

1 DAVID GLENN SPIVAK (SBN 179684)
david@spivaklaw.com
2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com
3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl
PMB 42554
5 West Hollywood, CA 90069
Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485
7

8 Attorneys for Plaintiff,
9 ARMANDO ASCENCIO, and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12 **(UNLIMITED JURISDICTION)**

13 ARMANDO ASCENCIO, on behalf of himself
14 and all others similarly situated, and as an
15 “aggrieved employee” on behalf of other
16 “aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 MONARCH LITHO INC., a California
20 corporation, ROBERT LOPEZ, a natural
21 individual; and DOES 1–50, inclusive,

22 *Defendant(s).*
23

Case No. 24STCV27524

**PLAINTIFF ARMANDO ASCENCIO’S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**



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PMB 42554
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(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
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Fl 7
Los Angeles, CA 90067

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

3 **I. INTRODUCTION**

4 Plaintiff Armando Ascencio ("Plaintiff") submits this memorandum of points and
5 authorities in support of his unopposed motion for preliminary approval of the Class Action and
6 PAGA Settlement Agreement and Class Notice (the "Settlement")², which provides for a Gross
7 Settlement Amount ("GSA") of \$1,600,000.00 in compromise of all disputed claims on behalf of
8 all persons Defendants employed in California as non-exempt, hourly employees who worked for
9 Defendants during the Class Period of October 21, 2020 through the date the Court preliminarily
10 approves this class action settlement. Through this Motion, Plaintiff respectfully requests for this
11 Court to (1) provisionally certify the below-defined Class for settlement purposes only under
12 Code of Civil Procedure § 382; (2) preliminarily approve the Settlement; (3) preliminarily appoint
13 Plaintiff as Class Representative; (4) appoint David Spivak and Caroline Tahmassian of The
14 Spivak Law Firm as Class Counsel; (5) approve the proposed notice procedures and related forms;
15 and (6) schedule a final approval hearing.

16 This Court should grant Plaintiff's motion because: (1) for settlement purposes, the
17 Settlement Class meets the requirements for class certification under Code of Civil Procedure §
18 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,
19 reasonableness, and adequacy; (3) for settlement purposes, Plaintiff is adequate to serve as Class
20 Representative; (4) Plaintiff's attorneys are adequate to serve as Class Counsel; (5) the proposed
21 notice procedures, and related forms, fully comport with due process and adequately apprise Class
22 Members of their rights; and (6) a final approval hearing must be scheduled to allow Settlement
23 Class Members an opportunity to be heard regarding the Settlement and to give it finality.
24 Accordingly, for the reasons detailed below, this Court should grant Plaintiff's Motion in its
25 entirety and preliminarily approve the Settlement.

26 **II. BACKGROUND**

27 Defendants are a family-owned printing company. DS, ¶ 4. Defendants employed Plaintiff
28 in California as an hourly, non-exempt mechanic from September of 1999 until July 26, 2024. *Id.*

A. The Claims and Procedural History

On October 15, 2024, Plaintiff notified Defendants and the California Labor and

² The Settlement is attached as Exhibit ("Ex.") 1 to the Declaration of David Spivak ("DS"), which is submitted herewith under a separate cover.



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1 Workforce Development Agency (“LWDA”), pursuant to the California Private Attorneys
2 General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor
3 Code violations committed by Defendants. DS, ¶ 5, Ex. 2.

4 On October 21, 2024, Plaintiff filed a Class Action Complaint in the Los Angeles County
5 Superior Court, Case No. 24STCV27524, against Defendants on behalf of himself and others
6 similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages
7 Earned for All Hours Worked (Lab. Code §§ 221, 510, 1194, 1197, and 1198); (2) Failure to
8 Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab.
9 Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage
10 Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§
11 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). DS, ¶ 6, Ex. 3. On
12 December 19, 2024, Plaintiff filed his First Amended Complaint adding a claim under PAGA.
DS, ¶ 6, Ex. 4.

13 **B. Sampling**

14 On December 13, 2024, Plaintiff requested that Defendants informally disclose
15 documents and data to enable Plaintiff to prepare for settlement discussions, including the number
16 of putative class members and aggrieved employees, the number of paychecks and workweeks
17 for the various limitations periods applicable to Plaintiff’s claims. DS, ¶ 7. Plaintiff also requested
18 a reasonable, randomly selected sample of Defendants’ time, payroll, and expense records, and
19 related personnel records. Finally, Plaintiff requested Defendants’ written policies applicable to
the claims at hand. *Id.*

20 The Parties thereafter engaged in an informal, voluntary exchange of information in the
21 context of privileged settlement discussions to facilitate an early mediation. Defendants produced
22 Plaintiff’s personnel file (including policies and agreements he signed and acknowledged) and
23 copies of their relevant company written policies. DS, ¶ 8.

24 Defendants contended that they employed 111 putative class members during the period
25 of October 21, 2020 to March 10, 2025. Defendants produced the records of 21.60% of the
26 putative class members. There were records for 24 employees in the sample. Plaintiff chose the
27 sample. The sample was randomly selected. The sample consisted of time and payroll records in
Microsoft Excel sheets, and related records. DS, ¶ 9.

