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on behalf of themselves and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

JORGE LEYVA and LUCKY SYSAVATH,
individuals on behalf of themselves and all
others similarly situated,

Plaintiff,

vs.

UNIVERSAL SERVICE RECYCLING,
INC., a California Corporation;
UNIVERSAL SERVICE RECYCLING
MERCED, INC., a California Corporation;
UNIVERSAL SERVICE RECYCLING
NEVADA, LLC., a business entity of
unknown form; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: STK-CV-UOE-2023-7875

CLASS ACTION

Assigned for All Purposes To:
Hon. Barbara Kronlund

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF SETTLEMENT;
AND (3) SETTING HEARING FOR FINAL
APPROVAL**

Date: June 10, 2025; June 11, 2025; June
12, 2025; June 13, 2025; June 18, 2025;
Next available
Time: 9:00 a.m.
Dept: 10D

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATUS OF THE LITIGATION.....	2
	A. Procedural History	2
	B. Investigation.....	2
	C. Settlement Efforts	3
III.	SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS	6
IV.	CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE	8
	A. There Is A Numerous and Ascertainable Class.....	6
	B. There Is A Well-Defined Community of Interest	9
	C. The Named Plaintiffs’ Claims Are Typical	8
	D. Adequacy of Class Counsel and Class Representatives.....	11
	E. Predominance and Superiority	9
V.	THE TWO-STEP APPROVAL PROCESS.....	9
VI.	THE SETTLEMENT IS FAIR AND ADEQUATE	10
	A. The Strength of Plaintiffs’ Case.....	13
	B. The Risks Associated with the Merits.....	14
	C. The Risks Associated with Paystub Violations and Waiting Time Penalties.	15
	D. The Risks Associated with the PAGA Penalties.....	16
	E. The Risk, Expense, Complexity and Likely Duration of Any Litigation. ..	17
	F. The Risk of Maintaining Class Action Status Through Trial.	17
	G. The Amount Offered in Settlement.....	18
VII.	THE CLASS REPRESENTATIVE ENHANCEMENTS ARE FAIR AND REASONABLE	20
VIII.	THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS.....	20
IX.	STANDING TO OBJECT TO PROPOSED SETTLEMENT	21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
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24
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27
28

X.	THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS REASONABLE AND SHOULD BE APPROVED.	23
XI.	ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY APPROVAL.....	25

TABLE OF AUTHORITIES

CASES

<u>B.W.I. Custom Kitchens v. Owens-Illinois, Inc.</u> (1987) 191 Cal.App.3d 1341	8
<u>Cartt v. Superior Court</u> 50 Cal.App.3d 960, 974 (1975).....	21
<u>Class Plaintiff v. City Of Seattle</u> 955 F.2d 1268, 1276 (1992).....	10
<u>Classen v. Weller</u> (1983)145 Cal.App.3d 27	8
<u>Daar v. Yellow Cab Company</u> 67 Cal. 2d 695, 704 (1967)	6
<u>Daum v. Claim Jumper Restaurants</u> Orange County Super. Ct. Case No. 02CC10201 (2006)	23
<u>Estrada v. Dr. Pepper/Seven-Up</u> Los Angeles County Super. Ct. Case No. BC 262247 (May 2005).....	23
<u>Evans v. Coca-Cola</u> Los Angeles County Super. Ct. Case No. BC 220525 (Hon. Richard C. Hubbell) (Dec. 2001)	23
<u>Gould v. Alleco, Inc.</u> 883 F.2d 281, 284 (4th Cir. 1998).....	22
<u>Hammon v. Barry</u> 752 F. Supp. 1087 (D.D.C. 1990)	11
<u>In re Activision Securities Litigation</u> (N.D. Cal. 1989) 723 F.Supp. 1373.....	22-23
<u>In re Ampicillin Antitrust Litigation</u> 526 F.Supp. 494 (D. D.C. 1981)	23
<u>In Re NASDAQ Market-Makers Antitrust Litigation</u> 172 F.R.D. 119, 123 (SDNY 1997)	7
<u>In re Pacific Enterprises Securities Litigation</u> 47 F.3d 373, 378-79 (9th Cir. 1994)	22-23
<u>In re School Asbestos Litigation</u> 921 F.2d 1330 (3rd Cir. 1990)	21
<u>In re Vitamin Cases</u> 107 Cal.App.4th 820, 828 (2003)	21
<u>In re Wash. Pub. Power Supply Sys. Sec. Litigation</u> 19 F.3d 1291, 1295-96 (9th Cir. 1994)	22
<u>Kimbell v. Abercrombie & Fitch Stores, Inc.</u> Los Angeles County Super. Ct. Case No. BC 277359 (Sept. 2006)	23
<u>Linder v. Thrifty Oil Co.</u> (2000) 23 Cal.4th 429, 439-441	6, 10
<u>Moreno v. Miller Brewing</u> Los Angeles County Super. Ct. Case No. BC 278170 (April 2004).....	23
<u>Mullane v. Central Hanover Bank & Trust Co.</u> 339 U.S. 306 (1950)	20

