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individually, and on behalf of other similarly
situated employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

DANIEL MUNGUIA, individually, and on behalf
of other similarly situated employees and
aggrieved employees pursuant to the California
Private Attorneys General Act,

Plaintiff,

vs.

MOOG INC.; and DOES 1 through 25, inclusive,

Defendants.

Case No. 24STCV11688
[related to Case No. 24STCV17560]

Honorable William F. Highberger
Department 10

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

Date: November 24, 2025
Time: 11:30 a.m.
Dept.: 10

Complaint Filed: May 8, 2024
FAC Filed: August 22, 2025
Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE THAT on November 24, 2025 at 11:30 a.m.** in Department 10 of
3 the above-captioned Court located at 312 North Spring Street, Los Angeles, California 90012, pursuant
4 to California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court,
5 Plaintiff Daniel Munguia (“Plaintiff”) will and hereby does move the Court for an Order granting
6 preliminary approval of the proposed class action and PAGA settlement between Plaintiff and Defendant
7 Moog Inc. (“Defendant”).

8 Plaintiff requests that the Court enter an Order:

9 1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement
10 Agreement (“Settlement” or “Settlement Agreement”) attached as Exhibit 3 to the Declaration of
11 Annabel Blanchard in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA
12 Settlement (“Blanchard Decl.”);

13 2. Certifying the Class for Settlement purposes only;

14 3. Appointing Plaintiff Daniel Munguia as the Class Representative for Settlement purposes
15 only;

16 4. Appointing Jonathan M. Genish, Barbara DuVan-Clarke, Danielle GruppChang, P.J. Van
17 Ert, and Annabel Blanchard of Blackstone Law, APC as Class Counsel for Settlement purposes only;

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

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

22 7. For each Class Member, directing Defendant to furnish the Class Member’s full name,
23 last known mailing address, Social Security number, dates employed by Defendant during the Class
24 Period, number of Work Weeks and PAGA Pay Periods, and such other information as is necessary for
25 the Administrator to calculate settlement payments within twenty-one (21) calendar days after entry of
26 the order granting preliminary approval of the Settlement;

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

28 9. Setting a Final Approval Hearing.

1 Pursuant to California Labor Code section 2699(1)(2), on September 17, 2025, a copy of the
2 Settlement was submitted to the California Labor and Workforce Development Agency (“LWDA”) via
3 online submission through the LWDA’s website. (Blanchard Decl., ¶ 50 and Exh. 4).

4 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the
5 Declaration of Annabel Blanchard, the Declaration of Plaintiff Daniel Munguia, the Declaration of the
6 Administrator (Julie Green of CPT Group, Inc.), the pleadings and other records on file with the Court
7 in this matter, and any other further evidence or argument that the Court may properly receive at or before
8 the hearing.

9 Respectfully submitted,

10 Dated: September 18, 2025__

BLACKSTONE LAW, APC

11 By: A. Blanchard
12 Annabel Blanchard
13 Attorneys for Plaintiff Daniel Munguia
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Daniel Munguia (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of Class
4 Action and PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”) entered into
5 between Plaintiff and Defendant Moog Inc. (“Defendant”) (together, with Plaintiff, the “Parties”).
6 (Declaration of Annabel Blanchard in Support of Plaintiff’s Motion for Preliminary Approval of Class
7 Action and PAGA Settlement [“Blanchard Decl.”], Exh. 3). The Settlement terms are outlined as follows:

- 8
- 9 • Class Size: Approximately 800 individuals (as of May 5, 2025).
 - 10 • Gross Settlement Amount: Two Million Dollars and Zero Cents (\$2,000,000.00).
 - 11 • Class Counsel’s Fees and Expenses: Class Counsel’s fees of thirty-five percent (35%) of the
12 Gross Settlement Amount (\$700,000.00 if the Gross Settlement Amount is \$2,000,000.00)
13 plus actual litigation costs and expenses not to exceed Thirty-Thousand Dollars and Zero
14 Cents (\$30,000.00), to be paid from the Gross Settlement Amount.
 - 15 • Class Representative Service Payment: Ten Thousand Dollars and Zero Cents (\$10,000.00),
16 to be paid from the Gross Settlement Amount.
 - 17 • Administration Expenses Payment: Not to exceed Eleven Thousand One Hundred Dollars
18 and Zero Cents (\$11,100.00), to be paid from the Gross Settlement Amount.
 - 19 • PAGA Penalties: Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) from the
20 Gross Settlement Amount, 75% of which will be paid to the Labor and Workforce
21 Development Agency (“LWDA”) and the remaining 25% to be paid to the Aggrieved
22 Employees.
 - 23 • Estimated Net Settlement Amount: One Million Forty-Eight Thousand Nine Hundred Dollars
24 and Zero Cents (\$1,048,900.00) to be distributed to Participating Class Members.

25 As set forth herein, the Settlement is the product of informed discovery and arms-length
26 negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore
27 respectfully requests that the Court grant preliminary approval of the Settlement, conditionally certify the
28 Class for settlement purposes only, approve the proposed Notice of Class Action Settlement (“Class
Notice”), and set a hearing date for final settlement approval, among other requested relief.

