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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

BEN DINH, an individual, on his own behalf
and on behalf of all others similarly situated,

Plaintiffs,

vs.

AMPEX DATA SYSTEMS CORPORATION,
a Delaware corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 24CV084864

**NOTICE OF MOTION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL**

Judge: Hon. Somnath Chatterjee
Date: May 5, 2026
Time: 2:30 PM
Dept.: 21

Complaint Filed: July 25, 2024

Reservation ID: 114137592585

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1 **NOTICE IS HEREBY GIVEN** that, on May 5, 2026 at 2:30 PM in Department 21 of
2 the Alameda Superior Court before the Honorable Somnath Chatterjee, pursuant to California
3 Code of Civil Procedure §382, Plaintiff Ben Dinh (“Plaintiff”), on behalf of himself and all
4 others similarly situated, will and does hereby move this Court for entry of an Order:

- 5 1. Preliminarily certifying the class for purposes of settlement only;
- 6 2. Preliminarily appointing Plaintiff as Class Representative for purposes of
7 settlement only;
- 8 3. Preliminarily appointing Kevin Lipeles, Esq., Thomas Schelly, Esq., and Jasmine
9 Badawi, Esq. of Lipeles Law Group, APC, as Class Counsel for purposes of settlement only;
- 10 4. Preliminarily approving the settlement as fair, adequate, and reasonable, based
11 upon the terms set forth in the Parties’ Joint Stipulation of Class Action and PAGA Settlement and
12 Release¹ (“Settlement Agreement”), including payment by Ampex Data Systems Corporation,
13 (“AMPEX” or “Defendant”) of the Maximum Settlement Amount of \$210,000.00;
- 14 5. Preliminarily approving a Class Representative Service Award of \$5,000 to
15 Plaintiff in recognition of his service to the Settlement Class;
- 16 6. Preliminarily approving Plaintiff’s Counsel’s request for up to \$73,500.00 (35%) of
17 the Maximum Settlement Amount as attorneys’ fees;
- 18 7. Preliminarily approving Plaintiff’s Counsel’s request for actual costs from the
19 Maximum Settlement Amount in an amount up to \$16,500.00;
- 20 8. Appointing Phoenix Class Action Administration Solutions (“Phoenix”) as the
21 third-party Settlement Administrator for mailing notices and for claims administration, approving
22 that a maximum of \$5,275.00² be deducted from the Maximum Settlement Amount for the costs
23 of administration, and approving that the fees and costs of the Settlement Administrator will be
24 paid from the Maximum Settlement Amount; and
- 25 9. Approving the proposed Class Notice and ordering it be disseminated to the Class
26 as provided in the Settlement Agreement.

27 ¹ The parties were required to amend the Settlement Agreement due to an inadvertent error regarding the amount of the
28 administrator’s costs.

² The initial cost of administration was \$7,250 as delineated in the Settlement Agreement. However, due to a lower
number of Class Members than originally estimated, the administrator’s costs were reduced to \$5,275.00.

1 This motion is based upon this Notice of Motion and Motion; the Memorandum of Points
2 and Authorities in Support thereof; the declarations of Kevin Lipeles, Esq. and Ben Dinh in
3 Support thereof; the Settlement Agreement; the proposed Order; the other records, pleadings, and
4 papers filed in this action; and upon such other documentary and verbal evidence or argument as
5 may be presented to the Court at the hearing of this motion.
6

7 Dated: April 10, 2026

Respectfully submitted,

8 LIPELES LAW GROUP, APC

9
10
11 By: 

Kevin Lipeles, Esq.

Thomas Schelly, Esq.

Jasmine Badawi, Esq.

Attorneys for Plaintiff and the Settlement Class
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1 **I. INTRODUCTION**

2 Plaintiff Ben Dinh (“Plaintiff”), on behalf of himself and the putative Settlement Class³
3 requests that this Court preliminarily approve the parties’ proposed Settlement Agreement,⁴
4 entered into by Plaintiff and Ampex Data Systems Corporation, (“Defendant” or “AMPEX”) in
5 September 2025. Defendant does not oppose Plaintiff’s instant Motion.⁵ The proposed
6 Settlement Agreement satisfies all of the criteria for preliminary settlement approval under
7 California Code of Civil Procedure §382, and falls well within the range of reasonableness.
8 Accordingly, Plaintiff requests that the Court grant preliminary approval of the proposed
9 Settlement, approve the proposed notice plan, and schedule a final approval hearing, all of which
10 is described in detail below.

11 The Settlement Agreement seeks to fully release and discharge Defendant from the claims
12 brought against it in the above-captioned matter (the “Lawsuit”⁶) and all related penalties. In
13 exchange, Defendant will pay the Settlement Class up to \$210,000.00 (“Maximum Settlement
14 Amount”) with no reversion to Defendant.

15 The Settlement Agreement and Notice distribution plan were the products of non-
16 collusive, arm’s-length negotiations by informed counsel and parties. The settlement is fair,
17 reasonable and adequate to all. Accordingly, Plaintiff seeks: (1) preliminary approval of the
18 Settlement Agreement; (2) provisional certification of the Settlement Class; (3) appointment of
19

20 ³ The proposed Settlement Class is defined as: all current and former non-exempt employees employed by Defendant in
21 California at its California facilities at any time from July 25, 2020 through the date of preliminary approval of the
22 Settlement.

23 ⁴ The Settlement Agreement is attached as Exhibit A to the Declaration of Kevin Lipeles (“Lipeles Decl.” filed
24 herewith). The proposed Class Notice is attached as Exhibit 1 to the Settlement Agreement.

25 ⁵ AMPEX vigorously denies liability or wrongdoing with respect to its wage and hour policies and practices. AMPEX
26 reserves its right to assert any and all defenses to the claims asserted by Plaintiff and the putative class. Further,
27 AMPEX joins in this motion to preliminarily approve of the settlement of a lawsuit that was filed as a class action, but
28 specifically denies that a settlement was necessary as a result of any action or inaction by AMPEX. AMPEX agrees to
29 resolve the claims asserted by Plaintiff on a class basis to avoid incurring additional substantial costs beyond those
30 which have already been incurred as well as the delay and risks that would be presented by further prosecution of the
31 litigation. The proposed settlement includes a non-admissions clause and AMPEX has at all times maintained that its
32 wage and hour policies and practices are fully lawful. Hence, AMPEX does not join in the substance of the
33 representations made by Plaintiff in this motion and specifically denies the negative characterizations of AMPEX's
34 conduct as well as Plaintiff’s interpretation of certain legal authorities. AMPEX, therefore, also reserves its right to
35 clarify any aspect of the motion that it believes needs to be addressed.

36 ⁶ All capitalized terms have the same meaning as in the Settlement Agreement.

1 Plaintiff as Class Representative; (4) appointment of Kevin Lipeles, Esq., Thomas Schelly, Esq.
2 and Jasmine Badawi, Esq. as Class Counsel; (5) approval of the Parties' proposed form and
3 method of notifying Class Members of the Settlement Agreement; (6) an order scheduling the
4 hearing date for Final Approval of the Class Settlement; and (7) entry of a preliminary approval
5 Order.

6 **II. FACTUAL SUMMARY**

7 **A. Claims**

8 Plaintiff alleges claims for failing to pay daily overtime in excess of eight hours per work
9 day, minimum wages and failing to authorize and permit meal/rest breaks. These extensive alleged
10 Labor Code violations also resulted in AMPEX issuing inaccurate itemized wage statements to
11 Class Members and failing to pay wages due upon termination of employment to Class Members
12 who are former employees. Additionally, Plaintiff also alleged that Defendant failed to allow
13 inspection of employment records.

14 Plaintiff contends that the foregoing violated Cal. Bus. & Prof. Code §17200, *et seq.*
15 Plaintiff also alleged that Defendant was liable for PAGA penalties pursuant to California Labor
16 Code §2699.

