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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SISILIA LEALAO, an individual; BRYAN RAGONE, an individual; BRANDON RIVAS, an individual, on behalf of themselves and all others similarly situated and the general public,

Plaintiffs,

v.

U.S. AVIATION SERVICES CORP., a Nevada corporation; and DOES 1 to 100, inclusive,

Defendants.

) Case No.: 24STCV03049

) **Assigned to All Purposes to:**
) **Hon. Samantha P. Jessner**
) **Dept. SSC-7**

) **MEMORANDUM OF POINTS &**
) **AUTHORITIES IN SUPPORT OF**
) **MOTION FOR PRELIMINARY**
) **APPROVAL OF CLASS AND PRIVATE**
) **ATTORNEYS GENERAL ACT**
) **SETTLEMENT**

) **Date: May 5, 2025**

) **Time: 9:00 AM**

) **Dept.: SSC-7**

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1 **I. INTRODUCTION**

2 Plaintiffs Sisilia Lealao, Brandon Rivas and Bryan Ragone (“Plaintiffs”) respectfully
3 request that the Court preliminarily approve the Class Action and Private Attorneys General
4 Act (“PAGA”) Settlement Agreement and Class Notice (“Agreement”) entered into between
5 Plaintiffs and Defendant U.S. Aviation Services Corp. (“Defendant”). The proposed settlement
6 seeks to resolve claims in this matter in exchange for a non-reversionary \$705,000 Gross
7 Settlement Amount. The settlement class consists of all individuals who are or were employed
8 by Defendant as nonexempt employees in California during the Class Period of January 24,
9 2020 through November 1, 2024.

10 The Agreement and Notice distribution plan are the products of adversarial, arm’s-
11 length negotiations by informed counsel and parties, facilitated by an experienced mediator.
12 The settlement is fair, reasonable, and adequate to all. Plaintiffs analyzed the strengths and
13 vulnerabilities of the claims with Defendant’s potential exposure and determined the \$705,000
14 proposed settlement is well within the range of reasonableness and is in the Class Members’
15 best interests. The length and risks of continued litigation and trial that affect the values of the
16 claims were all carefully weighed. In addition, the defenses asserted by Defendant, the
17 uncertainty of class certification, the difficulties of complex litigation, the lengthy process of
18 establishing specific damages and possible delays and appeals, were also considered by
19 Plaintiffs and counsel in negotiating the proposed settlement. Further, the proposed settlement
20 satisfies the criteria for preliminary approval under California Rules of Court, Rule 3.769.

21 Accordingly, Plaintiffs seek: (1) preliminary approval of the settlement; (2) provisional
22 certification of the Class; (3) appointment of Plaintiffs as Class Representatives;
23 (4) appointment of Bartz Law Group, APC; United Employees Law Group, PC; Crosner Legal
24 P.C.; and Melmed Law Group as Class Counsel; (5) approval of the Parties’ proposed Notice
25 of Class Action Settlement (“Notice”) and method of notifying the Class Members; (6) a hearing
26 date for Plaintiffs’ Motion for Final Approval of Class Action Settlement; and (7) entry of an
27 Order Granting Preliminary Approval of Class Action Settlement.
28

II. BACKGROUND/LITIGATION HISTORY

Defendant operates a fleet cleaning, maintenance, and repair service business for the airline industry. Defendant employed Plaintiff Rivas in California as a full-time hourly-paid ramp agent from June 2022 until September 2024. Plaintiff Lealao worked within California as a non-exempt hourly employee for Defendant between 2021 and August 2023. Plaintiff Ragone worked out of the Ontario airport as an hourly-paid Baggage Handler/Ramp Agent for the company for approximately one year until he resigned in December of 2023. (Declaration of Sepideh Ardestani “(Ardestani Decl.”), ¶ 13.)

On January 24, 2024, Plaintiff Rivas (“Rivas”) filed a putative class action complaint in San Bernardino County Superior Court, captioned *Brandon Rivas v. U.S. Aviation Services Corp.*, Case No. CIVSB2403694 (the “Rivas action”). On April 22, 2024, the Rivas action was removed to the United States District Court – Central District, Case No. 5:24-cv-00855-FWS-SHK. Similarly, on February 5, 2024, Plaintiff Lealao filed a putative class action complaint in Los Angeles County Superior Court, captioned *Sisilia Lealao v. U.S. Aviation Services Corp.*, Case No. 24STCV03049. On March 21, 2024, Plaintiff Ragone filed a putative class action complaint in San Bernardino County Superior Court, captioned *Bryan Ragone v. U.S. Aviation Services Corp.*, Case No. CIVSB2409463 (the “Ragone action”). Lastly, on April 9, 2024, Plaintiff Ragone also filed a standalone representative action complaint in the San Bernardino County Superior Court seeking penalties under the Private Attorneys General Act, Labor Code section 2698 et seq., captioned *Bryan Ragone v. U.S. Aviation Services Corp., United Services Companies, Inc.*, Case No. CIVSB2411967.

Together, Plaintiffs allege claims for (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide rest periods and pay missed rest period premiums; (4) failure to provide meal periods and pay missed meal period premiums; (5) failure to maintain accurate employment records; (6) failure to pay wages timely during employment; (7) failure to pay all wages earned and unpaid at separation; (8) failure to indemnify all necessary business expenditures; (9) failure to furnish accurate itemized wage statements; (10) unfair business

practices; and (11) cause of action for civil penalties under the Private Attorneys General Act of 2004 (“PAGA”). (Ardestani Decl., ¶ 15.)