///

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a developer of chemical and electric propulsion systems and space flight controls. Plaintiff was employed by Defendant as an hourly-paid, non-exempt employee, most recently with the job title of “Process Tech Specialist” from approximately January 2013 to approximately August 2023. (Declaration of Plaintiff Daniel Munguia in Support of Motion for Approval of Class Action and PAGA Settlement [“Munguia Decl.”], ¶ 2).

On May 8, 2024, Plaintiff provided written notice to the LWDA by online submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendant (“PAGA Letter”). (Blanchard Decl., ¶ 10 and Exh. 2).

On May 8, 2024, Plaintiff filed a Class Action Complaint in the action entitled *Daniel Munguia v. Moog Inc.*, Los Angeles County Superior Court Case No. 24STCV11688 (“Action”), thereby commencing a putative class action against Defendant. (*Id.*, ¶ 11).

On July 11, 2024, Defendant removed the Action to the United States District Court for the Central District of California on the basis of CAFA jurisdiction under 28 U.S.C. § 1332(d). (*Id.*, ¶ 12).

On July 15, 2024, Plaintiff filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq.* in the action entitled *Daniel Munguia v. Moog Inc.*, Los Angeles County Superior Court Case No. 24STCV17560 (“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.*, ¶ 13).

On March 5, 2025, Plaintiff and Defendant (together, the “Parties”) participated in a formal mediation conducted by Monique Ngo-Bonnici (“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. The Parties then worked diligently to negotiate and memorialize the terms in a long form settlement agreement. (*Id.*, ¶ 14).

On May 13, 2025, this Action was remanded to the Los Angeles County Superior Court (“State Court”) by stipulation of the Parties. (*Id.*, ¶ 15).

1 On August 21, 2025, the Court deemed the PAGA Action and this Action related, and designated
2 this Action as the lead case. (*Id.*, ¶ 16).

3 On August 22, 2025, Plaintiff filed a First Amended Class and Representative Action Complaint
4 (“Operative Complaint”) in the Action. The Operative Complaint alleges twelve (12) causes of action
5 for violations of the California Labor Code for failure to pay minimum wages, failure to pay overtime
6 wages, failure to provide compliant meal periods and premium payments in lieu thereof, failure to provide
7 compliant rest periods and premiums payments in lieu thereof, failure to provide one day’s rest in seven,
8 failure to timely pay wages during employment, failure to provide accurate wage statements, failure to
9 timely pay wages upon termination, failure to reimburse necessary business expenses, failure to provide
10 paid sick leave and to pay accrued vacation pay, for violations of California Business & Professions Code
11 Section 17200, *et seq.* based on the aforementioned California Labor Code violations, and for civil
12 penalties under PAGA based on the aforementioned California Labor Code violations. (*Id.*, ¶ 17).

13 On September 2, 2025, the Parties executed the Joint Stipulation of Class Action and PAGA
14 Settlement Agreement (“Settlement” or “Settlement Agreement”). (*Id.*, ¶ 18 and Exh. 3).

15 **III. THE SETTLEMENT TERMS**

16 **A. Class Definition**

17 For purposes of settlement only, the Parties have agreed that the Class shall be defined as “non-
18 exempt employees employed by Defendant in California at any time during the Class Period. This also
19 includes non-exempt employees employed via a staffing company who worked for Defendant in
20 California at any time during the Class Period” (“Class” or “Class Member(s)”). (Blanchard Decl., ¶ 19;
21 Settlement Agreement, ¶ 1.5). The Class Period is defined as the period from December 3, 2020 through
22 May 5, 2025. (Blanchard Decl., ¶ 19; Settlement Agreement, ¶ 1.12). Based on information provided by
23 Defendant, as of March 5, 2025, it is estimated that there are a total of **eight hundred (800)** Class
24 Members. (Blanchard Decl., ¶ 19).

25 **B. Amount of Settlement**

26 The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint
27 for a non-reversionary Gross Settlement Amount of Two Million Dollars and Zero Cents (\$2,000,000.00),
28 exclusive of employer-side payroll taxes. (Blanchard Decl., ¶ 20; Settlement Agreement, ¶ 1.24).

