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on behalf of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

HUGO RAMIREZ, an individual on behalf
of himself and all others similarly situated,

Plaintiff,

vs.

AMERESCO, INC., a Delaware corporation;
BERNARD NICKELS, INC., a New York
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Lead Case No.: CIVSB2406892
(Consolidated with Case No.: CIVRS2400221)

CLASS ACTION

Assigned for All Purposes

Hon. Jay H. Robinson
Dept. S35

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

*[Filed concurrently with Notice of Motion
and Motion; Declarations of Enoch J. Kim
and Hugo Ramirez; and [Proposed] Order
Granting Plaintiff's Motion for Preliminary
Approval]*

Date: September 15, 2025
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Hugo Ramirez (“Plaintiff”) filed a consolidated class and representative action
4 complaint in this Court (“Action”) against Defendants Ameresco, Inc. and Bernard Nickels, Inc.
5 (“BNA”) (together, “Defendants”). Plaintiff alleges in the class action complaint (“Class Action”)
6 claims against Defendants for failure to pay minimum and overtime wages, failure to provide meal
7 and rest breaks, failure to provide accurate itemized wage statements, failure to timely pay all wages
8 owed during employment and upon termination of employment, failure to provide reimbursements
9 for business expenses incurred, and, in a representative action (“PAGA Action”), alleges claims for
10 civil penalties for California Labor Code violations under the Private Attorneys General Act
11 (“PAGA”).

12 Defendants each filed an Answer to the Class Action Complaint denying Plaintiff’s claims
13 and asserting various affirmative defenses. Regarding the PAGA Action, BNA filed a demurrer
14 (which Ameresco joined) based on the untimely filing of the PAGA Action and motion to stay the
15 PAGA Action pending the outcome of the Class Action. The Court granted the motion to stay and
16 deferred ruling upon the demurrer until the Class Action is resolved.

17 After engaging in discovery, substantial investigation and extensive negotiations with the
18 assistance of a respected mediator, the parties agreed to settle all claims alleged in the Action on a
19 class-wide, non-reversionary basis for \$147,216.00, inclusive of all fees and costs. The parties’
20 Class Action and PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”) defines
21 the class as all (1) current and former non-exempt employees of Defendant Ameresco employed by
22 Defendant Ameresco in the state of California at any time from February 27, 2020 through April
23 8, 2025 (“Class Period”), and (2) current and former non-exempt employees placed at Defendant
24 Ameresco in California by Defendant BNA during the Class Period. All 59 Class Members will
25 receive a settlement payment unless they opt out of the Settlement.

26 The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and
27 adequate, and in the best interests of the Class. Accordingly, Plaintiff, with the consent of
28 Defendants, respectfully requests that this Court enter an order: (1) granting preliminary approval

1 of the proposed class action settlement, as embodied in the Settlement Agreement filed concurrently
2 herewith; (2) approving the Notice of Class Action Settlement and Hearing Date for Final Court
3 Approval (“Class Notice”), which is attached as Exhibit A to the Settlement Agreement, to be sent
4 to Class Members; and (3) setting a hearing for final approval of the class action settlement.

5 **II. THE LITIGATION**

6 **A. Background**

7 Ameresco is a leading cleantech integrator and renewable energy asset developer,
8 owner and operator. BNA is a temporary placement agency. Plaintiff was assigned by
9 BNA to an Ameresco job site where he provided service as a construction manager and
10 then a construction project manager from January 18, 2022 until March 30, 2023, when he
11 resigned.

12 **B. Procedural History**

13 On February 27, 2024, Plaintiff filed a class action complaint against Defendants alleging
14 10 causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime
15 Wages Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest
16 Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of
17 Labor Codes §§ 201, 201.3, 202, 203; (7) Violation of Labor Code §204; (8) Failure to Keep
18 Required Payroll Records Under Labor Code §§ 1174 and 1174.5; (9) Failure to Reimburse
19 Necessary Business Expenses § 2802; and (10) Violation of Business & Professions Code § 17200
20 *et seq.* (“Class Action”). (Declaration of Enoch J. Kim (“Kim Decl.”), ¶ 11.)

21 On the same day, Plaintiff also submitted a PAGA notice letter (“PAGA Notice”) to the
22 Labor Workforce Development Agency (“LWDA”) addressing the same wage and hour allegations
23 as his Class Action complaint and sent Defendants the PAGA Notice on the same day. (Kim Decl.,
24 ¶ 13.) The LWDA did not provide notice of its intent to investigate Plaintiff’s claims within the 65
25 calendar days from the postmark date of the PAGA Notice. (*Id.*) Therefore, on June 21, 2024,
26 Plaintiff filed a complaint for civil penalties under the Private Attorney General Act, Labor Code §
27 2698 *et seq.* (“PAGA Action”). (*Id.*)

28 On May 3, 2024, Defendants removed the Class Action to Federal Court, U.S.D.C. Central

1 Dist. of CA, Case No. 5:24-cv-00949-CV-SP. (Kim Decl., ¶ 14.) On August 20, 2024, BNA filed
2 a Notice of Related Case relating the PAGA Action to the Class Action. (*Id.*) On May 22, 2025,
3 the Class Action was remanded back to this Court, and on July 8, 2025, the Class Action and PAGA
4 Action were consolidated. (*Id.*) The Complaints filed in the Class Action and the PAGA Action are
5 the operative complaints in this case. (*Id.*)

6 Plaintiff contends that Defendants failed to pay all wages due by requiring Class Members
7 to work off the clock, failed to provide meal and rest breaks and premium wages for noncompliant
8 meal and rest breaks, failed to furnish accurate wage statements, failed to timely pay wages
9 including final wages, failed to maintain accurate records, and failed to reimburse necessary
10 business expenses. (Kim Decl., ¶ 12.)

