff's own. (Rodriguez Decl., ¶¶ 4-22; Tunyan Decl., ¶ 39.) Moreover, Plaintiff's counsel are experienced in wage and hour class action litigation and have no conflicts of interest with absent Class Members. (Tunyan Decl., ¶¶ 20-26, 39, Seung Yang Decl., ¶¶3-18.) As such, this Court should appoint Plaintiff as Class Representative for the Class and appoint Plaintiff's Counsel as Class Counsel.

5. Proceeding as a Class Action is Superior to Individual Actions

Plaintiff contends that proceeding as a class action is a superior means of resolving this dispute, as the Class Members and the Court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged Labor Code violations. *See Linder v. Thrifty Oil Co.* 23 Cal. 4th at 434. Furthermore, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results, which may be avoided by class certification.

6. The Proposed Class Notice Complies with Rule 3.766(d) and (e)

Notice requirements are set forth in Rules of Court, Rule 3.766. In determining the manner of the notice, the court must consider the interests of the class, the type of relief requested, the stake of the individual class members, the cost of notifying class members, the resources of the parties, the possible prejudice to class members who do not receive notice, and the *res judicata* effect on class members. Rules of Court, Rule 3.766(e).

a) The Notice Procedure Satisfies Due Process

The proposed procedure for distributing the Proposed Notice is robust and more than meets the minimal requirement that it have "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Sup. Ct.*, 50 Cal.App.3d 960, 974 (1975). There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the Class Members will receive direct mailed notice. Here, the proposed procedure includes safeguards, including, but not limited to, mailing notice to Class Members' last known addresses; skip tracing; searches for address changes; and the re-mailing of returned notices to any forwarding addresses. This manner of giving notice complies with Rule of Court 3.766(c) because it provides a reasonable chance that Class Notice will reach most if not all Class Members.

b) The Notice is Accurate and Informative

The proposed Notice of Class Action Settlement should be approved for dissemination to the Class Members because its content complies with Rule of Court 3.766(d) in that it contains a brief explanation of the case, including the basic contentions or denials of the Parties, detailed information about Class Members' rights to be excluded from the Settlement and object to the Settlement; a statement that the Settlement will bind all members who do not timely opt-out. Thus, the Notice also satisfies Rule of Court3.769(f) regarding the contents of settlement notices.

The Notice also fulfills the requirement of neutrality in class notices. 3 NEWBERG § 8.39. It summarizes the proceedings and the terms and conditions of the proposed Settlement, in an informative and coherent manner, in compliance with the Manual for Complex Litigation ("MANUAL"), (2d Ed. 1993), which states that "the notice should be accurate, objective, and understandable to Class Members . . .." MANUAL, § 30.211. It makes clear that the Settlement does not constitute an admission of liability by Defendant and recognizes that this Court has not ruled on the merits. It also states that the final settlement approval decision has yet to be made. Accordingly, the Notice complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

B. <u>The Court Should Preliminarily Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims in View of Defendant' Potential Liability Exposure and the Risks of Continued Litigation</u>

California courts favor settlement. *See, e.g.*, *Stambaugh v. Superior Court*, 62 Cal. App. 3d 231, 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed below, this Court should preliminarily approve the Settlement, allow the Parties to give notice to the Class as proposed, and schedule a final fairness and final approval hearing.

1. Class Action Settlements Are Subject to Review and Approval.

Any settlement of class litigation must be reviewed and approved by the presiding court. Rules of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial court and (2) a subsequent (final) review after notice has been distributed to the class members. The Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks *preliminary approval* and the setting of a Final Approval Hearing.

To evaluate a settlement, the trial court must receive "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail, Inc*., 168 Cal. App. 4th 116, 133 (2008). However, the record need *not* contain an explicit statement of the maximum theoretical amount that the class could recover. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,* 186 Cal. App. 4th 399, 409 (2010).

2. The Parties Reached the Settlement Through Arms' Length Negotiations Between Experienced Counsel After Sufficient Data Was Exchanged to Evaluate Settlement.

