

Barbara DuVan-Clarke (State Bar No. 259268)
BDC@blackstonepc.com
Danielle GruppChang (State Bar No. 313881)
dgruppchang@blackstonepc.com
P.J. Van Ert (State Bar No. 234858)
pjvanert@blackstonepc.com
Melissa Rodriguez (State Bar No. 352716)
mrodriguez@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
James S. Winn Jr. (State Bar No. 349690)
jwinn@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiffs RICK PEREZ and SAM TORRES, individually
and on behalf of others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO

RICK PEREZ and SAM TORRES, individually
and on behalf of others similarly situated,

Plaintiffs,

vs.

ROSENBALM ROCKERY, INC., and DOES 1
through 25, inclusive,

Defendants.

Case No. 24CECG00952
[Consolidated with Case No. 24CECG01868]

Honorable Lisa M. Gamoian
Department 403

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

Date: February 3, 2026
Time: 3:27 p.m.
Dept.: 403

Complaint Filed: March 24, 2024
Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE THAT on February 3, 2026 at 3:27 p.m.** in Department 403 of the
3 above-captioned Court located at 1130 O Street, Fresno, California 93721, pursuant to California Code
4 of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiffs Rick Perez and
5 Sam Torres (together, “Plaintiffs”) will and hereby do move the Court for an Order granting preliminary
6 approval of the proposed class action and PAGA settlement between Plaintiffs and Defendant Rosenbalm
7 Rockery, Inc. (“Defendant”).

8 Plaintiffs request that the Court enter an Order:

- 9 1. Preliminarily approving the Class Action and PAGA Settlement Agreement (“Settlement”
10 or “Settlement Agreement”) attached as Exhibit 3 to the Declaration of James S. Winn Jr. in Support of
11 Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement (“Winn Decl.”);
- 12 2. Certifying the Class for Settlement purposes;
- 13 3. Appointing Plaintiffs Rick Perez and Sam Torres as the Class Representatives for
14 Settlement purposes;
- 15 4. Appointing Jonathan M. Genish, Barbara DuVan-Clarke, Danielle GruppChang, P.J. Van
16 Ert, Melissa Rodriguez, Alexandra Rose, and James S. Winn Jr. of Blackstone Law, APC as Class
17 Counsel for Settlement purposes;
- 18 5. Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as
19 Exhibit A to the Settlement Agreement, to be mailed to the Class;
- 20 6. Approving the opt-out and objection procedures provided in the Settlement Agreement
21 and set forth in the Class Notice;
- 22 7. For each Class Member, directing Defendant to furnish their: (1) full name; (2) last known
23 mailing address; (3) Social Security number; (4) dates worked for Defendant during the Class Period;
24 and (5) such other information as is necessary for the Settlement Administrator to calculate Workweeks
25 and Pay Periods to the Settlement Administrator within fourteen (14) calendar days after entry of the
26 order granting preliminary approval of the Settlement;
- 27 8. Approving the proposed deadlines for the settlement administration process; and
- 28 9. Setting a Final Approval Hearing.

1 Pursuant to California Labor Code section 2699(1)(2), on January 9, 2026, a copy of the
2 Settlement was submitted to the California Labor and Workforce Development Agency (“LWDA”) via
3 online submission through the LWDA’s website. (Winn Decl., ¶ 53 and Exh. 5).

4 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the
5 Declaration of James S. Winn Jr., the Declaration of Plaintiff Rick Perez, the Declaration of Plaintiff Sam
6 Torres, the Declaration of the Settlement Administrator (Kimberly Sutherland of Apex Class Action
7 LLC), the Declaration of Bennett Berger, the pleadings and other records on file with the Court in this
8 matter, and any other further evidence or argument that the Court may properly receive at or before the
9 hearing.

10 Respectfully submitted,

11 Dated: January 9, 2026

BLACKSTONE LAW, APC

12 By: James Winn
13 James S. Winn Jr.
14 Attorneys for Plaintiffs Rick Perez and Sam Torres
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Rick Perez (“Plaintiff Perez”) and Sam Torres (“Plaintiff Torres”) (together, the
4 “Plaintiffs”) seek preliminary approval of the Class Action and PAGA Settlement Agreement
5 (“Settlement” or “Settlement Agreement”) entered into between Plaintiffs and Defendant Rosenbalm
6 Rockery, Inc. (“Defendant”) (collectively, with Plaintiffs, the “Parties”). (Declaration of James S. Winn
7 Jr. in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement
8 [“Winn Decl.”], Exh. 3). The Settlement terms are outlined as follows:

- 9
- 10 • Class Size: Approximately one hundred thirty-seven (137) individuals.
 - 11 • Gross Settlement Amount: Four Hundred Twenty-Five Thousand Dollars and Zero Cents (\$425,000.00).
 - 12 • Attorneys’ Fees and Costs: Attorneys’ fees of one-third (1/3) of the Gross Settlement Amount (\$141,667.00 if the Gross Settlement Amount is \$425,000.00) plus actual litigation costs and
13 expenses not to exceed Forty Thousand Dollars and Zero Cents (\$40,000.00), to be paid from
14 the Gross Settlement Amount.
 - 15 • Enhancement Payments: Ten Thousand Dollars (\$10,000.00) each to Plaintiffs (total,
16 \$20,000.00), to be paid from the Gross Settlement Amount.
 - 17 • Settlement Administration Costs: Not to exceed Seven Thousand Dollars and Zero Cents (\$7,000.00), to be paid from the Gross Settlement Amount.
 - 18 • PAGA Allocation: Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) from the
19 Gross Settlement Amount, 75% of which will be paid to the Labor and Workforce
20 Development Agency (“LWDA”) and the remaining 25% to be paid to the Aggrieved
21 Employees.
 - 22 • Estimated Net Settlement Amount: One Hundred Ninety-One Thousand Three Hundred
23 Thirty-Three Dollars and Zero Cents (\$191,333.00) to be distributed to Settlement Class
24 Members.
 - 25