1	<u>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</u>	
	27 Cal.App.4th 1085, 1094-195 (1994)	10
2	<u>Parker v. City of Los Angeles</u>	
	44 Cal.App.3d 556, 557-568 (1974)	23
3	<u>Priddy v. Edelman</u>	
	883 F.2d 438, 447 (6th Cir. 1989).....	11
4	<u>Prince v. CLS Transp., Inc.</u>	
	118 Cal. App. 4th 1320, 1328 (2004)	6
5	<u>Reyes v. Board of Supervisors of San Diego County</u>	
	196 Cal. App. 3d 1263, 1271 (1987).....	6
6	<u>Richmond v. Dart Industries, Inc.</u>	
	29 Cal. 3d 462 (1981)	6
7	<u>Rodriguez v. West Publ. Corp.</u>	
	2007 U.S. Dist. LEXIS 74767, 24-25 (C.D. Cal. August 10, 2007).....	11
8	<u>Rosack v. Volvo of America Corp</u>	
	131 Cal. App. 3d 741, 753 (1982).....	8
9	<u>Van Vranken v. Atlantic Richfield Co.</u>	
	901 F.Supp. 294 (N.D. Cal. 1995)	19
10	<u>Vasquez v. Superior Court</u>	
	4 Cal. 3d 800, 805-9 (1971)	6
11	<u>Vincent v. Hughes Air West, Inc.</u>	
	557 F.2d 759, 769 (9th Cir. 1977).....	22
12	<u>Wershba v. Apple Computer, Inc.</u> (2001). 91 Cal.App.4th 224	8

STATUTES

13	<u>Labor Code</u> § 203	1-2, 13-15
14	<u>Labor Code</u> § 226	1-2, 13-15
15	<u>Labor Code</u> § 226.7	1, 12-13
16	<u>Labor Code</u> § 2699	1, 10, 15-16

OTHER AUTHORITIES

17	Judicial Council of California's Deskbook on the Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74	21
18	<u>Manual for Complex Litigation (Second)</u> (1985)	10
19	<u>Newberg</u> , § 11.25	10
20	<u>Newberg</u> , § 12.1	19
21	<u>Newberg</u> , §§ 14-10	23
22	<u>Newberg</u> , §11.47	19
23	<u>Newberg</u> , §11.51	11
24	<u>Newberg</u> , at §14.03	23

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Lucky Sysavath (“Plaintiff Sysavath” or “Class Representative Sysavath”) filed
4 an individual and representative action complaint in the Superior Court of the State of California,
5 San Joaquin County, Case No. STK-CV-UWT-2022-0001673, against Defendant Universal
6 Service Recycling, Inc., and William Mendonca. Plaintiff Sysavath alleged the following
7 individual causes of actions: (1) Failure to Pay Minimum Wages, (2) Nonpayment of Wages, (3),
8 Failure to Pay Overtime & Doubletime Compensation, (4) Violation of the FLSA Overtime
9 Requirements, (5) Failure to Maintain Time Records, Provide Itemized Statements, (6) Failure to
10 Pay All Wages Due Upon Discharge, (7) Failure to Provide Paid Rest Breaks, (8) Failure to
11 Provide Meal Breaks, (9) Unfair Business Practices under Cal. Bus. & Prof. Code § 17200, (10)
12 Unlawful Business Practices under Cal. Bus. & Prof. Code § 17200, (11) Violation of the
13 California Family Rights Act & New Parent Leave Act, (12) Violation of Family and Medical
14 Leave Act, (13) Associational Physical Disability Discrimination, (14) Violation of Government
15 Code § 12940(m), (15) Violation of Government Code § 12940(n), (16) Violation of Government
16 Code § 12940(k), (17) Retaliation, (18) Tortious Termination in Violation of Public Policy, and
17 (19) a representative claim under the Private Attorney’s General Act of 2004.

