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18

19 **SUPERIOR COURT OF CALIFORNIA**

20 **COUNTY OF MONTEREY**

21 EDUARDO JACQUEZ, on behalf of
22 himself and all similarly aggrieved
23 employees,

24 Plaintiff,

25 v.

26 DANECO ELECTRIC INC.; and DOES 1
27 through 50, inclusive,

28 Defendants.

Case No. 24CV003077

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

Date: October 9, 2026

Time: 8:30 a.m.

Dept.: 14

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on October 9, 2026, at 8:30 a.m., or as soon thereafter
3 as the matter may be heard, before the Honorable Ian A. Rivamonte in Department 14 of the
4 above-referenced Court, located at 1200 Aguajito Road, Monterey, California, Plaintiff
5 Eduardo Jacquez (“Plaintiff”) will seek an Order:

6 (1) approving the Joint Stipulation of Class Action and PAGA Settlement
7 (“Settlement” or “Settlement Agreement”) in this matter;

8 (2) conditionally certifying the following Class for settlement purposes only:
9 All current and former non-exempt employees of Defendant who
10 worked in California at any time from October 7, 2020, through
September 19, 2026.

11 (3) appointing Plaintiff as Class Representative, and the law firms Fitzpatrick &
12 Swanston and Diversity Law Group, P.C., as Class Counsel;

13 (4) preliminarily approving the Settlement Agreement and the total Gross Settlement
14 Amount in the amount of Four Hundred Forty-Five Thousand Dollars and 00/100 Cents
15 (\$445,000.00);

16 (5) finding on a preliminary basis that the Settlement Agreement appears to be within
17 the range of reasonableness of a settlement, including the amount of Plaintiff’s service award,
18 attorneys’ fees and costs, settlement administration costs, and the allocation of payments to
19 Class Members that could ultimately be given final approval by this Court;

20 (6) approving the Notice Packet to be sent to Class Members;

21 (7) appointing Phoenix Settlement Administrators as the Settlement Administrator; and

22 (8) setting the matter for a Final Approval hearing.

23 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
24 provides for court approval of the settlement of a purported class action and allows the Court
25 to preliminarily certify a class for settlement purposes.

26 The basis for this Motion, filed without any opposition from Defendants Daneco
27 Electric, Inc., and Dane Whitehead, is that the proposed settlement is fair, adequate, and
28 reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity

1 of Class Members to participate in, opt-out of, or object to the settlement.

2 This Motion will be based on the attached Memorandum of Points and Authorities, the
3 Settlement Agreement and the proposed Notice Packet, and the supporting Declarations of B.
4 James Fitzpatrick, Sean S. Kaneshiro, Larry W. Lee, Simon L. Yang, Plaintiff Edwardo
5 Jacquez, and upon the oral arguments of counsel (should there be any) and on the complete
6 records and file herein.

7
8 Dated: September 4, 2026

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

9
10
11 By: /s/ B. James Fitzpatrick

B. James Fitzpatrick
Larry W. Lee
Attorneys for Plaintiff,
Edwardo Jacquez

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5 Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th ed. 2002).12, 13,
6 14

7 *The Manual for Complex Litigation, Third* § 30.4111

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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act
3 (“PAGA”) action seeking statutory and civil penalties under the California Labor Code.
4 Plaintiff Eduardo Jacquez (“Plaintiff”) alleges that Defendants Daneco Electric, Inc. and Dane
5 Whitehead (collectively “Defendant”) failed to pay all minimum and overtime wages, failed to
6 provide proper off-duty meal and rest periods or pay premiums in lieu thereof, failed to
7 reimburse business expenses, failed to provide accurate itemized wage statements, failed to
8 timely pay all wages and upon separation of employment, and engaged in unfair business
9 practices. Plaintiff brings class and PAGA claims based on these violations. The Parties have
10 reached a proposed class and PAGA action settlement, the terms of which are reflected in the
11 Parties’ Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Settlement
12 Agreement,” or “SAR”).

13 Prior to the settlement of this action, the Parties thoroughly investigated the facts
14 relating to the class and PAGA claims alleged in the lawsuit and engaged in a thorough study
15 of legal principles applicable to the claims asserted against Defendant. Through the exchange
16 of informal discovery, Defendant provided necessary data pertaining to the number of putative
17 class members and number of workweeks at issue, a sample of time and pay records of the
18 putative class members, as well as information pertaining to Defendant’s payroll policies and
19 practices. Thereafter, the Parties attended a full day of mediation with Christopher Panetta,
20 Esq., of Fenton & Keller. As a result, the Parties reached the current settlement of the class
21 and PAGA claims. The following represents the key terms of the settlement:

- 22 • Gross Settlement Amount of \$445,000.00, which will be paid by
23 Defendant and distributed to the Class on a **non-reversionary** basis
 (See SAR ¶ 6);
- 24 • Estimated Class of 169 individuals (*Id.* ¶ 1.5);
- 25 • Class Members do **not** need to submit claim forms to participate in the
26 settlement (*Id.* ¶ 5.3);
- 27 • Plaintiff’s Service Award of up to \$5,000.00 (*Id.* ¶ 5.1.2);
- 28 • Class Counsel’s attorneys’ fees of up to \$148,333.33 (1/3 of the Gross
 Settlement Amount) (*Id.* ¶ 5.1.1);

- Actual litigation costs and expenses up to \$25,000.00 (*Id.* ¶ 5.1.1);
- Settlement Administration Costs of up to \$7,000.00 (*Id.* ¶ 5.1.3);
- PAGA penalties of \$45,000.00, of which 65% or \$29,250.00 will go to the LWDA, and 35% or \$15,750.00 will be distributed to PAGA Members, defined as “all current and former non-exempt employees who worked for Defendants in the State of California at any time” from “July 17, 2023, through September 21, 2026”. (*Id.* ¶¶ 1.17, 1.18, 5.1.4);
- Net Settlement Amount of at least approximately \$214,666.67 (*Id.* ¶ 1.16);
- Raw average of approximately **\$1,270.22** to each Participating Class Member ($\$214,666.67 \div 169$ Class Members).
- Workweek Value is \$14.70 ($\$214,666.67 \div 14,600$ Workweeks).