17 Defendant vigorously denies each of Plaintiff's allegations, and contends that they
18 maintained compliant wage and hour practices and policies.

19 **B. Procedural History**

20 On July 24, 2024, Plaintiff submitted a letter to the LWDA alleging that Defendant
21 subjected him and other current and former hourly-paid or non-exempt employees of Defendant
22 within the State of California to certain violations under California Labor Code sections 201, 202,
23 203, 204, 226, 226(a), 226.7, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 17200, and IWC
24 Wage Orders including *inter alia*, IWC Wage Order No. 1.

25 On July 25, 2024, Plaintiff Ben Dinh filed his Original Class Action Complaint in the
26 Superior Court of California, Alameda County, on behalf of himself and others similarly situated
27 for certain present and former employees of Defendant AMPEX for: (1) failure to pay overtime
28 (Cal. Labor Code §§200, 510, 1194, 1198, *et seq.*); (2) failure to pay minimum wages due to
rounding (Cal. Labor Code §§ 1194, 1197, 1197.1, 1198, 1199); (3) failure to pay for meal periods
not provided (Cal. Labor Code §226.7); (4) failure to maintain records and provide accurate

1 itemized wage statements (Cal. Labor Code §§ 226); (5) failure to pay wages on termination and/or
2 resignation (Cal. Labor Code §§ 201-203); (6) failure to allow inspection of employment records
3 (Cal. Labor Code § 1198.5); and (7) unfair/unlawful business practices (Cal. Bus. and Prof. Code
4 §§ 17200 et seq.)

5 On October 7, 2024, Plaintiff filed his First Amended Class Action Complaint in the
6 Alameda Superior Court, adding a claim pursuant to the Private Attorney General Act of 2004, Cal.
7 Lab. Code §§2699, *et seq.*

8 On February 9, 2026, Plaintiff filed his Second Amended Complaint (“SAC”) in the
9 Alameda Superior Court, adding a claim for failure to provide rest breaks pursuant to Cal. Labor
10 Code §226.7.⁷ The SAC is the Operative Complaint.

11 **C. Marshalling of Evidence**

12 Through informal discovery, Plaintiff’s counsel has diligently pursued an investigation of
13 the putative Class Members’ claims, including: (1) extensive review and analysis of relevant
14 documents, including, but not limited to, documents demonstrating Defendant’s overtime,
15 minimum wage, meal break, policies and procedures; (2) detailed examination and analysis of
16 anonymized employee electronic time punch records and payroll records for the full Class; (3)
17 review of relevant data regarding the size of the putative class; (4) detailed examination of data
18 related to Defendant’s PAGA exposure; and (5) research with respect to the applicable law and the
19 potential defenses thereto. Lipeles Decl., ¶ 9.

20 **1. Documents**

21 The parties engaged in informal discovery in preparation for a private mediation. Lipeles
22 Decl., ¶ 8. Defendant provided information concerning the total number of Class Members (40),
23 anonymized employee electronic time punch records and payroll records and the applicable
24 policies and practices concerning the alleged wage and hour violations, among other documents. *Id.*
25 Plaintiff contends that Defendant’s internal documents and computerized records showed that
26 Defendant did not pay overtime, minimum wages and did not afford putative class members meal
27 breaks. Lipeles Decl. ¶ 11.
28

⁷ Plaintiff did not calculate damages based on the rest break claim in advance of mediation since Defendant requested that Plaintiff add that claim following mediation so that it would be included as part of the Released Claims.

1 **2. Data and Damages Model**

2 As part of informal discovery prior to mediation, AMPEX culled its documents relating to
3 its wage and hour policies and practices. To estimate the class-wide damages associated with
4 Plaintiff's and the Class's claims, Plaintiff's counsel examined and analyzed the above-described
5 voluminous documents. Lipeles Decl., ¶ 9.

6 From the data received from Defendant, Plaintiff constructed a damages model based on
7 AMPEX's exposure. Lipeles Decl., ¶ 15.

8 **a. Overtime Claim**

9 Defendant's data revealed that its non-exempt, hourly employees' average number of
10 overtime minutes was approximately 5 minutes of off the clock work per shift. The average wage
11 rate for all employees during the Class Period was \$33.94 per hour. The total number of unpaid off
12 the clock time in the four-year statutory period is 58 regular hours and 1.334 overtime hours. Thus,
13 based on the data for the full class, the total amount of overtime wages owed, excluding interest
14 and penalties, equaled \$69,882.46 as of June 16, 2025, calculated as follows: 58 hours * \$33.94 +
15 1,334 * \$33.94 * 1.5 = \$69,882.46. Lipeles Decl., ¶ 15A.

16 **b. Minimum Wage Claim**

17 Defendant's data revealed that its non-exempt hourly employees' average number of
18 minimum wage violations was approximately 5 minutes per shift. The following minimum wage
19 rates were used for calculating damages amounts:

20

2020	\$12.00 per hour
2021	\$13.00 per hour
2022	\$14.00 per hour
2023	\$15.50 per hour
2024	\$16.00 per hour
2025	\$16.50 per hour

21 The damages calculations on the minimum wage claim are as follows:

22 2020 - 1,112 shifts * \$12 * 5/608 = \$1,112

23 ⁸ Representing 5 minutes out of 60 minutes.

2021 - 2,394 shifts * \$13 * 5/60 = \$2,593.5

2022 - 3,116 shifts * \$14 * 5/60 = \$3,635.3

2023 - 3,977 shifts * \$15.5 * 5/60 = \$5,136.96

2024 - 4,906 shifts * \$16 * 5/60 = \$6,541.3

2025 - 1,189 shifts * \$16.5 * 5/60 = \$1,634.9

Total Damages for Minimum Wages Violations based on the data, excluding interest and penalties, was: \$20,654.00 Lipeles Decl., ¶ 15B.

c. Meal Break Claim

Regarding meal break violations (missed, shortened and/or late), Plaintiff calculated violations based on the actual violation rate. There were 14,792 meal-eligible shifts in the four-year statutory period (shifts over 5 hours). According to Plaintiff's damages model, Defendant's exposure for non-complaint meal periods, excluding interest based on the data for the full class was \$49,077.00 (1,446 * \$33.94), which assumes about a 10% violation rate. The total damages, excluding interest and penalties, are \$47,382 calculated as follows: \$49,077 - \$1,695 (meal period premiums paid) = \$47,382.

Defendant contended that it has a valid meal break policy and that it authorized and permitted meal breaks. Lipeles Decl., ¶ 15C.

d. Failure to Provide Accurate Wage Statements Claim

Concerning the wage statement claim,⁹ the putative class was comprised of approximately 35 current employees during the one-year statutory period. There were 24 pay periods per year. Defendant maintained that it provided accurate wage statements to its employees. The value of Plaintiff's wage statement claim was \$82,250, calculated as follows: Current employees (35, at the time of mediation) * \$2,350 (\$50.00 (initial violation) + \$100 (subsequent violations)) = \$82,250.00. Lipeles Decl., ¶ 15D.

⁹ Labor Code §226(e) provides that an employee is entitled to recover \$50 for the initial pay period in which a violation of Labor Code §226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally fails to provide accurate itemized statements to the employee causing the employee to suffer injury. The wage statement violation claim is derivative of Plaintiff's other claims and depends on the actual number of violations found to exist.

1 **e. Failure to Pay Wages on Termination Claim**

2 Concerning waiting time penalties, the putative class is comprised of approximately 17
3 former employees during the four-year period. Defendant contended that it paid its employees all
4 wages due on termination. However, Plaintiff asserted that employees were not paid all wages due
5 on termination. Plaintiff assumed 30 days per employee at 8.02 hours per day, \$33.94 average rate
6 of pay and 17 former employees each year are in the Section 203 subclass. The potential value of
7 the waiting time penalty claim¹⁰ for the Class Members who are former employees of Defendant
8 is \$138,821.39, calculated as follows: 17 employees * 8.02 hours per day * \$33.94 * 30 days =
9 \$138,821.39. Lipeles Decl., ¶ 15E.

