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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

ARIN ESRAELIAN, as an individual, and on
behalf of all similarly situated employees,

Plaintiff,

v.

THE GOODYEAR TIRE & RUBBER
COMPANY, and DOES 1-50, inclusive,

Defendants.

Luis Franco, individually, on behalf of himself
and all other similarly situated employees,

Plaintiff,

vs.

The Goodyear Tire and Rubber Company, an
Ohio corporation, and Does 1-5

Defendants.

Case No.: 21STCV44620
Consolidated with:
Franco Case No.: 22CV393403 and
Rodas Case No.: 21STCV28702

CLASS ACTION

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

Date: February 1, 2023
Time: 1:30 p.m.
Dept.: 3

1 DANIEL RODAS, as an individual and on
2 behalf of all others similarly situated,

3 Plaintiffs,

4
5 vs.

6 THE GOODYEAR TIRE & RUBBER
7 COMPANY, an Ohio corporation; and DOES
8 1 through 50, inclusive,

9 Defendants.
10
11
12

13
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1 **I. INTRODUCTION**

2 The Parties in the consolidated matters have reached a settlement in this matter, which is
3 subject to the approval of this Court. The Action presently contains class allegations against
4 Defendant The Goodyear Tire & Rubber Company (“Defendant”) for: (1) Failure to Pay All
5 Wages, Including Minimum and Overtime Wages (Labor Code §§ 510, 1194); (2) Failure to
6 Provide Rest Periods (Labor Code §§ 226.7, 512); (3) Failure to Provide Meal Periods (Labor
7 Code §§ 226.7, 512); (4) Failure to Timely Pay Wages at Separation (Labor Code §§ 201, 202,
8 203); (5) Failure to Keep Accurate Payroll Records (Labor Code § 1174, 226 (A), (E)); (6)
9 Failure to Reimburse Employees for Necessary Business Expenditures (Labor Code § 2802(A));
10 (7) Payment Via Bank Cards; (8) Unfair Business Practices (Bus. Prof. Code §§ 17200 et. seq.);
11 and; (9) Failure to Pay Wages Under the Fair Labor Standards Act (10) Penalties Under PAGA
12 Labor Code §2698, et seq. The Action also contains a representative allegation under the
13 Private Attorneys General Act (Lab. Cod/e, § 2698 et seq., hereinafter “PAGA”) for civil
14 penalties. (See Plaintiffs’ First Amended Consolidated Complaint filed on November 2, 2022.)

15 The proposed settlement satisfies all of the criteria for a preliminary approval of a
16 settlement under California law, and it falls well within the range of permissible approval.
17 Accordingly, Plaintiffs Luis Franco, Arin Esraelian, and Daniel Rodas (“Plaintiffs”) and
18 Defendant request that the Court provisionally certify the proposed Settlement Class for
19 settlement purposes only, grant preliminary approval of the proposed Settlement, direct
20 distribution to the Settlement Class of Notice of the Settlement and the opportunity to “opt out”
21 of and object to the settlement, and schedule a final approval hearing.

22 **II. FACTUAL AND PROCEDURAL BACKGROUND**

23 On or about July 21, 2021, Plaintiff Rodas submitted a PAGA Letter to the LWDA
24 seeking civil penalties under PAGA, against The Goodyear Tire & Rubber Company on behalf
25 of aggrieved employees in California, for alleged violations of the California Labor Code,
26 including California Labor Code sections 201-204, 226(a), 510, 558, 1194, 1197, and 1197.1.

27 /////

28 /////

1 On or about August 4, 2021, Plaintiff Rodas filed the *Rodas* Action in the Superior Court of
2 California, County of Los Angeles designated as Case No. 21STCV28702 on behalf of three
3 subclasses:

4 All current and former non-exempt employees of Defendant in the State of
5 California, who [sic] earned overtime wages and non-discretionary remuneration
6 during the same workweek, at any time from August 4, 2017, through the present;

7 All current and former non-exempt employees of Defendant in the State of
8 California, who were paid any wages on a piece-rate basis at any time from
9 August 4, 2020, through the present;

10 All current and former non-exempt employees of Defendant[sic] in the State of
11 California, who were paid any wages identified as “Details Not Displayed” at any
12 time from August 4, 2020, through the present.

13 On September 20, 2021, The Goodyear Tire & Rubber Company removed the *Rodas*
14 Action to the United States District Court – Central District of California, resulting in Case No.
15 2:21-cv-07526 -VAP-KES. The *Rodas* Action alleges three causes of action: (1) violation of
16 Labor Code §§ 510, 558, and 1194, (2) violation of Labor Code § 226(a), and (3) violation of
17 Business & Professions Code § 17200, et seq.

18 On or about September 24, 2021, Plaintiff Rodas filed the *Rodas PAGA* Action in the
19 Superior Court of California, County of Los Angeles, resulting in Case No. 21STCV35255 with
20 a single cause of action for violation of California’s Labor Code Private Attorneys General Act
21 of 2004 (Cal. Lab. Code §2698, *et seq.* or “PAGA”).

22 On or about November 18, 2021, Plaintiff Esraelian submitted a PAGA Letter to the
23 LWDA seeking civil penalties under PAGA, against The Goodyear Tire & Rubber Company on
24 behalf of aggrieved employees in California, for alleged violations of the California Labor Code
25 including California Labor Code sections 201-204, 206, 210, 226, 226.3, 226.7, 510, 512, 1174,
26 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2802.