11 Defendants deny all of Plaintiff's allegations and state that they have compelling legal
12 defenses to all of Plaintiff's claims, whether asserted individually, on behalf of a class, or on a
13 representative basis.

14 **C. Investigation**

15 Before filing the lawsuit, Class Counsel investigated and researched the facts and
16 circumstances underlying the pertinent issues and the law applicable thereto. (Kim Decl., ¶ 15.)
17 This required thorough discussions and interviews between Class Counsel and Plaintiff, as well as
18 preliminary research into the various legal issues involved in the case. (*Id.*) After conducting their
19 initial investigation, Class Counsel determined that Plaintiff's claims were well-suited for class and
20 representative action adjudication owing to what appeared to be a common course of conduct
21 affecting a similarly situated group of employees. (*Id.*)

22 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
23 claims giving rise to the action, including: (1) conducting informal discovery and meeting and
24 conferring with defense counsel about the same; (2) reviewing and analyzing a sampling of time
25 and pay records as well as Plaintiff's personnel file, relevant policies, and other documentation; (3)
26 researching the applicable law and potential defenses; (4) constructing damage models based on
27 interpretations of California law; and (5) reviewing information provided by Defendants prior to
28 the mediation. (Kim Decl., ¶¶ 16, 29.) The Class enumerated in this action is ascertainable because

1 Class Members may be readily identified by reference to Defendants' respective records. (*Id.*)
2 Defendants have agreed to share the information from these records with the Settlement
3 Administrator in order to identify and contact Class Members. (*Id.*) Defendants estimate that there
4 are approximately 59 Class Members. (*Id.*)

5 Defendants, for their part, vigorously contest liability, the amount of claimed damages, and
6 the propriety of class certification, including due to a lack of commonality, a lack of typicality, a
7 failure to meet the numerosity requirement, and inadequacy. (Kim Decl., ¶ 17.) Defendants deny
8 all of Plaintiff's allegations. (*Id.*) Plaintiff was assigned by BNA to an Ameresco job site in
9 Southern California. (*Id.*) Defendants contend that he could, and did, take meal and rest breaks
10 when he desired to do so, and the records reveal that there was never a work-related reason for him
11 to have a late, missed, or interrupted break. (*Id.*) Defendants contend that the same is true for the
12 putative Class Members and allegedly aggrieved employees. (*Id.*) Defendants contend that Plaintiff
13 repeatedly certified that the hours he worked were correct and because he was paid by the hour (as
14 reported by him), he had no incentive to underreport or round down his hours. (*Id.*) Defendants
15 contend that the same is true for the putative Class Members and allegedly aggrieved employees.
16 (*Id.*) Defendants contend that they never asked, forced, or otherwise knowingly permitted Plaintiff
17 (or others) to work off the clock and based on the records there was no unlawful rounding of hours.
18 (*Id.*) Defendants contend that Plaintiff and putative Class Members and allegedly aggrieved
19 employees were paid at the proper rates and were reimbursed for all expenses. (*Id.*)

20 After Class Counsel analyzed the relevant documents and other gathered data, Class
21 Counsel believed that this case was appropriate for resolution via mediation. (*Id.*) After discussion
22 amongst counsel, the parties elected to mediate Plaintiff's claims and explore the possibility of
23 settlement to avoid the expense and uncertainty of litigation. (*Id.*)

24 **D. Settlement Efforts**

25 On February 7, 2025, the parties mediated this case with Scott Markus, Esq., a respected
26 and highly experienced mediator in wage and hour class actions. (Kim Decl., ¶ 18.) During
27 mediation, Plaintiff's and Defendants' counsel discussed all aspects of the case, including the risks
28 and uncertainties of litigation and the risks and uncertainties to all parties of proceeding with a

1 motion for class certification as well as the law relating to unpaid wages, meal periods, rest periods,
2 wage statements, final pay and expense reimbursements. (*Id.*) As a result of the mediation, the
3 parties agreed to settle the lawsuit according to the terms set forth in the Settlement Agreement.
4 (*Id.*)

5 From Class Counsel’s review of the facts, strengths, and weaknesses of the case and the
6 risks and delays posed by further litigation, Class Counsel believes that the recovery for each Class
7 Member is fair and reasonable taking into consideration the amounts received in other wage and
8 hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each
9 Class Member’s claim to the settlement award he or she will receive. (*Id.*) Further, and based on
10 the settlement negotiations, which were extensive and conducted in good faith and at arm’s length
11 between attorneys with substantial experience litigating class actions and wage and hour cases, the
12 Settlement Agreement was the product of a non-collusive settlement process in which the parties
13 were forced to make significant compromises in the interest of reaching a full and complete
14 settlement of the lawsuit. (*Id.*)

15 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

16 Under the terms of the Settlement Agreement, Defendants have agreed to pay One Hundred
17 Forty-Seven Thousand Two Hundred Sixteen Dollars and Zero Cents (\$147,216.00) (“Gross
18 Settlement Amount”) on a non-reversionary basis to settle and release all claims asserted by
19 Plaintiff in the Complaints filed in the Class and PAGA Actions. (Kim Decl., ¶ 19; Exh. 1, §3.1.)

