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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MADERA**

DANIEL DURAN, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

TURF OPERATION FRESNO INC., a
corporation; and DOES 1 through 100,
inclusive,

Defendants.

DANIEL DURAN, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TURF OPERATION FRESNO, INC., a
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case Nos. MCV095208
MCV097350

CLASS ACTION

*Assigned for all Purposes to the Hon.
Michael J. Jurkovich, Dept. 44*

**PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: October 19, 2026

Time: 8:30 a.m.

Dept.: 44

Complaint Filed: December 10, 2024

Trial date: None Set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on October 19, 2026 at 8:30 a.m., or as soon thereafter as the matter may be heard in Department
3 44 (or as otherwise assigned) of the above-entitled Court, located at 200 South G Street, Madera,
4 California 93637, Plaintiff Daniel Duran (“Plaintiff”) will, and hereby does, move this Court for:

- 5 1. Preliminary approval of the proposed Settlement Agreement (“Settlement”) between
6 Plaintiff and Defendant Turf Operation Fresno, Inc. (“Defendant” or “TOF”);
- 7 2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional
8 certification, for settlement purposes only, of the following Settlement Class:
9 All persons who worked for Defendant in California as an hourly-
10 paid, non-exempt employee at any time from December 10, 2020,
11 through February 5, 2026 (the “Class Period”).
- 12 3. Preliminary appointment of Plaintiff as the Class Representative;
- 13 4. Preliminary appointment of Tuvia Korobkin, F. Shawn Azizollahi, and Nancy Goodes
14 of Marquee Law Group, APC as Class Counsel;
- 15 5. Appointment of Phoenix Settlement Administrators (“Phoenix”) as Settlement
16 Administrator;
- 17 6. Approval of the proposed Notice of Pendency of Class Action and Proposed
18 Settlement and Notice of Estimated Settlement Award (the “Notice Packet”), and an
19 order that the Notice Packet be disseminated to the Settlement Class as provided in
20 the Settlement; and
- 21 7. The scheduling of a hearing to consider whether the Settlement should be finally
22 approved and to award a Class Representative Service Payment to Plaintiff, and
23 attorneys’ fees and costs to Class Counsel.

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1 This motion is based on this notice of motion; the attached memorandum of points and
2 authorities; the declaration of Tuvia Korobkin and exhibits attached thereto; the declaration of
3 Plaintiff; the declaration of Jodey Lawrence and exhibits attached thereto; the pleadings and other
4 papers filed in this action; and any further oral or documentary evidence or argument presented
5 at the time of hearing.

6 Dated: September 14, 2026

MARQUEE LAW GROUP, APC



Tuvia Korobkin
Attorneys for Plaintiff

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TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	2
A. FACTUAL AND PROCEDURAL BACKGROUND.....	2
B. PLAINTIFFS’ CLAIMS AND TOF’S DEFENSES.....	2
1. Unpaid Overtime Claim.....	2
2. Meal Period Claim	3
3. Rest Period Claim	3
4. Expense Reimbursement Claim.....	4
4. Claims Under Labor Code §§ 203, 226 and the PAGA.....	4
C. DISCOVERY AND MEDIATION.....	5
III. THE PROPOSED SETTLEMENT.....	6
A. ESSENTIAL TERMS OF THE SETTLEMENT	6
1. The Settlement Provides for Significant Monetary Payments.....	6
2. Notice Period and Release of Claims.....	7
3. Funding of the Settlement.....	7
4. Attorneys’ Fees and Costs, Enhancement Award, and PAGA Payment	8
IV. ARGUMENT.....	9
A. PRELIMINARY APPROVAL IS WARRANTED	9
1. The Standard for Preliminary Approval is Met Here.....	10
a. The Strength of Plaintiff’s Case.....	10
b. Risk, Expense, Complexity, and Duration of Further Litigation.....	10
c. Risk of Maintaining Class Action Status	11
d. Amount Offered in Settlement Given Realistic Value of Claims.....	11
e. The Experience and Views of Counsel.....	11
f. The Settlement is Devoid of Obvious Deficiencies	12
g. The PAGA Settlement is Fair and Reasonable	12
h. The <i>Cy Pres</i> Recipient is Appropriate	13

1
2
3
4
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6
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8
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10
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14
15
16
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18
19
20
21
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23
24
25
26
27
28

B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS..... 13

 1. The Proposed Class Is Ascertainable and Numerous 13

 2. Common Issues of Law and Fact Predominate..... 13

 3. The Named Plaintiff’s Claims Are Typical 14

 4. Plaintiff and Class Counsel Will Adequately Represent the Class..... 14

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE..... 14

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING 15

V. CONCLUSION..... 15

TABLE OF AUTHORITIES

Federal Cases

<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156 (1974).....	14
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	9, 10
<i>In re Pac. Enter. Sec. Litig.</i> , 47 F.3d 373 (9th Cir. 1995).....	11
<i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008)	9

