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and on behalf of others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ**

TYLER EMERY individually and on behalf of
others similarly situated,
Plaintiff,

vs.

SANTA CRUZ BICYCLES, LLC; and DOES 1
through 25, inclusive, Defendants.

Defendants.

Case No.: 24CV00244

*Assigned for all purposes to the Honorable
Syda K. Cogliati, Dept. 5*

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

Date: October 7, 2024
Time: 8:30 a.m.
Dept.: 5

Complaint Filed: January 25, 2024
Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on **October 7, 2024** at **8:30 a.m.** in **Department 5** of the
3 above-captioned Court located at 701 Ocean Street, Santa Cruz, California 95060 pursuant to California
4 Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiff Tyler
5 Emery (“Plaintiff”) will and hereby does move the Court for an Order granting preliminary approval of
6 the proposed class action and PAGA settlement between Plaintiff and Defendant Santa Cruz Bicycles,
7 LLC (“Defendant”).

8 Plaintiff requests that the Court enter an Order:

9 1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement
10 (“Settlement” or “Settlement Agreement”) attached as Exhibit 2 to the Declaration of Karen I. Gold in
11 Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement (“Gold
12 Decl.”);

13 2. Certifying the Class for Settlement purposes;

14 3. Appointing Plaintiff Tyler Emery as the Class Representative for Settlement purposes;

15 4. Appointing Jonathan M. Genish, Karen I. Gold, Ashley H. Cruz, and Marissa A. Mayhood
16 of Blackstone Law, APC as Class Counsel for Settlement purposes;

17 5. Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as
18 Exhibit A to the Settlement Agreement, to be mailed to the Class;

19 6. Approving the opt-out and objection procedures provided in the Settlement Agreement
20 and set forth in the Class Notice;

21 7. Directing Defendant to furnish, for each Class Member, their full name, last known
22 mailing address, Social Security number or Individual Taxpayer Identification Number, dates worked for
23 the Defendant during the Class Period, last known telephone number, names and amounts paid to each
24 Class Member in connection with any prior settlement efforts in connection with the actions titled *Emery*
25 *v. Santa Cruz Bicycles, LLC*, Santa Cruz Superior Court, Case No. 24CV00244 (“Class Action”), and
26 *Emery v. Santa Cruz Bicycles, LLC*, Santa Cruz Superior Court, Case No. 24CV00839 (“PAGA Action”)
27 (together, the “Actions”); and the number of workweeks worked during the Class Period and PAGA
28 Period (or information allowing the Settlement Administrator to calculate the same) to the Settlement

1 Administrator within fifteen (15) calendar days after entry of the order granting preliminary approval of
2 the Settlement;

3 8. Approving the proposed deadlines for the settlement administration process; and

4 9. Setting a Final Approval Hearing.

5 Pursuant to California Labor Code section 2699(s)(2) and concurrently with the filing of this
6 Motion, a copy of the Settlement was submitted to the California Labor and Workforce Development
7 Agency (“LWDA”) via online submission through the LWDA’s website. Gold Decl., ¶ 53, Ex. 3.

8 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the
9 Declaration of Karen I. Gold, the Declaration of Plaintiff Tyler Emery, the pleadings and other records
10 on file with the Court in this matter, and any other further evidence or argument that the Court may
11 properly receive at or before the hearing.

12 Respectfully submitted,

13 Dated: September 12, 2024

BLACKSTONE LAW, APC

14
15 By: 
16 Jonathan M. Genish
17 Karen I. Gold
18 Ashley H. Cruz
19 Marissa A. Mayhood

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25
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27
28
Attorneys for Plaintiff TYLER EMERY, individually
and on behalf of others similarly situated

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Tyler Emery (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of Class
4 Action and PAGA Settlement (“Settlement” or “Settlement Agreement”) entered into between Plaintiff
5 and Defendant Santa Cruz Bicycles, LLC (“Defendant”) (together, with Plaintiff, the “Parties”).
6 Declaration of Karen I. Gold in Support of Plaintiff’s Motion for Preliminary Approval of Class Action
7 and PAGA Settlement (“Gold Decl.”), Ex. 2. The main Settlement terms are as follows:

- 8
- Class Size: Approximately 291 individuals (as of July 22, 2024).
 - 9 • Gross Settlement Amount: Nine Hundred Forty-Nine Thousand Two Hundred Eighty-Five
10 Dollars and Zero Cents (\$949,285.00).
 - 11 • Settlement is non-revisionary, and all class members who do not opt out will be automatically
12 sent their share of the Gross Settlement Amount without filing a claim.
 - 13 • Settlement Administration Costs: Not to exceed Nine Thousand Dollars and Zero Cents
14 (\$9,000.00), to be paid from the Gross Settlement Amount.
 - 15 • Class Representative Incentive Payment: Seven Thousand Five Hundred Dollars and Zero
16 Cents (\$7,500.00) to Plaintiff Tyler Emery, to be paid from the Gross Settlement Amount.
 - 17 • PAGA Payment: Fifty Thousand Dollars and Zero Cents (\$50,000.00) from the Gross
18 Settlement Amount, 75% of which will be paid to the Labor and Workforce Development
19 Agency (“LWDA”) and the remaining 25% to be paid to the Aggrieved Employees.
 - 20 • Attorneys’ Fees and Costs: Attorneys’ fees not to exceed thirty-five percent (35%) of the
21 Gross Settlement Amount (i.e., \$332,249.75 if the Gross Settlement Amount is \$949,285.00)
22 plus actual litigation costs and expenses not to exceed Twenty-Four Thousand Dollars and
23 Zero Cents (\$24,000.00), to be paid from the Gross Settlement Amount.
 - 24 • Estimated Net Settlement Amount: Five Hundred Twenty-Six Thousand Five Hundred
25 Thirty-Five Dollars and Twenty-Five Cents (\$526,535.25) to be distributed to Participating
26 Class Members.