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. Plaintiffs therefore
28 respectfully request that the Court grant preliminarily approval of the Settlement, conditionally certify

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

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a landscaping supply company with facilities in both Fresno and Madera, California and offers landscaping and delivery services to homeowners and contractors all throughout California and neighboring states. Plaintiff Rick Perez was employed by Defendant as an hourly-paid, non-exempt Dispatcher, Customer Service Attendant, and Yard Assistant from approximately September 2007 to approximately June 2022. (Declaration of Plaintiff Rick Perez in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement [“Perez Decl.”], ¶ 2). Plaintiff Sam Torres was employed by Defendant as an hourly-paid, non-exempt Yard Worker and Customer Service Representative from approximately March 2021 to approximately September 2023. (Declaration of Plaintiff Sam Torres in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement [“Torres Decl.”], ¶ 2).

On February 23, 2024, Plaintiff Torres provided written notice to the LWDA by online submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendant (“PAGA Letter”). (Winn Decl., ¶ 12 and Exh. 2).

On March 4, 2024, Plaintiffs filed a Class Action Complaint (“Class Operative Complaint”) in the action entitled *Rick Perez, et al. v. Rosenbalm Rockery, Inc.*, Fresno County Superior Court Case No. 24CECG00952 (“Class Action”), thereby commencing a putative class action against Defendant. (*Id.*, ¶ 13).

On April 29, 2024, Plaintiff Torres filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq.* (“PAGA Operative Complaint”) in the action entitled *Samuel Torres v. Rosenbalm Rockery, Inc.*, Fresno County Superior Court Case No. 24CECG01868 (“PAGA Action”), which alleged one cause of action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698 *et seq.* (“PAGA”) against Defendant. (*Id.* ¶ 14).

///

1 On August 19, 2024, the Court entered an Order consolidating the Class Action and PAGA Action
2 (together, “Actions”). (*Id.*, ¶ 15). The Class Operative Complaint and PAGA Operative Complaint allege
3 causes of action for violations of the California Labor Code for failure to pay minimum wages, failure to
4 pay overtime wages, failure to provide compliant meal periods and premium payments in lieu thereof,
5 failure to provide compliant rest periods and premium payments in lieu thereof, failure to timely pay
6 wages during employment, failure to provide compliant wage statements, failure to timely pay wages
7 upon termination, and failure to reimburse necessary business expenses, violation of California Business
8 & Professions Code Section 17200, *et seq.* based on the aforementioned California Labor Code
9 violations, and for civil penalties under PAGA based on the allegations in the February 23, 2024 PAGA
10 Letter. (*Ibid*).

11 On July 2, 2025, the Parties participated in a formal mediation conducted by Tripper Ortman,
12 Esq. (“Mediator”), a neutral and respected mediator with extensive experience in complex wage and hour
13 matters, and with the assistance of the Mediator’s evaluations, the Parties were able to reach an agreement
14 to resolve this dispute on a class and representative basis. (*Id.*, ¶ 16). The Parties then worked diligently
15 to negotiate and memorialize the terms in a long form settlement agreement. (*Ibid*).

16 On October 29, 2025, the Parties executed the Settlement Agreement. (*Id.*, ¶ 17 and Exh. 3).

17 **III. THE SETTLEMENT TERMS**

18 **A. Class Definition**

19 For purposes of settlement only, the Parties have agreed that the Class shall be defined as “all
20 current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of
21 California at any time during the Class Period” (“Class” or Class Member(s)). (Winn Decl., ¶ 18;
22 Settlement Agreement, ¶ 10.d). The Class Period is defined as the period from March 4, 2020 through
23 August 31, 2025. (Winn Decl., ¶ 18; Settlement Agreement, ¶ 10.h). Based on information provided by
24 Defendant, it is estimated that there is a total of one hundred thirty-seven (137) Class Members. (Winn
25 Decl., ¶ 18).

26 **B. Amount of Settlement**

27 The Parties have agreed to settle the class and PAGA claims at issue in the Actions for a non-
28 reversionary Gross Settlement Amount of Four Hundred Twenty-Five Thousand Dollars and Zero Cents

1 (\$425,000.00), exclusive of employer-side payroll taxes. (Winn Decl., ¶ 19; Settlement Agreement, ¶
2 10.s).