State Cases

<i>Amaro v. Anaheim Arena Management, LLC</i> , 69 Cal.App.5th 521 (2021)	12
<i>Benton v. Telecom Network Specialists, Inc.</i> , 220 Cal.App.4th 701 (2013).....	13
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987)	14
<i>Capital People First v. State Dept. of Developmental Svcs.</i> , 155 Cal.App.4th 676 (2007)	14
<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018).....	5
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (2008)	9
<i>Cochran v. Schwan’s Home Service</i> , 228 Cal.App.4th 1137 (2014)	14
<i>Dunk v. Ford Motor Co.</i> 48 Cal.App.4th 1794 (1996)	10
<i>Gattuso v. Hart-Hanks Shoppers, Inc.</i> , 42 Cal.4th 554 (2007)	4
<i>Grissom v. Vons Companies, Inc.</i> , 1 Cal.App.4th 52 (1991)	4
<i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010).....	8
<i>Kao v. Joy Holiday</i> , 12 Cal.App.5th 947 (2017)	5
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008).....	10, 11
<i>Laffitte v. Robert Half Int’l, Inc.</i> , 1 Cal.5th 480 (2016).....	9
<i>Maldonado v. Epsilon Plastics, Inc.</i> , 22 Cal.App.5th 1308 (2018)	5
<i>McGhee v. Bank of Am.</i> , 60 Cal.App.3d 442 (1976)	14
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal.App.5th 56 (2021)	12
<i>Naranjo v. Spectrum Security Services, Inc.</i> , 15 Cal.5th 1056 (2024).....	5
<i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011).....	5
<i>Reed v. United Teachers Madera</i> , 208 Cal.App.4th 322 (2012)	9
<i>Sav-On Drug Store, Inc. v. Sup. Ct.</i> , 34 Cal.4th 319 (2004).....	13

1	<i>Sevidal v. Target Corp.</i> , 189 Cal.App.4th 905 (2010).....	13
2	<i>Soto v. Motel 6 Operating, L.P.</i> , 4 Cal.App.5th 385 (2016).....	5
3	<i>Taduran v. Glidewell</i> , 121 Cal.App.5th 197 (2026)	5
4	<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1112 (2012)	5
5	<i>Turrieta v. Lyft, Inc.</i> , 16 Cal. 5th 664 (2024)	12
6	<i>Wershba v. Apple Computer, Inc</i> , 91 Cal.App.4th 224 (2001).....	10
7	<u>Federal Statutes & Rules</u>	
8	Fed. R. Civ. Proc. Rule 23	9
9	<u>State Statutes and Rules</u>	
10	8 Cal. Code Regs. § 13520.....	5
11	Cal. Code Civ. Proc. § 382	13
12	Cal. Rule of Court 3.766	15
13	Cal. Rule of Court 3.769	9, 15
14	Cal. Labor Code § 203	4
15	Cal. Labor Code § 226	4
16	Cal. Labor Code § 2699	5, 8, 12
17	<u>Unpublished Cases</u>	
18	<i>Alvarado v. Nederend</i>	
19	No. 1:08-cv-01099-OWW-DLB, 2011 WL 90228 (E.D. Cal. Jan. 11, 2011).....	8
20	<i>Carlino v. CHG Medical Staffing, Inc.</i> , 2019 WL 1005070 (N.D. Cal. Oct. 20, 2019)	14
21	<i>Chu v. Wells Fargo Inv., LLC</i>	
22	No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011).....	8
23	<i>Fleming v. Covidien, Inc.</i>	
24	No. ED CV 10-01487 RGK, 2011 WL 7563047 (C.D. Cal. Aug. 12, 2011).....	5
25	<i>Lagunas v. Young Adult Institute, Inc.</i>	
26	No. 23-cv-00654-RS, 2024 WL 1025121 (N.D. Cal. Mar. 8, 2024)	8
27	<i>Martinez v. Knight Transportation, Inc.</i>	
28	No. 1:16-cv-01730-SKO, 2023 WL 5917989 (E.D. Cal. Sept. 11, 2023).....	8

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Daniel Duran (“Plaintiff”) seeks preliminary approval of a class action settlement
4 (“Settlement”) with Defendant Turf Operation Fresno, Inc. (“Defendant” or “TOF”) (together
5 with Plaintiff, the “Parties”). The Settlement resolves a class and representative action pending
6 before this Court (the “Action”), in which Plaintiff alleges that TOF failed to pay employees for
7 all hours worked; failed to pay overtime wages correctly; failed to provide all meal periods; failed
8 to authorize and permit all rest periods; and failed to reimburse business expenses. Plaintiff further
9 alleges that as a result of these violations, TOF failed to issue accurate itemized wage statements,
10 failed to pay all wages on termination, engaged in unfair competition, and is liable for civil
11 penalties under the Private Attorneys General act (“PAGA”).