26 As set forth herein, the Settlement is the product of informed discovery and arms-length
27 negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore
28 respectfully requests that the Court grant preliminary approval of the Settlement, conditionally certify the

Class, approve the Notice of Proposed Class Action and PAGA Representative Action Settlement (“Class Notice”), and set a hearing date for final settlement approval, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant manufactures and ships high-end bicycles out of its facility in Santa Cruz, California. Plaintiff was employed by Defendant as an hourly-paid, non-exempt Shipper from approximately August 2017 to approximately May 2023. Declaration of Plaintiff Tyler Emery in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement (“Emery Decl.”), ¶ 2.

On January 16, 2024, Plaintiff provided written notice to the LWDA and to Defendant, pursuant to California Labor Code Section 2699.3, of the specific provision of the California Labor Code alleged to have been violated by Defendant (“PAGA Letter”). Gold Decl., ¶ 10 & Exh. 1.

On January 25, 2024, Plaintiff filed a Class Action Complaint for damages in the action entitled *Tyler Emery v. Santa Cruz Bicycles, LLC*, Santa Cruz County Superior Court, Case No. 24CV00244 (“Class Action”), thereby commencing a putative class action against Defendant. Gold Decl., ¶ 11.

On March 22, 2024, Plaintiff filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2689 *et seq.*, in the action entitled *Tyler Emery v. Santa Cruz Bicycles, LLC*, Santa Cruz County Superior Court, Case No. 24CV00839 (“PAGA Action”), thereby commencing a separate representative action against Defendant. Gold Decl., ¶ 12.

On July 12, 2024, the Parties participated in a formal mediation conducted by Paul Haines, Esq. (“Mediator”), a neutral and respected mediator with extensive experience in complex wage and hour matters. *Id.*, ¶ 13. After a full day of mediation, and with the help of the Mediator, the Parties were able to reach an agreement to resolve this dispute on a class and PAGA basis. *Id.*

On September 10, 2024, the Parties executed the Settlement Agreement. *Id.*, ¶ 14.

III. THE SETTLEMENT TERMS

A. Class Definition

For purposes of settlement only, the Parties have agreed that the Class shall be defined as “all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period” (“Class Members” or “Class”). Gold Decl., ¶ 14; Settlement Agreement, ¶ 1.7. The Class Period is defined as the period from January 25, 2020, to October

1 15, 2024, inclusive. Gold Decl., ¶ 14, Ex. 2 (“Settlement Agreement”), ¶ 1.10. Based on information
2 provided by Defendant, as of July 22, 2024, it is estimated that there are a total of two hundred and ninety-
3 one (291) Class Members. Gold Decl., ¶ 15.

4 **B. Amount of Settlement**

5 The Parties have agreed to settle the claims in the Class Action and PAGA Action for a non-
6 reversionary Gross Settlement Amount of Nine Hundred Forty-Nine Thousand Two Hundred Eighty-Five
7 Dollars and Zero Cents (\$949,285.00), exclusive of employer-side payroll taxes. Settlement Agreement,
8 ¶ 1.22.

9 **C. Allocation and Funding of the Gross Settlement Amount**

10 The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees,
11 and other allocations. Settlement Agreement, ¶ 1.22. The Gross Settlement Amount includes: (1) Class
12 Counsel’s Attorney’s Fees in the amount not to exceed thirty-five percent (35%) of the Gross Settlement
13 Amount (*i.e.*, \$332,249.75 if the Gross Settlement Amount is \$949,285.00); (2) Class Counsel’s actual
14 litigation costs and expenses, not to exceed Twenty-Four Thousand Dollars and Zero Cents (\$24,000.00);
15 (3) Settlement Administration Costs, not to exceed Nine Thousand Dollars and Zero Cents (\$9,000.00);
16 (4) Class Representative Incentive Payment in the amount of Seven Thousand Five Dollars and Zero
17 Cents (\$7,500.00); and (5) PAGA Payment in the amount of Fifty Thousand Dollars and Zero Cents
18 (\$50,000.00). Settlement Agreement, ¶¶ 1.24; 1.41. After the above-estimated amounts are deducted from
19 the Gross Settlement Amount, the Net Settlement Amount that will be available for Class Members is
20 currently estimated to be Five Hundred Twenty-Six Thousand Five Hundred Thirty-Five Dollars and
21 Twenty-Five Cents (\$526,535.25). Gold Decl., ¶ 16. Additionally, 25% of the PAGA Payment (“PAGA
22 Settlement Payment”), which is \$12,500.00 out of \$50,000.00, will be fully distributed to all current and
23 former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California
24 at any time during the PAGA Period (“Aggrieved Employees”). Settlement Agreement, ¶ 1.26. The
25 “PAGA Period” is defined as the period from January 16, 2023, through October 15, 2024. Settlement
26 Agreement, ¶¶ 1.27.

27 Based on information from Defendant, it is estimated that the Class Members worked a total of
28 approximately 30,000 workweeks during the period from January 25, 2020, through October 15, 2024.

1 Settlement Agreement, ¶ 4.7. If it is determined by the Settlement Administrator that the total number of
2 workweeks worked by the Class Members during the Class Period actually exceeds 30,000 by more than
3 5% (i.e., if there are more than 31,500 workweeks), then Defendant shall have the option to either: (i)
4 end the Class Period and the PAGA Period on the date on which the workweeks reach 31,500; or (ii)
5 increase the Gross Settlement Amount on a proportional basis by the amount by which it exceeds 5%
6 (i.e., if there was a 6% increase in the number of workweeks during the Class Period, Defendant would
7 agree to increase the Gross Settlement Amount by 1%). Settlement Agreement, ¶ 4.7.

