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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA**

BUDDY SIMS and THADDEUS PHILYAW,  
individually, and on behalf other members of  
the general public similarly situated; and  
ERNESTO ORTIZ, on behalf of the State of  
California and Aggrieved Employees;

Plaintiffs,

v.

MASS PRECISION, INC., a California  
corporation; and DOES 1 through 100,  
inclusive,

Defendants.

Case No.: 21CV375211

Honorable Charles F. Adams  
Department 7

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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Buddy Sims and Thaddeus Philyaw on behalf of the putative Class; and Plaintiff  
4 Ernesto Ortiz, on behalf of the State of California and Aggrieved Employees (collectively “Plaintiffs”),  
5 seek preliminary approval of the settlement of this wage and hour Class and Private Attorneys’ General  
6 Act (“PAGA”) action against Mass Precision, Inc. (“Defendant”).<sup>1</sup> Plaintiffs have achieved a fair and  
7 reasonable result for the members of the Class and the Aggrieved Employees, who are current and  
8 former non-exempt employees of Defendant throughout the State of California.<sup>2</sup> The Settlement  
9 resolves approximately 1,177 putative Class Members’ claims that are unlikely to have been  
10 prosecuted as individual actions, and in so doing provides an excellent benefit to the members of the  
11 Class and the Aggrieved Employees.

12 The basic terms of the Settlement are as follows: (1) the Gross Settlement Amount is  
13 \$1,950,000.00; (2) no portion of the Gross Settlement Amount will revert to Defendant; (3) a Net  
14 Settlement Amount of approximately \$1,079,203.90 will be available for distribution to Participating  
15 Class Members; (4) Plaintiffs request, and Defendant does not oppose, individual service awards of  
16 \$10,000.00 each for Plaintiffs Sims, Ortiz, and Philyaw (“\$30,000.00 total); (5) a sum of \$100,000.00  
17 for the PAGA Payment; (6) the actual costs and expenses of the Settlement Administrator, currently  
18 estimated at \$16,000.00; (7) up to 35% of the Gross Settlement Amount, or \$682,500.000, for  
19 attorneys’ fees; and (8) reimbursement of actual costs to Class Counsel currently estimated at  
20 approximately \$42,296.10.

21 The average award for each of the approximately 1,177 proposed Class Members is \$916.91.  
22 This is a strong recovery for a wage-and-hour class action, particularly considering the risks and  
23 factual circumstances described below. The Settlement satisfies the criteria for preliminary settlement  
24 approval under California law and falls well within the range of reasonableness.

25 Plaintiff requests that the Court: (1) grant preliminary approval of the Settlement; (2) appoint  
26

27 <sup>1</sup> A true and correct copy of the Class and Representative Action Settlement Agreement and Release  
28 (“Settlement”) is attached as **Exhibit 1** to the Declaration of Attorney Carolyn H. Cottrell in Support  
of the Motion for Preliminary Approval of the Settlement. (“Cottrell Decl.”)

<sup>2</sup> The Class Period spans from June 18, 2017 through May 3, 2025. (Settlement, ¶ 2.g.) The PAGA  
Period spans from December 17, 2023 through the date of Preliminary Approval. (Settlement, ¶2.v.)

1 Phoenix Class Action Administration Solutions (“Phoenix”) as Settlement Administrator for the  
2 Settlement and approve as reasonable the estimated costs of settlement administration of up to  
3 \$16,000.00; (3) appoint Schneider Wallace Cottrell Kim LLP (“SWCK”) as Class Counsel for the  
4 Settlement Class; (4) appoint Plaintiffs Buddy Sims and Thaddeus Philyaw as Class Representatives  
5 and Ernesto Ortiz as PAGA Representative; (5) provisionally certify the Class for settlement purposes  
6 only; (6) preliminarily approve service awards of \$10,000.00 each for Plaintiffs Sims, Ortiz, and  
7 Philyaw, for their efforts on behalf of the Class and Aggrieved Employees; (7) preliminarily approve  
8 an allocation of \$100,000.00 for the PAGA Payment; (8) preliminarily approve an award of attorneys’  
9 fees to Class Counsel in the amount of 35% of the Gross Settlement Amount, or \$628,500.00, plus  
10 reimbursement of Class Counsel’s out-of-pocket expenses currently estimated at approximately  
11 \$42,296.10; (10) approve the Notice of Class Action Settlement and Hearing Date for Final Court  
12 Approval (“Class Notice”) attached as **Exhibit A** to the Settlement Agreement; and (11) approve the  
13 proposed notice administration schedule, set forth in the Settlement and Notice of Motion filed  
14 herewith.

## 15 **II. SUMMARY OF THE LITIGATION**

### 16 **A. Factual Background**

17 Defendant Mass Precision, Inc. is a California corporation headquartered in Santa Clara  
18 County, California. Defendant is registered to do business in California, does business in California  
19 and employs or employed hourly, non-exempt employees, including Plaintiffs, the putative Class  
20 Members, and Aggrieved Employees in California. (Second Amended Complaint (“SAC”), ¶ 9).

21 Plaintiffs and approximately 1,177 Class Members are Defendant’s current and former non-  
22 exempt hourly employees in California. (*Id.* at ¶ 15; Cottrell Decl., ¶¶ 10, 24).

23 Plaintiffs allege that Defendant regularly failed to pay Plaintiffs, Class Members, and  
24 Aggrieved Employees all regular and/or overtime wages. (SAC, ¶¶ 26, 30, 32). Additionally, Plaintiffs  
25 allege that Plaintiffs, Class Members, and Aggrieved Employees are systematically denied compliant  
26 meal and rest periods, or appropriate compensation in lieu thereof. (*Id.* at ¶¶ 25, 27-29). Plaintiffs  
27 further allege that Defendant failed to pay them, Class Members, and Aggrieved Employees all wages  
28 owed upon termination or resignation, including overtime and minimum wages and meal and rest

1 period premiums and failed to keep accurate payroll records and provide accurate wage statements.  
2 (*Id.* at ¶¶ 31, 33-34). Plaintiffs also allege that Defendant failed to reimburse Plaintiffs, Class Members,  
3 and Aggrieved Employees for necessary business-related business expenses. (*Id.* at ¶ 35). Finally,  
4 Plaintiffs allege that Defendant impermissibly paid wages to Plaintiff Philyaw and other Class  
5 Members in the form of gift cards. (*Id.* at ¶ 37).

6 As a result of these violations, Plaintiffs assert Labor Code claims for (1) failure to pay  
7 minimum wages for all hours worked; (2) failure to pay overtime wages; (3) failure to authorize and  
8 permit and/or make available meal and rest periods; (4) failure to timely reimburse for necessary  
9 business expenses; (5) failure to provide accurate itemized wage statements; (6) failure to pay final  
10 wages; (7) failure to pay wages in a Code-compliant instrument; (8) failure to keep requisite payroll  
11 records; (9) waiting time penalties; (10) unlawful business practices; and (11) penalties pursuant to  
12 PAGA. (*Id.*, generally; Cottrell Decl., ¶ 13).

