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9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SACRAMENTO**

12 RAYMOND KIETSATHIT and ANDREW
13 OCON, individually, and on behalf of all others
similarly situated,

14 *Plaintiffs,*

15 vs.

16 CENTRAL TRANSPORT LLC; and DOES 1
17 through 10, inclusive,

18 *Defendants.*

Case No.: 24CV015239

CLASS AND REPRESENTATIVE ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

*[Filed with the Declaration of Kane Moon,
the Declaration of Plaintiff Raymond
Kietsathit, the Declaration of Plaintiff
Andrew Ocon, the Declaration of Jodey
Lawrence, and [Proposed] Preliminary
Approval Order]*

PRELIMINARY APPROVAL HEARING:

Date: January 8, 2027

Time: 9:00 a.m.

Dept.: 8A

Judge: Jill Talley

Reservation # A-15239-001

Complaint Filed: July 30, 2024

Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on January 8, 2027 at 9:00 a.m. in Department 8A of the Tani
3 G. Cantil-Sakauye Sacramento County Courthouse located at 500 G Street, Sacramento, California
4 95814, pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et*
5 *seq.*, Plaintiff Raymond Kietsathit (“Plaintiff Kietsathit”) and Plaintiff Andrew Ocon (“Plaintiff
6 Ocon”) (collectively, “Plaintiffs”) will move the Court for an order granting preliminary approval of
7 the proposed class action settlement between Plaintiffs and Defendant Central Transport LLC.

8 Plaintiffs will further move the Court for an order:

- 9 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement;
- 10 2. Certifying a Class, for settlement purposes only;
- 11 3. Approving the Class Notice and plan for its distribution;
- 12 4. Appointing Plaintiffs as the Class Representative, for settlement purposes only;
- 13 5. Appointing Moon Law Group, PC as Class Counsel, for settlement purposes only;
- 14 6. Appointing Phoenix Class Action Administration Solutions as the Administrator; and
- 15 7. Scheduling a Final Approval Hearing no earlier than 120 days from the date of
16 preliminary approval.

17 The motion will be based upon this notice, the attached memorandum of points and
18 authorities, the supporting Declarations of Kane Moon (and exhibits attached thereto), Plaintiff
19 Kietsathit, and Plaintiff Ocon, the records and files in this action, and any other further evidence or
20 argument that the Court may properly receive at or before the hearing.

21 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this
22 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative ruling may
23 be downloaded off the court’s website. If the party does not have online access, they may call the
24 dedicated phone number for the department as referenced in the local telephone directory between
25 the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative
26 ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the
27 hearing, no hearing will be held.

28 As this Motion is unopposed, the Parties respectfully request relief from the page limit

1 requirement set by California Rules of Court, Rule 3.1113(d).

2
3 Respectfully submitted,

4 Dated: July 23, 2026

MOON LAW GROUP, PC

5 By: _____

6 Kane Moon
7 Allen Feghali
8 Jacquelyne VanEmmerik
9 Nichelle Christopherson

Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Raymond Kietsathit (“Plaintiff Kietsathit”) and Plaintiff Andrew Ocon (“Plaintiff Ocon”) (collectively, “Plaintiffs”) seek preliminary approval of a proposed \$1,200,000.00 non-reversionary, wage and hour class action settlement (the “Settlement”) with Defendant Central Transport LLC (“Defendant”) (together with Plaintiffs, the “Parties”). The Settlement will provide substantial monetary payments to an estimated 1,300 Class Members who worked an estimated aggregate of 84,125 Workweeks, of which roughly 1,083 are Aggrieved Employees who worked an estimated aggregate of 61,641 PAGA Pay Periods. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, informal discovery, and negotiations between the Parties. The negotiations were at arm’s-length and were facilitated through a mediation session by an experienced and neutral class action mediator, Steven Rottman, Esq. Accordingly, Plaintiffs request the Court preliminarily approve the Settlement, certify the proposed Settlement Class, approve the proposed Notice to Class Members, and set a final approval hearing no earlier than 120 days from the date of preliminary approval.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs’ Claims and Procedural History

This is a wage and hour class action and representative action for alleged Labor Code violations and claims for civil penalties pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* (“PAGA”). (Declaration of Kane Moon in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement [“Moon Decl.”], ¶ 3.) Plaintiffs seek to represent a class of all current and former non-exempt drivers and dock workers who were employed by Defendant in the State of California from October 18, 2022, to November 15, 2025. (*Id.*) Defendant is a freight transportation services provider serving manufacturing and retail companies of various sizes with multiple terminals throughout California, including a facility in Sacramento County. (*Id.*) Plaintiff Kietsathit worked for Defendant from approximately June to August 2023 as a truck driver. (*Id.*) Plaintiff Ocon similarly worked for Defendant from

1 approximately April to October 2023 as a truck driver. (*Id.*) Throughout their employment
2 Plaintiffs were employed in an hourly paid, non-exempt position. (*Id.*) Plaintiffs contend they and
3 their coworkers were subjected to the same unlawful labor practices, including failure to pay
4 wages for all hours worked. (*Id.*)

5 Plaintiffs' claim for unpaid minimum and overtime wages stem from Defendant's alleged
6 failure to compensate employees for off-the-clock work and Defendant's failure to incorporate all non-
7 discretionary bonuses into its regular rate of pay when calculating the correct overtime rate of pay and
8 sick day rate of pay. (*Id.* at ¶ 4.) Plaintiffs further allege that Defendant failed to compensate employees
9 at the legally required minimum wage for non-productive time or paid them less than their regular
10 hourly rate for such time worked. (*Id.*) Moreover, Plaintiffs bring claims against Defendant for meal
11 and rest period violations, unreimbursed business expenses, failure to pay sick and vacation pay, failure
12 to establish, implement, and maintain a workplace violence prevention program and maintain a safe
13 and healthy workplace, and derivative claims for waiting time penalties, wage statement violations,
14 unfair business practices, and civil penalties under PAGA. (*Id.*)

15 Because of the foregoing alleged violations of various provisions of the Labor Code,
16 Plaintiffs filed a class action on July 30, 2024, which alleges Defendant systematically: (1) failed
17 to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal
18 periods, (4) failed to authorize and permit rest periods, (5) failed to indemnify necessary business
19 expenses, (6) failed to pay final wages at termination, (7) failed to provide accurate itemized wage
20 statements, and (8) engaged in unfair business practices. (*Id.* at ¶ 5.)