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-
13 reversionary class action Settlement,¹ in which TOF has agreed to pay **\$315,000.00** to the
14 following Settlement Class, which is estimated to consist of 286 individuals:

15 All persons who worked for Defendant in California as an hourly-
16 paid, non-exempt employee at any time from December 10, 2020,
through February 5, 2026 (the “Class Period”).

17 The Settlement was reached after the Parties engaged in a full-day mediation with Russ J.
18 Wunderli, Esq., an experienced and respected class action mediator. In connection with
19 mediation, Defendant produced extensive informal discovery, including timekeeping and payroll
20 records for a sample of the putative class members, TOF’s relevant written policies, and other
21 documents and information.

22 After extensive research and investigation, including a detailed analysis of TOF’s
23 potential exposure made with the assistance of an expert data analyst, the full-day mediation
24 session was held with Mr. Wunderli on November 12, 2025. The Parties did not reach a resolution
25 at mediation. However, the Parties continued negotiating with the mediator’s assistance and
26 eventually agreed to a mediator’s proposal in late December 2025. Over the following months,
27 the Parties negotiated the finer terms of their settlement, ultimately resulting in the Settlement.

28 ¹ The Settlement is attached as Exhibit 1 to the Korobkin Declaration. The Class Notice and Notice
of Estimated Settlement Payment are attached as Exhibits A and B, respectively, to the Settlement.

1 Notably, Settlement Class members do not need to submit a claim form to receive a
2 payment (“Settlement Award”). After deductions for proposed administration costs, attorney fees
3 and costs, Plaintiff’s service payments, and the Labor & Workforce Development Agency’s
4 (“LWDA”) share of PAGA civil penalties, the average Settlement Award is estimated at **\$566.43**.
5 For the reasons discussed herein, Plaintiff respectfully submits the Settlement is fair, reasonable,
6 and adequate, and request that the Court grant preliminary approval of the Settlement.

7 **II. SUMMARY OF THE LITIGATION**

8 **A. FACTUAL AND PROCEDURAL BACKGROUND**

9 TOF offers landscaping services throughout California’s Central Valley. *See* Declaration
10 of Tuvia Korobkin (“Korobkin Decl.”), ¶ 12. Plaintiff worked for TOF as a non-exempt lawn
11 technician from approximately August to November 2024. *Id.*

12 On December 10, 2024, Plaintiff filed this Action in Tulare County Superior Court,
13 alleging claims for failure to pay minimum wages and overtime wages, meal and rest period
14 violations, wage statement violations, failure to reimburse business expenses, and unfair
15 competition. Korobkin Decl., ¶ 13. Plaintiff also submitted a PAGA notice letter to the LWDA
16 and to TOF on December 10, 2024, based on the same violations. *Id.*, ¶ 13 & Exh. 2. Plaintiff
17 subsequently filed a First Amended Complaint adding a cause of action for PAGA civil penalties.
18 *Id.*, ¶ 13. The Parties later stipulated to transfer venue to this Court. *Id.*

19 Separately, Plaintiff filed a class action alleging a single cause of action for failure to
20 timely pay final wages (Case No. MCV097350). Korobkin Decl., ¶ 14. Plaintiff’s PAGA notice
21 letter was also amended to include this claim. *Id.*, ¶ 14 & Exh. 3. As part of the Parties’ settlement,
22 Plaintiff filed a Consolidated Complaint merging the two actions into one. *Id.*, ¶ 14.

23 **B. PLAINTIFF’S CLAIMS AND TOF’S DEFENSES**

24 **1. Unpaid Overtime Claim**

25 Plaintiff alleges that TOF failed to properly pay overtime wages because it failed to
26 incorporate production pay in the “regular rate” of pay. Korobkin Decl., ¶ 15. TOF counters that
27 production pay was only paid to a minority of employees and was not paid in every pay period
28 and therefore employees did not come to expect such additional pay, and thus it was not required

1 to be included in the regular rate. *Id.* TOF also argues that the amount of underpaid overtime is
2 very small (about \$8,300 in the aggregate), and thus the value of this claim stems from potential
3 waiting time penalties, and because TOF raised a good faith defense to this claim, waiting time
4 penalties would not be available. TOF also argues that differences among employees' job duties,
5 working conditions, the frequency with which they earned production pay, as well as issues with
6 proving whether each employee suffered damages, would present individualized issues that
7 would preclude class certification. *Id.*

8 **2. Meal Period Claim**

9 Plaintiff alleges that TOF failed to provide non-exempt employees with uninterrupted off-
10 duty 30-minute meal periods. Korobkin Decl., ¶ 16. Plaintiff alleges that management pushed
11 employees to maximize production at the expense of taking their breaks. At the same time,
12 Plaintiff alleges that TOF deducted 30 minutes from employee time records for supposed meal
13 breaks despite employees not taking them, resulting in unpaid wages. *Id.* For its part, TOF argues
14 that it has always maintained lawful meal period policies and practices, and that if TOF ever
15 recorded a meal period on behalf of an employee, it was because the employee simply forgot to
16 clock out for their meal period while they were in the field and the meal period was, in fact, taken.
17 *Id.* TOF further argues that employees voluntarily waived meal periods on shifts under 6 hours
18 and waived second meal periods on shifts under 12 hours, as they are permitted to do under Labor
19 Code § 512. *Id.* In addition, TOF argues that individualized inquiries would be required to
20 determine, on an employee-by-employee and shift-by-shift basis, whether each employee failed
21 to take a legally compliant meal period on each shift, and for those shifts where they did not, *why*
22 they did not take a legally compliant meal period, and that these individual issues would preclude
23 class certification. *Id.*

