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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

JENNIFER CERVANTES, an individual, on
behalf of herself and all similarly situated
employees,

Plaintiff,

vs.

GOTON TILES, INC., a California
corporation; JUXIANG LI, an individual;
and DOES 1 through 100, inclusive,

Defendants.

Case No. 30-2024-01423863-CU-OE-CXC
(Hon. Melissa R. McCormick, Dept. CX105)

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

[Concurrently filed with Declaration of
Michael C. Robinson; Declaration of Plaintiff;
Declaration of Jodey Lawrence; [Proposed]
Order]

Date: January 28, 2027
Time: 2:00 p.m.
Dept.: CX105
Reservation Number: 74952801

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

2 PLEASE TAKE NOTICE that on January 28, 2027, at 2:00 p.m. or as soon thereafter as
3 the matter may be heard, in Department CX105 of the Orange County Superior Court Civil Complex
4 Center, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, plaintiff JENNIFER
5 CERVANTES (“Plaintiff”) will and hereby does move this Court for an order: (1) granting class
6 certification of the Settlement Class solely for settlement purposes pursuant to California Code of
7 Civil Procedure section 382; (2) preliminarily approving the Class Action and PAGA Settlement
8 Agreement and Class Notice (the “Settlement”)¹ between Plaintiff and defendants GOTON TILES,
9 INC. (“Defendant” or “Goton”) and JUXIANG LI (collectively, “Defendants”), (3) appointing
10 Michael Robinson and Orion Robinson of Robinson Di Lando A Professional Law Corporation as
11 Class Counsel; (4) appointing Plaintiff as Class Representative; (5) approving the use of the proposed
12 notice procedures and related forms; (6) directing that notice be mailed to the proposed Settlement
13 Class; and (7) scheduling a hearing date for motion for final approval of class action settlement and
14 awards of attorneys’ fees and costs.

15 The “Settlement Class” or “Class Members” consist of all of Defendant’s non-exempt
16 employees in California during the Class Period. The “Class Period” means the period from
17 September 6, 2020 through the date of preliminary approval of the Settlement.

18 This Motion is made on the following grounds: (1) the Settlement Class meets all the
19 requirements for class certification for settlement purposes only under California Code of Civil
20 Procedure section 382; (2) Plaintiff and her counsel are adequate to represent the Settlement Class;
21 (3) the Settlement reflects a fair, adequate, and reasonable compromise of all disputed claims in view
22 of Defendants’ potential liability exposure as compared against the risks of continued litigation; (4)
23 the proposed notice procedures and related forms adequately apprise the Class Members of their

24 _____
25 ¹ The Settlement is attached as Exhibit 1 to the Declaration of Michael C. Robinson (“MCR”),
26 which is submitted herewith under a separate cover.

1 rights under the Settlement and fully comport with due process; and (5) in view of the foregoing,
2 notice should be disseminated to the Class Members, and a hearing date for motion for final approval
3 of class action settlement, and awards of attorneys' fees and costs, should be set.

4 Plaintiff's counsel has met and conferred with Defendants' counsel regarding the subject
5 Motion. Defendants do not intend to oppose this Motion. Plaintiff has provided notice to the LWDA
6 of the Settlement and hearing date for this Motion.

7 The Motion is based on this Notice of Motion, the attached Memorandum of Points and
8 Authorities, the Declarations of Michael C. Robinson, Plaintiff, and Jodey Lawrence, all papers and
9 pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and
10 documentary evidence as may be presented in connection with the hearing on the Motion.

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

I. INTRODUCTION

Plaintiff JENNIFER CERVANTES (“Plaintiff”) submits this memorandum of points and authorities in support of her motion for preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice (the “Settlement”)², which provides for a Gross Settlement Amount (“GSA”) of \$190,000.00 in compromise of all disputed wage claims on behalf of non-exempt California employees of defendant GOTON TILES, INC. (“Defendant” or “Goton”), but only for the time period that the employees performed non-exempt work for Defendant during the period of September 6, 2020 through the preliminary approval date of the Settlement. Through this Motion, Plaintiff respectfully requests for this Court to: (1) provisionally certify the below-defined Class for settlement purposes only under Code of Civil Procedure § 382; (2) preliminarily approve the Settlement; (3) preliminarily appoint Plaintiff as Class Representative; (4) appoint Michael C. Robinson and Orion S. Robinson of Robinson Di Lando A Professional Law Corporation as Class Counsel; (5) approve the proposed notice procedures and related forms; and (6) schedule a final approval hearing.

This Court should grant Plaintiff’s motion because: (1) for settlement purposes, the Settlement Class meets the requirements for class certification under Code of Civil Procedure § 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness, reasonableness, and adequacy; (3) for settlement purposes, Plaintiff is adequate to serve as Class Representative; (4) Plaintiff’s attorneys are adequate to serve as Class Counsel; (5) the proposed notice procedures and related forms fully comport with due process and adequately apprise Class Members of their rights;

² The Settlement is attached as Exhibit (“Ex.”) 1 to the Declaration of Michael C. Robinson (“MCR”), which is submitted herewith under a separate cover.

1 and (6) a final approval hearing must be scheduled to allow Class Members an opportunity to be
2 heard regarding the Settlement and to give it finality. Accordingly, for the reasons detailed below,
3 this Court should grant Plaintiff's Motion in its entirety and preliminarily approve the Settlement.

4 **II. BACKGROUND**

5 Defendant is a wholesale distributor of building materials, including tiles, flooring, and
6 moldings. MCR, ¶ 3. Defendant employed Plaintiff in California as a non-exempt, hourly front desk
7 receptionist from April 2019 through August 9, 2024. *Id.*

8 **A. The Claims and Procedural History**

9 On or around September 4, 2024, Plaintiff notified Defendant and the California Labor and
10 Workforce Development Agency ("LWDA"), pursuant to the California Private Attorneys General
11 Act of 2004, California Labor Code §§ 2698, *et seq.* ("PAGA"), of alleged Labor Code violations
12 committed by Defendant. MCR, ¶ 4, Ex. 2.