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

4 The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees,
5 and other allocations. (Winn Decl., ¶ 19; Settlement Agreement, ¶ 10.s). The Gross Settlement Amount
6 includes: (1) Class Counsel’s fees in the amount of one-third (1/3) of the Gross Settlement Amount (i.e.,
7 \$141,667.00 if the Gross Settlement Amount is \$425,000.00); (2) Class Counsel’s actual litigation costs
8 and expenses, not to exceed Forty Thousand Dollars and Zero Cents (\$40,000.00); (3) Settlement
9 Administration Costs, not to exceed Seven Thousand Dollars and Zero Cents (\$7,000.00); (4)
10 Enhancement Payments in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) each to
11 Plaintiffs (total, \$20,000.00); and (5) PAGA Allocation of Twenty-Five Thousand Dollars and Zero Cents
12 (\$25,000.00). (Winn Decl., ¶ 19; Settlement Agreement, ¶¶ 10.s, 13, 14, 15, and 16). After the above-
13 estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount that will
14 be available for Class Members is currently estimated to be One Hundred Ninety-One Thousand Three
15 Hundred Thirty-Three Dollars and Zero Cents (\$191,333.00). (Winn Decl., ¶ 19). Additionally, 25% of
16 the PAGA Allocation (“Aggrieved Employee Amount”), which is \$6,250.00 out of \$25,000.00, will be
17 fully distributed to “all current and former hourly-paid and/or non-exempt employees who worked for
18 Defendant in the State of California at any time during the PAGA Period” (“Aggrieved Employee(s)").
19 (Winn Decl., ¶ 19; Settlement Agreement, ¶¶ 10.a, 10.b, and 10.z). The “PAGA Period” is defined as the
20 period from February 23, 2023 through August 31, 2025. (Winn Decl., ¶ 19; Settlement Agreement, ¶
21 10.aa).

22 The Net Settlement Amount will be distributed and paid to all Class Members who do not submit
23 a timely and valid Request for Exclusion (“Settlement Class Member(s)”) on a *pro rata* basis based on
24 the number of weeks each Class Member worked for Defendant as an hourly-paid and/or non-exempt
25 employee in California during the Class Period (“Workweeks”). (Winn Decl., ¶ 20; Settlement
26 Agreement, ¶¶ 10.mm and 10.nn). The *pro rata* share of the Net Settlement Amount that a Class Member
27 may be eligible to receive under the Class Settlement (“Individual Settlement Share”) will be calculated
28 by the Settlement Administrator, in accordance with the Settlement Agreement. (Winn Decl., ¶ 20;

1 Settlement Agreement, ¶¶ 10.v and 18).

2 The Aggrieved Employee Amount will be distributed and paid to all Aggrieved Employees on a
3 *pro rata* basis based on the number of pay periods each Aggrieved Employee worked for Defendant as
4 an hourly-paid and/or non-exempt employee in California during the PAGA Period (“Pay Periods”).
5 (Winn Decl., ¶ 21; Settlement Agreement, ¶¶ 10.cc and 19). The *pro rata* share of the Aggrieved
6 Employee Amount that an Aggrieved Employee may be eligible to receive under the PAGA Settlement
7 (“Individual PAGA Payment”) will be calculated by the Settlement Administrator, in accordance with
8 the Settlement Agreement. (Winn Decl., ¶ 21; Settlement Agreement, ¶¶ 10.t and 19).

9 Each Individual Settlement Share will be allocated as follows: twenty percent (20%) wages and
10 eighty percent (80%) penalties, interest, and non-wage damages. (Winn Decl., ¶ 22; Settlement
11 Agreement, ¶ 20). The portion allocated to wages will be reported on an IRS Form W-2 and the portions
12 allocated to penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if
13 applicable) by the Settlement Administrator. (Winn Decl., ¶ 22; Settlement Agreement, ¶ 20). The
14 Settlement Administrator will withhold the employee’s share of taxes and withholdings with respect to
15 the wages portion of the Individual Settlement Shares and issue checks to Settlement Class Members for
16 their net payment of their Individual Settlement Share (“Individual Settlement Payment”). (Winn Decl.,
17 ¶ 22; Settlement Agreement, ¶¶ 10.u and 20). The employer’s share of payroll taxes in connection with
18 the wages portion of Individual Settlement Shares will be paid by Defendant separately and in addition
19 to the Gross Settlement Amount. (Winn Decl., ¶ 22; Settlement Agreement, ¶¶ 10.n and 20). Each
20 Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported
21 on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Winn Decl., ¶ 22; Settlement
22 Agreement, ¶ 20).

23 The Settlement Agreement is a non-reversionary and non-claims made settlement. (Winn Decl.,
24 ¶ 23; Settlement Agreement, ¶ 10.s). The Net Settlement Amount will be fully distributed to Settlement
25 Class Members and the PAGA Allocation will be fully distributed to the LWDA and Aggrieved
26 Employees, in accordance with the Settlement Agreement. (Winn Decl., ¶ 23; Settlement Agreement, ¶¶
27 10.x and 38). No money will revert to Defendant. (Winn Decl., ¶ 23; Settlement Agreement, ¶ 10.s).

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Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. (Winn Decl., ¶ 24; Settlement Agreement, ¶ 38). Any funds associated with such canceled checks shall be distributed by the Settlement Administrator to Marjaree Mason Center (the proposed *cy pres* recipient) in accordance with California Civil Procedure Code Section 384. (Winn Decl., ¶ 24; Settlement Agreement, ¶ 38). The Parties and their counsel each represent that they do not have any financial interest in, or otherwise have a relationship with, the proposed *cy pres* recipient that could create a conflict of interest. (Winn Decl., ¶ 24; Settlement Agreement, ¶ 38).

D. Released Claims

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiffs and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims. (Settlement Agreement, ¶ 39).

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiffs, the State of California with respect to all Aggrieved Employees, and all Aggrieved Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims. (*Id.*, ¶ 40).

“Released Class Claims” means any and all claims which were alleged or which could have been reasonably alleged based on the factual allegations in the Class Operative Complaint, arising during the Class Period, which shall specifically include claims for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide accurate wage statements, and reimburse necessary business-related expenses in violation of California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, applicable Industrial Welfare Commission Wage Orders, and California Business and Professions Code sections 17200, *et seq.* (*Id.*, ¶ 10.ff).