### 13 **B. Procedural History**

14 On January 12, 2021, Alicia Zamora filed an initial action entitled *Zamora v. Mass Precision,*  
15 *Inc.* against Defendant in the Superior Court of California, County of Santa Clara, Case No.  
16 21CV375211, asserting claims as a class pursuant to California labor laws. (Settlement, ¶ 3). On July  
17 15, 2021, Plaintiff Buddy Sims filed a First Amended Complaint (“FAC”) replacing Alicia Zamora as  
18 the Class representative. (*Id.*)

19 On November 21, 2023, Plaintiff Thaddeus Philyaw filed his action entitled *Philyaw v. Mass*  
20 *Precision, Inc.* against Defendants in the Superior Court of California, County of Santa Clara, Case  
21 No. 23CV426354, asserting claims as a class pursuant to California labor laws. (*Id.* at ¶ 4).

22 Plaintiff Ernesto Ortiz provided written notice to the LWDA of his intent to pursue claims  
23 under California Private Attorneys General Act (“PAGA”) Cal. Lab. Code § 2699 on December 16,  
24 2024. (*Id.* at ¶ 5).

25 Through the Actions, Plaintiffs allege that Defendant violated the wage and hour laws of  
26 California by failing to pay Class Members and Aggrieved Employees earned wages, failing to provide  
27 legally compliant meal and rest periods, and failing to reimburse business expenses. On this basis,  
28 Plaintiffs brought claims against Defendant for unpaid minimum wages and overtime wages, failure

1 to provide meal and rest periods, failure to reimburse business expenses, inaccurate wage statements,  
2 failure to pay final wages, unfair competition, and civil penalties under the PAGA. (*Id.* at ¶ 6).

3 On November 14, 2023, Defendant and Plaintiff Buddy Sims conducted a full day mediation  
4 session which was remotely held before mediator Hon. Jamie Jacobs-May (Ret.). The mediation  
5 session was unsuccessful. (*Id.* at ¶ 7). On January 23, 2025, the Parties conducted a second, full day  
6 mediation session which was remotely held before employment mediator Deborah Saxe. Following  
7 mediation, on February 5, 2025, the Parties reached a settlement pursuant to a mediator’s proposal and  
8 executed a confidential memorandum of understanding of the substantive terms of the settlement that  
9 day, under the terms provided in the instant Settlement Agreement. (*Id.* at ¶ 8).

10 The parties ultimately agreed to a Settlement of \$1,950,000.00 to resolve all the claims alleged  
11 in this Consolidated Action. (Cottrell Decl., ¶ 19). The parties negotiated the full terms of the  
12 Settlement and executed the long-form Settlement on June 4, 2025. (*Id.*).

13 On July 9, 2025, Plaintiffs filed a consolidated Second Amended Complaint for purpose of  
14 settlement.

### 15 **III. SUMMARY OF THE SETTLEMENT**

#### 16 **A. Terms of the Settlement**

17 The Settlement provides that Defendant will pay a non-reversionary Gross Settlement Amount  
18 of \$1,950,000.00, plus all employer payroll taxes owed on the wage portions of the Individual  
19 Settlement Payments to settle all aspects of the case. (Cottrell Decl., ¶ 19; Settlement, ¶ 26). The  
20 Settlement covers approximately 1,177 Class Members and 881 Aggrieved Employees who  
21 collectively worked a total of approximately 132,211 work weeks during the Class Period. (Cottrell  
22 Decl., ¶¶ 10, 11, 24).

23 The Net Settlement Amount of approximately \$1,079,203.90 available to the Class Members  
24 is the Gross Settlement Amount, less deductions for: Plaintiffs’ service awards (\$30,000.00); attorneys’  
25 fees to Class Counsel (not to exceed 35%, or \$682,500.00); Class Counsel’s actual costs of \$42,296.10;  
26 administrative expenses to the Settlement Administrator currently estimated to be \$16,000.00; the  
27 Labor & Workforce Development Agency (“LWDA”) PAGA Payment (\$65,000.00 or 65% of the  
28 \$100,000.00 PAGA Payment), and the Individual PAGA Payment (\$35,000.00 or 35% of the

1 \$100,000.00 PAGA Payment). (Cottrell Decl., ¶¶ 22-24; Settlement, ¶ 27.e.)

2 **1. Settlement Class Definition**

3 The Settlement Class includes all current and former hourly, non-exempt employees who  
4 worked for Defendant in California any time from June 18, 2017, through May 3, 2025. (Cottrell Decl.,  
5 ¶ 47; Settlement, ¶¶ 2.c, 2.g.) The Aggrieved Employees (alternatively referenced as the “Aggrieved  
6 Employees”) are all current and former hourly, non-exempt employees who worked for Defendant in  
7 California any time during from December 17, 2023, through the date of Preliminary Approval.  
8 (Cottrell Decl., ¶ 11; Settlement, ¶¶ 2.b, 2.v.).

9 Defendant represented that there are approximately 1,177 Settlement Class Members who  
10 worked approximately 132,211 workweeks during the Class Period through January 23, 2025.  
11 (Cottrell Decl., ¶¶ 10, 24; Settlement, ¶ 26.b.) In the event that the total number of workweeks worked  
12 by the Participating Class Members during the Class Period exceeds this number by more than 10%,  
13 Defendant will have the option of either: (a) increasing the Gross Settlement Amount proportionally;  
14 or (b) end the Class Period on the date on which the number of workweeks reached 145,432.  
15 (Settlement, ¶ 26.b.).

16 **2. Proposed Class Notice**

17 The parties have jointly selected Phoenix Class Action Administration Solutions (“Phoenix”)  
18 as the Settlement Administrator. (Settlement, ¶ 2.cc.). During the Class Notice process, the Settlement  
19 Administrator will send out the proposed Class Notice, which informs Class Members of the estimated  
20 payment the class member is expected to receive assuming full participation of all Settlement Class  
21 Members, as well as the estimated Individual PAGA Payment, as applicable, and the number of  
22 workweeks each Class Member has worked. (Settlement, ¶¶ 19.b, 20). Each Class Member and  
23 Aggrieved Employees member shall have the opportunity to challenge the number of Workweeks  
24 allocated to the Class Member or Aggrieved Employees member in the Class Notice. (Settlement, ¶  
25 20; Cottrell Decl., ¶¶ 39, 41). Class Members who wish to exclude themselves from the Settlement  
26 must submit a written request for exclusion from the Settlement by the Response Deadline. (Cottrell  
27 Decl., ¶ 41).

1           **3.       Proposed Release**

2           The release of all Released Claims (as defined in the Settlement) is effective upon Final  
3 Approval of the Settlement and the Administrator's remittance of all Individual Class Payments, all  
4 Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the  
5 Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and Service Payments.  
6 The Class Members's Released Claims encompass all claims arising between June 18, 2017 and May  
7 3, 2025, inclusive, under state, federal, or local law, arising out of the facts pleaded in the operative  
8 Second Amended Complaint filed in this Action (including, but not limited to: claims for violation of  
9 Cal. Lab. Code §§ 201-204, 226, 226.7, 510-512, 1174, 1174.1, 1182.11, 1182.12, 1194, 1197, 1197.1,  
10 1198 and 2699, *et seq.*, and Cal. Bus. & Prof. Code §§ 17200, *et seq.* and claims based on alleged  
11 violations of these Labor Code provisions) and all other claims, such as those under the California  
12 Labor Code, Wage Orders, regulations, and/or other provisions of law, that were or could have been  
13 pleaded based on the facts asserted in the Action, including: (1) failure to pay for all hours worked;  
14 (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to authorize and  
15 permit and/or make available meal and rest periods; (5) failure to provide timely and accurate itemized  
16 wage statements; (6) waiting time penalties; and (7) unlawful business practices. (Settlement, ¶ 16).