24 **3. Rest Period Claim**

25 As with meal periods, Plaintiff alleges that TOF did not authorize or permit off-duty rest
26 periods, and that "breaks" were often taken while driving between appointments or otherwise
27 while on-duty. Korobkin Decl., ¶ 17. TOF counters that, as with meal periods, it has always
28 maintained lawful rest period policies and has consistently authorized and permitted legally

1 compliant 10-minute rest periods without interruption. *Id.* Moreover, TOF argues this claim
2 would not be certifiable due to the individualized inquiries needed to determine liability and
3 damages for rest period violations. *Id.* These manageability concerns are especially present with
4 respect to rest periods, TOF contends, as rest periods are not (and need not be) recorded. *Id.*

5 **4. Expense Reimbursement Claim**

6 Plaintiff alleges that TOF required employees to use their personal cell phones for work
7 purposes, including by downloading and using multiple apps for work purposes and using the
8 GPS application on their personal cell phones. Korobkin Decl., ¶ 18. TOF argues that employees
9 did not need to use personal cell phones, as TOF provided any and all tools and technology
10 necessary to perform their jobs. *Id.* TOF further asserts that if employees did need to use
11 personal cell phones, there are procedures in place for employees to request reimbursement of
12 work-related expenses. *Id.* TOF further argues that this claim would not be manageable on a
13 class basis, given differences among employees as to whether they incurred phone-related
14 expenses, whether TOF knew about such expenses, and whether such expenses were reasonable
15 and therefore requiring reimbursement. *Id.*; *see also Gattuso v. Hart-Hanks Shoppers, Inc.*, 42
16 Cal.4th 554, 568 (2007) (“In calculating the reimbursement amount due under section 2802, the
17 employer may consider not only the actual expenses that the employee incurred, but also
18 whether each of those expenses was ‘necessary,’ which in turn depends on the reasonableness
19 of the employee's choices.”); *Grissom v. Vons Companies, Inc.*, 1 Cal.App.4th 52, 58 (1991)
20 (under § 2802, “ascertaining what was a necessary expenditure will require an inquiry into what
21 was reasonable under the circumstances”).

22 **5. Claims Under Lab. Code §§ 203, 226, and the PAGA**

23 As a result of TOF’s alleged failure to pay wages, as well as its alleged failure to provide
24 meal and rest periods, Plaintiff asserts TOF failed to comply with its final payment and wage
25 statement obligations, in violation of Cal. Labor Code §§ 203 and 226. Korobkin Decl., ¶ 19.
26 Plaintiff also seeks civil penalties under the PAGA based on the aforementioned claims. *Id.*

27 TOF argues that Plaintiff’s derivative claims fail for the same reasons their underlying
28 claims fail. Korobkin Decl., ¶ 20. TOF further asserts it has strong, good-faith defenses to

1 Plaintiff's underlying claims, precluding imposition of penalties. *See* 8 Cal. Code Regs. § 13520
2 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties");
3 *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding "good faith dispute" precluded
4 imposition of waiting time penalties); *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal.5th
5 1056 (2024) (holding good faith defense precluded imposition of wage statement penalties). TOF
6 further contends its wage statements always accurately reflect amounts *paid* to employees and
7 therefore no wage statement violations occurred. Korobkin Decl., ¶ 20; *see also Maldonado v.*
8 *Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) ("The purpose of section 226 is to
9 'document the paid wages to ensure the employee is fully informed regarding the calculation of
10 those wages.'") (citing *Soto v. Motel 6 Operating, L.P.*, 4 Cal.App.5th 385, 392 (2016)).

11 TOF contends Plaintiff's PAGA claim fails because the underlying claims fail. *See, e.g.,*
12 *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of
13 action fail, the derivative UCL and PAGA claims also fail."). TOF further maintains that given its
14 good-faith defenses and honest attempts to comply with the law, the Court would substantially
15 reduce PAGA civil penalties even if it were to find in Plaintiff's favor on the underlying claims.
16 Korobkin Decl., ¶ 20; *see also* Lab. Code § 2699(e)(2) (authorizing discretionary reduction in
17 PAGA penalties); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012)
18 (affirming reduction of PAGA penalties, in part because "the evidence showed...defendants took
19 their obligations...seriously and attempted to comply with the law"); *Fleming v. Covidien, Inc.*,
20 No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA
21 penalties by over 82% in part because employer was "not aware" of violations and "took prompt
22 steps to correct all violations once notified"); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504,
23 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where employer made "good
24 faith attempts" to comply with the law); *Taduran v. Glidewell*, 121 Cal.App.5th 197 (2026)
25 (affirming PAGA penalty reduction of more than 99%, from \$55.9 million to \$515,955).