10 **f. Damages Model**

11 The Damages Model manifested the following conclusions concerning Defendant's
12 exposure, excluding interest:
13

14

<u>ALLEGATION</u>	<u>LIABILITY RISK</u>
Overtime Claim	\$69,882.46
Minimum Wage Claim	\$20,654.00
Meal/Rest Break Claims ¹¹	\$47,382.00
Failure to Issue Accurate Itemized Wage Statement Claim	\$82,250.00
Failure to Pay Wages on Termination Claim	\$138,821.39. However, for the reasons stated in section IV.A.1. (iii) <i>infra</i> , the value of this claim is discounted by 65% leading to potential realistic exposure of \$48,587.49.
Total, excluding interest	\$268,755.95

25

26 Lipeles Decl., ¶ 15F.

27 The following chart shows the amount of PAGA penalties on the overtime wage claim only

28 ¹⁰ Under Labor Code 203(a), Plaintiff and the Class are entitled to one day's wages for each day he or she was not timely paid, not to exceed 30 days' wages.

¹¹ Damages relating to rest breaks are subsumed within the damages for meal breaks since at the time of mediation the Parties agreed to file a Second Amended Complaint adding a claim for rest breaks and to release the rest break claims as part of the settlement.

1 since based on Labor Code 2699(h)(3)(i) PAGA penalties cannot be stacked:

2	Number of Pay Periods in PAGA Period	983	
3	Number of Pay Periods in PAGA Period – Failure to	983	
4	Pay Overtime		
4	PAGA for Overtime	\$98,300	\$100/\$100
5	Total PAGA penalties	\$98,300.00	

6
7 Since PAGA penalties cannot be stacked the maximum recoverable PAGA penalties is \$98,300.00.
8 Lipeles Decl., ¶15F.

9 **D. Settlement Negotiations**

10 On June 16, 2025, the parties virtually attended via Zoom an all-day mediation with
11 mediator Mark LeHockey, Esq. Lipeles Decl., ¶ 17. Kevin Lipeles, Esq., and Jasmine Badawi,
12 Esq. of Lipeles Law Group, APC, attended on behalf of Plaintiff. Plaintiff also attended the
13 mediation remotely. Attorneys Jared W. Speier, Esq. and Lindsay L. Bowden, Esq. of Stradling
14 Yocca Carlson & Rauth LLP, attended on behalf of Defendant. *Id.*

15 After a full day of negotiations, the Parties agreed to settle for \$210,000.00 with no claims
16 process and **no reversion** to Defendant of any settlement monies remaining after all Settlement
17 Class Members are paid.¹² Lipeles Decl., ¶¶ 19-20; Exhibit A thereto (the Parties' Settlement
18 Agreement), ¶¶12, 49.

19 **E. Summary of Settlement Terms**

20 Under the terms of the Settlement Agreement, Defendant is discharged of all claims
21 asserted in the Lawsuit ("Released Claims")¹³ in exchange for paying the Maximum Settlement
22 Amount of \$210,000.00.¹⁴ The following amounts will be subtracted, subject to court approval:
23 Plaintiff's Class Representative Service Award of up to \$5,000, Class Counsel Fees up to
24 \$73,500.00, Class Counsel Costs in an amount up to \$16,500, PAGA Payment in the amount of
25 \$30,000 (allocated 35% to the PAGA-Eligible Employees in the amount of \$10,500 and 65% to
26 the LWDA in the amount of \$19,500) and the Settlement Administration Costs up to \$7,250.00.
27 The employer's portion of the payroll taxes attributed to the wage portion of Individual Class
28

¹² The Parties continued to negotiate until their finalized Settlement Agreement was fully executed in September 2025.
Lipeles Decl., ¶ 20.

¹³ Settlement Agreement, ¶21.

¹⁴ Settlement Agreement, ¶ 2.X.

1 Payments to Class Members will be paid by Defendant outside of and in addition to the Maximum
2 Settlement Amount.¹⁵ The Net Settlement Amount (“NSA”) is the remainder, *i.e.*, approximately
3 \$79,725, which shall be available for distribution to Class Members in its entirety.¹⁶

4 The average Estimated Amount per class member is \$1993.13.¹⁷ Settlement Class
5 Members are not required to submit a claim form in order to receive an Individual Class
6 Payment.¹⁸

7 The Settlement Administrator, using the Class Data, will calculate each Participating Class
8 Member’s Individual Class Payment by determining the total number of Compensable Workweeks
9 worked by all Participating Class Members during the Class Period, dividing that number into the
10 Net Settlement Amount to determine the per-workweek value of each Compensable Workweek, and
11 then multiplying that sum by the number of Compensable Workweeks worked by each Participating
12 Class Member during the Class Period.¹⁹

13 Because PAGA-Eligible Employees cannot opt out of the PAGA claims, each PAGA-
14 Eligible Employee, whether or not a Participating Class Member, shall also receive his or her
15 Individual PAGA Payment calculated by dividing the 35% portion of the PAGA Payment to be
16 distributed to those individuals, *i.e.* Ten Thousand Five Hundred Dollars (\$10,500.00), by the total
17 number of Compensable Workweeks worked by all of the PAGA-Eligible Employees during the
18 PAGA Period to derive the per-workweek value of the Individual PAGA Payments, and then
19 multiplying that sum by the number of Compensable Workweeks worked by each such employee
20 during the PAGA Period.²⁰

21
22 For tax purposes, Individual Class Payments shall be allocated and treated as follows: ten
23 percent (10%) of each Individual Class Payment will be allocated to settlement of wage claims and
24 subject to withholdings and taxes, ninety percent (90%) will be allocated to penalties and interest,
25 and not subject to withholding. Each Individual PAGA Payment shall be treated as 100%

26
27
28 ¹⁵ Settlement Agreement, ¶ 2.X.

¹⁶ Settlement Agreement, ¶ 2.Y.

¹⁷ \$79,725 (NSA)/40 (putative class members) = \$1,993.13. (average award per class member).

¹⁸ Settlement Agreement, ¶ 49.

¹⁹ Settlement Agreement, ¶ 17.

²⁰ Settlement Agreement, ¶ 18.

1 penalties.²¹

2 Individual Class Payment checks issued to Participating Class Members and PAGA-
3 Eligible Employees shall remain valid and negotiable for one hundred and eighty (180) calendar
4 days from the date of issuance. In the event an Individual Class Payment check has not been cashed
5 within one hundred and eighty (180) days, all such checks shall be cancelled and funds associated
6 with such cancelled checks, shall be transmitted to the California Controller's Unclaimed Property
7 Fund in the name of the Class Member, pursuant to California Code of Civil Procedure section
8 384.²²

9 **F. Administration of Notice, Objections, and Claims**

10 The actual costs of administration, estimated at up to \$5,275.00, will be deducted from the
11 Settlement Amount (Settlement Agreement ¶ 15).²³ The Parties have agreed that Phoenix Class
12 Action Administration Solutions (“Phoenix”) shall serve as the Settlement Administrator. Within
13 thirty (30) calendar days after the entry of the Preliminary Approval Order, AMPEX will provide
14 the Settlement Administrator with the Class Data. Within twenty (20) calendar days after receiving
15 the Class Data from Ampex, Phoenix will mail all Class Members the Class Notice. The Class
16 Notice (Exhibit 1 to the Settlement Agreement) shall contain, *inter alia*, the employee ending dates
17 of employment, the number of Compensable Workweeks or pay periods during the Class
18 Period/PAGA Period, and the estimated amount of his or her Individual Class Payment if he or she
19 does not request to be excluded from the Settlement. The Settlement Administrator shall use the
20 Class Data to determine the dates of employment, calculate the number of Compensable
21 Workweeks and calculate the estimated Individual Class Payment for each Settlement Class
22 Member.