18 Plaintiff Jorge Leyva (“Plaintiff Leyva” or “Class Representative Leyva”) (Plaintiff
19 Sysavath and Plaintiff Leyva collectively “Plaintiffs” or “Class Representatives”) filed a class
20 action complaint in the Superior Court of the State of California, San Joaquin County, Case No.
21 STK-CV-UOE-2023-7875, against Defendant Universal Service Recycling, Inc., Universal
22 Service Recycling Merced, Inc., and Universal Service Recycling Nevada, LLC., (collectively
23 “Defendants”). Plaintiff Leyva alleged the following causes of action: (1) Failure to Pay
24 Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal
25 Period Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Labor Code § 226.7;
26 (5) Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203; (7) Violation of Labor
27 Code § 204; (8) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and
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1 1174.5; (9) Failure to Reimburse Necessary Business Expenses § 2802; (10) Failure to Produce
2 Requested Employment Records Under Labor Code §§ 226(b), 1198.5; (11) Violation of
3 Business & Professions Code § 17200 *et seq*; and (12) Penalties under Private Attorney General
4 Act (“PAGA”).

5 Pursuant to the proposed Class Action and PAGA Settlement Agreement (“Settlement” or
6 “Settlement Agreement”), filed concurrently herewith, the class consists of “all persons employed
7 by Defendants in California and classified as a non-exempt, hourly employee who worked for
8 Defendants at any time between July 26, 2019, to January 7, 2025.” After engaging in substantial
9 investigation, discovery, and extensive negotiations with the assistance of a respected third-party
10 neutral Brandon McKelvey, the parties have agreed to settle all claims alleged in the lawsuit on a
11 class-wide non-reversionary basis for Six Hundred Ninety-Nine Thousand Dollars and Zero Cents
12 (\$699,000.00), inclusive of all fees and costs. All 144 Class Members shall receive a settlement
13 share unless they opt out.

14 The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and
15 adequate, and in the best interests of the Class. Consequently, Plaintiffs, with the consent of
16 Defendants, hereby move this Court for an order: (1) granting preliminary approval of the
17 proposed class action settlement, as embodied in the Settlement Agreement filed concurrently
18 herewith; (2) approving the Notice of Settlement to be sent to Class Members; and (3) setting a
19 hearing for final approval of the class action settlement.

20 **II. STATUS OF THE LITIGATION**

21 **A. Procedural History**

22 On December 15, 2021, Plaintiff Sysavath submitted a Private Attorneys General Act
23 (“PAGA”) notice letter to the Labor Workforce Development Agency (“LWDA”) and served
24 Defendants Universal Service Recycling, Inc., and William Mendonca. (Declaration of Natalie
25 Haritounian (“Haritounian Decl.”), filed concurrently herewith, ¶ 11). The LWDA did not express
26 an interest in investigating Plaintiff Sysavath’s claims within the 65-day period. (*Id*).

27 On March 4, 2022, Plaintiff Sysavath filed an individual and representative action
28

1 complaint against Defendants Universal Service Recycling, Inc., and William Mendonca alleging
2 nineteen causes of actions: (1) Failure to Pay Minimum Wages, (2) Nonpayment of Wages, (3),
3 Failure to Pay Overtime & Doubletime Compensation, (4) Violation of the FLSA Overtime
4 Requirements, (5) Failure to Maintain Time Records, Provide Itemized Statements, (6) Failure to
5 Pay All Wages Due Upon Discharge, (7) Failure to Provide Paid Rest Breaks, (8) Failure to
6 Provide Meal Breaks, (9) Unfair Business Practices under Cal. Bus. & Prof. Code § 17200, (10)
7 Unlawful Business Practices under Cal. Bus. & Prof. Code § 17200, (11) Violation of the
8 California Family Rights Act & New Parent Leave Act, (12) Violation of Family and Medical
9 Leave Act, (13) Associational Physical Disability Discrimination, (14) Violation of Government
10 Code § 12940(m), (15) Violation of Government Code § 12940(n), (16) Violation of Government
11 Code § 12940(k), (17) Retaliation, (18) Tortious Termination in Violation of Public Policy, and
12 (19) a representative claim under the Private Attorney’s General Act of 2004. (Haritounian Decl.,
13 ¶ 12.)

14 On July 26, 2023, Plaintiff Leyva filed a class action complaint against Defendants
15 Universal Service Recycling, Inc., Universal Service Recycling Merced, Inc., and Universal
16 Service Recycling Nevada, LLC., alleging eleven causes of action: (1) Failure to Pay Minimum
17 Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period
18 Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Labor Code § 226.7; (5)
19 Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203; (7) Violation of Labor
20 Code § 204; (8) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and
21 1174.5; (9) Failure to Reimburse Necessary Business Expenses § 2802; (10) Failure to Produce
22 Requested Employment Records Under Labor Code §§ 226(b), 1198.5; and (11) Violation of
23 Business & Professions Code § 17200 *et seq.* (Haritounian Decl., ¶ 13.)