On November 14, 2024, the Parties participated in a global mediation with Kim Deck, Esq., a respected wage and hour class action mediator. The mediation lasted a full day and the Parties reached agreement on all major issues. They then formally reduced the proposed settlement to the Agreement now before the Court for approval. The Agreement meets the requirements in the LASC Checklist for Preliminary Approval. The Agreement has also been uploaded to the LWDA. (Ardestani Decl., ¶ 16.)

Finally, as part of the tentative settlement, the Parties agreed Plaintiff Lealao would file an amended complaint in this matter for purposes of seeking court approval of the global settlement, to add plaintiffs Rivas and Ragone as party-plaintiffs, and otherwise conform the allegations in the FAC with the terms of the proposed settlement. Consequently, pursuant to the Parties’ stipulation, Plaintiff Lealao filed the First Amended Complaint on March 18, 2025. Upon final approval of the settlement, the *Rivas* and *Ragone* Actions will be dismissed. (Ardestani Decl., ¶ 17.)

III. INVESTIGATION

Prior to the mediation, Defendant provided Plaintiffs with extensive informal discovery, including Plaintiffs’ personnel, time, and payroll records, time records and payroll records for a randomly selected sampling of about 85% of the Class Members,¹ wage statement exemplars, Defendant’s employee handbooks, including Defendant’s policies and procedures regarding the payment of wages, the provision of meal and rest breaks, timekeeping policies (including recording hours), issuance of wage statements, and termination wages, as well as information regarding the number of putative Class Members who are current and former employees, the number of putative Aggrieved Employees, the number of workweeks throughout the Class Period, and the number of pay periods throughout the PAGA Period. From this information,

¹ Which sample Plaintiffs’ experts confirmed would be statistically reliable. (Ardestani Decl., ¶ 18.)

1 Plaintiffs were able to analyze Defendant’s liability for the claims asserted in this case and, with
2 the assistance of Plaintiffs’ experts at Berger Consulting Group, the potential exposure and
3 damages. (Ardestani Decl., ¶ 18.)

4 Based on this informal discovery, Plaintiffs contend the Class Members were not paid
5 all minimum or overtime wages, did not receive proper expense reimbursement, were not
6 provided with legally compliant meal and rest periods, did not receive compliant wage
7 statements, and did not receive all wages due on separation of employment. In considering the
8 reasonableness of the proposed settlement, Plaintiffs considered each of Defendant’s
9 counterarguments, which sharply contested Plaintiffs’ claims. Plaintiffs’ Counsel weighed the
10 strength of Defendant’s arguments, including the risks of prevailing at class certification and
11 on the merits, and determined that the proposed settlement is in the best interests of the Class.
12 Although remaining confident in the strength of their claims, all these factors led Plaintiffs to
13 discount the exposure analysis, discussed in detail below. (Ardestani Decl., ¶ 19.)

14 **IV. TERMS OF THE PROPOSED SETTLEMENT**

15 **A. Deductions from the Settlement**

16 The Parties agreed to resolve the matter for the non-reversionary sum of \$705,000.00
17 (“Gross Settlement Amount” or “GSA”) (Agreement, §§ 1.22, 3.1). The GSA includes:
18 (a) attorney’s fees of up to \$235,000 (one-third of the GSA)² to compensate Class Counsel for
19 work already performed and all work remaining to be performed (Agreement, § 3.2.2.);
20 (b) actual litigation expenses not to exceed \$30,000.00³ (*Id.*); (c) a representative enhancement
21 to each Plaintiff not to exceed \$7,500 (\$22,500 total) (Agreement, § 3.2.1); (d) Administration
22 Costs to Apex Class Action, LLC (“Apex”) in an amount not to exceed \$10,900.00 (Agreement,
23

24
25 _____
26 ² The percentage method, with or without a lodestar cross-check, may be used in common fund cases
27 like this one. *Laffitte v. Robert Half Int’l., Inc.* (2016) 1 Cal.5th 480, 503. In support of their fee request
28 at Final Approval, Class Counsel will provide the Court with lodestar information to permit the Court
to do a lodestar cross-check in connection with Class Counsel’s request for attorney’s fees.

³ At Final Approval, Class Counsel will provide documentation regarding actual expenses incurred to
support Class Counsel’s request for reimbursement of actual expenses.

§ 3.2.3); and (e) PAGA penalties to the LWDA of \$37,500.00 (which is 75% of the \$50,000.00 PAGA Payment, with the remaining 25% or \$12,500.00 to Aggrieved Employees) (Agreement, § 3.2.5). Employer-side payroll taxes (including FICA, FUTA, and SDI) will be paid by Defendant separate and apart from the GSA. (Agreement, § 3.1.)

B. Calculation of the Individual Settlement Payments to Class and Aggrieved Employees

After all Court-approved deductions from the GSA, approximately \$332,500 (“Net Settlement Amount” or “NSA”), less all applicable employee-side taxes, will be distributed to the estimated 496 Class Members, with an average individual settlement payment of approximately \$670.⁴ Additionally, the 25% PAGA Payment (\$12,500.00) will be distributed to the estimated 315 Aggrieved Employees, resulting in an average payment of \$39.68⁵ per Aggrieved Employee. (Ardestani Decl., ¶ 21.) Under no circumstances will any portion of the Settlement revert to Defendant. (Agreement, § 3.1.)