17           For the State of California, and, to the extent permitted by law, the Aggrieved Employees, the  
18 PAGA release includes all claims asserted in the PAGA Notice and as alleged in the Second Amended  
19 Complaint filed in this Action for PAGA civil penalties pursuant to Cal. Lab. Code §§ 2699, *et seq.* in  
20 connection with alleged violations of Cal. Lab. Code §§ 201-203, 204, 226, 226.7, 510, 1182.12, 1174,  
21 1194, 1197, 1198, and 2802. (*Id.* at ¶ 17).

22           **4.       Proposed Service Awards**

23           The Agreement provides for payment to Plaintiffs in the amount of \$10,000.00 each for Named  
24 Plaintiffs Buddy Sims, Ernesto Oritz, and Thaddeus Philyaw based on the efforts they made and the  
25 risks they took in filing and prosecuting this action and obtain this \$1,950,000.00 Settlement. Plaintiffs  
26 took the significant risk of coming forward to represent the interests of their fellow employees.  
27 (Cottrell Decl., ¶ 36). They have subjected themselves to risk with regards to future employment  
28 opportunities and their reputation in the community by participating in this action. (*Id.*). Their service

1 as the named Plaintiffs in a wage-and-hour class action lawsuit may be discerned by potential  
2 employers and members of the community, creating a very real risk of future repercussions,  
3 particularly with respect to future job opportunities. (*Id.*). In addition, Plaintiff, unlike the Class  
4 Members, also agreed to a general release of claims. (*Id.*; Settlement, ¶ 18).

#### 5           **5.       Proposed Attorneys' Fees and Costs**

6           Plaintiffs seek reasonable attorneys' fees and costs from the \$1,950,000.00 Gross Settlement  
7 Amount. (Settlement, ¶ 27.b.i.) Under the terms of the Settlement, Class Counsel may seek a fee award  
8 of up to 35% of the Gross Settlement Amount, or \$682,500.00, which will compensate Class Counsel  
9 for all work performed and to be performed in this Action. (*Id.*) In addition, Class Counsel shall,  
10 subject to Court approval, receive reimbursement of Class Counsel's reasonable litigation costs,  
11 currently estimated at approximately \$42,296.10. (Settlement, ¶ 27.b.ii; Cottrell Decl., ¶ 45).

#### 12           **IV.     PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

13           A class action may not be dismissed, compromised, or settled without the approval of the  
14 court.<sup>3</sup> Cal. R. Ct., Rule 3.769 describes three distinct steps for approval of class action settlements by  
15 California courts: (1) preliminary approval of the proposed settlement after submission of a written  
16 motion for preliminary approval, the proposed class action settlement, and the proposed Class Notice;  
17 (2) mailing of notice of the settlement to all affected Members of the Settlement Class; and (3) a final  
18 settlement approval hearing at which Members of the Settlement Class may be heard regarding the  
19 settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness  
20 of the settlement is presented.<sup>4</sup>

21           With this motion, the parties request that the Court take the first step and grant preliminary  
22 approval. The Settlement proposed herein is based on arm's length negotiations that were guided by  
23 Class Counsel's investigation and the evaluation of informal discovery. (Cottrell Decl., ¶ 21). The  
24

25 <sup>3</sup> See Cal. Code Civ. Proc. § 1781(f); Cal. R. Ct., Rule 3.769; *see also* Fed. R. Civ. P. 23(e). The  
26 California Supreme Court has authorized and urged California's trial courts to use Fed. R. Civ. P. 23  
27 and federal case law for guidance in considering class action issues. *See Green v. Obledo* (1981) 29  
28 Cal.3d 126, 145-46.

<sup>4</sup> This procedure is similar to the procedure and criteria for approval of class actions under federal law  
and is also endorsed by the nation's leading class action commentator, Professor Herbert Newberg.  
*See Newberg on Class Actions*, § 11:24 (4th ed. 2002); *Manual for Complex Litigation*, § 21:63 (4th  
ed. 2006).

1 negotiations included extensive communications between Class Counsel and counsel for Defendant  
2 and two full-day mediation conferences supervised by experienced and respected mediators. (*Id.*). The  
3 proposed Settlement provides substantial monetary recovery for the Settlement Class, and it satisfies  
4 all of the required due process protections. (*Id.*). Thus, the proposed Settlement is fair, reasonable, and  
5 adequate, and Plaintiff therefore requests that the Court grant preliminary approval.

6       **A.     The Settlement Warrants Preliminary Approval Because it is Fair and**  
7       **Reasonable and Eliminates the Risks of Continued Litigation**

8       The decision to approve or reject a proposed settlement is within a court’s discretion. *Wershba*  
9 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–35. To grant preliminary approval of a class  
10 action settlement, courts need only find that the settlement falls within the range of possible final  
11 approval, also described as “the range of reasonableness.” *See, e.g., North County Contractor’s Assn.,*  
12 *Inc. v. Touchstone Ins. Servs.* (1994) 27 Cal.App.4th 1085, 1090; *see also Newberg on Class Actions*  
13 *at §11:25 (4th ed. 2002).*

14       To make this determination, courts must consider several relevant factors, including “the  
15 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the  
16 risk of maintaining class action status through trial, the amount offered in settlement, the extent of  
17 discovery completed and the stage of the proceedings, [and] the experience and views of counsel.”  
18 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive, and  
19 the court is free to engage in a balancing and weighing of the factors depending on the circumstances  
20 of each case.” *Wershba, supra*, at 245.

21       A proposed settlement is not to be measured against a hypothetical ideal result that might have  
22 been achieved. *See, e.g., 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85  
23 Cal.App.4th 1135, 1150 (quoting *Linney v. Cellular Alaska P’ship* (9th Cir. 1998) 151 F.3d 1234, 1242)  
24 (“This court has aptly held that it is the very uncertainty of outcome in litigation and avoidance of  
25 wasteful and expensive litigation that induce consensual settlements.”). Instead, courts make an initial  
26 evaluation of the fairness, reasonableness, and adequacy of the proposed settlement based on  
27 information already known, supplemented as necessary by briefs, motions, or information presented  
28 by the settling parties. *See Manual for Complex Litigation at § 21:632.* Courts must ensure that “the

1 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,  
2 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon v.*  
3 *Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.

#### 4 **1. The Terms of the Settlement Are Fair**

5 A presumption of fairness exists where: (1) the settlement is reached through arm’s length  
6 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act  
7 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is  
8 small. *Dunk*, 48 Cal.App.4th at 1802. The first three of these conditions are satisfied here, and  
9 Plaintiffs expect that the fourth condition will also be satisfied.

##### 10 **a. The Settlement is the result of arm’s length negotiations.**

11 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is  
12 reached through arm’s length bargaining.” *Wershba*, 91 Cal.App.4th at 224, 245. The Settlement was  
13 reached after numerous arm’s length settlement discussions between Class Counsel and Defendant’s  
14 counsel and following two mediations with respected mediators. (Cottrell Decl., ¶ 21). Class Counsel  
15 conducted extensive pre-class certification discovery. (*Id.* at ¶ 28). Class Counsel also took the  
16 deposition of Defendant’s Person Most Knowledgeable (“PMK”) and Defendant’s counsel took the  
17 deposition of Plaintiff Sims. (*Id.*). Accordingly, the Settlement was agreed upon following extensive  
18 arm’s length negotiations. (*Id.* at ¶ 21).

