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

3 **NOTICE IS HEREBY GIVEN** that on July 16, 2025, at 9:00 a.m., or as soon thereafter as
4 the matter can be heard in Department 6 of Los Angeles County Superior Court located at 312 North
5 Spring Street, Los Angeles, California 90012, Plaintiff ADRIAN VALDIVIA (“Plaintiff”) will move
6 for an order granting preliminary approval of the proposed class action settlement on the terms and
7 conditions set forth in the Class Action and PAGA Settlement Agreement and Class Notice
8 (“Settlement” or “Settlement Agreement”) between Plaintiff and Defendant YOSEMITE VALLEY
9 BEEF DISTRIBUTORS, LLC (“Defendant”) a copy of which is attached to the Declaration of Eve
10 Howe (“Howe Dec.”) as **Exhibit “1.”** Plaintiff will further move that the Order specifically
11 encompass the following:

- 12 1. Certify a class for settlement purposes only;
- 13 2. Appoint the Plaintiff as Class Representative for settlement purposes only;
- 14 3. Appoint Joseph Lavi, Esq., Vincent C. Granberry, Esq., Brett Szmanda, Esq., and Eve
15 Howe, Esq. of Lavi & Ebrahimian, LLP as Class Counsel;
- 16 4. Approve the Class Notice in the form attached as **Exhibit “1”** to the Settlement;
- 17 5. Set a Final Approval and Settlement Fairness Hearing on a date that is approximately
18 150 days after the Court grants preliminary approval of the Settlement.

19 Dated: June 6, 2025

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

21
22
23 By: /s/ Eve Howe
Joseph Lavi, Esq.
24 Vincent C. Granberry, Esq.
Brett Szmanda, Esq.
25 Eve Howe, Esq.
Attorneys for Plaintiff ADRIAN VALDIVIA,
26 behalf of himself and others similarly situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Adrian Valdivia (“Plaintiff”) respectfully submits this memorandum of points and
4 authorities in support of his motion for preliminary approval of the proposed class action settlement
5 with Defendant Yosemite Valley Beef Distributors, LLC (“Defendant”) (Plaintiff and Defendant are
6 collectively hereinafter referred to as “the Parties”). Plaintiff seeks entry of a proposed order granting
7 preliminary approval of the class settlement which: (1) preliminarily approves the proposed
8 settlement of the class action; (2) approves the form and method for providing notice and directs that
9 notice be given to members of the settlement class; (3) preliminarily certifies the settlement class for
10 settlement purpose; and (4) schedules a final approval hearing date.

11 As consideration for this Settlement, Defendant shall pay a sum equal to One Hundred Sixty-
12 Five Thousand Dollars and Zero Cents (\$165,000.00) (the “Gross Settlement Amount”) to fund the
13 non-reversionary, no claims made settlement of this class action. (Class Action and PAGA Settlement
14 Agreement and Class Notice (“Settlement” or “Settlement Agreement”)), § 1.22 attached as **Exhibit**
15 **“1”** to Declaration of Eve Howe (“Howe Dec.”). The Gross Settlement Amount is inclusive of
16 Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel
17 Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administrator’s
18 Expenses as provided by this Settlement. (*Id.*)

19 **II. SUMMARY OF LITIGATION**

20 **A. The Parties**

21 The named Plaintiff worked as an hourly-paid, non-exempt employee for Defendant and seeks
22 to represent approximately 54 current and former employees of Defendant who worked in California
23 as hourly-paid, non-exempt employees at any time during the Class Period (hereinafter “Class” or
24 “Class Members”). (Howe Dec. ¶3.)

25 **B. The Complaint and Allegations**

26 This is a proposed employee wage and hour class action and PAGA representative action. On
27 January 16, 2024, Plaintiff filed a class action pursuant to complaint against Defendant for alleged
28 violations of the California Labor Code in the Los Angeles County Superior Court against Defendant

(the “Class Action”). Plaintiff alleged the following: (1) Failure to Pay Wages for All Hours Worked at Minimum Wage in Violation of Labor Code Sections 1194 and 1197; (2) Failure to Pay Overtime Wages for Daily Overtime Worked in Violation of Labor Code Sections 510 and 1194; (3) Failure to Authorize or Permit Meal Periods in Violation of Labor Code Sections 512 and 226.7; (4) Failure to Authorize or Permit Rest Periods in Violation of Labor Code Section 226.7; (5) Failure to Indemnify Employees for Losses and Expenditures in Violation of Labor Code Section 2802; (6) Failure to Provide Complete and Accurate Wage Statements in Violation of Labor Code Section 226; (7) Failure to Timely Pay All Earned Wages and Final Paychecks Due at Time of Separation of Employment in Violation of Labor Code Sections 201, 202, and 203; and (8) Unfair Business Practices, in Violation of Business and Professions Code Sections 17200, *et seq.* Defendant has denied all claims in the Class Action. (Howe Dec. ¶4.)

On January 16, 2024, Plaintiff also submitted a notice to the LWDA informing it of his intention to bring a claim for civil penalties pursuant to PAGA. (Howe Dec. ¶5.)

On March 25, 2024, Plaintiff commenced a second action in the Los Angeles Superior Court alleging a single cause of action against Defendant for civil penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.* (the “PAGA Action”). (Howe Dec. ¶6.)

On June 18, 2024, the Court consolidated the Class and PAGA Action designating the Class Action as the lead case. (Howe Dec. ¶7.)

On December 12, 2024, the Parties participated in an all-day mediation presided over by Jeffrey Fuchsman which led to an agreement to settle the Action. (Howe Dec. ¶8.)