20 The Settlement Agreement defines “Class Members” as “all current and former non-
21 exempt employees of Ameresco employed by Ameresco in the state of California at any time during
22 the Class Period [February 27, 2020 through April 8, 2025] and all current and former non-exempt
23 employees placed at Ameresco in California by BNA during the Class Period [February 27, 2020,
24 through April 8, 2025].” (Kim Decl., ¶ 20; Exh. 1, §1.5.) The Settlement Agreement also defines
25 “PAGA Members” as “all current and former non-exempt direct employees of Ameresco employed
26 by Ameresco in the state of California at any time during the PAGA Period [February 27, 2023
27 through April 8, 2025] as well as all current and former non-exempt employees placed at Ameresco
28 in California by BNA during the PAGA Period [February 27, 2023 through April 8, 2025].” (Kim

Decl., ¶ 20; Exh. 1, §1.32.)

The “Net Settlement Amount,” available for distribution to Class Members, shall be the Gross Settlement Amount, less Individual PAGA Payments, LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, and the Settlement Administration Expenses Payment. (Kim Decl., ¶ 21; Exh. 1, §1.27.) These amounts are detailed as follows:

- Class Counsel Fees and Expenses Payment: Class Counsel’s attorneys’ fees of no more than one-third of the Gross Settlement Amount, which is currently estimated to be Forty-Nine Thousand Seventy-Two Dollars and Zero Cents (\$49,072.00), and actual reasonable litigation expenses in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) (Kim Decl., ¶ 21; Exh. 1, §3.2.2);
- Administration Expenses Payment: Not to exceed Four Thousand Dollars and Zero Cents (\$4,000.00) (Kim Decl., ¶ 21; Exh. 1, §3.2.3);
- Class Representative Service Payment: Not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00) (Kim Decl., ¶ 21; Exh. 1, §3.2.1); and
- PAGA Penalties: Twelve Thousand Dollars and Zero Cents (\$12,000.00) for civil penalties under PAGA, with 75% (\$9,000.00) paid to the LWDA for the LWDA PAGA Payment and 25% (\$3,000.00) paid to PAGA Members for their Individual PAGA Payments. (Kim Decl., ¶ 21; Exh. 1, §3.2.5.)

The “Individual Class Payment” is each Participating Class Member’s share of the Net Settlement Amount and will be calculated and apportioned from the Net Settlement Amount based on the number of workweeks a Participating Class Member worked in California during the Class Period. (Kim Decl., ¶ 22; Exh. 1, §1.22.) Using a straight average, Plaintiff estimates that each Class Member will receive an average of \$1,098.92 for their Individual Class Payment. The “Individual PAGA Payment” means the PAGA Member’s pro rata share of 25% of the PAGA Penalties calculated according to the number of workweeks worked in California during the PAGA Period. (Kim Decl., ¶ 22; Exh. 1, §1.22.)

Defendants shall pay their respective employer-side payroll tax obligations on the Wage

1 Portion of the Individual Class Payments in addition to the Gross Settlement Amount. (Kim Decl.,
2 ¶ 23; Exh. 1, §3.1.)

3 Class Members will receive the Class Notice via first class mail (after the Settlement
4 Administrator conducts a national change of address search). (Kim Decl., ¶ 24; Exh. 1, §7.4.2.)
5 Class Members will have an opportunity to dispute the Workweeks information provided in their
6 Class Notice and produce evidence to support their contentions. (Kim Decl., ¶ 25; Exh. 1, § 7.6)
7 The Settlement Administrator will make the final determination as to any disputes involving Class
8 Members' allocation of Workweeks. (*Id.*)

9 Class Members wishing to opt out from the Settlement Agreement must send a signed
10 written request for exclusion to the Settlement Administrator within 60 days from the initial mailing
11 of the Class Notice. (Kim Decl., ¶ 26; Exh. 1, §7.5.1.) Participating Class Members will also have
12 the opportunity to object to the Settlement Agreement by serving a copy of the objection to the
13 Settlement Administrator within 60 days after the mailing of the Class Notice. (*Id.*; Exh. 1, §7.7.2.)

14 The Parties have also selected Apex Class Action LLC to serve as the Settlement
15 Administrator to handle the notice and administration of the Settlement. (Kim Decl., ¶ 27; Exh. 1,
16 § 7.1) The procedures for mailing notice and processing exclusions and objections as well as
17 distribution of the Net Settlement Amount are detailed in the Settlement Agreement. (*Id.*; Exh. 1,
18 §§ 4.4, 7.4, 7.5, 7.6, 7.7.)

19 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

20 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince*
21 *v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981)
22 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved in favor
23 of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at 473-75.)
24 The decision to certify a class is a procedural one, and should be based on the allegations in the
25 operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v.*
26 *Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

27 To certify a settlement class, the Court must find the two primary requirements for
28 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-

1 defined community of interest in the questions of law and fact involving the parties to be
2 represented. (*See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
3 *Company* (1967) 67 Cal. 2d 695, 704.) These criteria are met here for the reasons set forth below.

4 **A. There Is A Numerous and Ascertainable Class**

5 Whether a class is ascertainable is determined by examining the class definition, the size of
6 the class, and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d at
7 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271.)
8 Class members are “ascertainable” where they may be readily identified without unreasonable
9 expense or time. *See Rose v. City of Hayward*, 126 Cal. App. 3d 926, 932 (1981) (finding that
10 “class members are ‘ascertainable’ where they may be readily identified without unreasonable
11 expense or time by reference to official records).