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1 “Released PAGA Claims” means any and all claims arising from any of the factual allegations in
2 the PAGA Letter and the PAGA Operative Complaint, arising during the PAGA Period, for civil penalties
3 under the Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq.*, which
4 shall specifically include claims for Defendant’s alleged failure to pay overtime, straight time, and
5 minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay
6 wages during employment and upon termination, provide compliant wage statements, maintain complete
7 and accurate payroll records, and reimburse necessary business-related expenses in violation of California
8 Labor Code Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198,
9 2800, and 2802, and applicable Industrial Welfare Commission Wage Order and including claims for
10 penalties under California Labor Code sections 2699, 558, 210, 226, 226.3, 1174.5, 1197.1, and 1199,
11 penalties under applicable IWC Wage Orders, and any and all additional penalties and remedies as
12 provided by the California Labor Code and/or other statutes. (*Id.*, ¶ 10.gg).

13 “Released Parties” means Defendant and its current and former owners, officers, directors,
14 employees, agents, members, insurers, shareholders, subsidiaries, affiliates, predecessors, successors, and
15 assigns. (*Id.*, ¶ 10.hh).

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

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

22 The review and approval of a proposed class action settlement involves a two-step process. (*See*
23 *Cal. Rules of Court, Rule 3.769(c)*). First, counsel submit the proposed terms of the settlement and the
24 Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the
25 range of a fair settlement to justify providing notice of the proposed settlement to class members. After
26 notice is provided to the class, the Court must conduct a second inquiry into whether the proposed
27 settlement is fair, reasonable, and adequate. (*Ibid.*).

28 ///

1 The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.”
2 (*Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980)).
3 Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the
4 proposed settlement is within the range of possible approval and, as a result, “whether there is any reason
5 to notify the class members of the proposed settlement and to proceed with a fairness hearing.” A
6 presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2)
7 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
8 is experienced in similar litigation; and (4) the percentage of objectors is small. (*See In re Microsoft I-V*
9 *Cases*, 135 Cal. App. 4th 706, 723 (2006)).

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

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

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

19 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
20 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
21 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties’ settlement negotiations
22 were at all times made at arm’s-length and were adversarial. (Winn Decl., ¶ 25). The Settlement was
23 reached following a full day of mediation with a highly respected mediator with substantial experience
24 mediating wage and hour cases. (*Ibid*). At all times, Plaintiffs were willing and prepared to litigate this
25 matter through class certification and trial if the Parties had been unable to reach a favorable resolution.
26 (*Id.*, ¶ 51).

27 ///

28 ///

1 **B. Sufficient Investigation and Discovery by Experienced Class Counsel**

2 Courts typically assess the status of discovery in determining whether a class action settlement
3 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation,
4 Defendant produced a random eleven point forty-seven percent (11.47%) sampling of putative class
5 members' time and pay data. (Winn Decl., ¶ 26). Class Counsel originally requested one-third (1/3)
6 sampling. (Ibid). However, Defendant represented that it lost access to its prior ADP program and was
7 not able to access Excel reports of time and pay records prior to September 2024, so Defendant was not
8 produce the requested sampling amount. (Ibid). Our expert then extrapolated the data that Defendant
9 provided through the mediation date (i.e. July 2, 2025) for all putative class members. (Ibid). Defendant
10 also produced relevant wage and hour policies, and information regarding the total number of putative
11 class members, and the total workweeks worked by the putative class members. (Ibid). The documents
12 that Defendant produced prior to mediation are not provided with this Motion for Preliminary Approval
13 of Class Action and PAGA Settlement as they were marked confidential by Defendant. (Ibid). Pursuant
14 to California Code, Evidence Code section 1119, the documents produced by Defendant are confidential
15 and not admissible. (Ibid).

16 Defendant represented that the putative class members worked in the office, in the yards, or as
17 drivers. (*Id.*, ¶ 27). Defendant further represented that the same practices and policies of Defendant
18 applied to all Class Members, except the meal and rest period policies for drivers as Defendant alleged
19 that the drivers, which represent approximately 21.17% of the putative class, are preempted by the Federal
20 Motor Carrier Safety Administration ("FMCSA"). (Ibid). For the avoidance of doubt, Defendant has
21 represented that the information in this Paragraph is accurate. (Ibid).

22 This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and
23 weaknesses of the claims and the potential class-wide damages. (*Id.*, ¶ 28). Based on information
24 exchanged, the Parties extensively briefed issues regarding class certification and liability and provided
25 their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective
26 positions. (*Id.*, ¶ 29). Additionally, settlement negotiations were conducted by highly capable and
27 experienced counsel. (Winn Decl., ¶¶ 1-11). Accordingly, Class Counsel had sufficient information and
28 experience to act intelligently in negotiating the Settlement.

1 **C. The Settlement is Fair and Reasonable in Light of the Parties’ Respective Legal Positions**
2 **and Recovery Risks**

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

11 Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal and
12 factual grounds for defending the Actions. Based upon Class Counsel’s experience litigating similar
13 complex matters, Plaintiffs reasonably expected a vigorous and lengthy defense to both class certification
14 and the merits of the Actions absent a settlement.