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

2 The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees,
3 and other allocations. (Blanchard Decl., ¶ 20; Settlement Agreement, ¶ 1.24). The Gross Settlement
4 Amount includes: (1) Class Counsel’s fees in the amount of thirty-five percent (35%) of the Gross
5 Settlement Amount (i.e., \$700,000.00 if the Gross Settlement Amount is \$2,000,000.00); (2) Class
6 Counsel’s actual litigation costs and expenses, not to exceed Thirty-Thousand Dollars and Zero Cents
7 (\$30,000.00); (3) Administration Expenses Payment, not to exceed Eleven Thousand One Hundred
8 Dollars and Zero Cents (\$11,100.00); (4) Class Representative Service Payment in the amount of Ten
9 Thousand Dollars and Zero Cents (\$10,000.00); and (5) PAGA Penalties of Two Hundred Thousand
10 Dollars and Zero Cents (\$200,000.00). (Blanchard Decl., ¶ 20; Settlement Agreement, ¶¶ 1.24, 1.7, 1.14,
11 and 1.36). After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net
12 Settlement Amount that will be available for Class Members is currently estimated to be One Million
13 Forty-Eight Thousand Nine Hundred Dollars and Zero Cents (\$1,048,900.00). (Blanchard Decl., ¶ 20).
14 Additionally, 25% of the PAGA Penalties (“Aggrieved Employee Amount”), which is \$50,000.00 out of
15 \$200,000.00, will be fully distributed to “all non-exempt employees employed by Defendant in California
16 at any time during the PAGA Period. This also includes non-exempt employees employed via a staffing
17 company who worked for Defendant in California at any during the PAGA Period.” (“Aggrieved
18 Employee(s)”). (Blanchard Decl., ¶ 20; Settlement Agreement, ¶¶ 1.24, 1.30, 1.36, and 1.4). The “PAGA
19 Period” is defined as the period from May 8, 2023 through May 5, 2025. (Blanchard Decl., ¶ 20;
20 Settlement Agreement, ¶ 1.37).

21 The Net Settlement Amount will be distributed and paid to all Class Members who do not submit
22 a timely and valid Request for Exclusion (“Participating Class Member(s)”) on a *pro rata* basis based on
23 the number of weeks each Class Member worked for Defendant for at least one day as a non-exempt
24 employee in California during the Class Period (“Work Weeks”). (Blanchard Decl., ¶ 21; Settlement
25 Agreement, ¶¶ 1.38 and 1.47). The *pro rata* share of the Net Settlement Amount that a Class Member
26 may be eligible to receive under the Class Settlement (“Individual Class Payment”) will be calculated by
27 the Administrator, in accordance with the Settlement Agreement. (Blanchard Decl., ¶ 21; Settlement
28 Agreement, ¶¶ 1.25 and 3.2.4).

1 The Aggrieved Employee Amount will be distributed and paid to all Aggrieved Employees on a
2 *pro rata* basis based on the number of pay periods each PAGA Employee worked for Defendant for at
3 least one day as a non-exempt employee in California during the PAGA Period (“PAGA Pay Periods”).
4 (Blanchard Decl., ¶ 22; Settlement Agreement, ¶¶ 1.32 and 3.2.4.2). The *pro rata* share of the Aggrieved
5 Employee Amount that an Aggrieved Employee may be eligible to receive under the PAGA Settlement
6 (“Individual PAGA Payment”) will be calculated by the Administrator, in accordance with the Settlement
7 Agreement. (Blanchard Decl., ¶ 22; Settlement Agreement, ¶¶ 1.26 and 3.2.5).

8 Each Individual Class Payment will be allocated as twenty percent (20%) wages (the “Wage
9 Portion”) and eighty percent (80%) penalties and interest (the “Non-Wage Portion”). (Blanchard Decl.,
10 ¶ 23; Settlement Agreement, ¶ 3.2.4.1). The Wage Portion will be reported on an IRS Form W-2 and the
11 Non-Wage Portion will be reported on an IRS Form 1099 (if applicable) by the Administrator.
12 (Blanchard Decl., ¶ 23; Settlement Agreement, ¶ 3.2.4.1). The Administrator will withhold the
13 employee’s share of taxes and withholdings with respect to the Wage Portion of the Individual Class
14 Payments, and issue checks to Participating Class Members for their net payment of their Individual Class
15 Payment (“Individual Class Payment”). (Blanchard Decl., ¶ 23; Settlement Agreement, ¶¶ 1.26 and
16 3.2.5.1). The employer’s share of taxes and contributions in connection with the Wage Portion of
17 Individual Class Payments will be paid by Defendant separately and in addition to the Gross Settlement
18 Amount. (Blanchard Decl., ¶ 23; Settlement Agreement, ¶¶ 1.26 and 3.2.5.1). Each Individual PAGA
19 Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form
20 1099 (if applicable) by the Administrator. (Blanchard Decl., ¶ 23; Settlement Agreement, ¶ 3.2.5.1).

21 The Settlement Agreement is a non-reversionary and non-claims made settlement. (Blanchard
22 Decl., ¶ 24; Settlement Agreement, ¶¶ 1.24 and 3.1). The Net Settlement Amount will be fully distributed
23 to Participating Class Members and the PAGA Penalties will be fully distributed to the LWDA and
24 Aggrieved Employees, in accordance with the Settlement Agreement. (Blanchard Decl., ¶ 24; Settlement
25 Agreement, ¶¶ 3.2.4 and 3.2.5). No money will revert to Defendant. (Blanchard Decl., ¶ 24; Settlement
26 Agreement, ¶ 1.24).

27 Each Individual Class Payment and Individual PAGA Payment check will be valid and negotiable
28 for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall

1 be canceled. (Blanchard Decl., ¶ 25; Settlement Agreement, ¶ 4.41). Any funds associated with such
2 canceled checks will be distributed by the Settlement Administrator to the State of California's
3 Unclaimed Property Division in the name of the Class Member (Blanchard Decl., ¶ 25; Settlement
4 Agreement, ¶ 4.4.3).