12 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that there is
13 a numerous and ascertainable class here. Class Members are “all current and former non-exempt
14 employees of Ameresco employed by Ameresco in the state of California at any time from February
15 27, 2020, through April 8, 2025, and all current and former non-exempt employees placed at
16 Ameresco in California by BNA from February 27, 2020, through April 8, 2025.” (Kim Decl., ¶
17 74(a).) Documents and information exchanged between the parties reflect a class of approximately
18 52 Class Members. (Kim Decl., ¶ 74(a).) The Class Members have already been identified by
19 reference to Defendants’ respective payroll and personnel records. (Kim Decl., ¶ 74(b).)

20 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

21 **B. There Is A Well-Defined Community of Interest**

22 A community of interest is established by the predominance of common issues of law and
23 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

24 [D]oes not depend upon an identical recovery, and the fact that each
25 member of the class must prove his separate claim to a portion of any
26 recovery by the class is only one factor to be considered ... The mere
27 fact that separate transactions are involved does not of itself preclude
28 a finding of the requisite community of interest so long as every
member of the alleged class would not be required to litigate
numerous and substantial questions to determine his individual right
to recover subsequent to the rendering of any class judgment which
determined in plaintiff’ favor whatever questions were common to

the class.

Id. at 809.

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof. (Kim Decl., ¶ 74(e).) Because Plaintiff has alleged a single scheme, “the relevant proof [does] not vary among class members” and “clearly presents a common question fundamental to all class members.” (*See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no hesitancy” in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This inference “‘eliminates the need for each class member to prove individually the consequences of the defendants’ actions to him or her.’” (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).)

This action involves, *inter alia*, a determination about Defendants’ alleged failure to provide meal period and rest periods, failure to pay wages and overtime due to allegedly common and unlawful policies, failure to timely pay wages, failure to pay final wages when required, failure to provide accurate paystubs, and largely derivative claims under the Business & Professions Code and PAGA. Plaintiff contends these practices affected Class Members in the same manner. The outcome of litigation in this matter depends upon questions that are common to Class Members and the issues of liability can be determined on a class-wide basis. (Kim Decl., ¶ 74(f).)

C. The Named Plaintiff’s Claims Are Typical

A class representative’s claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative class members, and if their claims rest on the same legal theories. The class representative’s claims must be “typical” but not necessarily identical to the claims of other class members. It is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*

1 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class
2 representative must have identical interests with the class members.”) Thus, it is not necessary that
3 the class representative should have personally incurred all of the damages suffered by each of the
4 other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

5 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that
6 Plaintiff’s claims are typical of Class Members’ claims because they arose from the same factual
7 basis and are based on the same legal theories. (Kim Decl., ¶ 74(c).) Plaintiff was placed by BNA
8 at Ameresco during the Class Period and was subject to the allegedly unlawful meal and rest
9 policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiff is a member of the
10 Class. (*Id.*) The central issues of this litigation (whether Defendants failed to pay all wages, whether
11 Defendants failed to provide meal and rest periods, etc.) apply to the other Class Members as well.
12 The answer to these questions would determine Defendants’ liability to the putative class. (*Id.*)
13 Thus, the claims of Plaintiff are typical of the claims of the putative class and the typicality
14 requirement is satisfied.

15 **D. Adequacy of Class Counsel and Class Representative**

16 Class Counsel are experienced in class actions, have represented their clients zealously and
17 have no conflicts of interest. (Kim Decl., ¶¶ 3-9, 74(d).) The Class Representative’s interests are
18 aligned with those of the Class Members, he has suffered the same injuries as the Class Members,
19 and has no conflicts of interest. (*Id.*) Therefore, Class Counsel and the Class Representative are
20 adequate.

21 **E. Predominance and Superiority**

22 Individual issues do not predominate over those common to the class. (Kim Decl., ¶74(f).)
23 The class action mechanism is superior to individualized actions because Class Members have little
24 incentive to bring claims that are small. (*Id.*)

25 **V. THE TWO-STEP APPROVAL PROCESS**

26 Any settlement of class action litigation must be reviewed and approved by the Court. This
27 is accomplished in two steps: (1) an early (preliminary) review by the trial court, and (2) a detailed
28 review after the notice has been distributed to the class members for their comments or objections.

1 In this regard, the Manual for Complex Litigation (Second) explains:

2 A two-step process is followed when considering class settlements...
3 If the proposed settlement appears to be the product of serious,
4 informed, non-collusive negotiations, has no obvious deficiencies,
5 does not improperly grant preferential treatment to class
6 representative or segments of the class, and falls within the range of
possible approval, then the court should direct that notice be given to
the class members of a formal fairness hearing, at which evidence
may be presented in support of and in opposition to the settlement.

7 (*Manual for Complex Litigation (Second)* (1985) at § 30.44.) The preliminary approval of the class
8 action settlement by the trial court is simply a conditional finding that the settlement appears to be
9 within the range of acceptable settlements. (*See, e.g., Newberg*, § 11.25; *North County Contractor's*
10 *Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.) Thus, the
11 preliminary approval of the class action settlement by the trial court is simply a conditional finding
12 that the settlement appears to be within the range of acceptable settlements.

13 Settlements to resolve PAGA claims also require court approval. (Labor Code § 2699(1)(2).)
14 There is no articulated standard for approving PAGA settlements. PAGA settlements for as little
15 as \$0 have been approved. (*See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589
16 (approving PAGA settlement and release that allocated \$0 to a PAGA claim).) Courts have also
17 approved settlements for \$20,000 or less. (*See, e.g., Hicks v. Toys 'R' Us-Delaware, Inc.*, (C.D.
18 Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4 million
19 settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1
20 (approving PAGA payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson*
21 *Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement
22 allocation in a \$300,000 gross settlement).)