#### 19 **2. The Parties Reached the Settlement After Extensive Investigation, Discovery,** 20 **and Analysis of the Class Claims**

21 Throughout this litigation and in the lead up to mediation, Class Counsel investigated the  
22 applicable law and the facts and extensively analyzed the potential damages that might be recovered  
23 for the employees. (Cottrell Decl., ¶ 29). Class Counsel reviewed time records, pay records, and  
24 information relating to the size and scope of the Class, and data permitting Class Counsel to estimate  
25 the number of workweeks and pay periods in the Class Period and PAGA Period. (*Id.*). Class Counsel  
26 used this information to perform a careful and extensive analysis of the effects of Defendant’s  
27 compensation, meal and rest break and timekeeping policies and practices on the Class Members and  
28 Aggrieved Employees’ pay. (*Id.* at ¶ 30).

1           **3.       Class Counsel are Experienced Class Action Litigators**

2           Class Counsel are experienced and respected class action litigators. (Cottrell Decl., ¶ 5). Based  
3 on Class Counsel’s knowledge and expertise in this area of law, Class Counsel believe the Settlement  
4 will provide an excellent benefit to the Class Members and Aggrieved Employees members. (*Id.*).

5           **4.       The Settlement Should Be Preliminary Approved Because Plaintiffs Face**  
6           **Substantial Risk of Continued Litigation**

7           In contrast to the risk and uncertainty of continued litigation, the Settlement will yield a  
8 prompt, certain, and substantial recovery for the employees. Such a result will benefit the parties and  
9 the court system. (Cottrell Decl., ¶ 31). If this case were to go to trial as a class action, it would require  
10 substantial additional preparation and discovery and ultimately would involve the depositions of  
11 managerial employees and experts, the presentation of witnesses at trial, as well as the consideration,  
12 preparation, and presentation of voluminous documentary evidence and the preparation and analysis  
13 of expert reports. (*Id.*). In contrast to the risk and uncertainty of continued litigation, the Settlement  
14 will yield a prompt, certain, and substantial recovery for the employees. (*Id.*). Such a result will benefit  
15 the parties and the court system. (*Id.*).

16           Plaintiffs would face other significant risks if the litigation were to proceed to trial. (Cottrell  
17 Decl., ¶ 32). For example, Defendant produced wage and hour policies that it contends were compliant  
18 with California law. At trial, Plaintiff would have to establish Class-wide liability and prove up various  
19 issues regarding damages and penalties. (Cottrell Decl., ¶ 36). Liability and damages issues would  
20 also be vigorously disputed by Defendant. (*Id.*) Establishing liability and proving damages would  
21 likely take years and would necessitate expert witness testimony and significant additional litigation.  
22 (*Id.*)

23           Additionally, the Plaintiffs’ derivative claims regarding waiting time penalties and wage  
24 statements rise and fall with Plaintiffs’ other wage payment claims. (Cottrell Decl., ¶ 33). For example,  
25 Plaintiffs would recover nothing under Cal. Lab. Code § 203 if they were unable to prove the  
26 underlying claims or defeat a “good faith” dispute defense. *Id.*; see Cal. Code Regs. Tit. 8, § 13520  
27 (good faith dispute, based in law or fact, precludes award of waiting time penalties); *Naranjo v.*  
28 *Spectrum Sec. Servs., Inc.* (2024) 15 Cal.5th 1056 (same defense precludes award of statutory wage

1 statement penalties).

2 While Plaintiffs believe that they would have prevailed on these issues and others, they  
3 recognize the risk that a factfinder may have found for Defendant on one or more of these issues and  
4 or found damages to be significantly less than what the Plaintiffs claim. (Cottrell Decl., ¶ 34).  
5 Defendant, represented by experienced employment lawyers, raised the above arguments, and more,  
6 in mediation and would have done so in continued litigation. (*Id.*). Despite Plaintiffs' confidence in  
7 their ability to prove their claims on a Class-wide basis, any one of the above defenses, if decided in  
8 favor of Defendant, could have reduced or even eliminated any potential damages award. (*Id.*).

## 9 **5. The Settlement Amount is Fair and Reasonable**

10 A preliminary review of the Settlement reveals the fairness of its terms. Preliminary approval  
11 is warranted where the Court is provided sufficient information regarding the discovery process and  
12 the facts developed, so that the Court may form “an understanding of the amount that is in controversy  
13 and the realistic range of outcomes of the litigation.” *Kullar v. Foot Locker Retail Inc.* (2008) 168  
14 Cal.App.4th 116, 129-31; *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 801). This  
15 does not require the Court to review the outer reaches of possible exposure without taking into account  
16 the actual risks of certification, decertification, dispositive motions, and trial. *Munoz v. BCI Coca-Cola*  
17 *Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9.

18 The \$1,950,000.00 settlement is reasonable and fair because it represents a substantial portion  
19 of the potential recovery sought. *See, e.g., In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d  
20 454, 459 (“It is well-settled law that a cash settlement amounting to only a fraction of the potential  
21 recovery does not per se render the settlement inadequate or unfair.”); *Bellinghausen v. Tractor Supply*  
22 *Co.* (N.D. Cal. 2015) 306 F.R.D. 245, 256 (“Settlement avoids the complexity, delay, risk and expense  
23 of continuing with the litigation and will produce a prompt, certain, and substantial recovery for the  
24 Plaintiff class;” approving settlement that provided 9% recovery based on estimated liability  
25 exposure); *Balderas v. Massage Envy Franchising* (N.D. Cal., July 21, 2014) No. 12-CV06327 NC,  
26 2014 WL 3610945 (settlement approved of only 5% of projected maximum recovery) *Villegas v. J.P.*  
27 *Morgan Chase* (N.D. Cal., Nov. 21, 2012) No. CV 09-00264 SBA EMC, 2012 WL 5878390 (approved  
28 settlement that was 15% of potential recovery).

1 Here, the estimated Net Settlement Amount of approximately \$1,079,203.90, derived from the  
2 Gross Settlement Amount of \$1,950,000.00, will result in fair and just relief to the Class Members and  
3 Aggrieved Employees. This amount provides an estimated average recovery of \$916.91 dollars per  
4 Class Member, assuming 100% participation in the Settlement. (Cottrell Decl., at ¶ 22).

5 The result is within the reasonable standard, particularly when considering the nature of  
6 Plaintiffs' claims and the difficulty and risks presented by continuing this litigation. The \$1,950,000.00  
7 settlement represents approximately 10.3% of the total assessed value of approximately \$18,955,424.  
8 for unliquidated, core claims for unpaid wages, meal and rest breaks, and expense reimbursements.  
9 When adding derivative claims, interest, and potential PAGA penalties, the \$1,950,000.00 settlement  
10 allocation represents approximately 7.1% of Defendant's total potential exposure of \$27,380,429.  
11 (Cottrell Decl., ¶ 23).

