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as an individual and on behalf of all employees similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JAVIER HERNANDEZ, as an individual and on behalf of all employees similarly situated, Plaintiff, v. PRECISE AEROSPACE MANUFACTURING, INC., a California Corporation; and DOES 1 through 50, inclusive, Defendant.	Case No.: 30-2024-01400056-CU-OE-CXC [Assigned for all purposes to Hon. Randall J. Sherman, Department CX105] <u>CLASS AND PAGA REPRESENTATIVE ACTION</u> **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Reservation N: 74544108 Date: August 8, 2025 Time: 10 a.m. Courtroom: Dept. CX105 Judge: Hon. Randall J. Sherman Action Filed: May 15, 2024 Trial: Not Set

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 8, 2025, at 10 a.m., or as soon thereafter as the matter may be heard, in Department CX105 of the above-captioned Court, located at 751 W. Santa Ana Boulevard, Santa Ana, California 92701, Plaintiff JAVIER HERNANDEZ ("Plaintiff") will and hereby do move this Court for an order:

1. Granting class certification of the Class, solely for settlement purposes pursuant to Code of Civil Procedure § 382;
2. Preliminarily approving the JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT ("Settlement" or "Agreement");
3. Appointing counsel for Plaintiff, Tunyan Law, APC as Class Counsel;
4. Appointing Plaintiff as the Class Representative;
5. Approving the use of the proposed notice procedure and related notice form;
6. Approving ILYM Group, Inc. as the third-party administrator;
7. Directing that notice be mailed to the Class; and,
8. Scheduling a hearing date for motion for final approval of class action settlement and awards of attorneys' fees and costs.

Good cause exists to grant this Motion because:

1. The Class meets all of the requirements for class certification for settlement purposes under Code of Civil Procedure § 382;
2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted by Plaintiff;
3. Plaintiff and Class Counsel are adequate to represent the Class;
4. The proposed notice procedures and related forms comply with California Rules of Court 3.766(d) and (e), adequately apprise Class Members of their rights, and fully comport with due process; and
5. Based on the foregoing, notice should be directed to the Class Members and a final fairness hearing should be scheduled (Plaintiff suggest about 130 days after preliminary approval is granted).

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of Plaintiff's counsel, Defendant's counsel, Plaintiff, and the Settlement Administrator in support thereof, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

Dated: April 22, 2025

TUNYAN LAW, APC

By: ______________________

Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff JAVIER HERNANDEZ

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I. INTRODUCTION

Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiff JAVIER HERNANDEZ ("Plaintiff") respectfully request that this Court preliminarily approve the proposed class action settlement set forth in the JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT ("Settlement" or "Agreement") with Defendant PRECISE AEROSPACE MANUFACTURING, INC. ("Defendant").

Plaintiff was employed by Defendant and alleged various wage and hour violations, which Defendant denies. After informal discovery, the exchange of documents, and an arm's-length mediation session with an experienced mediator, Monique Ngo-Bonnici, Esq., Plaintiff and Defendant (collectively referred to herein as the "Parties") reached a proposed class action settlement with a gross settlement amount ("GSA") of **$225,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class consisting of approximately **86** members as of February 26, 2025. Plaintiff believes that this settlement is a fair, adequate, and reasonable compromise of the disputed claims for alleged unpaid wage and hour violations and penalties asserted in this case.

Plaintiff now submit this Motion for Preliminary Approval of Class and PAGA Representative Action Settlement, along with the Settlement (attached to the Declaration of Lilit Tunyan ["Tunyan Decl."], **Exhibit 1** thereto). For the Court's convenience, below is a summary of the key provisions of the Settlement.

II. THE MAJOR TERMS OF SETTLEMENT

The provisions of the proposed Settlement include the following:

- Defendant agrees not to oppose certification of a Class for purposes of Settlement only (Settlement, ¶ 19);
- **Settlement Amount**: Defendant will pay a maximum of **$225,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** payment per Class Member of approximately **$2,616.28** (Settlement, ¶ 26(c));
- **Class Size**: Approximately **86** individuals as of February 26, 2025. (Tunyan Decl., ¶ 16.)
- **PAGA Group Size**: Approximately **50** individuals as of February 26, 2025 (Tunyan Decl., ¶ 17);