15 **1. Class Counsel’s Analysis of the Maximum Available Liability and Damages**

16 Class Counsel analyzed all available data and estimated Defendant’s maximum potential exposure
17 to be approximately \$1,778,054, assuming the litigation was successful at trial on all claims at issue and
18 every employee had a violation for each claim on every shift worked. (Winn Decl., ¶ 30). This maximum
19 potential analysis was then reduced based on the challenges facing the likelihood of obtaining class
20 certification, prevailing at trial, and other attendant risks. (Ibid). This estimate is based off an estimated
21 maximum liability for all claims at issue and the total aggregate workweeks during the relevant time
22 period, less interest, and based on the analysis of the data which was extrapolated out for all class
23 members across the entire putative class period, which included: \$11,852 for meal period violations (less
24 meal period premiums paid); \$793,541 for rest period violations at a 100% violation rate; \$244,379 for
25 unpaid off-the-clock work for 1 hour per workweek of off-the-clock work; \$11,481 for unpaid overtime
26 wages; \$69,090 for unreimbursed business expenses; \$331,711 for waiting time penalties; and \$316,000
27 for wage statement penalties. (Ibid). Plaintiffs further estimated that Defendant faced an additional
28 exposure of \$419,700 in potential, non-stacked (i.e., one penalty, per employee, per pay period during

the PAGA statutory period) PAGA penalties. (Ibid). Together with the PAGA penalties, Defendant's maximum potential exposure totaled \$2,197,754 in damages. (Ibid).

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

While Plaintiffs believe that Defendant faced significant exposure, substantial barriers to a recovery existed. Defendant contended that Plaintiffs' claims are not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. (Winn Decl., ¶ 33; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011)). While Plaintiffs and Class Counsel disagree with Defendant's predictions, they also recognize that there is a significant risk that the Court may deny class certification. (Winn Decl., ¶ 33; *see also, Findings of the Study of California Class Action Litigation*, 2000-2006, available at <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class actions were certified either as part of a settlement or as part of a contested certification motion)).

For example, Plaintiffs' meal period claims, which were based on Defendant's alleged failure to provide lawful meal periods, have been increasingly difficult to certify in recent years. (Winn Decl., ¶ 34; *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiffs' theory of liability for meal period violations was based on allegations that Defendant had failed to implement its policies and that its practices failed to allow Class Members to take meal breaks in the manner required under California law. (Winn Decl., ¶ 34; *See Bradley v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129, 1150 (2012) (holding that "the lack of a meal/rest break policy and the uniform failure to authorize such breaks are matters of common proof.")). Defendant contended that its policies and practices at all times during the Class Period were lawful. (Winn Decl., ¶ 34). Indeed, Plaintiffs' analysis revealed only a 1.6% violation rate for purported unique meal period violations after offsetting meal period premiums paid. (Ibid). Additionally, Defendant alleged that the FMCSA preempts any meal period claims of the putative class members who are drivers. (Ibid). Defendant further argued that the rate of purported meal period violations reflected in the data would require individualized inquiry and that such inquiry would prohibit a class from being certified. (Ibid). Class Counsel also had to consider the risk that the Court would find validity in an individualized proof defense to certification of Plaintiffs' meal period claim. (Ibid).

1 Additionally, a large portion of Defendant's overall liability lies in Plaintiffs' rest period
2 allegations. (*Id.*, ¶ 35). As with the meal period allegations, Defendant contended that it had a lawful
3 written rest period policy, provided compliant rest breaks, and relieved Class Members of all duties as
4 required under California law. (*Ibid*). Defendant further alleged that the FMCSA preempts any rest
5 period claims of the putative class members who are drivers. (*Ibid*). Additionally, this claim was even
6 more uncertain given the difficulties associated with proving the alleged rest period violations, as
7 Defendant was not required to record these breaks. (*Ibid*). Given the lack of records demonstrating rest
8 period violations, there were legitimate concerns Plaintiffs would not be able to certify these claims or
9 prove substantial damages with requisite certainty, which made the estimated value of this claim subject
10 to much challenge. (*Ibid*).

11 Plaintiffs also faced challenges certifying and proving liability for their minimum wage and
12 overtime claims. (*Id.*, ¶ 36). These claims were largely based on Defendant's unrecorded, off-the-clock
13 work performed by the Class Members both before and after their shifts and during purported meal
14 periods. (*Ibid*). For example, Class Members interviewed stated that they often received time sensitive
15 phone calls before clocking in for their shifts and also performed off-the-clock work after their scheduled
16 shifts due to unreasonably high workloads. (*Ibid*). However, the individualized nature of why this work
17 was performed and the individualized nature of damages presented substantial concerns regarding the
18 manageability of the case and the risk the Court could find these issues prevented certification, and the
19 estimated damages for this claim were based on an assumption that all Class Members worked off the
20 clock for at least one hour per week. (*Ibid*).

21 Plaintiffs also contended that Defendant failed to reimburse Plaintiffs and the other Class
22 Members for necessary business-related expenses, such as the such as the purchase of steel toe boots, and
23 the usage of personal cellphones for work related tasks, such as using the GPS application to navigate for
24 work, downloading and utilizing the Verizon Connect app to check in with other drivers, and
25 communicating with customers and other employees. (*Id.*, ¶ 37). Defendant contended that it had a
26 policy and practice of reimbursing employees for necessary business-related expenses. (*Ibid*). Defendant
27 further contended that, with respect to the alleged expenses for which Plaintiffs and the other Class
28 Members never requested reimbursement from Defendant, it did not know and had no reason to know

1 that alleged business-related expenses had been incurred. (Ibid). Defendant further contended that the
2 reason for why a Class Member undertook certain expenses, while not others, and failed to receive
3 reimbursement for certain expenses while not others, would raise individual issues that could not be
4 certified. (Ibid). Additionally, Defendant produced payroll data evidencing cell phone reimbursement
5 of \$7.50 per week. (Ibid).