8 The Net Settlement Amount will be distributed and paid to all Class Members who do not submit
9 a timely and valid Request for Exclusion (“Participating Class Members”) on a *pro rata* basis based on
10 the number of weeks each Class Member worked for Defendant as an hourly-paid and/or non-exempt
11 employee in California during the Class Period (“Credited Workweeks”). Settlement Agreement, ¶¶ 1.16,
12 1.24, and 1.30. The *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to
13 receive under the Class Settlement (“Class Member Payment”) will be calculated by the Settlement
14 Administrator, in accordance with the Settlement Agreement. Settlement Agreement, ¶¶ 1.8 and 4.2(a).

15 Prior to mediation, Defendant engaged in a “Pick-Up Stix” style campaign, in which it offered its
16 employees the option to settle out their claims in this lawsuit in exchange for a monetary payment ranging
17 from \$500 to \$11,760 per employee. Gold Decl., ¶ 41. Defendant paid a total of \$149,285.00 to its
18 employees as part of its Pick-Up Stix campaign, which is included in the Gross Settlement Amount. Gold
19 Decl., ¶ 16.

20 Participating Class Members who already received a settlement payment from the Gross
21 Settlement Amount shall receive an additional settlement payment to the extent required to ensure they
22 receive the total amount to which they are entitled based on the calculations for their Class Member
23 Payments under the terms of the Settlement Agreement. Settlement Agreement, ¶¶ 1.8 and 4.2(a). For
24 example, if a Participating Class Member’s Class Member Payment is \$100 and the Participating Class
25 Member previously received a \$20 payment from the Gross Settlement Amount then the Participating
26 Class Member will receive an additional \$80 (the net amount owed after subtracting the prior payment).
27 Settlement Agreement, ¶¶ 1.8 and 4.2(a).

28 The PAGA Settlement Payment will be distributed and paid to all Aggrieved Employees on a *pro*

1 *rata* basis based on the number of weeks each PAGA Employee worked for Defendant as an hourly-paid
2 and/or non-exempt employee in California during the PAGA Period (“Credited Workweeks”). Settlement
3 Agreement, ¶¶ 1.29 and 4.2(b). The *pro rata* share of the PAGA Settlement Payment that a PAGA
4 Employee may be eligible to receive under the PAGA Settlement (“PAGA Settlement Payment”) will be
5 calculated by the Settlement Administrator, in accordance with the Settlement Agreement. Settlement
6 Agreement, ¶¶ 1.8 and 4.2(b).

7 Each Class Member Payment will be allocated as twenty percent (20%) wages and sixty-five
8 percent (65%) penalties, and fifteen percent (15%) as interest. Settlement Agreement, ¶ 4.2(e). The
9 portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to interest and
10 penalties will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator.
11 Settlement Agreement, ¶ 4.2(e). The Settlement Administrator will withhold the employee’s share of
12 taxes and withholdings with respect to the wages portion of the Class Member Payments, and issue checks
13 to Participating Class Members for their net payment of their Class Member Payment. Settlement
14 Agreement, ¶¶ 4.2(e) and 5.2. The employer’s share of taxes and contributions in connection with the
15 wages portion of Class Member Payments will be paid by Defendant separately and in addition to the
16 Gross Settlement Amount. Settlement Agreement, ¶ 4.2(e). Each PAGA Settlement Payment will be
17 allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 by the
18 Settlement Administrator. Settlement Agreement, ¶ 4.2(e).

19 The Settlement Agreement is a non-reversionary and non-claims made settlement. Settlement
20 Agreement, ¶ 4.2(d). The Net Settlement Amount will be fully distributed to Participating Class Members
21 and the PAGA Payment will be fully distributed to the LWDA and Aggrieved Employees, in accordance
22 with the Settlement Agreement. Settlement Agreement, ¶¶ 1.26, 4.2(a), and 4.2(b). No money will revert
23 to Defendant. Settlement Agreement, ¶ 4.2(d).

24 Each Class Member Payment and PAGA Settlement Payment check will be valid and negotiable
25 for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall
26 be canceled. Settlement Agreement, ¶ 4.2(c). If a Class Member Payment and PAGA Settlement Payment
27 check is returned before the expiration of the 180-day period (i.e., Returned Check), within five (5)
28 business days of receipt of the Returned Check, the Settlement Administrator shall undertake a skip-trace

1 search for an alternate mailing address and re-mail the Returned Check to an alternate mailing address (if
2 one is located), under a cover letter indicating that the Returned Check will continue to be valid and
3 negotiable for thirty (30) days after the date of re-mailing. Settlement Agreement, ¶ 4.2(c). If a Returned
4 Check is returned with a forwarding address provided by the United States Postal Service, the Settlement
5 Administrator will promptly re-mail the check to the Participating Class Member and/or Aggrieved
6 Employee's forwarding address within five (5) days of receipt of the Returned Check with a cover letter
7 indicating that the Returned Check will continue to be valid and negotiable for thirty (30) calendar days
8 after the date of re-mailing. Settlement Agreement, ¶ 4.2(c). Any funds associated with such canceled
9 checks will be distributed by the Settlement Administrator to the State of California's Unclaimed Property
10 Division in the name of the Participating Class Member and/or PAGA Employee. Settlement Agreement,
11 ¶ 4.2(d). The Parties agree that this disposition results in no "unpaid residue" under California Civil
12 Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Participating Class
13 Members, whether or not they cash their settlement checks. Settlement Agreement, ¶ 4.2(d).

14 **D. Released Claims**

15 Upon the full funding of the Gross Settlement Amount, Plaintiff and all Participating Class
16 Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished,
17 and discharged the Released Parties of all Class Released Claims. Settlement Agreement, ¶¶ 1.34, 1.36,
18 6.2, and 6.3.

19 Upon the full funding of the Gross Settlement Amount, Plaintiff, the State of California with
20 respect to all Aggrieved Employees, and all Aggrieved Employees will be deemed to have fully, finally,
21 and forever released, settled, compromised, relinquished, and discharged the Released Parties of all
22 PAGA Released Claims. *Id.*, ¶ 1.35, 1.36, and 6.4.