- **<u>Escalator Clause</u>**: Defendant estimates that the number of Class Members was approximately 86 individuals as of February 26, 2025, and the number of Covered Workweeks worked in the Class Period for those Class Members was approximately 3,889 as of that date. If it is later determined that, the number of Covered Workweeks in the Class Period is more than 10% greater than the estimated number of workweeks as of February 26, 2025, i.e. exceeds 4,278 workweeks, at Defendant's sole election, Defendant can either: (1) have the Gross Settlement Amount increased proportionally by the Covered Workweeks actually worked in the Class Period in excess of 4,278 Covered Workweeks by a pro-rata dollar value equal to the number of Covered Workweeks in excess of 4,278 Covered Workweeks (For example, if there is a 1% increase over 10% then the Gross Settlement Amount increases by 1%); or (2) the Class Period shall end on the date the number of Covered Workweeks reaches 4,278. Should Defendant elect option (2) above and end the Class Period early, then Defendant shall notify Class Counsel of its election no later than seven (7) days after Defendant has received sufficient information to determine that the actual number of Covered Workweeks exceeds 4,278. (the "Escalator Clause"). (Settlement, ¶ 26(d).)
- ***<u>Kullar/Munoz</u>* <u>Analysis</u>**: Plaintiff addresses the claims analysis herein, at Part V.B.3, and in more detail the Declaration of Tunyan, at Paragraph 17;
- **<u>No Reversion</u>**: The Settlement is a ***non-reversionary*** settlement (Settlement, ¶ 26(e));
- **<u>Certification</u>:** Plaintiff addresses certification requisites herein, at Part V.A., and in the Declaration of Tunyan, at Paragraphs 35-41;
- **<u>No Claim Form</u>:** No claim form is required (Settlement., ¶ 26(f));
- **<u>Class Release</u>**: Class Members will release Released Class Claims as defined in the Settlement (those Class Members who do not opt out of the Settlement) (Settlement, ¶ 37);
- **<u>PAGA Release</u>**: PAGA Employees are deemed to release the Released PAGA Claims defined in the Settlement, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶ 37);
- **<u>Release Effective Date</u>:** The Release is not active until Defendant tenders all payments

required under the Settlement to the Settlement Administrator (Settlement, ¶ 37);

- **Net Settlement Amount Available to the Class:** After deducting Class Counsel's attorneys' fees and costs, service payment to Plaintiff, administration costs, and the payment to the LWDA, the remainder will be used to pay Settlement Class Payments to Class Members who do not opt out and PAGA Settlement Payments to PAGA Employees. For the Settlement Class Payments, each Class Member will receive a share based on the number of workweeks each Class Member worked for Defendant within the Class Period. The Net Settlement Amount which also includes PAGA Settlement Payments to PAGA Employees is estimated to be at least **$101,950.00**, resulting in an average **net** payment per Class Member of at least **$1,185.47**. (Settlement, ¶ 26(g));
- **Tax Allocation:** The amounts distributed to Class Members will be characterized as 20% wages and 80% interest and penalties, and PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶ 26(k));
- **Employer's Portion of Payroll Taxes Paid Separately**: Defendant's portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 26(h));
- **Settlement Administrator**: The notice portion of the Settlement and distribution of funds will be administered by a third-party Administrator, ILYM Group, Inc., and the Parties estimated that the costs of administration should not reasonably exceed $7,000.00. ILYM Group, Inc.'s low bid for settlement administration services in the amount of **$5,550.00** was selected as the lowest bid from a competitive bidding process. (Settlement, ¶ 26(o));
- **Class Data for Administration:** The Settlement Administrator will receive the Class List within 15 calendar days of Preliminary Approval, use the NCOA database to update the Class List, and then use skip tracing on returned Notices (Settlement, ¶ 32(a));
- **Notice:** The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 32(b)). The Notice describes how to dispute workweeks, submit and objection, or request exclusion (Settlement, ¶ 26(r)).
- **Notice Language**: Notice will issue in English and Spanish (Settlement, ¶ 26(s));

- **<u>Objections</u>:** Objections can be submitted to the Settlement Administrator in writing via the Objection Form, or at the Final Approval Hearing. (Settlement, ¶ 26(w));
- **<u>Exclusion Requests</u>:** Requests for exclusion can be submitted to the Settlement Administrator in writing on the Request for Exclusion Form (Settlement, ¶ 26(v));
- **<u>PAGA Allocation</u>:** From the GSA, **$20,000.00** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq*. ("PAGA"), and seventy-five percent (75%), or **$15,000.00** will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶ 10.)
- **<u>Notice to LWDA</u>:** Notice was provided prior to the filing of this Motion. Evidence is attached to Tunyan Declaration.
- **<u>Service Payment to Plaintiff</u>:** Defendant will not oppose the application for Class Representative Service Payment of **$7,500.00** to be paid from the GSA (Settlement, ¶ 26(n));
- **<u>Fees and Costs</u>**: Defendant will not oppose Class Counsel's application for fees not to exceed 33 1/3% of the GSA **($75,000.00**), and actual costs, in an amount not to exceed **$20,000**, to be paid out of the GSA (Settlement, ¶ 26(m)).
- **<u>Check Void Period</u>**: Settlement checks will be valid for 180 days (Settlement, ¶ 34);
- **<u>Uncashed Checks</u>**: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the California State Controller's Office for Unclaimed Property in the name of each Class Member who failed to cash their Settlement Payment (Settlement, ¶ 35);
- **<u>Judgment Notice</u>:** Judgment will be posted on the Settlement Administrator's website after entry for 180 days (Settlement, ¶ 30);
- **<u>Confidentiality Provisions</u>:** Plaintiff and Class Counsel agree to keep settlement terms confidential (Settlement ¶ 58).