13 On September 6, 2024, Plaintiff filed a Class Action Complaint in Orange County Superior
14 Court, Case No. 30-2024-01423863-CU-OE-CXC, against Goton and individual Juxiang Li
15 (collectively, "Defendants"), on behalf of herself and others similarly situated, alleging causes of
16 action on a class-wide basis for: (1) Failure to Pay All Overtime Wages; (2) Failure to Pay Minimum
17 Wages; (3) Failure to Provide Meal Periods or Compensation In Lieu Thereof; (4) Failure to Provide
18 Rest Periods or Compensation in Lieu Thereof; (5) Failure to Pay Due Wages At Termination; (6)
19 Failure to Furnish Accurate Wage Statements; (7) Violation of Labor Code § 226(c); (8) Violation
20 of Labor Code § 1198.5; (9) Violation of Labor Code § 2802; and (10) Unfair Competition (Bus. &
21 Prof. Code §§ 17200, *et seq.*). MCR, ¶ 5, Ex. C. On or about May 29, 2025, Plaintiff filed a First
22 Amended Complaint adding a PAGA cause of action against Defendants. MCR, ¶ 5, Ex. D.

23 Defendants deny all of Plaintiff's allegations and strongly contend that their wage and hour
24 policies, practices, and procedures are fully compliant with all applicable laws. MCR, ¶ 5.

25 ///

of missed meal period premiums, the amount of unpaid wages due to miscalculation of the regular rate of pay, and the amount of potential off-the-clock work performed by the Class Members, all during the Class Period. *Id.*

Overall, Plaintiff's Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative Class representative through interviews, background investigations, and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Class's time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in mediation. This investigation allowed Plaintiff's Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as making an independent assessment of the reasonableness of the terms to which the Parties have agreed. MCR, ¶ 9.

C. Mediation

On October 29, 2025, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator Cynthia Remmers, Esq., an experienced employment and class action mediator. MCR, ¶ 10. The Parties participated in an early conference to discuss the claims, supporting facts and evidence, and potential defenses. MCR, ¶ 10. During the mediation, the Parties had a full day of productive negotiations but were not able to reach a settlement. MCR, ¶ 10. The Parties continued to discuss resolution extensively, and were able to reach a settlement on November 11, 2025. MCR, ¶ 10. During the mediation session and ongoing settlement discussions, each side, represented by its respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all

other matters covered by this Agreement pursuant to the terms and conditions of this Agreement.
MCR, ¶ 10.

III. OVERVIEW OF THE SETTLEMENT

A. Settlement Class and Aggrieved Employees Definition

The Settlement defines the “Settlement Class” as all of Defendant’s non-exempt employees in California during the Class Period. Settlement, ¶ 1.5. The “Class Period” is September 6, 2020 through the date of preliminary approval of the Settlement. *Id.*, ¶ 1.12. “Aggrieved Employee” means Defendant’s non-exempt hourly employees during the PAGA Period. *Id.*, ¶ 1.4. The “PAGA Period” begins September 4, 2023 and ends on the date of preliminary approval of the Settlement. *Id.*, ¶ 1.33.

B. Monetary Terms

Except as otherwise provided by Paragraph 9 of the Agreement, Defendants promise to pay \$190,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants will fund the settlement as follows: \$20,000 within 30 days of execution of the Settlement Agreement (May 18, 2026), \$60,000 within 6 months from when the Settlement Agreement is fully executed, \$50,000 within 9 months from when the Settlement Agreement is fully executed, and \$60,000 within 12 months from when the Settlement Agreement is fully executed. *Id.*, ¶ 4.3. The “Effective Date” is defined as the date that the Court has approved the Settlement; the Court has issued the Final Order, dismissed all of Plaintiff’s claims with prejudice in their entirety, and entered judgment in accordance with the terms described herein; and the judgment is final meaning that (i) it is appealable and (ii) either (a) no appeal has been taken from the judgment as of the date on which all times to appeal therefrom have expired, or (b) an appeal or other review proceeding of the judgment having been commenced, such appeal or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for re-hearing en banc, petitions for writ of certiorari, or otherwise, and such appeal or other review has been finally resolved

1 in such manner that affirms the judgment order in its entirety. If the Parties' Settlement is not
2 approved as described herein, the Settlement shall be void *ab initio* and of no further force or effect,
3 and the Parties shall be returned in all respects to their respective positions as of November 10, 2025,
4 the day before the Settlement of this matter. *Id.*, ¶ 1.18. The Administrator will disburse the entire
5 Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved
6 Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount
7 will revert to Defendants. *Id.*, ¶ 3.1.

8 The Administrator will make and deduct the following payments from the Gross Settlement
9 Amount, in the amounts specified by the Court in the Final Approval:

10 Class Representative Service Payment to the Class Representative of not more than
11 \$15,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the
12 Class Representative is entitled to receive as a Participating Class Member). Defendants will not
13 oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this
14 amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses
15 Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later
16 than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative
17 Service Payment less than the amount requested, the Administrator will retain the remainder in the
18 Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using
19 IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the
20 Class Representative Service Payment. *Id.*, ¶ 3.2.1.

21 Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be
22 \$63,333.33, and a Class Counsel Litigation Expenses Payment of not more than \$15,000.00.
23 Defendants will not oppose requests for these payments provided that they do not exceed these
24 amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class
25 Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the

1 Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment
2 less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement
3 Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel
4 arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel
5 Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class
6 Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full
7 responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel
8 Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any
9 dispute or controversy regarding any division or sharing of any of these Payments. *Id.*, ¶ 3.2.2.

10 An Administrator Expenses Payment not to exceed \$3,250.00 except for a showing of good
11 cause and as approved by the Court. To the extent the Administration Expenses are less or the Court
12 approves payment less than \$3,250.00, the Administrator will retain the remainder in the Net
13 Settlement Amount. *Id.*, ¶ 3.2.3.

14 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the
15 total number of Work Weeks worked by all Participating Class Members during the Class Period and
16 (b) multiplying the result by each Participating Class Member's Work Weeks. *Id.*, ¶ 3.2.4.

17 10.00% of each Participating Class Member's Individual Class Payment will be allocated to
18 settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding
19 and will be reported on an IRS W-2 Form. The 90.00% of each Participating Class Member's
20 Individual Class Payment will be allocated to settlement of claims for interest and penalties (the
21 "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be
22 reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability
23 for any employee taxes owed on their Individual Class Payment. *Id.*, ¶ 3.2.4.1.

1 Non-Participating Class Members will not receive any Individual Class Payments. The
2 Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement
3 Amount for distribution to Participating Class Members on a pro rata basis. *Id.*, ¶ 3.2.4.2.