C. The Exchange of Detailed Informal Discovery and Legal Analysis by the Parties’ Counsel

As a critical part of settlement negotiations, the Parties engaged in extensive informal discovery exchange where Plaintiff’s counsel reviewed and analyzed the following: (1) time records; (2) pay records; (3) information relating other size and scope of the class; (4) data permitting Plaintiff to fully understand the nature and scope of the allegations in the Complaint, including the time and wage records for approximately 24% of Class Members which were analyzed by Plaintiff’s counsel.

1 (Howe Dec. ¶9.)

2 Counsel for the Parties have investigated the law as applied to the facts discovered regarding
3 the alleged claims of Plaintiff and potential defenses thereto, and the potential damages claimed by
4 Plaintiff, and have had multiple conference calls and email exchanges between Plaintiff's counsel and
5 Defendant's counsel. (Howe Dec. ¶10.)

6 Plaintiff and Class Counsel recognize the expense and length of continued proceedings
7 necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has also
8 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties
9 and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of
10 proof necessary to establish liability for the claims asserted in the Action, both generally and in
11 response to Defendant's compelling defenses thereto, and the difficulties in establishing damages for
12 the Class Members. Based on the foregoing, Plaintiff and Class Counsel have determined that the
13 Settlement set forth in this Agreement is a fair, adequate and reasonable settlement, and is in the best
14 interests of the Class Members. (Howe Dec. ¶11.)

15 **III. THE SETTLEMENT**

16 The settlement contemplates (i) entry of an Order preliminarily approving the settlement and
17 approving certification of a provisional settlement class, contingent upon final approval of the
18 settlement; and (ii) entry of an Order granting final approval of the settlement and judgment.

19 Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure
20 and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the Lawsuit
21 by agreement upon the terms and conditions and for the consideration set forth in the Settlement, a
22 copy of which is attached to the Declaration of Eve Howe as **Exhibit "1."**

23 A summary of the key terms of the Settlement is as follows:

- 24 1. **"Class"** means a person employed by Defendant in California and classified as an hourly,
25 non-exempt employee who worked for Defendant during the Class Period. (Settlement, § 1.5.)
- 26 2. **"Aggrieved Employee"** means a person employed by Defendant in California and classified
27 as an hourly, non-exempt employee who worked for Defendant during the PAGA Period.
(Settlement, § 1.4.)
- 28 3. **"Class Period"** means the period from January 16, 2020 through March 12, 2025. (Settlement,

§ 1.12.)

4. **“PAGA Period”** means the period from January 16, 2023 through March 12, 2025. (Settlement, § 1.31.)
5. **“Gross Settlement Amount”** means One Hundred Sixty-Five Thousand Dollars (\$165,000.00), which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 of the Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses. (Settlement, § 1.22.)
6. **“Net Settlement Amount”** means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. (Settlement, § 1.28.)
7. An Individual Class Payment calculated by (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. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. (Settlement, §§ 3.2.4., 3.2.4.2.)
8. PAGA Penalties in the amount of \$10,000 to be paid from the Gross Settlement Amount, with 75% (\$7,500) allocated to the LWDA PAGA Payment and 25% (\$2,500) allocated to the Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$2,500) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (Settlement, §§ 3.2.5., 3.2.5.1.)
9. Twenty Percent (20%) of each Participating Class Member’s Individual Class Payment will be allocated to settlement of wage claims (the “Wage Portion”). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The Eighty Percent (80%) of each Participating Class Member’s Individual Class Payment will be allocated to settlement of claims for interest and penalties (the “Non-Wage Portion”). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. If the Court approves a PAGA Settlement Amount in less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. (Settlement, § 3.2.4.1, 3.2.5.2.)

10. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Settlement, § 4.3.1, 4.4.3.)
11. **The Release by Participating Class Members** is as follows: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint. Except as set forth in Section 5.3 of the Settlement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (Settlement, § 5.2.)
12. **The Release by Aggrieved Employees** is as follows: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice. (Settlement, § 5.3)
13. The Parties have agreed to retain Apex Class Action Administration to perform the customary duties of Settlement Administrator (the Administrator"). (Settlement, § 1.2.)
14. **To Class Counsel:** A Class Counsel Fees Payment of not more than One-Third of the Gross Settlement Amount, which is currently estimated to be \$55,000, and a Class Counsel Litigation Expenses Payment of not more than \$15,000. (Settlement, § 3.2.2.)
15. **To Plaintiff:** Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). (Settlement, § 3.2.1.)
16. **To the Administrator:** An Administration Expenses Payment not to exceed \$5,000 except for a showing of good cause and as approved by the Court. To the extent the Administrator's expenses are less or the Court approves payment less than \$5,000, the Administrator will retain the remainder in the Net Settlement Amount. (Settlement § 3.2.3.)
17. **"Response Deadline"** Deadline" means 60 calendar days after the Administrator mails Notice

1 to Class Members and Aggrieved Employees, and shall be the last date on which Class
2 Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax,
3 email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets
are resent after having been returned undeliverable to the Administrator shall have an
additional 14 calendar days beyond the Response Deadline has expired. (Settlement, § 1.43.)

4 18. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send
5 the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than
6 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class
7 Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class
8 Member or his/her representative that reasonably communicates the Class Member's election
to be excluded from the Settlement and includes the Class Member's name, address and email
address or telephone number. To be valid, a Request for Exclusion must be timely faxed,
emailed, or postmarked by the Response Deadline. (Settlement, 7.5.1.)

9 19. Participating Class Members may send written objections to the Administrator, by fax, email,
10 or mail. In the alternative, Participating Class Members may appear in Court (or hire an
11 attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
12 Participating Class Member who elects to send a written objection to the Administrator must
do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an
additional 14 days for Class Members whose Class Notice was re-mailed). (Settlement, §
7.7.2.)