28 Plaintiff retained James Toney, a data analyst, to analyze the sample. Plaintiff also

1 employed the Raosoft³ Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to
2 determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004)
3 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative
4 margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin
5 of error of 43.3 percent was unacceptable. Using a margin of error of 20.0%, a confidence level
6 of 95%, and a population size of 111, the Raosoft Sample Size Calculator recommended a sample
7 of 24. DS, ¶ 10, **Exhibit 5** (Raosoft Sample Size Calculator results print-out). Thus, the sample
8 population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

9 **C. Mediation**

10 On March 10, 2025, following much of the foregoing informal discovery and exchange
11 of information, the Parties participated in a mediation session presided over by Mediator Joe
12 Lovretovich, an experienced class action mediator. During the mediation, the Parties had a full
13 day of productive negotiations and reached an agreement on a class-wide settlement after a
14 mediator's proposal. During the mediation sessions, each side, represented by his / their respective
15 counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and
16 all other matters covered by this Agreement pursuant to the terms and conditions of this
17 Agreement. DS, ¶ 11.

18 **III. OVERVIEW OF THE SETTLEMENT**

19 **A. Settlement Class and Aggrieved Employees Definition**

20 The Settlement defines the Settlement Class as all persons Defendants employed in
21 California as non-exempt, hourly employees who worked for Defendants during the Class Period.
22 Settlement, § 1.5. The Class Period is October 21, 2020 through the date the Court preliminarily
23 approves this class action settlement. *Id.* The "Aggrieved Employees" all persons Defendants
24 employed in California as non-exempt, hourly employees who worked for Defendants during the
25 during the PAGA Period. Settlement, § 1.4. The "PAGA Period" begins October 15, 2023 through
26 the date the Court preliminarily approves this class action settlement. *Id.*

27 ³ Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the
28 Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software
programs for information gathering and analysis. The family of survey software supports data
collection and reporting for any form-based data. Support is for web-surveys and forms, email
distribution, diskette, PDA, laptop or pen-based: all types of distribution." The Raosoft webpage
advertises that is it "database web survey software for gathering information."
<http://www.raosoft.com/>. It also advertises, "The parameters of the sample size calculation are
something that you choose." <http://www.raosoft.com/suggestreading.html>.



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1 **B. Monetary Terms**

2 Defendants promise to pay \$1,600,000.00 as the Gross Settlement Amount and to
3 separately pay Defendants' share of employer payroll taxes owed on the Wage Portions of the
4 Individual Class Payments. The Administrator will disburse the entire Gross Settlement Amount
5 without asking or requiring Participating Class Members or Aggrieved Employees to submit any
6 claim as a condition of payment. Notwithstanding the return of funds in the event that Court
7 declines to grant Preliminary Approval and/or Final Approval of the Settlement, none of the Gross
8 Settlement Amount will revert to Defendants. Settlement, § 3.1.

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

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

22 To Class Counsel: A Class Counsel Fees Payment of not more than 33 and 1/3%, which
23 is currently estimated to be \$533,333.33 and a Class Counsel Litigation Expenses Payment of not
24 more than \$15,000.00. Defendants will not oppose requests for these payments provided that do
25 not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel
26 Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the
27 Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
28 Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will
allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to
Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will



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1 pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
2 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
3 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
4 Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any
5 division or sharing of any of these Payments.

6 To the Administrator: An Administrator Expenses Payment not to exceed \$10,000.00
7 except for a showing of good cause and as approved by the Court. To the extent the
8 Administration Expenses are less or the Court approves payment less than \$10,000.00, the
9 Administrator will retain the remainder in the Net Settlement Amount.

10 To Each Participating Class Member: An Individual Class Payment calculated by (a)
11 dividing the Net Settlement Amount by the total number of Work Weeks worked by all
12 Participating Class Members during the Class Period and (b) multiplying the result by each
13 Participating Class Member's Work Weeks.

14 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$100,000.00
15 to be paid from the Gross Settlement Amount, with 65% (\$65,000.00) allocated to the LWDA
16 PAGA Payment and 35% (\$35,000.00) allocated to the Individual PAGA Payments.
17 Settlement, § 3.2.

18 **C. Timing of Payments**

19 Defendants will fully fund the Gross Settlement Amount, and also fund the amounts
20 necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the
21 Administrator no later than 30 days after the Effective Date. Settlement, § 4.3

22 **D. Calculation of Settlement Shares**

23 An Individual Class Payment is calculated by (a) dividing the Net Settlement Amount by
24 the total number of Work Weeks worked by all Participating Class Members during the Class
25 Period and (b) multiplying the result by each Participating Class Member's Work Weeks.
26 Settlement, § 3.2.4.

27 The Administrator will calculate each Individual PAGA Payment by (a) dividing the
28 amount of the Aggrieved Employees' 35% share of PAGA Penalties \$35,000.00 by the total
number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and
(b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved
Employees assume full responsibility and liability for any taxes owed on their Individual PAGA
Payment. Settlement, § 3.2.5.1.



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1 **E. Apportionment of Settlement Shares**

2 10.00% of each Participating Class Member's Individual Class Payment will be allocated
3 to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
4 withholding and will be reported on an IRS W-2 Form. The remaining 90% of each Participating
5 Class Member's Individual Class Payment will be allocated to settlement of claims
6 proportionately with 50% for interest and 50% for penalties (the "Non-Wage Portion"). The Non-
7 Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms.
8 Settlement, § 3.2.4.1.