4 PAGA Penalties in the amount of \$25,000.00 to be paid from the Gross Settlement Amount,
5 with 65% (\$16,250.00) allocated to the LWDA PAGA Payment and 35% (\$8,750.00) allocated to
6 the Individual PAGA Payments. *Id.*, ¶ 3.2.5.

7 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount
8 of the Aggrieved Employees' 35% share of PAGA Penalties (\$8,750.00) by the total number of
9 PAGA Paychecks of all Aggrieved Employees but only for the time period that the employee
10 performed services during the PAGA Period and (b) multiplying the result by each Aggrieved
11 Employee's PAGA Paychecks. Aggrieved Employees assume full responsibility and liability for any
12 taxes owed on their Individual PAGA Payment. *Id.*, ¶ 3.2.5.1.

13 If the Court approves PAGA Penalties of less than the amount requested, the Administrator
14 will allocate the remainder to the Net Settlement Amount. The Administrator will report the
15 Individual PAGA Payments on IRS 1099 Forms. *Id.*, ¶ 3.2.5.2.

16 **C. Timing of Payments and Escalator**

17 Based on a review of Defendant's records through mediation, Defendant estimates there are
18 24 Class Members who collectively worked a total of 921 Work Weeks, and 11 Aggrieved
19 Employees who received a total of 179 PAGA Paychecks through the date of mediation. *Id.*, ¶ 9. If
20 the Work Weeks and/or Class Members as of the date the Court approves the Settlement exceeds the
21 referenced 921 Work Weeks and/or 24 Class Members by more than 10.00%, the Gross Settlement
22 Amount, including the Class Counsel Fees Payment, the Class Representative Service Payments, and
23 the LWDA payment, will increase proportionally according to the number of additional Work Weeks
24 or Class Members, whichever results in a higher increase in the Gross Settlement Amount.
25 Alternatively, Defendants may elect to end the Class Period on the date on which the number of
26

workweeks reached 1,013. *Id.*, ¶ 9.

Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data. *Id.*, ¶ 4.2.

Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator as follows: \$20,000 within 30 days of full execution of the Settlement Agreement (May 18, 2026); \$60,000 within 6 months of full execution of the Settlement Agreement; \$50,000 within 9 months of full execution of the Settlement Agreement; and \$60,000 within 12 months of full execution of the Settlement Agreement. *Id.*, ¶ 4.3.

Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. *Id.*, ¶ 4.4.

1 The Administrator will issue checks for the Individual Class Payments and/or Individual
2 PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid.
3 The face of each check shall prominently state the date (not less than 180 days after the date of
4 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the
5 void date. The Administrator will send checks for Individual Settlement Payments to all Participating
6 Class Members (including those for whom the Notice Packet was returned undelivered). The
7 Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees
8 including Non-Participating Class Members who qualify as Aggrieved Employees (including those
9 for whom the Notice Packet was returned undelivered). The Administrator may send Participating
10 Class Members a single check combining the Individual Class Payment and the Individual PAGA
11 Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses
12 using the National Change of Address Database. *Id.*, ¶ 4.4.1.

13 The Administrator must conduct a Class Member Address Search for all other Class Members
14 whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving
15 a returned check, the Administrator must re-mail checks to the USPS forwarding address provided
16 or to an address ascertained through the Class Member Address Search. The Administrator need not
17 take further steps to deliver checks to Class Members whose re-mailed checks are returned as
18 undelivered. The Administrator shall promptly send a replacement check to any Class Member whose
19 original check was lost or misplaced, requested by the Class Member prior to the void date. *Id.*, ¶
20 4.4.2.

21 For any Class Member whose Individual Class Payment check is uncashed and cancelled
22 after the void date, the Administrator shall aggregate the amounts of those Individual Class Payment
23 checks not negotiated within the 180-day period and shall distribute to the cy pres recipient, Legal
24 Aid at Work. *Id.*, ¶ 4.4.3.

1 For any Class Member whose Individual PAGA Payment check is uncashed and cancelled
2 after the void date, the Administrator shall transmit the funds represented by such checks to the
3 California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving
4 no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). *Id.*,
5 ¶ 4.4.4.

6 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate
7 Defendants to confer any additional benefits or make any additional payments to Class Members
8 (such as 401(k) contributions or bonuses) beyond those specified in this Agreement. *Id.*, ¶ 4.4.5.

9 **D. Calculation of Settlement Shares**

10 An Individual Class Payment is calculated by (a) dividing the Net Settlement Amount by the
11 total number of Work Weeks worked by all Participating Class Members during the Class Period and
12 (b) multiplying the result by each Participating Class Member's Work Weeks. *Id.*, ¶ 3.2.4.

13 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount
14 of the Aggrieved Employees' 35% share of PAGA Penalties (\$8,750.00) by the total number of
15 PAGA Paychecks of all Aggrieved Employees but only for the time period that the employee
16 performed non-exempt work during the PAGA Period and (b) multiplying the result by each
17 Aggrieved Employee's PAGA Paychecks. Aggrieved Employees assume full responsibility and
18 liability for any taxes owed on their Individual PAGA Payment. *Id.*, ¶ 3.2.5.1.

19 **E. Apportionment of Settlement Shares**

20 10.00% of each Participating Class Member's Individual Class Payment will be allocated to
21 settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding
22 and will be reported on an IRS W-2 Form. The 90.00% of each Participating Class Member's
23 Individual Class Payment will be allocated to settlement of claims for interest and penalties (the
24 "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be
25

reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. *Id.*, ¶ 3.2.4.1.

F. The Release

Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

Plaintiff and her respective former and present spouse (if applicable), representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or law, or Plaintiff's discovery of them. *Id.*, ¶ 6.1

For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist

1 in his or her favor at the time of executing the release, and that if known by him or her would have
2 materially affected his or her settlement with the debtor or Released Party.” *Id.*, ¶ 6.1.1.