12 For purposes of estimating these damages, Class Counsel prepared an exposure analysis with  
13 the following data points based on their investigation:

- 14 a. Number of Workweeks for Class Period: 132,211
- 15 b. Number of Pay Periods in PAGA Period: 68,544
- 16 c. Number of Class Members: approximately 1,177
- 17 d. Number of Aggrieved Employees: approximately 881
- 18 e. Average hourly rate of pay: \$22.98
- 19 f. Number of separated employees: 878

20 (Cottrell Decl., at ¶ 24).

21 Additionally, Plaintiff's Counsel made the following assumptions based on their investigation  
22 and analysis:

- 23 a. that Plaintiffs will fully prevail at trial on all causes of action;
- 24 b. that Plaintiffs can prove approximately 15 minutes of off-the-clock work per day that is  
25 owed at the overtime rate;
- 26 c. that Plaintiffs can prove approximately 50% meal break violations (less the number of meal  
27 break premiums paid during the Class Period);
- 28 d. that Plaintiffs can prove 50% rest break violations (less the number of rest break premiums

1 paid during the Class period);

2 e. that each Class Member is entitled to receive the maximum penalty of \$4,000 under Cal.  
3 Lab. Code § 226;

4 f. that each formerly employed Class Member is owed the maximum penalty for failure to pay  
5 wages at the time of discharge in violation of Cal. Lab. Code § 203;

6 g. that each Class Member making less than double the California minimum wage is owed  
7 \$100 for unreimbursed business expenses; and

8 g. that a civil penalty of \$100 will be imposed for PAGA violations for every pay period that  
9 an Aggrieved Employee worked in the PAGA Period.

10 (Cottrell Decl., at ¶ 25).

11 Based on these assumptions and the data points, the maximum potential exposure for each  
12 claim was estimated as follows:

13 a. Unpaid Overtime Premium (Cal. Lab. Code §§ 1194, 510): \$4,303,166

14 b. Meal Period Violations (Cal. Lab. Code § 512(a)): \$7,170,897

15 c. Rest Period Violations (Cal. Lab. Code § 512(a)): \$7,378,962

16 d. Business Expenses (Cal. Lab. Code § 2802): \$102,399

17 e. Inaccurate Wage Statement Penalties (Cal. Lab. Code § 226): \$3,428,000

18 f. Waiting Time Penalties (Cal. Lab. Code § 203): \$4,997,005

19 g. PAGA Penalties (Cal. Lab. Code § 2699): \$755,600

20 (Cottrell Decl., at ¶ 30).

21 Therefore, the maximum potential exposure for the substantive violations (*i.e.*, unpaid  
22 overtime and meal and rest breaks) is estimated at \$18,955,424. The total maximum potential exposure  
23 for the Class Claims including substantive violations plus the derivative violations of Cal. Lab. Code  
24 §§ 203 and 226 is estimated at \$27,380,429. The maximum potential exposure for PAGA penalties is  
25 estimated at \$755,600.

26 The recovery of 10.3% of the substantive exposure and 7.1% of the total exposure falls within  
27 the range of reasonableness. *See, e.g., Kullar*, 168 Cal.App.4th at 133 (citing *Tech-Bilt, Inc. v.*  
28 *Woodward-Clyde & Assoc.* (1985) 38 Cal.3d 488, 499-500) (“the court must at least satisfy itself that

1 the class settlement is within the “ballpark” of reasonableness”). “It is well-settled law that a cash  
2 settlement amounting to only a fraction of the potential recovery does not per se render the settlement  
3 inadequate or unfair.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459 (internal quotations and  
4 citations omitted)). Indeed, courts routinely approve settlements that provide a fraction of the  
5 maximum potential recovery.<sup>5</sup>

6 It is equally well-settled that a proposed settlement is not to be measured against a hypothetical  
7 ideal result that might have been achieved. *See, e.g., 7-Eleven Owners for Fair Franchising*, 85  
8 Cal.App.4th at 1150 (“[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful  
9 and expensive litigation that induce consensual settlements. The proposed settlement is not to be  
10 judged against a hypothetical or speculative measure of what might have been achieved by the  
11 negotiators.”) *Id.*; quoting *Linney*, 151 F.3d at 1242). The excellent result here easily satisfies these  
12 standards.

13 The PAGA Payment of \$100,000.00 represents 5.1% of the Gross Settlement Amount, which  
14 is well within the settlements previously approved by courts in California.<sup>6</sup> (Cottrell Decl., at ¶ 27).

#### 15 **B. The Proposed Service Awards Are Reasonable**

16 Named plaintiffs in class action litigation are eligible for reasonable service awards. *See Staton*  
17 *v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977. Courts award service payments to advance public  
18

19 <sup>5</sup> *See, e.g., Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 628; *Viceral v.*  
20 *Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016) No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759,  
21 at \*7 (approving wage-and-hour settlement representing 8.1% of the total verdict value); *see also*  
22 *Stovall-Gusman v. W.W. Granger, Inc.* (N.D. Cal. June 17, 2015) No. 13-cv-02540-HSG, 2015 U.S.  
23 Dist. LEXIS 78671, at \*12 (approving and finding within the range of reasonableness settlement  
24 representing 10% or less of the maximum recovery); *Balderas v. Massage Envy Franchising, LLP*  
(N.D. Cal. July 21, 2014) No. 12-cv06327 NC, 2014 U.S. Dist. LEXIS 99966, at \*16 (same); *Ma v.*  
*Covidien Holding, Inc.* (C.D. Cal. Jan. 31, 2014) No. SACV 12-02161-DOC (RNBx), 2014 U.S. Dist.  
LEXIS 13296, at \*12 (same); *Escalante v. Urth Payroll Servs.* (Super. Ct. L.A. Cnty. May 5, 2023)  
No. 20STCV25106, 2023 Cal. Super. LEXIS 30449, at \*7 (same).

25 <sup>6</sup> *See Ramirez v. Benito Valley Farms, LLC* (N.D. Cal. Aug. 27, 2017) 2017 U.S. Dist. LEXIS 137272  
26 at \* 14 (approving a PAGA settlement that represented only 4.5% of the total estimated possible  
27 penalties under PAGA due to early stage of litigation, Defendant’s weak financial condition, and  
28 stipulated injunctive relief); *Hartley v. On My Own, Inc.* (E.D. Cal. Aug. 25, 2020) 2020 WL 5017608  
at \*4 (approving settlement at 3.47% of verdict value of PAGA penalty, resulting in average payment  
per employee of \$61); *Haralson v U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F.Supp.3d 959 at  
972–74 (citing cases reflecting approval of settlements at 0.2% to 1.1% of verdict value of PAGA  
penalty); *Gilmore v. McMillan-Hendryx Inc.* (E.D. Cal. Jan. 20, 2022) 2022 U.S. Dist. LEXIS 11032  
at \* 9 (recognizing the inherent risks and costs in any litigation matter and approving a PAGA  
settlement that amounted to approximately 4.2% of the total exposure calculated by plaintiff).

1 policy by encouraging individuals to come forward and perform their civic duty in protecting the rights  
2 of the class, as well as to compensate class representatives for their time, effort, and inconvenience. *In*  
3 *re California Indirect Purchases* (Cal. Super. Ct., Oct. 22, 1998) 1998 WL 1031494 at \*11. It is well-  
4 established that representative plaintiffs are eligible for reasonable incentive payments to compensate  
5 them for the expense or risk they have incurred in conferring a benefit on other members of the class.  
6 *Munoz*, 186 Cal.App.4th at 412.