23 Settlement Class Members will not be required to submit a claim form and shall
24 automatically receive an Individual Class Payment unless they submit a valid Request for
25 Exclusion.²⁴ Plaintiff negotiated this term to eliminate any potential fear of retaliation from Class
26
27

28 ²¹ Settlement Agreement, ¶ 19.

²² Settlement Agreement, ¶ 50.

²³ The initial cost of administration was \$7,250 as delineated in the Settlement Agreement. However, due to a lower number of Class Members than originally estimated, the administrator’s costs were reduced to \$5,275.00.

²⁴ Settlement Agreement, ¶ 49.

1 Members, for participating in the settlement.²⁵ The proposed Class Notice is attached to the
2 Settlement Agreement as Exhibit 1.

3 The Class Notice informs each Settlement Class Member of his or her right to object to the
4 settlement. Settlement Class Members who wish to object to the Settlement must object in writing,
5 and submit to the Administrator a written statement of the grounds of objection, signed by the
6 objecting Class Member or his or her attorney, along with all supporting papers, no later than forty-
7 five (45) calendar days after the initial mailing of the Class Notice.²⁶

8 **G. Procedure for Requesting Exclusion or Opting Out of Settlement**

9 Class Members who wish to exclude themselves from the Settlement Agreement must sign
10 and mail a written Request for Exclusion opting out of the Settlement Class postmarked no later
11 than forty-five (45) calendar days after the Class Notice is first mailed out²⁷ (Settlement Agreement
12 ¶ 36). All Class Members who do not submit a valid Request for Exclusion shall be bound by all
13 the terms of the Settlement Agreement and any Final Judgment entered by the Court if the Court
14 grants final approval of the settlement.

15 **H. Mailing of Individual Class Payments**

16 Settlement Class Members will automatically receive an Individual Class Payment unless
17 they submit a valid Request for Exclusion. Within thirty (30) calendar days after the Settlement
18 becomes Final, Defendant will wire the amounts necessary to fund the Maximum Settlement
19 Amount plus Defendant's share of employer-side payroll taxes into a QSF established by the
20 Settlement Administrator.²⁸ Distribution to Settlement Class Members shall be within fifteen (15)
21 calendar days of the Settlement Administrator's receipt of Defendant's payment.²⁹ The Settlement
22 Administrator will pay attorneys' fees and costs to Class Counsel within fifteen (15) calendar days
23 of the Settlement Administrator's receipt of Defendant's payment.³⁰ Additionally, within fifteen
24

25 ²⁵ Neither Plaintiff nor his counsel believe that Defendant will retaliate against Class Members for participating in the
26 lawsuit. However, Plaintiff's counsel has found the fear of retaliation to be a common, albeit often unfounded, fear
among Class Members in virtually every case.

27 ²⁶ Settlement Agreement, ¶ 35.

28 ²⁷ However, those Settlement Class Members who receive a re-mailed Class Notice shall have their response period
extended seven (7) calendar days from the original response period. Settlement Agreement, ¶ 2 LL.

²⁸ Settlement Agreement, ¶¶ 30, 46.

²⁹ Settlement Agreement, ¶ 47.

³⁰ Settlement Agreement, ¶ 47. Additionally, any portion of the Class Counsel Fees and Class Counsel Costs not
awarded to Plaintiff's Counsel will be available for distribution to Settlement Class Members as part of the NSA.
Settlement Agreement, ¶ 13.

1 (15) calendar days of the Settlement Administrator's receipt of Defendant's payment, the
2 Settlement Administrator will pay the Class Representative Service Award to the Named
3 Plaintiff.³¹

4 III. CLASS ACTION SETTLEMENT APPROVAL PROCEDURE

5 Any settlement of class litigation must be reviewed and approved by the presiding court,
6 Cal. R. Ct. 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial
7 court; and (2) a subsequent (final) review after the notice has been distributed to the Class
8 Members for their comments and/or objections. The Preliminary Approval Hearing and Final
9 Approval Hearing coincide with these two required steps. The present motion seeks preliminary
10 approval and the setting of a Final Approval Hearing.

11 The first step, preliminary approval, proceeds as follows:

12 When the parties to an action reach a monetary settlement, they will usually
13 prepare and execute a joint stipulation of settlement, which is submitted to the
14 court for preliminary approval. The stipulation should set forth the central terms
15 of the agreement, including but not limited to, the amount of the settlement, form
16 of payment, manner of determining the effective date of settlement and any recapture
clause.

17 Rubinstein, Conte & Newberg, *Newberg on Class Actions*, §§ 11.24-11.26 (4th Ed. 2002)
18 ("Newberg").

19 California courts favor settlement. *Stambaugh v. Superior Court (Pacific Gas and Electric*
20 *Company)*, 62 Cal. App. 3d 231, 236 (1976). Courts have broad powers to determine whether a
21 proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court (County*
22 *of Marin)*, 89 Cal. App. 3d 434, 438 (1979).

23 Here, the Parties have executed and hereby submit the Settlement Agreement, which sets
24 forth all material terms. "Where the settlement terms are fair and reasonable, the settlement is
25 presumptively valid, subject only to objections that may be raised at a final hearing." *Newberg*, §
26 11.26. California courts have certified classes in cases similar to the present Class in which
27 Plaintiff's Counsel was appointed Class Counsel.³²

28

³¹ Settlement Agreement, ¶ 47. Additionally, any portion of the Class Representative Service Award not awarded to the
Class Representative will be available for distribution to Settlement Class Members as part of the NSA. Settlement
Agreement, ¶ 14.

³² See Lipeles Decl., ¶ 36.

1 The schedule setting forth a proposed sequence for the relevant dates and deadlines is
2 outlined in the Proposed Order filed herewith. Having appropriately presented the materials and
3 information necessary for preliminary approval, the parties request that the Final Approval Hearing
4 be conducted as soon as the Court's calendar may accommodate.

6 IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

7 The law favors settlement, particularly in class actions and other complex cases where
8 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
9 *See Newberg* § 11:41 (and cases cited therein); *Class Plaintiff v. City of Seattle*, 955 F.2d 1268,
10 1276 (1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also Potter v.*
11 *Pac. Coast Lumber Co.*, 37 Cal. 2d 592, 602 (1951). In evaluating class action settlements, the
12 court has broad powers to determine whether a proposed settlement is fair under the circumstances
13 of the case. *Wershba v. Apple Computers, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *Mallick v.*
14 *Superior Court (County of Marin)*, 89 Cal. App. 3d 434, 438 (1979). The purpose of the
15 preliminary evaluation of class action settlements is to determine only whether the proposed
16 settlement is within the range of possible approval, also described as the "range of reasonableness,"
17 and thus whether notice to the class of the settlement's terms and conditions and the scheduling of
18 a formal fairness hearing are worthwhile. *See Wershba*, 91 Cal. App. 4th at 234-235; *North County*
19 *Contractor's Ass'n, Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-1090 (1994); *In re*
20 *Traffic Exec Ass'n*, 627 F.2d 631, 633-634 (2nd Cir. 1980); *Newberg*, § 11:25-26.