27 On or about December 8, 2021, Plaintiff Esraelian filed the *Esraelian* Action in the
28 Superior Court of California for the County of Los Angeles, Case No. 21STCV44620, on behalf
of all non-exempt, hourly-paid employees currently and/or formerly employed by The Goodyear
Tire & Rubber Company in California. On January 20, 2022, The Goodyear Tire & Rubber

1 Company removed the *Esraelian* Action to the United States District Court – Central District of
2 California, resulting in Case No. 2:22-cv-00413-JFW-JPR. The *Esraelian* Action alleges a cause
3 of action for violations of the California Labor Code under California Business & Professions
4 Code § 17200, et seq., for failure to pay all wages, including minimum and overtime wages
5 (Cal. Lab. Code §§ 510 and 1194), failure to provide meal periods (Cal. Lab. Code §§ 226.7 and
6 512), failure to provide rest periods (Cal. Lab. Code §§ 226.7 and 512) failure to keep accurate
7 payroll records (Cal. Lab. Code §§ 1174, 226(a), (e)), failure to timely pay wages at separation
8 (Cal. Lab. Code §§ 201-203), and failure to reimburse employees for necessary business
9 expenditures (Cal. Lab. Code § 2802(a)).

10 On or about January 17, 2022, Plaintiff Franco submitted a PAGA Letter to the LWDA
11 seeking civil penalties under PAGA, against The Goodyear Tire & Rubber Company on behalf
12 of aggrieved employees in California, for alleged violations of the California Labor Code and
13 Industrial Welfare Commission Wage Orders, including California Labor Code sections 201,
14 202, 203, 226(a), 226.7, 512, and Industrial Welfare Commission Wage Orders 9-2001.

15 On or about January 18, 2022, Plaintiff Franco filed the *Franco* Action in the Superior Court of
16 California, County of Santa Clara designated as Case No. 22CV393403 on behalf of a class (and
17 five sub-classes) of current and former hourly non-exempt employees of Defendant who were
18 employed by Defendant in California from January 18, 2018, through the present. On March 2,
19 2022, The Goodyear Tire & Rubber Company removed the *Franco* Action to the United States
20 District Court – Northern District of California, resulting in Case No. 5:22-cv-01320 -CRB. The
21 *Franco* Action alleges six causes of action: (1) Failure to Pay Proper Premiums for Non-
22 Compliant Meal and Rest Periods in Violation of California Labor Code §§ 512 and 226.7 and
23 IWC Wage Order; (2) Failure to Provide Rest Periods in Violation of California Labor Code §
24 226.7 and IWC Wage Order; (3) Failure to Provide Accurate Itemized Wage Statements in
25 Violation of California Labor Code § 226 and IWC Wage Order; (4) Failure to Pay Earned
26 Wages Upon Separation in Violation of California Labor Code §§ 201-203; (5) Unlawful, Unfair
27 and Fraudulent Business Practices (Cal. Bus. & Prof. Code §§ 17200 et. seq.); and (6) Civil
28 Penalties Pursuant to Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698

1 *et seq* or “PAGA”).

2 On or about January 28, 2022, Plaintiff Esraelian filed the *Esraelian PAGA* Action in the
3 Superior Court of California for the County of Los Angeles, Case No. 22STCV03534 alleging a
4 single cause of action for a violation of PAGA.

5 Following exchange and extensive review of relevant documents and class data, on April
6 22, 2022, the Parties engaged in a full-day mediation with experienced wage and hour class
7 action mediator Steve Rottman, Esq. which did not settle that day, but through continued arms-
8 length negotiations through Mr. Rottman, eventually resulted in a settlement and Parties accepted
9 a mediator’s proposal on May 27, 2022. Any post-mediation disputes will be mediated through
10 Mr. Rottman. (**Declaration of Janelle Carney, Exh. 1**) Pursuant to the terms of the settlement,
11 the Plaintiffs in all of the pending actions stipulated to and filed a consolidated complaint on
12 November 2, 2022.

13 **III. CLASS ACTION SETTLEMENT APPROVAL PROCEDURE**

14 A class action may not be dismissed, compromised, or settled without the approval of
15 the court. (*See* Code Civ. Proc., § 1781, subd. (f).) Judicial proceedings have led to a defined
16 procedure and specific criteria for settlement approval in class action settlements, described in
17 the *Manual for Complex Litigation, Third* (Fed. Judicial Center 1995) (“*Manual*”) section
18 30.41. The *Manual*’s settlement approval procedure describes three distinct steps:

- 19 1. Preliminary approval of the proposed settlement at an informal hearing;
- 20 2. Dissemination of mailed and/or published notice of the settlement to all affected
21 class members; and
- 22 3. A “formal fairness hearing,” or final settlement approval hearing, at which class
23 members may be heard regarding the settlement, and at which evidence and argument
24 concerning the fairness, adequacy, and reasonableness of the settlement is presented.

25 This procedure, commonly used by California courts and endorsed by the leading class
26 action commentator, Professor Newberg, safeguards class members’ procedural due process
27 rights and enables the court to fulfill its role as the guardian of class interests. (*See 2 Newberg*
28 *on Class Actions* (“*Newberg*”) 3d (1992) § 11.22 et seq.)