A settlement is presumptively fair where it is reached through arms' length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors is small.[1] *Dunk*, 48 Cal.App.4th at 1802; *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v. Southland Corp*., 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g*., *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, at 1801, quoting *Officers for Justice v. Civil Serv. Comm'n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

Relevant factors in making this determination, include, but are not limited to:

> [T]he complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Id. These factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the factors

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[1] Because the fourth prerequisite for the presumption to arise cannot be addressed until the final approval hearing, only the first three prerequisites are relevant at this preliminary stage of the settlement approval process.

considered to each case and give due regard to "what is otherwise a private consensual agreement between the parties." *Id.*

Here, the Settlement resulted from thorough, arms' length negotiations between experienced counsel with the assistance of highly regarded mediator. (Tunyan Decl., ¶¶ 7-9.) With respect to the claims at issue in this case, Plaintiff obtained employees' pay and time data from Defendant and then carefully reviewed that information. Counsel for Plaintiff also examined relevant policies.

Based on the totality of that review, Plaintiff estimated the potential exposure and then estimated risk factors to adjust the reasonable expected outcome. The investigation and discovery that Plaintiff's counsel conducted were sufficient to provide them with enough information to intelligently evaluate the estimated exposure in this action for purposes of negotiating the Settlement in view of the risks discussed below and are also sufficient to allow this Court to do the same. *See, e.g.*, *Wershba v. Apple Computer, Inc.,* 91 Cal. App. 4th 224, 245 (2001).

3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise of Class Members' Claims Based on Defendant' Estimated Liability Exposure Given the Risks Continued Litigation Would Entail.

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial and does not have to provide 100% of damages sought to be fair and reasonable. "In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba*, 91 Cal. App. 4th at 250. Accordingly, because settlements involve compromise, even one that provides for substantially narrower relief than would likely be obtained if the suit were successfully litigated can be reasonable given that "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id., quoting Air Line Stewards & Stewardesses Ass'n, Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).

With respect to the claims asserted on behalf of the Class in this case, there are serious risks that support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiff would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC*

2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial); (ii) the risk that Defendant's meal and rest period policies might not ultimately support class certification or a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28 (citing Court of Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability of proposition); (iii) the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and practices could preclude class-wide awards of statutory penalties under Labor Code §§ 203 and 226(e); (iv) the risk that individual differences between Class Members could be construed as pertaining to liability and not solely to damages, *see Duran,* 59 Cal. 4th at 19; (v) the risk that any civil penalties award under the PAGA could be reduced by the Court in its discretion, *see* Labor Code § 2699(e)(1); (vi) the risk that class treatment could be deemed improper as to one or more claims, except for settlement purposes; and, (vii) the risk that appellate litigation could ensue; (viii) the risk that violation rate estimates would prove much lower than expected. (Tunyan Decl., ¶ 15.) These risks are non-exhaustive.

In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and reasonable recovery for the Class Members. (Tunyan Decl. ¶¶ 12-19.) The settlement amount is, of course, a compromise figure. (Tunyan Decl. ¶ 16.) By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the approximately **175** members of the Class, the average ***gross*** recovery is at least **$1,571.43** per class member, and the estimated average ***net*** recovery for each Class Member is approximately **$793.33** (*Id.*) Given that Defendant could challenge certification and liability, this is a significant sum to have achieved in settlement. Moreover, <u>a Class Member who worked a greater number of weeks for Defendant will receive a larger share of the Settlement</u> than a Class Member who worked for a shorter amount of time during the class period. (*Id.*)

After analyzing the claims in this matter, Plaintiff has concluded that the Gross Settlement Amount of **<u>$275,000.00</u>** is about 75% of the **$368,930.85** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. (Tunyan Decl., ¶ 17.) This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. (*Id.*) The maximum calculated reasonable exposure is **$2,331,162.75**, including PAGA penalties. (*Id.)*