23 A review of the preliminary approval criteria demonstrates a substantial basis for granting
24 the instant motion and proceeding to a final settlement hearing.

25 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

26 As a matter of public policy, courts both encourage the use of the class action device and
27 favor settlement over continued litigation. (*See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th
28 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent a

1 failure of justice in our judicial system.”); *Class Plaintiff v. City of Seattle* (1992) 955 F.2d 1268,
2 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class action
3 litigation is concerned.”).)

4 Moreover, courts presume the absence of fraud or collusion in the negotiation of a
5 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
6 negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.* (C.D.
7 Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989)
8 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents, particularly
9 when settlement has been reached by experienced counsel familiar with the litigation. (*Rodriguez*,
10 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.)

11 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
12 several factors that should be analyzed in determining if a class action settlement should be
13 approved. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,
14 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
15 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
16 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
17 participant; and (8) the reaction of the Class Members to the proposed settlement.

18 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
19 informal discovery before entering into meaningful settlement negotiations in this matter, including
20 a detailed analysis of Defendants’ respective policies and a considerable sample of Defendants’
21 respective time and pay records. (Kim Decl., ¶¶ 15-16.) This discovery permitted Class Counsel to
22 fairly evaluate the strengths of the case and the risks associated with ongoing litigation. (*Id.*) Class
23 Counsel is very experienced in the handling of wage and hour class actions and supports this
24 Settlement. (Kim Decl., ¶¶ 3-9.)

25 **A. The Strength of Plaintiff’s Case.**

26 Plaintiff alleges that Defendants failed to pay minimum wages and overtime by requiring
27 Class Members to work off the clock. (Kim Decl., ¶ 29.) Plaintiff further alleges that Defendants
28 failed to provide proper meal or rest breaks or provide premium pay in lieu thereof, failed to provide

1 accurate wage statements, failed to keep required payroll records, failed to timely pay wages, failed
2 to timely pay all wages upon termination, and failed to reimburse necessary business expenses in
3 violation of California law. (*Id.*)

4 Class Counsel took the position that the claims in this case would be certified given their
5 view that Defendants' policies were applicable to all Class Members. (Kim Decl., ¶¶ 28-61.)
6 Defendants contend, however, that their policies complied with California law and deny Plaintiff's
7 allegations.

8 **B. The Risks Associated with the Merits.**

9 As with all litigation, there are risks that a party will not prevail on the merits. In this case,
10 Plaintiff contends that he and other Class Members were not properly provided meal periods. (Kim
11 Decl., ¶¶ 35-38.) Defendants contend that Class Members were given a reasonable opportunity to
12 take their meal periods, and when compliant meal periods were not provided, Defendants provided
13 premium pay to Class Members as reflected in the time and pay records. (*Id.*) If Defendants'
14 contentions are proven true and prevail in trial, the likely outcome would be no recovery for the
15 Class Members on the meal break claim.

16 Plaintiff also contends that Defendants did not provide Class Members with paid 10-minute
17 rest breaks for every four hours or major fraction thereof. (Kim Decl., ¶¶ 39-41.) Plaintiff contends
18 that Class Members consistently worked in excess of consecutive four-hour shifts and were entitled
19 to paid rest breaks of not less than ten minutes for each consecutive four-hour shift but were
20 required to work through their rest breaks during their shifts. Defendants maintain that they did
21 provide a reasonable opportunity for Class Members to take duty-free rest breaks during their shifts
22 and dispute all allegations that rest breaks were not provided. (Kim Decl., ¶ 41.) Considering that
23 unlike meal periods, rest breaks need not be recorded, these violations would likely be difficult to
24 prove at trial and potentially depress the damages ultimately awarded. Therefore, Class Counsel
25 applied significant and appropriate discounts to the rest break claim.

26 Plaintiff alleges that Defendants failed to pay Plaintiff and Class Members at least minimum
27 wages for all hours worked and proper overtime wages for hours worked in excess of eight hours
28 in a day and 40 hours in a week. (Kim Decl., ¶ 32.) Specifically, Plaintiff alleges Class Members

1 were required to perform pre-shift and post-shift off the clock work including, but not limited to,
2 being required to respond to work demands on their personal devices, as well as continue sending
3 emails and other communications and attend conference calls after clocking out. (*Id.*)

4 Defendants contend that they paid for all reported hours worked, that Class Members were
5 instructed to record all hours worked, and that they paid wages at the proper rates. (Kim Decl., 33.)
6 Defendants argue that given their written policies and practices, any unrecorded hours are likely
7 subject to individualized inquiry and unlikely to be certified. (*Id.*) Given the difficulty in certifying
8 this claim, Class Counsel applied a significant discount to damages based on this theory. (*Id.*)

9 Plaintiff alleges that Defendants failed to reimburse Plaintiff and Class Members for
10 business expenses. (Kim Decl., ¶ 49.) Specifically, Plaintiff alleges Class Members were required
11 to use their personal cell phones and were not reimbursed for the business use of the same. (*Id.*)

12 Defendants contend that they reimbursed Plaintiff and Class Members for all reasonable
13 and necessary business expenses they incurred and submitted for reimbursement. Defendants
14 contend that stipends were paid per pay period to individuals holding positions requiring cell phone
15 or internet usage to reimburse them of the costs associates with those expenses. Defendants also
16 argue that given their written policies and practices, and the amounts paid to individuals,
17 individualized inquires abound and this claim is unlikely to be certified. Given the difficulty in
18 certifying this claim, Class Counsel applied a significant discount to damages based on this theory.
19 (*Id.*)

20 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties.**

21 In order to establish liability for these penalties, Plaintiff would first have to establish
22 liability for the underlying claims. Plaintiff would then have to establish that Defendants' conduct
23 was willful and knowing. (Labor Code §§ 203, 226(e).)