13 20. **Funding of Gross Settlement Amount.** Defendant shall fully fund the Gross Settlement
14 Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes
15 by transmitting the funds to the Administrator no later than 14 days after the Effective Date.
(Settlement, § 4.2.)

16 **IV. ANALYSIS**

17 **A. Class Action Settlements Are Subject To Review And Approval Under The** 18 **California Rules of Court**

19 Rule 3.769 of the California Rules of Court requires court approval for class action settlements.
20 "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement."
21 (Cal. Rules of Court, rule 3.769(g).) Courts act within their discretion in approving settlements which
22 are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional
23 uncertainties inherent in complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir.
24 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators*
25 *Ass'n* (1981) 452 U.S. 905.)

26 **B. This Settlement Is Fair, Reasonable, And Adequate**

27 The purpose of the preliminary evaluation of class action settlements is to determine only
28 whether the proposed settlement is within the *range of reasonableness* and, therefore, whether notice

1 to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple*
2 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4th Ed.) §11:25.)
3 Courts have broad powers to determine whether a proposed settlement is fair under the circumstances
4 of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-35; *Mallick v. Superior Court* (1979) 89
5 Cal.App.3d 434, 438.) In evaluating preliminary approval, courts must consider several relevant
6 factors, including “the strength of the Plaintiffs’ case, the risk, expense, complexity and likely
7 duration of further litigation, the risk of maintaining class action status through trial, the amount
8 offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the
9 experience and views of counsel....” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)
10 “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the
11 factors depending on the circumstances of each case.” (*Wershba, supra*, 91 Cal.App.4th at 245.)
12 Furthermore, courts must give “proper deference to the private consensual decision of the parties”
13 because “the court’s intrusion upon what is otherwise a private consensual agreement negotiated
14 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
15 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
16 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
17 (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

18 A proposed class action settlement is presumed fair under the following circumstances: (1)
19 the parties reached settlement after arms-length negotiations; (2) investigation and discovery were
20 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
21 litigation, and (4) the percentage of objections is small. (*Dunk v. Ford Motor Co., supra*, 48
22 Cal.App.4th at 1802.) The Declaration of Class Counsel Eve Howe demonstrates that the proposed
23 settlement was the product of serious, informed, and non-collusive negotiations and demonstrates
24 counsel’s extensive experience in both employment law as well as class action litigation.

25 **1. The Settlement is the result of serious, informed, and non-collusive**
26 **negotiations.**

27 The Settlement was reached as a result of arm’s-length negotiations facilitated during a
28 December 12, 2024, mediation with a highly regarded and experienced wage and hour mediator,

1 Jeffrey Fuchsman, and analysis by Plaintiff's counsel and expert witness. (Howe Dec. ¶¶9-31.)
2 While Plaintiff believes in the merits of his case, he also recognizes the inherent risks of litigation
3 and understands the benefit of the Class receiving settlement funds immediately as opposed to risking
4 an unfavorable decision on class certification, summary judgment, at trial and/or the damages
5 awarded, and/or on an appeal that can take several more years to litigate. (*Id.*)

6 **2. The extent of the information provided through formal and informal**
7 **discovery and the stage of the proceedings support the Settlement.**

8 As described herein, the Parties investigated and evaluated the factual strengths and weaknesses
9 of this case before reaching the proposed Settlement and engaged in sufficient investigation and
10 discovery, as referenced above, to support the Settlement. (*Id.*) Accordingly, the proposed Settlement
11 was reached following probative factual evaluation of Defendant's relevant policies and procedures and
12 review, compilation, and analysis by Plaintiff's counsel and Plaintiff's counsel's expert of the following:
13 (1) the total number of current and former putative class members and aggrieved employees who worked
14 during the relevant time periods; (2) the total number of workweeks at issue during the relevant time
15 periods; (3) the total number of pay periods at issue during the relevant time periods; (4) the average
16 hourly rate for the putative class members; (5) and other relevant information. Further, the Plaintiff's
17 counsel had multiple discussions, calls, and emails with the Defendant's counsel about the disputed
18 factual and legal issues involved in this case, the risks attending further prosecution, including risks
19 related to a contested motion for class certification, and the substantial benefits to be received pursuant
20 to a compromise and settlement of the case as set forth in the Agreement. As such, settlement on the
21 terms agreed to is in the best interest of Plaintiff and the settlement class. (*Id.*)

22 Thus, the Settlement came only after the case was fully investigated by counsel, as set forth
23 above. This litigation, therefore, has reached the stage where "the Parties certainly have a clear view
24 of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel*
25 *Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

26 **3. Plaintiff's counsel are experienced in similar litigation.**

27 Experienced counsel, operating at arms-length, have weighed the strengths of the case and
28 examined all of the issues and risks of litigation and endorse the proposed settlement. The view of

1 the attorneys actively conducting the litigation “is entitled to significant weight” in deciding whether
2 to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630
3 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661
4 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, *supra*, 485 F.Supp. at 617.)