5 **D. Released Claims**

6 Upon the Effective Date and full funding of the entire Gross Settlement Amount, Plaintiff and all
7 Participating Class Members, on behalf of themselves and their respective former and present
8 representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall fully and finally
9 release the Released Parties of the Released Class Claims (Settlement Agreement, ¶ 5.2).

10 Upon the Effective Date and full funding of the entire Gross Settlement Amount, Plaintiff, the
11 Labor and Workforce Development Agency, and the State of California through Plaintiff as its agent
12 and/or proxy, and all Aggrieved Employees, on behalf of themselves and their respective former and
13 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall release the
14 Released Parties of all Released PAGA Claims. (*Id.*, ¶ 5.3).

15 "Released Class Claims" include all claims asserted in the Class Action, as amended, and/or
16 arising from or related to the facts and claims alleged in the Class Action, as amended, or that could have
17 been raised in the Class Action, as amended, based on the facts and claims alleged. The Released Class
18 Claims include all claims for unpaid wages, including, failure to pay minimum wages, straight time
19 compensation, overtime compensation, double-time compensation, and interest; the calculation of the
20 regular rate of pay; wages related to alleged illegal time rounding; wages related to reporting time pay;
21 wages and/or premiums related to missed/short/late/interrupted meal periods, rest periods, and/or
22 recovery periods; failure to provide meal periods; failure to authorize and permit rest periods and/or
23 recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; payment
24 for all hours worked, including off-the-clock work; failure to pay sick pay; failure to pay PTO and/or
25 vacation; failure to provide one day's rest in seven; failure to timely pay wages during employment;
26 failure to pay all wages due upon separation of employment; failure to reimburse necessary business
27 expenses; wage statement violations; deductions; failure to keep/maintain accurate records including
28 payroll records; unfair business practices related to the Released Class Claims; penalties, including, but

not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs; all claims related to the Released Class Claims arising under: the California Labor Code (including, but not limited to, sections 201, 201.3, 202, 203, 204, 206, 210, 216, 218, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 227.3, 245, 246, 246.5, 248.5, 256, 510, 511, 512, 515, 516, 550, 551, 552, 554, 558, 558.1, 1174(d), 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1197.2, 1198, 1199, 2800, 2802, and 2810.5); the Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys General Act of 2004 ("PAGA"); California Business and Professions Code section 17200, et seq.; the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq.; and federal common law. This release excludes the release of claims not permitted by law. (*Id.*, ¶ 5.2).

Participating Class Members who timely cash or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the Class Settlement for purposes of the FLSA and, as to those Class Members, the Released Class Claims include any and all claims the Class Members may have under the FLSA asserted in the Class Action, arising from or related to the facts and claims alleged in the Class Action, or that could have been alleged in the Class Action based on the facts and claims alleged in the Class Action, as amended, during the Class Period. Only those Class Members who timely cash or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the Class Settlement for purposes of the FLSA and thereby release and waive any of their claims under the FLSA arising under or relating to the alleged claims.

The following language will be printed on the reverse of each Settlement Payment Check, or words to this effect: "By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards Act ("FLSA") portion of the Class Action, elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Class Settlement."

Upon entry of Judgment, Participating Class Members are precluded from filing any wage and hour action, including under the Fair Labor Standards Act, against the Released Parties for claims and/or causes of action encompassed by the Released Class Claims, which are extinguished and precluded pursuant to the holding in *Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106 (2018). All Participating Class Members, on behalf of themselves and their respective former and present

representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims alleged or that could have been alleged based on the facts alleged in the Class Action Complaint, and any amendments thereto, which arose during the Class Period.

“Released PAGA Claims” means all known or unknown claims for civil penalties under PAGA that were alleged, or could have been alleged, based on the facts asserted in Plaintiff’s PAGA Action Complaint, as amended, and/or in the PAGA Notice, as amended, including but not limited to, all claims for unpaid wages, including, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; wages related to alleged illegal time rounding; wages related to reporting time pay; wages and/or premiums related to missed/short/late/interrupted meal periods, rest periods, and/or recovery periods; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; payment for all hours worked, including off-the-clock work; failure to pay sick pay; failure to pay PTO and/or vacation; failure to provide one day’s rest in seven; failure to timely pay wages during employment; failure to pay all wages due upon separation of employment; failure to reimburse necessary business expenses; wage statement violations; deductions; failure to keep/maintain accurate records including payroll records; unfair business practices related to the Released PAGA Claims; penalties, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys’ fees and costs; all claims related to the Released PAGA Claims arising under: the California Labor Code (including, but not limited to, sections 201, 201.3, 202, 203, 204, 206, 210, 216, 218, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 227.3, 245, 246, 246.5, 248.5, 256, 510, 512, 515, 516, 550, 551, 552, 554, 558, 558.1, 1174(d), 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1197.2, 1198, 1199, 2698, 2699 et seq., 2800, 2802, and 2810.5); and the Wage Orders of the California Industrial Welfare Commission (“Released PAGA Claims”). The Released PAGA Claims are limited to the PAGA Period. All Aggrieved Employees, including those who timely and effectively exclude themselves from the Released Class Claims pursuant to the provisions of the Settlement Agreement, shall nevertheless be deemed to have released the Released PAGA Claims and shall receive a *pro rata* portion of the twenty-five percent (25%) of the PAGA Penalties. (*Id.*, ¶ 5.3).