23 "Class Released Claims" means all claims made or which could have been made based on the
24 facts pled in the Class Action Complaint, arising during the Class Period, including, but not limited to,
25 claims for: (i) Failure to Pay Minimum Wage (Labor Code §§ 1194, 1197, and 1197.1); (ii) Failure to
26 Pay Overtime (Labor Code §§ 510 and 1198); (iii) Failure to Provide Timely Off-Duty Meal Breaks or
27 Compensation in Lieu Thereof (Labor Code §§ 226.7 and 512); (iv) Failure to Provide Timely, Off-Duty
28 Rest Periods or Compensation in Lieu Thereof (Labor Code § 226.7); (v) Failure to Timely Pay Wages

1 During Employment (Labor Code §§ 204 and 210); (vi) Failure to Provide Accurate Itemized Wage
2 Statements (Labor Code § 226(a)); (vii) Failure to Timely Pay All Wages Due at Separation (Labor Code
3 §§ 201, 202 and 203); (viii) Failure to Reimburse Necessary Business Expenses (Labor Code §§ 2800
4 and 2802); and (ix) Violation of Unfair Competition Law (Business & Professions Code § 17200, et seq.).
5 Settlement Agreement, ¶ 1.34.

6 “PAGA Released Claims” means all claims made or which could have been made for civil
7 penalties under the PAGA, Labor Code section 2698, *et seq.*, based on the facts pled in Plaintiff’s letter
8 to the LWDA and the PAGA Action Complaint, arising during the PAGA Period, including, but not
9 limited to, claims for: (i) Failure to Pay Minimum Wage (Labor Code §§ 1194, 1197, and 1197.1); (ii)
10 Failure to Pay Overtime (Labor Code §§ 510 and 1198); (iii) Failure to Provide Timely Off-Duty Meal
11 Breaks or Compensation in Lieu Thereof (Labor Code §§ 226.7 and 512); (iv) Failure to Provide Timely,
12 Off-Duty Rest Periods or Compensation in Lieu Thereof (Labor Code § 226.7); (v) Failure to Timely Pay
13 Wages During Employment (Labor Code §§ 204 and 210); (vi) Failure to Provide Accurate Itemized
14 Wage Statements (Labor Code § 226(a)); (vii) Failure to Timely Pay All Wages Due at Separation (Labor
15 Code §§ 201, 202 and 203); (viii) Failure to Keep Complete and Accurate Payroll Records (Labor Code
16 § 1174(d)); and (ix) Failure to Reimburse Necessary Business Expenses (Labor Code §§ 2800 and 2802).
17 Settlement Agreement, ¶ 1.35.

18 “Released Parties” means Santa Cruz Bicycles, LLC, their present and former officers, directors,
19 members, managers, shareholders, employees, agents, parents, subsidiaries, affiliates, insurers, operators,
20 partners, joint ventures, consultants, attorneys, successors, or assignees. Settlement Agreement, ¶ 1.36.

21 **IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL**

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

27 The review and approval of a proposed class action settlement involves a two-step process. *See*
28 Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of the settlement, and the

1 Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the
2 range of a fair settlement to justify providing notice of the proposed settlement to class members. After
3 notice is provided to the class, the Court must conduct a second inquiry into whether the proposed
4 settlement is fair, reasonable, and adequate. *Id.*

5 The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.”
6 *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Rather,
7 the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed
8 settlement is within the range of possible approval and, as a result, “whether there is any reason to notify
9 the class members of the proposed settlement and to proceed with a fairness hearing.” *Looper v. FCA US*
10 *LLC*, No. LACV1400700VAPDTBX, 2017 WL 11650429, at *3 (C.D. Cal. Mar. 23, 2017). A
11 presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2)
12 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
13 is experienced in similar litigation; and (4) the percentage of objectors is small. *See In re Microsoft I-V*
14 *Cases*, 135 Cal. App. 4th 706, 723 (2006).

15 Preliminary approval does not require a court to make a final determination that the settlement is
16 fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice
17 of the settlement has been given to the class members and they have had an opportunity to object or
18 exclude themselves from the settlement. *See* Cal. Rules of Court, Rule 3.769(g). In considering a potential
19 class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which
20 underlie the merits of the dispute and need not engage in a trial on the merits. *See Officers for Justice v.*
21 *Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982).

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

23 **A. The Settlement Was Reached as a Result of Arm’s-Length Bargaining**

24 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
25 reached through arm’s-length bargaining.” *Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
26 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). Here, the Parties’ settlement negotiations were
27 at all times made at arm’s-length and were adversarial. Gold Decl., ¶ 25. The Settlement was reached
28 after completing a full day of mediation with a highly respected mediator with substantial experience

litigating and mediating wage and hour cases. *Id.* At all times, Plaintiff was willing and prepared to litigate this matter through class certification and trial if the Parties had been unable to reach a fair resolution.

B. Sufficient Investigation and Discovery by Experienced Class Counsel

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. Prior to mediation, Defendant produced putative class members' time and pay data, as well as Defendant's employee handbook, relevant wage and hour policies, and information to determine the total number of putative class members, the number of current versus former employees, the total workweeks worked by the putative class members, and the average rate of pay for the putative class members. Gold Decl., ¶ 26.

This allowed Plaintiff's counsel to conduct an informed assessment and analysis of the strengths and weaknesses of the claims and the potential class-wide and PAGA damages. *Id.*, ¶ 27. Based on information exchanged, the Parties extensively briefed issues regarding class certification and liability and provided their analyses to the mediator who helped the Parties further assess the strengths and weakness of their respective positions. *Id.*, ¶ 28. Additionally, settlement negotiations were conducted by highly capable and experienced counsel. Gold Decl., ¶¶ 25, 28. Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

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

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

Here, the reasonableness of the Settlement is underscored by Defendant's legal and factual arguments against Plaintiff's claims. Based upon Class Counsel's experience litigating similar complex

1 matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification and the
2 merits of the Action absent a settlement. Gold Decl., ¶¶ 30-45.