- A reasonably estimated exposure for unpaid wages for time rounding was calculated, with the assistance of an expert, to be approximately **$328,686.75**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **$65,737.35**, assuming certification probability of 50% and merits success at 40%.
- A reasonably estimated exposure for unpaid wages for off-the-clock work was calculated, with the assistance of an expert, to be approximately **$407,572.00**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **$61,135.80**, assuming certification probability of 50% and merits success at 30%.
- A reasonably estimated exposure for rest break violations over the class period was calculated at **$407,572.00,** but with chances of certification and proof of liability (50% and 30% respectively) for a risk-adjusted exposure of **$61,135.80.**
- A reasonably estimated exposure for meal break violations over the class period was calculated at **$407,572.00** with chances of certification and liability risks (50% and 40% respectively) resulting in a risk-adjusted exposure of **$81,514.00**.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **$22,345.00** and **$29,568.00,** respectively, on maximum exposures of **$223,450.00** and **$295,680.00,** respectively (50% and 20% respectively).
- A reasonably estimated exposure for unreimbursed expenses was calculated at **$92,630.00**, with chances of certification and liability risks (50% and 30% respectively) resulting in a risk-adjusted exposure of **$13,894.50.**
- Performing risk-adjusted valuations for all claims yields a total value in the range of **$335,330.85**, excluding PAGA. (*Id.*)
- PAGA penalties were calculated as having a maximum realistic exposure of **$168,000.00**, but a risk adjusted value of **$33,600.00**, after factoring in risks of reduction in penalties pursuant

to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

The concurrently filed Declaration of Lilit Tunyan sets forth claim valuation in additional detail. (*See*, Tunyan Decl., ¶ 17.)

This result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Tunyan Decl., ¶ 18.) Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. (Tunyan Decl., ¶ 18.) Third, the certification rates in California are lower than conventional wisdom holds. *See*, H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html; *see also, Findings of the Study of California Class Action Litigation*, 2000-2006, available at http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf (finding, at page 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement ***or*** as part of a contested certification motion).

Here, the estimated certification probabilities are ***above*** the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. (Tunyan Decl., ¶ 18.) In sum, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. (*Id.*) The recovery is roughly **12%** of the maximum plausible recovery (estimated to be approximately **$2,331,162.75** including PAGA), which falls within the expected outcome under the likelihood of success metric. (*Id.*) This Settlement achieves the goals of the litigation.

4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate, and Reasonable.

The proposed method of allocating the Settlement Fund to Class Members also is fair and reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members based on time worked by the Class Member during the Class Period, in relation to the total amount of time worked by all participating Class Members collectively during the class period. This proposed method is fair and reasonable because each Class Member's actual potential damages vary based on the number of workweeks he or she actually worked (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when a higher number of incidents occur). A Class Member who worked a greater number of weeks for Defendant will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time during the relevant period. (Tunyan Decl., ¶¶ 11, 17.)

5. The Proposed Enhancement Award to Plaintiff Is Fair, Adequate, and Reasonable and Warrants Preliminary Approval.

The proposed enhancement payment to Plaintiff is intended to recognize the substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.,* 901 F. Supp. 294 (N.D.Cal. 1995) (approving a $50,000 enhancement award). Plaintiff contributed time to the prosecution of this matter, including assistance prior to the settlement negotiations and during settlement negotiations with information and substantial time conferring with counsel over the course of this litigation and before it was filed. (Rodriguez Decl., ¶¶ 4-22; Tunyan Decl., ¶ 32.) The enhancement also recognizes the considerable risks Plaintiff undertook on behalf of the Class as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued a former employer, making future employment prospects uncertain and general release of all claims beyond wage-and-hour claims released in this action.

6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Preliminary Approval.

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorney's fees in California Courts:

> We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the

> court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation (See pt. I, *ante; Lealao, supra*, 82 Cal.App.4th at pp. 48–49, 97 Cal.Rptr.2d 797; *Rawlings v. Prudential–Bache Properties, Inc., supra*, 9 F.3d at p. 516)—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Laffitte v. Robert Half Intern. Inc., 1 Cal. 5th 480, 503 (2016).[2] Thus, this Court may and, pursuant to *Laffitte, should* award fees to Plaintiff's counsel based upon the percentage of the fund methodology.

Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund method or the lodestar method is used, the outcome is roughly the same: "'[F]ee awards in class actions average around one-third of the recovery' regardless of 'whether the percentage method or the lodestar method is used.'" *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521 (2021). This is also consistent with counsels' experience in class cases. Here, Plaintiff's attorneys intend to request attorneys' fees of up to $91,666.67 (one-third of the GSA), and costs capped at $18,000 (which includes payment for filing fees, service of process fees, mediation fees, expert fees and other standard expenses). (Tunyan Decl., ¶ 31.) Given the efforts and risks involved in this case, as well as the results achieved, these amounts are within the range of reasonableness and warrant *preliminary approval*.