1 “Released Parties” means Defendant and each of its past, present and future agents, employees,
2 servants, officers, directors, managing agents, members, owners, partners, trustees, representatives,
3 shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, plans, related
4 companies/corporations and/or partnerships (including Moog Military Aircraft LLC, and Moog Military
5 LLC), divisions, assigns, predecessors, successors, insurers, joint venturers, joint employers, potential
6 and alleged joint employers, temporary staffing agencies, common law employers, potential and alleged
7 common law employers, dual employers, potential and alleged dual employers, co-employers, potential
8 and alleged co-employers, contractors, affiliates, service providers, alter-egos, potential and alleged alter-
9 egos, vendors, affiliated organizations, any person and/or entity with potential or alleged to have joint
10 liability, and all of their respective past, present and future employees, directors, officers, members,
11 owners, agents, representatives, payroll agencies, attorneys, stockholders, fiduciaries, parents,
12 subsidiaries, other service providers, and assigns, and any and all persons and/or entities acting under,
13 by, through or in concert with any of them. (*Id.*, ¶ 1.44).

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

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

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

26 The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.”
27 (*Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980)).
28 Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the

1 proposed settlement is within the range of possible approval and, as a result, “whether there is any reason
2 to notify the class members of the proposed settlement and to proceed with a fairness hearing.” A
3 presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2)
4 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
5 is experienced in similar litigation; and (4) the percentage of objectors is small. (*See In re Microsoft I-V*
6 *Cases*, 135 Cal. App. 4th 706, 723 (2006)).

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

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

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

16 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
17 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal. App. 4th at 245; *see also Clark v. Am.*
18 *Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009)). Here, the Parties’ settlement negotiations
19 were at all times made at arm’s-length and were adversarial. (Blanchard Decl., ¶ 26). The Settlement
20 was reached following a full day of mediation with a highly respected mediator with substantial
21 experience mediating wage and hour cases. (*Ibid*). At all times, Plaintiff was willing and prepared to
22 litigate this matter through class certification and trial if the Parties had been unable to reach a favorable
23 resolution. (*Id.*, ¶ 47).

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

25 Courts typically assess the status of discovery in determining whether a class action settlement
26 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal. App. 4th at 1801). Prior to mediation,
27 Defendant produced Plaintiff’s employment records, a random sampling of putative class members’ time
28 and pay records as well as Defendant’s relevant wage and hour policies (including, but not limited to,

1 Defendant's policies regarding classification of employees, timekeeping, paid time off, overtime, and
2 business travel), and information regarding the total number of putative class members, the number of
3 current versus former employees, the total workweeks worked by the putative class members, and the
4 average rate of pay for the putative class members. (Blanchard Decl., ¶ 27).

5 This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and
6 weaknesses of the claims and the potential class-wide damages. (*Id.*, ¶ 28). Based on information
7 exchanged, the Parties extensively briefed issues regarding class certification and liability and provided
8 their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective
9 positions. (*Id.*, ¶ 29). Additionally, settlement negotiations were conducted by highly capable and
10 experienced counsel. (Blanchard Decl., ¶¶ 2-9). Accordingly, Class Counsel had sufficient information
11 and experience to act intelligently in negotiating the Settlement.

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

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

22 Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal and
23 factual grounds for defending the Action. Based upon Class Counsel's experience litigating similar
24 complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification
25 and the merits of the Action absent a settlement.

26 Class Counsel analyzed all available data and estimated Defendant's maximum potential exposure
27 to be approximately \$20,919,310, assuming the litigation was successful at trial on all claims at issue and
28 every employee had a violation for each claim on every shift worked. (Blanchard Decl., ¶ 30). This

1 maximum potential analysis was then reduced based on the challenges facing the likelihood of obtaining
2 class certification, prevailing at trial, and other attendant risks. (Ibid). This estimate is based off an
3 estimated maximum liability for all claims at issue and the total aggregate workweeks during the relevant
4 time period, less interest, and based on the analysis of the data which was extrapolated out for all class
5 members across the entire putative class period, which included: \$3,570,992 for meal period violations
6 (less meal period premiums paid); \$9,784,803 for rest period violations; \$2,988,590 for unpaid off-the-
7 clock work for 1 hour per workweek of off-the-clock work; \$14,974 for unpaid overtime wages; \$620,880
8 for unreimbursed business expenses; \$1,983,071 for waiting time penalties; and \$1,956,000 for wage
9 statement penalties. (Ibid). Plaintiff further estimated that Defendant faced an additional exposure of
10 \$3,827,000 in potential, non-stacked (i.e., one penalty, per employee, per pay period during the PAGA
11 statutory period) PAGA penalties. (Ibid). Together with the PAGA penalties, Defendant's maximum
12 potential exposure totaled \$24,746,310 in damages. (Ibid).