24 With waiting time penalties, there is always the risk that the trier of fact would not have
25 held that Defendants' actions were done "willfully." A good faith belief in a legal defense can
26 preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36,
27 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleges that Defendants failed to pay for all
28 hours worked and premiums for non-compliant meal and rest breaks. Plaintiff contends Class

Members are entitled to these wages and premiums, which they allege were not paid at the time of their termination or resignation. If Plaintiff is successful on his claims, the penalties pursuant to Labor Code § 203 shall attach. Defendants, however, contend they provided employees with the reasonable opportunity to take meal and rest breaks, asked Class Members to confirm the accuracy of their time records, and therefore had good-faith defenses under *Brinker* and its progeny. Defendants likewise contend that they properly paid all hours worked by their employees. Based upon Defendants’ potential success in establishing both that a good faith dispute existed with regard to unpaid wages, and Defendants endeavored in good faith to supply accurate wage statements, Defendants argue the claims for paystub violations and waiting time penalties have little or no value. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage statements that accurately report wages paid to employees do not violate Labor Code § 226, even if it is later determined that employer did not properly pay all wages due). As such, Class Counsel had to consider the risk of no recovery of wage statement and waiting time penalties. (Kim Decl., ¶¶ 42-48.)

D. The Risks Associated with the PAGA Penalties.

Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for specific Labor Code violations by way of a civil action. PAGA provides a penalty amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount by the Labor Code section relating to the underlying alleged Labor Code violation, that amount shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”]). *See, e.g., Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev. denied* (2018), (recognizing court’s ability to reduce PAGA penalties). Courts have held that situations involving injury-less violations, technical errors, and substantial compliance should lead to reductions in penalties. *See Thurman v.*

1 *Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1134-1135 (2012) (holding that
2 reduction was justified when employer “attempted to comply with the law”); *Fleming v. Covdien,*
3 *Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August
4 12, 2011) (reducing PAGA penalties more than 80% – from \$2.8 million to \$500,000 – when
5 “employees suffered no injury” employers were “not aware” of the violation and “took prompt
6 steps to correct all violations once notified”).

7 Plaintiff discounted potential penalties under this claim given this authority, and for other
8 reasons. The PAGA claims are premised on the same underlying unpaid wages, meal and rest break,
9 wage statement, and waiting time claims, and thus subject to the same disputes and defenses. There
10 is also a dispute as to whether violations in later pay periods trigger the \$200 penalty under PAGA
11 as a “subsequent violation.” (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1203 (2008).)
12 As such, there is a fair amount of risk and uncertainty associated with PAGA claims which makes
13 the Settlement’s proposed PAGA payment of \$12,000.00 appropriate. (Kim Decl., ¶¶ 51-54.)

14 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

15 Given the risks outlined above, the issues in this case were complex and the risk for Plaintiff
16 and Class Members associated with this litigation was high. (Kim Decl., ¶¶ 58-61.) A class trial
17 would have required the retention of expensive expert witnesses, the accrual of extensive litigation
18 costs, and the parties would have had to spend a substantial amount of time. (Kim Decl., ¶ 58.)

19 Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome
20 at trial would have resulted in a lengthy and costly appeal. (Kim Decl., ¶ 61.) An appeal would
21 result in further delay of a resolution in this matter. (*Id.*)

22 **F. The Risk of Maintaining Class Action Status Through Trial.**

23 In class actions, decertification is always a possibility. There is always a risk that a trial of
24 this magnitude can become unmanageable. (Kim Decl., ¶ 60.) Given cases like *Duran v. U.S. Bank*
25 *Nat. Assn.*, 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples in
26 class actions, decertification is a real risk that Class Counsel must consider. (*Id.*)

27 **G. The Amount Offered in Settlement.**

28 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-

1 collusive, and arms-length negotiations between the parties with an experienced mediator. (Kim
2 Decl., ¶ 18.) In order to determine the approximate potential damages which would be owed to
3 Class Members, Class Counsel analyzed the time records for Plaintiff and Defendants provided
4 Class Counsel with records for a sampling of Class Members. (Kim Decl., ¶ 16.) By analyzing this
5 information, Class Counsel was able to estimate the full value of the case if Plaintiff were to prevail
6 at trial. (Kim Decl., ¶ 30.)

7 There are approximately 59 total Class Members. (Kim Decl., ¶ 14.) Based on the data
8 provided, Class Counsel estimated the following maximum exposures: unpaid wage claim at
9 \$53,214.56, meal period claim at \$128,788.66, rest period claim at \$122,802.68, wage statement
10 claim at \$55,825.00, waiting time penalties at \$79,039.80, unreimbursed business expenses claim
11 at \$2,950.00, and PAGA penalties at \$130,800.00, for a total maximum exposure of \$573,420.70.
12 (*Id.* at ¶¶ 34, 38, 41, 44, 48, 50, 54.)

13 However, taking into account the difficulties of proof, Defendants' defenses, and other
14 attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or other
15 relief that the Class could reasonably expect to be awarded at trial is significantly less than the
16 maximum exposure estimated above. (Kim Decl., ¶ 31.)