21 On September 12, 2024, Defendant removed this Action to the United States District Court
22 for the Eastern District of California, Case No. 2:24-cv-02493-KJM-JDP. (*Id.* at ¶ 6.) On October
23 8, 2024, Plaintiffs filed a separate Complaint in the Sacramento County Superior Court adding a
24 single cause of action for Civil Penalties under PAGA. (*Id.*) On February 9, 2026, the Action was
25 remanded from the United States District Court for the Eastern District (USDC Case No. 2:24-cv-
26 02493-KJM-JDP) to the Sacramento County Superior Court (Case No. 24CV015239). (*Id.*) The Court
27 has not granted class certification. (*Id.*)

28 Subsequently, the Parties agreed to stipulate to the filing of a stipulated First Amended

1 Complaint that complies with the Parties agreement at mediation. (*Id.* at ¶ 7.) On May 22, 2026, the
2 Parties filed the First Amended Complaint (the “Operative Complaint”) to add claims for failure to pay
3 sick and vacation pay, and failure to establish, implement, and maintain a workplace violence
4 prevention program and maintain a safe and healthy workplace claim which were encompassed by
5 the settlement but not included in the original complaint in the Action. (*Id.*)

6 Defendant ardently opposes the merits of this case and denies Plaintiffs’ factual allegations.
7 (*Id.* at ¶ 8.) Defendant asserts it complied with all of its compensation obligations, including
8 compensating Class Members for all off-the-clock work, and therefore, Plaintiffs and other Class
9 Members were paid all wages owed. (*Id.*) Defendant also argues that Defendant did not fail to
10 incorporate any bonuses into Plaintiffs’ and Class Member’s regular rate for purposes of overtime,
11 and sick pay as such bonuses were discretionary. (*Id.*) Defendant maintains that it properly paid
12 the proper wage for non-productive time. (*Id.*) Defendant maintains compliance with all of its
13 meal and rest period obligations. (*Id.*) Defendant asserts it complied with all of its reimbursement
14 obligations, and therefore, Plaintiffs and other Class Members were compensated for any and all
15 necessary business expenses incurred. (*Id.*) Defendant maintains that it properly paid all sick leave
16 and vacation wages owed to the Plaintiffs and Class Members. (*Id.*) Defendant further argues that
17 it has established, implemented, and maintained a workplace violence prevention program and
18 maintain a safe and healthy workplace. (*Id.*) To the extent Class Members received wage
19 statements that were allegedly inaccurate, Defendant asserts employees suffered no actual damage
20 or harm as a result. (*Id.*; *see, e.g., Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013, No. C
21 12–05860 CRB) 2013 WL 622032, at *10 [“A plaintiff must adequately plead an injury arising
22 from an employer’s failure to provide full and accurate wage statements, and the omission of the
23 required information alone is not sufficient.”].) With respect to Plaintiffs’ claim for waiting time
24 penalties, Defendant alleges its good-faith belief that it paid all wages precludes the imposition of
25 waiting time penalties since Plaintiffs cannot prove Defendant’s alleged failure to pay all final
26 wages at the time of separation was “willful.” (Moon Decl., ¶ 8; *see, e.g., Pedroza v. PetSmart,*
27 *Inc.* (C.D. Cal. June 14, 2012, No. ED CV 11–298 GHK (DTBx)) 2012 WL 9506073, *5.) For
28 these reasons, among others, Defendant denies all of Plaintiffs’ claims and allegations, and further

1 claims it did not engage in any unfair business practices and denies liability under PAGA. (Moon
2 Decl., ¶ 8.) Defendant also maintains the claims are improper for class treatment, in part, due to
3 the individualized and testimony-intensive nature of the wage claims that could bar class
4 certification or significantly reduce Defendant's overall liability. (*Id.*)

5 **B. Discovery and Investigation**

6 The Parties agreed to mediate the instant action, and participated in private mediation with
7 Steven Rottman, Esq., an experienced class and PAGA action mediator. (*Id.* at ¶ 9.) In preparation
8 for mediation, the Parties agreed to a protocol for an informal exchange of documents and
9 information before mediation. (*Id.*) Prior to mediation, Plaintiffs obtained from Defendant, through
10 informal discovery, documents and data that were necessary and helpful to evaluate the claims
11 asserted in this action. (*Id.*) Defendant produced a statistically significant sample of time and pay
12 records for the putative Class, Plaintiffs' personnel file, and Defendant's written policies. (*Id.*)
13 Defendant also provided information regarding the estimated number of current and formerly
14 employed Class Members, Aggrieved Employees, and PAGA Pay Periods. (*Id.*)

15 In preparation for mediation, Plaintiffs' Counsel reviewed and analyzed all the information
16 Defendant provided, including the sample records and documents regarding Defendant's wage and
17 hour policies. (*Id.* at ¶ 10.) Plaintiffs' Counsel retained a statistics expert to analyze the sample
18 records and prepare a damage analysis prior to the mediation. (*Id.*) The sample time and pay records
19 analyzed represented approximately 8% of the Class, which allowed Plaintiffs' expert to prepare an
20 analysis with reasonable certainty. (*Id.*) In conjunction with their extensive factual investigation,
21 Plaintiffs' Counsel also investigated the applicable law regarding the claims and defenses asserted in
22 the litigation. (*Id.*) Accordingly, Plaintiffs' Counsel was able to evaluate the probability of class
23 certification, success on the merits, and Defendant's maximum and realistic monetary exposure for
24 all claims. (*Id.*) Thus, Plaintiffs' and their Counsel's familiarity with the facts of the case and the
25 legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement.
26 (*Id.*)

27 **C. Settlement Negotiations**

28 On September 16, 2025, the Parties participated in a full day of private mediation before

1 Steven Rottman, Esq. (*Id.* at ¶ 11.) The negotiations were at arm’s length and, although conducted
2 in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to
3 explore the potential for a settlement of the dispute, but each side was also prepared to litigate
4 their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive
5 negotiations and discussions regarding the strengths and weaknesses of Plaintiffs’ claims and
6 Defendant’s defenses, a resolution was reached by the Parties, the material terms of which are set
7 out in the Class Action and PAGA Settlement Agreement (*Id.*, Exh. 1 [the “Settlement”].)

8 In reaching a resolution, the Parties recognized that the issues presented in this action are likely
9 only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation
10 will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to the potential
11 benefits of litigation. (*Id.* at ¶ 12.) Plaintiffs and their Counsel also considered the risk and uncertainty
12 of the outcome inherent in any litigation when determining whether this Settlement was the correct
13 option. (*Id.*) In sum, Plaintiffs and their Counsel believe the proposed Settlement is in the best interests
14 of Aggrieved Employees and the LWDA. (*Id.*)

15 Plaintiffs’ Counsel have conducted a thorough investigation into the facts of this case. (*Id.*
16 at ¶ 34.) Based on the foregoing document and information exchange and on their own independent
17 investigation and evaluation, Plaintiffs’ Counsel are of the opinion that the proposed Settlement
18 is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and
19 circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses that
20 Defendant may assert both to certification and on the merits, the Settlement is in the best interest
21 of the Class. (*Id.*; *see also Id.* at ¶¶ 35–44.) **Indeed, the \$1,200,000.00 gross settlement figure**
22 **represents about 36% of the realistic recovery estimated to be \$3,373,108.94.** (*Id.* at ¶¶ 35,
23 44.)