21 The *Manual for Complex Litigation*, Fourth (Fed. Judicial Center 2004 ("Manual")),
22 § 21.632 characterizes the preliminary approval stage as an "initial evaluation" of the fairness of
23 the proposed settlement made by the court on the basis of written submissions and informal
24 presentation from the settling parties. To make a fairness determination, courts must consider
25 several factors, including "the strength of the Plaintiff's case, the risk, expense and complexity and
26 likely duration of further litigation, the risk of maintaining class action status through trial, the
27 amount offered in settlement, the extent of the discovery completed and the stage of the
28 proceedings, [and] the experience and views of counsel. ..." *Dunk v. Ford Motor Co.*, 48 Cal. App.
4th 1794, 1801 (1996) "The list of factors is not exclusive and the court is free to engage in a
balancing and weighing of factors depending on the circumstances of each case." *See Wershba*, 91

1 Cal. App. 4th at 245.

2 Furthermore, courts must give “proper deference to the private consensual agreement of the
3 parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement
4 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a
5 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
6 between, the negotiating parties, and that the settlement, taken as a whole, is fair reasonable and
7 adequate to all concerned.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1027 (9th Cir. 1998) (internal
8 quotes and citation omitted). Once the judge is satisfied with the results of the initial inquiry into
9 the fairness, reasonableness, and adequacy of the settlement, the court should direct that the Class
10 Members be given notice of a formal fairness hearing, at which arguments and evidence may be
11 presented in support of, and in opposition to, the settlement. *See Manual*, § 21.633.

12 **A. The Proposed Settlement Is Fair to the Class**

13 The terms of the settlement recognize the strength of the case. The proposed settlement is
14 reasonable, in light of the strength of Plaintiff’s case and the risks of litigation. *Clark v. American*
15 *Residential Services, LLC*, (2009), 175 Cal. App. 4th 785, 799. Under *Clark* “the trial court is
16 obliged, at a minimum, to determine whether a legitimate controversy exists on a legal point, if that
17 legal point significantly affects the valuation of the case for settlement purposes.” *Id.* at 803.
18 However, the trial court is not required to reach any ultimate legal or factual conclusions. *Id.* A
19 settlement is not judged against what might have been recovered had a plaintiff prevailed at trial,
20 nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.
21 *Wershba*, 91 Cal. App. 4th at 224 (holding that “[c]ompromise is inherent and necessary in the
22 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
23 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement
24 because the public interest may indeed be served by a voluntary settlement in which each side gives
25 ground in the interest of avoiding litigation”). Settlement agreements are realistically assessed.
26 *Stambaugh*, 62 Cal. App. 3d at 236; *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989) (“The
27 fact that a plaintiff might have received more if the case had been fully litigated is no reason not to
28 approve the settlement.”).

The Settlement Agreement in this case confers a substantial benefit on the Settlement Class.
Pursuant to the terms of the Settlement Agreement, Defendant will pay \$210,000 in exchange for a

1 full discharge of Plaintiff's and Settlement Class Members' Released Claims.³³ Once all the
2 adequate deductions have been made from the Settlement Amount, the amount available for
3 distribution to Plaintiff and the Settlement Class is approximately \$79,725.00.

4 Plaintiff has evaluated the strengths of the class claims, and assessed the range of potential
5 outcomes of the litigation. In addition to disputing the merits of Plaintiff's claims, Defendant
6 would strongly challenge any request for class certification. Plaintiff believed that this case was
7 suitable for class certification. However, Plaintiff also realized that there is always a significant
8 risk associated with class certification proceedings. In light of the uncertainties of protracted
9 litigation, the Settlement Amount reflects an excellent recovery for the Class Members. Lipeles
10 Decl., ¶ 24.

11 **1. Plaintiff Faced Significant Risk**

12 Pursuit of the Action through trial would impose significant risks on the outcome of
13 Plaintiff's claims. Plaintiff estimates that the likelihood of proving all his underlying claims is low and
14 thus his likelihood of recovering the potential undiscounted amount or anything close to that amount is
15 very unlikely. With respect to the claims asserted on behalf of the Class in this case, there are
16 significant risks that support the reduced compromise amount. These risks include, but are not limited
17 to the following:

18 (i) The risk that Plaintiff would be unable to establish liability for allegedly unpaid
19 minimum and overtime wages. *See Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal.4th 1, 39 & fn. 33 (2014)
20 ("*Duran*"), citing *Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014) (dismissing
21 certified off-the-clock claims based on proof at trial). Defendant contends that it is its policy and
22 practice to pay all wages for all time worked and that employees were not allowed to engage in
23 off the clock work. Further, Defendant maintains that it instructed employees to record all time
24 worked. Thus, not getting certified was a risk which Plaintiff considered during the negotiations.

25 (ii) The risk that Plaintiff would not be able to prove liability for alleged failure to provide
26 compliant meal periods and rest breaks; or that to establish liability for the failure to provide compliant
27 meal periods and rest breaks would require an individualized inquiry that would present trial
28 manageability issues and perhaps lead to inconsistent testimony. Defendant adamantly contends that

³³ Settlement Agreement, ¶ 21.

1 it implemented a policy for when nonexempt employees were to take meal/rest breaks. Defendant
2 maintains that it provided its non-exempt employees with legally-compliant meal/rest periods.
3 Defendant argued that it has no obligation to ensure that meal/rest breaks are taken. Further,
4 Defendant maintained that individual issues predominate. Defendant argued that courts routinely
5 decline to certify meal/rest break classes. *See, e.g., Wilson v. TE Connectivity Networks, Inc.*,
6 2017 WL 1758048, *7 (N.D. Cal. Feb. 9, 2017 (denying certification of break classes and noting
7 “courts consistently [find that] individualized issues predominate in meal and rest break claims”).
8 Thus, there was a high risk that the Court would deny certification of the meal/rest break claims.

9 (iii) Plaintiff must establish willfulness with respect to his waiting time penalties claim under
10 Labor Code Section 203 as well as a knowing and intentional violation under Labor Code Section 226
11 for wage statement penalties. It should be noted that there is currently a split of authority as to whether
12 such penalties can be obtained. *See e.g., Singletary v. Teavana Corporation*, 2014 WL 1760884, *4
13 (N.D. Cal. 2014) (noting that “the law in this area is murky at best” and holding that section 203 penalties
14 are not applicable to meal and rest break claims). Plaintiff might not prevail in showing that Defendant
15 acted with the requisite intent necessary for the alleged claims for penalties under Labor Code sections
16 203 and 226. Specifically, section 203 requires that a plaintiff show the employer committed a “willful”
17 violation of the law in withholding wages. “A good faith dispute that any wages are due will preclude
18 imposition of waiting time penalties under Section 203.” 8 Cal. Code Regs. § 13520. Similarly,
19 penalties pursuant to section 226 require a “knowing and intentional” violation. Defendant contends
20 that it would present several good faith defenses that would preclude a finding of willfulness under
21 section 203. Since penalties relating section 203 represent the lion’s share of the estimated potential
22 exposure in this Action, \$138,821.39, Plaintiff believes that claim should be discounted by 65%,
23 resulting a realistic value of \$90,233.90.

25 (iv) The risk that any civil penalties award under PAGA could be reduced by the Court in its
26 discretion, which would materially impact the recovery by the PAGA-Eligible Employees. *See Labor*
27 *Code section 2699(e)(1).*

28 (v) The risk that lengthy appellate litigation could ensue, with associated litigation risk and
costs, further enhances the value of a confirmed settlement as opposed to unpredictable litigation.

1 (vi) Although the PAGA penalties recoverable amounts to \$98,300, that amount is not likely
2 to bear fruit in this case. Most significantly, the ultimate decision as to the amount of penalties is
3 always up to the discretion of the Court. Labor Code § 2699(e)(2) states: “In any action by an
4 aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court
5 may award a lesser amount than the maximum civil penalty amount specified by this part if, based on
6 the facts and circumstances of the particular case, to do otherwise would result in an award that is
7 unjust, arbitrary and oppressive, or confiscatory.” Subdivision (a) states, “Notwithstanding any other
8 provision of law, any provision of this code that provides for a civil penalty to be assessed and collected
9 by the Labor and Workforce Development Agency or any of its departments, divisions, commissions,
10 boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
11 a civil action brought by an aggrieved employee on behalf of himself or herself and other current or
12 former employees pursuant to the procedures specified in Section 2699.3.” Subdivision (f) specifies the
13 penalties in instances where the underlying statute does not specify any civil penalty. In other words,
14 where the facts and circumstances of the particular case demonstrate that an unreduced award would be
15 “unjust, arbitrary and oppressive, or confiscatory,” the court may reduce the award so as to ameliorate
16 any such finding.