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

4 Class Counsel analyzed all available data and estimated Defendant's maximum potential exposure
5 to be approximately \$6,771,576, assuming the litigation was successful at trial on all class claims at issue
6 and every employee had a violation for each claim on every shift worked, and then reduced this exposure
7 analysis based on adopting more realistic presumptions, the challenges facing the likelihood of obtaining
8 class certification, prevailing at trial, and other attendant risks. *Id.*, ¶ 29. This estimate is based off an
9 estimated maximum liability for all claims at issue and the total aggregate workweeks during the relevant
10 time period, less interest, and based on the analysis of the data which was extrapolated out for all Class
11 Members across the entire putative class period, which included: \$723,362 for meal period violations less
12 meal period premiums paid; \$3,113,265 for rest period violations; \$1,202,907 for unpaid off-the-clock
13 work; \$21,943 for unpaid overtime wages at the required regular rate of pay; \$278,190 for unreimbursed
14 business expenses; \$804,659 for waiting time penalties; and \$627,250 in wage statement penalties. *Id.*
15 Plaintiff further estimated that Defendant faced an additional exposure of \$1,535,100 in potential, non-
16 stacked (i.e., one penalty, per employee, per pay period during the PAGA statutory period) PAGA
17 penalties. *Id.* Together with the PAGA penalties, Defendant's maximum potential exposure totaled
18 \$8,306,676 in damages. *Id.*

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

20 While Plaintiff believes that Defendant faced significant exposure, substantial barriers to a
21 recovery existed. Defendant denied and continues to deny any liability and wrongdoing of any kind
22 associated with the claims alleged. Gold Decl., ¶ 32. Moreover, Defendant contended that Plaintiff's
23 claims are not suitable for class certification because individual issues and affirmative defenses would
24 predominate should this case go to trial. *Id.*; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th
25 1004 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*,
26 131 S.Ct. 2541, 2551 (2011). While Plaintiff and Class Counsel disagree with Defendant's arguments,
27 they also recognize that there is a significant risk that the Court may deny class certification. Gold Decl.,
28 ¶ 32; *see also, Findings of the Study of California Class Action Litigation*, 2000-2006, available at

1 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class
2 actions were certified either as part of a settlement or as part of a contested certification motion)).

3 *i. Meal Periods*

4 Plaintiff asserts that Defendant failed to provide lawful meal periods. Plaintiff's theory of liability
5 for meal period violations was based on allegations that Defendant's practices failed to allow Class
6 Members to take meal breaks in the manner required under California law. Gold Decl., ¶ 33; *See Bradley*
7 *v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129, 1150 (2012). Plaintiff's analysis of the time data
8 revealed that in 23.4% of all shifts there was at least one unique meal period violation. *Id.*, at ¶ 33.

9 Defendant contended that its meal break policies and practices at all times during the Class Period
10 were lawful. *Id.*, ¶ 34. Defendant further argued that the rate of purported meal period violations reflected
11 in the data would require individualized inquiry and that such inquiry would prohibit a class from being
12 certified. *Id.* Additionally, the records showed that Defendant had paid meal premiums for 3% of the
13 recorded meal break violations. *Id.*

14 Based on these facts, Plaintiff used a 23.4% violation rate, and thus attributed \$723,362 in
15 potential damages resulting from alleged meal break violations.

16 *ii. Rest Periods*

17 Plaintiff alleged that Defendant failed to schedule, permit, or authorize compliant rest periods,
18 and that Plaintiff and other Class Members were unable to take their rest breaks because of their heavy
19 workloads. Gold Decl., ¶ 35. Plaintiff reported that if he was able to take a rest break, they were frequently
20 interrupted by supervisors, coworkers, and/or customers. *Id.* Plaintiff's damages analysis on this claim
21 was based on an alleged 25% violation rate. *Id.*

22 As with the meal period allegations, Defendant contended that it had a lawful written rest period
23 policy, provided compliant rest breaks, and relieved Class Members of all duties as required under
24 California law. *Id.*, ¶ 36. Defendant also claimed that given the lack of records demonstrating rest period
25 violations, there were legitimate concerns in certifying these claims. *Id.*

26 Based on these facts, Plaintiff used a 25% violation rate, and thus attributed \$3,113,265 in
27 potential damages resulting from alleged rest break violations.

28 *iii. Off-The-Clock Work*

1 Plaintiff minimum and overtime wages claims were largely based on alleged unrecorded, off-the-
2 clock work performed by the Class Members both before and after their shifts and during purported meal
3 and rest periods. Gold Decl., ¶ 37. For example, Class Members allege that they spent approximately
4 twelve (12) minutes working off the clock per shift. *Id.* This off-the-clock time included, *inter alia*,
5 interruptions during meal periods, responding to calls and messages while away from work, reviewing
6 Covid literature, and checking out with management after clocking out for the day. *Id.*

7 Defendant claimed that the individualized nature of why this work was performed and the
8 individualized nature of damages presented concerns regarding the manageability of the case and the risk
9 the Court could find these issues prevented certification. *Id.*

10 The estimated damages for this claim were based on an assumption that all Class Members worked
11 off the clock for one hour per week, resulting in a total of \$1,202,907 in exposure for Plaintiff's off-the-
12 clock work claim.

13 *iv. Unreimbursed Business Claims*

14 Plaintiff alleged that Defendant failed to reimburse necessary business expenses, including for
15 use of personal cell phones and work shoes. Gold Decl., ¶ 38. Defendant contended that these expenses
16 were not common to all Class Members and that the costs were not a reimbursable expense. *Id.* Defendant
17 further contended that it had policies and practices of reimbursing employees for necessary business
18 expenses. *Id.*

19 Accordingly, Plaintiff used a reasonable estimate of \$30 per month in unreimbursed business
20 expenses, resulting in \$278,190 in potential exposure for this claim.