24 **D. Key Terms of the Proposed Settlement**

25 Under the Settlement, Defendant will pay a non-reversionary, all-inclusive amount of *no*
26 *less than* \$1,200,000.00, subject to an escalator clause, to resolve this action. (Settlement, ¶¶ 3.1,
27 4.1.) The key terms include:

1 1. Non-reversionary Gross Settlement Amount: This amount is \$1,200,000.00, subject to a
2 potential increase under the escalator clause and excludes Defendant's employer's share of payroll
3 taxes. (*Id.* at ¶¶ 3.1.) No portion will revert to Defendant. (*Id.*)

4 2. Escalator Clause: The Settlement provides an escalator clause under which should the
5 number of Class Period Workweeks increases by more than 10% of the original estimate of 84,125
6 (i.e., exceeds 92,538), Defendant at its sole discretion, will either: (1) increase the Gross Settlement
7 Amount on a proportional basis for those Class Period workweeks worked in excess of 10% of the
8 current 84,125 estimate (i.e., if there is a 11% increase in the total Class Period workweeks,
9 Defendant shall increase the Gross Settlement Amount by 1%); or (2) elect to cut off the Class Period
10 as of the date the total Class Period Workweeks do not exceed 10% of the 84,125 estimate (i.e., so
11 that the total workweeks is at or below 92,538). (*Id.* at ¶ 4.1.) Defendant agrees to be prepared to
12 inform the Court of its election at the Preliminary Approval Hearing. (*Id.*)

13 3. Net Settlement Amount: The Net Settlement Amount means the Gross Settlement
14 Amount, less the following fixed payments in the amounts approved by the Court: Individual PAGA
15 Payments, the LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees
16 Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment.
17 (*Id.* at ¶ 1.28.). Accordingly, the Net Settlement Amount is the Gross Settlement Amount
18 (\$1,200,000.00) minus the following sums, subject to approval by the Court: (1) Attorney's Fees (not
19 to exceed one-third of the Gross Settlement Amount, or \$400,000.00); (2) Litigation Expenses (not
20 to exceed \$30,000.00); (3) the Service Payment to Plaintiffs (not to exceed \$20,000.00); (4) the
21 PAGA Penalty Payment (\$50,000.00); and (5) Administration Expense Payment (estimated not to
22 exceed \$15,950.00). (*Id.* at ¶ 3.2.) The Net Settlement is estimated to be \$684,050. (Moon Decl., ¶¶
23 15, 49.)

24 4. Tax Treatment: The Individual Class Payments will be allocated as 20% to taxable wages
25 and 80% to non-taxable penalties and interest. (*Id.* at ¶ 3.2.4.1.) The PAGA Settlement Payment to
26 Aggrieved Employees will be entirely allocated to penalties. (*Id.* at ¶ 3.2.5.2.)

27 5. No Claim Form: Disbursement will occur within 14 days of completed funding. (*Id.* at ¶
28 4.4.) Class Members will not need to submit any claim form as a condition of receiving Settlement

1 Class Payments. (*Id.* at ¶ 3.1.) Each Class Member who does not opt-out will be entitled to a pro rata
2 share of the Net Settlement Amount that is directly proportional to the number of Workweeks worked
3 during the Class Period. (*Id.* at ¶ 3.2.4.) Likewise, each Aggrieved Employee will be entitled to a pro
4 rata share of the 25% share of the PAGA Allocation directly proportional to the number of PAGA
5 Pay Periods. (*Id.* at ¶ 3.2.5.1.)

6 6. Class Members or Settlement Class, and Class Period: The “Class” is defined as all
7 current and former non-exempt drivers and dock workers who were employed by Defendant in the
8 State of California from October 18, 2022, to November 15, 2025 (“Class Period”). (*Id.* at ¶¶ 1.5,
9 1.13.) The Parties estimate that the Class included approximately 1,300 Class Members. Class
10 Members will be paid a pro-rata share based on the number of Workweeks worked by the Class
11 Member during the Class Period. (*Id.* at ¶ 3.2.4.) “Class Period Workweeks” means the any week
12 during which a Class Member worked for Defendant for at least one day during the Class Period. (*Id.*
13 at ¶ 1.14.) The Parties estimate that the number of weeks worked by all Class Members from October
14 18, 2022, to November 15, 2025, is 84,125. (*Id.*)

15 7. Aggrieved Employees and PAGA Period: The Class contains an estimated 1,083
16 Aggrieved Employees, defined as all current and former non-exempt drivers and dock workers who
17 were employed by Defendant in the State of California from July 24, 2023, to November 15, 2025.
18 (*Id.* at ¶¶ 1.4, 1.32, Moon Decl., ¶ 18.)

19 8. Released Parties: Defendant and each of its former and/or present directors, officers,
20 shareholders, owners, members, employees, attorneys, insurers, reinsurers, predecessors, successors,
21 assigns, parents, subsidiaries, affiliates, agents, and any other entities under common control with
22 Defendant or that could be considered to have jointly employed the Class Members or Aggrieved
23 Employees (including, without limitation, any investment bankers, accountants, insurers, reinsurers,
24 attorneys and any past, present or future officers, directors and employees). (*Id.* at ¶ 1.42.)

25 9. Release by Participating Class Members: All Participating Class Members, on behalf of
26 themselves and their respective former and present representatives, agents, attorneys, heirs,
27 administrators, successors, and assigns, fully and finally release and discharge the Released Parties
28 from all claims, debts, liabilities, demands, obligations, penalties, costs, expenses, attorney's fees,

1 damages, and causes of action that were alleged or that reasonably could have been alleged based on
2 the facts and claims alleged in the Operative Complaint and Plaintiffs' PAGA Notices. (*Id.* at ¶ 5.2.)

3 10. Release by Participating Class Members Who Are Aggrieved Employees and Non-
4 Participating Class Members Who Are Aggrieved Employees: All Participating Class Members who
5 are Aggrieved Employees and Non-Participating Class Members who are Aggrieved Employees are
6 deemed to fully and finally release and discharge, on behalf of themselves and their respective former
7 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
8 Released Parties from all claims for civil penalties, and attorneys' fees and costs, under PAGA that
9 were alleged or that reasonably could have been alleged based on the facts and claims alleged in the
10 Operative Complaint and Plaintiffs' PAGA Notices. (*Id.* at ¶ 5.3.)

11 11. PAGA Penalties: The Settlement provides for PAGA Penalties of \$50,000.00. (*Id.* at ¶
12 3.2.5.) Pursuant to PAGA, 75% or \$37,500.00 is allocated to the LWDA and 25% of \$12,500.00 is
13 allocated to Aggrieved Employees. (*Id.*) On July 24, 2024 and July 30, 2024, Plaintiff Kietsathit and
14 Plaintiff Ocon, respectively gave written notice to the California Labor and Workforce Development
15 Agency (the "LWDA") of the alleged Labor Code violations, with certified mail service on Defendant,
16 and paid the required filing fee. (Moon Decl., ¶ 25, Ex. 2.) To date, the LWDA has not indicated its
17 intent to investigate the alleged violations or intervene in this Action. (*Id.* at ¶ 25.) In compliance
18 with Labor Code section 2699, subdivision (1)(2), Plaintiffs' Counsel submitted to the LWDA a
19 notice of settlement and a copy of the proposed Settlement. (*Id.* at ¶ 26.)

20 12. Funding: Defendant will fully fund the GSA and payroll taxes by transmitting the funds
21 to the Administrator no later than 30 days after the Effective Date. (*Id.* at ¶ 4.3.)