7 Service awards in the amount of \$10,000.00 each for Plaintiffs Sims, Ortiz, and Philyaw are  
8 reasonable in light of the efforts they made and risks they took in filing and prosecuting this action  
9 and obtain this \$1,950,000.00 Settlement. (Cottrell Decl., ¶ 35). Incentive awards “are intended to  
10 compensate class representatives for work done on behalf of the class, to make up for financial or  
11 reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to  
12 act as a private attorney general.” *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380,  
13 1393–94. Throughout this litigation, Plaintiffs worked with Class Counsel and assisted in the  
14 development of the case. (Sims Decl., ¶ 8, Thaddeus Decl., ¶¶ 5, 7; Ortiz Decl., ¶¶ 8). They provided  
15 extensive information and documents during Class Counsel’s initial investigation and the preparation  
16 of the Complaints. *Id.*) They also provided responses to Class Counsel’s questions as the case  
17 progressed and provided valuable insight into Defendant’s operations. (*Id.*) Plaintiffs have taken part  
18 in the Settlement decision and remained apprised of the case during approximately four years of  
19 litigation. (*Id.*) In addition, Plaintiffs, unlike the Class Members, also agreed to a general release of  
20 claims. (*Id.*)

21 As a result of Plaintiffs’ efforts and willingness to step forward, the employees will receive  
22 significant recoveries if the Settlement is approved. (Cottrell Decl., ¶ 36). On the other hand, if  
23 Plaintiffs did not serve as Class Representatives or assist in the prosecution of this case, the claims of  
24 the employees would never have been asserted. (*Id.*). Defendant’s alleged conduct would have gone  
25 unchecked. (*Id.*). Plaintiffs have committed their time to this case and assumed significant risk to  
26 obtain the favorable result. (*Id.*).

27 Moreover, the enhancement payments are fair when compared to the payments approved in  
28 similar cases. (*Id.*); *see, e.g., Soto v. O.C. Commc’ns, Inc.* (N.D. Cal. Oct. 23, 2019) Case No. 3:17-

1 cv-00251-VC, ECF 304 (approving \$15,000.00 and \$10,000.00 service awards in recent hybrid  
2 FLSA/Rule 23 settlement); *Van Liew v. North Star Emergency Servs., Inc.* (Alameda Super. Ct., Dec.  
3 11, 2018) No. RG17876878, (approving \$15,000.00 and \$10,000.00 service awards, respectively, to  
4 class representatives in California Labor Code wage and hour class action).

5 **C. The Proposed Notice of Settlement Provides Adequate Notice to the Class**

6 “Adequate notice is critical to court approval of a class settlement under Rule 23(e).” *Hanlon*,  
7 150 F.3d at 1025. A class action settlement notice “...is satisfactory if it ‘generally describes the terms  
8 of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come  
9 forward and be heard.’” *Churchill Village LLC v. General Elec.* (9th Cir. 2004) 361 F.3d 566, 575.

10 Here, all Class Members will be identified, and the Class Notice Packet will be mailed directly  
11 to each Class Member at their last known addresses provided by Defendant. (Settlement, ¶19.b). If the  
12 Notice is returned as undeliverable, the Settlement Administrator will perform a skip trace and resend  
13 the Notice. (*Id.* at ¶ 19.f). Additionally, the Settlement Administrator will create a website for the  
14 Settlement to allow Class Members to view the Class Notice, Settlement Agreement, and all papers  
15 filed by Class Counsel to obtain preliminary and final approval of the Settlement. (*Id.* at ¶ 19.b.) Thus,  
16 reasonable steps will be taken to ensure that all Class Members receive the Notice. (Cottrell Decl., ¶  
17 38).

18 The proposed Class Notice is clear and straightforward, and provides information on the case,  
19 the Settlement, the rights of the Class Members to participate, opt out, and object, the monetary awards  
20 that the Settlement will provide to Participating Class Members, and the identity and contact  
21 information for Class Counsel. (Cottrell Decl., ¶ 39).

22 The Class Notice summarizes the proceedings necessary to provide context for the Settlement  
23 and summarizes the terms and conditions of the Settlement, including an explanation of how the  
24 Settlement amount will be allocated between Plaintiffs, Class Counsel, the Settlement Administrator,  
25 and Participating Class Members. (Cottrell Decl., ¶ 40). It further explains the Class definition. (*Id.*).  
26 The Class Notice also describes the release of claims to which Class Members will be subject if they  
27 participate in the Settlement. (*Id.*). Moreover, this summary is presented in a coherent, and easy-to-  
28 understand manner, all in compliance with the Manual for Complex Litigation’s recommendation that

1 “the notice contain a clear, accurate description of the terms of the settlement.”

2 The Class Notice clearly explains the procedures and deadlines for opting out of the Settlement  
3 and submitting objections and disputes, the consequences of taking or foregoing the various options  
4 available to Class Members, and the date, time, and place of the Final Approval Hearing. (Cottrell  
5 Decl., ¶ 41). The Class Notice also sets forth the amount of attorneys’ fees and costs sought by Class  
6 Counsel and explains that Class Members have the opportunity to object to Class Counsel’s requests  
7 for fees and costs. (*Id.*). In addition, the Class Notice clearly states that the Settlement does not  
8 constitute an admission of liability by Defendant. (*Id.*). Finally, it makes clear that the final settlement  
9 approval decision has yet to be made. (*Id.*). The Class Notice also fulfills the requirement of neutrality  
10 in class notices. (*Id.*). See *Newberg on Class Actions* at §§ 8:21 and 8:39; *Manual for Complex Litig.*  
11 at §§ 21:311 and 21:312. Based on the foregoing, the Class Notice complies with the standards of  
12 fairness, completeness, and neutrality required of a settlement class notice disseminated under  
13 authority of the Court.

14 **D. The Proposed Attorneys’ Fees and Costs are Appropriate and Should be**  
15 **Preliminary Approved**

16 Plaintiffs seek reasonable attorneys’ fees and expenses as a percentage of the \$1,950,000.00  
17 Gross Settlement Amount. (Settlement, ¶ 27.b.i.) Under the terms of the Settlement, Class Counsel  
18 may seek an award of up to 35% of the Gross Settlement Amount, or \$682,500.00, plus reimbursement  
19 of actual costs, currently estimated to be \$42,296.10. (Settlement, ¶¶ 27.b.i, 27.b.ii.)

20 The California Supreme Court upheld the use of the common fund theory of recovery for  
21 attorneys’ fees in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 506. In *Laffitte*, the Court  
22 approved attorneys’ fees in the amount of one third of the gross settlement (*e.g.*, an award of \$6.33  
23 million) under the common fund theory. *Id.* By awarding counsel a percentage of the total recovery,  
24 rather than fees based on hours worked, the common fund method encourages attorneys to efficiently  
25 litigate to achieve the best results possible for the class. *Id.* at 492-94. Indeed, the “percentage-of-  
26 recovery method is generally favored in common fund cases because it allows courts to award fees  
27 from the fund ‘in a manner that rewards counsel for success and penalizes it for failure.’ *Id.* at 493  
28 (quoting *In re Rite Aid Corp. Sec. Litig.* (3d Cir. 2005) 396 F.3d 294, 300).