21 *v. Derivative Claims*

22 As with all derivative claims, success depends on the success of the underlying claims. *Id.*, ¶ 39.
23 Here, Plaintiff's claims for inaccurate wage statements and failure to pay all wages due upon termination
24 would only succeed if the underlying claims for failure to pay wages for off-the-clock work, failure to
25 pay overtime, and failure to pay premiums for meal and rest periods not lawfully provided were
26 successful. *Id.* Therefore, these claims were subject to the same risks of failure as discussed above. *Id.*

27 Also, even if Plaintiff prevailed on his underlying claims, he would still be required to demonstrate
28 that Defendant's violations of California Labor Code section 203 were *willful* violations. *See e.g. Choate*

1 *v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013) (holding that “an employer’s reasonable, good faith
2 belief that wages are not owed may negate a finding of willfulness”). Wage statement claims have also
3 seen varying treatment at the appellate level because such claims have an element of discretion attached
4 to them rather than a pure calculation of damages after liability is proven. *Jaimez v. DAIOHS USA, Inc.*,
5 181 Cal.App.4th 1286 (2010); *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011). Accordingly,
6 these derivative claims, which comprised a substantial portion of Defendant’s estimated liability, were
7 uncertain. *See id.*

8 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the
9 amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
10 proposition. Gold Decl., ¶ 40. In order to prove liability and damages, Class Counsel will need to request
11 and analyze thousands of pages of documents, obtain the Class Members’ contact information, contact
12 them, and obtain their declarations at great expense. *Id.* Obtaining the cooperation of current employees
13 would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current
14 employer. *Id.* On the other hand, Defendant would likely be able to obtain the cooperation of its
15 employees. *Id.* Moreover, even if Plaintiff prevailed at class certification and trial, possible appeals would
16 substantially delay any recovery by the Class. *Id.*

17 Class Counsel further recognized that Defendant secured releases from many of the Class
18 Members and would continue to do so if the case did not settle, which, if upheld, could serve to resolve
19 all liability in this matter for a fraction of the amount for which the case ultimately settled. *Id.*, ¶ 41.

20 Therefore, taking into account how each of the above risks potentially effected Plaintiff’s ability
21 to obtain class certification, thereafter prove the underlying violations, and the cost and delay in
22 recovering the alleged potential damages, Class Counsel discounted Defendant’s estimated liability by
23 70% to \$2,492,002.80. *Id.*, ¶ 42. The merits-based risk factors further reduced Defendant’s estimated
24 liability by an additional 40%. *Id.* This resulted in an adjusted estimated liability of \$1,495,201.68. *Id.*
25 In light thereof, the settlement amount of \$949,285 is significant settlement. *Id.*

26 Class Counsel also contemplated the risks of proceeding with the PAGA action and potential
27 liability Defendant could face from this claim as part of the global resolution. Gold Decl., ¶ 43. Existing
28 case law makes PAGA claims subject to the same defenses and risks as Plaintiff’s underlying wage

1 claims. *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) (“Plaintiff’s
2 claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiff’s other claims
3 fail as a matter of law, so does her PAGA claim”). Class Counsel anticipated that even if successful on
4 the merits at trial, the imposition of cumulative civil penalties based on the alleged wage and hour
5 violations could be considered unjust, arbitrary and oppressive, or confiscatory, and that Defendant would
6 argue that it made a good faith attempt to comply with its legal obligations warranting a reduction in
7 penalties. Gold Decl., ¶ 43. Class Counsel also anticipated Defendant would argue that it made a good
8 faith attempt to comply with its legal obligations and that the violations per pay period were low,
9 warranting an additional reduction in civil penalties. *Id.* Finally, Class Counsel was also mindful of the
10 fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended to
11 facilitate enforcement of California’s labor laws by financing state activities and educating and deterring
12 non-compliance. *Id.*, ¶ 43.

13 Therefore, after considering this multitude of factors, Plaintiff and Class Counsel concluded that
14 it was in the best interest of the State of California and the Aggrieved Employees to enter into the
15 Settlement, and to allocate Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement
16 Amount towards the PAGA claim, which represents approximately 5.27% of the Gross Settlement
17 Amount. *Id.*, ¶ 44. This percentage of the settlement is well within the range of wage and hour settlements
18 regularly approved in both state and federal court for cases that include both a class and PAGA action.
19 *Id.* Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims,
20 and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved
21 as reasonable by courts. *Id.* Moreover, the overall relief obtained by the Settlement is significant, not only
22 from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to
23 promote enforcement of California’s labor laws, provide funds to the state, and deter future non-
24 compliance by the employer. *Id.*

25 The Settlement is therefore in the best interest of the Class Members, the Aggrieved Employees,
26 and the State of California and is within the accepted range of recoveries for this type of litigation given
27 the inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of
28 further litigation. *Id.*, ¶ 45.

1 **VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

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

10 **A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is**
11 **Impracticable**

12 Whether an ascertainable class exists turns on three factors: (1) the class definition; (2) the size
13 of the class; and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d
14 862, 873 (1983). In this case, all three considerations favor class certification. The Class is defined as
15 "all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State
16 of California at any time during the Class Period." Settlement Agreement, ¶ 6(b). This provides a clear
17 and definite scope for the proposed class.

18 Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity
19 requirement. Courts have certified classes with as few as ten or twenty-eight class members. *Rose v. City*
20 *of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995); *Hebbard*
21 *v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Here, the estimated Class size of 291 individuals meets
22 the numerosity requirement. Gold Decl., ¶ 15.

23 Finally, the question of whether class members are easily identifiable turns on whether a plaintiff
24 can establish "the existence of an ascertainable class." *Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706
25 (1967). The existence of an ascertainable class in this case can be established through Defendant's payroll
26 records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and the
27 Court to determine the parameters of the Class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d
28 605, 617 (1987).