13 **1. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments**

14 While Plaintiff believes that Defendant faced significant exposure for the reasons stated in the
15 accompanying Declaration of Annabel Blanchard (Blanchard Decl., ¶ 30), substantial barriers to a
16 recovery existed. Defendant contended that Plaintiff's claims were not suitable for class certification
17 because individual issues and affirmative defenses would predominate should this case go to trial.
18 (Blanchard Decl., ¶ 33; *see Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran*
19 *v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551
20 (2011)). While Plaintiff and Class Counsel disagree with Defendant's predictions, they also recognize
21 that there is a significant risk that the Court may deny class certification. (Blanchard Decl., ¶ 33; *see*
22 *also, Findings of the Study of California Class Action Litigation*, 2000-2006, available at
23 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class
24 actions were certified either as part of a settlement or as part of a contested certification motion)).

25 For example, Plaintiff's meal period claims, which were based on Defendant's alleged failure to
26 provide lawful meal periods, have been increasingly difficult to certify in recent years. (Blanchard Decl.,
27 ¶ 34; *see Brinker*, 53 Cal.4th at 1034-35). Plaintiff's theory of liability for meal period violations was
28 based on allegations that Defendant had failed to implement its policies and that its practices failed to

1 allow Class Members to take meal breaks in the manner required under California law. (Blanchard Decl.,
2 ¶ 34; *see Bradley v. Networkers Int'l, LLC*, 211 Cal. App. 4th 1129, 1150 (2012) (holding that “the lack
3 of a meal/rest break policy and the uniform failure to authorize such breaks are matters of common
4 proof.”)). Defendant contended that its policies and practices at all times during the Class Period were
5 lawful. (Blanchard Decl., ¶ 34). Defendant further argued that the rate of purported meal period violations
6 reflected in the data would require individualized inquiry and that such inquiry would prohibit a class
7 from being certified. (Ibid). Class Counsel also had to consider the risk that the Court would find validity
8 in an individualized proof defense to certification of Plaintiff’s meal period claim. (Ibid).

9 Additionally, a large portion of Defendant’s overall liability lies in Plaintiff’s rest period
10 allegations. (*Id.*, ¶ 35). As with the meal period allegations, Defendant contended that it had a lawful
11 written rest period policy, provided compliant rest breaks, and relieved Class Members of all duties as
12 required under California law. (Ibid). While some rest breaks were recorded here, it was still difficult to
13 discern to what extent these rest breaks were compliant. There were legitimate concerns Plaintiff would
14 not be able to certify these claims or prove substantial damages with requisite certainty, which made the
15 estimated value of this claim subject to much challenge. (Ibid).

16 Plaintiff also faced challenges certifying and proving liability for his minimum wage and overtime
17 claims. (*Id.*, ¶ 36). These claims were largely based on unrecorded, off-the-clock work performed by
18 the Class Members both before and after their shifts and during purported meal periods. (Ibid). However,
19 the individualized nature of why this work was performed and the individualized nature of damages
20 presented substantial concerns regarding the manageability of the case and the risk the Court could find
21 these issues prevented certification. (Ibid). The estimated damages for this claim were based on an
22 assumption that all Class Members worked off the clock for at least one hour per week. (Ibid).

23 Plaintiff also contended that Defendant failed to reimburse Plaintiff and the other Class Members
24 for necessary business-related expenses, such as the usage of personal cell phones for work-related
25 purposes, for uniforms, and for safety shoes. (*Id.*, ¶ 37). Defendant contended that it had a policy and
26 practice of reimbursing employees for necessary business-related expenses. (Ibid). Defendant further
27 contended that, with respect to the alleged expenses for which Plaintiff and the other Class Members
28 never requested reimbursement from Defendant, it did not know and had no reason to know that alleged

1 business-related expenses had been incurred. (Blanchard Decl., ¶ 37). Defendant further contended that
2 the reason why a Class Member undertook certain expenses, while not others, and failed to receive
3 reimbursement for certain expenses while not others, would raise individual issues that could not be
4 certified. (Ibid).

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

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

1 Therefore, taking into account how each of the above risks potentially affected Plaintiff's ability
2 to first obtain class certification, and then prove the underlying violations, plus the cost and delay in
3 recovering the alleged potential damages, Class Counsel discounted Defendant's estimated liability based
4 on the challenges facing his ability to succeed on class certification by 75% to \$6,186,577.50 (Blanchard
5 Decl., ¶ 40). The merits-based risk factors further reduced Defendant's estimated liability by an
6 additional 65%. (Ibid). This resulted in an adjusted estimated liability of \$2,165,302.13. (Ibid). In light
7 of these discounts of Defendant's estimated liability, the settlement amount of \$2,000,000.00 is a
8 significant settlement. (Ibid).

