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

Date: May 19, 2026
Time: 3:27 p.m.
Dept.: 403

Complaint Filed: March 4, 2024
Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE THAT** on **May 19, 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 and
10 Amendment No. 1 to Class Action and PAGA Settlement Agreement (together, “Settlement” or
11 “Settlement Agreement”) attached as Exhibit 3 and Exhibit 5, respectively, to the Declaration of James
12 S. Winn Jr. in Support of Plaintiffs’ Renewed Motion for Preliminary Approval of Class Action and
13 PAGA Settlement (“Winn Decl.”);

14 2. Certifying the Class for Settlement purposes;

15 3. Appointing Plaintiffs Rick Perez and Sam Torres as the Class Representatives for
16 Settlement purposes;

17 4. Appointing Jonathan M. Genish, Barbara DuVan-Clarke, Danielle GruppChang, P.J. Van
18 Ert, Melissa Rodriguez, Alexandra Rose, and James S. Winn Jr. of Blackstone Law, APC as Class
19 Counsel for Settlement purposes;

20 5. Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as
21 Exhibit A to the Amendment No. 1 to Class Action and PAGA Settlement Agreement, to be mailed to
22 the Class;

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

25 7. For each Class Member, directing Defendant to furnish their: (1) full name; (2) last known
26 mailing address; (3) Social Security number; (4) dates worked for Defendant during the Class Period;
27 and (5) such other information as is necessary for the Settlement Administrator to calculate Workweeks
28 and Pay Periods to the Settlement Administrator within fourteen (14) calendar days after entry of the

1 order granting preliminary approval of the Settlement;

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

3 9. Setting a Final Approval Hearing.

4 Pursuant to California Labor Code section 2699(s)(2), on January 9, 2026 and April 17, 2026,
5 copies of the Settlement was submitted to the California Labor and Workforce Development Agency
6 (“LWDA”) via online submission through the LWDA’s website. (Winn Decl., ¶ 57 and Exh. 7).

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

13 Respectfully submitted,

14 Dated: April 27, 2026

BLACKSTONE LAW, APC

15 By: James Winn
16 James S. Winn Jr.
17 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 (“Original
5 Agreement”) and Amendment No. 1 to Class Action and PAGA Settlement Agreement (“Amendment
6 No. 1”) (together, “Settlement” or “Settlement Agreement”) entered into between Plaintiffs and
7 Defendant Rosenbalm Rockery, Inc. (“Defendant”) (collectively, with Plaintiffs, the “Parties”).
8 (Declaration of James S. Winn Jr. in Support of Plaintiffs’ Renewed Motion for Preliminary Approval of
9 Class Action and PAGA Settlement [“Winn Decl.”], Exh. 3 and Exh. 5). The Settlement terms are
10 outlined as follows:

- 11 • Class Size: Approximately one hundred thirty-seven (137) individuals.
- 12 • Gross Settlement Amount: Four Hundred Twenty-Five Thousand Dollars and Zero Cents
13 (\$425,000.00).
- 14 • Attorneys’ Fees and Costs: Attorneys’ fees of one-third (1/3) of the Gross Settlement Amount
15 (\$141,667.00 if the Gross Settlement Amount is \$425,000.00) plus actual litigation costs and
16 expenses not to exceed Forty Thousand Dollars and Zero Cents (\$40,000.00), to be paid from
17 the Gross Settlement Amount.
- 18 • Enhancement Payments: Four Thousand Dollars and Zero Cents (\$4,000.00) each to
19 Plaintiffs (total, \$8,000.00), to be paid from the Gross Settlement Amount.
- 20 • Settlement Administration Costs: Not to exceed Six Thousand Five Hundred Dollars and
21 Zero Cents (\$6,500.00), to be paid from the Gross Settlement Amount.
- 22 • PAGA Allocation: Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) from the
23 Gross Settlement Amount, 75% of which will be paid to the Labor and Workforce
24 Development Agency (“LWDA”) and the remaining 25% to be paid to the Aggrieved
25 Employees.
- 26 • Estimated Net Settlement Amount: Two Hundred Three Thousand Eight Hundred Thirty-
27 Three Dollars Dollars and Zero Cents (\$203,833.00) to be distributed to Settlement Class
28 Members.

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1 As set forth herein, the Settlement is the product of informed discovery and arms-length
2 negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiffs therefore
3 respectfully request that the Court grant preliminarily approval of the Settlement, conditionally certify
4 the Class, approve the proposed Notice of Class Action Settlement (“Class Notice”), and set a hearing
5 date for final settlement approval, among other requested relief.

6 II. FACTUAL AND PROCEDURAL BACKGROUND

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

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

21 On March 4, 2024, Plaintiffs filed a Class Action Complaint (“Class Operative Complaint”) in
22 the action entitled *Rick Perez, et al. v. Rosenbalm Rockery, Inc.*, Fresno County Superior Court Case No.
23 24CECG00952 (“Class Action”), thereby commencing a putative class action against Defendant. (*Id.*, ¶
24 13).