(Tunyan Decl., ¶¶ 10-11 and Exhibit 1 thereto.)

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Claims

17. On May 15, 2024, Plaintiff filed a putative class action alleging the following labelled causes of action: (1) failure to pay all wages; (2) failure to provide meal periods; (3) failure to provide rest periods; (3) failure to maintain and provide accurate itemized wage statements; (5) failure to indemnify necessary business expenses; (6) failure to timely pay all wages and final wages; (7) Unfair Business Practices in violation of Bus. & Prof. Code § 17200 et seq. On July 22, 2024, Defendant filed his First Amended Complaint adding the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] ("PAGA") cause of action ("Action"). In the complaint, Plaintiff sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint. (Tunyan Decl., ¶ 3.)

Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] ("PAGA"). (Tunyan Decl., ¶ 4.)

B. Pre-Mediation Data Production and Analysis

The Parties have conducted informal discovery and investigation of the facts and law. Such discovery and investigation have included, inter alia, the exchange of data and discoverable information in preparation for the mediation session. (Tunyan Decl., ¶ 5.) The Parties have analyzed payroll and other data pertaining to Plaintiff and the Class during the relevant Class Period, including but not limited to the numbers of former and current members of the Class, average workweeks, and average rate of hourly pay. (*Id.*) In addition, Defendant also provided documents reflecting their wage and hour policies and practices during the Class Period (*Id.*)

After reviewing documents regarding Defendant's wage and hour policies and practices and other information obtained during the exchange of discovery, Class Counsel were able to evaluate the probability of class certification, success on the merits, and the reasonably obtainable maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (Tunyan Decl., at ¶ 6.)

C. **Settlement**

On February 26, 2025, the Parties mediated before a mediator, Monique Ngo-Bonnici, Esq., who is a highly experienced and well-regarded mediator for wage and hour class action litigation. (Tunyan Decl., ¶ 7.) At the mediation, the Parties discussed at length the burdens and risks of continuing with the litigation as well as the merits of the claims and defenses. (*Id.*) The Parties have been able to reach a settlement at the mediation. The Parties have reached an agreement regarding the substantive terms of a class-wide settlement, pending the Parties' agreement on a long-form class settlement agreement. The Parties then signed a long form settlement agreement ("Agreement"). (*Id.*)

Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses thereto. (Tunyan Decl., ¶ 8.) Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a Settlement that confers substantial relief upon the Class.

Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class. (Tunyan Decl., ¶ 9.) Solely for the purpose of settling this case, the parties agree that the requirements for establishing class action certification with respect to this class have been met and are met. (*Id.*) If this Settlement is not approved by the Court for any reason, Defendant reserves its right to contest class certification. (*Id.*) This Settlement, if approved by the Court, will result in the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

IV. **CLASS DEFINITION**

The Class is defined as follows:

> All current and former non-exempt employees of Defendant worked within the State of California at any time during the Class Period. the "Class Period" is from May 15, 2020 through the date the Court grants preliminary approval of this settlement or May 26, 2025, whichever is earlier). "Settlement Class Members" are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶¶ 3-4.) (Tunyan Decl., ¶ 34 and Exhibit 1.)

The PAGA Employees is defined as follows:

> All current and former non-exempt employees of Defendant worked within the State of

California at any time during the PAGA Period (the "PAGA Period" is from May 15, 2023 through the date the Court grants preliminary approval of this settlement or May 26, 2025, whichever is earlier.) PAGA Employees cannot opt out of the settlement of the PAGA claim. (Settlement, ¶¶ 11-12.)

V. DISCUSSION

A. The Court Should Conditionally Certify the Class Because It Meets All the Requirements for Certification for Settlement Purposes Under CCP § 382

Under Code of Civil Procedure § 382,[1] class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest among its members and that a "class action proceeding is superior to other means for a fair and efficient adjudication of the litigation." *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). Any doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to later modification. *Richmond v. Dart Indus. Inc.*, 29 Cal. 3d 462, 473-475 (1981). For purposes of this Settlement only, Defendant has agreed not to oppose conditional certification of the proposed class action. (Settlement ¶ 19.)

"The certification question is 'essentially a procedural one that does not ask whether an action is legally or factually meritorious.'" *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2000). Indeed, the certification question simply asks whether the theory of recovery advanced by the Plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). In ruling on certification, a trial court's task is to determine "whether ... the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." *Id*. Thus, "[t]he relevant comparison lies between the costs and benefits of adjudicating Plaintiff' claims in a class action and the costs and benefits of proceeding by numerous separate actions . . . ."*See, e.g., id.*

"[I]t is also well established that trial courts should use different standards to determine the

[1] Code Civ. Proc. § 382, which is the statutory basis for the maintenance of class actions under California law, states in relevant part, "[W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). As the court noted in *Dunk*, although certification requirements are intended "to protect the interests of the non-representative class members," that concern is "protected by the trial court's fairness review of the settlement." *Dunk*, 48 Cal. App. 4th at 1807 n.19.