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

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

6 The commonality criterion requires the existence of common question of law or fact and is
7 generally established with the issues of predominance and typicality. *See Daar*, 67 Cal.2d 695, 706. What
8 is required is that a common question of fact or law exists which predominates over issues unique to
9 individual plaintiffs. The existence of individual issues or facts—generally present in any case arising
10 from employment—is not a bar to class certification as long as they do not render class litigation
11 unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v. Owens-Illinois,*
12 *Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

13 Here, Plaintiff’s claims present common issues of law and fact that predominate and warrant class
14 certification. Plaintiff alleges that Defendant denied compliant meal and rest periods to employees,
15 required employees to perform work off-the-clock, and failed to fully compensate employees for all time
16 actually worked. *Id.*, ¶¶ 33-39. These policies and practices meant that Defendant allegedly failed to pay
17 minimum and overtime wages, and other related claims. *See id.* Plaintiff alleges that Defendant’s policies
18 and practices were uniform as to all Class Members. *See id.* Thus, class treatment is appropriate.

19 To satisfy the typicality requirement, California law does not require that plaintiffs’ claims be
20 identical to the other class members. Rather, the test of typicality for a class representative is whether
21 other members have the same or similar injury, whether the action is based on conduct which is not
22 unique to the named plaintiff, and whether other class members have been injured by the same course of
23 conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality requirement
24 for a class representative refers to the nature of the claim or defense of the representative, and not to the
25 specific facts from which it arose or the relief sought. *See id.*

26 Here, Plaintiff alleges that his claims are similar to that of the other Class Members and that
27 Plaintiff’s claims arise out of the same alleged course of conduct giving rise to the claims of the other
28 Class Members. Because Plaintiff’s claims are based upon the same alleged conduct and business

practices as those of Class Members, the typicality requirement has been satisfied.

Finally, the question of adequacy of representation “depends on whether the plaintiff’s attorney qualifies to conduct the proposed litigation in the plaintiff’s interest or not antagonistic to the interests of the class.” *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations are satisfied. Class Counsel is well-regarded and is qualified and experienced in employment-related, class-action litigation. Gold Decl., ¶¶ 2-9; 49. Moreover, Plaintiff will vigorously, adequately, and fairly represent the interests of the Class. Plaintiff has, at all times, throughout the course of the litigation considered the interests of the Class and understood that he must take steps to adequately represent the Class and their interests. Emery Decl., ¶ 10. Because Plaintiff’s claims are typical of other Class Members and are not based on unique circumstances, there is no antagonism between the interests of Plaintiff and the Class.

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

Under the circumstances, proceeding as a class action is a superior means of resolving this dispute, as the Class Members and the Court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will come forward to prove his or her separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior to individual litigation under the facts and circumstances present here.

VII. THE REQUESTED CLASS REPRESENTATIVE INCENTIVE PAYMENT IS REASONABLE

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation “for the expense or risk they have incurred in conferring a benefit on other members of the class.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representative, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. *See In re Online DVD Rental*, 779 F.3d 934, 947-948

(9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and reasonable”).

Plaintiff initiated this litigation on behalf of his former co-workers who will now be entitled to receive payment from the Settlement. Plaintiff invested substantial time and effort into litigation, including his own research, reviewing documents, and extensive discussions with Class Counsel. Emery Decl., ¶¶ 3-5. Further, the requested amount for Plaintiff is also reasonable given the average award and the benefit gained by other Class Members. For these reasons, Plaintiff requests a Class Representative Incentive Payment of Seven Thousand Five Dollars and Zero Cents (\$7,500.00) to Plaintiff be preliminarily approved by the Court. Gold Decl., ¶ 46; Emery Decl., ¶ 12.

VIII. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE

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

Here, the requested attorneys’ fees of up to thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$332,249.75 if the Gross Settlement Amount is \$949,285.00) is disclosed to Class Members in the proposed Class Notice. Settlement Agreement, Ex. A. The requested fee is common in the legal marketplace and is not opposed by Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel’s request for the reimbursement of litigation costs and expenses not to exceed Twenty-Four Thousand Dollars and Zero Cents (\$24,000.00). Gold Decl., ¶¶ 47-48.

IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS

The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members. Settlement Agreement, Ex. A. The Class Notice will include information regarding the nature of the

1 Action, a summary of the terms of the Settlement, the Class definition, information on how to object to
2 and/or opt-out of the Class Settlement and to dispute Credited Workweeks, and the date of the Final
3 Approval Hearing. *Id.* The Class Notice will list each Class Member's total workweeks and their
4 estimated Class Member Payment and each Aggrieved Employee's total workweeks and their estimated
5 PAGA Settlement Payment. *Id.*

6 Within fifteen (15) calendar days after entry of the preliminary approval order, Defendant will
7 provide a Class List to the Settlement Administrator containing the following information for each Class
8 Member: (1) full name; (2) last known address; (3) Social Security Number or Individual Taxpayer
9 Identification Number; (4) dates worked for the Defendant during the Class Period; (5) last known
10 telephone number; (6) names and amounts paid to each Class Member in connection with any prior
11 settlement efforts obtained in connection to the Actions; and (7) the number of workweeks worked during
12 the Class Period and PAGA Period (or information allowing the Settlement Administrator to calculate
13 same). Settlement Agreement, ¶¶ 1.6, 5.3(a). Within five (5) business days after receiving the Class List,
14 the Settlement Administrator will perform a search based on the National Change of Address Database
15 and an Accurint (or substantially similar) skip trace service for information to update and correct for any
16 known or identifiable address changes, and will mail a Class Notice in English and Spanish (in the form
17 attached as Exhibit A to this Settlement Agreement) to all Class Members via First-Class U.S. Mail, using
18 the most current, known mailing addresses identified by the Settlement Administrator. *Id.*, ¶ 5.3(a). The
19 Parties have agreed to use ILYM Group, Inc. as the Settlement Administrator. Gold Decl., ¶ 51;
20 Settlement Agreement, ¶ 5.2.