1 The decision to approve or reject a proposed settlement is committed to the court's
2 sound discretion. (*See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–35.)
3 (“In general, questions whether a settlement was fair and reasonable, whether certification of the
4 class was proper, and whether the attorney fee award was proper are matters addressed to the
5 trial court’s broad discretion”).) The practical purpose of provisional class certification is to
6 facilitate distribution to all class members of notice of the terms of the Settlement and the date
7 and time of the final approval hearing. (*See Manual* § 30.41.) The additional rulings sought in
8 this motion—approving the form, content and distribution of the class notice, and scheduling a
9 formal fairness hearing—facilitate the settlement approval process, and are also typically made
10 at the preliminary approval stage. (*See 2 Newberg* § 11.26.)

11 **A. PRELIMINARY APPROVAL OF THE SETTLEMENT IS**
12 **APPROPRIATE**

13 The law favors settlement, particularly in class actions and other complex cases where
14 substantial resources can be conserved by avoiding the time, cost, and rigors of formal
15 litigation. (*See 2 Newberg* § 11.41 (and cases cited therein); *Class Plaintiffs v. City of*
16 *Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976)
17 529 F.2d 943, 950; *see also Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal.2d 592,
18 602.) These concerns apply with particular force in a case such as this one before the Court.
19 (*See Officers for Justice v. Civil Service Com'n of City and County of San Francisco* (9th Cir.
20 1982) 688 F.2d 615 *Servv. Officers for Justice, supra*, 688 F.2d at p. 625; *Wilkerson v. Martin*
21 *Marietta Corp.* (D. Colo. 1997) 171 F.R.D. 273, 284.)

22 The purpose of the preliminary evaluation of class action settlements is to determine
23 only whether the proposed settlement is within the range of possible approval, and thus whether
24 notice to the class of the terms and conditions and the scheduling of a formal fairness hearing
25 are worthwhile. (*See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–35; 2
26 *Newberg* § 11.25.) In passing on class action settlements, a court has broad powers to determine
27 whether a proposed settlement is fair under the circumstances of the case. (*Id.* at p. 234–35;
28 *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) To grant preliminary approval of

1 this Settlement, the Court need find only that the settlement falls within the range of possible
2 final approval, also described as “the range of reasonableness.” (*See, e.g., North County*
3 *Contractor's Assn. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089–1090; *In re*
4 *Traffic Executive Association-Eastern Railroads* (2d Cir. 1980) 627 F.2d 631, 633–634; *see*
5 *also* 2 Newberg § 11.25.)

6 “The list of factors is not exclusive and the court is free to engage in a balancing and
7 weighing of the factors depending on the circumstances of each case.”
8 (*Wershba, supra*, 91 Cal.App.4th 224 91 Cal. App.4th at 245.) Furthermore, courts must give
9 “proper deference to the private consensual decision of the parties,” since “the court’s intrusion
10 upon what is otherwise a private consensual agreement negotiated between the parties to a
11 lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement
12 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and
13 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ross v.*
14 *Artuz* (2d Cir. 1998) 150 F.3d 97, 102.)

15 Here, as shown below, the settlement falls well within the range of reasonableness.

16 **1. The Terms of the Settlement Disclose No Grounds to Doubt Its Fairness**

17 A preliminary review of the terms of the Settlement gives rise to no doubts as to its
18 fairness. Indeed, this Court should begin its analysis with a presumption that the Settlement is
19 fair:

20 [A] presumption of fairness exists where: (1) the settlement is reached through arm’s-
21 length bargaining; (2) investigation and discovery are sufficient to allow counsel and
22 the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
1794, 1802; *Wershba, supra*, 91 Cal.App.4th at p. 245.)

23 Here, the Parties have engaged in an exchange of formal and informal discovery,
24 thorough investigation of the merits of all asserted claims, engaged in an arm’s-length
25 negotiation through an experienced mediator, and ultimately reached a Settlement. Information
26 provided by Defendant/defense counsel and Class Counsel’s independent investigation has
27 allowed class counsel to fully assess the strengths and weaknesses of the class claims against
28 Defendant and the benefits of the Settlement under the circumstances of this case. The Plaintiffs

received 15% of time and payroll records and extrapolated the data out for the class. There are approximately 46,519 pay periods in the PAGA period. The pay period count is based on the employment dates in the class list provided by Goodyear – this list contained 983 employees. The last termination date in this file was on 2/10/22 – any employee that were active as of this time were considered to be active through the June 30, 2022, date. The numbers are extrapolated for the period from February 2022 through June 2022 since the assumption is that the headcount remained constant through this period. (**Carney Decl ¶8**)

2. Liability Is Contested, and the Settlement Provides for Reasonable Compensation for Class Members’ Damages

Of particular relevance to the reasonableness of the Settlement is the fact that Defendant has available legal and factual grounds for defending this action. Defendant, in its responsive pleadings, asserted a multitude of affirmative defenses each of which is still claimed as a valid defense. In addition to disputing the merits of Plaintiffs’ claims, Defendant would strongly challenge any request for class certification.

Plaintiffs believe and are informed, and based thereon alleges, that this case is suitable for class certification in that there were company-wide policies that affected all of Defendant’s non-exempt employees. However, while Plaintiffs asserts that this is a suitable case for class certification, Plaintiffs realize that there is always a significant risk associated with class certification proceedings. (**Carney Decl. ¶ 7**)

In light of the uncertainties of protracted litigation, the Gross Settlement Amount of three million five hundred thousand dollars (\$3,500,000.00), less class representative payment, class counsel’s attorneys’ fees and costs, LWDA payment, and the settlement administrator’s fees, toward compensating class members for their alleged damages, represents a fair a reasonable and reasonable settlement for Class Members. (**Carney Decl. ¶¶ 39-41**)

3. The Settlement Is the Product of Serious, Arm’s Length, Informed Negotiations

The Settlement resulted after arms’ length settlement negotiations between counsel through private mediation. (**Carney Decl. ¶¶ 8-10**) Plaintiffs’ counsel has significant experience

1 in class litigation. (Carney Decl. ¶¶ 2-4; Mahoney Decl. ¶¶ 11-13; Gavron Decl. ¶¶ 2-9;
2 **Kuchinsky Decl. ¶¶ 9-10**) The Parties have also taken into account the uncertainty and risk of
3 the outcome of further litigation, and the difficulties and delays inherent in such litigation and
4 believe that this settlement is in the best interest of the Parties.