Subject to the terms and conditions of the Settlement, Apex will calculate and issue Individual Settlement Payments to Participating Class Members based on the following formula: (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member’s Workweeks. (Agreement, § 3.2.4.)

Additionally, Apex will calculate and issue payments to Aggrieved Employees based on the following formula: (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$12,500.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods. Therefore, the value of each PAGA

⁴ \$332,500 NSA / 496 Class Members

⁵ \$12,500 (25% PAGA Payment) / 315 Aggrieved Employees

1 Member's share of the PAGA Payment ties directly to the amount of pay periods that he or she
2 worked. (Agreement, § 3.2.5.1)

3 The number of pay periods and weeks worked by each Participating Class Member and
4 PAGA Member will be derived from Defendant's records. (Agreement, § 1.8) Each Class
5 Member's Individual Class Payment will be apportioned as follows: 20% wages and 80%
6 penalties and interest. (Agreement, § 3.2.4.1.) 100% of each PAGA Member's payment will be
7 penalties and interest. (Agreement, § 3.2.5.1.) Apex will be responsible for issuing Form W-
8 2s for amounts deemed "wages" and Form 1099s for the portions allocated to penalties and
9 interest. (Agreement, §§ 3.2.4.1, 3.2.5.2)

10 **C. Uncashed Funds to Unclaimed Property Fund**

11 Settlement checks must be cashed or deposited within 180 days after issuance.
12 (Agreement, § 4.4.1.) In the event a settlement check remains uncashed, such uncashed funds
13 shall be transmitted to the State Controller's Office Unclaimed Property Fund in the name of
14 the Participating Class Member and/or Aggrieved Employee. (Agreement, § 4.4.3.). Therefore,
15 there will be no unpaid residue or unclaimed or abandoned Class Member funds under
16 California Code of Civil Procedure section 384(a). (Ardestani Decl., ¶ 25.)

18 **D. Notice and Extended Response Deadline for Re-Mailed Notices**

19 Within twenty days after entry of the Preliminary Approval Order, Defendant will
20 provide Apex with the Class Data, containing each Class Member's first and last name, last
21 known mailing address, Social Security number, total number of weeks worked during the Class
22 Period, and total number of pay periods worked during the PAGA Period. (Agreement, § 4.2.)
23 Apex will maintain the Class Data as private and confidential. (Agreement, § 4.2.)

24 Prior to mailing, Apex will perform a search for updated addresses in the National
25 Change of Address Database. (Agreement, § 8.4.2.) Apex will use the NCOA and skip traces
26 to attempt to find current addresses for any Notice returned as undeliverable. For any re-mailed
27 Notice, Apex will extend the Class Member's Response Deadline by 14 calendar days.
28 (Agreement, § 8.4.3-4.) If Apex is unable to obtain a better address for a Class Member, the

1 Notice will be deemed undeliverable. (Agreement, § 8.4.3-4.) Within 14 days after receipt of
2 the class data, Apex will mail via regular First-Class mail the Notice to all Class Members.
3 (Agreement, § 8.4.2.)

4 The contents of the Notice are consistent with the terms of the Agreement. The Notice
5 informs Class Members how and when to request exclusion from or object to the settlement and
6 of their estimated payment amount which they will automatically receive a settlement payment
7 if they do nothing. The Notice further advises Class Members how to obtain documents filed in
8 the case from the Court, Apex or Class Counsel, how to check the Court's website to find out
9 whether the Final Approval hearing date/location has been changed, directs the Class Member
10 to Apex's website and the Court's website to find out whether final judgment has been entered.
11 (Ardestani Decl. ¶ 28, Exh. 3.)

12
13 **E. Responses to the Settlement and Deadline Thereon**

14 Class Members will have 60 days from the initial mailing of the Notice to respond to
15 the settlement by submitting a challenge to the number of weeks or pay periods attributed to
16 them, submitting an objection, or requesting to be excluded from the settlement and the
17 consequences of each choice. (Agreement, §§ 1.43, 8.4.4.) The response deadline will be
18 extended for Class Members whose notice is re-mailed. (Agreement, § 8.4.4.) Class Members
19 can object to the settlement in writing via mail or fax by submitting a document with their name,
20 and a description of the arguments supporting their objection. Class Members are informed that
21 the Court will hear any objections from any Class Member who attends the Final Approval
22 Hearing. (Agreement, § 8.7.)

23 Class Members can also submit a written request for exclusion from the settlement by
24 mailing or faxing a written request, including his or her name, address, and phone number, and
25 a statement demonstrating his or her intent to opt out of the settlement. (Agreement, § 8.5.)

26 The Notice also informs the Class Member/Aggrieved Employees that they can dispute
27 the number of weeks/pay periods allotted to them to calculate their settlement payments by
28 contacting Apex before the Response Deadline and include any documentation supporting the

1 dispute. Apex will investigate the dispute, request additional information from Defendant, and
2 make a final decision as to the number of eligible work weeks/pay periods. (Agreement, § 8.6.)

3 **F. Funding and Distribution of the Settlement**

4 Defendant shall fund the settlement within 20 days of the Effective Date. (Agreement,
5 § 4.3.). Apex shall disburse all payments required under this Settlement within 14 calendar days
6 of receipt of the payment. (Agreement, § 4.4.)