17 Once Class Counsel was able to determine the maximum potential damages, it was able to
18 determine a fair and reasonable settlement for the Class. (*Id.* at ¶¶ 30-57.) Class Counsel analyzed
19 the likelihood of success on the merits and believed that the Class had a reasonable likelihood of
20 success on the core claims. (*Id.*) However, Defendants dispute this contention, deny all wrongdoing
21 in this matter and are confident they have strong legal and factual defenses to Plaintiff's claims.
22 (*Id.*) After taking into account the likelihood of success on each claim and the challenges faced
23 with certifying these claims, Class Counsel determined that the settlement amount of \$147,216.00
24 was fair and reasonable. (*Id.*)

25 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
26 including, but not limited to, interviewing Plaintiff on repeated occasions; drafting pleadings;
27 conducting considerable discovery, and meeting and conferring with defense counsel about the
28 same; reviewing and analyzing time records and various handbooks and policies, Plaintiff's

1 personnel file, and other documentation; researching California law; preparing for and attending
2 mediation; and negotiating and finalizing the Settlement Agreement and related documents. (Kim
3 Decl., ¶¶ 11-14.)

4 Among those matters considered during the course of settlement negotiations were the
5 strength of Plaintiff's case versus the amounts offered in settlement; the risks, expenses, and length
6 of further litigation, including class certification and the appeals process; the present state of the
7 law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present value
8 of a settlement versus the long wait necessitated by any potential judgment in class members' favor;
9 the burdens of proof necessary to establish liability against Defendants; and Defendants' defenses
10 to the action. (Kim Decl., *passim*.)

11 Class Counsel believes that the Settlement is fair and reasonable and serves the best interests
12 of the Class. Although the recommendations of counsel proposing the class settlement are not
13 conclusive, the Court can properly take the recommendations into account, particularly if counsel
14 has been involved in litigation for some period of time, appear to be competent, and have experience
15 with this type of litigation, and significant discovery has been completed. *See Newberg*, §11.47.

16 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND** 17 **REASONABLE**

18 It is appropriate to provide a relatively modest additional incentive payment to the class
19 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901
20 F.Supp. 294.

21 Plaintiff is entitled to a reasonable service payment for his efforts and initiative in bringing
22 and helping to prosecute this class action. Plaintiff spent significant time better apprising himself
23 of his rights, deciding whether remedial action should be taken, how it should be taken, searching
24 for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing his
25 case and the law. (Kim Decl., ¶ 69.) In the end, Plaintiff decided to vindicate not only his own rights
26 but also those of his co-workers by filing a class action lawsuit. (*Id.*)

27 The courage it took to do this should not be underestimated. (Kim Decl., ¶ 70.) By suing
28 Defendants and serving as the class representative in this case, Plaintiff contends he increased his

1 risk of retaliation by prospective employers and put his own future employment prospects at risk.
2 (*Id.*) But Plaintiff did not allow his fear of the potential repercussions of being a class representative
3 to deter him from acting for the benefit of Class Members. (Kim Decl., ¶ 71.) To the contrary,
4 Plaintiff has been intimately involved in this case since its inception. (*Id.*) He has devoted a
5 substantial amount of time to helping Class Counsel effectively develop and prosecute this action
6 at every stage of the litigation. (*Id.*) Both before and after the filing of this lawsuit, Plaintiff
7 conferred with Class Counsel to discuss every aspect of this case; Plaintiff has provided Class
8 Counsel with information about Defendants and about the industry generally, reviewed documents,
9 identified witnesses, consulted Class Counsel throughout the litigation, participated in the
10 mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and
11 signed the Settlement Agreement. (*Id.*)

12 In sum, Plaintiff has diligently, adequately, and fairly represented Class Members, and has
13 not placed his interests above any member of the putative class. (Kim Decl., ¶ 72.) This sort of
14 payment to a class representative has been a common feature of settlements negotiated by Class
15 Counsel and has been routinely approved by trial courts. (*Id.*)

16 In light of the foregoing, Class Counsel believes that the incentive award in the amount of
17 \$5,000.00 to the Class Representative is fair and reasonable. (*Id.*)

18 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE** 19 **CLASS MEMBERS.**

20 Constitutional due process requires that class members be provided with notice sufficient
21 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
22 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
23 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*
24 at 314.) The notice must apprise the class members of the pendency of the action; reasonably
25 convey information regarding the settlement and the class members' rights, entitlements, and
26 obligations; and afford class members the opportunity to present their objections. (*Id.*)

27 The Class Notice meets constitutional standards because it provides all the information a
28 reasonable person would need to make a fully informed decision about the settlement. It will notify

1 all Class Members of the terms of the Settlement, of its effect on their rights, of their options as
2 Class Members (i.e., participate, object, opt out, do nothing), and of the consequences of exercising
3 those options. (Kim Decl., ¶¶ 62-64.) Moreover, the Class Notice will specifically direct any Class
4 Members who have questions or concerns to contact the Settlement Administrator or Class Counsel.
5 (*Id.*)

6 The standard for determining the adequacy of notice is whether the notice has “a reasonable
7 chance of reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975)
8 50 Cal.App.3d 960, 974.) The Judicial Council of California’s Deskbook on the Management of
9 Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual notice by mail is
10 preferred when possible and dissemination of combined certification/settlement notice is a common
11 and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.)

12 Here, the Class Notice will be sent via first-class mail to each Class Member. (Kim Decl.,
13 ¶ 62.) If any Class Notices are returned undeliverable without a forwarding address, the Settlement
14 Administrator will use the national change of address database and perform a skip trace to locate
15 the Class Member and mail a new Class Notice to him or her at the correct address. (*Id.*) Thus,
16 most, if not all, Class Members will likely receive the Class Notice.