5 **4. The Gross Settlement Amount and Plan of Distribution Is Within the Range**
6 **of Reasonableness**

7 The Net Settlement Amount after all, costs, fees, and expenses are deducted, is a minimum
8 of two million forty-nine thousand five hundred sixty-one and thirty-three cents (\$2,051,333.33).

9 This Settlement is fair and reasonable because it provides substantial and immediate
10 benefits to the class members. The Settlement is jointly presented as the product of extensive
11 arm's length negotiations by experienced counsel on both sides, and recognition of the strengths
12 and weaknesses of each other's positions. In calculating the appropriate settlement amount, the
13 Parties had sufficient information, including payroll data and time records, and had conducted an
14 adequate investigation to allow them to make educated and informed analysis and conclusions.
15 Accordingly, Plaintiffs and Class Counsel have determined that the Settlement set forth in this
16 Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the
17 Settlement Class Members. (Carney Decl. ¶¶ 39-41)

18 **5. The Requested Class Representative Payments for Service to the Class Is**
19 **Reasonable and of the Type Routinely Awarded**

20 Plaintiffs intend to show that Plaintiffs' class representative payments recognize their time
21 and efforts on behalf of the class. The criteria courts may consider in determining whether to make
22 an incentive award include: (1) the risk to the class representative in commencing suit, both
23 financial and otherwise; (2) the notoriety and personal difficulties encountered by the class
24 representative; (3) the amount of time and effort spent by the class representative; (4) the duration
25 of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative
26 as a result of the litigation. (*Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp.
27 294, 299.) In this case, Plaintiffs have met with Class Counsel, spent significant time and energy
28 in the prosecution of this case outlined in Plaintiffs' contemporaneously filed declaration.

(Declaration of Arin Esraelian ¶¶ 2-6; Declaration of Luis Franco ¶¶ 2-6; Declaration of Daniel Rodas ¶¶ 2-6).

6. Class Counsel Intend to Show That Their Requested Attorneys' Fees and Costs Are Reasonable

While the Court will not issue a final determination regarding attorneys' fees until it considers any objections from the class, Class Counsel intends to request an award of attorney's fees equal to 33.33% of the Gross Settlement Amount (\$1,166,666.67), under the "percentage of benefit" theory. California state and federal courts have recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the settlement payment. (See *Wershba*, *supra*, 91 Cal.App.4th at p. 254 (recognizing both the "percentage of recovery" and "lodestar/multiplier" methods); *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) Class counsel intends to seek attorney's fees under *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 503.

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorneys' fees in California Court:

We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method- including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation (See pt. I, *ante*; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 48-49; *Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516.) convince us the percentage method is a valuable tool that should not be denied our trial courts. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 503.)

Further, the Court must take into consideration the additional Kullar factor which is "the most important factor is the strength of the case for the plaintiffs on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. 168 Cal. App 4th 116, 118) (See **Carney Decl., ¶8**)

CLAIM	REASONABLE EXPOSURE	SETTLEMENT VALUE	%
Off the Clock	\$2,000,000	\$950,000.00	48%
Meal	\$350,000	\$270,000.00	77%
Rest	\$620,000	\$500,000.00	81%
Regular Rate	\$100,000	\$100,000.00	100%
Rounding	\$270,000	\$180,000.00	67%
WTP	\$2,000,000	\$750,000.00	38%
PAYSTUB	\$1,000,000	\$500,000.00	50%
REIMBURSEMENT	\$684,400	\$250,000.00	37%
TOTALS	\$ 7,024,400.00	\$3,500,000.00	50%

Plaintiffs contend the settlement represents approximately **50%** of the reasonable value of all claims. (**Carney Decl. ¶8**). The settlement is for a maximum amount of \$3,500,000.00, for approximately 2100 class member employees. Plaintiffs assert that this is an excellent settlement for each class member and PAGA aggrieved employees.

B. Plaintiffs' Claims

1. Failure to Pay all Wages

Labor Code section 1197 provides as follows:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and cost of suit. (Lab. Code, § 1197.)

2. The Meal Break Claim

Labor Code sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than six (6) hours without providing a meal period of not less than thirty (30) minutes within the fifth (5) hour of work or employ any person for a work period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30) minutes. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in

1 accordance with this section, the employer shall pay the employee one (1) hour of pay at the
2 employee's regular rate of compensation for each workday that the meal period is not provided in
3 accordance with this section

4 Plaintiffs contend that Plaintiffs and Class Members regularly missed meal periods, or had
5 meal periods late, cut short, and/or interrupted as a result of understaffing, busy workload, and
6 Defendant's unlawful policies and practices.

7 **3. The Rest Break Claim**

8 Labor Code, section 226.7 provides as follows:

9 (a) No employer shall require any employee to work during any meal or rest
period mandated by an applicable order of the Industrial Welfare Commission.