5 Both Plaintiff’s and Defendant’s counsel are experienced in employment, wage and hour and
6 class action matters. Lavi & Ebrahimian LLP is a well-regarded firm that handles employment matters
7 almost exclusively. (Howe Dec. ¶32.) Joseph Lavi, of Lavi & Ebrahimian, LLP, has been approved
8 in class counsel in numerous actions and has been named a Southern California Super Lawyer the
9 area of Plaintiff’s employment litigation - class action from 2011-2025. (*Id.*) Defendant’s counsel,
10 Chanhoo C. Joo and Frank E. Marchetti of the Law Offices of Chanhoo C. Joo, are also extremely well-
11 regarded and respected as employment defense counsel. Counsel on both sides share the view –
12 endorsed by an experienced wage and hour class action mediator – that this is a fair and reasonable
13 settlement in light of the complexities of the case, the state of the law and uncertainties of class
14 certification and litigation, and the benefit the settlement confers on the class. (Howe Dec. ¶¶9-31.)
15 Given the risks inherent in litigation, in class certification proceedings, and in the defenses asserted,
16 this settlement is fair, adequate, and reasonable and in the best interests of the class. (*Id.*)

17 **4. The Settlement is fair and reasonable based on the strengths of Plaintiff’s case**
18 **and the risks and costs of further litigation.**

19 Plaintiff and his counsel have concluded it was reasonable to enter into the proposed
20 Settlement. Defendant has vigorously contested and continues to contest liability for the claims
21 asserted in the action. Although Defendant believes that class certification would be unlikely on such
22 claims, it nevertheless agreed to attempt resolution of the case through extensive informal discovery
23 and mediation to avoid the expense, distraction and uncertainty of protracted litigation.

24 There are significant legal uncertainties associated with cases such as this as they can be
25 factually complex and require protracted litigation to resolve. A settlement is not judged solely against
26 what might have been recovered had plaintiff prevailed at trial, nor does the settlement have to provide
27 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th
28 Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney v. Wells Fargo*

1 *Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, “[c]ompromise is inherent and necessary in the
2 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
3 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because
4 the public interest may indeed be served by a voluntary settlement in which each side gives ground
5 in the interest of avoiding litigation” (*Wershba*, 91 Cal.App.4th at 250.)

6 **5. The Proposed Settlement is a Reasonable Compromise of Claims**

7 To evaluate a settlement, the trial court must receive “basic information about the nature
8 and magnitude of the claims in question and the basis for concluding that the consideration being
9 paid for the release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker*
10 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) However, the record need not contain an explicit
11 statement of the maximum theoretical recovery:

12 “Greenwell misunderstands *Kullar*, apparently interpreting it to require the record
13 in all cases to contain evidence in the form of an explicit statement of the maximum
14 amount the plaintiff class could recover if it prevailed on all its claims—a number
15 which appears nowhere in the record of this case. But *Kullar* does not, as Greenwell
16 claims, require any such explicit statement of value; it requires a record which
allows “an understanding of the amount that is in controversy and the realistic
ranges of outcomes of the litigation.”

17 (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

18 Based on the information informally produced by Defendant, Defendant estimates there are
19 approximately 54 Class Members who collectively worked a total of 5,104 Workweeks, and 31
20 Aggrieved Employees who worked a total of approximately 839 PAGA Pay Periods. These workers
21 received an average rate of pay of \$16.77/hour. (Howe Dec. ¶13.) Based on Class Counsel’s and
22 Plaintiff’s analysis of the data, the maximum exposure for Plaintiff’s claims were as follows:

23 With regard to failure to pay wages for all hours worked at minimum wage and overtime,
24 Plaintiff alleged that Defendants routinely required Plaintiff and similarly situated employees to
25 maintain their work uniform and personal protective equipment (“PPE”) while off-the-clock without
26 being paid for that time. Plaintiff estimated there were approximately **\$64,195.56** in damages for
27 unpaid minimum wages [Calculated as follows: 5,104 workweeks x .5 hours off unpaid per week x
28 \$16.77 avg. hourly rate x 1.5 overtime multiplier = \$64,195.56.] (Howe Dec. ¶14.)

1 With regard to Plaintiff's Meal Break Claim, Plaintiff alleged that Defendant failed to
2 provide Plaintiff and similarly situated employees timely, uninterrupted, duty-free meal breaks of at
3 least 30 minutes for every five hours worked. Plaintiff's expert found approximately 80.7% of
4 examined shifts featured a unique meal period violation. Therefore, Plaintiff estimated there was a
5 maximum of approximately **\$345,372.11** in damages for meal break violations [Calculated as
6 follows: 5,104 workweeks x 5 shifts per week x \$16.77 avg. hourly rate x 80.7% violation rate =
7 \$345,372.11.] (Howe Dec. ¶15.)

8 With regard to Plaintiff's Rest Break Claim, Plaintiff alleged that Defendant failed to provide
9 Plaintiffs and similarly situated employees with timely, duty-free, net ten (10) minute rest breaks for
10 every four (4) hours worked or major fraction thereof. Given the foregoing, the maximum that
11 Plaintiff could recover amounted to approximately \$427,970.40 [Calculated as follows: 5,104
12 workweeks x 5 rest period violations per week x \$16.77 avg. hourly rate = \$427,970.40.] However,
13 rest breaks are not recorded, which would result in significant difficulties in proving this specific
14 claim were the case to go to trial. Applying a significant 90% reduction in the value of this claim
15 due to this lack of proof results in a more realistic valuation of **\$42,797.04**. (Howe Dec. ¶16.)

16 With regard to Plaintiff's Unreimbursed Business Expenses, Plaintiff contends that
17 Defendants required to maintain their uniforms at their own expense (cost associated with uniform
18 cleaning including, but not limited to, soap/detergent, laundromat costs, and/or excess wear and tear
19 on washer and dryer appliance for work-related purposes - without reimbursing Plaintiff and
20 similarly situated employees for such use. Given the foregoing, the maximum that Plaintiff could
21 recover amounted to approximately **\$25,520.00** [Calculated as follows: 5,104 workweeks x \$5 per
22 workweek estimate = \$25,520.00.] (Howe Dec. ¶17.)

23 With regard to failure to provide complete and accurate wage statements in violation of
24 Labor Code Section 226, with 54 employees, and a maximum penalty of \$4,000 per employee, the
25 total amount would be **\$216,000.00** [Calculated as follows: 54 employees X \$4,000 maximum
26 penalty = \$216,000.00.] (Howe Dec. ¶18.)