3 “Released Class Claims” means all claims, rights, demands, liabilities, and causes of action
4 that are alleged in the Operative Complaint, or which could have been alleged by reason of, or in
5 connection with, any matter or fact set forth or referred to in the Operative Complaint, including
6 claims for violation of: (a) California Labor Code § 510 (unpaid overtime); (b) California Labor Code
7 §§ 1194, 1197, and 1197.1 (unpaid minimum wages); (c) California Labor Code §§ 226.7 and 512(a)
8 (failure to provide meal periods); (d) California Labor Code § 226.7 (failure to authorize and permit
9 rest periods); (e) California Labor Code §§ 226(a) and 1174(d) (non-compliant wage statements and
10 failure to maintain payroll records); (f) California Labor Code §§ 201 and 202 (wages not timely paid
11 upon termination); (g) California Labor Code § 204 (failure to timely pay wages during
12 employment); (h) California Labor Code § 2802 (unreimbursed business expenses); (i) California
13 Business & Professions Code §§ 17200, *et seq.* (unlawful business practices); and (j) California
14 Business & Professions Code §§ 17200, *et seq.* (unfair business practices). *Id.*, ¶ 6.1.2.

15 “Released PAGA Claims” means all claims for civil penalties under California Labor Code
16 §§ 2698, *et seq.*, that were brought or could reasonably have been brought based on the same facts
17 alleged in Plaintiff’s LWDA letter and the Operative Complaint during the PAGA Period. *Id.*, ¶ 6.2.

18 **G. Notice and Claims Process and Procedures**

19 Not later than 3 business days after the Administrator’s receipt of any Notice Packet returned
20 by the USPS as undelivered, the Administrator shall re-mail the Notice Packet using any forwarding
21 address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator
22 shall conduct a Class Member Address Search, and re-mail the Notice Packet to the most current
23 address obtained. The Administrator has no obligation to make further attempts to locate or send
24 Notice Packet to Class Members whose Notice Packet is returned by the USPS a second time. *Id.*, ¶
25 8.4.3.

1 The deadlines for Class Members' written objections, Challenges to Work Weeks and/or
2 PAGA Paychecks (disputes), and Requests for Exclusion will be extended an additional 15 days
3 beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-
4 mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed
5 Notice Packet. *Id.*, ¶ 8.4.4.

6 If the Administrator, Defendants, or Class Counsel is contacted by or otherwise discovers any
7 persons who believe they should have been included in the Class Data and should have received the
8 Notice Packet, the Parties will expeditiously meet and confer in person or by telephone, and in good
9 faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such
10 persons will be Class Members entitled to the same rights as other Class Members, and the
11 Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise
12 options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline
13 dates in the Class Notice, whichever is later. *Id.*, ¶ 8.4.5.

14 **1. Disputes**

15 Each Class Member shall have 60 days after the Administrator mails the Notice Packet (plus
16 an additional 15 days for Class Members whose Notice Packet is re-mailed) to challenge the number
17 of Class Work Weeks and PAGA Paychecks (if any) allocated to the Class Member in the Class
18 Notice. This is also known as a "Dispute." A Work Week Dispute form, attached as Exhibit C, may
19 be used for this purpose but is not required. The Class Member may challenge the allocation by
20 communicating with the Administrator via fax, email, or mail. The Administrator must encourage
21 the challenging Class Member to submit supporting documentation. In the absence of any contrary
22 documentation, the Administrator is entitled to presume that the Work Weeks contained in the Class
23 Notice are correct so long as they are consistent with the Class Data. The Administrator's
24 determination of each Class Member's allocation of Work Weeks and/or PAGA Paychecks shall be
25 final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly
26

1 provide copies of all challenges to calculation of Work Weeks and/or PAGA Paychecks to Defense
2 Counsel and Class Counsel and the Administrator's determination of the challenges. *Id.*, ¶ 8.6.

3 **2. Opting Out**

4 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send
5 the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60
6 days after the Administrator mails the Notice Packet (plus an additional 15 days for Class Members
7 whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her
8 representative that reasonably communicates the Class Member's election to be excluded from the
9 Settlement and includes the Class Member's name, address, and email address or telephone number.
10 To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response
11 Deadline. An Election Not to Participate in Settlement form, attached as Exhibit B to the Settlement
12 Agreement, may be used for this purpose but is not required. *Id.*, ¶ 8.5.1.

13 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain
14 all the information specified in the Class Notice. The Administrator shall accept any Request for
15 Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class
16 Member and the Class Member's desire to be excluded. The Administrator's determination shall be
17 final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to
18 question the authenticity of a Request for Exclusion, the Administrator may demand additional proof
19 of the Class Member's identity. The Administrator's determination of authenticity shall be final and
20 not appealable or otherwise susceptible to challenge. *Id.*, ¶ 8.5.2.

21 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed
22 to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all
23 terms and conditions of the Settlement, including the Participating Class Member's Release under
24 Paragraph 6 of the Settlement Agreement, regardless of whether the Participating Class Member
25 actually receives the Class Notice or objects to the Settlement. *Id.*, ¶ 8.5.3.

Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Aggrieved Employees are deemed to release the claims identified in Paragraph 6.2 of the Settlement Agreement and are eligible for an Individual PAGA Payment. *Id.*, ¶ 8.5.4.

3. Objecting

Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Class Representative Service Payments. *Id.*, ¶ 8.7.1.

Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional 15 days for Class Members whose Notice Packet was re-mailed). The Objection form, attached as Exhibit D, may be used for this purpose but is not required. *Id.*, ¶ 8.7.2.

Non-Participating Class Members have no right to object to any of the class action components of the Settlement. *Id.*, ¶ 8.7.3.

H. Uncashed Checks

For any Class Member whose Individual Class Payment check is uncashed and cancelled after the void date, the Administrator shall aggregate the amounts of those Individual Class Payment checks not negotiated within the 180-day period and shall distribute to the cy pres recipient, Legal Aid at Work. *Id.*, ¶ 4.4.3.

1 For any Class Member whose Individual PAGA Payment check is uncashed and cancelled
2 after the void date, the Administrator shall transmit the funds represented by such checks to the
3 California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving
4 no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). *Id.*,
5 ¶ 4.4.4.

6 **IV. CERTIFICATION OF THE CLASS IS APPROPRIATE**

7 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and
8 its members are too numerous for joinder to be practical; (2) the representative and absent class
9 members share a community of interest and questions of law and fact common to the class
10 predominate over questions unique to individual class members; (3) the representative's claims are
11 typical of the class' claims; and (4) the representative will fairly and adequately represent the class'
12 interests. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Moreover, in the
13 settlement context, the Court can use a lesser standard to determine the appropriateness of a
14 settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.* (1996) 48
15 Cal.App.4th 1794, 1807. As explained below, all of these requirements are met in this case.