25 On April 29, 2024, Plaintiff Torres filed a Complaint for Enforcement Action Under the Private
26 Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq.* (“PAGA Operative Complaint”) in the action
27 entitled *Samuel Torres v. Rosenbalm Rockery, Inc.*, Fresno County Superior Court Case No.
28 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).

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

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

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

On January 9, 2026, Plaintiffs filed a Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion for Preliminary Approval”) and supporting documents. (*Id.*, ¶ 18).

On February 2, 2026, the Court issued a Tentative Ruling (“February 2, 2026 Tentative Ruling”), which raised points of inquiry with regard to the Motion for Preliminary Approval and denied the Motion for Preliminary Approval without prejudice. (*Id.*, ¶ 19). On February 3, 2026, the Court held a hearing on Plaintiffs’ Motion for Preliminary Approval. (*Ibid.*). At the hearing, the Parties clarified a point raised in the February 2, 2026 Tentative Ruling – specifically, that the Class Action and PAGA Action are consolidated, and that a release of PAGA claims is therefore appropriate as part of this settlement. (*Ibid.*).

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1 On February 6, 2026, the Court entered a Minute Order (“February 6, 2026 Minute Order”)
2 adopting the February 2, 2026 Tentative Ruling in its entirety, with the exception of the language
3 concerning the PAGA release. (*Id.*, ¶ 20 and Exh. 4).

4 On March 30, 2026, the Parties entered into Amendment No. 1, which reduced the Enhancement
5 Payments to Four Thousand Dollars and Zero Cents (\$4,000.00) each and the Settlement Administration
6 Costs to Six Thousand Five Hundred Dollars and Zero Cents (\$6,500.00) pursuant to the February 6,
7 2026 Minute Order. (*Id.*, ¶ 21 and Exh. 5).

8 **III. THE SETTLEMENT TERMS**

9 **A. Class Definition**

10 For purposes of settlement only, the Parties have agreed that the Class shall be defined as “all
11 current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of
12 California at any time during the Class Period” (“Class” or Class Member(s)). (Winn Decl., ¶ 22;
13 Original Agreement, ¶ 10.d). The Class Period is defined as the period from March 4, 2020 through
14 August 31, 2025. (Winn Decl., ¶ 22; Original Agreement, ¶ 10.h). Based on information provided by
15 Defendant, it is estimated that there is a total of one hundred thirty-seven (137) Class Members. (Winn
16 Decl., ¶ 22; Declaration of Gregory C. Simonian in Support of Motion for Preliminary Approval
17 [“Simonian Decl.”], ¶ 3).

18 **B. Amount of Settlement**

19 The Parties have agreed to settle the class and PAGA claims at issue in the Actions for a non-
20 reversionary Gross Settlement Amount of Four Hundred Twenty-Five Thousand Dollars and Zero Cents
21 (\$425,000.00), exclusive of employer-side payroll taxes. (Winn Decl., ¶ 23; Original Agreement, ¶ 10.s).

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

23 The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees,
24 and other allocations. (Winn Decl., ¶ 23; Original Agreement, ¶ 10.s). The Gross Settlement Amount
25 includes: (1) Class Counsel’s fees in the amount of one-third (1/3) of the Gross Settlement Amount (i.e.,
26 \$141,667.00 if the Gross Settlement Amount is \$425,000.00); (2) Class Counsel’s actual litigation costs
27 and expenses, not to exceed Forty Thousand Dollars and Zero Cents (\$40,000.00); (3) Settlement
28 Administration Costs, not to exceed Six Thousand Five Hundred Dollars and Zero Cents (\$6,500.00); (4)

Enhancement Payments in the amounts of Four Thousand Dollars and Zero Cents (\$4,000.00) each to Plaintiffs (total, \$8,000.00); and (5) PAGA Allocation of Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). (Winn Decl., ¶ 23; Original Agreement, ¶¶ 10.s, 13 and 15; Amendment No. 1, ¶¶ A and B). After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount that will be available for Class Members is currently estimated to be Two Hundred Three Thousand Eight Hundred Thirty-Three Dollars and Zero Cents (\$203,833.00). (Winn Decl., ¶ 23). Additionally, 25% of the PAGA Allocation (“Aggrieved Employee Amount”), which is \$6,250.00 out of \$25,000.00, will be fully distributed to “all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period” (“Aggrieved Employee(s)”). (Winn Decl., ¶ 23; Original Agreement, ¶¶ 10.a, 10.b, and 10.z). The “PAGA Period” is defined as the period from February 23, 2023 through August 31, 2025. (Winn Decl., ¶ 23; Original Agreement, ¶ 10.aa).