21 In determining whether to approve a settlement of a class action, a trial court has virtually
22 complete discretion as to the manner of giving notice to class members, and review on appeal is governed
23 by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380
24 (2010). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which
25 would result in a higher likelihood of actual notice. Gold Decl., ¶ 52. The original source of the mailing
26 addresses is from Class Members, who provided the information to Defendant. *Id.*

27 Class Members will have forty-five (45) calendar days after the initial mailing of the Class Notice
28 by the Settlement Administrator to submit a Request for Exclusion, written objection, and/or Credited

1 Workweeks dispute (“Response Deadline”). Settlement Agreement, ¶ 1.37.

2 Any Class Notice returned as undeliverable to the Settlement Administrator will promptly be re-
3 mailed to any available forwarding address(es), if provided, or to an updated address obtained from a
4 skip-trace search if no forwarding address is provided. *Id.*, ¶ 5.5(a). The Settlement Administrator shall
5 also send with any re-mailed notice a brief letter stating that the recipient of the re-mailed Notice has
6 until the original deadline set forth on the Notice, or ten (10) calendar days after the re-mailing of the
7 Notice (whichever is later), to submit a Request for Exclusion or an objection to the Settlement, or to
8 dispute the number of Credited Workweeks credited to them. *Id.*, ¶ 5.5(a).

9 Class Members will have an opportunity to dispute the number of Credited Workweeks to which
10 the Class Member has been credited, as reflected in their respective Class Notices, by submitting a timely
11 and valid letter to the Settlement Administrator, by mail, on or before the Response Deadline. *Id.*, ¶
12 5.10(a). A Credited Workweeks dispute must: (i) contain the case name and number of one or both of the
13 Actions (*Emery v. Santa Cruz Bicycles, LLC*, Case Nos. 24CV00244 and 24CV00839); (ii) contain the
14 full name, signature, address, telephone number, and last four digits of the Social Security number or
15 Employee Identification Number of the disputing Class Member; (iii) contain a statement indicating that
16 the Class Member seeks to dispute the number of Credited Workweeks credited to them, the time
17 period(s) they worked for Defendant in an hourly paid or non-exempt position in California during the
18 Class Period and/or PAGA Period, and the number of Credited Workweeks that they contend should be
19 credited to them; (iv) contain documentation and/or other facts supporting the Class Member’s position;
20 and (iv) be postmarked no later than the Response Deadline. Defendant will review its records and
21 provide information to the Settlement Administrator in response to any such disputes. *Id.*, ¶ 5.10(a).

22 Any Class Member wishing to be excluded from the Class Settlement must submit a timely and
23 valid letter (“Request for Exclusion”) to the Settlement Administrator, by mail, on or before the Response
24 Deadline. *Id.*, ¶¶ 1.38 and 5.7. A Request for Exclusion must: (i) contain the case name and number of
25 one or both of the Actions (*Emery v. Santa Cruz Bicycles, LLC*, Case Nos. 24CV00244 and 24CV00839);
26 (ii) contain the Class Members’ full name, signature, address, telephone number, and last four (4) digits
27 of the Class Members’ Social Security number or Employee Identification Number; (iii) contain a
28 statement that the Class Member wishes to be excluded from the Class Settlement; and (iv) be postmarked

no later than the Exclusion Deadline. *Id.*, ¶ 5.7. Notwithstanding the above, all Aggrieved Employees will be bound by the PAGA Settlement and will be issued their PAGA Settlement Payment, irrespective of whether they submit a Request for Exclusion as to the Class Action. *Id.*, ¶ 5.7.

To object to the Class Settlement, a Participating Class Member must submit a timely and complete written objection to the Settlement Administrator, by mail, on or before the Response Deadline. *Id.*, ¶ 5.8. An objector must: (i) mail a written objection in accordance with the terms of this Paragraph; or (ii) appear (in person or through an attorney) and object at the Final Approval Hearing. The Participating Class Member's written objection must: (i) contain the case name and number of one or both of the Actions (*Emery v. Santa Cruz Bicycles, LLC*, Case Nos. 24CV00244 and 24CV00839); (ii) contain the Participating Class Members' full name, signature, address, telephone number, and last four (4) digits of the Participating Class Member's Social Security number or Employee Identification Number; (iii) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; and (iv) be postmarked no later than the Response Deadline. *Id.*, ¶ 5.8. Participating Class Members, individually or through counsel, may also present any objection(s) orally at the Final Approval Hearing, regardless of whether they have submitted a notice of objection. *See* Class Notice, Ex. A to Settlement Agreement.

X. SCHEDULE FOR COMPLETION OF ITEMS PRIOR TO FINAL APPROVAL HEARING

If the Court enters the Order Granting Preliminary Approval of Class Action and PAGA Settlement on October 7, 2024, which is the date of the hearing on Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, then the following schedule would be in place for all items that must be completed before the final approval hearing:

Event	Estimated Completion Date Per Settlement Agreement
Defendant to Provide Class List to Settlement Administrator	October 22, 2024 -Within 15 calendar days of Preliminary Approval. Gold Decl., Ex. 2, ¶ 5.3(a).
Settlement Administrator to Mail Class Notice	October 29, 2024 - Within 5 business days of Settlement Administrator Receiving the Class List. Gold Decl., Ex. 2, ¶ 5.3(a).

Response Deadline	December 13, 2024- 45 calendar days of the Class Notice Mailing. Gold Decl., Ex. 2, ¶ 1.37.
Response Deadline, if Class Notice is Remailed	December 13, 2024 or 10 calendar days after the re-mailing of the Class Notice, whichever is later. Gold Decl., Ex. 2, ¶ 5.5.
Final Approval Hearing	On or after February 1, 2025.

XI. CONCLUSION

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

Respectfully submitted,

Dated: September 12, 2024

BLACKSTONE LAW, APC

By: 
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*Attorneys for Plaintiff TYLER EMERY, individually
 and on behalf of others similarly situated*