22 13. Individual Payments: There are an estimated 1,300 Class Members who worked
23 approximately 84,125 Class Period Workweeks, 1,083 of which are Aggrieved Employees who
24 worked approximately 61,641 Pay Periods. (Moon Decl., ¶ 28.) Class Members are estimated to
25 receive an average of \$526.19, with an average Workweek value of \$8.13. (*Id.* at ¶ 49.) Aggrieved
26 Employees are estimated to receive an average of \$11.54, with an average Pay Period value of \$0.20.
27 (*Id.*)
28

1 14. Uncashed Settlement Checks: The Settlement does not provide for a *cy pres* distribution.
2 (See Settlement, ¶ 4.4; Moon Decl., ¶ 29.) The funds representing the uncashed, unclaimed, or
3 abandoned checks shall be transmitted by the Administrator to the California Controller’s Office’s
4 Unclaimed Property Fund in the name of the Class Member thereby leaving no “unpaid residue”
5 subject to the requirements of 4.4.2. California Code of Civil Procedure section 384(b). (*Id.* at ¶
6 4.4.3.)

7 15. Administrator and Costs: The Parties jointly appointed Phoenix Class Action
8 Administration Solutions (“Phoenix”) as the neutral entity to administer this Settlement, agreed the
9 Administrator will be paid the costs of administration work from the Gross Settlement Amount, and
10 estimated administration costs will not exceed \$15,950.00. (*Id.* at ¶¶ 1.2, 3.2.3, 7.1.) At this time, the
11 Administrator estimates costs will be \$15,950.00. (Moon Decl., ¶ 30, Ex. 4.)

12 16. Class Notice: The proposed Class Notice sets forth, in plain terms, a statement of case,
13 the terms of the Settlement, the approximate amounts of attorneys’ fees, costs, PAGA Allocation,
14 and service award being sought, an explanation of how the individual payments are calculated, and
15 the Final Approval Hearing information. (Settlement, Ex. A.) The Administrator will mail the Class
16 Notice to Class Members with Spanish translation by First Class United States mail using data
17 provided by Defendant and after running a check of the data from Defendant against those on file
18 with the U.S. Postal Services’ National Change of Address List (Settlement, ¶ 7.3) Defendant will
19 provide the Class Data to the Administrator within 20 days from the date of preliminary approval,
20 and the Administrator will mail the Class Notices within 14 calendar days following receipt of the
21 Class Data. (*Id.* at ¶¶ 4.2, 7.4.2.)

22 17. Procedure for Disputing Pay Periods, Opting Out, or Objecting: The Class Notice
23 explains the procedure under which a Class Member can dispute the number of individual Class Period
24 Workweeks and/or Pay Periods credited to them. (*Id.* at Ex. A.) Additionally, the Class Notice explains
25 how Class Members may, should they choose to do so, opt-out or otherwise object to the Settlement.
26 Class Members need not file or serve, or state in any written objection, a notice of intention to appear
27 at the Final Approval Hearing. (*Id.* at Ex. A.) Class Members will have 45 days after the
28 Administrator initially mails the Class Notice to submit a Request for Exclusion or written objections

1 to the Settlement. (*Id.* at ¶ 7.5.) In the case of a re-mailed Class Notice, Class Members will have an
2 additional 14 calendar days from re-mailing. (*Id.*) Requests for Exclusion and objections will be
3 mailed to and handled by the Administrator. (*Id.* at ¶¶ 7.5-7.7.)

4 18. Fee Award and Litigation Costs: The Settlement provides a fee application of not more
5 than one-third of the Gross Settlement Amount for reasonable attorneys' fees, plus reimbursement
6 for actual litigation costs not to exceed \$30,000.00, payable from the Gross Settlement Amount,
7 subject to Court Approval. (*Id.* at ¶ 3.2.2.) At this time, Plaintiffs' Counsel has incurred \$20,096.37
8 in litigation costs. (Moon Decl., ¶¶ 31, 86, 87, Ex. 5.). Plaintiffs' Counsel expects to incur
9 approximately \$1,000.00 or less in additional costs from preliminary approval to final approval for
10 filing and service fees. (*Id.* at ¶ 31.)

11 19. Service Payment: The Settlement includes a Class Representative Service Payment up to
12 \$10,000.00 payable from the Gross Settlement Amount, subject to the Court's approval, to each
13 Plaintiff as the Class Representative, in addition to the amount they are eligible to receive as a Class
14 Member. (Settlement, ¶ 3.2.1.) This award is for initiating the Action and providing services in
15 support of the Action. (*Id.* at ¶ 1.13.) In the event the award finally approved is less, the difference
16 will be allocated to the Net Settlement Amount. (*Id.* at ¶ 3.2.1.)

17 20. Impact on Pending Litigation: This Settlement may affect the following cases: 1) *Steven*
18 *Nuno v. Central Transport, LLC*, case number CIVRS2501921, filed in the San Bernardino County
19 Superior Court on March 21, 2025; 2) *Christian Flores v. Central Transport, LLC*, filed in the San
20 Bernardino County Superior Court on May 6, 2025; and 3) *Luis Diaz v. Central Transport, LLC*, filed
21 in the Los Angeles County Superior Court on October 20, 2025. (*Id.* at ¶ 33.) These four cases allege
22 similar wage-and-hour violations and claims for PAGA civil penalties against Defendant. (*Id.*) As a
23 result, approval of this Settlement may extinguish the claims in these four cases. (*Id.*) However, this
24 Action was filed prior to each of the four cases and thus takes priority. (*Id.*) Additionally, the plaintiffs
25 in the four cases can opt-out of the Class settlement should they wish to pursue their individual claims.
26 (*Id.*) To the best of Plaintiffs' Counsel knowledge, there is no other individual, representative, or class
27 action in this jurisdiction, or any other court or jurisdiction, asserting claims similar to those asserted
28

1 in this action on behalf of a class or group of individuals who would also be members of the putative
2 Class, as defined in this matter, other than the aforementioned cases. (*Id.*)

3 **III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL**

4 The law favors the settlement of lawsuits, particularly in class actions and other complex
5 cases. (*See, e.g., Neary v. Regents of Univ. of Cal.* (1992) 3 Cal.4th 272, 277–81.) To prevent fraud,
6 collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v.*
7 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800–01 [citing authority omitted.] To approve a
8 settlement, the Court must find “the settlement is fair, adequate, and reasonable.” (*Id.*) This Court
9 has wide discretion in making this determination. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434,
10 438.) Fairness, adequacy, and reasonableness are presumed, as here, when: “(1) the settlement is
11 reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow
12 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
13 percentage of objectors is small.” (*Dunk*, 48 Cal.App.4th at p. 1802 [citing Newberg, Newberg on
14 Class Actions (3rd ed. 1992) § 11.41].)

15 In evaluating a settlement, the trial court considers the following factors: (1) the strength of
16 plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk
17 of maintaining class action status through trial; (4) the settlement amount offered; (5) the extent of
18 discovery completed and the stage of the proceedings; (6) counsel’s experience and views; (7) the
19 presence of a governmental participant; and (8) the class members’ reaction to the proposed
20 settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) To approve a class
21 action settlement, “the court must satisfy itself that the class settlement is within the ‘ballpark’ of
22 reasonableness.” (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum
23 theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399,
24 408–09 [holding that *Kullar* does not require “an explicit statement of the maximum amount the
25 plaintiff class could recover if it prevailed on all its claims,” but instead, only an “understanding
26 of the amount that is in controversy and the realistic range of outcomes of the litigation”].)

27 As discussed below, Plaintiffs’ Counsel have provided materials and information exceeding
28 the threshold required for this Court to conclude the Settlement is fair, reasonable, and adequate.