16 **A. The Settlement Class Is Objectively Ascertainable**

17 A class is ascertainable when it may be readily identified without unreasonable expense or
18 time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 (citing
19 *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiffs maintain that the above-defined Class
20 is ascertainable because its members may be identified by reference to Defendant's records and
21 Defendant has agreed to share the relevant information from their records to facilitate the settlement
22 process. MCR, ¶ 11. Therefore, the Settlement Class is ascertainable.

23 **B. The Membership of the Settlement Class Is Sufficiently Numerous**

24 The Settlement Class has sufficiently numerous members to render joinder impractical. No
25 set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove* (1972) 28

Cal.App.3d 1017, 1030. Defendant estimates that there are approximately 24 Class Members. MCR, ¶ 12. Plaintiff maintains that it would be impractical and economically inefficient to require each Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. The California Supreme Court has upheld a class of as few as 10 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations, the Settlement Class membership is sufficiently numerous. MCR, ¶ 12. *See Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695.

C. Class Members Share a Well-Defined Community of Interest

The community of interest requirement “embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. It “does not mandate that class members have uniform or identical claims.” *Capitol People First v. Dept. of Developmental Servs.* (2007) 155 Cal.App.4th 676, 692. Rather, courts focus on the defendant’s internal policies and “pattern and practice... in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal.4th at 333).

To justify certification, the class proponent “must show... that questions of law or fact common to the class predominate over the questions affecting the individual members....” *See Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank, F.A. v. Superior Court* (2001) 248 Cal.4th 906, 913). In light of the more lenient standard for certification of a settlement class, the Parties agree that for purposes of the Settlement only, the claims of the Class Members all stem from the same sources. MCR, ¶ 13.

In this case, Plaintiff asserts all Class Members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendant’s alleged policy-driven failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, failure to maintain

required payroll records, and related labor law violations, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1) whether Defendant failed to pay all wages earned to Class Members for all hours worked, including payment at the correct rates of pay; (2) whether Defendant failed to provide the class with all meal and rest periods in compliance with California law; (3) whether Defendant failed to pay the Class Members one additional hour of pay on workdays it failed to provide the Class Members with one or more meal or rest periods in compliance with California law; (4) whether Defendant failed to indemnify the Class Members for all necessary business expenditures incurred during the discharge of their duties; (5) whether Defendant knowingly and intentionally failed to provide the Class Members with accurate wage statements; (6) whether Defendant willfully failed to provide the Class Members with timely final wages; and (7) whether Defendant engaged in unfair competition within the meaning of Business and Professions Code §§ 17200, *et seq.*, with respect to the Class. MCR, ¶ 14. Therefore, common questions predominate.

D. Plaintiff Is Typical of the Settlement Class

The class representative must be similarly situated to the rest of the purported class. *See Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 (“[I]t has never been the law in California that the class representative must have identical interests with the class members. The only requirements are... that the class representative be *similarly* situated”) (emphasis in original); *see also* Newberg, § 3:29 (typicality “focuses on whether there exists a relationship between the Plaintiff’s claims and the claims alleged on behalf of the class”). Plaintiff contends that her claims are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that she, like absent Class Members, were subjected to the same relevant policies and procedures governing their compensation, hours of work, and meal and rest periods. Because Plaintiff contends that she was subjected to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiff will determine Defendants’ *prima facie* liability to all Class Members. Moreover, Plaintiff’s

claims could potentially be subject to the same primary affirmative defenses as those of absent Class Members. Accordingly, Plaintiff's claims are typical of the Class. MCR, ¶ 15.

E. Plaintiff Will Adequately Represent the Settlement Class

The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct the litigation, and the plaintiff's interest in the litigation is not antagonistic to the class's interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's ability to represent the class. MCR, ¶ 16.

First, Class Counsel has supplied the Court with declarations to show that they are adequate to represent the Settlement Class and that they have significant experience in employment litigation generally, and wage and hour and employment-related class action litigation specifically. *See* MCR, ¶ 38. Thus, Plaintiff's counsel is adequate to serve as Class Counsel.

Second, Plaintiff contends that she is an adequate class representative. Plaintiff and the Class Members have strong and co-extensive interests in this litigation because they all worked for Defendant during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiff and the Class Members. MCR, ¶ 17. Moreover, Plaintiff has demonstrated her commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as well as exposing herself to the risk of attorneys' fees and costs awards against her if this lawsuit had been unsuccessful. MCR, ¶ 17. Thus, Plaintiff is adequate to serve as a settlement class representative. Accordingly, this Court should find that Plaintiff and her counsel are adequate to represent the Settlement Class as required under Code of Civil Procedure § 382.

1 **F. Class Action Treatment Is the Superior Means for Resolving the Claims of the**
2 **Class Members**

3 Plaintiff further contends that a class action is superior to other means of adjudicating the
4 issues in this action. The predominance of common legal and factual questions shows that this Court
5 could fairly adjudicate the claims of Class Members through a single class action. In view of the
6 *theoretical* alternatives that proposed class members could potentially utilize—representative PAGA
7 action (where there is less relief available), individual civil lawsuits or wage claims through the
8 Division of Labor Standards Enforcement (where there would be relatively little money at stake, but
9 the claims would be time-consuming to litigate)—a class action is plainly superior to all of them.
10 Thus, this consideration supports conditional class action treatment for purposes of this Settlement
11 only. MCR, ¶ 18.