27 With regard to failure to provide employees a continuation of their wages from the day their
28 unpaid wages were due, the maximum that Plaintiff could recover amounted to approximately

1 **\$96,595.20** [Calculated as follows: 24 former employees X \$16.77 average rate of pay X 8 hours per
2 day X 30 days = \$96,595.20.] (Howe Dec. ¶19.)

3 As such, Plaintiff's maximum potential recovery in this matter, excluding PAGA penalties,
4 would amount to approximately **\$790,479.91**. The settlement reached in this matter was
5 \$165,000.00 or approximately 20.9% of potential exposure. (Howe Dec. ¶20.)

6 Regarding the PAGA penalty exposure analysis, according to the data informally produced
7 by Defendant in this case, during the relevant PAGA period (from January 16, 2023 through March
8 12, 2025.) there are approximately 839 pay periods for approximately 31 aggrieved employees.
9 (Howe Dec. ¶21.)

10 Regarding the PAGA penalty exposure analysis, as an initial matter, in wage and hour class
11 action cases that settle, which are the overwhelming majority of such cases, very little of the total
12 settlement is paid to PAGA penalties in order to maximize payments to class members. *See, e.g.,*
13 *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (no abuse of discretion to approve class
14 action settlement allocating \$0 to PAGA claims); *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S. Dist.
15 LEXIS 5118, 2015 WL 222500, at *2-3 (E.D. Cal. Jan. 14, 2015) (preliminarily approving \$10,000
16 in PAGA penalties out of a total settlement amount of \$900,000), report and recommendation
17 adopted, 2015 U.S. Dist. LEXIS 25730, 2015 WL 925598 (E.D. Cal. Mar. 3, 2015); *Nen Thio v.*
18 *Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (preliminarily approving \$10,000 in PAGA
19 penalties out of a total settlement amount of \$1,250,000); *Franco v. Ruiz Food Prods.*, 2012 U.S.
20 Dist. LEXIS 169057, 2012 WL 5941801, at *14 (E.D. Cal. Nov. 27, 2012) (granting final approval
21 of \$10,000 in PAGA penalties out of a total settlement amount of \$2,500,000); *Garcia v. Gordon*
22 *Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012)
23 (granting final approval of \$10,000 in PAGA penalties out of a total settlement amount of
24 \$3,700,000); *Chu v. Wells Fargo Invs., LLC*, 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1
25 (N.D. Cal. Feb. 16, 2011) (granting final approval of \$10,000 in PAGA penalties out of a total
26 settlement amount of \$6,900,000). In these settlements, the parties generally maximize statutory
27 penalties and minimize PAGA penalties. *See, e.g., Franco*, 2012 U.S. Dist. LEXIS 169057, 2012 WL
28

5941801, at *2, *14 (approving a \$10,000 PAGA award out of a total settlement amount of \$2,500,000). (Howe Dec. ¶22.)

Plaintiff recognizes that PAGA claims generally settle for a mere fraction of multiple “stacked” PAGA penalties as is described above, but more typically resolve for a reasonable fraction of the unstacked PAGA exposure. Here, since the claims for minimum wages, overtime wages, meal and rest periods, unreimbursed business expenses, wage statements, and failure to timely pay all unpaid wages following separation of employment are all premised at least partially on the same factual basis, (i.e. hourly non-exempt employees who were deprived of minimum wages, overtime wages, meal periods, and rest periods), stacking these penalties could arguably be overly punitive. Instead, seeking only penalties for minimum wages, overtime wages, meal and rest periods, results in far more reasonable and less punitive penalties that eliminate the “stacked” penalties for each Labor Code section violated as a result of the same conduct. As a result, Defendant could argue Plaintiff and the aggrieved employees may only be able to recover penalties under Plaintiff’s minimum wage, overtime wage, and meal and rest period violations. Thus, if Defendant is correct on the “stacking” issue, the maximum theoretical penalties would be substantially less under Defendant’s view of the law. (Howe Dec. ¶23.)

Second, Plaintiff’s calculation also assumes that Plaintiff’s PAGA claims could be tried in a manageable manner that comports with due process, which Defendant vigorously disputes. (Howe Dec. ¶24.)

Third, the Court has discretion under PAGA to reduce the amount of any penalties awarded for equitable reasons. (Howe Dec. ¶25.)

Fourth, Defendant would argue that PAGA penalties would be limited in any event. As discussed in detail above, Defendant denies any liability. Moreover, Defendant would argue that even if Plaintiff prevailed, the recoverable penalties under PAGA are minimal. Indeed, courts that have considered the issue have refused to “stack” PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty reduction to \$5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809. Moreover, Defendant would argue that Plaintiff is not entitled to recover PAGA penalties at

1 the subsequent violation rate of \$100 per pay period. California’s appellate courts have held that
2 “[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not
3 the commissioner or court chooses to impose penalties), the employer cannot be presumed to be
4 aware [of the violation]” and therefore, until a Court or the Commissioner issues a finding of a
5 violation, the initial \$50 violation rate applies for each pay period in which the alleged violation
6 occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; *accord Amalgamated*
7 *Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* (S.D. Cal. Aug. 10, 2009) 2009 WL
8 2448430, at *9 (“[u]nder California law, courts have held that employers are not subject to
9 heightened penalties for subsequent violations unless and until a court or commissioner notifies the
10 employer that it is in violation of the Labor Code”). Thus, Defendant would argue that even if the
11 Plaintiff was able to establish any violation of the Labor Code, the PAGA penalties assessed for
12 these violations will be computed at the \$50 rate, as opposed to the \$100 per pay period rate at
13 maximum, and there is a likelihood that a further reduction of the penalty to \$5 per pay period as
14 approved in *Carrington* would apply given Defendant’s compliance with the Labor Code as
15 discussed above. (Howe Dec. ¶26.)