1 **A. The Settlement Is Fair, Reasonable, Adequate, and the Product of**
2 **Investigation, Litigation, and Negotiation**

3 **1. The Settlement Is the Product of Discovery, Investigation, and**
4 **Informed and Non-Collusive Arm’s-Length Negotiations**

5 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
6 evidence to the contrary is offered. (Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.51.)
7 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.*
8 (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that
9 the plaintiff might have received more if the case had been fully litigated is no reason not to approve
10 the settlement.”].) Thus, there is a presumption here that negotiations were conducted in good faith.

11 The proposed Settlement at issue was reached following extensive negotiations and
12 discussions regarding the strengths and weaknesses of Plaintiffs’ claims and Defendant’s defenses
13 with an experienced and neutral class action mediator. (Moon Decl., ¶ 11.) Plaintiffs’ Counsel
14 performed an extensive investigation into the facts, claims, and defenses at issue, including by
15 reviewing the governing law, analyzing’ Defendant’s written policies and sampling time/pay data,
16 and retaining a statistics expert to prepare a damage analysis regarding Defendant’s potential liability.
17 (*Id.* at ¶¶ 9–10.) Once an agreement to mediate was made, Plaintiffs obtained, through informal
18 discovery, documents and data necessary and helpful to evaluate the claims and defenses at issue,
19 including a statistically significant sample of time and pay records for the putative Class as well as
20 demographic data. (*Id.*) At the time of mediation, there were an estimated: 1,300 Class Members who
21 worked an aggregate of 84,125 Workweeks, at an average hourly rate of \$32.50. (*Id.* at ¶ 35.)
22 Additionally, there were an estimated: 752 former employees falling within the three-year statute of
23 limitations (“SOL”) period for waiting time penalties, 1,083 employees falling within the one-year
24 SOL period for inaccurate wage statement penalties and PAGA penalties, and 61,641 PAGA Pay
25 Periods. (*Id.*) Based on Plaintiffs’ Counsel’s review of the time, payroll, and additional data provided
26 by Defendant, on Plaintiffs’ expert’s analysis of the sample records provided by Defendant, and on
27 information from Plaintiffs, Plaintiffs’ Counsel evaluated the estimated maximum and risk-adjusted
28 exposure that Defendant faced. (*Id.*)

2. The Settlement Is Fair Considering the Parties' Respective Positions

A settlement is not judged against what a plaintiff might recover had he prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Comp., Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent and necessary in the settlement process . . . even if ‘the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,’ this is no bar to a class settlement because ‘the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.’”] [quoting *Air Line Stewards v. Am. Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109].)

Here, based on the information provided at mediation, Defendant’s **realistic exposure** (adjusted for risks at certification and proof on the merits) for the alleged claims, including penalties, is estimated to be **\$3,373,108.94**. (Moon Decl., ¶¶ 35, 44.) This amount was calculated as follows: **\$38,756.85** (85% discount) for the regular rate claim; **\$942,678.45** (85% discount) for the overtime claim; **\$256,470.39** (90% discount) for the off-the-clock work claim; **\$981,513.00** (85% discount) for the meal period claim; **\$274,329.25** (90% discount) for the rest period claim; **\$46,612.00** (90% discount) for the unreimbursed business expense claim; **\$307,944.00** (95% discount) for the waiting time penalties claim; **\$216,600.00** (95% discount) for the wage statement claim; and **\$308,205.00** (95% discount) for the PAGA penalties claim. (*Id.* at ¶¶ 35-43.) The foregoing discounts were based on the evidence presented and arguments made during arm’s-length settlement negotiations. (*Id.* at ¶¶ 11, 34.) **The \$1,200,000.00 gross settlement figure represents about 36% of the total realistic recovery.** (*Id.* at ¶ 44.) This is an excellent result for the Class, particularly because, under the Settlement, Class Members will receive timely and guaranteed relief, avoiding the risk of not being able to recover anything. (*Id.*)

With regards to the PAGA claims, Plaintiffs and their Counsel believe the Settlement is a fair and reasonable resolution that satisfies PAGA’s dual statutory purposes of deterrence and punishment, on the one hand, and providing Aggrieved Employees with genuine and meaningful relief, on the other. (Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire legal counsel, engage in informal discovery, and participate in mediation. Defendant is also now

1 having to pay civil penalties to the LWDA under the Settlement, assuming final settlement approval is
2 granted. (*Id.* at ¶¶ 3.2.5.) Not including its own attorneys’ fees and costs as well as the employer’s
3 share of payroll taxes, Defendant will pay no less than \$1,200,000.00 to resolve this matter—of which
4 \$50,000.00 is allocated toward the PAGA claims and will be distributed, in compliance with Labor
5 Code section 2699 as 75% (\$37,500.00) to the LWDA and 25% (\$12,500.00) to Aggrieved
6 Employees—and the release obtained under the Settlement does not preclude Aggrieved Employees
7 from seeking remedies based on any underlying individual claims they may have against Defendant or
8 the other Released Parties. (Lab. Code § 2699(i).) The PAGA Allocation represents approximately 16%
9 of the realistic damage estimate for PAGA civil penalties (\$50,000 / \$308,205). (Moon Decl., ¶ 45.)
10 Moreover, Plaintiffs’ Counsel are of the opinion that because the issues here are fairly contested,
11 there is a possibility of the Court not awarding the PAGA penalties even if Plaintiffs prevailed on the
12 merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.*) Indeed, under Labor
13 Code section 2699, subdivision (e)(2), a Court can reduce PAGA penalties “if, based on the facts and
14 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary
15 and oppressive, or confiscatory.” (Lab. Code § 2699(e)(2).) In other words, were this matter to go to
16 trial, any award granted would be at the discretion of the Court and subject to a substantial reduction.
17 (Moon Decl., ¶ 47.)

18 While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as
19 to each cause of action. (*Id.* at ¶ 46.) Plaintiffs also recognize that proving the amounts of wages
20 owed to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*)
21 The Settlement obviates the significant risk that this Court may deny certification of all or some of
22 Plaintiffs’ claims. (*Id.* at ¶ 47.) Furthermore, even if Plaintiffs were able to pursue their claims on a
23 class-wide basis and obtain certification of all or some of the claims, continued litigation would be
24 expensive, involving a trial and possible appeals, and would substantially delay and reduce any
25 recovery by the Class. (*Id.*) This Settlement avoids the risks, burdens, and the accompanying expense
26 of further litigation. (*Id.* at ¶ 48.) Although the Parties have engaged in a significant amount of
27 investigation, informal discovery, and class-wide data analysis, they have not conducted extensive
28 formal discovery. (*Id.*) Moreover, preparation for class certification and a trial would remain for the

Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiffs and/or any summary judgment ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*)