The Parties believe that the settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, adequate, and reasonable in light of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiff and his counsel are confident that they could prevail on class certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific risks that a class might not be certified, that Plaintiff could fail to establish liability, and/or that Plaintiff would be unable to prove damages in the amounts sought. Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. PROCEDURAL HISTORY

On July 17, 2024, Angel Mendoza provided written notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendant Daneco of alleged Labor Code violations on behalf of himself and other current and former aggrieved employees pursuant to the Private Attorneys General Act of 2004 (“PAGA”). The notice alleged multiple wage-and-hour violations on behalf of Mr. Mendoza and all other aggrieved employees. On July 23, 2024, Mr. Mendoza filed the instant Action. Declaration of B. James Fitzpatrick “Fitzpatrick Decl.” ¶ 3.

On September 17, 2024, Plaintiff Eduardo Jacquez (“Plaintiff”) provided a second written notice to the LWDA and Daneco. Like Mr. Mendoza’s earlier notice, Plaintiff’s notice

1 alleged the same general categories of wage-and-hour violations, including failure to provide
2 compliant rest periods in violation of Labor Code section 226.7; failure to maintain accurate
3 records of all hours worked in violation of Labor Code section 1174, subdivision (d); failure to
4 pay overtime wages in violation of Labor Code sections 510 and 1194; failure to reimburse
5 necessary business expenses, including expenses associated with the required use of personal
6 vehicles and cellular telephones, in violation of Labor Code section 2802; failure to provide
7 accurate itemized wage statements in violation of Labor Code section 226; and failure to
8 timely pay all wages during employment and upon separation from employment in violation of
9 Labor Code sections 201, 202, 203, and 204. Fitzpatrick Decl. ¶ 4.

10 On October 7, 2024, Plaintiff filed a First Amended Complaint in the Mendoza Action,
11 adding himself as a named plaintiff and putative class representative. On November 5, 2024,
12 Plaintiff amended the complaint to name Dane A. Whitehead as a defendant in place of Doe 1.
13 On November 26, 2024, Plaintiff filed a separate representative action pursuant to PAGA
14 against Defendant in the San Benito County Superior Court, Case No. CU-24-00297 (the
15 “PAGA Action”). Fitzpatrick Decl. ¶ 5.

16 On December 5, 2024, Mr. Mendoza was dismissed as a named plaintiff and putative
17 class representative. Thereafter, on March 11, 2025, Plaintiff filed the operative Second
18 Amended Complaint in the Mendoza Action. The Second Amended Complaint removed Mr.
19 Mendoza as a plaintiff and left Mr. Jacquez as the sole named plaintiff and putative class
20 representative. The Second Amended Complaint also asserted Mr. Jacquez’s individual claims
21 for retaliation and wrongful termination. Fitzpatrick Decl. ¶ 6.

22 During litigation of the action against Defendant, the Parties agreed to exchange
23 information informally to evaluate their respective claims and defenses. Fitzpatrick Decl. ¶ 7.
24 The Parties subsequently engaged in informal discovery for Plaintiff to assess the claims, as
25 well as the maximum exposure of damages and penalties. Defendant provided Plaintiff’s
26 counsel with informal data and information pertaining to the putative class size and number of
27 pay periods, a sample of time and pay records of the employees, and information concerning
28 the extent of Defendant’s wage and hour policies and practices. *Id.* ¶ 7.

1 On July 21, 2026, the Parties attended mediation with Christopher Panetta, Esq., of
2 Fenton & Keller. Fitzpatrick Decl. ¶ 10.

3 After thorough investigation and evaluation of the facts and claims at issue, and arm's
4 length negotiations facilitated by the mediator, the Parties reached a global settlement of the
5 Action. Fitzpatrick Decl. ¶ 11.

6 **A. The Operative Complaint**

7 Plaintiff's class and PAGA claims as pled in the operative Complaint are predicated
8 upon the following allegations. With respect to Plaintiff's failure to pay wages claims,
9 Plaintiff contends that Defendant's timekeeping and payroll practices resulted in employees
10 being undercompensated for hours they worked. Plaintiff's analysis of the available time and
11 payroll data identified discrepancies between employees' recorded hours and the hours for
12 which they were paid, reflecting alleged time shaving and rounding practices that
13 disproportionately resulted in underpayment. Plaintiff contends that this practice resulted in
14 employees performing work for which they were not fully compensated, including regular,
15 overtime, and double-time work. Fitzpatrick Decl. ¶ 12.

16 With respect to the meal and rest period claim, Plaintiff contends that employees did
17 not receive proper meal and rest breaks during their shifts. Defendant failed to pay premiums
18 for missed, late, or interrupted breaks. To date, Plaintiff has yet to receive payment of all
19 wages owed. Fitzpatrick Decl. ¶ 13.

20 With respect to the business reimbursement claim, Plaintiff contends that Defendant
21 required employees to use their personal cellular telephones for work-related purposes without
22 fully reimbursing them for the associated expenses. Plaintiff's analysis indicates that
23 Defendant did not provide cellular telephone reimbursements until 2024, after which
24 Defendant began providing reimbursements at amounts that Plaintiff contends remained
25 insufficient. Fitzpatrick Decl. ¶ 14.

26 Plaintiff further contends that Defendant failed to properly calculate the regular rate of
27 pay for employees who earned both regular wages and prevailing wages. Specifically, Plaintiff
28 contends that Defendant failed to appropriately account for both rates when calculating

1 overtime compensation. Based on the information available at the time of Plaintiff's analysis,
2 Plaintiff contends that this potential exposure may have increased during later periods of
3 employment and intended to further investigate the issue through supplemental discovery and
4 the deposition of Defendant's person most qualified if the matter did not resolve. Fitzpatrick
5 Decl. ¶ 15.

6 With respect to the wage statement claims, Plaintiff contends that Defendant issued
7 inaccurate itemized wage statements as a result of the alleged underlying wage and hour
8 violations. Specifically, Plaintiff contends that Defendant's wage statements failed to
9 accurately report all hours worked, all wages earned, and premium wages allegedly owed for
10 missed, late, short, or interrupted meal and rest periods. Plaintiff further contends that the
11 discrepancies identified between recorded and paid time resulted in wage statements that did
12 not accurately identify the hours worked and wages earned by employees. Fitzpatrick Decl. ¶
13 16.

14 As a result of the alleged violations above, Plaintiff seeks damages and penalties under
15 the California Labor Code, the California Business & Professions Code, and the PAGA, as
16 well as attorneys' fees and costs. Fitzpatrick Decl. ¶ 17. Defendant has at all times denied
17 Plaintiff's collective allegations and has asserted factual and legal defenses to the above
18 claims, including that Defendant maintained procedures that comply with California law, that
19 individualized issues predominate, and that trial on a class or representative basis would be
20 unmanageable. *Id.* ¶ 17.