26 C. **DISCOVERY AND MEDIATION**

27 The Parties engaged in extensive informal discovery. TOF produced timekeeping and
28 payroll records for a sample of 33% of all putative class members; its employee handbooks and

1 other relevant written policies; classwide metrics including the number of putative class members,
2 workweeks worked during the putative class period, pay periods worked during the PAGA period,
3 and other relevant information. Korobkin Decl., ¶ 21. Plaintiff’s counsel hired an expert data
4 analyst to assist in analyzing and extrapolating the data. *Id.* This discovery allowed the Parties to
5 assess the merits and value of Plaintiff’s claims and TOF’s defenses. *Id.*

6 The Parties attended a full-day mediation with Mr. Wunderli on November 12, 2025,
7 during which they vigorously debated Plaintiff’s claims and TOF’s defenses, the Parties’
8 respective damages models, and the chances of certification. Korobkin Decl., ¶ 22. The Parties
9 did not reach a resolution at mediation. *Id.* However, they continued their settlement discussions
10 over the following weeks with Mr. Wunderli’s assistance. In December 2025, Mr. Wunderli
11 made a mediator’s proposal, which was eventually accepted by the Parties. Over the following
12 months, the Parties negotiated the finer terms of the settlement, ultimately resulting in the
13 Settlement. *Id.*

14 **III. THE PROPOSED SETTLEMENT**

15 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

16 Under the Settlement, TOF will pay a non-reversionary Gross Settlement Amount
17 (“GSA”) of \$315,000.00. The monetary terms of the Settlement are summarized below:

18	• Gross Settlement Amount (“GSA”):	\$315,000.00
19	• Minus Court-approved attorneys’ fees (up to one-third):	\$105,000.00
20	• Minus Court-approved costs (up to):	\$17,500.00
21	• Minus Court-approved Service Award:	\$7,500.00
22	• Minus Amount Set Aside as PAGA penalties:	\$20,000.00
23	• <u>Minus settlement administration costs (up to):</u>	<u>\$10,000.00</u>
24	Net Settlement Amount (“NSA”):	\$155,000.00
25	PLUS 35% of PAGA penalties (“PAGA Amount”):	\$7,000.00
26	Total Amount Paid to Settlement Class:	\$162,000.00

27 **1. The Settlement Provides for Significant Monetary Payments**

28 As noted above, after deducting amounts for court-approved service payments,
administration costs, attorneys’ fees and costs, and PAGA payment to the LWDA, Settlement
Class members will receive \$162,000.00. *See* Settlement, § 6. TOF represents there are
approximately 286 Settlement Class members. *Id.*, § 1. Thus, the average payment to Settlement
Class members is estimated to be **\$566.43**. Korobkin Decl., ¶ 23.

1 The NSA will be distributed to Participating Class Members (those Settlement Class
2 members who do not opt out) proportionally based on the number of workweeks worked as non-
3 exempt employees in California during the Class Period. *See* Settlement, § 8(B). Additionally, all
4 Settlement Class members (even those who opt out) who were employed by TOF as non-exempt
5 employees in California at any time from December 10, 2023 through February 5, 2026 (the
6 “PAGA Period”) are known as the “PAGA Group,” and PAGA Group members will receive a
7 portion of the \$7,000 PAGA Amount, based on their proportionate number of pay periods worked
8 for TOF as a non-exempt employee in California during the PAGA Period. *Id.*, §§ 2, 8(C).

9 Payments from the NSA will be treated as 10% wages to be reported on a Form W-2, and
10 90% interest and penalties reported on Form 1099. *See* Settlement, § 8(E). Payments from the
11 PAGA Amount will be treated as 100% penalties. *Id.* TOF will separately pay the employer’s
12 share of payroll taxes on the amount designated as wages. *Id.*, §§ 6(D), 8(E).

13 **2. Notice Period and Release of Claims**

14 Settlement Class members will have 60 days from the Notice mailing to opt out of or
15 object to the Settlement or submit disputes, thereby providing ample time to review the Notice
16 without unduly delaying the Settlement. *See* Settlement, § 13(C)-(E).

17 Participating Class Members will be bound by the Settlement and shall release all wage
18 and hour claims that were pled in the Action, or that could have been pled based on the facts
19 alleged in the Action, during the Class Period (“Class Released Claims”). *See* Settlement, § 3. In
20 addition, all PAGA Group members will release all claims against TOF for PAGA penalties based
21 on the facts alleged in the PAGA letters submitted by the Plaintiff, that arose during the PAGA
22 Period (“PAGA Released Claims”). *Id.*, § 4.