Indeed, numerous courts have certified settlement classes. For example, the court in *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285 (2d Cir. 1992), cert. dismissed, 506 U.S. 1088, 122 L. Ed. 497, 113 S. Ct 1070 (1993), addressed settlement before a class was certified. After a hearing, the "district court issued an order certifying the class and approving the settlement agreement." *Id.* at 289; *see also Alaniz v. California Processors, Inc.*, 73 F.R.D. 269, 278 (N.D. Cal. 1976) ("the use of the tentative settlement class procedure was appropriate in this case"), *aff'd*, 572 F.2d 657 (9th Cir.), cert. denied, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action litigation and an approved procedure which ought to be followed in this case. *See* Newberg on Class Actions (3d ed. 1991) § 11.27, pp. 11-40 to 11-56; Manual for Complex Litigation, 2d (1993) § 30.45.

In view of these standards, and as shown below, the Class should be certified for purposes of settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

1. The Members of the Class Are Both Objectively Ascertainable and Sufficiently Numerous.

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying class members. *See Miller v. Woods*, 148 Cal. App. 3d 862, 873 (1983). In this case, Plaintiff contends that all three considerations strongly favor class certification.

A class is ascertainable when "it is defined 'in terms of objective characteristics and common transactional facts' that make 'the ultimate identification of class members possible when that identification becomes necessary.'" *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019). No set number of class members is required to maintain a class action. *Hebbard v. Colgrove*, 28 Cal. App. 3d 1017, 1030 (1972). In fact, the California Supreme Court has upheld a class of as few as ten members. *Bowles v. Superior Court*, 44 Cal. 2d 574 (1955).

The class definition is sufficiently specific to enable the Parties, Class Members, and the Court to determine makeup of the class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 617 (1987) (proposed class defined as all persons nationwide subscribing to telephone service since January 1, 1981, who were charged for one or more unanswered long distance calls, deemed "plainly" ascertainable).

The question of whether class members are easily identifiable turns on whether a Plaintiff can establish "the existence of an ascertainable class," not whether the Plaintiff can "identify the individual members of such class as prerequisite to the class suit." *Daar*, 67 Cal.2d at 706; *see also, Reyes v. San Diego County Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1275 (1987).

In this case, there are approximately 86 Class Members as of February 26, 2025, all of whom may be identified by reference to Defendant's records. In addition, to facilitate the administration of the Settlement, Defendant has agreed to share information as to the class size from records and have already demonstrated that they can do so when providing class-wide discovery to Plaintiff to facilitate settlement discussions. Accordingly, the Class is not only ascertainable, but also sufficiently numerous. (Tunyan Decl., ¶ 36.)

2. There Are Common Questions That Predominate Over Any Questions That May Be Unique to Individual Class Members.

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. *Dunk,* 48 Cal. App. 4th at 1806; *Richmond*, 29 Cal. 3d at 473-75. In this case, Plaintiff's claims satisfy all three factors.

A question of law or fact is common to the members of a class if it may be resolved through common proof. *See, Jaimez,* 181 Cal.App.4th at 1305. As for predominance, it "is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate."' *Sav-on*, 34 Cal. 4th at 334, quoting *Reyes v. Los Angeles County Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1278 (1979). Thus, "[i]ndividual issues do not render class certification inappropriate so long as such issues may effectively be managed." *Id*. This is especially so where the key difference between class members solely concerns their damages. *See id.*

In this case, common questions include, but are not limited to: i. Whether or not Defendant paid proper wages to the Class; ii. Whether or not Defendant provided meal periods to the Class; iii. Whether or not Defendant provided rest periods to the Class; iv. Whether or not Defendant paid compensation timely upon separation of employment to former Class Members; v. Whether or not Defendant paid compensation timely throughout Class Members' employment; vi. Whether or not Defendant provided accurate itemized wage statements to the Class; vii. Whether or not waiting-time penalties are available to the Class for violation of California Labor Code § 203; viii. Whether or not Defendant reimbursed for necessary business expenses pursuant to California Labor Code § 2802; ix. Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208; and x. Whether or not Plaintiff and the Class are entitled to penalties pursuant to PAGA (Tunyan Decl., ¶ 38.)

In the Action, Plaintiff's claims present sufficient common issues of law and fact that predominate over individual issues and warrant class certification. From their review of the documentation provided, Class Counsel determined that for purposes of these claims, Defendant's policies and practices are either identical, or sufficiently similar, to raise the same questions of liability, and applied to all Class Members. Because Class Members would have to prove the same issues of law and fact to prevail, and because their potential legal remedies are identical, it would be preferable to resolve all Class Members' claims by means of the Settlement than to require each Class Member to litigate his or her individual claims. Therefore, common questions predominate over any questions that may be unique to individual Class Members, and class-wide settlement is superior to any other method of resolution.