21 **III. DISCUSSION**

22 Any settlement of a class action lawsuit must be reviewed and approved by the Court.
23 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final
24 review after notice has been distributed to the class members for their comment or objections.
25 The *Manual for Complex Litigation, Third* § 30.41 states:

26 Approval of class action settlements involves a two-step process.
27 First, counsel submits the proposed terms of settlement and the court
28 makes a preliminary fairness evaluation. If the preliminary
evaluation of the proposed settlement does not disclose grounds to
doubt its fairness or other obvious deficiencies, such as unduly

1 preferential treatment of class representatives or of segments of the
2 class, or excessive compensation for attorneys, and appears to fall
3 within the range of possible approval, the court should direct that
4 notice...be given to the class members of a formal fairness hearing,
at which arguments and evidence may be presented in support of
and in opposition to the settlement.

5 (Fed. Jud. Ctr., 3rd ed. 1995).

6 Thus, the preliminary approval by the trial court is simply a conditional finding that the
7 settlement appears to be within the range of acceptable settlements. As Professor Newberg
8 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or
9 conference concerning a tentative settlement proposal may vary. The court may find that the
10 settlement proposal contains some merit, is within the range of reasonableness required for a
11 settlement offer, or is presumptively valid subject only to any objections that may be raised at
12 a final hearing.” Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th
13 ed. 2002).

14 The procedures for the parties’ submission of a proposed settlement for preliminary
15 approval by the court also are discussed in *4 Newberg on Class Actions*:

16 When the parties to an action reach a monetary settlement, they will
17 usually prepare and execute a joint stipulation of settlement, which
18 is submitted to the court for preliminary approval. The stipulation
19 should set forth the central terms of the agreement, including but not
determining the effective date of settlement and any recapture
clause.

20 *Id.* § 11.24.

21 Here, the Parties have reached such an agreement and have submitted to this Court, in
22 connection with this Motion, a copy of the Settlement Agreement fully setting forth the
23 agreement reached among the Parties. The Settlement Agreement sets forth all terms of the
24 agreement reached by the Parties, which include, among other things, the method for
25 calculating the Class Members’ Individual Settlement Payments.

26 The parties also may, at the preliminary approval stage, request that the court
27 provisionally approve certification of the class – conditional upon final approval of the
28 settlement. “[P]re-certification settlements are routinely approved if found to be fair and

1 reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *accord*
2 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was
3 reached before any “adversary certification,” the court was satisfied that it was “fair, adequate
4 and reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many
5 courts have employed this practice in the name of judicial efficiency in order to facilitate
6 apparently beneficial settlement proposals”). As further explained by Professor Newberg:

7 The strength of the findings made by a judge at a preliminary
8 hearing or conference concerning a tentative settlement
9 proposal...may be set out in conditional orders granting tentative
10 approval to the various items submitted to the court. Three basic
11 rulings are often conditionally entered at this preliminary hearing.
 These conditional rulings may approve a temporary settlement class,
 the proposed settlement, and the class counsel’s application for fees
 and expenses.

12 *4 Newberg on Class Actions* § 11.26.

13 In addition to such terms as class identification, settlement amount, and payment
14 procedures, the Settlement Agreement reached among the Parties contains a provision
15 pursuant to which the Parties stipulate to the Court’s provisional certification of the Settlement
16 Class for the purposes of this settlement only. SAR ¶ 2.7.

17 **A. Proposed Class Definition**

18 The current settlement is being settled on behalf of “all current and former non-exempt,
19 hourly employees of Defendant who worked in California at any time from October 7, 2020,
20 through September 19, 2026. SAR ¶¶ 1.5, 1.7. Defendant estimates that there are
21 approximately 169 individuals that comprise the Class. SAR ¶ 1.5.

22 Pursuant to the Settlement Agreement, the Net Settlement Amount will be apportioned
23 among the Class Members based on the total number of workweeks for each Class Member
24 during the Class Period. As some Class Members received a portion of approximately
25 \$403,000 in remedial payments made by Defendant during the course of the litigation, number
26 of workweeks for Class Members who did not receive any remedial payments shall be
27 multiplied by five. SAR ¶ 5.3.2. Based on the data provided to Plaintiff, there are
28 approximately 14,600 Workweeks worked in the Class Period by 169 Class Members. SAR ¶

1 1.5. If at the time of Preliminary Approval, the actual number of workweeks worked by the
2 entire Class during the Class Period (“Actual Workweeks”) exceeds the Estimated Workweeks
3 by 110% (i.e., 16,060 workweeks), then Defendant will have the option to either (i) end the
4 Class Period as of the date that 16,060 workweeks have been worked by Class Members or (ii)
5 increase the Gross Settlement Amount by one percent (1%) for every percentage increase
6 above 10%. SAR ¶ 5.1.

7 **B. Settlement Terms and Evaluation**

8 Courts presume the absence of fraud or collusion in the negotiation of settlement
9 unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir.
10 1989); *Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682
11 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts
12 do not substitute their judgment for that of the proponents, particularly where, as here,
13 settlement has been reached with the participation of experienced counsel familiar with the
14 litigation. *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal.
15 2004); *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp.
16 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979);
17 *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

18 While the recommendations of counsel proposing the settlement are not conclusive, the
19 court can properly take them into account, particularly where, as here, they have been involved
20 in informal discovery and negotiations for some period of time, appear to be competent, have
21 experience with this type of litigation, and have exchanged substantial evidence from the
22 opposing party. *See 4 Newberg on Class Actions, supra* § 11.47; *Nat’l Rural Telecomms.*
23 *Coop.*, 221 F.R.D. at p. 528 (“[s]o long as the integrity of the arm’s length negotiation process
24 is preserved, however, a strong initial presumption of fairness attaches to the proposed
25 settlement...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who
26 are most closely acquainted with the facts of the underlying litigation”).

27 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage
28 and hour class action litigation. Plaintiff’s counsel have been approved as class counsel in a

1 number of wage and hour class actions and have extensive litigation experience. Fitzpatrick
2 Decl. ¶ 45; Kaneshiro Decl. ¶¶ 4-6; Lee Decl. ¶¶ 5-8; Yang Decl. ¶¶ 3-6;. Each side has
3 apprised the other of their respective factual contentions, legal theories, and defenses, resulting
4 in negotiations taking place between the Parties.