9 **F. The Releases**

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

14 Plaintiff's Release. In addition to the Released Class Claims and Released PAGA Claims
15 described below, Plaintiff, individually and on behalf of his respective former and present
16 spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns
17 generally, release and discharge Released Parties from all claims, transactions, or occurrences
18 demands, rights, liabilities and causes of action of every nature and description whatsoever,
19 whether known or unknown, asserted or that might have been asserted, whether in tort, contract,
20 or for violation of any state or federal statute, rule, law or regulation arising out of, relating to, or
21 in connection with any act or omission of the Released Parties through the date of full execution
22 of this Settlement Agreement("Plaintiff's Release."). Plaintiff's Release does not extend to any
23 claims or actions to enforce this Agreement, or to those rights that as a matter of law cannot be
24 waived, including but not limited to any claims for vested benefits, unemployment benefits,
25 disability benefits, social security benefits, workers' compensation benefits that arose at any time.
26 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to,
27 the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that
28 Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or
additional facts or Plaintiff's discovery of them.

 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. 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:



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 “A general release does not extend to claims that the creditor or releasing party does not
2 know or suspect to exist in his or her favor at the time of executing the release and that, if
3 known by him or her, would have materially affected his or her settlement with the debtor
4 or released party.”

5 Settlement, § 6.1.

6 Release by Participating Class Members: All Participating Class Members, on behalf of
7 themselves and their respective former and present representatives, agents, attorneys, heirs,
8 administrators, successors, and assigns, release Released Parties from all claims that were alleged,
9 or reasonably could have been alleged, based on the facts set forth in the Operative Complaint
10 that arose during the Class Period including, e.g., claims for: (a) failure to pay all wages earned
11 for all hours worked and other compensable hours at the correct rates of pay, including for off-
12 the-clock work, hours improperly deducted, minimum wages, regular wages, overtime wages,
13 and doubletime wages; (b) failure to provide compliant rest breaks or compensation in lieu
14 thereof; (c) failure to provide compliant meal periods or compensation in lieu thereof; (d) failure
15 to reimburse for necessary business-related expenses; (e) failure to provide accurate and complete
16 itemized wage statements and maintain payroll records; (f) failure to timely pay all wages due
17 during employment and upon separation of employment; and (g) claims for unfair competition.
18 (“Released Class Claims”). Except for Plaintiff’s Release by Plaintiff and as set forth in Section
19 6.3 of this Agreement, Participating Class Members do not release any other claims, including
20 claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing
21 Act, unemployment insurance, disability, social security, workers’ compensation, or claims based
22 on facts occurring outside the Class Period. Settlement, § 6.2.

23 Release of PAGA Claims by Aggrieved Employees. All Aggrieved Employees are
24 deemed to release, on behalf of themselves and their respective former and present
25 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
26 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been
27 alleged, based on the facts set forth in the Operative Complaint and the PAGA Notice that arose
28 during the PAGA Period including, e.g., claims for: (a) failure to pay all wages earned for all
hours worked and other compensable hours at the correct rates of pay, including for off-the-clock
work, hours improperly deducted, minimum wages, regular wages, overtime wages, and
doubletime wages; (b) failure to provide compliant rest breaks or compensation in lieu thereof;
(c) failure to provide compliant meal periods or compensation in lieu thereof; (d) failure to



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1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 reimburse for necessary business-related expenses; (e) failure to provide accurate and complete
2 itemized wage statements and maintain payroll records; (f) failure to timely pay all wages due
3 during employment and upon separation of employment; and (g) claims for unfair competition.
4 (“Released PAGA Claims”). The foregoing release shall be binding on Plaintiff, the Aggrieved
5 Employees, and the State of California, and shall bar by res judicata any claim under the PAGA
6 brought by any person, including the Aggrieved Employees, on behalf of the State of California,
7 as to any claims predicated on the Released PAGA Claims. Aggrieved Employees do not release
8 claims for wages or damages unless such Aggrieved Employees are Participating Class Members.
Settlement, § 6.3.

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

10 Not later than 15 days after the Court grants Preliminary Approval of the Settlement,
11 Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a
12 Microsoft Excel spreadsheet. No later than three (3) business days after receipt of the Class Data,
13 the Administrator shall notify Class Counsel that the list has been received and state the number
14 of Class Members, Aggrieved Employees, Work Weeks, and PAGA Pay Periods in the Class
Data. Settlement, § 4.2.

15 Using best efforts to perform as soon as possible, and in no event later than 14 days after
16 receiving the Class Data, the Administrator will send to all Class Members identified in the Class
17 Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet with Spanish
18 translation, if applicable substantially in the forms attached to this Agreement as Exhibits A, B,
19 C, and D. The first page of the Class Notice shall prominently estimate the dollar amounts of any
20 Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and
21 the number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate these
22 amounts. Before mailing Notice Packets, the Administrator shall update Class Member addresses
23 using the National Change of Address database. Not later than three (3) business days after the
24 Administrator’s receipt of any Notice Packet returned by the USPS as undelivered, the
25 Administrator shall re-mail the Notice Packet using any forwarding address provided by the
26 USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class
27 Member Address Search, and re-mail the Notice Packet to the most current address obtained. The
28 Administrator has no obligation to make further attempts to locate or send Notice Packet to Class
Members whose Notice Packet is returned by the USPS a second time. The deadlines for Class



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Fl 7
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Members' written objections, Challenges to Work Weeks and/or Pay Periods (disputes), and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Notice Packet. Settlement, § 8.4.

1. Disputes

Each Class Member shall have 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute. A Class Work Week/PAGA Pay Period Dispute form, attached as Exhibit C, may be used for this purpose but is not required. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Work Weeks and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Work Weeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Work Weeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges. Settlement, § 8.6.

2. Opting Out

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any



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8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067



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Fl 7
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Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement. 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. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment. Challenges to Calculation of Work Weeks/PAGA Pay Periods. Each Class Member shall have 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute. A Class Work Week/PAGA Pay Period Dispute form, attached as Exhibit C, may be used for this purpose but is not required. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Work Weeks and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Work Weeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Work Weeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges. Settlement, § 8.5.