30. The Net Settlement Amount available for settlement payments is estimated to be *no less than \$684,050.00* for an estimated Class of **1,300 individuals**.¹ (*Id.* at ¶ 51.) As a result, it is estimated each Participating Class Member will receive an average gross benefit of approximately **\$526.19** prior to tax withholdings on the wage portion of payments. (*Id.*) Considering Class Members' average hourly rate is \$32.50, the average benefit is roughly **16.19 hours of work**. (*Id.*) This amounts to **an estimated Workweek value of roughly \$8.13** for the currently estimated **84,125 Workweeks**. (*Id.*) Additionally, it is currently estimated there are **1,083 Aggrieved Employees** who will receive an estimated average of approximately **\$11.54** from their \$12,500.00 total share of the PAGA Allocation, which results in an estimated per **Pay Period value of \$0.20** based on the currently estimated **61,641 PAGA Pay Periods**. (*Id.*) The actual amounts to Settlement Class Members and Aggrieved Employees will vary based on each individual's duration of work during the Class Period or PAGA Period, respectively; thus, those who worked longer will receive a gross benefit greater than the average estimated amount. (*Id.*) At this time, the high and low range of payments to Class Members is unknown. (*Id.*) These ranges will be calculated by the Administrator following preliminary approval and receipt and processing of the Class Database and will be provided to the Court in a motion for final approval. (*Id.*)

The proposed Settlement of \$1,200,000.00 therefore represents a substantial recovery when compared to Plaintiffs' reasonably forecasted recovery. (*Id.* at ¶ 52.) When considering the risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to

¹ The Net Settlement Amount is at least \$1,200,000.00 less the following: \$20,000.00 for the Class Representative Service Payment to Plaintiffs, \$15,950.00 for Administration Expense Payment, \$50,000.00 for the PAGA Penalties to the LWDA and Aggrieved Employees, \$400,000.00 for attorneys' fees to Class Counsel, and up to \$30,000.00 for reimbursement of litigation costs to Class Counsel. (Settlement, ¶¶ 3.2 - 3.2.5.)

1 establish liability, and the probability of appeal, it is clear the Settlement amount of \$1,200,000.00 is
2 within the “ballpark” of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)

3 **3. Plaintiffs’ Counsel Have Extensive Experience in Class and PAGA**
4 **Action Litigation, Which Was Integral to Negotiating the Settlement**

5 The Settlement negotiations were conducted by highly capable counsel with considerable
6 experience and demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 55–
7 75.) Plaintiffs’ Counsel have a strong record of vigorous and effective advocacy for their clients and
8 are experienced in handling complex wage and hour class action litigation. (*Id.*) The experience of
9 Plaintiffs’ Counsel was helpful in assessing the reasonableness of the Settlement at issue here, and
10 from this experience they concluded that this litigation could not have been settled on better terms
11 than provided under the Settlement. (*Id.* at ¶ 76.) Although Plaintiffs and their counsel were prepared
12 to try the claims alleged in the litigation, they support the proposed Settlement as being in the best
13 interest of the Class based on objective evidence that has been considered and weighed against the
14 risks, expenses, and time consumption to both sides of continued litigation. (*Id.* at ¶¶ 11, 34-35.)

15 **B. The Proposed Notice of Class and PAGA Settlement Should Be Approved**

16 The proposed Class Notice, in the form attached to the Settlement as **Exhibit A**, should be
17 approved for dissemination to the Class. The Class Notice informs the Class of the terms of the
18 Settlement and of their rights to be excluded from or object to the Settlement. (Settlement, Exh. A.)
19 Accordingly, the proposed Notice meets all the requirements of Rule 3.769(f) of the California Rules
20 of Court. (Cal. Rules of Court, rule 3.769(f).)

21 **C. The Proposed Attorneys’ Fees and Costs Are Reasonable**

22 Subject to the Court’s approval, the Settlement provides a fee application of up to one-third
23 for Class Counsel’s attorneys’ fees, plus reimbursement for out-of-pocket litigation costs not to
24 exceed \$30,000.00. (Settlement, ¶ 3.2.2.) These amounts are disclosed to Class Members in the
25 proposed Notice and are reasonable. (*Id.* at Ex. A.)

26 **1. Counsel Will Request a Fees Award Based On the “Common Fund” Method**

27 California courts have long awarded attorneys’ fees as a percentage of the benefit created by
28 counsel in pursuing claims on behalf of a class. (*See, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25.)

1 The California Supreme Court has held, “when a number of persons are entitled in common to a
2 specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the
3 creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out
4 of the fund.” (*Id.* at p. 34.)

5 Plaintiffs’ Counsel will seek an award of attorneys’ fees on the “percentage of
6 recovery/common fund” theory. (Moon Decl., ¶ 80.) The purpose of this approach is to “spread
7 litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear
8 the entire burden alone.” (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn*
9 *v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends
10 attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require
11 those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in
12 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court
13 recognized that the common fund doctrine has been applied “consistently in California when an
14 action brought by one party creates a fund in which other persons[] are entitled to share.” (*Id.* at pp.
15 110–11 [pincite omitted].)

16 The California Supreme Court recently affirmed in *Laffitte v. Robert Half International Inc.*
17 (2016) 1 Cal.5th 480 that, “when class action litigation establishes a monetary fund for the benefit of
18 the class members, and the trial court in its equitable powers awards class counsel a fee out of that
19 fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage
20 of the fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the
21 percentage method—including relative ease of calculation, alignment of incentives between counsel
22 and the class, a better approximation of market conditions in a contingency case, and the
23 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
24 the litigation[]—convince us the percentage method is a valuable tool that should not be denied our
25 trial courts.” (*Id.* [internal citations omitted].) This line of legal authority supports a request for
26 attorneys’ fees based on the percentage of recovery/common fund method.

2. The Requested Fee Award Is in Line with Typical Cases

According to a leading treatise on class actions: “No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.” (Newberg, *Newberg on Class Actions* (3rd ed. 1992) § 14.03.) Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297 [stating that most cases where 30–50% was awarded involved “smaller” settlement funds of under \$10 million].)

Here, Plaintiffs’ Counsel will request fees equal to one-third of the Gross Settlement Amount, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*Compare* Settlement, ¶ 3.2.2, *with Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“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.”].) Accordingly, Plaintiffs request the Court preliminarily approve his counsel’s ability to request attorneys’ fees as negotiated by the Parties.

3. This Matter Involves a “Fee-Shifting” Provision of the Labor Code

Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(k)(1), 2802(d).) Under these sections, Plaintiffs would be permitted to recover their actual attorneys’ fees, even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiffs’ Counsel for their decision to assume risk by taking on this matter. (*See* Moon Decl., ¶¶ 47-48.) In fact, prosecution of this action involved significant financial risk for Plaintiffs’ Counsel. (*Id.* at ¶¶ 79–82.) Their Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once

1 Plaintiffs’ Counsel undertook this litigation on behalf of the Class, they committed to pursue it to its
2 conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 81.)

3 **4. Counsel’s Experience, Reputation, and Ability Support the Requested Fees**

4 As demonstrated by their past experience in pursuing class actions on behalf of consumers
5 and employees, Plaintiffs’ Counsel possess considerable expertise in litigating class actions. (*Id.* at
6 ¶¶ 55–75.) Plaintiffs’ Counsel have been involved as lead counsel or co-counsel in numerous class
7 actions that resulted in millions in recovery. (*Id.*) Plaintiffs’ Counsel’s experience in wage and hour
8 litigation was integral in evaluating the strengths and weaknesses of the case against Defendant and
9 the reasonableness of the settlement. (*Id.* at ¶ 76.) Practice in the narrow field of wage and hour
10 litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and
11 federal) as well as the procedural law of class action litigation. (*Id.* at ¶ 74.) Based on these and other
12 factors, Plaintiffs’ Counsel have frequently received fee awards of this percentage from the gross
13 recovery for the class. (*See id.* at ¶¶ 59, 64, 69.) Because it is reasonable to compensate counsel
14 commensurate with their skill, reputation, and experience, the requested fee award is supported here.