24 Simultaneously, on July 26, 2023, Plaintiff Leyva submitted a Private Attorneys General
25 Act (“PAGA”) notice letter to the Labor Workforce Development Agency (“LWDA”) and served
26 Defendants Universal Service Recycling, Inc., Universal Service Recycling Merced, Inc., and
27 Universal Service Recycling Nevada, LLC. (Haritounian Decl., ¶ 14.) The LWDA did not express
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1 an interest in investigating Plaintiff Leyva's claims within the 65 day period. (*Id.*). Therefore, on
2 September 29, 2023, Plaintiff Leyva filed a First Amended Complaint adding a cause of action
3 for penalties under the Private Attorneys General Act ("PAGA"). (*Id.*).

4 Plaintiffs contend that Defendants failed to pay Class Members all wages due and owing,
5 including by requiring off the clock work, failing to provide meal and rest breaks, failing to
6 furnish accurate wage statements, failing to timely pay wages including final wages, failing to
7 maintain accurate records, failing to produce requested employment records, failing to reimburse
8 necessary business expenses, and failing to comply with Wage Order obligations with respect to
9 excessive heat, humidity, or cold in work processes. (Haritonian Decl., ¶ 15.)

10 On May 6, 2025, Plaintiff Leyva filed a Second Amended Complaint adding Plaintiff
11 Sysavanth to this Action. (Haritonian Decl., ¶ 16.)

12 **B. Investigation**

13 Before filing the lawsuit, Class Counsel investigated and researched the facts and
14 circumstances underlying the pertinent issues and the law applicable thereto. (Haritonian Decl., ¶
15 17.) This required thorough discussions and interviews between Class Counsel and Plaintiffs, as
16 well as preliminary research into the various legal issues involved in the case. (*Id.*) After
17 conducting their initial investigation, Class Counsel determined that Plaintiffs' claims were well-
18 suited for class and representative action adjudication owing to what appeared to be a common
19 course of conduct affecting a similarly situated group of employees. (*Id.*)

20 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
21 claims giving rise to the action, including: (1) conducting formal and informal discovery and
22 meeting and conferring with defense counsel about same; (2) reviewing and analyzing a sampling
23 of time and pay records as well as employment handbooks, Plaintiffs' personnel files, relevant
24 policies and other documentation; (3) researching the applicable law and potential defenses; (4)
25 constructing damage models based on interpretations of California law; and (5) reviewing
26 information provided by Defendants at the mediation. (Haritonian Decl., ¶ 18.) The Class
27 enumerated in this action is ascertainable because the Class Members may be readily identified
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1 by reference to Defendants' records. (*Id.*) Defendants have agreed to share the information from
2 these records with the Settlement Administrator in order to identify and contact the Class
3 Members. (*Id.*) There are approximately 144 total Class Members. (*Id.*)

4 Defendants, for their part, vigorously contested liability, the amount of claimed damages,
5 and the propriety of class certification. (Haritounian Decl., ¶ 19.) After Class Counsel analyzed
6 the relevant documents and gathered data, Class Counsel believed that this case was appropriate
7 for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the parties
8 elected to mediate Plaintiffs' claims and explore the possibility of settlement. (*Id.*)

9 **C. Settlement Efforts**

10 On October 9, 2024, the parties mediated this case with Brandon McKelvey, a respected
11 and highly experienced mediator in wage and hour class actions. (Haritounian Decl., ¶ 20.)
12 During mediation, Plaintiffs' and Defendants' counsel discussed all aspects of the case, including
13 the risks of litigation and the risks to both parties of proceeding with a motion for class
14 certification as well as the law relating to unpaid wages, meal periods, rest periods, wage
15 statements, and final pay. (*Id.*) As a result of the mediation, the parties agreed to settle the lawsuit
16 according to the terms set forth in the Settlement Agreement. (*Id.*; See Exhibit 1 attached to
17 Haritounian Decl., "Settlement" or "Settlement Agreement".)

18 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks
19 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class
20 Counsel believes that the recovery for each Class Member is fair and reasonable taking into
21 consideration the amounts received in other wage and hour class actions, the risks inherent in
22 litigation of this genre, and the reasonable tailoring of each Class Member's claim to the
23 settlement award he or she will receive. (Haritounian Decl., ¶ 20.) Further, and based on the
24 settlement negotiations, which were extensive, and conducted in good faith and at arm's length
25 between attorneys with substantial experience litigating class actions and wage and hour cases,
26 the Settlement Agreement was the product of a non-collusive settlement process in which the
27 parties were forced to make significant compromises in the interest of reaching a full and
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complete settlement of the lawsuit. (*Id.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, Defendants have agreed to pay Six Hundred Ninety-Nine Thousand Dollars and Zero Cents (\$699,000.00) (“Gross Settlement Amount”) on a non-reversionary basis to settle and release all claims asserted by Plaintiffs in the Class Action and PAGA Action on behalf of the proposed Class. (Haritounian Decl., ¶ 21; Exh. 1, §1.23.) The Settlement Agreement defines the “Class Members” as “all persons employed by Defendants in California and classified as a non-exempt, hourly employee who worked for Defendants at any time between July 26, 2019, to January 7, 2025.” (Haritounian Decl., ¶ 22; Exh. 1, §1.6; 1.13.) The “Net Settlement Amount,” available for distribution to Class Members, shall be the Gross Settlement Amount, less the Attorneys’ Fees and Costs, the Class Representative Enhancement Payments, Settlement Administration Costs, seventy-five percent (75%) of the LWDA Payment, and the Individual PAGA Payments. (Haritounian Decl., ¶ 23; Exh. 1, §1.29.) These amounts are detailed as follows:

- not more than Two Hundred and Thirty-Three Thousand Dollars and Zero Cents (\$233,000.00) to Class Counsel for attorneys’ fees, and not more than Thirty-Thousand Dollars and Zero Cents (\$30,000.00) to Class Counsel for litigation costs; (Haritounian Decl., ¶ 23; Exh. 1, §3.2.2);
- not more than Six Thousand Five Hundred Dollars and Zero Cents (\$6,500.00) for the Settlement Administration Costs; (Haritounian Decl., ¶ 23; Exh. 1, §3.2.3);
- not more than Ten Thousand Dollars and Zero Cents (\$10,000.00) to each of the two Plaintiffs for a Class Representative Enhancement Payment; and (Haritounian Decl., ¶ 23; Exh. 1, §3.2.1);
- Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) for civil penalties under the PAGA, where 75% (\$26,250.00) will be paid to the LWDA and 25% (\$8,750.00) will be paid to Aggrieved Employees for their Individual PAGA Payments. (Haritounian Decl., ¶ 23; Exh. 1, §3.2.5.)

1 The “Individual Class Payment,” which is each Class Member’s share of the Net
2 Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on
3 the number of workweeks a Class Member worked during the Class Period as a non-exempt
4 employee in California. (Haritounian Decl., ¶ 24; Exh. 1, §1.24.)

5 Defendants shall pay its corporate payroll tax obligations on the payouts to Class
6 Members in addition to the Gross Settlement Amount. (Haritounian Decl., ¶ 25; Exh. 1, §3.1.)

7 The settlement amount was a compromise figure, factoring in the inherent risks related to
8 certification, liability and damages. (Haritounian Decl., ¶ 26.) However, taking into account all of
9 the circumstances of the action and the defenses raised by Defendants against certification,
10 liability and damages, Class Counsel believes that the settlement is fair and reasonable. (*Id.*)

11 Attached to the Settlement Agreement as Exhibit A is the Notice of Settlement (“Class
12 Notice”). Class Members shall each receive a Class Notice via first class mail (after the
13 Settlement Administrator conducts a national change of address search). (Haritounian Decl., ¶ 27;
14 Exh. 1, §7.4.2.) Class Members will have an opportunity to dispute the information provided in
15 their Class Notice and they may produce evidence to support the information is inaccurate.
16 (Haritounian Decl., ¶ 28; Exh. 1, § 7.6; *see also* Class Notice, **Exhibit A** attached to the
17 Settlement Agreement.) The Settlement Administrator shall decide the dispute and may ask
18 Defendants to produce the personnel and payroll files of the Class Member disputing their
19 credited workweeks in order to resolve the dispute. (Haritounian Decl., ¶ 28; Exh. 1, §7.6.) Class
20 Members wishing to opt-out from the Settlement Agreement must sign and postmark a written
21 request for exclusion to the Settlement Administrator. (Haritounian Decl., ¶ 29; Exh. 1, §7.5.)
22 Class Members will also have the opportunity to object to the Settlement Agreement, by serving a
23 copy of the objection to the Settlement Administrator. (Haritounian Decl., ¶ 29; Exh. 1, §7.7.) The
24 Response Deadline will be sixty (60) calendar days from the initial mailing of the Class Notice.
25 (Exh. 1, §1.44)

26 The parties have also agreed that Apex Class Action shall handle the notice and settlement
27 administration (Exh. 1, § 7.1), and the parties respectfully request this Court to appoint Apex
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1 Class Action to handle those procedures. The procedures for mailing notice and processing
2 exclusions and objections as well as distribution of the Net Settlement fund is detailed in the
3 Stipulation. (Exh. 1, §7)

4 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

5 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince*
6 *v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.*
7 (1981) 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved
8 in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at
9 473-75.) The decision to certify a class is a procedural one, and should be based on the allegations
10 in the operative complaint, and not in the perceived factual or legal merit of the class claims.
11 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

12 To certify a settlement class, the Court must find the two primary requirements for
13 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
14 defined community of interest in the questions of law and fact involving the parties to be
15 represented. (*See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
16 *Company* (1967) 67 Cal. 2d 695, 704.) These criteria are met here for the reasons set forth below.
17 Defendants do not dispute that these criteria are met for purposes of this settlement only.