10 (b) If an employer fails to provide an employee a meal period or rest period in
11 accordance with an applicable order of the Industrial Welfare Commission, the
12 employer shall pay the employee one additional hour of pay at the employee's regular
13 rate of compensation for each work day that the meal or rest period is not provided.
(Lab. Code, § 226.7, subd. (a) & (b).)

14 Plaintiffs contend that rest periods, when provided, were routinely interrupted due to
15 business needs and Defendant's prioritization work responsibilities over mandatory rest periods in
16 violation of the California Labor Code. Plaintiffs contend that rest period premiums were not
17 provided for each and every violation which occurred.

18 **4. Regular Rate**

19 Plaintiffs allege that when Defendant pays for missed meal and missed rest periods, they
20 do so at the base rate, and not the regular rate of compensation. Pursuant to Labor Code §226.7(c),
21 "[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with
22 state law, . . . ***the employer shall pay the employee one additional hour of pay at the employee's***
23 ***regular rate of compensation*** for each workday that the meal or rest or recovery period is not
24 provided." (emphasis added). "In sum, we hold that the term "regular rate of compensation" in
25 section 226.7(c) has the same meaning as "regular rate of pay" in section 510(a) and encompasses
26 not only hourly wages but all nondiscretionary payments for work performed by the employee.
27 This interpretation of section 226.7(c) comports with the remedial purpose of the Labor Code and
28 wage orders and with our general guidance that the "state's labor laws are to be liberally construed

1 in favor of worker protection.” (Alvarado, supra, 4 Cal.5th at p. 562.)” *Ferra v. Loews Hollywood*
2 *Hotel, LLC*, (2021) 11 Cal. 5th 858, 878

3 Moreover, Defendants contend that Plaintiffs have no basis to establish that there were
4 meal and rest period violations in the first instance. Instead, Defendants contend that they paid
5 premiums automatically if the timekeeping system demonstrated a missed, late or short meal
6 period. Defendant has changed its policy and started to pay meal and rest period premiums at the
7 regular rate as of *Ferra* decision.

8 **5. The Labor Code section 203 Claim**

9 Labor Code section 201 requires immediate payment of earned and unpaid wages to a
10 discharged employee at the time of discharge. Labor Code section 202 requires payment of earned
11 and unpaid wages to an employee who quits after giving a seventy-two (72) hour prior notice at
12 the time of quitting, and within seventy-two (72) hours after quitting to an employee who quits
13 without giving a seventy-two (72) hour prior notice. Under Labor Code section 203, if an
14 employer willfully failed to pay all wages earned and unpaid in accordance with Labor Code
15 sections 201 and 202, the wages shall continue as a penalty until paid, for up to thirty (30) days.

16 Plaintiffs contend that by failing to include in the final paychecks to former employees the
17 additional wages due to these employees, Defendant violated Labor Code sections 201, 202, and
18 203. Plaintiffs further contend that Defendant failed to pay penalties for each day a former
19 employee was not paid wages for all hours worked. Defendant contends that terminated Class
20 Members were properly paid all wages owed, including, but limited to, all straight time and
21 overtime.

22 **6. The Indemnification Claim**

23 Labor Code section 2802, subdivision (a), mandates that employers, such as Defendant,
24 “shall indemnify his or her employee for all necessary expenditures or losses incurred by the
25 employee in direct consequence of the discharge of his or her duties, or of his or her obedience to
26 the directions of the employer.” (Lab. Code, § 2802.)

27 Plaintiffs contend that Defendant failed to fully indemnify Plaintiffs and Class Members
28 for all business expenses incurred in direct consequences of their duties, including, but not limited

1 to, uniform cleaning, use of personal vehicles, and personal cell phone expenses. Further,
2 Plaintiffs and the class were sometimes paid with a pre-paid bank card that also incurred expense
3 in obtaining the funds on the card. Plaintiffs and the class were not reimbursed for such charges
4 to their payroll amounts. Defendant contends that to extent any exist, business expenditures
5 incurred by Class Members, were fully compensated.

6 **7. Pay Stub Claim**

7 As to the paystub penalty, Plaintiffs allege that Defendant willfully and intentionally failed
8 to make and/or keep records which accurately reflect the hours worked by Plaintiffs and Plaintiffs
9 Class. Specifically, Plaintiffs believe that Defendant's records do not accurately reflect where
10 Plaintiffs and Plaintiffs Class worked during their meal and/or rest breaks. Furthermore,
11 Defendant's records do not reflect all hours worked, specifically the hours Plaintiffs and Plaintiffs
12 Class were required to work off the clock for maintaining and donning and doffing Defendant's
13 uniform. This claim is derivative claim of the aforementioned claims for unpaid wages and meal
14 and rest break violations. To reiterate these theories are as follows: deficient paystubs due to
15 Defendant's failure to list the correct gross wages earned, net wages earned, and the applicable
16 hourly rates (including the correct overtime rate) as a result of the regular rate miscalculation on
17 overtime rates and failure to pay meal and rest period premiums, and to pay for all time worked.

18 **8. The PAGA Claim**

19 Labor Code sections 2698 et seq., the Private Attorneys General Act ("PAGA") provides
20 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
21 ("LWDA"), or any of its departments, divisions, commissions, boards, agencies, or employees,
22 for a violation of the Labor Code, which may be recovered through a civil action by an aggrieved
23 employee on behalf of himself or herself, and collectively on behalf of all other current or former
24 employees. The PAGA claim in this action is premised on the foregoing labor code violations.