12 **V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL BECAUSE THE**
13 **SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

14 **A. Legal Standard**

15 A class action settlement requires court approval. California Rules of Court (“CRC”), Rule
16 3.769 provides three steps for approval: (1) preliminary approval after submission of a written motion
17 for preliminary approval, the proposed class settlement, and the proposed class notice; (2) issuance
18 of notice of settlement to class members; and (3) a final settlement approval hearing where class
19 members may be heard regarding the settlement, at which evidence and argument concerning the
20 fairness, adequacy, and reasonableness of the settlement is presented. The decision to approve or
21 reject a class settlement is committed to the Court’s broad discretion. *Kullar v. Foot Locker Retail,*
22 *Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve class settlement may be reversed
23 only upon a showing of “clear abuse of discretion.” *Id.*

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1 with respect to the relevant factual issues at issue in Plaintiff's action. MCR, ¶ 19. Plaintiff's counsel
2 applied discounts to the maximum possible exposure to account for all other risks discussed below.
3 MCR, ¶ 19. While it is difficult to assign anything but crudely-determined percentages of risk to any
4 of the claims, it is safe to say that the risk that a *Pick-Up Stix* campaign would preclude recovery for
5 such employees is substantial and alone justifies a significant discount because Defendant would
6 likely by trial have gathered releases from the majority of the Class Members. MCR, ¶ 19.
7 Furthermore, many class members were in the process of executing arbitration agreements and class
8 waivers, which would have potentially limited the recovery substantially. MCR, ¶ 19. Additionally,
9 Defendant argued that to the extent there were any Labor Code violations, they were not caused by
10 company policies or procedures, but rather, were the independent decisions of the employee. MCR,
11 ¶ 19. A class settlement for approximately 32.58% of the potential recovery is a proportion
12 substantially in excess of recovery proportions sanctioned by existing case law.³ *Id.*

13 Furthermore, Plaintiff is aware of only two significant awards under the PAGA in a contested
14 proceeding, both issued by federal district courts.⁴ MCR, ¶ 20. PAGA penalty awards are often small

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18 ³ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998) (“[A]n agreement that
19 secures roughly six to twelve percent of a total trial recovery . . . seems to be within the targeted range of
20 reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019)
21 (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v.*
22 *Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery of
23 Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008)
24 (approving settlement amount that “is just over 9% of the maximum potential recovery asserted by either party.”).

25 ⁴ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the
26 PAGA of \$12,277,500.00 where total adjusted damages were \$18,695,692.58. In this regard, the district court stated,

even for egregious, intentional violations of the Labor Code. *Id.* For instance, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only \$50.00. *Minute Order, Shields v. Security Paving Company, Inc.*, Case No. BC492828 (LASC Oct. 24, 2017). Further, in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the defendant’s meal period violations. A similar result could occur here. *Id.*

Plaintiff’s initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. *Id.* Therefore, Plaintiff believes a class and PAGA settlement for \$190,000.00 is fair and reasonable. *Id.*

The plain language of PAGA provides that “a court may award a lesser amount than the maximum civil penalty amount specified by this part if, *based on the facts and circumstances of the particular case*, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2) (emphasis added). The relationship between the amount of total damages and the amount of maximum PAGA penalties is certainly a “circumstance” of the case under the term’s ordinary meaning. The weight given to that circumstance is greater in this case because Plaintiffs’ PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs’ individual claims except for one. As a general matter, it would be excessively punitive for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed the damages caused by that injury or set of injuries.

Id. at fn. 9. The district court further stated, “Virgin ‘has not presented any evidence that the full penalty would be excessive in relation to its ability to pay,’ the weight of this factor is lessened.” *Id.*

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F.Supp.3d. 1058, the court awarded approximately \$102 million in damages, primarily based on the defendant’s failures to comply with the requirements of California Labor Code § 226.

The *Kullar* case sets forth several factors a court should consider in determining whether to approve a class settlement. These factors include: (1) the strength of Plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. 168 Cal.App.4th at 128. As demonstrated herein, the Settlement satisfies each of these factors.

a. Risks Associated with the Arbitration Agreements

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There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at best, largely because Defendant's written policies throughout the relevant time period prohibited off-the-clock work. MCR, ¶ 22. Off-the-clock claims are difficult where a defendant requires in their written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation Hospital* (2014) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). In their employment policies, Defendant mandates that employees must record all time worked accurately on their time records and strictly prohibits employees from performing any work off-the-clock. MCR, ¶ 22. Moreover, while Defendant disputes that off-the-clock work occurred, it contends that any time spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable ("We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendant contends that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Accordingly, a large award of penalties seems unlikely with respect to this claim. *Id.*

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

1 **c. Risks Associated with the Meal Period Claims**

2 There are risks to Plaintiff's meal period claim. MCR, ¶ 24. Defendant contends that, to
3 establish a violation for missed meal periods, a plaintiff must do more than show that a meal break
4 was not taken. *Brinker Restaurant Corp v. Superior Court* (2012) 53 Cal.4th 1004, 1004. So long as
5 an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it
6 has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-
7 41. Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee
8 from taking a proper break, or otherwise failed to release the employee of all control. *Id.* "Thus, the
9 crucial issue with regard to the meal break claim is the reason that a particular employee may have
10 failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641.

11 Defendant contends it did not impede or discourage Plaintiff, or any other employees, from
12 taking their meal or rest periods. MCR, ¶ 25. Defendant's policies mandate that employees take at
13 least a 30-minute, uninterrupted meal periods and record the beginning and ending time of their meal
14 breaks each day on their time records. *Id.* The time records produced to Plaintiff for purposes of
15 mediation show that meal periods were taken. *Id.* Of the time records that show a late, short, or no
16 lunch, individualized evidence may be necessary to determine whether they occurred due to conduct
17 of the Defendant or each of the employees concerned. Accordingly, there is a significant risk that the
18 value of Plaintiff's meal period claim would be substantially reduced at trial. *Id.*

19 **d. Risks Associated with the Rest Break Claims**

20 There are risks to Plaintiff's rest period claim. MCR, ¶ 26. Employers are not required to
21 record rest periods, and such periods are paid. *Id.* Defendant contends it provided non-exempt
22 employees the opportunity to take rest periods in accordance with California law. Further,
23 Defendant's policies on meal and rest periods are consistent with the Wage Order. *Id.* Thus, unlike
24 meal periods, where there are often records showing whether an employee clocked out or not, there
25 is no such evidence to prove a missed rest period or that the employer refused to authorize and permit
26

one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.* Plaintiff will depend on sample witness testimony and surveys to prove the claims. *Id.* While a victory with such evidence is certainly possible, relevant case law makes such claims risky from a trial management and due process perspective. *Id.*; see *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 31 (“[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

e. **Risks Associated with the Failure to Indemnify Claim**

There is a risk that the Court may consider Plaintiff’s claims as to Defendant’s alleged failure to indemnify for business expenses to be individual in nature and thus decline to certify the class. MCR, ¶ 27. Plaintiff alleges that Defendant required certain Class Members to incur mileage and travel costs, and failed to indemnify them for these business expenses. *Id.* Defendant presented evidence that it had an expense reimbursement policy. As such, there is a risk that the Court may consider Plaintiff’s claims to be individual in nature and unfit for class wide resolution. *Id.*

f. **Risks Associated with the Wage Statement Violation Claims**

Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA penalties. Under Labor Code § 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. MCR, ¶ 28.