18 **A. There Is A Numerous and Ascertainable Class**

19 Whether a class is ascertainable is determined by examining the class definition, the size
20 of the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d
21 at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263,
22 1271.) Class members are “ascertainable” where they may be readily identified without
23 unreasonable expense or time.

24 Plaintiffs contend, and Defendants do not dispute for settlement purposes only, this
25 requirement and the requirement of numerosity is met. Class Members are “all persons employed
26 by Defendants in California and classified as a non-exempt, hourly employee who worked for
27 Defendants at any time between July 26, 2019, to January 7, 2025.” (Haritoonian Decl., ¶ 76(a).)

1 Documents and information exchanged between the parties reflect a class of approximately 144
2 Class Members. (Haritounian Decl., ¶ 76(a).) The Class Members have already been identified by
3 reference to Defendants' payroll and personnel records. (Haritounian Decl., ¶ 76(b).)

4 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

5 **B. There Is A Well-Defined Community of Interest**

6 A community of interest is established by the predominance of common issues of law and
7 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

8 [D]oes not depend upon an identical recovery, and the fact that each
9 member of the class must prove his separate claim to a portion of any
10 recovery by the class is only one factor to be considered ... The mere
11 fact that separate transactions are involved does not of itself preclude
12 a finding of the requisite community of interest so long as every
13 member of the alleged class would not be required to litigate
14 numerous and substantial questions to determine his individual right
15 to recover subsequent to the rendering of any class judgment which
16 determined in plaintiff' favor whatever questions were common to
17 the class.

18 *Id.* at 809.

19 Plaintiffs contend, and Defendants do not dispute for settlement purposes only, that
20 common issues of fact and law predominate as to each of the claims alleged by Plaintiffs, and the
21 Class is united in its proof. (Haritounian Decl., ¶ 76(e).) Because Plaintiffs have alleged a single
22 scheme, "the relevant proof [does] not vary among class members" and "clearly presents a
23 common question fundamental to all class members." (*See In Re NASDAQ Market-Makers
24 Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers
25 Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show "no hesitancy"
26 in inferring class-wide causation, class-wide injury, and class-wide damages when a common
27 course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This
28 inference "eliminates the need for each class member to prove individually the consequences of
the defendants' actions to him or her." (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp*
(1982) 131 Cal. App. 3d 741, 753 [emphasis added])).)

This action involves, *inter alia*, a determination about Defendants' alleged failure to

1 provide meal period and rest periods, failure to pay wages and overtime due to allegedly common
2 and unlawful policies, failure to pay final wages when required, failure to provide accurate
3 paystubs, and largely derivative claims under the Business & Professions Code and PAGA.
4 Plaintiffs contend these practices affected Class Members in the same way. Plaintiffs contend
5 these practices resulted in a failure to compensate employees at termination, and incomplete
6 wages displayed on wage statements. The outcome of litigation on this matter depends upon
7 questions that are common to Class Members. (Haritounian Decl., ¶ 76(e).) While Defendants
8 maintained otherwise, these issues will not be decided on the basis of facts peculiar to each Class
9 Member, but rather on the basis of facts common to them all. It is also true that these issues of
10 liability can be determined on a class-wide basis. (*Id.*)

11 C. The Named Plaintiffs' Claims Are Typical

12 A class representatives' claims are typical when they arise from the same event, practice,
13 or course of conduct that gives rise to the claims of other putative class members, and if their
14 claims rest on the same legal theories. The class representatives' claims must be "typical" but not
15 necessarily identical to the claims of other class members. It is sufficient that the representative is
16 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
17 (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
18 (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class
19 representative must have identical interests with the class members.") Thus it is not necessary that
20 the class representative should have personally incurred all of the damages suffered by each of the
21 other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

22 Plaintiffs contend, and Defendants do not dispute for settlement purposes only, that
23 Plaintiffs' claims are typical of Class Members' claims because they arose from the same factual
24 basis and are based on the same legal theories. (Haritounian Decl., ¶ 76(c).) Plaintiffs were
25 employed by Universal Service Recycling, Inc. during the Class Period, and were subject to the
26 allegedly unlawful meal and rest policies and pay practices at issue in this litigation. (*Id.*)
27 Accordingly, Plaintiffs are members of the Class. (*Id.*) The central issues of this litigation
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(whether Defendants failed to pay all wages, whether Defendants failed to provide meal and rest periods, etc.), which would arise if this was an individual action, applies to the other Class Members as well. The answer to these questions would determine Defendants' liability to the putative class. (*Id.*) Thus, the claims of Plaintiffs are typical of the claims of the putative class. (*Id.*) Accordingly, the typicality requirement is satisfied.