1 In this case, given the excellent results achieved and the effort expended litigating the Action,  
2 35% is warranted. There was no guarantee of compensation or reimbursement. (Cottrell Decl., at ¶  
3 43). Rather, counsel have undertaken all the risks of this litigation on a completely contingent fee  
4 basis. (*Id.*) The inherent risk of proving liability and damages on a Class-wide basis and Defendant's  
5 representation by skillful counsel confront Class Counsel with the prospect of recovering nothing or  
6 close to nothing for their commitment to and investment in the case. (*Id.*) Nevertheless, Plaintiffs and  
7 Class Counsel have committed themselves to developing and pressing Plaintiffs' legal claims to  
8 enforce the employees' rights and maximize the Class recovery. (*Id.*). This commitment and the risks  
9 involved are the reasons for multipliers in contingency fee cases.<sup>7</sup> As Participating Class Members  
10 will receive a significant payment if the Settlement is approved, Class Counsel seek a reasonable fee  
11 award for their efforts and the risk they have assumed.

12 Counsel's fee request of 35% of the Gross Settlement Amount is well within the range  
13 customarily approved by California and federal courts in comparable class actions.<sup>8</sup> California  
14 Superior Courts frequently grant common fund awards of at least 33.33%.<sup>9</sup>

15 <sup>7</sup> Posner, *Economic Analysis of the Law*, 534, 567 (4th ed. 1992) ("A contingent fee must be higher  
16 than a fee for the same legal services paid as they are performed... because the risk of default (the loss  
17 of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional  
loans.").

18 <sup>8</sup> See, e.g., *Newberg on Class Actions* at §11:24; *Manual for Complex Litigation* at §14:6; *Van Vranken*  
19 *v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 297–98 ("Class Counsel have also cited  
73 district court opinions in which fees in the range of 30–50% of the common fund were awarded.");  
20 *In re Pacific Enters. Sec. Litig.* (9th Cir 1995) 47 F.3d 373, 379 (33% fee award); *Williams v. MGM-*  
21 *Pathe Commc'ns Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (33% of total fund awarded); *In re Activision*  
22 *Sec. Litig.* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375 (noting that fee awards in common fund cases  
"almost always hover[] around 30% of the fund created by the settlement") (cited with approval in  
23 *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19 at 49); *In re Vitamins Antitrust Litig.*  
(D.D.C., July 16, 2001) No. MSL 1285, 2001 WL 34312839 (34.6% of \$365 million recovery); *Laffitte*  
*v. Robert Half Int'l Inc.* (2014) 180 Cal.Rptr.3d 136, 149 ("...the trial court's use of a percentage of  
33 1/3% of the common fund is consistent with, and in the range of, awards in other class action  
lawsuits.").

24 <sup>9</sup> See, e.g., *Asalati v. Intel Corp.* (Santa Clara Super. Ct., Oct. 29, 2018) No. 16cv302615 (approving  
33.3% fee award, at a multiplier of 3.98 over lodestar); *Ochoa v. Haralambos Beverage Co.* (Los  
25 Angeles Super. Ct., Feb. 1, 2007) No. BC319588 (approving 33.3% fee award with no mention of  
lodestar crosscheck); *Big Lots Overtime Cases* (San Bernardino Super. Ct., Feb. 4, 2004) JCC  
26 Proceeding No. 4283 (approving award of attorneys' fees of 33% of the recovery); *Barela v. Ralph's*  
*Grocery Company* (Los Angeles Super. Ct., June 5, 1998) No. BC070061 (same); *Davis v. The Money*  
27 *Store, Inc.* (Sacramento Super. Ct., Dec. 26, 2000) No. 99AS01716 (same); *Miskell v. Auto. Club of*  
*Southern Cal.* (Orange Super. Ct., May 27, 2003) No. 01CC09035 (same); *Sconce/Lamb Cremation*  
28 *Cases* (Los Angeles Super. Ct., March 24, 1992) JCC Proceeding No. 2085 (same); *Ojito v.*  
*Robertson's Ready Mix Concrete, Inc.* (Riverside Super. Ct., Jan. 16, 2007) No. RIC420994 (approving

1 The requested attorneys' fees are reasonable when compared to Class Counsel's lodestar  
2 amount incurred over four years of litigation. (Cottrell Decl., ¶ 44). This amount will only increase  
3 with preparation and attendance at the preliminary and final approval hearings, further correspondence  
4 with Class Members, and Settlement administration and oversight. (*Id.*). At final approval, Class  
5 Counsel will provide detailed lodestar information to show the requested fee is reasonable under both  
6 the percentage method and a lodestar "cross-check." (*Id.*).

7 Furthermore, reasonable litigation expenses are ordinarily included in an award of attorneys'  
8 fees pursuant to California wage and hour law. *Rider v. County of San Diego* (1992) 11 Cal.App.4th  
9 1410, 1424. Class Counsel's litigation costs are currently estimated at approximately \$42,296.10  
10 (Cottrell Decl. ¶ 45; Settlement, ¶ 27.b.ii). Plaintiffs' counsel incurred costs including, inter alia, filing  
11 and service fees, costs for remote appearances, document retrieval, and mediation fees. These expenses  
12 were incidental and necessary to the effective representation of the Class and Aggrieved Employees  
13 members. (*Id.*) They are reasonable and uncontested and should be approved.

#### 14 **E. The Court Should Certify the Class for Purposed of Settlement**

15 This Court should certify the proposed Class pursuant to Cal. Code Civ. Proc. § 382, which  
16 provides: "[W]hen the question is one of a common or general interest, of many persons, or when the  
17 parties are numerous, and it is impracticable to bring them all before the court, one or more may sue  
18 or defend for the benefit of all." California has a strong public policy in favor of broad enforcement  
19 of wage and hour laws for the benefit of workers and in favor of using the class action device. *Sav-on*  
20 *Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340. A party seeking class certification has  
21 the burden to establish the existence of both an ascertainable class and a well-defined community of  
22 interest among class members. The community of interest requirement embodies three factors: (1)  
23 predominant common questions of law or fact; (2) class representatives with claims or defenses typical

24  
25 30% fee award with no mention of lodestar crosscheck); *Jones v. Alliance Imaging, Inc.* (Alameda  
26 Super. Ct., Nov. 27, 2006) No. RG05210418 (approving 33% fee award with no mention of lodestar  
27 crosscheck); *Wisniewski v. Pacific Maritime Assoc.* (Los Angeles Super. Ct., Nov. 20, 2006) No.  
28 BC293134 (approving 30.7% fee award from \$12.9 million dollar settlement with no mention of  
lodestar crosscheck); *Garcia v. Save Mart Supermarket* (Stanislaus Super. Ct., Aug. 3, 2004) No.  
312026 (approving 33% fee award with no mention of lodestar crosscheck); *Terrell v. Ocean's 11*  
*Casino, Inc.* (San Diego Super. Ct., Feb. 10, 2004) No. GIC795732 (approving 33% fee award with  
no mention of lodestar crosscheck).

1 of the class; and (3) class representatives who can adequately represent the class. *Id.* at 326.

2 The benefits and efficiencies of this proposed Settlement, when compared to continued  
3 litigation of this case on either a class basis or through multiple individual suits, justify certification  
4 of the proposed Class. (Cottrell Decl., ¶ 47). The Settlement specifically defines the Class for  
5 Settlement purposes as: all current and former hourly, non-exempt employees who worked for  
6 Defendant in California any time between June 18, 2017, and May 3, 2025. (*Id.*; Settlement, ¶¶ 2.c,  
7 2.g.) The parties stipulate that the requisites for class certification with respect to the Class Members  
8 are met. (Cottrell Decl., ¶ 47; Settlement, ¶ 12). Applying the standards outlined herein, the Court  
9 should certify the proposed Class as defined herein.