6 There are also substantial risks associated with Plaintiffs' waiting time penalties and wage
7 statement claims. (*Id.*, ¶ 38). First, these claims were derivative of Plaintiffs' claims for unpaid meal
8 period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages,
9 and if certification was denied on those underlying claims, these derivative claims for penalties would
10 also likely fail. (Ibid). Further, even if Plaintiffs prevailed on their underlying claims, they would still
11 be required to demonstrate that Defendant's violations of California Labor Code section 203 were *willful*
12 violations. (Winn Decl., ¶ 38; *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013)
13 (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding
14 of willfulness")). Wage statement claims have also seen varying treatment at the appellate level because
15 such claims have an element of discretion attached to them rather than a pure calculation of damages after
16 liability is proven. (Winn Decl. ¶ 38; *Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with*
17 *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which
18 comprised a substantial portion of Defendant's estimated liability, were therefore uncertain. (Winn Decl.,
19 ¶ 38).

20 Class Counsel also recognized that, even if Plaintiffs prevailed at class certification, proving the
21 amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
22 proposition. (*Id.*, ¶ 39). In order to prove liability and damages, Class Counsel will need to request and
23 analyze thousands of pages of documents, obtain the Class Members' contact information, contact them,
24 and obtain their declarations at great expense. (Ibid). Obtaining the cooperation of current employees
25 would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current
26 employer. (Ibid). On the other hand, Defendant would likely be able to obtain the cooperation of its
27 employees. (Ibid). Moreover, even if Plaintiffs prevailed at class certification and trial, possible appeals
28 would substantially delay any recovery by the Class. (Ibid).

1 Therefore, taking into account how each of the above risks potentially effected Plaintiffs' ability
2 to first obtain class certification, and then prove the underlying violations, plus the cost and delay in
3 recovering the alleged potential damages, Class Counsel discounted Defendant's estimated liability based
4 on the challenges facing their ability to succeed on class certification by 60% to \$879,102. (*Id.*, ¶ 40).
5 The merits-based risk factors further reduced Defendant's estimated liability by an additional 50%.
6 (*Ibid*). This resulted in an adjusted estimated liability of \$439,551. (*Ibid*). In light thereof, the settlement
7 amount of \$425,000.00 is a significant settlement. (*Ibid*).

8 Class Counsel also contemplated the risks of proceeding with the PAGA claims and potential
9 liability Defendant could face from these claims as part of the global resolution. (*Id.*, ¶ 41). Existing
10 case law makes PAGA claims subject to the same defenses and risks as Plaintiffs' underlying wage
11 claims. (Winn Decl., ¶ 41; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D.
12 Cal. 2008) ("Plaintiffs' claim under [PAGA] is wholly dependent upon her other claims. Because all of
13 Plaintiffs' other claims fail as a matter of law, so does her PAGA claim")). Class Counsel also anticipated
14 that even if successful on the merits at trial, the imposition of cumulative civil penalties based on the
15 alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory,
16 and that Defendant would argue that it made a good faith attempt to comply with its legal obligations
17 warranting a reduction in penalties. (Winn Decl., ¶ 41).¹ Class Counsel also anticipated Defendant would
18 argue that the violations per pay period were low, warranting an additional reduction in civil penalties.
19 (*Ibid*). Finally, Class Counsel was also mindful of the fact that PAGA is fundamentally not intended to
20 be compensatory in nature but is instead intended to facilitate enforcement of California's labor laws by
21 financing state activities and educating and deterring non-compliance. (*Ibid*).

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23
24 ¹ See, e.g., *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory
25 and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis*
26 *Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) ("duplicative effect" of penalties is a factor in favor of "reducing ...the
27 PAGA penalty"); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to
28 stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez*
v. McDonalds Restaurants of California, Inc., 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties
arising out of the same conduct); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing
PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is
warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018)
(approving reduction in penalties from \$50 per pay period to \$5 per pay period based on good faith attempts to comply with
obligations and minimal violations).

1 Therefore, after considering this multitude of factors, Plaintiffs and Class Counsel concluded that
2 it was in the best interest of the State of California and the Aggrieved Employees to enter into the
3 Settlement, and to allocate Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) of the Gross
4 Settlement Amount towards the PAGA claims, which represents approximately 5.88% of the Gross
5 Settlement Amount. (*Id.*, ¶ 42). This percentage of the settlement is well within the range of wage and
6 hour settlements regularly approved in both state and federal court for cases that include both a class and
7 PAGA action. (*Ibid*). Typically, such hybrid cases allocate only 1% of the gross settlement value to
8 resolve PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement
9 amount have been approved as reasonable by courts. (*Ibid*). Moreover, the overall relief obtained by the
10 Settlement is significant, not only from a monetary perspective, but also because it fulfills the public
11 policy objectives of PAGA—to promote enforcement of California’s labor laws, provide funds to the
12 state, and deter future non-compliance by the employer. (*Ibid*).

13 The Settlement is in the best interest of the Class Members, the Aggrieved Employees, and the
14 State of California and is within the accepted range of recoveries for this type of litigation given the
15 inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further
16 litigation. (*Id.*, ¶ 43).

17 VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

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

27 ///

28 ///

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

3 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
4 the class, and (3) the means of identifying the class members. (*See Miller v. Woods*, 148 Cal.App.3d 862,
5 873 (1983)). In this case, all three considerations strongly favor class certification. Here, the Class is
6 defined as “all current and former hourly-paid and/or non-exempt employees who worked for Defendant
7 in the State of California at any time during the Class Period.” (Winn Decl., ¶ 18; Settlement Agreement,
8 ¶ 10.d). This provides a clear and definite scope for the proposed class.