7 **G. Release of Claims**

8 Upon Defendant's payment funding the GSA, Participating Class Members shall forever
9 release the Released Parties⁶ for the Released Claims for the Class Period, as detailed in Section
10 6.1 of the Agreement. Likewise, upon Defendant's payment funding the GSA, Plaintiffs, the
11 Aggrieved Employees, and the State of California shall forever release the Released Parties for
12 the PAGA Released Claims for the PAGA Period, as detailed in Section 6.2 of the Agreement.
13

14 As discussed below, Plaintiffs' Counsel is convinced that the proposed settlement is in
15 the Class Members' best interests based on the negotiations and a detailed knowledge of the
16 issues present in this action. The length and risks continued litigation that affect the value of the
17 claims were all carefully weighed. In addition, the affirmative defenses asserted by Defendant,
18 the uncertainty of class certification, the difficulties of complex litigation, the lengthy process
19 of establishing specific damages and various possible delays and appeals were also carefully
20 considered by Plaintiffs' Counsel in arriving at the proposed settlement. (Ardestani Decl., ¶ 33.)

21 **V. ARGUMENT**

22 In deciding whether to approve a proposed class action settlement under Code of Civil
23 Procedure section 382, the Court must find that a proposed settlement is "fair, adequate and
24 reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 [quoting *Officers for*
25

26 _____
27 ⁶ "Released Parties" means Defendant U.S. Aviation Services Corp., United Service Companies, Inc.,
28 and each of their respective former and present directors, officers, shareholders, owners, members,
attorneys, insurers, predecessors, successors, assigns, parents, subsidiaries, and affiliates. (Agreement,
§ 1.41.)

1 *Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, cert. den. (1983) 459 U.S.
2 1217]. A proposed class action settlement is **presumed** fair under the following
3 circumstances: (1) the parties reached settlement after arms-length negotiations;
4 (2) investigation and discovery were sufficient to allow counsel and the court to act
5 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
6 objectors is small. *Id.* at 1802. As the following shows, all of these elements are present here
7 and the Court should grant of preliminary approval.

8 **A. The Settlement was Reached as a Result of Arm’s Length Negotiations**

9 The proposed settlement was reached as a result of arm’s-length negotiations. Though
10 cordial and professional, the settlement negotiations have been, at all times, adversarial and
11 non-collusive in nature. Following mediation, Counsel for the Parties further negotiated
12 regarding the settlement terms memorialized in the Agreement. (Ardestani Decl., ¶ 34.)

13 While Plaintiffs believe in the merits of their case, they also recognize the inherent risks
14 of litigation and understand the benefit of Class Members receiving significant settlement funds
15 immediately as opposed to risking continued litigation in achieving class certification, the
16 merits of the case before and after trial, the damages awarded and/or an appeal that can take
17 several more years to litigate. (Ardestani Decl., ¶ 35.)

18 **B. The Settlement is the Result of Thorough Investigation and Discovery**

19 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
20 of their arguments before reaching the proposed settlement, and engaged in sufficient
21 investigation, research and discovery, referenced above, to support the settlement. The proposed
22 settlement was only possible following significant analysis and evaluation of Defendant’s
23 relevant policies and procedures, as well as the data it produced for the putative Class, which
24 permitted Plaintiffs’ Counsel and expert to engage in a comprehensive analysis of liability and
25 potential damages to prepare for mediation. (Ardestani Decl., ¶¶ 18, 36.) This litigation has
26 reached the stage where “the Parties certainly have a clear view of the strengths and weaknesses
27
28

1 of their cases” sufficient to support the Settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485
2 F. Supp. 610, 617.

3 **C. Counsel for the Parties are Experienced in Similar Litigation**

4 Counsel for the Parties are particularly experienced in wage and hour employment law,
5 class actions and PAGA actions. Plaintiffs’ Counsel has prosecuted numerous cases on behalf
6 of employees for wage and hour violations and thus are experienced and qualified to evaluate
7 the class and PAGA claims, evaluate settlement versus trial on a fully informed basis, and to
8 evaluate the viability of the defenses. This experience informed Plaintiffs’ Counsel on the risks
9 and uncertainties of further litigation and guided their determination to endorse the proposed
10 settlement.⁷ (Ardestani Decl. ¶¶ 7-12; Declaration of Jonathan Melmed (“Melmed Decl.”), ¶¶
11 4-7, Exh. 1; Declaration of Walter Haines, ¶¶ 3-6; Declaration of Aaron Bartz (“Bartz Decl.”),
12 ¶¶ 4-11.)

13 **D. The Proposed Settlement is a Reasonable Compromise of Claims**

14 An understanding of the amount in controversy is an important factor into whether the
15 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses
16 of the claims and the risks of the particular litigation.” *Kullar v. Foot Locker Retail, Inc.* (2008)
17 168 Cal.App.4th 116; 129; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
18 Cal.App.4th 399, 409. The most important factor in this regard is “the strength of the case for
19 plaintiffs on the merits, balanced against the amount offered in settlement.” *Kullar*, 168
20 Cal.App.4th at 129. In weighing the strength of Plaintiffs’ case, *Kullar* instructs that the court
21 is not to “decide the merits of the case or to substitute its evaluation of the most appropriate
22 settlement for that of the attorneys.” 168 Cal.App.4th at 133. Further, this analysis does not
23 require an explicit statement of the maximum amount the plaintiff class could recover if it
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27 ⁷ The final factor mentioned in *Dunk* - the number of objectors - is not determinable until the Notice of
28 Class Action Settlement has been provided to the Class and they have had an opportunity to respond.
This information will be provided to the Court in conjunction with the Motion for Final Approval of
Class Action Settlement.