1 **3. Objecting**

2 Only Participating Class Members may object to the class action components of the
3 Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
4 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
5 Payment and/or Class Representative Service Payment. Participating Class Members may send
6 written objections to the Administrator, by fax, email, or mail. In the alternative, Participating
7 Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal
8 objections at the Final Approval Hearing. A Participating Class Member who elects to send a
9 written objection to the Administrator must do so not later than 60 days after the Administrator's
10 mailing of the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet
11 was re-mailed). An The Objection form attached as Exhibit D may be used for this purpose but is
12 not required. Non-Participating Class Members have no right to object to any of the class action
13 components of the Settlement. Settlement, § 8.7.

14 **H. Uncashed Checks**

15 For any Class Member whose Individual Class Payment check or Individual PAGA
16 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
17 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
18 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
19 California Code of Civil Procedure Section 384, subd. (b). Settlement, § 4.4.3.

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

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

A. The Settlement Class Is Objectively Ascertainable

 A class is ascertainable when it may be readily identified without unreasonable expense
or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932



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PMB 42554
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(213) 725-9094 Tel
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Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the above-
2 defined Class is ascertainable because its members may be identified by reference to Defendants’
3 records and Defendants have agreed to share the relevant information from their records to
4 facilitate the settlement process. DS, ¶ 13. Therefore, the Settlement Class is ascertainable.

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

6 The Settlement Class has sufficiently numerous members to render joinder impractical.
7 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
8 (1972) 28 Cal.App.3d 1017, 1030. Defendants estimate that there are approximately 111 Class
9 Members. DS, ¶ 14. Plaintiff maintains that it would be impractical and economically inefficient
10 to require each Class Members to separately maintain an individual action or be joined as a named
11 plaintiff in this action. The California Supreme Court has upheld a class of as few as 10
12 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations,
the Settlement Class’ membership is sufficiently numerous. DS, ¶ 14. *See Daar v. Yellow Cab*
Co. (1967) 67 Cal.2d 695.

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

14 The community of interest requirement “embodies three factors: (1) predominant common
15 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
16 (3) class representatives who can adequately represent the class.” *Sav-On Drug Stores, Inc. v.*
17 *Superior Court* (2004) 34 Cal. 4th 319, 326. It “does not mandate that class members have
18 uniform or identical claims.” *Capitol People First v. Dept. of Developmental Servs.* (2007) 155
19 Cal. App. 4th 676, 692. Rather, courts focus on the defendant’s internal policies and “pattern and
20 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).

21 To justify certification, the class proponent ““must show ... that questions of law or fact
22 common to the class predominate over the questions affecting the individual members”” *See,*
23 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal. App. 4th 723, 732 (citing *Washington Mut. Bank,*
24 *FA v. Superior Court* (2001) 248 Cal. 4th 906, 913). In light of the more lenient standard for
25 certification of a settlement class, the Parties agree that for the purposes of the Settlement only,
the claims of the Class Members all stem from the same sources. DS, ¶ 15.

26 In this case, Plaintiff asserts all Class Members were subject to the same or similar
27 operations and employment policies, practices, and procedures. The claims arise from
28 Defendants’ alleged policy-driven failure to pay wages, unauthorized and unlawful wage



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Fl 7
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1 deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to
2 indemnify for business expenses, failure to issue proper wage statements, failure to timely pay
3 wages, failure to maintain required payroll records, and related labor law violations, all of which
4 Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff
5 asserts that common questions include, but are not limited to: (1) Whether Defendants failed to
6 pay all wages earned to Class Members for all hours worked at the correct rates of pay; (2)
7 Whether Defendants failed to provide the class with all meal and rest periods in compliance with
8 California law; (3) Whether Defendants failed to pay the class one additional hour of pay on
9 workdays they failed to provide the class with one or more meal or rest periods in compliance
10 with California law; (4) Whether Defendants failed to indemnify the class for all necessary
11 business expenditures incurred during the discharge of their duties; (5) Whether Defendants
12 knowingly and intentionally failed to provide the class with accurate wage statements; (6)
13 Whether Defendants willfully failed to provide the class with timely final wages; and (7) Whether
14 Defendants engaged in unfair competition within the meaning of Business and Professions Code
15 section 17200, *et seq.*, with respect to the class. DS, ¶ 15. Therefore, common questions
16 predominate.

17 **D. Plaintiff Is Typical of the Settlement Class**

18 The class representative must be similarly situated to the rest of the purported class. *See*
19 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating “it has never been the law in California
20 that the class representative must have identical interests with the class members. The only
21 requirements are ... that the class representative be *similarly* situated”) (emphasis in original); *See*
22 *also* Newberg, § 3:29 (typicality “focuses on whether there exists a relationship between the
23 Plaintiff’s claims and the claims alleged on behalf of the class”). Plaintiff contends that his claims
24 are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that he, like absent
25 Class Members was subject to the same relevant policies and procedures governing his
26 compensation, hours of work and meal and rest periods. Because Plaintiff contends that he was
27 subject to the same general course of conduct as absent Class Members, resolving the common
28 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. DS, ¶ 16.



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(213) 634-2485 Fax
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1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 **E. Plaintiff Will Adequately Represent the Settlement Class**

2 The adequacy requirement is met where the plaintiff is represented by counsel qualified
3 to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class'
4 interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the
5 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling
6 conflicts of interest that might hinder the plaintiff's ability to represent the class. DS, ¶ 17.