23 **3. Funding of the Settlement**

24 TOF will fund the settlement within thirty (30) days of the Effective Date. *See*
25 Settlement, § 6(B). If there are no objections, the Effective Date will be the date the Court finally
26 approves the Settlement and enters judgment. *Id.*, § 7. After the Gross Settlement Amount and
27 employer-side taxes have been fully funded, and after receiving approval from counsel of the
28 payment calculations, Phoenix will mail payments to Settlement Class members. *Id.*, § 8(D).

Funds represented by undeliverable checks, or checks remaining uncashed after 180 days, will be deposited by the Settlement Administrator with *cy pres* recipient Children's Advocacy Clinic of the Valley Children's Hospital. *Id.*, § 8(F).

4. Attorneys' Fees and Costs, Enhancement Award, and PAGA Payment

At final approval, Plaintiff will apply for a Service Payment of \$7,500. *See* Settlement, §§ 6(C)(iii), 10. "[I]ncentive awards are fairly typical in class action cases...and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be briefed at final approval, Plaintiff's requested payment is in recognition of the time and effort he expended on behalf of the Settlement Class, including providing factual information and documents to counsel, discussing with counsel the claims and theories at issue in the litigation, reviewing the settlement agreement and other documents, and otherwise actively participating in the prosecution of this case. Korobkin Decl., ¶ 36. Plaintiff respectfully submits that the requested payments are well within the range of permissible approval. *See, e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal. May 17, 2011) (approving \$7,500 award to each of five named plaintiffs (\$37,500 total) from roughly \$500,000 settlement, or roughly 7.5% of the total settlement amount); *Martinez v. Knight Transportation, Inc.*, No. 1:16-cv-01730-SKO, 2023 WL 5917989 (E.D. Cal. Sept. 11, 2023) (awarding \$10,000 incentive award from \$400,000 claims-made settlement where average settlement payment was just \$127.61).

The parties have designated \$20,000.00 of the GSA as PAGA penalties, of which \$13,000 (65%) will be paid to the LWDA, with the remaining \$7,000 (35%) distributed to PAGA Group members as described above, consistent with Labor Code § 2699(m). This PAGA allocation is reasonable. *See, e.g., Chu v. Wells Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011) (approving \$10,000 PAGA payment from \$6.9 million settlement); *Lagunas v. Young Adult Institute, Inc.*, No. 23-cv-00654-RS, 2024 WL 1025121 (N.D. Cal. Mar. 8, 2024) (preliminarily approving \$20,000 PAGA allocation from \$850,000 settlement).

1 At final approval, Plaintiff's counsel will request attorneys' fees of 33.33% of the GSA
2 (currently estimated at \$105,000), and up to \$17,500 in litigation costs. (Settlement, § 6(C)(iv).)
3 The requested fee is fair compensation for undertaking complex, risky, expensive, and time-
4 consuming litigation on a contingent basis. Plaintiff's counsel has incurred substantial attorneys'
5 fees, in, among other things, conducting pre-filing investigation and legal research; analyzing
6 timekeeping, payroll, and other data with Plaintiff's data expert to create a comprehensive
7 damages model; preparing for and attending mediation; drafting formal discovery requests;
8 negotiating and preparing the Settlement; preparing this Motion; and otherwise prosecuting this
9 case. Korobkin Decl., ¶ 35. Counsel will also incur future attorney fees in overseeing the Notice
10 process, fielding phone calls from Settlement Class members, preparing the Final Approval
11 Motion and supporting documents, and appearing at the Final Approval Hearing. *Id.*

12 It is appropriate to award attorney fees as a percentage of the "common fund" created by
13 the settlement. *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480 (2016) (holding "the percentage of
14 fund method survives in California class action cases"). Counsel's fee request is well within the
15 range of reasonableness and is typical for common fund settlements. *See, e.g., Chavez v. Netflix,*
16 *Inc.*, 162 Cal.App.4th 43, n.11 (2008) ("regardless whether the percentage method or the lodestar
17 method is used, fee awards in class actions average around one-third of the recovery"). As will
18 be briefed at final approval, the fee request is reasonable in light of the substantial risks and
19 significant work undertaken, the results obtained, and the efficiency with which counsel litigated.

20 **IV. ARGUMENT**

21 **A. PRELIMINARY APPROVAL IS WARRANTED**

22 California Rule of Court 3.769 conditions class action settlements on court approval,
23 which is generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United*
24 *Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine
25 "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*,
26 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine "whether a proposed
27 settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of
28 dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*,

516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role is to ensure the settlement agreement taken as a whole is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is a presumption of fairness when a settlement is negotiated at arm’s length by counsel. *See, e.g., Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. The Standard for Preliminary Approval is Met Here

To make a fairness determination, the Court should consider several factors, including: “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

a. The Strength of Plaintiff’s Case

While Plaintiff is confident in the merits of his claims, Plaintiff acknowledges there were substantial risks and uncertainty in proceeding with class certification and eventual trial on the merits. As described in section II.B., *supra*, TOF presented multiple defenses to Plaintiff’s claims, both on the merits and to class certification, rendering success uncertain.