Here, Plaintiff’s wage statement claim has the same underlying risks as the above claims, as it is derivative of them. *Id.* On their face, the wage statements issued by Defendant comply with the requirements of Labor Code § 226. MCR, ¶ 28.

g. **Risks Associated with the Waiting Time Penalty Claims.**

Without proof of willful behavior, Plaintiff will be unable to recover these penalties. Lab. Code § 203(a).

1 **h. Risks Associated with the PAGA Claim**

2 Regarding PAGA, a court has discretion to award a lesser amount than the maximum penalty.
3 Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th
4 1112, 1135 (reducing PAGA award). As set forth above, Defendant has posed valid defenses to the
5 Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face
6 significant uncertainty. MCR, ¶ 29. There is a risk that the Court would consider the maximum civil
7 penalty available to be confiscatory and unfair. Defendant will also argue that Plaintiff is not entitled
8 to stacking PAGA penalties.

9 This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a
10 significant discount for settlement purposes. MCR, ¶ 30. For mediation purposes, Plaintiff's counsel
11 estimated a maximum possible exposure of approximately \$361,200 in civil penalties. This estimate
12 did not take into account any of the risks discussed above and assumed a violation for every single
13 pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay period for the
14 same alleged violations of different Labor Code provisions and derivative violations. *Id.* Although
15 two federal district court decisions held that "stacking" PAGA penalties in this fashion may be
16 appropriate to determine the amount in controversy for purposes of removal jurisdiction, Plaintiff's
17 counsel is not aware of any California state courts awarding plaintiffs multiple PAGA penalties for
18 the same violation for the same pay period under different Labor Code provisions. *Id.* This may be
19 because the PAGA does not provide for what many employers characterize as claim splitting and not
20 merely stacking. *Id.*

21 **i. Risks Associated with a Pick-Up Stix Campaign**

22 An employer enjoys the right to settle a putative class member's disputed wage claims
23 individually, without the consent or involvement of class counsel. MCR, ¶ 31; *see Chindarah v. Pick*
24 *Up Stix, Inc.* (2009) 171 Cal.App.4th 796. As discussed above, Defendant may launch a "pick off"
25 settlement campaign to pursue individual release agreements from the Class Members, thereby
26

1 potentially narrowing the size of the Settlement Class significantly. *Id.* This led to a significant
2 reduction of claim value in settlement negotiations. *Id.*

3 While the evidence gathered through Plaintiff's discovery may support the merits of the
4 claims asserted in this lawsuit, Plaintiff and her counsel recognize that continued litigation presents
5 significant risks that support a downward departure from Defendant's estimated liability exposure.
6 MCR, ¶ 31. In view of the risks, the Settlement reflects Plaintiff's estimate of the total amount of
7 damages, monetary penalties, or other relief that the Class could reasonably expect to be awarded at
8 trial, taking into account the likelihood of prevailing and other attendant risks. *Id.* It also represents
9 a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary
10 approval. *Id.*; *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial
11 condition of defendant predominated in assessing the reasonableness of settlement); *Spann v. J.C.*
12 *Penney Corp.* (C.D. Cal. 2016) 211 F.Supp.3d 1244, 1256 (uncertainty concerning defendant's
13 financial stability "strongly supports the reasonableness of the settlement"); *Laguna v. Coverall M.*
14 *Am., Inc.*, No. 12-55479, 2014 WL 2465049, at *3 (9th Cir. June 3, 2014).

15 2. Allocation of the PAGA Payment

16 The settlement of PAGA penalties in the sum of \$25,000.00, of which 65% (\$16,250.00) will
17 be paid to the LWDA and 35% (\$8,750.00) will be distributed to the Aggrieved Employees, is
18 reasonable and appropriate under the circumstances. MCR, ¶ 32. The Parties negotiated a good faith
19 amount for PAGA Penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to
20 the LWDA was not the result of self-interest at the expense of other Class Members. *Id.* Where
21 settlements "negotiate[] a good faith amount" for PAGA penalties and "there is no indication that
22 this amount was the result of self-interest at the expense of other Class Members," such amounts are
23 generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
24 928133, at *9 (N.D. Cal. Apr. 3, 2009). Likewise, where the employer did not act willfully, and made
25 good faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted
26

1 because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary, and
2 oppressive. *Id.*; *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-29 (affirming trial
3 court's award of only 10% of maximum PAGA penalty for meal break violations). The amount to be
4 paid to the LWDA comports with PAGA settlement amounts approved by other courts. *See, e.g.,*
5 *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 67245, at *81 (approving
6 PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund); *Lazarin v. Pro Unlimited,*
7 *Inc.* (N.D. Cal. July 11, 2013) 2013 WL 3541217 (approving PAGA payment of \$7,500 to LWDA
8 out of \$1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8,
9 2008) 2008 WL 3385452, at *1 (approving PAGA settlement of 0.3% or \$1,500); *Nordstrom Com.*
10 *Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated \$0
11 to PAGA claim). Courts have also approved settlements for \$20,000 or less. *See, e.g., Hicks v. Toys*
12 *'R' Us-Delaware, Inc.* (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA
13 payment in a case involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov.
14 27, 2012) 2012 WL 5941801, at *14 (approving PAGA penalties of \$10,000 as part of \$2.5 million
15 settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3
16 (approving PAGA payment of \$10,000 as part of \$3.7 million common-fund settlement).

17 **3. Presence of Governmental Participant**

18 As required under Labor Code § 2699(1)(2), Plaintiff has provided notice of this settlement
19 to the LWDA on September 10, 2026 with the filing and service of this motion. MCR, ¶ 33, Ex. E.