The Net Settlement Amount will be distributed and paid to all Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Member(s)”) on a *pro rata* basis based on the number of weeks each Class Member worked for Defendant as an hourly-paid and/or non-exempt employee in California during the Class Period (“Workweeks”). (Winn Decl., ¶ 24; Original Agreement, ¶¶ 10.mm and 10.nn). The *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement (“Individual Settlement Share”) will be calculated by the Settlement Administrator, in accordance with the Original Agreement. (Winn Decl., ¶ 24; Original Agreement, ¶¶ 10.v and 18).

The Aggrieved Employee Amount will be distributed and paid to all Aggrieved Employees on a *pro rata* basis based on the number of pay periods each Aggrieved Employee worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA Period (“Pay Periods”). (Winn Decl., ¶ 25; Original Agreement, ¶¶ 10.cc and 19). The *pro rata* share of the Aggrieved Employee Amount that an Aggrieved Employee may be eligible to receive under the PAGA Settlement (“Individual PAGA Payment”) will be calculated by the Settlement Administrator, in accordance with the Original Agreement. (Winn Decl., ¶ 25; Original Agreement, ¶¶ 10.t and 19).

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1 Each Individual Settlement Share will be allocated as follows: twenty percent (20%) wages and
2 eighty percent (80%) penalties, interest, and non-wage damages. (Winn Decl., ¶ 26; Original Agreement,
3 ¶ 20). The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to
4 penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the
5 Settlement Administrator. (Winn Decl., ¶ 26; Original Agreement, ¶ 20). The Settlement Administrator
6 will withhold the employee's share of taxes and withholdings with respect to the wages portion of the
7 Individual Settlement Shares and issue checks to Settlement Class Members for their net payment of their
8 Individual Settlement Share ("Individual Settlement Payment"). (Winn Decl., ¶ 26; Original Agreement,
9 ¶¶ 10.u and 20). The employer's share of payroll taxes in connection with the wages portion of Individual
10 Settlement Shares will be paid by Defendant separately and in addition to the Gross Settlement Amount.
11 (Winn Decl., ¶ 26; Original Agreement, ¶¶ 10.n and 20). Each Individual PAGA Payment will be
12 allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if
13 applicable) by the Settlement Administrator. (Winn Decl., ¶ 25; Original Agreement, ¶ 20).

14 The Settlement Agreement is a non-reversionary and non-claims made settlement. (Winn Decl.,
15 ¶ 27; Original Agreement, ¶ 10.s). The Net Settlement Amount will be fully distributed to Settlement
16 Class Members and the PAGA Allocation will be fully distributed to the LWDA and Aggrieved
17 Employees, in accordance with the Settlement Agreement. (Winn Decl., ¶ 27; Original Agreement, ¶¶
18 10.x and 38). No money will revert to Defendant. (Winn Decl., ¶ 27; Original Agreement, ¶ 10.s).

19 Each Individual Settlement Payment and Individual PAGA Payment check will be valid and
20 negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
21 thereafter, shall be canceled. (Winn Decl., ¶ 28; Original Agreement, ¶ 38). Any funds associated with
22 such canceled checks shall be distributed by the Settlement Administrator to Marjaree Mason Center (the
23 proposed *cy pres* recipient) in accordance with California Civil Procedure Code Section 384. (Winn
24 Decl., ¶ 28; Original Agreement, ¶ 38). The Parties and their counsel each represent that they do not have
25 any financial interest in, or otherwise have a relationship with, the proposed *cy pres* recipient that could
26 create a conflict of interest. (Winn Decl., ¶ 28; Original Agreement, ¶ 38).

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1 **D. Released Claims**

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

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

10 “Released Class Claims” means any and all claims which were alleged or which could have been
11 reasonably alleged based on the factual allegations in the Class Operative Complaint, arising during the
12 Class Period, which shall specifically include claims for Defendant’s alleged failure to pay overtime and
13 minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay
14 wages during employment and upon termination, provide accurate wage statements, and reimburse
15 necessary business-related expenses in violation of California Labor Code Sections 201, 202, 203, 204,
16 210, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, applicable Industrial
17 Welfare Commission Wage Orders, and California Business and Professions Code sections 17200, *et seq.*
18 (*Id.*, ¶ 10. ff).

19 “Released PAGA Claims” means any and all claims arising from any of the factual allegations in
20 the PAGA Letter and the PAGA Operative Complaint, arising during the PAGA Period, for civil penalties
21 under the Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq.*, which
22 shall specifically include claims for Defendant’s alleged failure to pay overtime, straight time, and
23 minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay
24 wages during employment and upon termination, provide compliant wage statements, maintain complete
25 and accurate payroll records, and reimburse necessary business-related expenses in violation of California
26 Labor Code Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198,
27 2800, and 2802, and applicable Industrial Welfare Commission Wage Order and including claims for
28 penalties under California Labor Code sections 2699, 558, 210, 226, 226.3, 1174.5, 1197.1, and 1199,

penalties under applicable IWC Wage Orders, and any and all additional penalties and remedies as provided by the California Labor Code and/or other statutes. (*Id.*, ¶ 10.gg).