17 (vii) Moreover, Plaintiff faced the risk of a potentially prolonged and expensive trial.

18 Each of these factors bore heavily on the negotiations leading to the settlement. In view of these
19 risks, the settlement reflects a fair, adequate, and reasonable compromise amount for these claims and
20 warrants approval. Indeed, while the risks listed herein are far from exhaustive, they show that the
21 settlement is fair, adequate, and reasonable in view of them. Lipeles Decl., ¶ 22.

22 Where, as here, the settlement affords the Class Members prompt, substantial relief, while
23 avoiding legal and factual hurdles that otherwise may have prevented the Class from obtaining any
24 recovery at all, or at least after a very significant delay, the reasonableness of the settlement is
25 clear. Because the Settlement Agreement provides immediate and substantial relief, without the
26 attendant risks and delay of continued litigation, it warrants the Court’s preliminary approval.

27 **B. The Proposed Settlement Is the Result of Arm’s-Length Negotiation**

28 Plaintiff’s counsel conducted an extensive investigation, including reviewing voluminous
documentary evidence and obtaining employee sworn statements. The Parties negotiated in good

1 faith and at arm's-length on several occasions over many months before reaching an agreement.
2 Thus, Class Counsel negotiated the proposed Settlement with ample knowledge of the strengths
3 and weaknesses of this case, the amounts necessary to compensate Settlement Class Members for
4 their damages, and the benefits of the proposed Settlement under the circumstances of this case. In
5 addition, Class Counsel and Defense Counsel, are experienced class action litigation and
6 employment attorneys, and have used their experience and expertise in fashioning a proposed
7 Settlement that is acceptable to both parties. *See* Lipeles Decl., ¶¶ 36-37.

8 The settlement terms also indicate that the Settlement is fair to the Class. Defendant has
9 legal and factual grounds for defending this action. Among other things, Defendant denies the
10 allegations asserted in the Lawsuit and continues to assert defenses to such claims. Defendant
11 further contends that at all relevant times it had valid wage and hour policies and that they properly
12 paid Plaintiff and Class Members. Notwithstanding these arguments, the Settlement commits
13 Defendant to pay a total of \$210,000.00, of which approximately \$77,750.00 will go to compensate
14 the Settlement Class Members for their damages, which Class Counsel believes is a fair and
15 adequate amount given the litigation risks and delays inherent in further litigation and appeals. *See*
16 Lipeles Decl., ¶¶ 25-27.

17 Accordingly, preliminary approval of the Settlement is appropriate, and Plaintiff requests
18 that the Court order that Class Notice be disseminated to the Class, and that a final approval
19 hearing be scheduled.

20
21 **C. Provisional Certification of the Settlement Class Under the Lesser Standard**
22 **of Scrutiny for Settlement-Only Certification Is Appropriate**

23 “[P]re-certification settlements are routinely approved if found to be fair and reasonable.”
24 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App 4th 224, 240; *accord Dunk, supra*, 48 Cal.
25 App. 4th at 1803 (although the settlement was reached before any “adversary certification,” the
26 court was satisfied that it was “fair, adequate and reasonable.”); *see also, In re Baldwin-United*
27 *Corp.* 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts have employed this practice in the name
28 of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”).

The strength of the findings made by a judge at a preliminary hearing or
conference concerning a tentative settlement proposal . . . may be set out in
conditional orders granting tentative approval to the various items submitted to

1 the court. Three basic rulings are often conditionally entered at this preliminary
2 hearing. These conditional rulings may approve a temporary settlement class,
3 the proposed settlement, and the class counsel's application for fees and
4 expenses.

4 *Newberg on Class Actions*, at §11.26.

5 The standard for class certification in the settlement context is a significantly lower
6 threshold than in a contested proceeding or a trial context:

7 The two basic purposes for the Rule 23 certification requirements, as they
8 relate to questions of a nationwide class are: (1) to keep the lawsuit
9 manageable for trial; and (2) to protect the interests of the nonrepresentative
10 members. The first purpose is inapposite in the settlement context, and the
11 second, as it relates to commonality of issues, *only makes a difference if the*
12 *nonrepresentative class members would do much better by litigating on their*
13 *own or in their own jurisdiction.* The second category concerns are protected
14 by the trial court's fairness review of the settlement.

13 *Dunk*, 48 Cal. App. 4th at 1807, n. 19, (emphasis added). The reason for this is that no trial is
14 anticipated in the settlement context, so any case management issues inherent in determining if the
15 class should be certified need not be confronted. *Amchem Products, Inc. v. Windsor* 521 U.S. 591
16 (1987)

17 The very liberal standard expressed in *Dunk* is plainly satisfied here. The requirements for
18 class certification in the settlement context – ascertainability, numerosity, predominance of
19 common questions of law and fact, typicality, and adequacy – are all met. It certainly cannot be
20 said that the Settlement Class members would do “much better by litigating on their own”. *Dunk*,
21 48 Cal. App. 4th at 1807, n. 19. The proposed Settlement Class should be conditionally certified as
22 requested.

23 **1. Numerosity and Ascertainability.**

24 Numerosity is met if a proposed class is so large that joinder of all members would be
25 impracticable. *See* Code Civ. Proc. § 382. No set number of class members is required to maintain a
26 class action. *Hebbard v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030. The California Supreme Court
27 has upheld a class of as few as ten members. *Bowles v. Super. Ct. (Nickel, Jr.)* (1955) 44 Cal.2d 574,
28 577-81. A proposed settlement class is ascertainable if the class members can be objectively
identified and given notice of the litigation without unreasonable time or expense. *Medraza v.*

1 *Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). Here, the settlement class consists of
2 40 current and former employees of AMPEX in California from July 24, 2020 through the date of
3 preliminary approval, who have already been identified. Lipeles Decl., ¶ 28.

4 **2. Well-Defined Community of Interest.**

5 **a. Commonality.**

6 To justify certification, the class proponent must show that questions of law or fact common
7 to the class predominate over the questions affecting the individual members. *See Arenas v.*
8 *El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010). While the parties dispute whether a class
9 would be appropriate if the litigation were to continue, they agree, for the purposes of this
10 settlement only, that the Class is subject to common compensation policies and challenges to those
11 policies that are certifiable for settlement purposes. *See e.g., Bluford*, 216 Cal. App. 4th at 872-73
12 (certifiable issues were raised by claim that the employer's per mile piece-rate system did not
13 compensate drivers for their statutory rest break time).
14

15 **b. Typicality.**

16 Typicality means merely that the class representative is similarly situated to the members of
17 the class, not that his claims are identical. *Classen v. Weller* 145 Cal. App. 3d 27, 45-46 (1983). It
18 suffices if the class representative's claims arise from the same event or course of conduct that
19 gives rise to the class claims, and are premised upon the same legal theories. *Id.* Here, for
20 purposes of settlement, the Parties agree that Plaintiff asserts claims regarding AMPEX's wage and
21 hour compensation practices that are at the core of the action. Lipeles Decl., ¶ 5.
22

23 **c. Adequacy of representation.**

24 The proposed class representative must establish that he or she will adequately represent the
25 proposed class. *See Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009).
26 Adequacy may be established by the fact that counsel are experienced. *See Local Joint Exec. Bd.*
27 *of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001).
28 Here, Plaintiff alleges, and AMPEX does not dispute for purposes of settlement, that Plaintiff and
the Class are represented by counsel with extensive experience in wage-and-hour litigation and that
Plaintiff is an adequate class representative. Lipeles Decl., ¶¶ 36-37.