D. Adequacy of Class Counsel and Class Representative

Class Counsel are experienced in class actions, have represented their clients zealously and have no conflicts of interest. (Haritonian Decl., ¶¶ 4-10, 76(d).) Plaintiffs contend, and Defendants do not dispute for settlement purposes only, that the Class Representatives' interests are aligned with those of the Class Members, they have suffered the same injuries as the Class Members, and have no conflicts of interest. (*Id.*) Therefore, Class Counsel and the Class Representatives are adequate.

E. Predominance and Superiority

Plaintiffs contend, and Defendants do not dispute for settlement purposes only, that individual issues do not predominate over those common to the class. (Haritonian Decl., ¶76(f-g).) Plaintiffs further contend, and Defendants do not dispute for settlement purposes only, that the class action mechanism is superior to individualized actions because Class Members have little incentive to bring claims that are small. (*Id.*)

V. THE TWO-STEP APPROVAL PROCESS

Any settlement of class action litigation must be reviewed and approved by the Court. This is accomplished in two steps: (1) An early (preliminary) review by the trial court, and (2) a detailed review after the notice has been distributed to the class members for their comments or objections. In this regard, the Manual for Complex Litigation (Second) explains:

A two-step process is followed when considering class settlements... If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representative or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

1 (Manual for Complex Litigation (Second) (1985) at § 30.44.) The preliminary approval of the
2 class action settlement by the trial court is simply a conditional finding that the settlement appears
3 to be within the range of acceptable settlements. (See, e.g., *Newberg*, § 11.25; *North County*
4 *Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.)
5 Thus, the preliminary approval of the class action settlement by the trial court is simply a
6 conditional finding that the settlement appears to be within the range of acceptable settlements.

7 Settlements to resolve PAGA claims also require court approval. (Labor Code §
8 2699(1)(2).) There is no articulated standard for approving PAGA settlements. PAGA settlements
9 for as little as \$0 have been approved. (See *Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576,
10 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim).) Courts have
11 also approved settlements for \$20,000 or less. (See, e.g., *Hicks v. Toys 'R' Us-Delaware, Inc.*,
12 (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4
13 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645,
14 at *1 (approving PAGA payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson*
15 *Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in
16 \$300,000 settlement).)

17 A review of the preliminary approval criteria demonstrates a substantial basis for granting
18 the instant Motion and proceeding to a full settlement hearing.

19 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

20 As a matter of public policy, courts both encourage the use of the class action device and
21 favor settlement over continued litigation. (See, e.g., *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th
22 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent
23 a failure of justice in our judicial system.”); *Class Plaintiff v. City of Seattle* (1992) 955 F.2d
24 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class
25 action litigation is concerned.”).)

26 Moreover, courts presume the absence of fraud or collusion in the negotiation of a
27 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
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1 negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.*
2 (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir.
3 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents,
4 particularly when settlement has been reached by experienced counsel familiar with the litigation.
5 (*Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp.
6 1087.)

7 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
8 several factors that should be analyzed in determining if a class action settlement should be
9 approved. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense,
10 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
11 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
12 stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
13 governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

14 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
15 formal and informal discovery before entering into meaningful settlement negotiations in this
16 matter, including a detailed analysis of Defendants' policies and a considerable sample of
17 Defendants' time and pay records. (Haritounian Decl., ¶¶ 18-19.) This discovery permitted Class
18 Counsel to fairly evaluate the strengths of the case and the risks associated with ongoing
19 litigation. Class Counsel is very experienced in the handling of wage and hour class actions and
20 supports this Settlement. (Haritounian Decl., ¶¶ 4-10.)

21 **A. The Strength of Plaintiffs' Case.**

22 Plaintiffs allege that Defendants failed to pay minimum wages and overtime, failed to
23 provide proper meal breaks or provide premium pay in lieu thereof, failed to provide proper rest
24 breaks or provide premium pay in lieu thereof, failed to provide accurate wage statements, failed
25 to timely pay all wages upon termination, failed to maintain accurate records, failed to produce
26 requested employment records, failed to reimburse necessary business expenses, and failed to
27 comply with Wage Order obligations with respect to excessive heat, humidity, or cold in work
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1 processes in violation of California law. (Haritounian Decl., ¶ 31.)

2 Class Counsel felt confident that the claims in this case would be certified given that
3 Defendants' policies were applicable to all Class Members and unlawful on their face.
4 (Haritounian Decl., ¶¶ 27-55.) Defendants contended, however, that the policies complied with
5 California law and that the claims in this case would not be certified.