25 **IV. SUMMARY OF SETTLEMENT TERMS**

26 • Defendant stipulates to certification of a Class for settlement purposes only, consisting of
27 all non-exempt hourly individuals employed by Goodyear in California at any time from August
28 4, 2017, until July 30, 2022 ("Plaintiff Class," "Class Members," and "Settlement Class").

1 • The Class Period is defined as the time period from August 4, 2017, until July 30, 2022.

2 • The Class size was represented by Defendant to consist of approximately two thousand

3 seventy-one (2,071) Class Members as of April 2022;

4 • The Gross Settlement Amount is three million five hundred thousand dollars

5 (\$3,500,000.00);

6 • Class Members will be paid pursuant to the terms of the Settlement;

7 • This is a non-reversionary Settlement in which Defendant is required to pay the entire

8 Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant.

9 Within thirty (30) calendar days of the Effective Date, Defendant agrees to make a one-time

10 deposit of the full Gross Settlement Amount in the amount of Three Million Five Hundred

11 Thousand Dollars and Zero Cents (\$3,500,000.00) and an amount sufficient to pay the Employer

12 Taxes, into a settlement account to be established by the Settlement Administrator. No payments

13 from the Gross Settlement Amount shall be made before the Gross Settlement Amount is fully

14 funded. No release in this Settlement shall be effective until the Gross Settlement Amount is fully

15 funded.

16 • The Settlement shall be disbursed to Class Members within seven (7) calendar days after

17 the Settlement is funded;

18 • Class Members may opt-out of the Settlement or object to the Settlement within thirty

19 (30) days from the initial mailing of the Class Notice;

20 • After deducting Class Counsel fees and costs, the LWDA Payment allocation, Incentive

21 Awards to the Named Plaintiffs, and Settlement Administration Costs from the Gross Settlement

22 Amount, the Net Settlement Amount will be calculated and paid apportioned to Settlement Class

23 Members on a *pro rata* basis, based on the Settlement Class Members' respective number of

24 workweeks during the Class Period (the details of the settlement calculation method are set forth

25 in more detail in the parties' Settlement Agreement);

26 • Administration will be handled by third-party Rust Consulting Inc.;

27 • The Settlement Administration costs will be paid out of the Gross Settlement Amount,

28 and will not exceed Eighteen Thousand, Seven Hundred and Seventy-Two Dollars (\$18,772.00);

1 • Defendant will not oppose an application for a Class Representative Incentive Awards in
2 the amount of up to thirty thousand dollars (\$30,000.00), ten thousand dollars (\$10,000.00) each,
3 to the named Plaintiffs, to be paid out of the Gross Settlement Amount;

4 • Defendant will not oppose Class Counsel’s application for fees that is equal to or less than
5 the amount of One Million One Hundred Sixty-Six Thousand Six Hundred and Sixty-Six Dollars
6 and Sixty Seven Cents (\$1,166,666.67), which is one-third (33.33%) of the Gross Settlement
7 Amount, and application for costs that is equal to or less than the amount of thirty-five thousand
8 dollars (\$35,000.00), all from the gross settlement amount;

9 • As these terms are defined in the Settlement Agreement, “Plaintiffs” and “Settlement
10 Class Members” will release and discharge the Released Parties, i.e., from any and all “Released
11 Claims;”

12 • Plaintiffs and Settlement Class Members further agree that: (1) Defendant and the
13 Released Parties shall have no further or other liability or obligation to any member of the
14 Settlement Class with respect to the Released Claims; (2) the named Plaintiffs will waive all the
15 protections of Code of Civil Procedure section 1542 and all similar statutes and laws; and (3) to
16 the fullest extent allowed by law; and

17 • As of the date the Gross Settlement Amount is fully funded, all Settlement Class Members,
18 including Plaintiffs, who do not opt out of the Settlement, will be deemed to have fully, finally
19 and forever released, settled, compromised, relinquished, and discharged the Released Parties
20 from the Released Claims for the Class Period.

21 **V. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

22 Under California law, a class action is appropriate when the class is ascertainable and
23 there is “a well-defined community of interest in the questions of law and fact involved affecting
24 the parties to be represented.” (Code Civ. Proc., § 382; *Dunk, supra*, 48 Cal.App.4th at p. 1806,
25 *as modified* (Sept. 30, 1996).) State-law requirements under Code of Civil Procedure section 382
26 for class certification mirror those of federal law under Federal Rules of Civil Procedure Rule 23,
27 28 U.S.C.A. numerosity, typicality of the Class Representatives’ claims, adequacy of
28 representation, predominance of common issues, and superiority. (*See* Fed. Rules Civ.Proc., rule

23, 28 U.S.C.A. U.S.C.A.(a); *see also Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019.) Thus, for settlement purposes, each of these elements must be present. (*See Wershba, supra*, 91 Cal.App.4th at p. 237–38.)

A. The Proposed Settlement Class Is Ascertainable and Numerous for Settlement

Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*. *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435. Here, the proposed class is ascertainable because all of the class members have worked for Defendant as non-exempt employees and have been identified through Defendant’s employee and payroll files. (*See Rose v. City of Hayward*, 126 (1981) Cal.App.3d 926, 932 (finding that “Class Members are ‘ascertainable’ where they may be readily identified without unreasonable expense or time by reference to official records”).) Thus, the ascertain ability requirement is met.