1 prevailed on all its claims, provided there is a record which allows “an understanding of the
2 amount that is in controversy and the realistic range of outcomes of the litigation.” *Munoz*, 186
3 Cal. App. 4th at 409. Put differently, “as the court does when it approves a settlement as in good
4 faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the
5 class settlement is within the ‘ballpark’ of reasonableness.” *Kullar*, 168 Cal. App. 4th at 133
6 citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal. 3d 488, 499-500. As shown
7 below, the Parties’ investigation and discovery revealed several reasons to discount claims and
8 agree to this settlement.

9
10 **E. The Settlement is Fair and Reasonable Based on the Strengths of**
11 **Plaintiffs’ Case and the Risks and Costs of Further Litigation**

12 The proposed settlement was only possible following significant analysis and evaluation
13 of Defendant’s relevant policies and procedures, as well as the data that Defendant produced
14 for the Class. This permitted Plaintiffs’ Counsel to engage in a comprehensive analysis of
15 liability and potential damages. The discovery conducted resulted in Plaintiffs’ central theories
16 of liability, which are based on Plaintiffs’ claims that Defendant failed to provide compliant
17 meal and rest periods, failed to pay all minimum and overtime wages, failed to provide accurate,
18 itemized wage statements and failed to pay all wages due on separation of employment. As
19 explained above, Defendant maintains that the discovery produced demonstrates that it would
20 succeed at both class certification and on the merits. (Ardestani Decl., ¶ 37.)

21 Plaintiffs believe this case is suitable for certification on the claimed basis that there are
22 company-wide policies that Plaintiffs contend violate California law and uniformly affect the
23 Class Members. However, Defendant’s counterarguments raise uncertainties with respect to
24 both class certification and success on the merits. As the California Supreme Court emphasized
25 in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319 (2004), class certification is always a matter
26 of the trial court’s sound discretion, and decisions following *Sav-On* have reached different
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1 conclusions with respect to certification of wage and hour claims.⁸ While remaining confident
2 in the strengths of his claims, all of these factors led Plaintiffs to discount the following
3 maximum potential damage claims. (Ardestani Decl., ¶ 38.)

4 **1. The Settlement Amount is Reasonable**

5 Defendant provided Plaintiffs with class-wide data from which Plaintiffs' Counsel could
6 extrapolate a damage analysis in preparation of mediation. Prior to mediation, there were a total
7 of about 496 Class Members (336 formerly employed in the limitations period) and 23,444
8 work weeks in the Class Period. There are also approximately 315 aggrieved employees and
9 10,833 pay periods within the PAGA Period. (Ardestani Decl. ¶ 39.)

10 Plaintiffs first asserted Defendant failed to pay for all hours worked and the Class
11 Members regularly had to work "off the clock," which time was neither accounted nor paid for.
12 Here, Plaintiffs allege Class Members were expected to arrive approximately 25 minutes before
13 their shift to charge equipment, such as tugs and belt loaders, used to move luggage and load
14 aircraft. Once the equipment was charged and ready to be used for their shift, Plaintiffs and the
15 Class Members were allowed to clock in and begin their scheduled shift. These demands
16 required Plaintiffs and the Class Members to work off-the-clock approximately 2 hours per
17 week without receiving minimum wage for each hour worked. Defendant denied that Plaintiff
18 or any Class Member worked any "off the clock" work, and that Company policy prohibited
19 working "off the clock". (Ardestani Decl., ¶ 40.)

20 Plaintiffs further contend Defendant failed to pay all overtime wages due they were not
21 paid at the proper rate to Plaintiffs and the Class Members. Plaintiffs and the Class Members
22 allege that they only received overtime compensation based on their regular base hourly wage,
23 and not based on their regular rate of pay. Here, Plaintiffs allege Defendant paid various forms
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27 ⁸ *E.g., Harris v. Superior Court*, 154 Cal.App.4th 164 (2007) (reversing decertification of class claiming
28 misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007)
(not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal.App.4th
1440 (2007) (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*, 144
Cal.App.4th 121 (2006) (reversing denial of certification); *Dunbar v. Albertson's Inc.*, 141 Cal.App.4th 1422
(2006) (affirming denial of certification).

1 of non-hourly compensation that was not properly accounted for in the “regular rate of pay” for
2 purposes of paying overtime at the correct premium rate. As a result, Plaintiffs allege Defendant
3 regularly underpaid Class Members for their overtime wages. Without considering any of
4 Defendant’s defenses to certification or on the merits, Plaintiffs’ expert calculated Defendant’s
5 maximum exposure for this claim as about \$668,154 on the off the clock claim and about \$1,500
6 in underpaid overtime premiums on the regular rate claim. Defendant denied failing to pay
7 Plaintiff or any Class Member the proper regular rate of pay for overtime. (Ardestani Decl., ¶
8 41.)