9 Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity
10 requirement. Courts have certified classes with as few as ten or twenty-eight class members. (*Rose v.*
11 *City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995);
12 *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972)). Here, the estimated Class size of one hundred
13 thirty-seven (137) individuals meets the numerosity requirement.

14 Finally, the question of whether class members are easily identifiable turns on whether a plaintiff
15 can establish “the existence of an ascertainable class.” (*Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706
16 (1967)). The existence of an ascertainable class in this case can be established through Defendant’s
17 payroll records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and
18 the Court to determine the parameters of the Class. (*See Clothesrigger, Inc. v. GTE Corp.*, 191
19 Cal.App.3d 605, 617 (1987)).

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

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

25 The commonality criterion requires the existence of common question of law or fact and is
26 generally established with the issues of predominance and typicality. (*See Daar*, 67 Cal.2d 695, 706).
27 What is required is that a common question of fact or law exists which predominates over issues unique
28 to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising

1 from employment—is not a bar to class certification as long as they do not render class litigation
2 unmanageable or predominate over the common issues. (*See B.W.I. Custom Kitchen v. Owens-Illinois,*
3 *Inc.*, 191 Cal.App.3d 1341, 1354 (1987)).

4 Here, Plaintiffs’ claims present common issues of law and fact that predominate and warrant class
5 certification. Plaintiffs allege that Defendant denied compliant meal and rest periods to employees,
6 required employees to perform work off-the-clock, and failed to fully compensate employees for all time
7 actually worked. These policies and practices meant that Defendant allegedly failed to pay minimum and
8 overtime wages, and other related claims. Plaintiffs alleged that Defendant’s policies and practices were
9 uniform as to all Class Members. Thus, class treatment is appropriate.

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

17 Here, Plaintiffs allege that their claims are similar to that of the other Class Members and that
18 Plaintiffs’ claims arise out of the same alleged course of conduct giving rise to the claims of the other
19 Class Members. Because Plaintiffs’ claims are based upon the same alleged conduct and business
20 practices as those of Class Members, the typicality requirement has been satisfied.

21 Finally, the question of adequacy of representation “depends on whether the plaintiff’s attorney
22 is qualified to conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the
23 interests of the class.” (*McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976)). Here, these
24 considerations are satisfied. Class Counsel is well-regarded and is qualified and experienced in
25 employment-related, class-action litigation. (Winn Decl., ¶¶ 1-11). Plaintiffs will vigorously,
26 adequately, and fairly represent the interests of the Class. Plaintiffs have, at all times, throughout the
27 course of the litigation considered the interests of the Class and understood that they must take steps to
28 adequately represent the Class and their interests. (Perez Decl., ¶ 12; Torres Decl., ¶ 12). Because

1 Plaintiffs' claims are typical of other Class Members and are not based on unique circumstances, there is
2 no antagonism between the interests of Plaintiffs and the Class.

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

4 Under the circumstances, proceeding as a class action is a superior means of resolving this dispute,
5 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
6 the only means to deter and redress the alleged violations. (*See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429,
7 434 (2000) (relevant considerations include the probability that each class member will come forward to
8 prove his or her separate claim and whether the class approach would actually serve to deter and redress
9 the alleged wrongdoing)). Further, individual actions arising out of the same operative facts would
10 unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are
11 superior to individual litigation.

12 **VII. THE REQUESTED ENHANCEMENT PAYMENTS ARE REASONABLE**

13 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation
14 “for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz*
15 *v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010)). Courts routinely grant approval of
16 class action settlement agreements containing enhancements for the class representative, which are
17 necessary to provide incentive to represent the class and are appropriate given the benefit the class
18 representatives help to bring about for the class. (*See In re Online DVD Rental*, 779 F.3d 934, 947-948
19 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive
20 award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL
21 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and
22 reasonable”)).

23 Plaintiffs initiated this litigation on behalf of their former co-workers who will now be entitled to
24 receive payment from the Settlement. Plaintiffs invested substantial time and effort into litigation,
25 including their own research, reviewing documents, and extensive discussions with Class Counsel.
26 (Perez Decl., ¶¶ 3-7; Torres Decl., ¶¶ 3-7). Further, the requested amounts for Plaintiffs are also
27 reasonable given the average award and the benefit gained by other Class Members. For these reasons,
28 Plaintiffs request that Enhancement Payments of Ten Thousand Dollars and Zero Cents (\$10,000.00)

each to Plaintiffs be preliminarily approved by the Court. (Winn Decl., ¶ 44; Perez Decl., ¶ 14; Torres Decl., ¶ 14).

VIII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions are “not to 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 one-third (1/3) of the Gross Settlement Amount (i.e., \$141,667.00 if the Gross Settlement Amount is \$425,000.00) is disclosed to Class Members in the proposed Class Notice. (Settlement Agreement, Exh. A). The requested fee was freely negotiated, 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 Forty Thousand Dollars and Zero Cents (\$40,000.00). (Winn Decl., ¶¶ 45 and 50). The Attorneys’ Fees and Costs that are not ultimately approved by the Court shall instead be included in the Net Settlement Amount to be distributed to Settlement Class Members. (Settlement Agreement, ¶ 13).

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. (*Id.*, Exh. A). The Class Notice will include information regarding the nature of the Actions, a summary of the terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the Class Settlement and to dispute Workweeks and/or Pay Periods, and the date of the Final Approval Hearing. (*Ibid.*). The Class Notice will list each Class Member’s total Workweeks and their estimated Individual Settlement Share and each Aggrieved Employee’s total Pay Periods and their estimated Individual PAGA Payment. (*Ibid.*).