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

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

1 Therefore, after considering this multitude of factors, Plaintiff and Class Counsel concluded that
2 it was in the best interest of the State of California and the Aggrieved Employees to enter into the
3 Settlement, and to allocate Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) of the Gross
4 Settlement Amount towards the PAGA claims, which represents approximately 10% of the Gross
5 Settlement Amount. (*Id.*, ¶ 42). This percentage of the settlement is well within the range of wage and
6 hour settlements regularly approved in both state and federal court for cases that include both a class and
7 PAGA action. (*Ibid*). Typically, such hybrid cases allocate only 1% of the gross settlement value to
8 resolve PAGA claims, and, indeed, settlement allocations as little as 0.22% of the gross settlement amount
9 have been approved as reasonable by courts. (*Ibid*). Moreover, the overall relief obtained by the
10 Settlement is significant, not only from a monetary perspective, but also because it fulfills the public
11 policy objectives of PAGA—to promote enforcement of California’s labor laws, provide funds to the
12 state, and deter future non-compliance by the employer. (*Ibid*).

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

17 VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

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

26 A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is 27 Impracticable

28 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of

1 the class, and (3) the means of identifying the class members. (*See Miller v. Woods*, 148 Cal. App. 3d
2 862, 873 (1983)). In this case, all three considerations strongly favor class certification. Here, the Class
3 is defined as “non-exempt employees employed by Defendant in California at any time during the Class
4 Period. This also includes non-exempt employees employed via a staffing company who worked for
5 Defendant in California at any time during the Class Period” (Blanchard Decl., ¶ 19; Settlement
6 Agreement, ¶ 1.5). This provides a clear and definite scope for the proposed class.

7 Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity
8 requirement. Courts have certified classes with as few as ten class members. (*Blanchard v. City of*
9 *Hayward*, 126 Cal. App. 3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal.2d 574 (1995); *Hebbard*
10 *v. Colgrove*, 28 Cal. App. 3d 1017, 1030 (1972)). Here, the estimated Class size of approximately eight
11 hundred (800) individuals meets the numerosity requirement.

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

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

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

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

1 *Inc.*, 191 Cal. App. 3d 1341, 1354 (1987)).

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

8 To satisfy the typicality requirement, California law does not require that plaintiffs' claims be
9 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
13 requirement for a class representative refers to the nature of the claim or defense of the representative,
14 and not to the specific facts from which it arose or the relief sought. (*See Ibid.*).

15 Here, Plaintiff alleges that his claims are similar to those of the other Class Members and that
16 Plaintiff's claims arise out of the same alleged course of conduct giving rise to the claims of the other
17 Class Members. Because Plaintiff's claims are based upon the same alleged conduct and business
18 practices as those impacting other Class Members, the typicality requirement has been satisfied.

19 Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney
20 is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the
21 interests of the class." (*McGee v. Bank of America*, 60 Cal. App. 3d 442, 450 (1976)). Here, these
22 considerations are satisfied. Class Counsel is well-regarded and is qualified and experienced in
23 employment-related, class-action litigation. (Blanchard Decl., ¶¶ 2-9). Plaintiff will vigorously,
24 adequately, and fairly represent the interests of the Class. Plaintiff has, at all times throughout the course
25 of the litigation, considered the interests of the Class and understood that he must take steps to adequately
26 represent the Class and its interests. (Munguia Decl., ¶ 10). Because Plaintiff's claims are typical of
27 other Class Members and are not based on unique circumstances, there is no antagonism between the
28 interests of Plaintiff and the Class.

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

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

10 **VII. THE REQUESTED CLASS REPRESENTATIVE SERVICE PAYMENT IS**
11 **REASONABLE**

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

22 Plaintiff initiated this litigation on behalf of his former co-workers who will now be entitled to
23 receive payment from the Settlement. Plaintiff invested substantial time and effort into litigation,
24 including his own research, reviewing documents, and extensive discussions with Class Counsel.
25 (Munguia Decl., ¶¶ 3-5). Further, the requested amount for Plaintiff is also reasonable given the average
26 award and the benefit gained by other Class Members. For these reasons, Plaintiff requests that a Class
27 Representative Service Payment of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff be
28 preliminarily approved by the Court. (Blanchard Decl., ¶ 44; Munguia Decl., ¶ 12).

1 **VIII. THE REQUESTED CLASS COUNSEL’S FEES AND COSTS ARE REASONABLE**

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

8 Here, the requested attorneys’ fees of thirty-five percent (35%) of the Gross Settlement Amount
9 (i.e., \$700,000.00 if the Gross Settlement Amount is \$2,000,000.00) are disclosed to Class Members in
10 the proposed Class Notice. (Settlement Agreement, Exh. A). The requested fee was freely negotiated, is
11 common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will
12 elaborate on the nature of the legal services provided and will also support Class Counsel’s request for
13 the reimbursement of litigation costs and expenses not to exceed Thirty-Thousand Dollars and Zero Cents
14 (\$30,000.00). (Blanchard Decl., ¶¶ 45 and 47). The Attorneys’ Fees and Costs that are not ultimately
15 approved by the Court shall instead be included in the Net Settlement Amount to be distributed to
16 Settlement Class Members. (Settlement Agreement, ¶ 3.2.2).

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

19 The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members.
20 (*Id.*, Exh. A). The Class Notice will include information regarding the nature of the Action, a summary
21 of the terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the
22 Class Settlement and to dispute Work Weeks and/or PAGA Pay Periods, and the date of the Final
23 Approval Hearing. (*Ibid.*). The Class Notice will list each Class Member’s total Work Weeks and their
24 estimated Individual Class Payment and each Aggrieved Employee’s total PAGA Pay Periods and their
25 estimated Individual PAGA Payment. (*Ibid.*).