15 **D. The Service Payments to Plaintiffs Are Reasonable**

16 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
17 compensate them for the expense or risk they have incurred in conferring a benefit on other members
18 of the class.” (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval of class
19 action settlement agreements containing enhancements for the class representatives, which are
20 necessary to provide incentive to represent the class and are appropriate given the benefit the class
21 representatives help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009)
22 563 F.3d 948, 958–59.) Service awards are particularly important to plaintiffs in wage and hour cases
23 because they promote the important public policies underlying the wage and hour laws. This strong
24 policy is codified in California Labor Code section 90.5, which provides, “[i]t is the policy of this
25 state to vigorously enforce minimum labor standards in order to ensure employees are not required
26 or permitted to work under substandard unlawful conditions . . .” (Lab. Code § 90.5.) Nonetheless,
27 the California Supreme Court has noted that “retaliation against employees for asserting statutory
28 rights under the Labor Code is widespread,” despite anti-retaliation statutes designed to protect

1 employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61.) In this context, class
2 representatives should be rewarded for assuming the risk of retaliation for the sake of class members.
3 (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

4 Under the Settlement here, subject to the Court’s approval, Defendant agrees to pay a Service
5 Payment of \$10,000.00 to each Plaintiff, which will be in addition to their amount as a Class Member.
6 (Settlement, ¶ 3.2.1.) This award is for initiating the Action and providing services in support of the
7 Action. (*Id.* at ¶ 1.13.) Plaintiffs have devoted a great deal of time and work assisting counsel in the
8 case and communicated with counsel frequently for litigation and to prepare for the mediation
9 session. (Moon Decl., ¶¶ 53–56; Declaration of Plaintiff Raymond Kietsathit in Support of Motion
10 for Preliminary Approval of Class Action and PAGA Settlement [“Kietsathit Decl.”], ¶¶ 16-25;
11 Declaration of Plaintiff Andrew Ocon in Support of Motion for Preliminary Approval of Class Action
12 and PAGA Settlement [“Ocon Decl.”], ¶¶ 16-25.) The requested award is fair and reasonable,
13 particularly considering the substantial benefits Plaintiffs generated for all Class Members. (*See*
14 Moon Decl., ¶¶ 53–56.)

15 When compared with the amounts awarded in typical class action cases, the amount requested
16 here is particularly reasonable. A 2006 study examining the average incentive award given to class
17 action plaintiffs from 1993 to 2002 found that the “average award per class representative was
18 \$15,992 and the median award per class representative was \$4357.” (Eisenberg & Miller, *Incentive*
19 *Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1307–08.)
20 The same study found that named plaintiffs in employment discrimination class actions received an
21 average award of \$69,850 and a median award of \$31,081, while named plaintiffs in other
22 employment class actions received an average award of \$12,121 and a median award of \$13,059. (*Id.*
23 at p. 1333.) The authors of the study found that higher awards in employment cases reflected the
24 “courts’ wish to make representative plaintiffs whole by compensating them for the high costs of
25 their service to the class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)
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1 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

2 **A. Legal Standard**

3 The proposed Settlement Class is well suited for class certification. The claims all derive from
4 a core set of alleged violations of California’s wage and hour laws and regulations. (Moon Decl., ¶¶
5 3–4.) For the reasons set forth more fully below, the Class, for purposes of Settlement, satisfies the
6 prerequisites for certification under Code of Civil Procedure section 382. (Code Civ. Proc. § 382.)
7 Section 382 provides that “when the question is one of a common or general interest, of many
8 persons, or when the parties are numerous, and it is impracticable to bring them all before the court,
9 one or more may sue or defend for the benefit of all.” (*Id.*) There are two requirements to section
10 382: “(1) there must be an ascertainable class[]; and (2) there must be a well defined community of
11 interest in the questions of law and fact involved affecting the parties to be represented.” (*Daar v.*
12 *Yellow Cab Co.* (1967) 67 Cal. 2d 695, 704 [internal citations omitted].) To clarify these
13 requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to
14 explain that the community-of-interest requirement itself embodies three factors: “(1) predominant
15 common questions of law or fact; (2) class representatives with claims or defenses typical of the
16 class; and (3) class representatives who can adequately represent the class.” (*Richmond v. Dart*
17 *Indus., Inc.* (1981) 29 Cal. 3d 462, 470.)

18 California law and policy favor the fullest and most flexible use of the class action device.
19 (*Id.* at pp. 469–73.) Indeed, “Courts long have acknowledged the importance of class actions as a
20 means to prevent a failure of justice in our judicial system” particularly where the rights of consumers
21 are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to the
22 appropriateness of class treatment should be resolved in favor of certification. (*Richmond, supra*, 29
23 Cal.3d at pp. 473–75.)

24 **B. Plaintiffs Maintain that the Criteria for Class Certification Are Satisfied**

25 **1. The Class Is Ascertainable and Numerous**

26 When determining whether a class is ascertainable, California courts focus on the following
27 three factors: “(1) the class definition, (2) the size of the class and (3) the means of identifying class
28 members.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiffs maintain there is an

1 easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶ 1.5, 1.13.) The
2 proposed Class that Plaintiffs seek to represent is ascertainable because (1) the Class definition is
3 sufficiently precise, (2) the Class consists of about 1,300 individuals, and (3) Class Members can be
4 readily identified by looking at Defendant’s records. (*Id.* at ¶¶ 1.5, 1.13.) Because Class Members
5 are identified using specific criteria in the regular business records of Defendant—their employment
6 by Defendant in California, non-exempt classification, and actual work during the Class Period—the
7 Class is ascertainable. (*See Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959–60 [class
8 membership defined by ownership of product that is the subject of the lawsuit is sufficient to make
9 the class ascertainable].) “The requirement of Code of Civil Procedure section 382 that there be
10 ‘many’ parties to a class action suit is indefinite and has been construed liberally.” (*Rose v. City of*
11 *Hayward* (1981) 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’
12 persons, an action may be maintained as a class action even where the parties are numerous and it is
13 in fact practicable to join them all.” (*Id.*) “No set number is required as a matter of law for the
14 maintenance of a class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the
15 10 beneficiaries of a trust in an action for removal of the trustees.” (*Id.* [citing *Bowles v. Super. Ct.*
16 (1955) 44 Cal.2d 574]; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a class of 9 plaintiffs
17 and 35 members].) Therefore, numerosity is plainly satisfied.

18 **2. There Are Many Common Issues of Law and Fact Which Predominate**

19 To satisfy the community of interest requirement, Parties must show (1) common questions
20 of law and fact that predominate over individual issues, (2) class representatives have claims or
21 defenses typical of the class, and (3) class representatives adequately represent the class. (*Dunk,*
22 *supra*, 48 Cal.App.4th at p. 1806.) This inquiry tests whether proposed classes are sufficiently
23 cohesive to rationally warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE*
24 *Corp.* (1987) 191 Cal.App.3d 605, 611–12.)