///

1 Within fourteen (14) calendar days of the preliminary approval, Defendant will provide a list in a
2 formatted readable Microsoft Office Excel spreadsheet to the Settlement Administrator containing the
3 following information for each Class Member: (1) full name; (2) last known mailing address; (3) Social
4 Security number; (4) dates worked for Defendant during the Class Period; and (5) such other information
5 as is necessary for the Settlement Administrator to calculate Workweeks and Pay Periods (collectively
6 referred to as the “Class List”). (*Id.*, ¶¶ 10.f and 27). Within seven (7) calendar days after receiving the
7 Class List from Defendant, the Settlement Administrator will perform a search based on the National
8 Change of Address Database or other similar services available, such as provided by Experian, for
9 information to update and correct for any known or identifiable address changes, and will mail a Class
10 Notice in English and Spanish to all Class Members via First-Class U.S. Mail, using the most current,
11 known mailing addresses identified by the Settlement Administrator. (*Id.*, ¶ 28.a). The Parties have
12 agreed to use Apex Class Action LLC as the Settlement Administrator. (Winn Decl., ¶ 52; Settlement
13 Agreement, ¶ 10.kk).

14 In determining whether to approve a settlement of a class action, a trial court has virtually
15 complete discretion as to the manner of giving notice to class members, and review on appeal is governed
16 by the abuse of discretion standard. (*See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380
17 (2010)). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which
18 would result in a higher likelihood of actual notice. (Winn Decl., ¶ 53). The original source of the mailing
19 addresses is from Class Members, who provided the information to Defendant. (*Ibid*).

20 Class Members must submit a Request for Exclusion, Notice of Objection, and/or Dispute, which
21 shall be the date that is forty-five (45) calendar days from the initial mailing of the Class Notice by the
22 Settlement Administrator to Class Members, unless the 45th day falls on a Sunday or Federal holiday, in
23 which case the Response Deadline will be extended to the next day on which the United States Postal
24 service is open (“Response Deadline”). (Settlement Agreement, ¶ 10.jj).

25 Any Class Notice returned to the Settlement Administrator as undeliverable on or before the
26 Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed
27 thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.
28 (*Id.*, ¶ 28.b). If no forwarding address is provided, the Settlement Administrator will promptly attempt

1 to determine a correct address using a skip-trace or other search, using the name, address, and/or Social
2 Security number of the Class Member, and perform a single re-mailing within five (5) calendar days.
3 (Ibid). In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that
4 Class Member shall be extended fifteen (15) calendar days from the original Response Deadline. (*Id.*, ¶
5 10.jj).

6 Class Members will have an opportunity to dispute the number of Workweeks and/or Pay Periods
7 which have been credited to them, as reflected in their respective Class Notices, by submitting a timely
8 and valid letter (“Dispute”) to the Settlement Administrator, by mail, postmarked on or before the
9 Response Deadline. (*Id.*, ¶¶ 10.i and 29). A Dispute must: (a) contain the case name and number of the
10 Class Action; (b) contain the Class Member’s full name, signature, address, telephone number, and the
11 last four (4) digits of the Class Member’s Social Security number; (c) clearly state that the Class Member
12 disputes the number of Workweeks and/or Pay Periods credited to the Class Member and what the Class
13 Member contends is the correct number; and (d) be returned by mail to the Settlement Administrator at
14 the specified address, postmarked on or before the Response Deadline. (*Id.*, ¶ 10.i).

15 Any Class Member wishing to be excluded from the Class Settlement must submit a timely and
16 valid letter (“Request for Exclusion”) to the Settlement Administrator, by mail, postmarked on or before
17 the Response Deadline. (*Id.*, ¶¶ 10.ii and 30). A Request for Exclusion must: (a) contain the case name
18 and number of the Class Action; (b) contain the Class Member’s full name, signature, address, telephone
19 number, and last four (4) digits of the Class Member’s Social Security number; (c) clearly state that the
20 Class Member does not wish to be included in the Class Settlement; and (d) be returned by mail to the
21 Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*,
22 ¶ 10.ii). Notwithstanding the above, all Aggrieved Employees will be bound by the PAGA Settlement
23 and will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for
24 Exclusion. (*Id.*, ¶ 30).

25 To object to the Class Settlement, Settlement Class Members must submit a timely and complete
26 written objection (“Notice of Objection”) to the Settlement Administrator, by mail, postmarked on or
27 before the Response Deadline. (*Id.*, ¶¶ 10.y and 31). A Notice of Objection must: (a) contain the case
28 name and number of the Class Action; (b) contain the objector’s full name, signature, address, telephone

1 number, and the last four (4) digits of the objector's Social Security number; (c) contain a written
2 statement of all grounds for the objection accompanied by any legal support for such objection; (d)
3 contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be
4 returned by mail to the Settlement Administrator at the specified address, postmarked on or before the
5 Response Deadline. (*Id.*, ¶ 10.y). Settlement Class Members, individually or through counsel, may also
6 present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a
7 Notice of Objection. (*Id.*, ¶ 31).

8 **X. CONCLUSION**

9 For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs'
10 Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

11 Respectfully submitted,

12 Dated: January 9, 2026

BLACKSTONE LAW, APC

13 By: James Winn
14 James S. Winn Jr.
15 Attorneys for Plaintiffs Rick Perez and Sam Torres
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