20 **4. Reaction of Class Members to Proposed Settlement**

21 If the Settlement is preliminarily approved, Class Members will be provided with the Court
22 Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (attached
23 as Exhibit A to the Settlement Agreement) and an opportunity to object. MCR, ¶ 34. The Parties'
24 proposed notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow
25 Class Members to make informed responses to the proposed settlement. *Id.*

VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY COMPARED TO OTHER CLASS MEMBERS

The Individual Settlement Payments will be paid to each Class Member based on his or her eligible Work Weeks compared to the total Work Weeks. MCR, ¶ 35. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendant longer would have been subject to more alleged violations, it is fair, adequate, and reasonable. *Id.*

VII. ALLOCATION FOR CLASS COUNSEL’S FEE AWARD AND ATTORNEYS’ FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE

The Settlement states Class Counsel may seek attorneys’ fees of \$63,333.33 (one-third of the GSA) and up to \$15,000.00 for actual reasonable litigation costs and expenses incurred in prosecuting the Action. Settlement, ¶ 3.2.2. These amounts are reasonable, given the facts and circumstances of the case.

Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the “experienced trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Ca1.5th 480, 503 (citing *Lealao*, 82 Cal.App.4th at 48-49). The Supreme Court has recently approved fees equal to one-third of the common fund. *Id.* at 480. Many courts have similarly approved fee awards equal to or greater than the percentage requested here. *See, e.g., In re Pacific Enterprises* (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common

fund); *In re Activision* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

The amount of fees and costs requested are commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort, and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the value Class Counsel achieved for the class, and (6) the other cases Class Counsel turned down to devote time to this matter. MCR, ¶ 37. Class Counsel conducted interviews and obtained information regarding the claims as part of the investigation, met and conferred with Defendants' counsel on numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided by Defendants and obtained through other sources, researched applicable law, retained an expert, provided estimates of "damages" for purposes of settlement discussions, and participated in mediation, among other tasks. *Id.*

Class Counsel have borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. MCR, ¶ 38. Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.* Plaintiff's counsel was led by Michael C. Robinson, who has over thirty years of experience, Orion Robinson with over twelve years of experience, and Robert Bates with over thirty-eight years of experience. Plaintiff's counsel has handled over one hundred class action and PAGA claims both on the defense and plaintiff's side. MCR, ¶ 38. Considering the amount of the attorneys' fees requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded. *Id.*

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**VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFF SHOULD
BE PRELIMINARILY APPROVED BECAUSE IT IS FAIR, ADEQUATE, AND
REASONABLE**

Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000 enhancement award). The Settlement provides that Plaintiff may seek a Class Representative Service Payment of \$15,000.00. Settlement, ¶ 3.2.1. This amount is entirely reasonable given Plaintiff’s efforts in this action and the risks she undertook on behalf of the Class Members. MCR, ¶ 39; Declaration of Plaintiff, generally. Plaintiff has devoted many hours advancing the interests of the Settlement Class. Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about her work history with Defendant and Defendant’s policies and practices with respect to the wage and hour claims at issue, and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendants’ attorneys’ fees and costs if this action had been unsuccessful. *See* Labor Code §§ 218.5-218.6. The efforts and risks that Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Service Payment is fair, adequate, and reasonable, and thus warrants preliminary approval. MCR, ¶ 39; Plaintiff’s Decl., generally.

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IX. **THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE, AND REASONABLE**

With regard to the settlement administration costs (“Administration Expenses Payment”) provision, it is reasonable. Plaintiff’s counsel obtained a quote from Phoenix Settlement Administrators (“Phoenix”) for the amount of \$3,250.00. MCR, ¶ 40; Declaration of Jodey Lawrence. Plaintiff’s counsel has used Phoenix to administer settlements in the past, and based on Plaintiff’s counsel’s experience, Phoenix’s costs are less than other reputable third-party administrators. MCR, ¶ 40. Thus, the settlement administration costs provision should be given preliminary approval.

X. **THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO EXERCISE THEIR RIGHTS**

This Court should approve the proposed plans for giving notice to the Settlement Class and administering the Settlement. The standard for determining the adequacy of notice is whether the notice has “a reasonable chance of reaching a substantial percentage of the class members.” *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple measures to ensure that as many Class Members as practicable receive actual notice of the Settlement and have enough time to exercise their rights. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, ¶ 8.4.2. Although there are current employee Class Members, it is uncertain whether Defendant’s records of their contact information include email addresses. As such, notice by mail alone is fair, adequate, and reasonable. MCR, ¶ 41.

With respect to its content, “[the] notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-52. The

purpose of the notice in class settlement context is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement Agreement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the individual Settlement Class Member's estimated payment. Additionally, the Class Notice will include the number of Work Weeks a Class Member had during the Class Period. Accordingly, the Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. MCR, ¶ 42.

XI. CONCLUSION

For the reasons stated above, this Court should grant Plaintiff's Motion in its entirety and adopt the proposed order submitted concurrently herewith.

DATED: September 10, 2026

ROBINSON DI LANDO

By:



Michael C. Robinson, Jr.
Orion S. Robinson

Attorneys for Plaintiff
JENNIFER CERVANTES

Cindy Estrada

From: donotreply@occourts.org
Sent: Thursday, September 10, 2026 6:16 PM
To: Cindy Estrada
Subject: Superior Court of California, County of Orange - Motion Reservation Request - CONFIRMATION



Reserve a Motion Date

Your reservation request has been CONFIRMED by the Superior Court. The hearing date and time below has been reserved. You will be asked to provide your reservation number to the court at a later date.

MOVING PAPERS MUST BE E-FILED WITHIN 24 HOURS AFTER COMPLETING THE ON-LINE RESERVATION. Failure to submit your moving papers within 24 hours will result in the automatic CANCELLATION of the reservation.

NOTE: To expedite your motion, please place the appropriate Court Reservation number (e.g. 7XXXXXXX) on each Motion being submitted. If multiple motions are submitted on one document, all reservation numbers must be listed on the face page of the pleading.

Please do not reply to this email.

Reservation Number: 74952801

Hearing Date: January 28, 2027
Hearing Time: 2:00 PM
Department: CX105
Motion Type: Motion for Approval of Class Settlement

Case Number: 30-2024-01423863-CU-OE-CXC
Case Title: Cervantes vs. Goton Tiles, Inc.
Judicial Officer: Melissa R. McCormick

Email: cestrada@rdwlaw.com
Requestor Name: Cindy Estrada
Requestor Phone: 213-229-0100
Filing Party: Plaintiff, Jennifer Cervantes

Date of Request: September 10, 2026

Time of Request: 5:47 PM

Transaction Number: 1000641016

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