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

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

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

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

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

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

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

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

10 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
11 reached through arm's-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
12 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties' settlement negotiations
13 were at all times made at arm's-length and were adversarial. (Winn Decl., ¶ 29). The Settlement was
14 reached following a full day of mediation with a highly respected mediator with substantial experience
15 mediating wage and hour cases. (*Ibid*). At all times, Plaintiffs were willing and prepared to litigate this
16 matter through class certification and trial if the Parties had been unable to reach a favorable resolution.
17 (*Id.*, ¶ 54).

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

19 Courts typically assess the status of discovery in determining whether a class action settlement
20 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation,
21 Defendant produced a random eleven point forty-seven percent (11.47%) sampling of putative class
22 members' time and pay data. (Winn Decl., ¶ 30). Class Counsel originally requested one-third (1/3)
23 sampling. (*Ibid*). However, Defendant represented that it lost access to its prior ADP program and was
24 not able to access Excel reports of time and pay records prior to September 2024, so Defendant was not
25 able to produce the requested sampling amount. (*Ibid*). Our expert then extrapolated the data that
26 Defendant provided through the mediation date (i.e. July 2, 2025) for all putative class members. (*Ibid*).
27 Defendant also produced relevant wage and hour policies, and information regarding the total number of
28 putative class members, and the total workweeks worked by the putative class members. (*Ibid*). The

documents that Defendant produced prior to mediation are not provided with this Renewed Motion for Preliminary Approval of Class Action and PAGA Settlement as they were marked confidential by Defendant. (Ibid). Pursuant to California Code, Evidence Code section 1119, the documents produced by Defendant are confidential and not admissible. (Ibid).

Defendant represented that the putative class members worked in the office, in the yards, or as drivers. (Winn Decl., ¶ 31; Simonian Decl., ¶ 5). Defendant further represented that the same employment practices and policies as set forth in Defendant's employee handbooks applied to all Class Members, except the meal and rest period policies for drivers as Defendant alleged that twenty-seven (27) drivers, which represent approximately 20% of the putative class, are preempted by the Federal Motor Carrier Safety Administration ("FMCSA"). (Winn Decl., ¶ 31; Simonian Decl., ¶ 5). For the avoidance of doubt, Defendant has confirmed these representations in their declaration filed in support of this motion. (Winn Decl., ¶ 31; Simonian Decl., ¶ 5).

This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and weaknesses of the claims and the potential class-wide damages. (Winn Decl., ¶ 32). Based on information exchanged, the Parties extensively briefed issues regarding class certification and liability and provided their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective positions. (*Id.*, ¶ 33). Additionally, settlement negotiations were conducted by highly capable and experienced counsel. (Winn Decl., ¶¶ 1-11). Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

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

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

1 (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).

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

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

7 Class Counsel analyzed all available data and estimated Defendant's maximum potential exposure
8 to be approximately \$1,778,054, assuming the litigation was successful at trial on all claims at issue and
9 every employee had a violation for each claim on every shift worked. (Winn Decl., ¶ 34). This maximum
10 potential analysis was then reduced based on the challenges facing the likelihood of obtaining class
11 certification, prevailing at trial, and other attendant risks. (Ibid). This estimate is based off an estimated
12 maximum liability for all claims at issue and the total aggregate workweeks during the relevant time
13 period, less interest, and based on the analysis of the data which was extrapolated out for all class
14 members across the entire putative class period, which included: \$11,852 for meal period violations (less
15 meal period premiums paid); \$793,541 for rest period violations at a 100% violation rate; \$244,379 for
16 unpaid off-the-clock work for 1 hour per workweek of off-the-clock work; \$11,481 for unpaid overtime
17 wages; \$69,090 for unreimbursed business expenses; \$331,711 for waiting time penalties; and \$316,000
18 for wage statement penalties. (Ibid). Plaintiffs further estimated that Defendant faced an additional
19 exposure of \$419,700 in potential, non-stacked (i.e., one penalty, per employee, per pay period during
20 the PAGA statutory period) PAGA penalties. (Ibid). Together with the PAGA penalties, Defendant's
21 maximum potential exposure totaled \$2,197,754 in damages. (Ibid).

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

23 While Plaintiffs believe that Defendant faced significant exposure, substantial barriers to a
24 recovery existed. Defendant contended that Plaintiffs' claims are not suitable for class certification
25 because individual issues and affirmative defenses would predominate should this case go to trial. (Winn
26 Decl., ¶ 37; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank*
27 *Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011)).
28 While Plaintiffs and Class Counsel disagree with Defendant's predictions, they also recognize that there

1 is a significant risk that the Court may deny class certification. (Winn Decl., ¶ 37; *see also*, *Findings of*
2 *the Study of California Class Action Litigation*, 2000-2006, available at
3 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class
4 actions were certified either as part of a settlement or as part of a contested certification motion)).