16 Finally, Plaintiff anticipates that Defendant would argue that the Court might follow the
17 logic in *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 and assess only the initial
18 \$50 violation rate for each pay period (i.e. at \$50 per pay period x 839 pay periods at issue),
19 therefore it is likely Defendant’s maximum exposure is actually only \$41,950.00. Defendant likely
20 would have argued that this Court would use the *Carrington* valuation as a ceiling for assessing
21 PAGA penalties and that this amount (i.e., \$5 per pay period x 839 pay periods at issue = \$4,195.00)
22 was its true “worst case scenario” exposure). (Howe Dec. ¶27.)

23 In sum, the settlement in the instant case provides for a gross fund value of \$165,000.00 with
24 a PAGA allocation of \$10,000.00 with 75% (\$7,500) payable to the LWDA and 25% (\$2,500)
25 distributed to the Aggrieved Employees which falls squarely within the range of reasonableness for
26 PAGA allocations outlined in the case law above. (Howe Dec. ¶28.)

27 Defendant has however maintained significant defenses to the above claims as follows:
28 Regarding Plaintiff’s claims for unpaid minimum wages, overtime wages, Defendant would likely

1 argue that properly paid all minimum wages and overtime wages owed. Regarding meal periods,
2 Defendant could argue that it provided authorize or permit meal periods to Plaintiff and similarly
3 situated employees of no less than thirty (30) minutes for each five-hour period of work as required
4 by law. Defendant could contend it had compliant meal period policies and issued those to all
5 exempt Class Members. With respect to Plaintiff’s rest period claim, Defendant could contend that
6 it provided compliant written rest period policies and therefore Plaintiff and the Class were on
7 notice of what rest periods should have been taken. Defendant could argue that it reimbursed all
8 business expenses to Plaintiff and similarly situated employees. Additionally, Defendant could
9 contend any alleged wage statement violations could not be shown to be “knowing and intentional”
10 given its good-faith defenses, and that Plaintiff cannot show her or other employees “suffer[ed]
11 injury,” as required by Labor Code § 226(e). Defendant would likely argue that wage statements
12 always accurately reflected hours worked and amounts paid to employees. Based on the foregoing,
13 Defendant could argue that Plaintiff and Class Members were paid out upon separation of
14 employment for all wages owed, and that Defendant believed, in good faith, that it was properly
15 paying all wages to separating employees. For these reasons, Defendant could conclude that
16 Plaintiff would not likely prevail on their claims. (Howe Dec. ¶29.)

17 If Plaintiff continued litigating this matter, the class members could potentially receive
18 **nothing** if the court agreed with Defendant’s position or if Defendant was able to defeat certification
19 based on the individual inquiries that would be required regarding Plaintiff’s off the clock claims and
20 meal and rest claims. Furthermore, even if the Court agreed with Plaintiff, Plaintiff still had to prove
21 Defendant faced exposure under Plaintiff’s derivative claims and acted intentionally and *willfully* in
22 order to receive the additional penalties under Labor Code Sections 203, 204, and 226. As such,
23 Plaintiff’s decision to settle this matter was in the best interest of the Class Members. (Howe Dec.
24 ¶30.)

25 This is a fair and reasonable result. Other substantial benefits also include that it is a non-
26 reversionary, no-claims made settlement, which distributes the Net Settlement Amount on a pro rata
27 basis based on the number of Workweeks each Participating Class Member worked for Defendant
28 during the Class Period. (Settlement, §3.2.4.) The 25% portion of the PAGA Settlement Amount

1 allocated to Aggrieved Employees will be distributed to each Aggrieved Employee who worked
2 during the PAGA Period based on their individual number of Pay Periods during the PAGA Period.
3 (Settlement, §3.2.5.1.) Settlement Class Members will have no less than one hundred eighty (180)
4 days to cash their checks. Any funds not distributed after the expiration of the Individual Class
5 Payment checks shall escheat to the California Controller's Unclaimed Property Fund to in the name
6 of the Class Member. (Settlement, § 4.3.3.) (Howe Dec. ¶131.)

7 The Gross Settlement Amount is reasonable in light of the risks involved in this case—
8 including the prospect of a potential adverse summary judgment ruling, class certification issues as
9 well as the uncertainty of class certification, defenses to the case, potential appeal, the elements of
10 willfulness and/or injury required for certain penalties.

11 Plaintiff's Counsel is convinced that the proposed Settlement is in the best interest of the class
12 based on the negotiations and a detailed knowledge of the issues present in this action. The affirmative
13 defenses asserted by Defendant, the prospect of a potential adverse summary judgment ruling,
14 preemption issues, class certification issues as well as the uncertainty of class certification, the
15 difficulties of complex litigation, the lengthy process of establishing specific damages and various
16 possible delays and appeals were also carefully considered by Class Counsel in agreeing to the
17 proposed Settlement. In light of the above, the proposed Settlement is well within the "ballpark" of
18 reasonableness and should be granted preliminary approval.

19 **V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES**

20 The court may make an order approving certification of a provisional settlement class after the
21 preliminary settlement hearing. (California Rules of Court, Rule 3.769(d).) For settlement purposes,
22 courts use a less stringent standard for certification of classes. (*Global Minerals & Metals Corp. v.*
23 *Superior Court* (2003) 113 Cal.App.4th 836, 859.) "The reason for this is that no trial is anticipated
24 in a settlement class case, so the case management issues inherent in the ascertainable class
25 determination need not be confronted." (*Id.*; see also *7-Eleven Owners for Fair Franchising v.*
26 *Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming certification of class action for
27 settlement purposes only].) Accordingly, this Court has discretion to certify Plaintiffs' class for
28 settlement purposes only.