5 Prior to the mediation, Plaintiff engaged in informal discovery. Plaintiff was provided
6 with data pertaining to putative class members during the relevant class period, as well as a
7 sample of time and payroll records. Fitzpatrick Decl. ¶ 8. From this data, Plaintiff was able to
8 investigate the claims asserted and conduct an exposure analysis that informed Plaintiff's
9 position at the mediation. Fitzpatrick Decl. ¶ 9. Based on the data provided by Defendant,
10 Plaintiff estimated Defendant's potential exposure as follows:

- 11 • Unpaid Wages: \$477,299 based on a 68.9% violation rate derived
12 from Defendant's sample timekeeping records.
- 13 • Meal Period Violations: \$142,791 based on a 5.7% violation rate
14 derived from Defendant's sample timekeeping records. Of 24,992
15 meal-period-eligible shifts in the sample, 1,468 reflected a missed
16 or late meal period.
- 17 • Rest Period Violations: \$127,697 based on a 5.7% violation rate
18 reflected in the meal-period data.
- 19 • Unreimbursed Business Expenses: \$75,144 based on an estimate of
20 an under-reimbursed \$5 per pay period for required personal cell
21 phone use, and gas and mileage, for the approximately 14,600 pay
22 periods worked by putative Class Members.
- 23 • Waiting Time Penalties: \$587,925 based on approximately 84
24 former employees, 8.1 hours per day, an average hourly rate of
25 \$28.91, and the maximum 30-day penalty provided by Labor Code
26 section 203.
- 27 • Wage Statement Penalties: \$388,750 based on approximately 119
28 Class Members and 3,947 pay periods, applying the statutory
penalties and individual \$4,000 cap where appropriate.
- PAGA Penalties: \$470,800 based on approximately 4,708 pay
periods worked by approximately 119 aggrieved employees during
the relevant PAGA period and a \$100 penalty per pay period.

Fitzpatrick Decl. ¶ 18.

While the total theoretical exposure of Plaintiff's class and PAGA claims based on the
above amounts to as high as approximately \$2,270,406, this analysis does not take into

1 account Defendant's arguments to liability and to class certification as further explained
2 below. *Id.* ¶ 19.

3 On the merits, there are also significant risks presented if Plaintiff was to move
4 forward with litigation. Defendant maintains that its written policies complied with California
5 law, including policies requiring timely meal periods and authorizing rest periods. If
6 Defendant successfully established these positions, they would present substantial risks to
7 Plaintiff's ability to establish liability and obtain class certification. *Id.* ¶ 20.

8 With respect to the unpaid wage claims, Plaintiff contends that Defendant had a
9 systematic pattern of "synthetic timekeeping" in which recorded hours, particularly overtime
10 hours, were shaved or rounded away before payment, producing underpayment in the large
11 majority of pay periods. Based on this sample, Plaintiff calculated Defendant's total potential
12 exposure to the full Class of \$477,299 based on a 68.9% violation rate. *Id.* ¶ 21.

13 With respect to meal and rest period claims, Plaintiff contends that Defendant's
14 synthetic timekeeping records hide a pattern of noncompliant breaks. (*Id.* ¶ 22.) Nonetheless,
15 of the 24,992 meal-period-eligible shifts in Defendant's sample, approximately 5.7% still
16 reflected a missed or late meal period. Based on this sample, Plaintiff calculated Defendant's
17 total potential exposure to the full Class at \$142,791. Plaintiff applied the same violation rate
18 to rest periods, which Defendant did not record, resulting in estimated exposure of \$127,697.
19 (*Id.* ¶ 22.) At mediation, Plaintiff contended that *Donohue v. AMN Services, LLC* (2021) 11
20 Cal.5th 58, 74-78 supported a rebuttable presumption of meal period violations based on
21 Defendant's records. Defendant, however, maintained that it had lawful written policies
22 requiring timely meal periods, authorizing rest periods, and prohibiting off-the-clock work.
23 Defendant relied on *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004,
24 1040, to argue that an employer need only provide employees the opportunity to take
25 compliant breaks and is not required to police whether they do so. Defendant further
26 contended that determining why individual employees missed or took late breaks would
27 require individualized inquiries, creating a significant risk to both class certification and
28 Plaintiff's ability to establish class-wide liability. *Id.* ¶ 22.

1 With respect to unreimbursed business expenses, Plaintiff contends that Defendant
2 violated Labor Code section 2802 by failing to reimburse employees for necessary
3 expenditures incurred for Defendant's benefit, including work-related use of personal cell
4 phones, and mileage or vehicle expenses incurred performing work-related errands between
5 Defendant's locations. (*Id.* ¶ 23.) At mediation, Plaintiff relied on *Cochran v. Schwan's Home*
6 *Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144, which held that an employer must reimburse
7 a reasonable portion of an employee's personal cell phone expenses when the phone is
8 required for work. Defendant insufficiently reimbursed employees \$5 per week at first and
9 then \$15 per month. (*Id.* ¶ 23.) For mediation purposes, Plaintiff estimated these
10 underreimbursed expenses at \$5 per weekly pay period, resulting in potential class-wide
11 exposure of \$75,144. Defendant disputed the claim, contending that employees were not
12 required to use their personal cell phones because company phones were available at both
13 locations and that Defendant supplied the tools and equipment necessary for employees to
14 perform their duties. *Id.* ¶ 23.

15 With respect to waiting time penalties, Plaintiff contends that Defendant failed to pay
16 all wages due to former employees upon separation, including unpaid meal and rest period
17 premiums, unpaid wages, and other compensation. (*Id.* ¶ 24.) Plaintiff relies on *Naranjo v.*
18 *Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, 117, which holds that missed-break
19 premium pay constitutes wages that may support waiting time penalties under Labor Code
20 section 203 when the statutory requirements are satisfied. (*Id.* ¶ 24.) Based on Defendant's
21 data identifying approximately 84 former employees, Plaintiff calculated potential exposure of
22 \$587,925, assuming the maximum 30-day penalty, an average day of 8.1 hours, and an
23 average hourly rate of \$28.91. (*Id.* ¶ 24.) Defendant disputed this derivative claim based on its
24 position that no underlying wages or premiums were owed and, therefore, no unpaid wages
25 remained due at separation. Additionally, Plaintiff also faced a potential defense as to the
26 willfulness required by section 203. *See, e.g. Naranjo, supra*, 13 Cal.5th at pp. 105-106. *Id.* ¶
27 24.