5 For example, Plaintiffs' meal period claims, which were based on Defendant's alleged failure to
6 provide lawful meal periods, have been increasingly difficult to certify in recent years. (Winn Decl., ¶
7 38; *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiffs' theory of liability for meal period violations was
8 based on allegations that Defendant had failed to implement its policies and that its practices failed to
9 allow Class Members to take meal breaks in the manner required under California law. (Winn Decl., ¶
10 38; *See Bradley v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129, 1150 (2012) (holding that "the lack of
11 a meal/rest break policy and the uniform failure to authorize such breaks are matters of common proof.")).
12 Defendant contended that its policies and practices at all times during the Class Period were lawful.
13 (Winn Decl., ¶ 38). Indeed, Plaintiffs' analysis revealed only a 1.6% violation rate for purported unique
14 meal period violations after offsetting meal period premiums paid. (Ibid). Additionally, Defendant
15 alleged that the FMCSA preempts any meal period claims of the putative class members who are drivers.
16 (Ibid). Defendant further argued that the rate of purported meal period violations reflected in the data
17 would require individualized inquiry and that such inquiry would prohibit a class from being certified.
18 (Ibid). Class Counsel also had to consider the risk that the Court would find validity in an individualized
19 proof defense to certification of Plaintiffs' meal period claim. (Ibid).

20 Additionally, a large portion of Defendant's overall liability lies in Plaintiffs' rest period
21 allegations. (*Id.*, ¶ 39). As with the meal period allegations, Defendant contended that it had a lawful
22 written rest period policy, provided compliant rest breaks, and relieved Class Members of all duties as
23 required under California law. (Ibid). Defendant further alleged that the FMCSA preempts any rest
24 period claims of the putative class members who are drivers. (Ibid). Additionally, this claim was even
25 more uncertain given the difficulties associated with proving the alleged rest period violations, as
26 Defendant was not required to record these breaks. (Ibid). Given the lack of records demonstrating rest
27 period violations, there were legitimate concerns Plaintiffs would not be able to certify these claims or
28 prove substantial damages with requisite certainty, which made the estimated value of this claim subject

1 to much challenge. (Ibid).

2 Plaintiffs also faced challenges certifying and proving liability for their minimum wage and
3 overtime claims. (*Id.*, ¶ 40). These claims were largely based on Defendant's unrecorded, off-the-clock
4 work performed by the Class Members both before and after their shifts and during purported meal
5 periods. (Ibid). For example, Class Members interviewed stated that they often received time sensitive
6 phone calls before clocking in for their shifts and also performed off-the-clock work after their scheduled
7 shifts due to unreasonably high workloads. (Ibid). However, the individualized nature of why this work
8 was performed and the individualized nature of damages presented substantial concerns regarding the
9 manageability of the case and the risk the Court could find these issues prevented certification, and the
10 estimated damages for this claim were based on an assumption that all Class Members worked off the
11 clock for at least one hour per week. (Ibid).

12 Plaintiffs also contended that Defendant failed to reimburse Plaintiffs and the other Class
13 Members for necessary business-related expenses, such as the such as the purchase of steel toe boots, and
14 the usage of personal cellphones for work related tasks, such as using the GPS application to navigate for
15 work, downloading and utilizing the Verizon Connect app to check in with other drivers, and
16 communicating with customers and other employees. (*Id.*, ¶ 41). Defendant contended that it had a
17 policy and practice of reimbursing employees for necessary business-related expenses. (Ibid). Defendant
18 further contended that, with respect to the alleged expenses for which Plaintiffs and the other Class
19 Members never requested reimbursement from Defendant, it did not know and had no reason to know
20 that alleged business-related expenses had been incurred. (Ibid). Defendant further contended that the
21 reason for why a Class Member undertook certain expenses, while not others, and failed to receive
22 reimbursement for certain expenses while not others, would raise individual issues that could not be
23 certified. (Ibid). Additionally, Defendant produced payroll data evidencing cell phone reimbursement
24 of \$7.50 per week. (Ibid).

25 There are also substantial risks associated with Plaintiffs' waiting time penalties and wage
26 statement claims. (*Id.*, ¶ 42). First, these claims were derivative of Plaintiffs' claims for unpaid meal
27 period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages,
28 and if certification was denied on those underlying claims, these derivative claims for penalties would

1 also likely fail. (Ibid). Further, even if Plaintiffs prevailed on their underlying claims, they would still
2 be required to demonstrate that Defendant's violations of California Labor Code section 203 were *willful*
3 violations. (Winn Decl., ¶ 42; *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013)
4 (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding
5 of willfulness")). Wage statement claims have also seen varying treatment at the appellate level because
6 such claims have an element of discretion attached to them rather than a pure calculation of damages after
7 liability is proven. (Winn Decl. ¶ 38; *Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with*
8 *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which
9 comprised a substantial portion of Defendant's estimated liability, were therefore uncertain. (Winn Decl.,
10 ¶ 42).