b. Risk, Expense, Complexity, and Duration of Further Litigation

Although the Parties engaged in significant informal discovery, they had not completed formal written and deposition discovery, which would have required expenditure of substantial time and resources. Korobkin Decl., ¶ 37. Plaintiff also still had to file for class certification. *Id.* Even if Plaintiff obtained certification, the Parties would incur considerable attorneys’ fees and costs through a possible decertification motion, motions for summary judgment, trial, and potential appeals. *Id.* The Settlement avoids those risks and the accompanying delay and expense. *Id.* Thus, this factor supports preliminary approval.

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1 **c. Risk of Maintaining Class Action Status**

2 Plaintiff had not yet filed his class certification motion, and as such, the extent to which
3 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
4 was a risk there would not be a certified class at trial, or if there were, that it would consist of a
5 significantly smaller group of employees than the proposed Settlement Class, and the expected
6 recovery would be significantly reduced. Thus, this factor supports preliminary approval.

7 **d. Amount Offered in Settlement Given Realistic Value of Claims**

8 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class
9 for disputed claims. As detailed in the Korobkin Declaration, and with the assistance of a data
10 expert, Plaintiff conducted an analysis of potential damages due to TOF's allegedly unlawful
11 policies and practices. After applying reasonable discounts for risks of not obtaining class
12 certification and risks of losing on the merits, Plaintiff estimated his claims had a realistic
13 potential value of approximately \$422,241 if the case had gone through class certification and
14 trial. Korobkin Decl., ¶¶ 26-34. The proposed settlement of \$315,000 thus represents about 75%
15 of Plaintiff's reasonably forecasted classwide recovery. *Id.*, ¶ 34. Preliminary approval is
16 appropriate, as the Settlement and this litigation provide significant relief to the Settlement Class.

17 **e. The Experience and Views of Counsel**

18 "Parties represented by competent counsel are better positioned than courts to produce a
19 settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter.*
20 *Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, counsel have extensive experience
21 litigating wage and hour class actions, and have been appointed class counsel in numerous cases
22 alleging similar claims. *See* Korobkin Decl., ¶¶ 2-10. Counsel conducted an in-depth review of
23 TOF's policies, timekeeping and payroll records, and other relevant data, and drew on their
24 extensive experience to assess Plaintiff's claims. The Settlement was also reached after a
25 mediation session with mediator Russ J. Wunderli, Esq., an experienced wage and hour class
26 action mediator, as well as additional negotiations with Mr. Wunderli's assistance. Korobkin
27 Decl., ¶ 22. This strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

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1 **f. The Settlement Is Devoid of Obvious Deficiencies**

2 The Settlement provides tangible monetary relief to the Settlement Class, and the amounts
3 proposed for attorneys’ fees, costs, Plaintiff’s incentive awards, and PAGA penalties are all
4 reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of
5 obvious deficiencies, this supports preliminary approval.

6 **g. The PAGA Settlement is Fair and Reasonable**

7 PAGA settlements require court approval. (Labor Code § 2699(s)(2)). PAGA penalties
8 are intended to “remediate present violations and deter future ones, *not* to redress employees’
9 injuries.” *Amaro v. Anaheim Arena Management, LLC*, 69 Cal.App.5th 521, 542 (2021). The
10 standard for evaluating a PAGA settlement is not whether the employees are fully compensated
11 for their injuries, but “whether it is fair, reasonable, and adequate in view of PAGA’s purposes to
12 remediate present labor law violations, deter future ones, and to maximize enforcement of state
13 labor laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021), disapproved on other
14 grounds by *Turrieta v. Lyft, Inc.*, 16 Cal. 5th 664 (2024).

15 Where, as here, the parties reach a substantial settlement providing employees with
16 monetary compensation for underlying Labor Code violations, many of PAGA’s underlying
17 policy objectives are satisfied. In addition, the amount allocated to the PAGA claims is fair to
18 those affected because it accounts for a realistic assessment of the PAGA exposure on the claims
19 as well as the significant possibility of the Court not awarding the PAGA penalties even if Plaintiff
20 prevailed on the merits due to the Court’s discretion to substantially reduce PAGA penalties.

21 The \$20,000.00 PAGA allocation in this case is within the range approved by California
22 courts and therefore should be approved. As noted above, there was significant risk that the Court
23 would either find against Plaintiff on his underlying claims or, if it found for Plaintiff, would have
24 drastically reduced PAGA penalties. Moreover, courts have approved PAGA allocations
25 comprising much smaller portions of the overall settlement, as described above. Thus, the PAGA
26 allocation is fair and reasonable.