1 The requirements under California Code of Civil Procedure Section 382 are all met for the
2 purposes of certifying this case for settlement purposes:

3 • Numerosity: The settlement class consists of approximately 54 Class Members. Thus,
4 the requirement of numerosity is easily met because joinder of 54 individual plaintiffs into a single
5 case is otherwise impracticable in light of the circumstances of this case.

6 • Typicality: The claims of the class representative are typical of the claims of the class
7 members as a whole. The named Plaintiff suffered the same alleged violations (e.g. failure to pay
8 minimum, overtime wages, provide or authorize meal and rest periods, failure to reimburse business
9 expenses, failure to provide complete and accurate wage statements, and failure to pay all wages due
10 upon separation of employment) as the class as a whole did and, thus, the claims of the named Plaintiff
11 fairly represent the claims of the class as a whole.

12 • Ascertainability: The proposed “Class” is easily ascertainable based on Defendant’s
13 own payroll records.

14 • Adequacy: Plaintiff has proven to be an adequate class representative. He has
15 conducted himself diligently and responsibly in representing the class in this litigation, he understands
16 his fiduciary obligations, and he has actively participated in the prosecution of this case. (Howe Dec.
17 ¶36.) Plaintiff has spent hours in meetings and conferences with counsel to get a better understanding
18 of his work environment and requirements. Plaintiff remained actively engaged in the settlement
19 negotiations following mediation that were ultimately required to finalize settlement. (*Id.*) Further,
20 Plaintiff does not have any interest that is adverse to the interests of the other class members. (*Id.*)
21 Moreover, proposed class counsel is adequate to represent the class for settlement purposes and has
22 been appointed as class counsel before by this Court as well as both State and Federal Courts. (Howe
23 Dec. ¶32.)

24 • Commonality: Many common issues of law and fact unite the class. The common
25 questions of law and fact include, but are not limited to:

- 26 1) Whether Defendant failed to pay minimum and overtime wages;
- 27 2) Whether Defendant failed to provide the Class Members meal periods;
- 28 3) Whether Defendant failed to provide the Class Members rest periods;

- 4) Whether Defendant failed to reimburse business expenses;
- 5) Whether Defendant failed to provide the Class Members complete and accurate wage statements;
- 6) Whether Class Members are entitled to waiting time penalties for Defendant's failure to pay all wages upon separation of employment; and
- 7) Whether Defendant violated Business and Professions Code section 17200.

- Superiority: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Joinder of all members of the proposed class is impractical. Class treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously for settlement purposes without the unnecessary duplication of effort and expense that numerous individual actions would engender.

VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE APPROVED

The proposed Class Notice in the form attached to the Settlement as Exhibit 1, should be approved for dissemination to the Class Members. This document informs the Class of the terms of the Settlement, of their right to receive their proportional share of the Settlement and the manner in which to do so, of their right to request exclusion or to comment upon or object to the Settlement, and of their right to appear in person or by counsel at the final approval hearing and to be heard regarding approval of the Settlement. Adequate periods of time are provided by each of these procedures. Furthermore, the date and time of the Final Approval hearing will be inserted in the Notice will identify the information upon which the Class Member's share will be calculated as well as the estimated amount he or she can expect to receive if he or she chooses to participate in the settlement.

VII. THE PROPOSED ATTORNEY FEES AND COSTS ARE REASONABLE

Plaintiff's Counsel seeks attorneys' fees of one-third (1/3) of the Gross Settlement Amount or Fifty-Five Thousand Dollars and Zero Cents (\$55,000.00), as well as Class Counsel's costs not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00), for the time spent litigating this matter as well as expenses incurred in the prosecution of the action thus far. Defendant will not object to an award of attorneys' fees and costs in these amounts. The requested fee falls well within the historical range of attorneys' fee awards under the common fund theory, which is generally from 20% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits

1 achieved by Plaintiff's counsel for the Class Members. Plaintiff's counsel diligently litigated and
2 investigated this case.

3 California courts have recognized that an appropriate method for awarding attorney's fees in
4 class actions is to award a percentage of the "common fund" created as a result of the settlement.
5 (*City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15
6 Cal. 3d 162, 168; *see also Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253,
7 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26.) The basis of the common
8 fund is fairness to the successful litigant, who might otherwise receive no benefit because his
9 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to others
10 who are entitled to share in the fund and who should bear their share of the burden of its recovery;
11 encouragement of the attorney for the successful litigant, who will be more willing to undertake and
12 diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that
13 he will be properly and directly compensated should his efforts be successful. (*City & County of San*
14 *Francisco v. Sweet, supra*, 12 Cal. 4th at 111.) In *Quinn*, the California Supreme Court stated: "[O]ne
15 who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits
16 may require those passive beneficiaries to bear a fair share of the litigation costs." (*Quinn v. State,*
17 *supra*, 15 Cal. 3d at 167.) Similarly, in *Sweet*, the California Supreme Court recognized that the
18 common fund doctrine has been applied "consistently in California when an action brought by one
19 party creates a fund in which other persons are entitled to share." (*City & County of San Francisco*
20 *v. Sweet, supra*, 12 Cal. 4th at 110.)

21 Several courts have expressed frustration with the alternative "lodestar" approach for
22 deciding fee awards, which usually involves wading through voluminous and often indecipherable
23 time records. (*Lealao, supra*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D. Cal
24 1989)] 723 F. Supp. 1373, 1375.) The percentage approach is preferable to the lodestar because: (1)
25 it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution
26 of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
27 demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79.) The Ninth
28 Circuit now routinely uses the percentage of the common fund approach to determine the award of

1 attorney's fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific Enters. Sec. Litig.* (9th Cir.
2 1995) 47 F.3d 373, 378-79 [approving attorney's fee of 33%].)