11 Class Counsel also recognized that, even if Plaintiffs prevailed at class certification, proving the
12 amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
13 proposition. (*Id.*, ¶ 43). In order to prove liability and damages, Class Counsel will need to request and
14 analyze thousands of pages of documents, obtain the Class Members' contact information, contact them,
15 and obtain their declarations at great expense. (Ibid). Obtaining the cooperation of current employees
16 would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current
17 employer. (Ibid). On the other hand, Defendant would likely be able to obtain the cooperation of its
18 employees. (Ibid). Moreover, even if Plaintiffs prevailed at class certification and trial, possible appeals
19 would substantially delay any recovery by the Class. (Ibid).

20 Therefore, taking into account how each of the above risks potentially effected Plaintiffs' ability
21 to first obtain class certification, and then prove the underlying violations, plus the cost and delay in
22 recovering the alleged potential damages, Class Counsel discounted Defendant's estimated liability based
23 on the challenges facing their ability to succeed on class certification by 60% to \$879,102. (*Id.*, ¶ 44).
24 The merits-based risk factors further reduced Defendant's estimated liability by an additional 50%.
25 (Ibid). This resulted in an adjusted estimated liability of \$439,551. (Ibid). In light thereof, the settlement
26 amount of \$425,000.00 is a significant settlement. (Ibid).

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1 Class Counsel also contemplated the risks of proceeding with the PAGA claims and potential
2 liability Defendant could face from these claims as part of the global resolution. (*Id.*, ¶ 45). Existing
3 case law makes PAGA claims subject to the same defenses and risks as Plaintiffs’ underlying wage
4 claims. (Winn Decl., ¶ 45; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D.
5 Cal. 2008) (“Plaintiffs’ claim under [PAGA] is wholly dependent upon her other claims. Because all of
6 Plaintiffs’ other claims fail as a matter of law, so does her PAGA claim”)). Class Counsel also anticipated
7 that even if successful on the merits at trial, the imposition of cumulative civil penalties based on the
8 alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory,
9 and that Defendant would argue that it made a good faith attempt to comply with its legal obligations
10 warranting a reduction in penalties. (Winn Decl., ¶ 45).¹ Class Counsel also anticipated Defendant would
11 argue that the violations per pay period were low, warranting an additional reduction in civil penalties.
12 (*Ibid.*). Finally, Class Counsel was also mindful of the fact that PAGA is fundamentally not intended to
13 be compensatory in nature but is instead intended to facilitate enforcement of California’s labor laws by
14 financing state activities and educating and deterring non-compliance. (*Ibid.*).

15 Therefore, after considering this multitude of factors, Plaintiffs and Class Counsel concluded that
16 it was in the best interest of the State of California and the Aggrieved Employees to enter into the
17 Settlement, and to allocate Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) of the Gross
18 Settlement Amount towards the PAGA claims, which represents approximately 5.88% of the Gross
19 Settlement Amount. (*Id.*, ¶ 46). This percentage of the settlement is well within the range of wage and
20 hour settlements regularly approved in both state and federal court for cases that include both a class and
21 PAGA action. (*Ibid.*). Typically, such hybrid cases allocate only 1% of the gross settlement value to
22 resolve PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement
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 amount have been approved as reasonable by courts. (Ibid). Moreover, the overall relief obtained by the
2 Settlement is significant, not only from a monetary perspective, but also because it fulfills the public
3 policy objectives of PAGA—to promote enforcement of California’s labor laws, provide funds to the
4 state, and deter future non-compliance by the employer. (Ibid).

5 The Settlement is in the best interest of the Class Members, the Aggrieved Employees, and the
6 State of California and is within the accepted range of recoveries for this type of litigation given the
7 inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further
8 litigation. (*Id.*, ¶ 47).

9 VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

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

19 A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is 20 Impracticable

21 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
22 the class, and (3) the means of identifying the class members. (*See Miller v. Woods*, 148 Cal.App.3d 862,
23 873 (1983)). In this case, all three considerations strongly favor class certification. Here, the Class is
24 defined as “all current and former hourly-paid and/or non-exempt employees who worked for Defendant
25 in the State of California at any time during the Class Period.” (Winn Decl., ¶ 22; Original Agreement,
26 ¶ 10.d). This provides a clear and definite scope for the proposed class.