The numerosity requirement is met if the class is so large that joinder of all members would be impracticable. (*See Gay v. Waiter and Dairy Lunchmen's Union, Local No 30* (N.D. Cal. 1980) 489 F.Supp. 282). Here, Defendant’s payroll and personnel records show that the proposed class potentially has approximately two thousand seventy-seven (2,071) members. Because these numbers are so large, joinder of all class members would be impracticable and a class wide proceeding is preferable. (*See Hebbard v. Colgrove*, 28 (1972) Cal.App.3d 1017, 1030 (noting that there is no set minimum to meet the numerosity prerequisite, and that even a class of as few as 28 members is acceptable).)

B. The Commonality Requirement Is Met

The commonality requirement is met if there are questions of law and fact common to the class. (*See Hanlon, supra*, 150 F.3d at p. 1019 (“The existence of shared legal issues with

1 divergent legal factual predicates is sufficient, as is a common core of salient facts coupled with
2 disparate legal remedies within the class.”) Here, for purposes of the Settlement only, the Parties
3 agree that common factual and legal issues include, among other things: (1) whether or not
4 Defendant paid proper wages to the Class; (2) whether or not Defendant provided meal and rest
5 periods to the Class; (3) whether or not Defendant paid compensation timely upon separation of
6 employment to former Class Members; (4) whether or not Defendant provided accurate itemized
7 statements to the Class; (5) whether or not Defendant provided full business expense
8 reimbursement to the Class; (6) whether or not waiting-time penalties are available to the Class
9 for violation of Labor Code section 203; (7) whether or not Defendant paid proper meal period
10 pay or rest period pay to the Class; (8) whether or not Defendant engaged in unlawful or unfair
11 business practices affecting the Class in violation of Bus. & Prof. Code, § 17200, 17201, 17202,
12 17203, 17204, 17205, 17206, 17207, and 17208; (9) whether or not Plaintiffs and the Class are
13 entitled to injunctive and/or declaratory relief; and (10) whether or not Plaintiffs and the Class are
14 entitled to penalties pursuant to PAGA. Under these specific circumstances, the commonality
15 requirement is satisfied. (*See Id.* at p. 1019–20.)

16 In this case, common questions of law and fact predominate across the Class Members
17 throughout the Class Period. *Vanwagoner v. Siemens Industry, Inc.*, 2014 U.S. Dist. LEXIS
18 67141, *11 (N.D. Cal. 2014) (commonality satisfied where, “[n]ot only does the class raise
19 common questions, but the class action may generate a class-wide answer to the central issues:
20 whether defendant’s calculation and payment of wages and overtime were correct and whether
21 defendant engaged in a uniform practice of denying meal and rest periods and denying
22 reimbursements.”) Under these specific circumstances, and for settlement purposes only, the
23 commonality requirement is satisfied.

24 **C. The Typicality Requirement Is Met**

25 The typicality requirement is met if the claims of the name representative is typical of
26 those of the class, though “they need not be substantially identical.” (*See Hanlon, supra*, 150 F.3d
27 at p. 1020; *Classen v. Weller*, 145 (1983) Cal.App.3d 27, 46-47.) For purposes of the Settlement
28 only, the Parties agree that the claims of the proposed Class Representatives here are typical of

1 the Settlement Class as a whole. The named Plaintiffs, like all Class Members, worked as non-
2 exempt employees during the Class Period for Defendant. Further, Plaintiffs' claims involve the
3 contention that there was a common practice of forcing Class Members to work off-the-clock and
4 that they were not provided with lawful meal or rest periods. For these reasons, this case is readily
5 amenable to class certification in the settlement context and the Court should provisionally certify
6 the Class for settlement purposes. Plaintiffs also contend that they were not reimbursed for all
7 business expenses incurred including using personal cell phones and vehicles and/or costs
8 associated with the pre-paid bank cards, while employed by Defendant. Like all Class Members,
9 the named Plaintiffs have suffered relatively moderate damages as a result of the alleged
10 violations of California's wage and hour laws and regulations. Since all members of the Class
11 would need to demonstrate the same elements to recover on their claims, their interests are
12 sufficiently aligned that the proposed Class Representative can be expected to adequately pursue
13 the interests of the absentee Class Members. As such, Plaintiffs' claims are typical of the class
14 insofar as together they held the positions covered by the class definition that were all subjected
15 to the same policies and procedures. Inasmuch, Plaintiffs have and will continue to adequately
16 represent the Class.

17 **D. The Adequacy Requirement Is Met**

18 The adequacy requirement is met if the class representative and class counsel have no
19 interests adverse to the interests of the proposed class members and are committed to vigorously
20 prosecuting the case on behalf of the class. (*See Hanlon, supra*, 150 F.3d at p. 1020; *McGhee v.*
21 *Bank of America* (1976) 60 Cal.App.3d 442, 450–51.) Those standards are met here. Under the
22 terms of the Settlement Agreement, each named Plaintiff is eligible to receive a class
23 representative payment of ten thousand dollars (\$10,000.00), collectively thirty thousand dollars
24 (\$30,000.00), upon approval of the Court. Thus, no “settlement allocation” questions are raised.
25 (*See Hanlon, supra*, 150 F.3d at p. 1020.)

26 Moreover, “[p]otential Plaintiffs are not divided into conflicting discrete categories,” since
27 they all claim additional wages for work, they performed in California for Defendant. (*See Id.* at
28 p. 1021.) Finally, any class member who wishes to “opt out” of the Settlement may do so. (*See*

1 *Ibid.*) There is therefore no conflict of interest between Plaintiffs and the class members. In
2 addition, class counsel “spoke and conferred regularly to coordinate their litigation strategy and
3 to apply as much pressure as possible” to Defendant. (*Ibid.*) Thus, at least for settlement purposes,
4 the adequacy prong is met.