3. Plaintiff's Claims Are Typical of Those of the Class.

Typicality "requires a showing that the class representative has claims or defenses typical of the class." *See, e.g*., *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1534 (2008), citing *Fireside Bank v. Super. Ct.*, 40 Cal. 4th 1069, 1089 (2007), and *Sav-On*, 34 Cal. 4th at 326, approved by *Jaimez*, 181 Cal. App. 4th at 1298 and *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004 (2012).

To satisfy the typicality requirement, California law does not require that Plaintiff has claims identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named Plaintiff, and whether other class members have been injured by the same course of conduct. *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007). The typicality requirement for a class representative refers to the nature of the claim or defense of the representative, and not to the specific facts from which it arose or the relief sought. *Id.; Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

The purpose of this requirement is to ensure that the representative Plaintiff has interests that are reasonably co-extensive with those of absent class members. *See id.* "The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named Plaintiff, and whether other class members have been injured by the same course of conduct.'" *Id.*, quoting *Schwartz v. Harp* 108 F.R.D. 279, 282 (C.D. Cal. 1985). Notably, "it has never been the law in California that the class representative must have *identical* interest with the class members." *Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983). In light of these standards, Plaintiff is typical of class members.

Here, like other Class Members, Defendant employed Plaintiff in a non-exempt position during the Class Period, and Plaintiff was subject to the same policies alleged to have impacted the entire class. (Tunyan Decl., ¶ 37.) Plaintiff and other Class Members share the same claims stemming from Defendant' alleged violations of the Labor Code and relevant wage order. In addition, Defendant's main defense, namely that its policies and practices comply with California law, apply equally to the claims of all Class Members. Thus, Plaintiff is typical of the Class.

4. Plaintiff and Plaintiff's Counsel Will Adequately Represent the Class.

The adequacy requirement is met where the Plaintiff is represented by counsel qualified to conduct the litigation and the Plaintiff's interest in the litigation is not antagonistic to class members' interests. *McGhee v. Bank of America*, 60 Cal.App.3d 442, 451(1976). In other words, where the Plaintiff has adequate counsel, the Plaintiff may represent the entire class absent any disabling conflicts of interest that might hinder the Plaintiff's ability to represent the class. *Id.*

In the Action, Plaintiff has no conflicts of interest with other Class Members and has agreed to place Class interests above Plaintiff's own. (Hernandez Decl., ¶¶ 4-20; Tunyan Decl., ¶ 40.) Moreover, Plaintiff's counsel is experienced in wage and hour class action litigation and have no conflicts of interest with absent Class Members. (Tunyan Decl., ¶¶ 21-27, 40.) As such, this Court should appoint Plaintiff as Class Representatives for the Class and appoint Plaintiff's Counsel as Class Counsel.

5. Proceeding as a Class Action is Superior to Individual Actions

Under the circumstances, proceeding as a class action is a superior means of resolving this dispute, as the Class Members and the Court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged Labor Code violations. *See Linder v. Thrifty Oil Co.* 23 Cal. 4th at 434 (relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress the alleged wrongdoing). Furthermore, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results, which may be avoided by class certification.

B. <u>The Court Should Preliminarily Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims in View of Defendant' Potential Liability Exposure and the Risks of Continued Litigation</u>

California courts favor settlement. *See, e.g*., *Stambaugh v. Superior Court*, 62 Cal. App. 3d 231, 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed below, this Court should preliminarily approve the Settlement, allow the Parties to give notice to the Class as proposed, and schedule a final fairness and final approval hearing.

1. Class Action Settlements Are Subject to Review and Approval.

Any settlement of class litigation must be reviewed and approved by the presiding court. Rules of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial court and (2) a subsequent (final) review after notice has been distributed to the class members. The Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks *preliminary approval* and the setting of a Final Approval Hearing.

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

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

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

2. The Parties Reached the Settlement Through Arms' Length Negotiations Between Experienced Counsel with the Assistance of a Highly Qualified Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.

A settlement is presumptively fair where it is reached through arms' length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors is small.[2] *Dunk*, 48 Cal.App.4th at 1802; *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g.*, *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, at 1801, quoting *Officers for Justice v. Civil Serv. Comm'n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

Relevant factors in making this determination, include, but are not limited to:

> [T]he 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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the

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[2] Because the fourth prerequisite for the presumption to arise cannot be addressed until the final approval hearing, only the first three prerequisites are relevant at this preliminary stage of the settlement approval process.

proposed settlement.