28 With respect to wage statement penalties, Plaintiff contends that Defendant's failure to

1 pay and report meal and rest period premiums, overtime wages, and other compensation
2 resulted in inaccurate wage statements in violation of Labor Code section 226. (*Id.* ¶ 25.)
3 Plaintiff relied on *Naranjo, supra*, 13 Cal.5th at page 121, which recognizes that unpaid meal
4 and rest period premiums constitute wages and that the failure to report such premiums may
5 support wage statement liability. (*Id.* ¶ 25.) Based on approximately 119 Class Members and
6 3,947 pay periods, Plaintiff estimated potential statutory penalties of \$388,750, applying the
7 \$50 initial and \$100 subsequent-pay-period penalties and the \$4,000 per-employee statutory
8 cap. (*Id.* ¶ 25.) Defendant disputed the claim as derivative of the underlying wage-and-hour
9 violations and maintains that no wages or premiums were improperly omitted. Moreover,
10 section 226 penalties require a “knowing and intentional” violation. Defendant was thus
11 entitled to a “good faith” defense on this claim. *See, e.g. Naranjo, supra*, 13 Cal.5th at pp.
12 103-104. (*Id.* at ¶ 25.)

13 With respect to PAGA, Plaintiff contends that the same Labor Code violations
14 underlying the class claims—including meal and rest period violations, unreimbursed business
15 expenses, wage statement violations, and derivative waiting time violations—support civil
16 penalties on behalf of Plaintiff and other aggrieved employees. (*Id.* ¶ 26.) Plaintiff also
17 recognized uncertainty concerning whether PAGA penalties could be “stacked” by imposing a
18 separate penalty for each distinct Labor Code violation occurring during the same pay period.
19 (*Id.* ¶ 26.) Federal courts applying California law have recognized that multiple PAGA
20 penalties potentially may be assessed for separate Labor Code violations within the same pay
21 period. *Hernandez v. Towne Park, Ltd.* (C.D. Cal. 2012) 2012 WL 2373372, at *17 n.77
22 [recognizing federal decisions permitting PAGA penalties for separate types of Labor Code
23 violations]; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. 2010) 2010 WL 2793650, at *6
24 [recognizing the possibility of PAGA penalties for each separate cause of action]. Other courts
25 have similarly recognized stacking as a potential measure of maximum PAGA exposure while
26 acknowledging uncertainty concerning whether such penalties ultimately would be imposed.
27 *See, e.g., Hamilton v. Juul Labs, Inc.* (N.D. Cal. 2021) 2021 WL 5331451, at *9; *Snow v.*
28 *United Parcel Service, Inc.* (C.D. Cal. 2020) 2020 WL 1638250, at *3. In addition, although

PAGA permits heightened penalties for subsequent violations, such penalties generally require prior notice to the employer by a court or the Labor Commissioner that its conduct violates the Labor Code, and there is no indication Defendant received such notice here. (*Bernstein v. Virgin America, Inc.* (9th Cir. 2021) 3 F.4th 1127, 1144; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209.) In light of the uncertainty concerning stacking and heightened penalties, Plaintiff conservatively elected not to stack penalties for the multiple Labor Code violations alleged in this action and applied only initial \$100 penalties. Accordingly, based on Defendant's data identifying approximately 119 aggrieved employees who worked 4,708 pay periods, Plaintiff applied only the single \$100 penalty per pay period, resulting in estimated maximum PAGA exposure of \$470,800. (*Id.* ¶ 26.)

Defendant disputed the underlying violations and further contended that even if violations were established, the Court has discretion under Labor Code section 2699 to substantially reduce PAGA penalties where the resulting award would be unjust, arbitrary, oppressive, or confiscatory. (*Id.* ¶ 27.) Defendant further asserted that its good-faith efforts to comply with California wage-and-hour law and its corrective measures after learning of potential compliance issues are grounds for reducing any penalty award. (*Id.* ¶ 27.) Accordingly, the PAGA claim presented risks to establishing the predicate Labor Code violations and to the amount of penalties the Court ultimately would impose.

Based on the foregoing, Plaintiff estimates Defendant's potential exposure to all claims as follows:

Claim	Potential Exposure
Unpaid Wages and Overtime	\$477,299
Meal Period Premiums	\$142,791
Rest Period Premiums	\$127,697
Unreimbursed Business Expenses	\$75,144
Waiting Time Penalties	\$587,925
Wage Statement Penalties	\$388,750
PAGA Penalties	\$470,800
Total Estimated Exposure	\$2,270,406

Fitzpatrick Decl. ¶ 28.

With respect to Plaintiff's class claims, exclusive of PAGA penalties, Plaintiff

1 calculated Defendant's potential exposure at approximately \$1,799,606 (\$2,270,406 less
2 \$470,800 in estimated PAGA penalties). Fitzpatrick Decl. ¶ 29. Although Plaintiff believes in
3 the merits of the alleged claims, he recognizes the substantial risks inherent in continued
4 litigation and Defendant's asserted defenses. In particular, penalties, including waiting time
5 and wage statement penalties, accounted for approximately \$976,675 of the estimated class
6 exposure, and Defendant's good-faith defenses, if successful, could prevent recovery of those
7 damages. (*Id.* ¶ 29.) Defendant also asserted legal and factual defenses to the underlying
8 wage-and-hour claims, including its facially compliant meal and rest period policies. Plaintiff
9 further faced risks in establishing that the violations reflected uniform practices rather than
10 isolated errors or, with respect to meal and rest periods, individual employee choice. Taking
11 these risks into account, the Parties negotiated a \$400,000 settlement of the class claims,
12 representing approximately 22.2% of Defendant's estimated maximum class-wide exposure.
13 (*Id.* ¶ 29.)

14 With respect to Plaintiff's claim under the PAGA, Plaintiff estimated that Defendant
15 could face civil penalties of at least \$470,800 (based on 4,708 pay periods at issue during the
16 PAGA Period). Fitzpatrick Decl., ¶ 30. The \$45,000 allocated to PAGA penalties thus
17 represents approximately 9.6*% of Defendant's total potential PAGA exposure. This
18 settlement amount took into account the substantial uncertainty associated with any ultimate
19 PAGA award, including the need to prove the underlying claims and the Court's discretion to
20 reduce civil penalties. (*Id.* ¶ 30.) Labor Code § 2699(e)(2) authorizes the Court to reduce an
21 award where, based on the facts and circumstances of the particular case, the otherwise
22 applicable penalty would be "unjust, arbitrary and oppressive, or confiscatory." The exercise
23 of that discretion can result in a substantial reduction even where a plaintiff successfully
24 establishes the underlying violations. As shown in the Court of Appeal's decision in
25 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), for example, while the plaintiff
26 prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty
27 amount by 90%, citing the employer's good faith attempt at complying with the law. *Id.* at p.
28 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at p. 539. Thus,

1 even if Plaintiff ultimately prevailed, Defendant's correction of the challenged policies would
2 support a finding that PAGA's purpose of promoting compliance with the Labor Code had
3 been substantially fulfilled. Under these circumstances, there remains a meaningful possibility
4 that the Court would exercise its statutory discretion to reduce the penalties and award only a
5 fraction of the maximum amount otherwise available.