1 **D. An Award of Class Counsel Fees, Class Counsel Costs, and Payment for**
2 **the Class Representative’s Participation, Service and Risk from the**
3 **Maximum Settlement Amount Are Justified in this Case.**

4 The proposed Settlement provides that Plaintiff will request, and AMPEX will not oppose,
5 an award to Class Counsel in an amount not to exceed \$73,500.00 in attorneys’ fees (35% of the
6 Maximum Settlement Amount), actual costs up to \$16,500, Class Representative Service Award of
7 \$5,000 to the Named Plaintiff in recognition of his time, effort, and risk as Class Representative,
8 PAGA Payment in the amount of \$30,000, and up to \$5,275 in claims administration costs. The
9 foregoing awards amount to \$130,275 and Plaintiff therefore requests that the Court approve a total
10 deduction of \$130,275.00 from the \$210,000.00 Maximum Settlement Amount. Viewing the
11 participation, service and risk payment as an additional cost of litigation, in combination with the
12 allocation for attorneys’ fees, expenses and costs, this total deduction of \$130,275.00 is within the
13 range of attorneys’ fees, expenses and costs awarded in similar cases. *See* Lipeles Decl., at ¶ 27.
14 The participation payment to Plaintiff is also justified as a Class Representative Service Award,
15 which courts regularly award in class action litigation.

16 **1. The Proposed Class Counsel Fees and Class Counsel Costs Requested Are**
17 **Reasonable, Fair and Appropriate Under the Common Fund Doctrine and Should**
18 **be Preliminarily Approved.**

19 Plaintiff seeks preliminary approval of his request for reasonable attorneys’ fees in an
20 amount up to \$73,500 and actual expenses and costs up to \$16,500.00.³⁴ As discussed in more
21 detail below, this fee award is reasonable under the common fund approach in determining
22 reasonable attorneys’ fees.

23 An attorneys’ fees award is justified where the legal action has produced its benefits by way
24 of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987). California
25 law provides that when a party is entitled to statutory fees, he must be compensated for all time
26 reasonably spent seeking to accomplish the desired litigation result. *See Serrano v. Unruh*, 32
27 Cal.3d 621, 624 (1982). Courts in and out of California have long recognized the equitable

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³⁴ Prior to the expiration of the period of time allotted for class members to make objections to the settlement, Plaintiff will file a motion and brief for fees and costs (to be heard at the same time as the Final Fairness Hearing) so that class members will be able, if they elect to do so, to review the fees motion prior to making objections or filing a claim. The motion and brief for fees and costs will include, *inter alia*, an itemized listing of all costs incurred in litigating this case. *See* Lipeles Decl., ¶.

1 “common fund” doctrine under which attorneys that create a common fund or benefit for a group of
2 persons may be awarded their fees and costs out of the fund. “[W]hen a number of persons are
3 entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the
4 benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be
5 awarded attorneys’ fees out of the fund.” *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977), *see also*
6 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] lawyer who recovers a common fund...
7 is entitled to reasonable attorneys’ fees from the fund as a whole”).

8 In addition to spreading the litigation costs among all beneficiaries, awards of common fund
9 fees are essential to furthering the important societal goal of attracting competent counsel to handle
10 these often complex contingency cases, “who will be more willing to undertake and diligently
11 prosecute proper litigation for the protection or recovery of the fund if assured that [they] will be
12 promptly and directly compensated should [their] efforts be successful.” *Melendres v. City of Los*
13 *Angeles*, 45 Cal. App. 3d 267, 273 (1975) (quoting *Estate of Stauffer*, 53 Cal.2d 124, 132 (1959).
14 In California, trial courts have inherent equitable power to award attorneys’ fees on a common fund
15 basis when counsel’s efforts “have resulted in the preservation or recovery of a certain or easily
16 calculable sum of money.” *Serrano*, 20 Cal.3d 25 at 35; *see also Bank of America Nat’l Trust &*
17 *Sav. Ass’n v. Cory*, 164 Cal. App. 3d 66, 89 (1985); *Melendres*, 45 Cal. App. 3d 267, 277 (trial
18 courts’ “broad discretion” in awarding common fund fees is well-established).

19 The traditional method for calculating a common fund fee is to award a percentage of the
20 total fund. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 900 and 916 (1984); *Six (6) Mexican Workers*
21 *v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Lealao v. Beneficial California,*
22 *Inc.*, 82 Cal. App. 4th 19, 26 (2000); *Melendres*, 45 Cal. App. 3d at 278. Indeed, California courts
23 have regularly approved payments of attorneys’ fees amounting to 35% or more of the common
24 fund in similar class actions.

25 California state and federal courts have regularly approved payments of attorneys’ fees
26 amounting to as much as 35% or more of the common fund in similar wage and hour class actions
27 alleging missed meal and/or rest periods. *See, e.g., Morales v. Southland Sod Farms Operations, Inc.*,
28 No. 56-2017-00496912, 2018 WL 6928228, *2 (Cal. Super. Oct. 10, 2018) (granting final approval in a
wage and hour action and awarding 35% in attorneys’ fees); *Erickson v. Q.S.P., Inc.*, No. BC469830,
2013 WL 4369736, *5, (Cal. Super. July 9, 2013) (granting final approval in a wage and hour action

1 and finding that 35% in attorneys' fees was reasonable); *Cabrera v. Advantage Sale & Marketing, LLC*,
2 No. BC485259, 2013 WL 1182822, (Cal. Sup. Mar. 12, 2013) (granting final approval for failure to
3 afford meal/rest breaks and awarding 35% in attorneys' fees). Where, as here, the common fund is
4 relatively small, class action commentators have noted that courts typically award 30-50% of the
5 common fund as attorneys' fees. *See Newberg* at §14.6.

6 Finally, several other factors support the requested attorneys' fees. Plaintiff and his counsel
7 brought this class action to prevent Defendant from continuing to commit the alleged violations of
8 California law regarding wage and hour violations alleged in the Second Amended Complaint.
9 Plaintiff's Counsel handled this case on a contingency basis and the case involved significant risks
10 of non-payment of attorneys' fees and non-recovery of litigation expenses if class certification was
11 not granted and/or if Plaintiff's Counsel did not settle or prevail. For these reasons, a costs award
12 and common fund fee of 35% of the settlement fund (*i.e.*, a total of up to \$89,750.00) is fair,
13 reasonable and appropriate. Furthermore, because Plaintiff's requested attorneys' fees of 35% of
14 the common fund is reasonable and falls within the range of approved percentages in similar
15 common fund class action cases, Plaintiff's request for fees of 35% of the common fund should be
16 granted.

17 **2. The Proposed Payment to the Class Representative for His Service to the Class Is**
18 **Reasonable, Routinely Awarded, and Should be Preliminarily Approved.**

19 The proposed payment of \$5,000 to the Named Plaintiff³⁵ is intended to recognize the
20 critical role he played in this case and the time, effort and risk undertaken in helping secure the
21 result obtained on behalf of the Class. *See Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726
22 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing class case);
23 Manual §21.62 n. 973 (noting service awards are warranted).

24 "Courts routinely approve incentive awards to compensate named plaintiffs for the services
25 they provide and the risks they incurred during the course of the class action litigation." *Ingram v.*
26 *The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (quoting *In re S. Ohio Correctional*
27 *Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997) (approving \$303,000 payment to each class
28 representative plaintiff in employment case settling before class certification); *Martens v. Smith*

³⁵ Any portion of the Class Representative Incentive Award not awarded to Plaintiff will be made available for distribution to Settlement Class Members as part of the NSA. Settlement Agreement, ¶ 14.