### 10 **1. Plaintiff Satisfies the Ascertainability and Numerosity Requirements**

11 To be certified, a class must be numerous in size such that it is impracticable to bring them all  
12 before the court. Cal. Code Civ. Proc. § 382. The requirement of § 382 that there be many parties to a  
13 class action suit is indefinite and has been construed liberally. No set number is required as a matter  
14 of law for the maintenance of a class action. The ultimate issue in evaluating this factor is whether the  
15 class is too large to make joinder practicable. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,  
16 934; *Collins v. Rocha* (1972) 7 Cal.3d 232, 238. Plaintiffs satisfy the numerosity element as there are  
17 1,177 Class Members who would likely not have pursued their individual rights absent a class  
18 mechanism, making joinder impracticable. (Cottrell Decl., ¶ 48); *Rose, supra*, at 934; *Collins, supra*,  
19 at 238.

20 In determining whether a class is “ascertainable,” courts “examine the class definition, the size  
21 of the class, and the means of identifying the class members.” *Reyes v. Bd. of Supervisors* (1987) 196  
22 Cal.App.3d 1263, 1274–75. Plaintiffs have defined the Class according to objective criteria. (Cottrell  
23 Decl., ¶ 48). The Class Members are easily identifiable, and Defendant will provide a Class list  
24 identifying each Class Member. (*Id.*)

### 25 **2. Common Questions of Law and Fact Predominate in this Action**

26 “[T]he focus in a certification dispute is on what type of questions – common or individual –  
27 are likely to arise in the action[.]” *Sav-on*, 34 Cal.4th at 427. The California Supreme Court has  
28 expressly held that predominance does not require that all questions of law and fact be uniform for all

1 members of the class. *Id.* at 338.

2 Here, Plaintiffs contend that Defendant’s company-wide policies and procedures raise common  
3 issues of law and fact that are applicable to the claims of Plaintiffs and Class Members. (Second  
4 Amended Complaint, ¶ 50; Cottrell Decl., ¶ 49). Where, as in this case, uniform policies and  
5 procedures apply on a class-wide basis, “the legal question to be resolved is not an individual one. To  
6 the contrary, the common legal question remains the overall impact of [Defendant’s] policies on its  
7 [employees].” *Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1299. Plaintiffs also allege  
8 that Defendant has uniform policies applicable to all employees. (Second Amended Complaint., ¶ 28;  
9 Cottrell Decl., ¶ 50). Plaintiffs allege that these standardized policies and procedures are dictated by  
10 Defendant and apply to all Class Members. (*Id.*).

### 11 3. The Typicality Requirement is Satisfied

12 Plaintiffs also must establish that their claims are typical to those of the putative Class they  
13 seek to represent. *Chern v. Bank of America* (1976) 15 Cal.3d 866, 874. A representative plaintiff’s  
14 claims are “typical” if they arise from the same event, practice, or course of conduct that gives rise to  
15 the claims of the other class members and if their claims are based on the same legal theory. *Classen*  
16 *v. Weller* (1983) 145 Cal.App.3d 27, 46–47. The typicality requirement is not onerous and does not  
17 require the claims to be identical. *Id.*

18 Here, Plaintiffs contend that they, like other Class Members, were subject to the policies and  
19 practices that form the basis of the claims asserted in this case. (Second Amended Complaint., ¶ 45;  
20 Cottrell Decl., ¶ 51). Plaintiffs claim they were denied legally compliant meal and rest breaks, overtime  
21 wages, minimum wages, and reimbursement of business expenses. (*Id.*) Plaintiffs claim that the Class  
22 Members were subjected to the same illegal policies and practices to which Plaintiffs were subjected  
23 and that the Class claims are based on the same legal theory as Plaintiffs’ individual claims. (*Id.*)  
24 Plaintiffs further claim that Defendant required them to use their personal cell phones in the  
25 performance of their duties for the benefit of Defendant.

26 Accordingly, Plaintiffs are members of the Class they seek to represent, and their claims are  
27 “typical” of those asserted by other Class Members. *See Classen, supra*, at 46-7.

28

1           **4.       The Adequacy Requirement is Satisfied**

2           A plaintiff is an adequate class representative if his or her claims are not inconsistent with or  
3 antagonistic to the claims of the class members. *See Johnson v. GlaxoSmithKline, Inc.* (2008) 166  
4 Cal.App.4th 1497, 1509. In the instant case, there is no conflict between Plaintiffs and the proposed  
5 Class. (Cottrell Decl., ¶ 52; Sims Decl., ¶ 6, Thaddeus Decl., ¶ 7; Ortiz Decl., ¶ 6). Plaintiffs' claims  
6 are in line with those of the Class, and Plaintiffs have prosecuted this case with the interests of the  
7 Class in mind. (Cottrell Decl., ¶ 52; Sims Decl., ¶ 6, Thaddeus Decl., ¶ 7; Ortiz Decl., ¶ 6). Plaintiffs  
8 have met with Counsel, conducted interviews regarding their work experiences, and participated in  
9 class-wide settlement decisions. (Cottrell Decl., ¶ 53; Sims Decl., ¶ 8, Thaddeus Decl., ¶ 7; Ortiz Decl.,  
10 ¶¶ 8). Furthermore, Plaintiffs have selected counsel with extensive experience in class action and  
11 employment litigation, including wage and hour class actions, and who do not have any conflict with  
12 the Class. (Cottrell Decl., ¶ 39; Sims Decl., ¶ 7, Thaddeus Decl., ¶ 5; Ortiz Decl., ¶ 7). For the foregoing  
13 reasons, Plaintiffs are adequate class representatives, and Counsel are appropriate Class Counsel.  
14 (Cottrell Decl., ¶ 53).

15           **V.       CONCLUSION**

16           For the foregoing reasons, Plaintiffs respectfully request that this Court grant preliminary  
17 approval of the Settlement, in accordance with the schedule set forth in the Notice of Motion filed  
18 herewith.

19           Dated: October 8, 2025

Respectfully Submitted,

21           

22           Carolyn Hunt Cottrell  
23           Ori Edelstein  
24           Philippe M.J. Gaudard

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**JAMES HAWKINS APLC**

*Attorneys for Plaintiff, on behalf of the Class,  
the State of California and Aggrieved Employees*

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1 **PROOF OF SERVICE**

2 I, the undersigned, declare that I am, and was at the time of service of the papers herein  
3 referred to, over the age of 18 years and not a party to the within action or proceeding. I am  
4 employed at Schneider Wallace Cottrell Kim LLP located at 300 S Grand Avenue, Suite  
2700, Los Angeles, California 90071.

5 On October 8, 2025, served the following document(s):

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

8 on the following person(s) listed below, as follows:

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26 ☒ **BY ELECTRONIC SERVICE:** Eugene Huffman, Paralegal, has submitted an  
27 electronic version of the above-referenced document to the person(s) whose email  
28 address(es) are known to me as listed above.

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I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on October 8, 2025, in North Hollywood, California.

  
Eugene Huffman