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1 **h. The Cy Pres Recipient is Appropriate.**

2 The Settlement further provides that any settlement checks that remain uncashed after the
3 void date shall be distributed to a *cy pres* recipient, the Child Advocacy Clinic (“CAC”) at Valley
4 Children’s Hospital. *See* Settlement, § 8(F). CAC is an appropriate *cy pres* recipient as a “child
5 advocacy program” under Cal. Code Civ. Proc. § 384(b). Specifically, CAC’s mission is to
6 “provide[] comprehensive medical services to suspected victims of child maltreatment.”
7 Declaration of Wan-Keung Chen (“Chen Decl.”), ¶ 3. After children are discharged, “they are
8 followed by pediatric child abuse specialists to monitor physical recovery, address psychosocial
9 needs and provide referrals to outside agencies.” *Id.* Thus, Plaintiff respectfully requests the Court
10 approve CAC as the *cy pres* recipient of uncashed funds.

11 **B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS**

12 The proposed Settlement Class satisfies the criteria for certification because: 1) the
13 Settlement Class is ascertainable and numerous; 2) common questions of law and fact
14 predominate; 3) Plaintiff’s claims are typical of the Settlement Class; and 4) Plaintiff and his
15 counsel will fairly and adequately represent the Settlement Class. Cal. Code Civ. Proc. § 382.

16 **1. The Proposed Class Is Ascertainable and Numerous**

17 A class is “ascertainable” where members “may be readily identified without unreason-
18 able expense or time by reference to official [or business] records.” *Sevidal v. Target Corp.*, 189
19 Cal.App.4th 905, 919 (2010). The Settlement Class includes non-exempt employees who worked
20 for TOF in California during the Class Period, and it thus can be readily identified from TOF’s
21 records. TOF represents there are approximately 286 Settlement Class members, rendering it
22 impracticable to bring them all before the Court. Numerosity is satisfied.

23 **2. Common Issues of Law and Fact Predominate**

24 The focus on certification is on what types of questions, “common or individual,” are
25 likely to arise in the action. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004).
26 Plaintiff’s claims are predicated primarily on Defendant’s overtime, meal and rest period, and
27 expense reimbursement policies/practices. Such claims are commonly held proper for class
28 certification. *See, e.g., Benton v. Telecom Network Specialists, Inc.* 220 Cal.App.4th 701, 726

(2013) (certifying meal and rest period claims); *Carlino v. CHG Medical Staffing, Inc.*, 2019 WL 1005070 (N.D. Cal. Oct. 20, 2019) (certifying regular rate claim); *Cochran v. Schwan's Home Service*, 228 Cal.App.4th 1137 (2014) (reversing denial of certification of reimbursement claim).

3. The Named Plaintiff's Claims Are Typical

Typicality is satisfied where class representatives have claims typical of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Here, Plaintiff's claims are typical of those held by Settlement Class members. Plaintiff was employed by Defendant as a non-exempt employee in California during the Class Period, and Plaintiff contends he was injured by the same challenged policies that allegedly injured the Settlement Class as a whole. *See* Declaration of Daniel Duran, ¶ 3.

4. Plaintiff and Class Counsel Will Adequately Represent the Class

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.*, 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the Settlement Class, as there are no known conflicts between Plaintiff or his counsel and the Settlement Class. *See McGhee v. Bank of Am.*, 60 Cal.App.3d 442, 450 (1976) (finding adequacy satisfied where there was no indication that plaintiff's counsel was not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation, as noted above.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

The Court should order distribution of the proposed Notice by U.S. Mail, using last known mailing addresses provided by TOF. This is the "best notice practicable" under the circumstances as it provides "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff proposes the Settlement be administered by Phoenix Settlement Administrators, an experienced administrator. *See* Jodey Lawrence Declaration and exhibits. Phoenix will run all addresses through the USPS National Change of Address database and will perform "skip traces" to obtain current addresses for Notices returned as undeliverable. *See* Settlement, § 13(B) & (F).

1 The proposed Notice satisfies Rule of Court 3.766(d) because it advises the Settlement
2 Class of the nature of the claims; the parties' basic contentions; the key Settlement terms; the 60-
3 day deadline to opt out, object, or submit a dispute and how to do so; the payment formula and
4 expected payment amount for each Settlement Class member; and explains the releases of claims.
5 See Settlement, Exh. A. The Notice also includes the final approval hearing date and time and
6 provides contact information for Class Counsel and the administrator. *Id.* The Notice will also be
7 translated into Spanish. See Settlement, § 12(F). The Notice satisfies Rule of Court 3.766(e) as
8 the most reliable and cost-effective method of reaching the Settlement Class.

9 **D. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

10 The Court should set a hearing for final approval on a date appropriately scheduled to
11 follow Settlement Class members' response deadline. See Cal. Rule of Court 3.769.

12 **V. CONCLUSION**

13 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
14 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
15 Proposed Order submitted concurrently herewith.

16
17 Dated: September 14, 2026

Respectfully submitted,
MARQUEE LAW GROUP, APC

18 By:


Tuvia Korobkin
Attorneys for Plaintiff