7 First, Class Counsel have supplied the Court with declarations to show that they are
8 adequate to represent the Settlement Class and that they have significant experience in
9 employment litigation generally, and wage and hour and employment-related class action
10 litigation specifically. *See* DS, ¶¶ 17-29. Thus, Plaintiff's counsel are adequate to serve as Class
11 Counsel.

12 Second, Plaintiff contends that he is an adequate class representative. Plaintiff and the
13 Class Members have strong and co-extensive interests in this litigation because they all worked
14 for Defendants during the relevant time period, allegedly suffered the same alleged injuries from
15 the same alleged course of conduct, and there is no evidence of any conflict of interest between
16 Plaintiff and the Class Members. DS, ¶ 18. Moreover, Plaintiff has demonstrated his commitment
17 to the Settlement Class by, among other things, retaining experienced counsel, providing counsel
18 with documents and extensively speaking with them to assist in identifying the claims asserted in
19 this case, assisting them in identifying witnesses, as well as exposing himself to the risk of
20 attorneys' fees and costs awards against him if this lawsuit had been unsuccessful. DS, ¶ 18. Thus,
21 Plaintiff is adequate to serve as settlement class representative. Accordingly, this Court should
22 find that Plaintiff and his counsel are adequate to represent the Settlement Class as required under
23 Code of Civil Procedure § 382.

24 **F. Class Action Treatment Is the Superior Means For Resolving The Claims**
25 **Of The Class Members**

26 Plaintiff further contends that a class action is also superior to other means of adjudicating
27 the issues in this action. The predominance of common legal and factual questions shows that this
28 Court could fairly adjudicate the claims of Class Members through a single class action. In view
of the *theoretical* alternatives that proposed class members could potentially utilize—
representative PAGA action (where there is less relief available), individual civil lawsuits or wage
claims through the Division of Labor Standards Enforcement (where there would be relatively
little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly



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Fl 7
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1 superior to all of them. Thus, this consideration supports conditional class action treatment for
2 purposes of this Settlement only. DS, ¶30.

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

5 **A. Legal Standard**

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

15 **B. The Settlement Is Presumptively Fair**

16 In assessing preliminary approval, a court evaluates if the settlement process has certain
17 indicia of fairness. A “presumption of fairness exists where (1) the settlement is reached through
18 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
19 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
20 of objectors is small.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996)
21 48 Cal.App.4th at 1794.

22 The class settlement here satisfies all of these factors. The Settlement resulted from
23 thorough, arms’ length, negotiations between experienced counsel with the assistance of a
24 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
25 weaknesses of their respective cases and Defendants’ estimated exposure. DS, ¶ 31.

26 At issue in this class and Private Attorneys General Act (“PAGA”) action is the liability
27 of Defendants for unpaid wages, unprovided meal periods, unauthorized rest breaks,
28 unreimbursed business expenses, incomplete and inaccurate wage statements, untimely wages,
and related violations of the Labor Code and applicable Wage Order. DS, ¶ 32. Plaintiff prepared
“damages” estimates in advance of the mediation. DS, ¶ 32, Ex. 6. Plaintiff determined
Defendants’ maximum possible exposure for restitution and penalties to be approximately
\$6,950,717.65 (consisting of \$527,963.15 in unpaid wages, \$1,472,193.66 in missed meal period



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1875 Century Park East
Fl 7
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premium wages, \$1,472,193.66 in missed rest break premium wages, \$195,690.00 in unreimbursed expenses, \$387,700.00 for wage statement penalties, \$439,180.88 for waiting time penalties, and \$2,103,750.00 for civil penalties under PAGA. Plaintiff calculated the damages based on the number of workweeks and pay periods provided by Defendants, Plaintiff's reports, and the sample data. *Id.*

However, based on the difficulties of proof, the Defendants' defenses, and the other attendant risks Plaintiff identifies below, Plaintiff estimates the likely awards at trial should Plaintiff prevail to be the following amounts:

- a. Unpaid wages and liquidated damages with interest in the amount of \$352,003.78;
- b. Meal period premium wages with interest in the amount of \$588,877.46;
- c. Rest period premium wages with interest in the amount of \$588,877.46;
- d. Unreimbursed expenses with interest in the amount of \$78,276.00;
- e. Statutory pay stub penalties in the amount of \$155,080.00;
- f. Waiting time penalties in the amount of \$175,672.35; and
- g. Civil penalties in the amount of \$841,500.00.

The total of these amounts is \$2,780,287.06. The Gross Settlement Amount of \$1,600,000.00 is 57.55% of this amount. DS, ¶ 33. Plaintiff's Counsel applied discounts to the maximum possible exposure to account for all other risks discussed below. While it is difficult to assign anything but crudely-determined percentages of risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees is substantial and alone justifies a significant discount because Defendants would likely by trial have gathered releases from the majority of the Class Members. A settlement for approximately 57.55% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.⁴ *Id.*



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Office:
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⁴ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998) (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d

Plaintiff's initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. DS, ¶ 34. Therefore, Plaintiff believes a class settlement for \$1,600,000.00 is fair and reasonable. *Id.*

C. The Settlement Satisfies the *Kullar* Factors for Approval

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.

1. Evaluation of Plaintiff's Case

a. Risks Associated with the Unpaid Wages Claim

There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at best, largely because Defendants' written policies throughout the relevant time period required the employees to record their hours worked. Off-the-clock claims are difficult where a defendant requires in its written policies that all work must be recorded. *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). Moreover, while Defendants dispute that off-the-clock work occurred, they contend 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. (Stating that "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*, Defendants contend 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. DS, ¶ 35.