5 **E. Common Issues Predominate and Class-Wide Settlement Is Superior to**
6 **Other Available Methods of Resolution**

7 Class certification is authorized where common questions of law and fact predominate
8 over individual questions, and where class-wide treatment of a dispute is superior to individual
9 litigation. (*See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469.) The test is whether
10 the proposed class is sufficiently cohesive to warrant adjudication by representation. (*See Hanlon,*
11 *supra*, 150 F.3d at p. 1022.) The proposed class in this case is sufficiently cohesive because, for
12 purposes of the Settlement, the Parties agree that all class members share a “common nucleus of
13 facts and potential legal remedies,” as was present in *Hanlon, supra*, 150 F.3d 1011, where the
14 Ninth Circuit approved class certification under the standards set forth in *Amchem*. Plaintiffs on
15 behalf of themselves and class members, seek among other things, minimum wage and overtime
16 pay for all work performed, and meal and rest period violation pay under California law, and
17 reimbursement of business expenses. Plaintiffs have common questions about the policies of
18 Defendant, and the class members’ potential legal remedies are identical. Thus, this class may be
19 certified for settlement purposes. Furthermore, it would be preferable to resolve all of the class
20 members’ claims by means of the Settlement than to require each class member to litigate his or
21 her individual claims.

22 **VI. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

23 **A. The Class Notice Satisfies Due Process**

24 California statutory and case law vests the Court with broad discretion in fashioning an
25 appropriate notice program. (*See Civ. Code*, § 1781; *19 v. Cartt v. Superior Court* (1975) 50
26 Cal.App.3d 960, 973–74.) The notice plan entails the mailing of the class notice to all known and
27 reasonably ascertainable class members based on Defendant’s payroll records. The class notice
28 is consistent with class certification notices approved by numerous state and federal courts, and

1 is, under the circumstances of this case, the best notice practicable. (**Carney Decl. ¶ 43, Ex. A**)
2 Defendant will provide names, social security numbers, and last-known addresses for class
3 members, and the settlement administrator and class counsel will endeavor to update Defendant's
4 database with additional information as needed. Such notice satisfies all due process
5 requirements. (*See Cartt, supra*, 50 Cal.App.3d 960.)

6 **B. The Proposed Class Notice Is Accurate and Informative**

7 The proposed class notice provides information on the meaning and nature of the proposed
8 settlement class; the terms and provisions of the Settlement; the relief the Settlement will provide
9 to Class Members; the applications of Plaintiffs for their class representative payments and of
10 class counsel for their attorneys' fees and costs; the payment of the settlement administrator's
11 fees; the date, time and place of the final settlement approval hearing; and the procedure and
12 deadlines for submitting claims, opting out of the Settlement or for submitting comments and
13 objections. (**Carney Decl. ¶ 52, Ex. A to the Settlement Agreement**)

14 The class notice also fulfills the requirement of neutrality in class notices. (*See 2 Newberg*
15 § 8.39.) It summarizes the proceedings to date, and the terms and conditions of the Settlement, in
16 an informative and coherent manner, in compliance with the *Manual's* statement that "the notice
17 should be accurate, objective, and understandable to Class Members." (*Manual* at § 30.211.) The
18 class notice clearly states that the Settlement does not constitute an admission of liability by
19 Defendant, and recognizes that the Court has not ruled on the merits of the action. It also states
20 that the final settlement approval decision has yet to be made. Accordingly, the class notice
21 complies with the standards of fairness, completeness, and neutrality required of a settlement
22 class notice disseminated under authority of the Court. (*See Fed. Rules Civ.Proc.*, rule 23, 28
23 U.S.C.A. U.S.C.A.(c)(2); 23(e); 2 *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 30.211, 30.212.)

24 **VII. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED**

25 The last step in the settlement approval process is the formal final approval hearing, at
26 which the Court may hear all evidence and argument necessary to evaluate the proposed
27 Settlement. At that hearing, proponents of the Settlement may explain and describe its terms and
28 conditions and offer argument in support of Settlement approval; members of the Settlement

Class, or their counsel, may be heard in support of or in opposition to the Settlement Agreement. Plaintiffs request a Final Approval hearing be set on or after April 17, 2023.

VIII. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

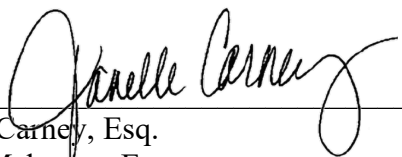
Attached as Exhibit 1 to the Declaration of Janelle Carney is a true and correct copy of the Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims. (Carney Decl. ¶7, Ex. 1.) Attached as Exhibit 5 to the Declaration of Janelle Carney is a true and correct copy of the LWDA's confirmation of submission of the proposed Settlement. (Carney Decl. ¶7.) Attached as Exhibit B to the Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims is a true and correct copy of the Notice of Class Action Settlement. (Carney Decl. ¶ 7 Exh 1-Ex. A.)

IX. CONCLUSION

For the foregoing reasons, the Parties respectfully request the Court grant preliminary approval of the Settlement.

Dated: December 9, 2022

JANELLE CARNEY – ATTORNEY AT LAW, APC
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Kevin Mahoney, Esq.
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of all employees similarly situated