26 Within twenty-one (21) calendar days after entry of the preliminary approval order, Defendant
27 will provide a list in a formatted readable Microsoft Office Excel spreadsheet to the Administrator
28 containing the following information for each Class Member: full name; last known mailing address;

1 Social Security number; dates employed by Defendant during the Class Period; and number of Work
2 Weeks and PAGA Pay Periods, as well as any other relevant information needed to calculate settlement
3 payments (collectively referred to as the “Class Data”). (*Id.*, ¶¶ 1.8 and 4.2). Within fourteen (14)
4 calendar days after receiving the Class Data from Defendant, the Administrator will perform a search
5 based on the National Change of Address Database or other similar services available, such as provided
6 by Experian, for information to update and correct for any known or identifiable address changes, and
7 will mail a Class Notice to all Class Members via First-Class U.S. Mail, using the most current, known
8 mailing addresses identified by the Settlement Administrator. (*Id.*, ¶ 4.4.1). The Parties have agreed to
9 use CPT Group, Inc. as the Administrator. (Blanchard Decl., ¶ 48; Settlement Agreement, ¶ 1.2).

10 In determining whether to approve a settlement of a class action, a trial court has virtually
11 complete discretion as to the manner of giving notice to class members, and review on appeal is governed
12 by the abuse of discretion standard. (*See In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380
13 (2010)). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which
14 would result in a higher likelihood of actual notice. (Blanchard Decl., ¶ 49). The original source of the
15 mailing addresses is from Class Members, who provided the information to Defendant. (*Ibid.*).

16 Class Members will have forty-five (45) calendar days from the initial mailing of the Class Notice
17 by the Administrator to submit a Request for Exclusion, Objection, and/or challenge to Work Weeks
18 and/or Pay Periods (“Response Deadline”). (Settlement Agreement, ¶ 1.46).

19 Any Class Notice returned to the Administrator as undeliverable on or before the Response
20 Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto and
21 the Administrator will indicate the date of such re-mailing on the Class Notice. (*Id.*, ¶ 7.4.3). If no
22 forwarding address is provided, the Administrator will promptly attempt to determine a correct address
23 using a skip-trace or other search, using the name, address, and/or Social Security number of the Class
24 Member, and perform a single re-mailing within three (3) calendar days. (*Ibid.*). In the event that a Class
25 Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended
26 fourteen (14) calendar days from the original Response Deadline. (*Id.*, ¶ 7.4.4).

27 Class Members will have an opportunity to dispute the number of Work Weeks and/or PAGA Pay
28 Periods which they have been credited with, as reflected in their respective Class Notices, by submitting

1 a timely and valid letter (“Challenge to Work Weeks”) to the Administrator, by mail, postmarked on or
2 before the Response Deadline. (*Id.*, ¶¶ 1.32 and 7.5). A Challenge to Work Weeks must: (a) contain the
3 case name and number of the Action; (b) contain the Class Member’s full name, signature, address,
4 telephone number, and the last four (4) digits of the Class Member’s Social Security number; (c) clearly
5 state that the Class Member disputes the number of Work Weeks and/or PAGA Pay Periods credited to
6 that Class Member and what the Class Member contends is the correct number; and (d) be returned by
7 mail to the Settlement Administrator at the specified address, postmarked on or before the Response
8 Deadline. (*Id.*, ¶ 7.5.1).

9 Any Class Member wishing to be excluded from the Class Settlement must submit a timely and
10 valid letter (“Request for Exclusion”) to the Administrator, by mail, postmarked on or before the
11 Response Deadline. (*Id.*, ¶¶ 7.5). A Request for Exclusion must: (a) contain the case name and number
12 of the Action; (b) contain the Class Member’s full name, signature, address, telephone number, and last
13 four (4) digits of the Class Member’s Social Security number; (c) clearly state that the Class Member
14 does not wish to be included in the Class Settlement; and (d) be returned by mail to the Administrator at
15 the specified address, postmarked on or before the Response Deadline. (*Id.*, ¶ 7.5). Notwithstanding the
16 above, all Aggrieved Employees will be bound by the PAGA Settlement and will be issued their
17 Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion. (*Id.*, ¶ 26).

18 To object to the Class Settlement in writing, Participating Class Members must submit a timely
19 and complete written objection (“Objection”) to the Administrator, by mail, postmarked on or before the
20 Response Deadline. (*Id.*, ¶¶ 7.7). An Objection must: (a) contain the case name and number of the
21 Action; (b) contain the objector’s full name, signature, address, telephone number, and the last four (4)
22 digits of the objector’s Social Security number; (c) contain a written statement of all grounds for the
23 objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs,
24 or other documents upon which the objection is based; and (e) be returned by mail to the Settlement
25 Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*, ¶ 7.7.1).
26 Participating Class Members, individually or through counsel, may also present their objection orally at
27 the Final Approval Hearing, regardless of whether they have submitted an Objection. (*Id.*, ¶ 7.7.2).

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Respectfully submitted,

BLACKSTONE LAW, APC

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