The difficulty inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim.

1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party.").



1 Generally, a court will not certify a class unless it can determine an appropriate classwide
2 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff
3 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given
4 the lack of records indicating when such off-the-clock work may have taken place. Individualized
5 inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual
6 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant
7 risk that the Court would consider this evidentiary showing insufficient as a classwide
8 methodology. DS, ¶ 36.

8 **b. Risks Associated with the Meal Period Claims**

9 There are risks to Plaintiff’s meal period claim. DS, ¶ 37. Defendants contend that, to
10 establish a violation for missed meal periods, a plaintiff must do more than show that a meal break
11 was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a
12 “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal
13 breaks and ensure no work thereafter is performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must
14 show the employer impeded, discouraged, or prohibited the employee from taking a proper break,
15 or otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard
16 to the meal break claim is the reason that a particular employee may have failed to take a meal
17 break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

17 Defendants contend they did not impede or discourage Plaintiff, or any other employees,
18 from taking their meal or rest periods. Defendants’ policies mandate that employees take at least
19 a 30-minute, uninterrupted meal periods. Accordingly, there is a significant risk that the value of
20 Plaintiff’s meal period claim would be substantially reduced at trial. DS, ¶ 38.

21 **c. Risks Associated with the Rest Break Claims**

22 There are risks to Plaintiff’s rest period claim. Employers are not required to record rest
23 periods and such periods are paid. Defendants contend they provided non-exempt employees the
24 opportunity to take rest periods in accordance with California law. Further, Defendants contend
25 that their written policies on meal and rest periods are consistent with the Wage Order. Thus,
26 unlike meal periods, where there are often records showing whether an employee clocked out or
27 not, there is no such evidence to prove a missed rest period or that the employer refused to
28 authorize and permit one. Managing such claims at trial has become exceedingly difficult.
Plaintiff will depend on sample witness testimony and surveys to prove the claims. While a
victory with such evidence is certainly possible, relevant caselaw makes such claims risky from



1 a trial management and due process perspective. *Id.*, See *Duran v. U.S. Bank National Assn.*,
2 (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist to support class
3 certification, it may be possible to manage individual issues through the use of surveys and
4 statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast*
5 *Corporation v. Behrend* (2013) 133 S.Ct. 1426. DS, ¶ 39.

6 **d. Risks Associated with the Failure to Indemnify Claim**

7 There is a risk that the Court may consider Plaintiff’s claims as to Defendants’ alleged
8 failure to indemnify for business expenses to be individual in nature and thus decline to certify
9 the class. Plaintiff alleges that Defendants required Plaintiff and the Class Members to use their
10 personal items including cellular phones, and failed to indemnify them for these business
11 expenses. Defendants could present evidence that they did not require the employees to use their
12 personal cellphones and that they had an expense reimbursement policy. As such, there is a risk
13 that the Court may consider Plaintiff’s claims to be individual in nature and unfit for class wide
14 resolution. DS, ¶ 40.

15 **e. Risks Associated with the Statutory Wage Statement Penalty**
16 **Claims**

17 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and
18 PAGA penalties. Under Labor Code section 226, wage statements must include various
19 information, including the applicable rates of pay, corresponding hours worked, and gross pay.
20 Here, Plaintiff’s wage statement claim has the same underlying risks as the above claims, as it is
21 derivative of them. On their face, the wage statements issued by Defendants comply with the
22 requirements of Labor Code § 226. DS, ¶ 41.

23 **f. Risks Associated with the Waiting Time Penalty Claims.**

24 Without proof willful behavior, Plaintiff will be unable to recover these penalties. DS, ¶
25 42.

26 **g. Risks Associated With the PAGA Claim**

27 Regarding PAGA, a court has discretion to award a lesser amount than the maximum
28 penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed
valid defenses to the Labor Code claims underlying Plaintiff’s PAGA allegations. Thus, the
PAGA claims likewise face significant uncertainty. There is a risk that the Court would consider
the maximum civil penalty available to be confiscatory. DS, ¶¶ 43-44.

This uncertainty increases Plaintiff’s risk of pursuing the PAGA claims and required a





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1 significant discount for settlement purposes. For mediation purposes, Plaintiff's counsel
2 estimated a maximum possible exposure of approximately \$2,103,750.00 in civil penalties. This
3 estimate did not take into account any of the risks discussed above and assumed a violation for
4 every single pay period. Plaintiff's counsel also assessed multiple penalties for the same pay
5 period for the same alleged violations of different Labor Code provisions and derivative
6 violations. Although two federal district court decisions held that "stacking" PAGA penalties in
7 this fashion may be appropriate to determine the amount in controversy for purposes of removal
8 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
9 multiple PAGA penalties for the same violation for the same pay period under different Labor
10 Code provisions. This may be because the PAGA does not provide for what many employers
characterize as claim splitting and not merely stacking. DS, ¶ 45.

11 Plaintiff is aware of only two significant awards under the PAGA in a contested
12 proceeding, both issued by federal district courts.⁵ PAGA penalty awards are often small even for
13 egregious, intentional violations of the Labor Code.⁶ For instance, on October 24, 2017, the Los

14
15 ⁵ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
16 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were
\$18,695,692.58. In this regard, the district court stated,

17 The plain language of PAGA provides that "a court may award a lesser amount than the
18 maximum civil penalty amount specified by this part if, *based on the facts and*
19 *circumstances of the particular case*, to do otherwise would result in an award that is
20 unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code s 2699(e)(2) (emphasis
21 added). The relationship between the amount of total damages and the amount of
22 maximum PAGA penalties is certainly a "circumstance" of the case under the term's
23 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.