7. The Proposed Payment to the Administrator Is Fair and Reasonable

In deciding whether to approve a proposed settlement, a trial court must determine if the proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In exercising this power, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Simpluris, Inc., which has been selected due to its competitive bid, estimates that administration can be performed for **$6,500.00**. In counsel's experience, based on similar wage-and-hour actions, an estimated cost of **$6,500.00** is a fair and reasonable amount for administration fees and should be preliminarily approved. (Tunyan Decl., ¶

[2] The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases." *Laffitte*, 1 Cal. 5th at 501.

33.)

8. The PAGA Allocation is Reasonable

The ultimate decision as to the amount of PAGA penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: "In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

Prior to the issuance of *Moniz v. Adecco USA, Inc*., 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions addressing that question. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. *O'Connor v. Uber Technologies, Inc*., 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) ("By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the Defendant employer and other employers, an objective of PAGA."); *see also Viceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D. Cal. 2016) ("Applying O'Connor's sliding scale approach, settlement of the PAGA claim may be substantially reduced below its standalone settlement value without sacrificing its statutory purposes because the non PAGA settlement is relatively substantial.")

Moniz then provided explicit confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz* said:

> [W]hile PAGA does not require the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for settlements that prevents " ' " 'fraud, collusion or unfairness' " ' " (Dunk, supra, 48 Cal.App.4th at pp. 1800–1801, 56 Cal.Rptr.2d 483), and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement.
>
> Given PAGA's purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair in view of PAGA's purposes and policies.

> (*O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1132–1134; *Jordan v. NCI Group, Inc.* (Jan. 5, 2018, No. EDCV 16-1701-JVS) 2018 WL 1409590, at *1–*2, 2018 U.S. Dist. Lexis 25297, at *3–*4; *Chamberlain v. Baker Hughes, a GE Co., LLC, supra*, 2020 WL 4350207 at *3–*4, 2020 U.S. Dist. Lexis 134582 at *10–*11; see *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 59, 61–62, 45 Cal.Rptr.3d 647 [where the Legislature required court approval of private settlements of Proposition 65 actions brought to vindicate the public interest, court must evaluate the resulting consent decree to determine if it is "just" and "serves the public interest"].) We therefore hold that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws. (*See Williams, supra*, 3 Cal.5th at p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA "sought to remediate present violations and deter future ones"]; *Arias*, *supra*, 46 Cal.4th at p. 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 [the declared purpose of PAGA was to augment state enforcement efforts to achieve maximum compliance with labor laws].) The trial court below used this standard.

Moniz, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with the federal courts that have considered how to evaluate a PAGA settlement, concluded that the class action factors are appropriately considered, along with a consideration of whether the settlement furthers "PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws."

As to the first set of elements (the class-type analysis), it is embodied in Plaintiff's discussion of the adequacy of the settlement generally. Using class settlements as a source of analogous settlement review standards, to assess the fairness, adequacy, and reasonableness of a settlement, the court should also consider the expense, complexity and likely duration of further litigation. *Dunk*, 48 Cal. App. 4th at 1801. Here, the expense, complexity and likely duration of future litigation as it pertained to Plaintiff's PAGA claims was to some extent an unknown. However, what is certain is that to adequately establish the foundational violations that would support a substantial penalty award, tremendous time and expense would be invested. To adequately establish that aggrieved employees experience the alleged violations, and at what frequency, most of the aggrieved employees would need to be interviewed in a systematic fashion and their testimony cataloged in way sufficiently meaningful to permit the submission of summary evidence at trial, such as via survey. *First,* the burdensome nature of such a process would be expensive and time-consuming. *Second*, substantial risk that the Court would either substantially reduce any penalty ultimately awarded *or* conclude that the conduct was insufficient to support a penalty award. *Third*, it would be essentially impossible to formulate an objectively reliable means of summarizing testimonial experiences, other than by an extraordinarily detailed survey. And formulating such a survey would have been important, since frequency of violations would need to be established before any penalties could be recovered. At least as to claims such as meal period and rest break violations, the decisions of aggrieved employees are a major factor in assessing liability. In sum, the evidence collected to date leads Plaintiff to conclude that, direct testimony would have been required from as many of the roughly 75 aggrieved employees as could be obtained, which would be, at best, very difficult. Proof of this sort gives rise to a manageability argument that could substantially reduce the size of the aggrieved employee group.