9 Plaintiffs also argued Defendant failed to provide legally compliant meal and rest
10 breaks. Specifically, as addressed above, Plaintiffs contend the volume of work Defendant
11 imposed in order to meet operational demands made it difficult if not impossible for the Class
12 Members to take all required meal and breaks, and further made it difficult to take breaks on a
13 fully compliant basis even when they were able to take one at all. Due to the demands of their
14 jobs, Plaintiffs and the Class Members were allegedly regularly required to forgo their meal
15 periods altogether. Additionally, when Plaintiffs and the Class Members were provided meal
16 periods, they were allegedly on-duty and therefore noncompliant. For example, Plaintiffs allege
17 Defendant expected Plaintiffs and the Class Members to continue working to finish orders
18 during their meal periods. Plaintiffs claim this violates Labor Code sections 512, 226.7, and the
19 applicable IWC Wage Orders, as well as *Brinker Restaurant Corp. v. Superior Court* (2012) 53
20 Cal.4th 1004 and *Augustus v. ABM Security Serv., Inc.* (2016) 2 Cal.5th 257 for failure to
21 provide fully compliant meal periods and within the applicable time frames. According to
22 Plaintiffs’ experts’ analysis of the sample records for the Class Members shows 43.9% of shifts
23 between 5 and 6 hours did not include a recorded meal period at all, and that about 81.8% of
24 shifts greater than 10 hours did not include a recorded meal period. Plaintiffs also allege that,
25 in addition to failing provide compliant meal periods, Plaintiffs and the Class Members were
26 not compensated with an additional hour of pay at their regular rate of compensation when they
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1 were not provided with a compliant meal period as required under Labor Code § 226.7(b).
2 (Ardestani Decl., ¶ 42.)

3 For similar reasons, Plaintiffs contend Defendant also failed to provide Class Members
4 with required rest breaks. Per Plaintiffs, they were told that their rest periods consisted of the
5 time in which a plane had not arrived, but otherwise they were not designated or allowed to take
6 uninterrupted 10-minute rest periods. Thus, Plaintiffs claim that due to the demands of the job
7 Class Members were frequently required to skip their rest periods entirely. Further, Plaintiffs
8 argued Defendant has an unlawful policy requiring employees remain on premises during their
9 rest periods. Such control over employees during their rest periods violates the Wage Order.
10 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257 (finding that rest periods by their
11 very nature must be “duty free,” and reasoning that an employee on a rest break who must be
12 “at the ready, tethered by time and policy to particular locations or communications devices,”
13 is not “duty free” and concluding that “during rest periods employers must relieve employees
14 of all duties and relinquish control over how employees spend their time.”). (Ardestani Decl.,
15 ¶ 43.)
16

17 Defendant denied Plaintiffs’ contentions, claiming it made meal and rest breaks
18 available to Class Members in compliance with California law. Defendant contended its meal
19 and rest break policies are lawful and that Class Members were frequently reminded via training
20 and supervisors, that they were required to take all meal and rest breaks. Defendant also
21 contends that time records demonstrate that Class Members took duty-free, timely meal and rest
22 breaks. Defendant argued its meal and rest break policies and practices comported with the
23 flexibility the *Brinker* court held was integral to California’s meal and rest period requirements.
24 Finally, Defendant argued that Plaintiffs’ meal and rest break claims are not susceptible to
25 common proof, as the claims would require individualized inquiry, including whether there was
26 an unlawful companywide policy, whether employees had the opportunity to take meal and rest
27 periods, whether they voluntarily chose to forego their meal and rest periods, and whether
28 Defendant ever prevented them from taking meal and rest periods. Accordingly, Defendant

1 contends these claims are vulnerable to a ruling that class treatment is not appropriate. Without
2 taking into consideration any of Defendant's defenses to certification or on the merits, Plaintiffs
3 calculated Defendant's maximum exposure for the meal break claims as approximately
4 \$234,462, and about \$1,386,722 on the rest break claims. (Ardestani Decl., ¶ 44.)

5 Plaintiffs also allege Defendant required Plaintiffs and the Class Members to use their
6 personal cell phones for work related purposes, as noted above, primarily for communicating
7 with supervisors during a shift regarding needed work. Plaintiffs allege that Defendant failed to
8 reimburse employees for the use of their personal cell phones. *See Cochran v. Schwan's Home*
9 *Service, Inc.* (2014) 228 Cal.App.4th 1137 (§ 2802 requires employers to always reimburse
10 employees who are required to use personal cell phones for work-related calls for a reasonable
11 percentage of their cell phone bills). On the other hand, Defendant argued there was no reason
12 for employees to use their own phones while working, and any other use was purely for personal
13 preference and therefore not reimbursable. Without taking into consideration any of
14 Defendant's defenses to certification or on the merits, Plaintiffs calculated Defendant's
15 maximum exposure for expense reimbursement as about \$117,200. (Ardestani Decl., ¶ 45.)