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

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

28 ⁶ In 2012, Plaintiff's Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court
case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The
plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the



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1 Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced
2 counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA
3 Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.* (2018) 30
4 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA
5 penalty of only \$5 per pay period for the defendant's meal period violations. A similar result
6 could occur here. DS, ¶¶ 46-47.

7 **h. Risks Associated With A Pick-Up Stix Campaign**

8 An employer enjoys the right to settle a putative class member's disputed wage claims
9 individually, without the consent or involvement of class counsel. *See Chindarah v. Pick Up Stix,*
10 *Inc.* (2009) 171 Cal. App. 4th 796. *Id.* As discussed above, Defendants may launch a "pick off"
11 settlement campaign to pursue individual release agreements from the Class Members, thereby
12 potentially narrowing the size of the Settlement Class – 111 members - until it is no longer
13 numerous enough for class certification. Plaintiff, then, may not have sufficient number of
14 employees to represent. This led to a significant reduction of claim value in settlement
15 negotiations. DS, ¶ 48.

16 While the evidence gathered through Plaintiff's discovery supports the merits of the
17 claims asserted in this lawsuit, Plaintiff and his counsel recognize that continued litigation
18 presents significant risks that support a downward departure from Defendants' estimated liability
19 exposure. In view of the risks, the Settlement reflects Plaintiff's estimate of the total amount of
20 damages, monetary penalties or other relief that the Class could reasonably expect to be awarded
21 at trial, taking into account the likelihood of prevailing and other attendant risks. It also represents
22 a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary
23 approval. *Id.*, *Torrison v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial
24 condition of defendant predominated in assessing the reasonableness of settlement); *Spann v. J.C.*
25 *Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning defendant's
26 financial stability "strongly supports the reasonableness of the settlement"); *Laguna v. Coverall*
27 *N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. DS, ¶ 49.

28 **2. Allocation of the PAGA Payment**

The settlement of PAGA penalties in the sum of \$100,000.00, of which 65% (\$65,000.00)

Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under
the PAGA. **Exhibits 7-8.**



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Fl 7
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will be paid to the LWDA and 35% (\$35,000.00) will be distributed to the Class, is reasonable and appropriate under the circumstances. DS, ¶ 50. The Parties negotiated a good faith amount for PAGA Penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements “negotiate[] a good faith amount” for PAGA penalties and “there is no indication that this amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary, and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial court’s award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The amount to be paid to the LWDA comports with PAGA settlement amounts approved by other courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also approved settlements for \$20,000 or less. See, e.g., *Hicks v. Toys ‘R’ Us–Delaware, Inc.*, (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in a case involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801 at *14 (approving PAGA penalties of \$10,000 as part of \$2.5 million settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3 (approving PAGA payment of \$10,000 as part of \$3.7 million common-fund settlement). *Id.*

3. Presence of Governmental Participant

As required under Labor Code section 2699(l)(2), Plaintiff will provide notice of this settlement to the LWDA with the filing and service of this motion. DS, ¶ 71, Ex. 19.

4. Reaction of Class Members to Proposed Settlement

If the settlement is preliminarily approved, Class Members will be provided with the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (attached

as Exhibit A to the Settlement) and an opportunity to object. The parties' proposed notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement.

VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS MEMBERS 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 Members based on his or her eligible Work Weeks compared to the total Work Weeks. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable. DS, ¶¶ 65-66.

Plaintiff estimates that there are 17,853 Work Weeks for the Class Period. So, each Work Week has a value of approximately \$51.91 (\$926,666.67 Net Settlement Amount / 17,853 Work Weeks = \$51.91). Plaintiff had approximately 196 Work Weeks during the Class Period. Based on this, it is anticipated that Plaintiff will receive an Individual Class Payment of approximately \$10,173.45 as a Participating Class Member (196 Work Weeks x \$51.91 = \$10,173.45) while the average estimated Individual Class Payment to Participating Class Members will be approximately \$8,348.35. Some Class Members – those who worked more Work Weeks during the Class Period - will receive more, and some less. The highest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for all Work Weeks in the Class Period) will be approximately \$13,354.90. The lowest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for only one Work Week in the Class Period) will be approximately \$51.91. *See* DS, ¶ 66.

It is anticipated that the average Aggrieved Employees Individual PAGA Payments will be \$280.90. *Id.* Plaintiff's Individual PAGA Payments, his individual share of 35% of the PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement, each Aggrieved Employees will receive a *pro rata* distribution of 35% of the PAGA Penalties proportionate to the number of paychecks he or she had with Defendants during the PAGA Period, compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as reflected by Defendants' records. Plaintiff estimates that there are 3,825 Aggrieved Employees paychecks for the PAGA Period. So, each Aggrieved Employees paycheck from the PAGA Period has a value of approximately \$9.15 (35% of \$100,000.00 in



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1 PAGA Penalties / 3,825 Aggrieved Employees paychecks = \$9.15). It is anticipated that Plaintiff
2 Armando Ascencio will receive an Individual PAGA Payment of approximately \$371.53 as an
3 Aggrieved Employee (41 paychecks during the PAGA Period x \$9.15 paycheck value = \$371.53)
4 while the average estimated Individual PAGA Payments to an Aggrieved Employees will be
5 approximately \$393.25 (\$35,000.00, 35% of PAGA Penalties / Aggrieved Employees during the
6 PAGA Period = \$393.25 Individual PAGA Payments). Some Aggrieved Employees – those who
7 had more paychecks during the PAGA Period - will receive more, and some less. The highest
8 possible Individual PAGA Payments to an Aggrieved Employees (i.e., to those who qualify for
9 all paychecks in the PAGA Period) will be approximately \$934.65. The lowest possible Individual
10 PAGA Payments to an Aggrieved Employees (i.e., to those who qualify for only one paycheck in
the PAGA Period) will be approximately \$9.15. *See* DS, ¶ 67.