Id. These factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the factors considered to each case and give due regard to "what is otherwise a private consensual agreement between the parties." *Id.*

Here, the Settlement resulted from thorough, arms' length negotiations between experienced counsel with the assistance of highly regarded mediator. (Tunyan Decl., ¶¶ 6-8.) With respect to the claims at issue in this case, Plaintiff obtained data from Defendant and then carefully reviewed that information. Counsel for Plaintiff also examined relevant policies in detail about their work experiences and Defendant's practices.

Based on the totality of that review, Plaintiff estimated the potential exposure and then estimated risk factors to adjust the reasonable expected outcome. The investigation and discovery that Plaintiff's counsel conducted were sufficient to provide them with enough information to intelligently evaluate the estimated exposure in this action for purposes of negotiating the Settlement in view of the risks discussed below and are also sufficient to allow this Court to do the same. *See, e.g., Wershba v. Apple Computer, Inc.,* 91 Cal. App. 4th 224, 245 (2001).

3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise of Class Members' Claims Based on Defendant's Estimated Liability Exposure Given the Risks Continued Litigation Would Entail.

A settlement is not judged against what might have been recovered had a Plaintiff prevailed at trial and does not have to provide 100% of damages sought to be fair and reasonable. "In the context of a settlement agreement, the test is not the maximum amount Plaintiff might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba*, 91 Cal.App.4th at 250. Accordingly, because settlements involve compromise, even one that provides for substantially narrower relief than would likely be obtained if the suit were successfully litigated can be reasonable given that "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id., quoting Air Line Stewards & Stewardesses Ass'n, Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).

With respect to the claims asserted on behalf of the Class in this case, there are serious risks that support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiff would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014); (ii) the risk that Defendant's meal and rest period policies might not ultimately support class certification or a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28 (citing Court of Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability of proposition); (iii) the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and practices could preclude class-wide awards of statutory penalties under Labor Code §§ 203 and 226(e); (iv) the risk that individual differences between Class Members could be construed as pertaining to liability and not solely to damages, *see Duran*, 59 Cal. 4th at 19; (v) the risk that any civil penalties award under the PAGA could be reduced by the Court in its discretion, *see* Labor Code § 2699(e)(1); (vi) the risk that class treatment could be deemed improper as to one or more claims, except for settlement purposes; (vii) the risk that lengthy appellate litigation could ensue. (Tunyan Decl., ¶ 15.) These risks are non-exhaustive.

In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and reasonable recovery for the Class Members. (Tunyan Decl. ¶¶ 12-19.) The settlement amount is, of course, a compromise figure. (Tunyan Decl. ¶ 16.) By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the approximately **86** members of the Class, the average ***gross*** recovery including PAGA individual payment is at least **$2,616.28** per class member, and the estimated average ***net*** recovery for each Class Member including PAGA individual payment is approximately **$1,185.47**. (*Id.*) Given that Defendant could challenge certification and liability, this is a significant sum to have achieved in settlement. Moreover, <u>a Class Member who worked a greater number of weeks for Defendant will receive a larger share of the Settlement</u> than a Class Member who worked for a shorter amount of time during the class period. (*Id.*)

After analyzing the claims in this matter, Plaintiff has concluded that the value of this Settlement is fair, adequate, and reasonable. (Tunyan Decl., ¶ 17.) The Gross Settlement Amount of **$225,000.00** is about 68% of the **$332,900.97** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. On that basis, it would be unwise to pass up this settlement opportunity. This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. (*Id.*) The maximum calculated reasonable exposure is **$1,218,092.56,** *including* PAGA penalties. (*Id.*)

- A reasonably estimated exposure for unpaid wages for unlawful rounding was calculated, with the assistance of an expert, to be approximately **$48,326.11**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **$34,794.80**, assuming certification probability of 80% and merits success at 90%.
- A reasonably estimated exposure for unpaid wages for the off-the clock work was calculated, with the assistance of an expert, to be approximately **$119,820.09.** However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **$14,378.41**, assuming certification probability of 40% and merits success at 30%.
- A reasonably estimated exposure for rest break violations over the class period was calculated at **$159,760.12** with chances of certification and proof of liability (50% and 40% respectively) for a risk-adjusted exposure of **$31,952.02.**
- A reasonably estimated exposure for meal break violations over the class period was calculated at **$319,520.24**, with chances of certification and liability risks (70% and 80% respectively) resulting in a risk-adjusted exposure of **$178,931.33**.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties with chances of certification and liability risks (50% and 20% respectively) were estimated to be approximately **$8,600.00** and **$29,577.60,** respectively, on maximum exposures of **$86,400.00** and **$295,776.00**, respectively.
- A reasonably estimated exposure for unreimbursed expenses over the class period was calculated at **$38,890.00,** with chances of certification and liability risks (40% and 30%

respectively) resulting in a risk-adjusted exposure of **$4,666.80**.