6 The Parties recognize the risk, expense, and delay in continuing litigation with the
7 class and PAGA claims, and believe the settlement to be fair, reasonable, and adequate.
8 Fitzpatrick Decl. ¶ 33. Although Plaintiff believes in the merits of his Class and PAGA claims
9 and that the proposed Class can be certified, the Settlement appropriately accounts for the
10 substantial risks identified above, including Defendant's defenses to the underlying claims, the
11 possibility that Plaintiff would not prevail on one or more claims or theories of liability, the
12 risks associated with class certification, the Court's discretion to substantially reduce PAGA
13 penalties, and the delay and uncertainty associated with trial and potential appeals. *Id.* ¶ 34.
14 The risks to class certification are compounded by the California Supreme Court's holding in
15 *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained class
16 certification and subsequently prevailed at trial after eight years of litigation, but the judgment
17 and the certification ruling were reversed by the California Supreme Court after an additional
18 five years of litigation. The case was remanded to superior court where class certification was
19 denied and plaintiffs' subsequent appeal also was denied.

20 Based on a review of all the information and their experience in class action litigation,
21 Class Counsel believes this settlement to be fair, adequate, and reasonable. Fitzpatrick Decl. ¶
22 35. In addition, Plaintiff's counsel was retained based upon a contingency fee arrangement
23 wherein Plaintiff's counsel agreed to advance all costs and receive no fee unless a recovery
24 was accomplished. *Id.* ¶ 36. Specifically, had Plaintiff failed to prevail in this case, counsel for
25 Plaintiff would have spent a significant amount of time, money and other resources without
26 any benefit or return. Had Plaintiff failed to prevail in the present case, Defendant would have
27 been able to seek costs in connection with their defense of the case. Thus, the settlement for
28 each Settlement Class Member is fair, reasonable, and adequate, given the inherent risks of

1 litigation, the costs of pursuing such an action, and benefit to the Class. The settlement is the
2 result of extensive arm's length negotiations between the Parties and their counsel and was
3 facilitated by an experienced and neutral mediator. *Id.* ¶ 36.

4 Numerous courts have held that gross settlements approximating between only 8 and
5 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin.*
6 *Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement
7 recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a
8 cash settlement amounting to only a fraction of the potential recovery does not per se render
9 the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement
10 should be assessed relative to risks of pursuing the litigation to judgment"; noting that whether
11 the settlement is fair and adequate depends on the "the difficulties in proving the case");
12 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D.
13 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of
14 the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist.
15 Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and
16 hour class settlement which obtained only 9.1% of projected damages, given the risks of
17 continued litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC,
18 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement
19 of approximately 15% of the potential recovery was fair and reasonable).

20 Here, Plaintiff calculated Defendant's combined potential exposure on the class and
21 PAGA claims at approximately \$2,270,406. Against that potential exposure, the \$445,000
22 non-reversionary Gross Settlement Amount represents approximately 19.6% of Plaintiff's
23 estimated maximum recovery. Fitzpatrick Decl. ¶ 31. As discussed above, however, Plaintiff's
24 maximum exposure calculation assumes that he would successfully establish the underlying
25 violations, obtain and maintain class certification, overcome Defendant's defenses, recover
26 substantial waiting time and wage statement penalties, and obtain PAGA penalties without a
27 significant discretionary reduction. The Settlement eliminates these uncertainties and provides
28 Class Members with an immediate monetary recovery without the expense, delay, and risk of

1 continued litigation, trial, and potential appeals. *Id.* ¶ 31. Accordingly, considering the
2 strength of Plaintiff's claims together with the substantial litigation risks, the informed and
3 arm's-length negotiations of experienced counsel, and the assistance of an experienced neutral
4 mediator, the \$445,000 Gross Settlement Amount is fair, reasonable, and within the range of
5 possible approval. *Id.* ¶ 32.

6 Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class
7 Action Settlement ("Notice Packet") attached to the Settlement Agreement at Exhibit 1, should
8 any Class Member wish to pursue his or her own case for the claims being released herein,
9 each Class Member has the right to submit a Request for Exclusion (*i.e.*, opt-out) from the
10 settlement, with the exception of the PAGA claims. *See* Notice Packet. Moreover, as set forth
11 in the Notice Packet, Class Members are advised of their right to object to any of the terms
12 contained in the Settlement Agreement and attend the final approval hearing.

13 **1. Amount and Manner of Distribution of the Compensation to be**
14 **Provided to Class Members Including the Amount, or an Estimate,**
of What Each Class Member Will Receive

15 The Settlement Agreement provides for \$445,000.00 as the Gross Settlement Amount.
16 SAR ¶¶ 5.1. The Net Settlement Amount, calculated after deduction of Class Counsel's
17 attorneys' fees of up to \$148,333.33, reimbursement of actual litigation costs and expenses of
18 up to \$25,000.00, a Class Representative Service Award to Plaintiff of up to \$5,000.00,
19 \$45,000.00 in PAGA penalties, and Settlement Administration Costs of up to \$7,000.00, is
20 estimated to be approximately \$214,666.67. SAR ¶¶ 5.1.1-5.1.4; Fitzpatrick Decl. ¶ 37.
21 Participating Class Members are not required to submit claim forms and will receive a share of
22 the Net Settlement Amount based on the number of Workweeks they worked during the Class
23 Period and a multiple if they did not receive remedial payments made by Defendant during the
24 course of the litigation. *See* SAR ¶ 5.3; Fitzpatrick Decl. ¶ 38.

25 Based on an estimated Class of 169 individuals, on a raw average, each Participating
26 Class Member may recover approximately \$1,270.22, on average ($\$214,666.67 \div 169$ Class
27 Members). Based on approximately 14,600 Workweeks, the estimated value of the Net
28 Settlement Amount is approximately \$14.70 per Workweek. The amount actually paid to each

1 Participating Class Member will increase or decrease depending on the number of qualifying
2 Workweeks credited to that individual during the Class Period and whether they received
3 remedial payments from Defendant during the course of the litigation. Fitzpatrick Decl. ¶ 39.