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

6 Finally, the question of whether class members are easily identifiable turns on whether a plaintiff
7 can establish “the existence of an ascertainable class.” (*Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706
8 (1967)). The existence of an ascertainable class in this case can be established through Defendant’s
9 payroll records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and
10 the Court to determine the parameters of the Class. (*See Clothesrigger, Inc. v. GTE Corp.*, 191
11 Cal.App.3d 605, 617 (1987)). Here, the Class is ascertainable. Defendant has confirmed that there are
12 one hundred thirty-seven (137) identifiable Clas Members for the Class Period, and the identities of such
13 Class Members can be obtained through Defendant’s payroll records and/or other business records kept
14 in the regular course of business. (Simonian Decl., ¶¶ 3 and 4).

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

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

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

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1 Here, Plaintiffs' claims present common issues of law and fact that predominate and warrant class
2 certification. Plaintiffs allege that Defendant denied compliant meal and rest periods to employees,
3 required employees to perform work off-the-clock, and failed to fully compensate employees for all time
4 actually worked. These policies and practices meant that Defendant allegedly failed to pay minimum and
5 overtime wages, and other related claims. Plaintiffs alleged, and Defendant confirmed, that Defendant's
6 policies and practices were uniform as to all Class Members, excluding the meal and rest policies for the
7 Class Members who are drivers preempted by the FMCSA. (Simonian Decl., ¶ 5). Thus, class treatment
8 is appropriate. To satisfy the typicality requirement, California law does not require that plaintiffs' claims
9 be identical to the other class members. Rather, the test of typicality for a class representative is whether
10 other members have the same or similar injury, whether the action is based on conduct, which is not
11 unique to the named plaintiff, and whether other class members have been injured by the same course of
12 conduct. (*See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007)). The typicality requirement
13 for a class representative refers to the nature of the claim or defense of the representative, and not to the
14 specific facts from which it arose or the relief sought. (*See Ibid*).

15 Plaintiffs allege that their claims are similar to that of the other Class Members and that Plaintiffs'
16 claims arise out of the same alleged course of conduct giving rise to the claims of the other Class Members.
17 Plaintiffs allege that Defendant subjected them to the same wage-and-hour violations, the same unlawful
18 policies, and the same practices that affected every member of the proposed Class. Critically, this is not
19 merely an allegation – Defendant itself confirmed that its policies and practices were uniform as to all
20 Class Members, excluding only the meal and rest policies applicable to Class Members who are drivers
21 preempted by the FMCSA. (Simonian Decl., ¶ 5). This confirmation by Defendant eliminates any serious
22 dispute as to whether a common, class-wide policy exists and demonstrates that Plaintiffs' claims are not
23 unique to them but rather reflect the shared experience of the entire Class. Because Plaintiffs and the
24 Class Members were subjected to the same uniform policies and practices, were harmed in the same
25 manner, and seek relief under the same legal theories, Plaintiffs' claims are typical of the claims of the
26 Class as a whole, and the typicality requirement is satisfied.

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1 Finally, the question of adequacy of representation “depends on whether the plaintiff’s attorney
2 is qualified to conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the
3 interests of the class.” (*McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976)). Here, these
4 considerations are satisfied. Class Counsel is well-regarded and is qualified and experienced in
5 employment-related, class-action litigation. (Winn Decl., ¶¶ 1-11). Plaintiffs will vigorously,
6 adequately, and fairly represent the interests of the Class. Plaintiffs have, at all times, throughout the
7 course of the litigation considered the interests of the Class and understood that they must take steps to
8 adequately represent the Class and their interests. (Perez Decl., ¶ 12; Torres Decl., ¶ 12). Because
9 Plaintiffs’ claims are typical of other Class Members and are not based on unique circumstances, there is
10 no antagonism between the interests of Plaintiffs and the Class.

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

12 Under the circumstances, proceeding as a class action is a superior means of resolving this dispute,
13 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
14 the only means to deter and redress the alleged violations. (*See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429,
15 434 (2000) (relevant considerations include the probability that each class member will come forward to
16 prove his or her separate claim and whether the class approach would actually serve to deter and redress
17 the alleged wrongdoing)). Further, individual actions arising out of the same operative facts would
18 unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are
19 superior to individual litigation.

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

21 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation
22 “for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz*
23 *v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010)). Courts routinely grant approval of
24 class action settlement agreements containing enhancements for the class representative, which are
25 necessary to provide incentive to represent the class and are appropriate given the benefit the class
26 representatives help to bring about for the class. (*See In re Online DVD Rental*, 779 F.3d 934, 947-948
27 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive
28 award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL

7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and reasonable”).

Plaintiffs initiated this litigation on behalf of their former co-workers who will now be entitled to receive payment from the Settlement. Plaintiffs invested substantial time and effort into litigation, including their own research, reviewing documents, and extensive discussions with Class Counsel. (Perez Decl., ¶¶ 3-7; Torres Decl., ¶¶ 3-7). Further, the requested amounts for Plaintiffs are also reasonable given the average award and the benefit gained by other Class Members. For these reasons, Plaintiffs request that Enhancement Payments of Four Thousand Dollars and Zero Cents (\$4,000.00) each to Plaintiffs be preliminarily approved by the Court. (Winn Decl., ¶ 48; 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. (Amendment No. 1, 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., ¶¶ 49 and 52). 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. (Original Agreement, ¶ 13).