3 Plaintiff's counsel's request for fees equal to one-third (1/3) of the Gross Settlement Amount
4 is within the range of reasonableness. Historically, courts have awarded percentage fees in the range
5 of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig., supra*,
6 723 F. Supp. at 1378.) According to Professor Newberg: "No general rule can be articulated on what
7 is a reasonable percentage of a common fund...Usually 50 per cent of the fund is the upper limit on
8 a reasonable fee award from a common fund, in order to assure that fees do not consume a
9 disproportionate part of the recovery obtained for the class, though somewhat larger percentages are
10 not unprecedented." (Newberg, *supra*, §14.6.)

11 Class Counsel have borne, and continue to bear, the entire risk and cost of litigation
12 associated with this class action on a pure contingency basis. The factual and legal issues posed in
13 this case were highly disputed, and there were also risks as to whether or not a class would be
14 certified, leaving a large number of putative class members unlikely to receive any recovery.

15 Based on Class Counsel's past experience in class action wage and hour litigation, it is safe
16 to state that Class Counsel is very likely to be called upon, after the Class Notice has been sent, to
17 expend substantial amounts of additional time to help Class Members understand the terms of the
18 proposed Settlement. It is also likely that, even after final approval of the Settlement has been
19 granted, Class Counsel will be called upon to expend additional amounts of time in the presentation
20 and resolution of contests and questions relating to Class Members' allocation under the terms of the
21 proposed Settlement, as to the amounts of individual claims and perhaps other individual issues.

22 The Court should preliminarily approve the requested attorney's fees and costs, which are
23 justified by the results achieved, the complexity of the issues, the difficulty of the case, and the great
24 risk undertaken by Class Counsel. The requested attorneys' fees and costs will not be opposed by
25 Defendant, and are well within established guidelines. The Class Members will also be notified of the
26 requested amount and have an opportunity to object to the requested fees.

27 **VIII. THE REQUESTED SERVICE AWARD IS REASONABLE**

28 The named Plaintiff is entitled to a Service Payment for his service as class representative

1 and the risks associated with his role as Class Representative and named Plaintiff in this action.
2 Plaintiff understood and continues to understand his role as Class Representative, he has protected
3 the interests of Class Members during the pending of this matter and will continue to do so. (Howe
4 Dec. ¶36.) Plaintiff has spent hours in meetings and conferences with counsel to get a better
5 understanding of his work environment. (*Id.*) Even after mediation, he continued to be engaged with
6 counsel for the months of the continued negotiations that it took to ultimately finalize a settlement
7 as well as understanding and discussing the settlement agreement with his attorneys. (*Id.*) Further,
8 Plaintiff does not have any interest that is averse to the interests of the other class members. (*Id.*)
9 Defendant will not oppose the application for an enhancement of \$10,000 to Plaintiff as the Class
10 Representative from the Gross Settlement Amount for his services to the Class in this action. Class
11 Counsel can attest that Plaintiff devoted a proportionate amount of time and work assisting counsel
12 in the case, communicating with counsel frequently, providing documents and information regarding
13 his employer and employment, which led to an increase in the value and ultimate success of the
14 Settlement. (*Id.*) Class Counsel is prepared to submit a full declaration from Plaintiff detailing his
15 efforts as Class Representative as part of Plaintiff's Motion for Final Approval. (*Id.*)

16 **IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS**

17 The Parties propose the following schedule for the fairness hearing and final proceedings:

- 18 i. Not later than fifteen (15) calendar days after the Court grants Preliminary Approval
19 of the Settlement, Defendant will deliver the Class Data to the Administrator, in the
20 form of a Microsoft Excel spreadsheet. (Settlement, § 4.1.)
- 21 ii. Using best efforts to perform as soon as possible, and in no event later than fourteen
22 (14) days after receiving the Class Data, the Administrator will send to all Class
23 Members identified in the Class Data, via first-class United States Postal Service
24 ("USPS") mail, the Class Notice with Spanish translation. (Settlement, § 7.4.2.)
- 25 iii. If a Class Member wishes to submit a Request for Exclusion or Objection, they may
26 do so within sixty (60) calendar days from the date the Class Notice is mailed to
27 them ("Response Deadline"). Class Members to whom Notice Packets are resent
28 after having been returned undeliverable to the Administrator shall have an
additional 14 calendar days beyond the Response Deadline. (Settlement, § 1.43.)
- iv. The filing date for the Motion for Final Approval of the Class Action Settlement,
and Motion for Final Approval of Plaintiff's Attorneys' Fees and Costs and Service
Payment to the Class Representative will be determined by the Court.

- 1 v. The Final Fairness and Approval Hearing date will be determined by Court. The
2 parties request that the Final Fairness and Approval Hearing be set approximately
3 one hundred fifty (150) days following the Court's granting of preliminary approval
4 of the proposed Class Action Settlement.

5 **X. CONCLUSION**

6 The proposed class action settlement is fair, adequate, and reasonable. It will result in fair and
7 immediate payment to Class Members; it is non-collusive; and it was achieved as the result of
8 informed, extensive, and arms' length negotiations conducted by counsel for respective parties who
9 are experienced in wage and hour class action litigation. For the foregoing reasons, the parties
10 respectfully request that the Court grant preliminary approval of the proposed Settlement, sign the
11 proposed Order, approve and authorize mailing of the proposed Class Notice of Settlement and set a
12 date for a final approval hearing.

13 Dated: June 6, 2025

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

14
15 By: /s/ Eve Howe
16 Joseph Lavi, Esq.
17 Vincent C. Granberry, Esq.
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20 Attorneys for Plaintiff ADRIAN VALDIVIA on
21 behalf of himself and others similarly situated
22
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