4 Additionally, the Settlement allocates \$45,000.00 to PAGA penalties, of which 65%, or
5 \$29,250.00, will be paid to the LWDA, and 35%, or \$15,750.00, will be distributed to PAGA
6 Members on a *pro rata* basis based on the number of pay periods worked during the PAGA
7 Period. *See* SAR ¶ 5.3.1; Fitzpatrick Decl. ¶ 40. Based on the data provided by Defendant
8 prior to mediation, there are an estimated 119 PAGA Members. Accordingly, on a raw average
9 basis, each PAGA Member is estimated to receive approximately \$132.35 ($\$15,750.00 \div 119$
10 PAGA Members), with the actual payment varying according to the number of pay periods
11 worked during the PAGA Period. Fitzpatrick Decl. ¶ 41.

12 Finally, pursuant to the Settlement Agreement, funds from settlement checks that
13 remain uncashed after the applicable check-cashing period will be distributed to the designated
14 *cy pres* beneficiary. *See* SAR ¶ 5.6. Plaintiff's counsel has no conflict of interest with the
15 designated *cy pres* beneficiary. Fitzpatrick Decl. ¶ 42.

16 **2. Whether, and Under What Circumstances, Amounts Available for**
17 **Payment in Settlement Might Not Be Paid to Class Members or**
Might Revert to the Defendant

18 None of the settlement funds will revert to Defendant. SAR ¶ 5.1.

19 **3. Scope of the Release of Class Members' Claims**

20 As a condition of participating in this class action settlement, Class Members who do
21 not submit a valid and timely Request for Exclusion ("Participating Class Members") will
22 release the Released Parties from "any and all claims arising during the Class Period that were
23 alleged in the operative complaint or that could have been alleged based on the factual
24 allegations in the operative complaint. *See* SAR ¶ 6.1.

25 The "Released Parties" are defined by the Settlement Agreement to include "Defendants
26 and any of their predecessors, successors, subsidiaries, and affiliates, and all of their owners,
27 shareholders, members, officers, directors, successors and assigns, and any other persons acting
28 by, through, under or in concert with any of them." *See* SAR ¶ 1.23.

1 In addition, regardless of their decision to participate in the class portion of the
2 settlement, PAGA Members will release the Released Parties from “any and all claims for
3 penalties under PAGA during the PAGA Period that were alleged in the Action.” *See* SAR ¶
4 6.2.

5 Given that the releases above are tailored to only claims pled or that could arise out of
6 the facts alleged in the Action and Plaintiff’s respective PAGA letters, that accrued during
7 limited periods of time, the releases are appropriately tailored.

8 **4. Tax Treatment of Settlement Amounts**

9 The Parties have agreed that the settlement payments (“Individual Settlement
10 Payments”) to Participating Class Members from the Net Settlement Amount shall be
11 allocated as follows: 10% wages, for which an IRS Form W-2 will issue and from which
12 payroll taxes will be deducted, and 90% penalties and interest, for which an IRS Form 1099
13 will issue. SAR ¶ 5.3.2. Defendant will be liable for employer-side payroll taxes. SAR ¶
14 1.13.

15 The Individual Settlement Payments to PAGA Members from the PAGA Penalties
16 Fund will be deemed one hundred percent (100%) penalties and be accompanied by an IRS
17 Form 1099. SAR ¶ 5.3.1.

18 **5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations**

19 As stated above, Class Members do not need to do anything should they wish to
20 receive their share of the settlement funds. In other words, because this is not a claims-made
21 settlement, Class Members will not be required to make a submission to participate in the
22 settlement. Thus, this substantially decreases the burden each Class Member must bear in
23 order to receive their Individual Settlement Payment. If a Class Member does not wish to take
24 part in this settlement and be bound by the Released Class Claims, the Class Member must
25 submit a Request for Exclusion. SAR ¶ 4.3. If twenty percent (10%) or more of the Class
26 submit a timely and valid Request for Exclusion, Defendant will have the right, but not the
27 obligation, to revoke and void this Settlement at their discretion. SAR ¶ 4.5.

1 **C. Notice to Class Members**

2 Should the Court grant the instant Motion, Defendant will provide the Settlement
3 Administrator with a list containing each Class Member’s full name, most recent mailing
4 address, Social Security number, dates of employment, respective number of Workweeks
5 worked during the Class Period and PAGA Period, and any other relevant information needed
6 to calculate settlement payments (“Class List”). SAR ¶ 3.2. Defendant shall provide this
7 information within seven calendar days of preliminary approval of this settlement. *Ibid.*
8 Within seven calendar days of receipt of the Class List, the Settlement Administrator shall
9 mail the Notice Packet to all Class Members. *Ibid.* Any notices returned to the Settlement
10 Administrator as non-deliverable on or before the opt-out deadline shall be sent promptly via
11 regular first-class U.S. mail to the forwarding address affixed thereto. SAR ¶ 3.3. If no
12 forwarding address is provided, the Settlement Administrator shall promptly attempt to
13 determine the correct address using a skip trace or other search and perform a re-mailing. *Ibid.*

14 The Parties have agreed to the language of the Notice Packet. The Notice Packet
15 describes the terms of the settlement and advises Class Members of their opportunity to opt
16 out of the settlement or object to the settlement. Notice Packet; SAR ¶¶ 4.1-4.3. Class
17 Members will have forty-five (45) calendar days from the initial mailing of the Notice Packet
18 by the Settlement Administrator to opt out of the settlement or object to the settlement. SAR ¶
19 4.1. Class Members can submit objections to the settlement in writing to the Settlement
20 Administrator. SAR ¶ 4.2.

21 If Class Members need further information about the settlement and/or the lawsuit,
22 Class Counsel’s contact information and the Settlement Administrator’s contact information
23 are provided in the Notice Packet. *See* Notice Packet. Fitzpatrick Decl. ¶ 43.