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

3 The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members.
4 (Amendment No. 1, Exh. A). The Class Notice will include information regarding the nature of the
5 Actions, a summary of the terms of the Settlement, the Class definition, information on how to object to
6 and/or opt-out of the Class Settlement and to dispute Workweeks and/or Pay Periods, and the date of the
7 Final Approval Hearing. (Ibid). The Class Notice will list each Class Member's total Workweeks and
8 their estimated Individual Settlement Share and each Aggrieved Employee's total Pay Periods and their
9 estimated Individual PAGA Payment. (Ibid).

10 Within fourteen (14) calendar days of the preliminary approval, Defendant will provide a list in a
11 formatted readable Microsoft Office Excel spreadsheet to the Settlement Administrator containing the
12 following information for each Class Member: (1) full name; (2) last known mailing address; (3) Social
13 Security number; (4) dates worked for Defendant during the Class Period; and (5) such other information
14 as is necessary for the Settlement Administrator to calculate Workweeks and Pay Periods (collectively
15 referred to as the "Class List"). (Original Agreement, ¶¶ 10.f and 27). Within seven (7) calendar days
16 after receiving the Class List from Defendant, the Settlement Administrator will perform a search based
17 on the National Change of Address Database or other similar services available, such as provided by
18 Experian, for information to update and correct for any known or identifiable address changes, and will
19 mail a Class Notice in English and Spanish to all Class Members via First-Class U.S. Mail, using the
20 most current, known mailing addresses identified by the Settlement Administrator. (*Id.*, ¶ 28.a). The
21 Parties have agreed to use Apex Class Action LLC as the Settlement Administrator. (Winn Decl., ¶ 55;
22 Original Agreement, ¶ 10.kk).

23 In determining whether to approve a settlement of a class action, a trial court has virtually
24 complete discretion as to the manner of giving notice to class members, and review on appeal is governed
25 by the abuse of discretion standard. (*See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380
26 (2010)). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which
27 would result in a higher likelihood of actual notice. (Winn Decl., ¶ 56). The original source of the mailing
28 addresses is from Class Members, who provided the information to Defendant. (Ibid).

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

6 Any Class Notice returned to the Settlement Administrator as undeliverable on or before the
7 Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed
8 thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.
9 (*Id.*, ¶ 28.b). If no forwarding address is provided, the Settlement Administrator will promptly attempt
10 to determine a correct address using a skip-trace or other search, using the name, address, and/or Social
11 Security number of the Class Member, and perform a single re-mailing within five (5) calendar days.
12 (*Ibid.*). In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that
13 Class Member shall be extended fifteen (15) calendar days from the original Response Deadline. (*Id.*, ¶
14 10.jj).

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

24 Any Class Member wishing to be excluded from the Class Settlement must submit a timely and
25 valid letter (“Request for Exclusion”) to the Settlement Administrator, by mail, postmarked on or before
26 the Response Deadline. (*Id.*, ¶¶ 10.ii and 30). A Request for Exclusion must: (a) contain the case name
27 and number of the Class Action; (b) contain the Class Member’s full name, signature, address, telephone
28 number, and last four (4) digits of the Class Member’s Social Security number; (c) clearly state that the

1 Class Member does not wish to be included in the Class Settlement; and (d) be returned by mail to the
2 Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*,
3 ¶ 10.ii). Notwithstanding the above, all Aggrieved Employees will be bound by the PAGA Settlement
4 and will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for
5 Exclusion. (*Id.*, ¶ 30).

6 To object to the Class Settlement, Settlement Class Members must submit a timely and complete
7 written objection (“Notice of Objection”) to the Settlement Administrator, by mail, postmarked on or
8 before the Response Deadline. (*Id.*, ¶¶ 10.y and 31). A Notice of Objection must: (a) contain the case
9 name and number of the Class Action; (b) contain the objector’s full name, signature, address, telephone
10 number, and the last four (4) digits of the objector’s Social Security number; (c) contain a written
11 statement of all grounds for the objection accompanied by any legal support for such objection; (d)
12 contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be
13 returned by mail to the Settlement Administrator at the specified address, postmarked on or before the
14 Response Deadline. (*Id.*, ¶ 10.y). Settlement Class Members, individually or through counsel, may also
15 present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a
16 Notice of Objection. (*Id.*, ¶ 31).

17 X. CONCLUSION

18 For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs’
19 Renewed Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief
20 requested herein.

21 Respectfully submitted,

22 Dated: April 27, 2026

BLACKSTONE LAW, APC

23 By:



24 James S. Winn Jr.

25 Attorneys for Plaintiffs Rick Perez and Sam Torres