- Performing risk-adjusted valuations for all claims yields a total value in the range of **$302,900.97**, excluding PAGA.[3] (*Id*.)
- PAGA penalties were calculated as having a maximum realistic exposure of **$150,000.00**, but a risk adjusted value of **$30,000.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

The concurrently filed Declaration of Lilit Tunyan sets forth claim valuation in additional detail. (*See*, Tunyan Decl., ¶ 17.)

This result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Tunyan Decl., ¶ 18.) Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. (Tunyan Decl., ¶ 18.) Third, the certification rates in California are lower than conventional wisdom holds. *See*, H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html; *see also*, *Findings of the Study of California Class Action Litigation*, 2000-2006, available at http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf (finding, at page 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement ***or*** as part of a contested certification motion).

Here, the estimated certification probabilities are ***above*** the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. (Tunyan Decl., ¶ 18.) In sum, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. (*Id*.) The recovery is roughly 18% of the maximum

[3] In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of "very high risk" or "high risk" to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel.

theoretical recovery (estimated to be approximately $1,218,092.56, including PAGA), which falls within the expected outcome under the likelihood of success metric. (*Id.*) This Settlement achieves the goals of the litigation.

4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate, and Reasonable.

The proposed method of allocating the Net Settlement to Class Members also is fair and reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members based on time worked by the Class Member during the Class Period, in relation to the total amount of time worked by all participating Class Members collectively during the class period. This proposed method is fair and reasonable because each Class Member's actual potential damages vary based on the number of workweeks he or she actually worked (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when a higher number of incidents occur). A Class Member who worked a greater number of weeks for Defendant will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time during the relevant period. (Tunyan Decl., ¶ 16.)

5. The Proposed Service Payment to Plaintiff is Fair, Adequate, and Reasonable and Warrants Preliminary Approval.

The proposed Service Payment to Plaintiff is intended to recognize the substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate named Plaintiff for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named Plaintiff for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.,* 901 F. Supp. 294 (N.D.Cal. 1995) (approving a $50,000 enhancement award). Plaintiff contributed time to the prosecution of this matter, including assistance prior to the mediation with discovery, information and substantial time conferring with counsel over the course of this litigation and before it was filed. (Hernandez Decl., ¶¶ 4-20; Tunyan Decl., ¶ 33.) The service payment also recognizes the considerable risks Plaintiff undertook on behalf of the Class to be personally liable for all costs incurred regardless of the success of the litigation or class certification, as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued a former employer, making future employment prospects uncertain.

6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Preliminary Approval.

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorney's fees in California Courts:

> We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation (See pt. I, *ante; Lealao, supra*, 82 Cal.App.4th at pp. 48–49, 97 Cal.Rptr.2d 797; *Rawlings v. Prudential–Bache Properties, Inc.*, *supra*, 9 F.3d at p. 516)—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Laffitte v. Robert Half Intern. Inc., 1 Cal. 5th 480, 503 (2016).[4] Thus, this Court may and, as strongly encouraged by the California Supreme Court, *should* award attorney's fees to Plaintiff's counsel based upon the percentage of the fund methodology.

Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund method or the lodestar method is used, the outcome is roughly the same: "Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 47 n. 11 (2008), quoting *Shaw v. Toshiba America Information Systems, Inc.*, 91 F.Supp.2d 942, 972 (E.D. Tex. 2000). This is also consistent with Plaintiff's counsels' experience in these types of cases. Here, Plaintiff's attorneys intend to request attorneys' fees of up to $75,000.00 (one-third of the GSA), and costs capped at $20,000.00 (which includes payment for mediation, filing fees, and other standard expenses). (Tunyan Decl., ¶ 32.) Given the efforts and risks involved in this case, as well as the results achieved, these

[4] The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases." *Laffitte*, 1 Cal. 5th at 501.

amounts are within the range of reasonableness and warrant *preliminary approval*.

7. The Proposed Payment to the Administrator Is Fair and Reasonable

In deciding whether to approve a proposed settlement, a trial court must determine if the proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In exercising this power, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). ILYM Group, Inc., which has been selected due to its competitive bid, estimates that administration can be performed for **$5,550.00** flat fee. In counsel's experience, based on similar wage-and-hour actions, an estimated cost of **$5,550.00** is a fair and reasonable amount for administration fees and should be preliminarily approved. (Tunyan Decl., ¶ 34.)