16 Plaintiffs' claims for inaccurate wage statements and waiting time penalties are
17 derivative of the unpaid wage claims. Should those claims fail, Plaintiffs' claim for inaccurate
18 wage statements and waiting time penalties would also fail. Defendant also contends it would
19 not be liable for waiting time penalties because a "good faith dispute" exists over the payment
20 of past wages. Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163
21 Cal.App.4th 1157, 1201. Further, Defendant contended Plaintiffs would have to prove that
22 Defendant "willfully" failed to pay Class Members appropriate wages due upon separation of
23 employment, and that any failure to pay wages upon separation was not willful. Without taking
24 into consideration any of Defendant's defenses to certification or on the merits, Plaintiffs
25 calculated Defendant's maximum exposure for wage statement penalties as about \$862,200 and
26 waiting time penalties at around \$1,369,267. (Ardestani Decl., ¶ 46.)
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1 As far as potential PAGA liability, the theoretical civil penalties likely exceed \$3.7
2 million should Plaintiffs prevail on all claims and establish violations of the multiple Labor
3 Code sections at issue. (Ardestani Decl., ¶ 47.) As with the class claims, Plaintiffs discounted
4 the potential PAGA penalties based on Defendant's various defenses on the merits and also
5 accounted for the Court's wide discretion to reduce such penalties, or to decline to award
6 penalties at all. Labor Code § 2699(e)(2); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th
7 504 (trial court awarded penalties of \$5 per pay period after a bench trial, which decision was
8 upheld on appeal); *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) 2016 U.S.
9 Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated
10 \$50,000 to PAGA penalties.

11 Plaintiffs submit this amount is reasonable under the circumstances and in line with
12 comparable settlements in other wage and hour class actions in California. *E.g., Van Kempen v.*
13 *Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting
14 final approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total
15 settlement); *Slavkov v. First Water Heater Partners I* (N.D. Cal. July 25, 2017) 2017 U.S. Dist.
16 LEXIS 116303 (finding a \$7,500 PAGA payment reasonable when measured against the overall
17 settlement of \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total
18 settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of
19 the settlement, and will be able to weigh in as necessary. *Jennings v. Open Door Mktg. Inc.*
20 (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with
21 PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the
22 LWDA, and the LWDA has not objected to the settlement.

23 Thus, Plaintiffs and their counsel discounted the value of the class claims consistent
24 with the risks discussed above. They carefully weighed the likelihood of the class receiving
25 substantially greater benefit if the litigation continued, and concluded – in light of these very
26 real and substantial risks, including that the Court(s) in any of the stand-alone actions (this case,
27 the *Rivas* action, and the *Ragone* action) could deny class certification – settlement on the
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1 proposed terms and without prolonged and costly litigation was in the best interests of the class.
2 The overall \$705,000 recovery represents a significant percentage of Defendant's potential
3 exposure and, given Defendant's multi-layered defenses and all other potential risks of
4 continued litigation, a total recovery for the class of \$705,000, which will result in average
5 award of some \$670 per class member, plus additional sums under PAGA, is a significant result
6 well within the range of reasonableness considering all potential outcomes, and it will provide
7 direct monetary awards to all Class Members without further delay. (Ardestani Decl., ¶¶ 48-49;
8 Melmed Decl., ¶¶ 9-16.)

9 Importantly, the mere fact that a settlement does not provide the same recovery as might
10 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
11 adequate. *Wershba*, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the
12 settlement process...even if the relief afforded by the proposed settlement is substantially
13 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
14 settlement because the public interest may indeed be served by a voluntary settlement in which
15 each side gives ground in the interest of avoiding litigation"); *7-Eleven Owners for Fair*
16 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed
17 settlement may amount to only a fraction of the potential recovery does not, in and of itself,
18 mean that the proposed settlement is grossly inadequate and should be disapproved"); *White v.*
19 *Experian Information Solutions, Inc.* (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting
20 contention settlement was not fair and reasonable even though it represented 99% discount off
21 the maximum value of the claims); *Lane v. Facebook, Inc.* (9th Cir. 2012) 696 F.3d 811, 819
22 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question
23 whether the settlement is perfect in the estimation of the reviewing court"). Importantly as well,
24 the proposed settlement is non-reversionary and will provide immediate benefits to the Class
25 Members without a claims process. *White*, 803 F.Supp.2d at 1098; *c.f.*, Federal Judicial Center,
26 *Managing Class Action Litigation: A Pocket Guide for Judges* (3d ed. 2010) at 20, available at
27 [http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf) (reversionary provisions and/or
28

cumbersome claims process may indicate lack of fairness). Plaintiffs and their counsel submit the settlement is within the “range of reasonableness,” and is fair and adequate for the Class.

F. Provisional Class Certification Should be Granted

A class action is appropriate when the class is ascertainable and there is “a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented.” Code Civ. Proc. § 382. Class certification requirements under Section 382 follow Rule 23 of the Federal Rules of Civil Procedure, and require: numerosity, typicality of the class representatives’ claims, adequacy of representation, predominance of common issues, and superiority. Fed.R.Civ.Pro. 23(b)(3); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. While a court must certify a class for settlement purposes if a class has not already been certified, “it is 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.” *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836, 859 citing *Dunk*, Cal.App.4th 1794, 1807, n.19; *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 237-38.

Here, Plaintiffs seek approval of the following Class for settlement purposes only: all individuals who are or were employed by Defendant as nonexempt employees in California during the Class Period of January 24, 2020, through November 1, 2024. (Agreement, § 1.5).

1. The Proposed Class is Sufficiently Numerous and Ascertainable

First, the class is both sufficiently numerous, consisting of approximately 496 individuals, and ascertainable by reference to Defendant’s personnel and payroll records. (Ardestani Decl., ¶ 50.) “There is no set number required to maintain a class action, and the statutory test is whether a class is so numerous that ‘it is impracticable to bring them all before the court.’” *Hebbard v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030 (noting that there is no set minimum to meet the numerosity prerequisite, but that a class of as few as 28 is acceptable); *Bowles v. Superior Court* (1995) 44 Cal. 2d 574 (upholding a class of ten members); *Rose v.*

1 *City of Hayward* (1981) 126 Cal. App. 3d 926, 932 (finding that “Class Members are
2 ‘ascertainable’ where they may be readily identified without unreasonable expense or time by
3 reference to official records.”). Thus, the ascertainability requirement is met.