17 Pursuant to controlling authority, the proposed Class Notice and method of distribution fully
18 comport with due process requirements. Therefore, the Court should approve the Class Notice and
19 direct that it be distributed as proposed herein.

20 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

21 Non-settling parties and third parties periodically may attempt to object to proposed class
22 action settlements, but the right of non-settling parties to object at the final settlement approval
23 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
24 members have standing to object to a proposed settlement. “Beginning from the unassailable
25 premise that settlements are to be encouraged, it follows that to routinely allow non-class members
26 to inject their concerns via objection at the settlement stage would tend to frustrate this goal.”
27 (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Thus, the Settlement Agreement states
28 that persons who opt out do not have standing to object.

1 **X. THE AWARD OF ATTORNEYS' FEES AND COSTS IS REASONABLE AND**
2 **SHOULD BE APPROVED.**

3 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will seek
4 an award of fees of no more than Forty-Nine Thousand Seventy-Two Dollars and Zero Cents
5 (\$49,072.00), one-third of the Gross Settlement Amount, and actual reasonable litigation costs in
6 an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00). (Kim Decl. ¶ 66.)
7 The requested fees are fair compensation for a law firm involved in undertaking complex, risky,
8 expensive, and time-consuming litigation solely on a contingent basis. (Kim Decl. ¶¶ 66-68.)
9 Defendants will not oppose Class Counsel's above fees and costs request. (Kim Decl. ¶ 66.)

10 California courts routinely look to the federal courts on class action approvals. The Ninth
11 Circuit has recognized that an appropriate method for awarding attorneys' fees in class actions is
12 to award a percentage of the "common fund" created as a result of the settlement. (*Vincent v.*
13 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common
14 fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries
15 so that the active beneficiary does not bear the entire burden alone." (*Id.*) Accordingly, courts have
16 discretion to choose either the percentage-of-the-fund method or the lodestar method. (*In re Wash.*
17 *Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.)

18 Several courts have, however, expressed frustration with the "lodestar" approach for
19 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
20 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns the
21 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
22 litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
23 demands on judicial resources. (*In re Activision Securities Litigation*, (N.D. Cal. 1989) 723 F.Supp.
24 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach to
25 determine the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir.
26 1994) 47 F.3d 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).)

27 Class Counsel's application for attorneys' fees in light of the facts and circumstances
28 surrounding this case is well within the range of reasonableness. Historically, courts have awarded
percentage fees in the range of 20% to 50% of the common fund, depending on the circumstances

1 of the case. (*Newberg*, at §14.03; *see also In re Activision Securities Litigation*, 723 F. Supp. at
2 1378.) *Newberg* further notes: “[A]chievement of a substantial recovery with modest hours
3 expended should not be penalized but should be rewarded for considerations of time saved by
4 superior services performed.” (*Id.* at §§ 14-10:14-11.)

5 The attorneys’ fees request provided for in the Settlement Agreement is commensurate with
6 judicial precedent. Both state and federal courts regularly approve fee awards equal to or greater
7 than the percentage requested in this case. (*See, e.g., In re Pacific Enterprises Securities Litigation*
8 (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re*
9 *Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding plaintiff
10 counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin Antitrust*
11 *Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement fund); *Parker*
12 *v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to counsel of one-
13 third (1/3) of recovery achieved).)

14 In wage and hour class actions in particular, California trial courts have customarily
15 approved attorney’s fees consistent with or greater than the percentage of the common fund
16 requested in this case. (*See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC
17 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys’ fees of at least
18 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
19 Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
20 Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*
21 *Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon.
22 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County Super.Ct.
23 Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper Restaurants*,
24 Orange County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).)

25 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive any
26 compensation until recovery is obtained. (Kim Decl., ¶ 66.) The Court should also consider the
27 benefit obtained by Class Counsel on behalf of Class Members. Thus, the requested award for Class
28 Counsel is reasonable.

XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY APPROVAL

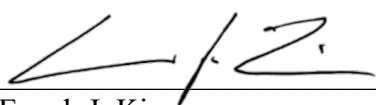
The Parties respectfully request that this Court, as part of the preliminary approval process, grant the following relief and make the following orders:

1. Review and approve the Settlement Agreement;
2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit A;
3. Consider and determine that the proposed class action settlement as set forth in the Settlement Agreement preliminarily appears fair, reasonable, and adequate;
4. Enter an order conditionally certifying the action as a class action for settlement purposes only and preliminarily approving the proposed class action settlement and the Settlement Agreement;
5. Approve and appoint D.Law, Inc. to serve as Class Counsel for settlement purposes;
6. Approve and appoint Apex as the Administrator to handle the notice and claims procedures as set forth in the Settlement Agreement;
7. Approve the proposed settlement's allocation of funds to claims made under PAGA;
8. Order Defendants to disclose to Apex the names, last-known mailing addresses, last known telephone numbers, Social Security numbers, and start and end dates of active employment of all Class Members in the State of California, and any other information required by the Settlement Administrator to effectuate the terms of the Settlement;
9. Order Apex to mail the Class Notice to Class Members; and
10. Set a date for the Final Approval Hearing.

Dated: July 18, 2025

Respectfully submitted,

D.LAW, INC.

By 
Enoch J. Kim
Attorneys for Plaintiff Hugo Ramirez on behalf
of himself and others similarly situated