8. The Proposed Class Notice Complies with Rule 3.766(d) and (e)

Notice requirements are set forth in Rules of Court, Rule 3.766. In determining the manner of the notice, the court must consider the interests of the class, the type of relief requested, the stake of the individual class members, the cost of notifying class members, the resources of the parties, the possible prejudice to class members who do not receive notice, and the *res judicata* effect on class members. Rules of Court, Rule 3.766(e).

a) The Notice Procedure Satisfies Due Process

Plaintiff request that the Court approve the proposed plan for giving notice to the Class and administering the Settlement. The notice process is set forth in the Settlement. The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Sup. Ct.*, 50 Cal.App.3d 960, 974 (1975). California law vests the Court with broad discretion in fashioning an appropriate notice program. *Cartt*, 50 Cal. App. 3d at 973-74. There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the Class Members will receive direct mailed notice. Direct mail notice to Class Members' last known address is the best possible notice under the circumstances. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

As the Court of Appeal has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class Members . . . ." *Cartt*, 50 Cal. App. 3d at 974. For class claims “for money damages or similar relief at law, notice sent by first class mail to the last known address of each member of the Plaintiff class is sufficient.” *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811 (1985). Here, the proposed procedure includes safeguards, including, but not limited to, searches for address changes and the re-mailing of returned notices after skip traces. As such, the proposed procedure provides a reasonable chance that Class members will receive notice.

b) The Notice is Accurate and Informative

The proposed Notice of Class Action Settlement should be approved for dissemination to the Class Members. It will be disseminated through direct mail to the last known address for each Class Member. It informs the Class Members of the terms of the settlement and their right to be excluded from the Settlement. If there are Class Members who wish to object to this proposed class action settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing.

Rule 3.769(f) of the Rules of Court provides as follows:

> If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

Rules of Court, rule 3.769(f).

The Notice also fulfills the requirement of neutrality in class notices. 3 NEWBERG § 8.39. It summarizes the proceedings and the terms and conditions of the proposed Settlement, in an informative and coherent manner, in compliance with the Manual for Complex Litigation (“MANUAL”), (2d Ed. 1993), which states that “the notice should be accurate, objective, and understandable to Class Members . . ..” MANUAL, § 30.211. It makes clear that the Settlement does not constitute an admission of liability by the Defendant and recognizes that this Court has not ruled on the merits. It also states that the final settlement approval decision has yet to be made. Accordingly, the Notice complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

Upon the Court’s approval, the Notice of Class Action Settlement will be mailed by the Administrator to each Class Member, in both English and Spanish.

9. The PAGA Allocation is Reasonable

The PAGA allocation is reasonable because the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. *O'Connor v. Uber Technologies, Inc*., 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) ("By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the Defendant employer and other employers, an objective of PAGA."); *see also Viceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D. Cal. 2016) ("Applying O'Connor's sliding scale approach, settlement of the PAGA claim may be substantially reduced below its standalone settlement value without sacrificing its statutory purposes because the non PAGA settlement is relatively substantial.")

In addition, there is no evidence that a court or a commissioner had informed Defendant that its conduct violated the Labor Code. *Amaral v. Cintas Corp*., 163 Cal. App. 4th 1157, 1209 (2008); *Willis v. Xerox Bus. Servs., LLC,* 2013 WL 6053831, *7-8 (E.D. Cal. 2013) ("Under California law, courts have held that employers are not subject to heightened penalties for subsequent violations until and unless a court or commissioner notified the employer that it is in violation of the Labor Code.").

Finally, the PAGA allocation is fair. The LWDA is receiving **$15,000.00**. PAGA Employees are receiving **$5,000.00** and Class Members are receiving, net, an estimated **$96,950.00** for the releases for eight theories of recovery (excluding the $5,000.00 as the aggrieved employees' share of the PAGA Allocation). An allocation to the LWDA equal to 15% of the Net Settlement Amount is not unfair and satisfies the policies underlying California's wage and hour laws.

VI. THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING

The last step in the settlement approval process is the fairness hearing, where the Court makes a final determination about the propriety of settlement. Plaintiff request that the fairness hearing in this case be scheduled for about 130 days after issuance of the Court's Order granting preliminary approval of the Settlement. Under the Settlement, Defendant will have fifteen (15) days to provide the mailing data to the Settlement Administrator, which will then have fourteen (14) days to mail out class notice. Class Members have sixty (60) days after mailing of the notice to submit exclusions or objections (with a 14-day extension available for late-returned and re-mailed notices). Therefore, Plaintiff propose a final approval hearing scheduled for the first available hearing date that is about 130 days after preliminary approval is granted.

VII. CONCLUSION

For all the foregoing reasons, because the Class meets the requirements for certification, because the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant this Motion for Preliminary Approval, adopt the [Proposed] Order Granting Preliminary Approval of Class Action Settlement submitted herewith, and schedule a Final Fairness Hearing.

Respectfully submitted,

Dated: April 22, 2025

TUNYAN LAW, APC

By: ______________________________

Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff JAVIER HERNANDEZ

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 535 N. Brand Blvd., Suite 285, Glendale, California 91203. On April 22, 2025, I served the foregoing document described as:

On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

John T. Egley
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Madeleine K. Lee
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Connie Valles
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Attorneys for Defendant PRECISE AEROSPACE MANUFACTURING, INC.

[✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[✓] **BY ELECTRONIC SERVICE:** Based on a court order, Rule of Court, or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via electronic mail. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 22, 2025, at Los Angeles, California.

Lilit Tunyan
Name

Signature