24 **D. Typicality and Adequacy of Representation**

25 **1. Class Representative’s Claims are Typical of the Class**

26 The commonality requirement is met when there are questions of law and fact common
27 to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of
28 shared legal issues with divergent legal factual predicates is sufficient, as is a common core of

1 salient facts couple with disparate legal remedies within the class”). Commonality requires
2 only that some common legal or factual questions exist; the Plaintiff need not show that all
3 issues in the litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473
4 (1981). Defendant’s conduct is central to the commonality inquiry. *See City of San Jose v.*
5 *Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13
6 (1971). Where the employer’s conduct is uniformly directed at a class of employees, as it is
7 here, the class wide impact of the Defendant’s policies and practices satisfies the commonality
8 requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

9 Plaintiff alleges that Defendant violated the Labor Code by failing to pay all minimum
10 and overtime wages owed for all hours worked, failing to provide off-duty meal and rest
11 breaks or pay meal and rest period premiums, failing to timely pay all wages when due and
12 upon separation of employment, failing to reimburse business expenses, failing to provide
13 accurate itemized wage statements, and engaging in unfair business practices. Declaration of
14 Plaintiff Edwardo Jacquez (“Pltf Decl.”) ¶¶ 3-8. As a result, Plaintiff alleges that he is owed
15 unpaid wages and penalties for the above violations.

16 In other words, Plaintiff contends that he was subjected to the same policy and practice
17 as other Class Members and that his claims are typical to those of the Settlement Class.

18 Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such
19 issues been raised or presented. Pltf Decl. ¶ 9. Plaintiff has taken all necessary steps to
20 represent the interests of the Settlement Class, and by providing information and documents to
21 Plaintiff’s counsel. Pltf Decl. ¶ 10. For such reasons, Plaintiff has adequately represented the
22 Class Members and will continue to do so.

23 **2. Class Counsel Have Adequately Represented the Class and Have** 24 **Experience with Wage and Hour Class Action**

25 From the inception of the case, Class Counsel have zealously represented the interests
26 of the Class. Class Counsel have engaged in significant investigation and meet and confer
27 discussions with Defendant’s counsel to obtain informal data and documents and to discuss the
28 merits of the claims on behalf of the Class. Fitzpatrick Decl. ¶¶ 44; Kaneshiro Decl. ¶ 3; Lee

Decl. ¶¶ 2-3; Yang Decl. ¶ 2. The settlement was obtained for the benefit of the Class, as opposed to the individual Class Representative. Fitzpatrick Decl. ¶ 44; Lee Decl. ¶ 2; Yang Decl. ¶ 2.

E. Costs and Fees

1. Attorneys' Fees and Costs

California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

The common fund doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits, she may require the passive beneficiaries to compensate those who created the fund. Both California state and federal courts have embraced this doctrine. *Serrano v. Priest*, 20 Cal. 3d at p. 35; *Vincent*, 557 F.2d at p. 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." The reasons for applying the common fund doctrine include:

Fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful.

Id.

1 Indeed, in 2016, the California Supreme Court has also now held that the award of
2 attorneys' fees in common fund wage and hour class action settlements should start with the
3 percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (2016) ("We
4 join the overwhelming majority of federal and state courts in holding that when class action
5 litigation establishes a monetary fund for the benefit of the class members, and the trial court
6 in its equitable powers awards class counsel a fee out of that fund, the court may determine the
7 amount of a reasonable fee by choosing an appropriate percentage of the fund created").

8 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
9 percent of the fund. *Laffitte*, 1 Cal. 5th at p. 506. And this was based on a lodestar amount that
10 required a multiplier of 2.13. *Id.* at p. 487. As the Court held, only when the multiplier is
11 "extraordinarily high or low [should] the trial court [] consider whether the percentage method
12 should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id.* at p.
13 505.

14 The Parties have agreed to a payment of a maximum of \$148,333.33, or one-third of
15 the Gross Settlement Amount for payment to Class Counsel as attorneys' fees. SAR ¶ 5.1.1.
16 Further, the parties have agreed to reimbursement of Class Counsel's litigation expenses up to
17 \$25,000.00 for reimbursement of actual litigation costs, subject to Court approval. SAR ¶
18 5.1.1.

19 Class Counsel have, at their own risk, expended costs to prosecute the Action,
20 including filing the instant Action, effecting service of process, participating in mediation, and
21 paying other litigation-related costs.

22 Based on the foregoing, the Court should preliminarily approve the attorney's fees and
23 costs as requested by the Parties, subject to lodestar cross-check and review of the
24 reimbursements sought.

25 **2. Proposed Payment to the Class Representative**

26 Class Representative Edwardo Jacquez requests an enhancement of \$5,000.00. Pltf
27 Decl. ¶ 13; SAR ¶ 5.1.2. The Class Representative met and conferred with Class Counsel on a
28 number of occasions to discuss the case, provided documents and information to Class

1 Counsel, and reviewed the Stipulation of Settlement. Pltf Decl. ¶ 10. In addition to the
2 invaluable services that he provided, Plaintiff also took a significant risk, both professionally
3 and monetarily, in acting as the Class Representative and seeking benefits on behalf of the
4 Settlement Class. Because the claims alleged by the Class Representative involved the
5 payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of
6 Defendant, had he not prevailed in this action. Pltf Decl. ¶ 12.

7 Furthermore, Plaintiff believes that future employers are much less likely to hire
8 individuals who have filed suit against their employer, particularly cases of this nature, so that
9 Plaintiff may face prejudice in the future from other potential employers. Pltf Decl. ¶ 11.
10 Plaintiff took this risk upon himself and the whole Settlement Class benefited from these risks
11 taken by Plaintiff. Settlement Class Members did not have to file individual lawsuits and bear
12 the risks of payment of costs if they did not prevail, nor did they have to face the potential for
13 retaliation and not getting future employment had they filed a public lawsuit.

14 In addition, Plaintiff agreed to provide a broader release of claims and waiver of the
15 protections of Civil Code § 1542, which is something that was not required of Class Members.

16 For these reasons, the Court should preliminarily approve Plaintiff's enhancement
17 payment.

18 **3. Settlement Administration Costs**

19 The Parties have agreed to an estimated payment of \$7,000.00 to the Settlement
20 Administrator, Phoenix Settlement Administrators, to send notices and to administer this
21 settlement. Phoenix Settlement Administrators is a well-recognized class action settlement
22 administrator. The Parties believe that the administration fee is reasonable and should be
23 approved. The estimated cost per Class Member is approximately \$41.42 for distribution
24 (\$7,000.00 ÷ 169 Class Members).

25 **IV. NOTICE TO THE LWDA**

26 Concurrently with the filing of this motion, Plaintiff submitted the Settlement
27 Agreement and supporting documents to the LWDA. Fitzpatrick Decl. ¶ 48.