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

13 The Settlement states Class Counsel may seek attorneys’ fees of \$533,333.33 (one-third
14 of the GSA) and up to \$15,000.00 for actual reasonable litigation costs and expenses incurred in
15 prosecuting the Action. These amounts are reasonable, given the facts and circumstances of the
case. DS, ¶¶ 51-53.

16 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
17 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
18 *Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the “experienced
19 trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum*
20 *v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should
21 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
22 incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Cal. 5th 480, 503 (citing *Lealao, supra*, 82
23 Cal.App.4th at p. 48-49). The Supreme Court has recently approved fees equal to one-third (1/3)
24 of the common fund. *Laffitte, supra*, 1 Cal. 5th 480. Many courts have similarly approved fee
25 awards equal to or greater than the percentage requested here. *See, e.g., In re Pacific Enterprises*
26 (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re Activision* (N.D.
27 Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re Ampicillin Antitrust*
28 *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



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1 skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the
2 value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned
3 down to devote time to this matter. DS, ¶ 52. Class Counsel interviewed and obtained information
4 from putative class members, met and conferred with Defendants' counsel on numerous
5 occasions, reviewed and analyzed hundreds of pages of data and documents provided by
6 Defendants and obtained through other sources, researched applicable law, and provided
estimates of "damages" for purposes of settlement discussions, among other tasks. *Id.*

7 Class Counsel have borne all the risks and costs of litigation and will receive no
8 compensation until recovery is obtained. DS, ¶ 53. Class Counsel are well-experienced in wage-
9 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*
10 Considering the amount of the attorney fees requested, the work performed, and the risks incurred,
11 the requested fees and costs are reasonable and should be awarded. *Id.*

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

14 Courts routinely approve incentive awards to compensate named plaintiffs for the services
15 they provide and the risks they incur during class action litigation, often in much higher amounts
16 than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
17 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van*
18 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
19 enhancement award). The Settlement provides that Plaintiff may seek a Class Representative
20 Service Payment of \$15,000.00. This amount is entirely reasonable given Plaintiff's efforts in this
21 action and the risks he undertook on behalf of Class Members. DS, ¶ 54; Declaration of Armando
22 Ascencio ("Plaintiff decl."), generally. Plaintiff has devoted many hours advancing the interests
23 of the Settlement Class. Plaintiff has done this by, among other things, retaining experienced
24 counsel, providing them with information about his work history with Defendants and
25 Defendants' policies and practices with respect to the wage and hour claims at issue, participating
26 in mediation, and being actively involved in the settlement process to ensure a fair result for the
27 Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks,
28 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



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1 fair, adequate, and reasonable, and thus warrants preliminary approval. DS, ¶ 54-64; Exhibits 9-
2 14; Plaintiff decl., generally.

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

6 With regard to the settlement administration costs (“Administration Expenses Payment”) provision, it is reasonable. Before agreeing to Apex and its bid of \$4,990.00, the Parties sought
7 and reviewed bids from other reputable third-party administrators which provided higher bids.
8 DS, ¶ 69-70, Exs. 15-18. Thus, the settlement administration costs provision should be given preliminary approval.

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

13 This Court should approve the proposed plans for giving notice to the Settlement Class
14 and administering the Settlement. The standard for determining the adequacy of notice is whether
15 the notice has “a reasonable chance of reaching a substantial percentage of the class members.”
16 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple
17 measures to ensure that as many Class Members as practicable receive actual notice of the
18 Settlement and have enough time to exercise their rights. The Settlement requires distribution of
19 the Notice by First Class U.S. mail only. Although there are current employee Class Members, it
20 is uncertain whether Defendants’ records of their contact information include email addresses and
21 Class Members, who perform all of their work away from a desk, are not in a position to check
22 their emails. As such, notice by mail alone is fair, adequate, and reasonable. DS, ¶ 68.

23 With respect to its content, “[The] notice given to the class must fairly apprise the class
24 members of the terms of the proposed compromise and of the options open to dissenting class
25 members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.
26 The purpose of the notice in class settlement context is to give class members sufficient
27 information to decide whether they should accept the benefits offered, opt out and pursue their
28 own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) 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 Members; (3) how



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1 Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the
2 Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how
3 payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the
4 individual Settlement Class Members's estimated payment. Additionally, the Class Notice will
5 include the number of Work Weeks a Class Members had during the Class Period. Accordingly,
6 the Notice should be approved because it describes the Settlement with sufficient clarity and
7 specificity to explain to Class Members what this action is about, their rights under the Settlement,
8 and how to exercise those rights. DS, ¶ 68.

8 **XI. CONCLUSION**

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

11 Respectfully submitted,

12 THE SPIVAK LAW FIRM

14 Dated: July 24, 2025

By:



15 DAVID G. SPIVAK, Attorneys for
16 Plaintiff, ARMANDO ASCENCIO, and
17 all others similarly situated



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23 Mail:
24 8605 Santa Monica Bl
25 PMB 42554
26 West Hollywood, CA 90069
27 (213) 725-9094 Tel
28 (213) 634-2485 Fax
SpivakLaw.com

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067