The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*, PAGA's purposes include (1) remediation of present labor law violations, (2) deterrence of future violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major portion of settlement funds to class members still advances the goal of labor law violation remediation. Class members benefit from payments intended to offset the harm of alleged violations of wage and hour requirements. The allocation of a major portion of settlement funds to class members also deters future violations, since, from the perspective of an employer, where settlement funds go is less significant than the fact that settlement funds are issuing at all. Finally, allocation of a major portion of settlement funds to class members still advances the goal of enforcement of state labor law. This settlement is, by definition, a response to alleged violations of state labor laws, balanced against the competing factors of uncertainty of proof and other risks.

A final note on the analysis discussion in *Moniz* is appropriate. *Moniz* was concerned with the standard applied to a standalone PAGA action, not a settlement in which money was allocated between class and PAGA claims. Here, the adequacy of the settlement as a whole impacts the factors approved of by *Moniz*. It would be misleading to examine only the PAGA portion of the settlement without asking how this Settlement as a whole is consistent with the purposes of PAGA. Second, the discussion of "fairness" to those impacted by the settlement in *Moniz* does not play a role in this matter. In *Moniz*, the Court found the record lacked any support for the disparate allocation of PAGA penalties between different types of employees: "[T]he settlement's allocation of shares of civil penalties to Colleagues that are fifteen times greater than the shares allocated to Associates does not seem to have been justified below and may be contrary to PAGA's purposes." *Moniz*, 72 Cal. App. 5th at 87. Here, PAGA penalties are allocated by pay period, irrespective of job classification, an equitable method of allocation.

In addition, there is no evidence that a court or a commissioner had informed Defendant that any conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v. Xerox Bus. Servs., LLC,* 2013 WL 6053831, *7-8 (E.D. Cal. 2013) ("Under California law, courts have held that employers are not subject to heightened penalties for subsequent violations until and unless a court or commissioner notified the employer that it is in violation of the Labor Code.") And in *Cotter*, the court found a significant reduction of the PAGA claim would be appropriate because "[t]his does not appear to be a case where a company has deliberately sought to evade the law." *Cotter v. Lyft, Inc*., 176 F. Supp. 3d 930, 941 (N.D. Cal. 2016). Here, Defendant can state a strong case that, as the Court concluded in *Cotter*, the efforts to devise compliant operational policies do not indicate an organization that has deliberately sought to evade the law. This is a very significant risk factor.

Finally, the PAGA allocation is fair. The LWDA is receiving $15,000.00. The Class is receiving, net, an estimated $138,833.33 for the releases for eight theories of recovery (excluding the $5,000.00 as the aggrieved employees' share of the PAGA Allocation). An allocation to the LWDA equal to roughly **11%** of the Net Settlement Amount is not unfair and satisfies the policies underlying California's wage and hour laws.

VI. THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING

The last step in the settlement approval process is the fairness hearing, where the Court makes a final determination about the propriety of settlement. Plaintiff requests that the fairness hearing in this case be scheduled for about 130 days after issuance of the Court's Order granting preliminary approval of the Settlement. Under the Settlement, the Defendant will have 14 days to provide the mailing data to the Settlement Administrator, which will then have 14 days to mail out class notice. Class Members have 60 days after mailing of the notice to submit exclusions or objections (with a 14-day extension available for late-returned and re-mailed notices). Therefore, Plaintiff proposes a final approval hearing scheduled for the first available hearing date that is about 130 days after preliminary approval is granted.

VII. CONCLUSION

For all the foregoing reasons, because the Class meets the requirements for certification, because the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant this Motion for Preliminary Approval, adopt the [Proposed] Order Granting Preliminary Approval of Class Action Settlement submitted herewith, and schedule a Final Fairness Hearing.

Respectfully submitted,

Dated: January 17, 2025

TUNYAN LAW, APC

By: ______________________________

Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff KARINA HUIZAR RODRIGUEZ

Dated: January 17, 2025

THE SENTINEL FIRM, APC

By: ______________________________

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Attorneys for Plaintiff KARINA HUIZAR RODRIGUEZ

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 355 S. Grand Ave., Suite 1450 Los Angeles, California 90071.

On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

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[✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service **CASEANYWHERE**. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 17, 2025 at Glendale, California.

Karen Arellano

KAREN ARELLANO
Name

Signature