1 *Barney*, No. 96 Civ. 3779, 1998 W.L. 1661385, *4 (S.D.N.Y. 1998) and 181 F.R.D. 243, 262
2 (S.D.N.Y. 1998) (approving payments of up to \$150,000 for named plaintiffs, for a total of \$1.9
3 million in incentive payments for employment cases settling prior to class certification); *Roberts v.*
4 *Texaco*, 979 F. Supp. 185 (S.D.N.Y. 1997) (approving incentive payments up to \$85,000 for named
5 plaintiffs in employment case settling prior to class certification).

6 The factors courts use in determining the amount of incentive payments include (1) a
7 comparison between the incentive awards and the range of monetary recovery available to the
8 class; *see, e.g., Ingram*, 200 F.R.D. at 694; *Roberts v. Texaco, Inc.* 979 F. Supp. 185, 204
9 (S.D.N.Y. 1997); (2) time and effort put into the litigation; *see, e.g., Van Vranken v. Atlantic*
10 *Richfield Co.*, 901 F. Supp. 294, 299 (1995); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998);
11 (3) whether the litigation will further the public policy underlying the statutory scheme; *see, e.g.,*
12 *Roberts*, 979 F. Supp. at 201; (4) risks of retaliation; *see Roberts*, 979 F. Supp. at 202; *Cook*, 142
13 F.3d 1004, at 1016; (5) compromise of unique individual claims; *see, e.g. Women’s Comm. For*
14 *Equal Employment Opportunity v. Nat’l Broad. Co.*, 76 F.R.D. 173, 180 (S.D.N.Y. 1977); and (6)
15 risks of an adverse attorneys’ fees award; *see, e.g., Rodriguez v. West Publishing*, 563 F.3d 948,
16 958 (9th Cir. 2009) (“Incentive awards are intended to compensate class representatives for work
17 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the
18 action, and, sometimes, to recognize their willingness to act as a private attorney general.”).

19 These factors support the approval of the incentive payments requested here for the Class
20 Representative. First, the requested payment of \$5,000 to the Named Plaintiff constitutes only 2.4%
21 of the Maximum Settlement Amount. Second, the Named Plaintiff spent time providing invaluable
22 assistance to Class Counsel and the Class in this case, including providing factual background for
23 the Class Complaint; providing and explaining documents corroborating his allegations to Class
24 Counsel; reviewing the Complaint and other pleadings filed with the Court by Plaintiff and
25 Defendant; participating in multiple conference calls and phone calls to discuss litigation and
26 settlement strategy, and remotely attending the all-day mediation. *See Declaration of Ben Dinh*
27 (“Dinh Decl.”), ¶6. The Named Plaintiff has been actively involved in this case, and has proven
28 himself to be an invaluable resource of information throughout the settlement discussions. Lipeles
Decl., ¶ 31; Dinh Decl., ¶6. Third, by bringing this action, the Named Plaintiff furthered the public
policy goal of encouraging compliance with the wage and hour provisions of the Labor Code.

1 Finally, the requested Class Representative Service Award of \$5,000 to the Plaintiff falls well
2 within the range of incentive payments typically awarded to Class Representatives in such class
3 actions. Lipeles Decl., ¶ 31; *see e.g., Ross v. US Bank Nat'l Ass'n*, No. C 07–02951 SI, 2010 WL
4 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving \$20,000 enhancement awards to each of four
5 class representatives in the wage and hour class action); *Garner v. State Farm Mut. Auto. Ins. Co.*,
6 No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) (“Numerous
7 courts in the Ninth Circuit and elsewhere have approved incentive awards of \$20,000 or more
8 where, as here, the class representative has demonstrated a strong commitment to the class”).

9 Accordingly, the requested Class Representative Service Award of \$5,000 to the Named
10 Plaintiff is fully deserved and justified and thus should be preliminarily approved.

11 **V. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

12 **A. The Proposed Notice of Class Action Settlement Satisfies Due Process**

13 California statutory and case law vests the Court with broad discretion in fashioning an
14 appropriate notice program. *See Cal. Rules of Court* 1859(f); *Cartt v. Superior Court*, 50 Cal. App.
15 3d 960, 973-74 (1975). The notice plan here entails mailing, and if necessary, re-mailing, the notice
16 to all identified participating Settlement Class Members based on Defendant’s employment
17 records. Defendant will provide the last known addresses for all identified Class Members.
18 Plaintiff has proposed the services of an experienced class action settlement administration firm,
19 Phoenix, to implement the proposed Class Notice procedures. The Class Notice is consistent with
20 class certification notices approved by numerous state and federal courts, and is, under the
21 circumstances of this case, the best notice practicable. Such notice satisfies all due process
22 requirements. *See Cartt*, 50 Cal. App. 3d at 966-975.

23 **B. The Proposed Notice of Class Action Settlement is Accurate and**
24 **Informative**

25 The proposed Class Notice, attached as Exhibit 1 to the proposed Settlement Agreement,
26 provides among other things: (1) information regarding the nature of the Action; (2) a summary of
27 the substance of the settlement; (3) the class definition; (4) the formulae for calculating Individual
28 Class Payments and Individual PAGA Payments; (5) the number of Compensable Workweeks and
pay periods based on Defendant’s business records; (6) instructions on how Settlement Class
Members may submit a valid Request for Exclusion; (7) the procedure for objecting to the

1 settlement; (8) the deadline by which Settlement Class Members must postmark an objection to the
2 settlement; (9) notice that the Settlement Class Members will permanently forego their right to
3 pursue any and all of their released claims against Defendant, unless they elect not to participate in
4 the Lawsuit; and (10) notice that Settlement Class Members will automatically receive an
5 Individual Class Payment unless they submit a valid request for exclusion.

6 The best practicable means of providing notice to all Class Members will be used. Notice
7 will be mailed to all known and reasonably ascertainable Class Members, using Defendant's
8 records. The information in those records will be updated prior to mailing, using the National
9 Change of Address Database or its equivalent. If any Class Notices are returned as undeliverable,
10 the Settlement Administrator will take appropriate steps, such as skip-tracing, to maximize the
11 probability that the Class Notice will be received by all Class Members. (Settlement Agreement ¶
12 32).

13 The Class Notice also fulfills the requirement of neutrality in Class Notices. *See Newberg* §
14 8:39 at pp. 284, 285. The Class Notice summarizes the proceedings to date, the significant legal
15 developments since the date of the settlement, and the terms and conditions of the settlement, in a
16 coherent and informative manner. The Class Notice clearly states that the Settlement does not
17 constitute an admission of liability by AMPEX and recognizes that the Court has not ruled on the
18 merits of the Lawsuit. The Class Notice also states that the final settlement approval decision has
19 yet to be made. Accordingly, the Class Notice complies with the standards of fairness,
20 completeness and neutrality required of a settlement notice disseminated under authority of the
21 Court. *Newberg* §8:21, §8:39; *Manual* § 21.312.

22 VI. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

23 The last step in the settlement approval process is the formal final approval hearing, at
24 which the Court may hear all evidence and argument necessary to evaluate the proposed
25 Settlement. *See Cal. Rules of Court* 1859(b). At that hearing, proponents of the Settlement may
26 explain and describe its terms and conditions and offer argument in support of the Settlement
27 approval. Furthermore, members of the Settlement Class, or their counsel, may be heard in support
28 of or in opposition to the proposed Settlement. Class Counsel requests that the hearing be held as
soon as the Court's calendar may accommodate.

1 **VII. CONCLUSION**

2 For the reasons discussed above, Plaintiff requests that the Court enter an order of
3 preliminary approval of the class action settlement, approve the form of the proposed notice, and
4 approve the proposed schedule, including setting a date for a final approval hearing.
5

6 Dated: April 10, 2026

Respectfully submitted,

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