4 **2. The Typicality and Adequacy Requirements Are Met**

5 The typicality requirement is met if the claims of the named representative are typical
6 of those of the Class, though, “they need not be substantially identical.” *Classen v. Weller*
7 (1983) 145 Cal.App.3d 27, 46-47. Here, Plaintiffs contend their claims are typical of the Class
8 Members’ claims because they arise from the same factual basis and are based on the same legal
9 theories applicable to the Class Members. Plaintiffs further contend Defendant’s policies
10 applied to all Class Members and each Class Member is challenging the same policies and
11 practices. As such, the typicality requirement is satisfied for purposes of settlement.
12 (Declaration of Sisilia Lealao (“Lealao Decl.”), ¶¶ 3-13; Declaration of Brandon Rivas (“Rivas
13 Decl.”), ¶¶ 2-9; Declaration of Bryan Ragone (“Ragone Decl.”), ¶¶ 2-5; Ardestani Decl. ¶ 51.)

14 Adequacy requires that the plaintiff have no interests adverse to the interests of the
15 proposed Class Members and be committed to vigorously prosecuting the case on behalf of the
16 Class. *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51. Each Plaintiff has been
17 and will continue to be committed to vigorously prosecuting this case, and they have no
18 conflicts of interest with the Class. For these reasons, Plaintiffs each contends he or she is an
19 adequate class representative. (Lealao Decl., ¶¶ 3-13; Rivas Decl., ¶¶ 2-9; Ragone Decl., ¶¶ 2-
20 5; Ardestani Decl., ¶ 51.)

22 **3. The Commonality Requirement is Met**

23 Next, common questions of law and fact predominate – particularly for purposes of a
24 settlement class – as the Class Members all were subject to the same meal and rest break policies
25 and alleged “de facto” policies resulting in meal period violations, and similarly subject to the
26 same improper regular rate policy. Since the focus of the claims against Defendant concerns
27 the legality of alleged common policies applied uniformly to the entire class, common issues
28 predominate over individualized inquiries concerning liability. For instance, Defendant’s meal

1 and rest break policy is allegedly company-wide policy applied equally and consistently to all
2 class members, and this policy is either compliant with California law or it is not. Regardless
3 of that determination, it will decide liability for all class members one way or another. Similarly,
4 whether Defendant properly calculated and paid for overtime is another question common to
5 all class members. (Ardestani Decl., ¶ 52.)

6 By now it is well-settled that a theory of recovery asserting the existence of a uniform
7 policy violating California law is sufficient to satisfy the requirements for class certification.
8 *Jones v. Farmers Ins. Exch.* (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform
9 policy consistently applied to a group of employees is in violation of the wage and hour laws
10 are of the sort routinely, and properly, found suitable for class treatment”); *Williams v. Superior*
11 *Court* (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question
12 of fact or law that supports commonality for class certification”). Lastly, a class action is
13 superior to other means for the fair and efficient adjudication of this controversy. (Ardestani
14 Decl., ¶ 53.)

15
16 **G. Apex Should be Appointed as the Settlement Administrator**

17 The Parties agreed to use Apex Class Action, LLC as the Settlement Administrator in
18 this matter. (Agreement, § 1.2). Apex is highly qualified and experienced as a settlement
19 administrator, committed to the security of data (having experienced no data breaches at all),
20 carries insurance for the theft of money or data, and has no relationship with Counsel.
21 (Declaration of Sean Hartranft, ¶¶ 2-9; Exhs. A-B; Ardestani Decl., ¶ 54.)

22 **H. Notice to Class Members Complies With California Rule of Court 3.769(f)**

23 California Rule of Court 3.769(f), provides: “If the court has certified the action as a
24 class action, notice of the final approval hearing must be given to class members in the manner
25 specified by the court. The notice must contain an explanation of the proposed settlement and
26 procedures for class members to follow in filing written objections to it and in arranging to
27 appear at the settlement hearing and state any objections to the proposed settlement.” Here, the
28 proposed Notice meets all of these requirements, as it advises Class Members of their rights to

1 participate in the settlement, how to and when to object to or request exclusion from the
2 settlement, and the date, time, and location of the final approval hearing. Class Members need
3 not do anything to receive their *pro rata* share of the settlement. (Ardestani Decl. ¶ 55, Exh. 3.)

4 **VI. CONCLUSION**

5 Plaintiffs respectfully submit that the proposed settlement is in the best interests of the
6 Class Members, as it is fair, adequate, and reasonable. Plaintiffs accordingly request the Court
7 certify the class for settlement purposes, appoint Plaintiffs as Class Representatives, appoint
8 Plaintiffs' Counsel as Class Counsel, appoint Apex as Settlement Administrator, approve the
9 method of notice and the Notice to be sent to the Class, preliminarily approve the Settlement
10 Agreement, enter the proposed order filed herewith, and set a Final Approval hearing date.
11

12 Dated: April 7, 2025

BARTZ LAW GROUP, APC
UNITED EMPLOYEES LAW GROUP, PC
CROSNER LEGAL, PC
MELMED LAW GROUP

16 By: /s/ Aaron A. Bartz
17 AARON A. BARTZ
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