25 Here, Plaintiffs’ claims satisfy all three requirements. The employment practices at issue
26 include whether or not Defendant paid proper wages to the Class; whether or not Defendant provided
27 meal periods to the Class; whether or not Defendant provided rest periods to the Class; whether or
28 not Defendant paid proper overtime pay; whether or not Defendant provided correct sick and vacation

1 pay; whether or not Defendant established, implemented, and maintained a workplace violence
2 prevention program and maintained a safe and healthy workplace; whether or not Defendant
3 reimbursed all business expenses incurred by the Class; whether or not Defendant paid proper
4 compensation timely upon separation of employment to Class Members; whether or not Defendant
5 timely paid proper compensation throughout Class Members' employment; whether or not Defendant
6 provided accurate and complete itemized wage statements to the Class; whether or not waiting-time
7 penalties are available to Class Members who are no longer employed by Defendant for violation of
8 *Labor Code* § 203; whether or not Defendant maintained adequate and requisite records; and whether
9 or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of
10 *Business and Professions Code* §§ 17200-17208. (Moon Decl., ¶ 3–4) Plaintiffs contend the factual
11 and legal issues are the same for all Class Members, and further that all Class Members suffered from
12 and seek redress for the same alleged injuries. (Kietsathit Decl., ¶¶ 4–5; Oconn Decl., ¶¶ 4-5.)
13 Considering Class Members would need to prove the same issues of law and fact to prevail, and their
14 legal remedies are identical, it would be preferable to resolve all claims through a settlement than to
15 force each Class Member to litigate their own individual claims. Thus, the Court should grant
16 conditional class certification for settlement purposes because common questions of law and fact
17 predominate over any individual questions within the Class.

18 **3. Plaintiffs' Claims Are Typical of the Claims of the Class**

19 The typicality requirement does not focus on the individual characteristics or circumstances
20 of the representative plaintiff compared to those of the remainder of the class, but rather, upon the
21 typicality of the proposed representative's claims as they relate to the defendant's conduct and
22 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 [“The only requirements are [sic] that
23 common questions of law and fact *predominate* and that the class representative be *similarly* situated”
24 vis-à-vis the class.] [emphasis in original].) A representative plaintiff's claims are typical of the class
25 if they arise from the same event, practice, or course of conduct, and if the claims rest on the same
26 legal theories. (*Id.*) That is precisely the case here. Plaintiffs are former non-exempt employees of
27 Defendant; as such, they allege they were subject to the same policies and practices as other similarly
28 situated employees. (Kietsathit Decl., ¶ 6; Oconn Decl., ¶ 6.)

1 **4. Plaintiffs and Their Counsel Meet the Adequacy Requirement**

2 The adequacy of representation requirements is met by fulfilling two conditions: (1) a named
3 plaintiff must be represented by counsel qualified to conduct the pending litigation, and (2) a named
4 plaintiff’s interests cannot be antagonistic to those of the class. (*McGhee v. Bank of Am.* (1976) 60
5 Cal.App.3d 442, 450.)

6 Here, all requirements are met. Plaintiffs retained counsel with extensive experience in
7 prosecuting complex class actions, including similar class actions that previously settled. (Moon
8 Decl., ¶¶ 55-75.) With their experience, Plaintiffs’ Counsel unquestionably are “qualified,
9 experienced and generally able to conduct the proposed litigation.” (*Miller, supra*, 148 Cal.App.3d
10 at p. 874.) In addition, Plaintiffs and their Counsel have no conflicts with one another, other Class
11 Members, the proposed Administrator. (Kietsathit Decl., ¶¶ 7–8; Oconn Decl., ¶¶ 7-8; Moon Decl.,
12 ¶ 79.) Further, Plaintiffs have, with counsel, litigated this case and diligently reviewed the settlement
13 terms, showing dedication, and with full knowledge and acceptance of duties, they have committed
14 to their role as Class Representative. (Kietsathit Decl., ¶¶ 16–25; Oconn Decl., ¶¶ 16-25.)

15 **5. A Class Action Is Superior to a Multiplicity of Litigation**

16 Finally, in making its class certification decision, the Court must determine that a class action
17 would be superior to alternative means for the fair and efficient adjudication of the litigation. (*See*
18 *Leyva v. Medline Indus. Inc.* (9th Cir. 2013) 716 F.3d 510, 514–15.) By consolidating many potential
19 individual actions into a single proceeding, this Court’s use of the class action device enables it to
20 manage this litigation in a manner that serves the economics of time, effort, and expense for the
21 litigants and the judicial system. (*Id.*) Absent class treatment, similarly situated employees with
22 small, but nevertheless meritorious, claims for damages would, as a practical matter, have no means
23 of redress because of the time, effort, and expense required to prosecute individual actions. (*Id.* at p.
24 515; *Gentry, supra*, 42 Cal.4th at pp. 457–62.) Moreover, in the context of settlement, the superiority
25 concerns are essentially non-existent. (*See generally, e.g., Stamburgh, supra*, 62 Cal.App.3d.)

1 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

2 **A. The Proposed Notice Plan Satisfies Due Process**

3 Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
4 rule 3.766(e)–(f).) California law vests the Court with broad discretion in fashioning an appropriate
5 notice program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory
6 or due process requirement that all class members receive actual notice, but in this matter, the Class
7 Members will receive direct mailed notice. (Settlement, ¶ 7.4.2.) As the Court of Appeals has
8 explained, “[t]he notice given should have a reasonable chance of reaching a substantial percentage
9 of the Class Members . . .” (*Cartt*, 50 Cal.App.3d at p. 974.) In this case, notice of the proposed
10 Settlement will be provided by direct mailing, the best possible form of notice under the
11 circumstances. (Settlement, ¶ 7.4.2.)

12 **B. The Class Notice Is Accurate and Informative**

13 The proposed Class Notice should be approved. It will be disseminated through direct U.S.
14 first-class mail to the current address for each Class Member. (*Id.* at ¶ 7.4.2.) It informs the Class of
15 the terms of the Settlement and the right to be excluded. (*Id.* at ¶ 7.4, Ex. A.) And if there are Class
16 Members who wish to object to the proposed Settlement, they are informed of their right to submit
17 written objections and/or be heard at the Final Approval Hearing. (*Id.* at ¶¶ 7.5-7.7, Exh. A.)

18 The Class Notice also fulfills the requirement of neutrality in class notices. (Newberg,
19 Newberg on Class Actions (3rd ed. 1992) § 8.39.) It summarizes the proceedings to date and the
20 terms and conditions of the Settlement in an informative and coherent manner. (Settlement, Ex.
21 A.) It makes clear the Settlement does not constitute an admission of liability by Defendant, who
22 deny all liability, and it recognizes that this Court has not ruled on the merits of the action. (*Id.*)
23 It also states that the final approval decision has yet to be made, and provides the date, time, and
24 location of the Final Approval Hearing. (*Id.*) Accordingly, the Class Notice complies with the
25 standards of fairness, completeness, and neutrality required of a combined settlement-certification
26 class notice.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grant this motion, enter the proposed order submitted herewith regarding preliminary approval, and set a final approval hearing no earlier than 120 days from the preliminary approval order.

Respectfully submitted,

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