6 **B. The Risks Associated with the Merits.**

7 As with all litigation, there are risks that a party will not prevail on the merits. In this case,
8 Plaintiffs contend that they and other Class Members were not properly provided meal periods.
9 (Haritounian Decl., ¶¶ 37-4036.) Defendants contended that Class Members were given a
10 reasonable opportunity to take their meal periods, and in fact received their compliant meal
11 periods most of the time. (*Id.*) If Defendants' contentions are proven true and prevail in trial, the
12 likely outcome of this claim would be no recovery for the Class Members. Plaintiffs also
13 contended that Defendants did not provide Class Members with paid 10-minute rest breaks for
14 every four hours or major fraction thereof. (Haritounian Decl., ¶¶ 41-43.) Plaintiffs further
15 contended that Class Members consistently worked in excess of consecutive four-hour shifts and
16 were entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift,
17 which they were denied. Plaintiffs further alleged that Class Members were required to work
18 through their rest breaks, and through their entire shifts. Defendants maintained that they did
19 provide the reasonable opportunity for Class Members to take duty-free rest breaks. (*Id.*)
20 Defendants also pointed out that, unlike meal periods, rest breaks need not be recorded and
21 Defendants disputes all allegations that breaks were not provided. As these considerations would
22 likely depress the damages *vel non* ultimately awarded, Class Counsel applied significant and
23 appropriate discounts to the rest-break claim.

24 Plaintiffs alleged that Defendants failed to pay Plaintiffs and Class Members minimum
25 wages for all hours worked, in violation of minimum wage laws. (Haritounian Decl., ¶ 34.)
26 Plaintiffs contended that Class Members were not paid all wages they were owed including for all
27 work performed and for all overtime hours worked. (*Id.*) Specifically, Plaintiffs alleged that at the
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1 beginning of Class Members' shift, they were required to assist clients, unload cars and
2 shipments, and wait in line in order to clock in. When Plaintiffs were required to assist clients and
3 unload cars prior to the start of their shift, this often resulted in upwards of 30 minutes of off the
4 clock work. Plaintiffs argued that they were never compensated for this off the clock time. (*Id.*)

5 Defendants contended that they paid for all reported hours worked, that Class Members
6 were trained to record all hours worked, and that they paid proper minimum wages. (Haritounian
7 Decl., ¶ 35) Defendants argued that given their written policies and practices, any unrecorded
8 hours were subject to individualized inquiry and unlikely to be certified. Given the difficulty in
9 certifying this claim, Class Counsel had to apply a significant discount to damages based on this
10 theory.

11 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties.**

12 In order to establish liability for these penalties, Plaintiffs would first have to establish
13 liability for the underlying claims. Plaintiffs would then have to establish that Defendants'
14 conduct was willful and knowing. (Labor Code §§ 203, 226(e).)

15 With waiting time penalties, there is always the risk that the trier of fact would not have
16 held that Defendants' actions were done "willfully." A good faith belief in a legal defense can
17 preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36,
18 54; 8 C.C.R. § 13520.) As discussed above, Plaintiffs alleged that Defendants failed to pay for all
19 hours worked and premiums for non-compliant meal breaks. Plaintiffs contend the Class
20 Members are entitled to these wages and premiums, which they allege were not paid at the time
21 of their termination or resignation. If Plaintiffs are successful on their claims, the penalties
22 pursuant to Labor Code § 203 shall attach. Defendants, however, contend they provided
23 employees with the reasonable opportunity to take meal breaks, asked Class Members to confirm
24 the accuracy of their time records, and therefore had good-faith defenses under *Brinker* and its
25 progeny. Defendants likewise contend that they properly paid employees for all hours worked.
26 Based upon Defendants' potential success in establishing both that a good faith dispute existed
27 with regard to alleged unpaid wages, and Defendants endeavored in good faith to supply accurate
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1 wage statements, Defendants argue the claims for paystub violations and waiting time penalties
2 have little or no value. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-
3 1337 (2018) (wage statements that accurately report wages paid to employees do not violate
4 Labor Code § 226, even if it is later determined that employer did not properly pay all wages
5 due). As such, there was risk associated with wage statement and waiting time penalties that Class
6 Counsel had to consider. (Haritounian Decl., ¶¶ 44-46.)

7 **D. The Risks Associated with the PAGA Penalties.**

8 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
9 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
10 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
11 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
12 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount
13 by the Labor Code section relating to the underlying alleged Labor Code violation, that amount
14 shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
15 maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil
16 penalty amount specified by this part if, based on the facts and circumstances of the particular
17 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
18 confiscatory.”]); *See, e.g., Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev.*
19 *denied* (2018), (recognizing court’s ability to reduce PAGA penalties). Courts have held that
20 situations similar to the current one (e.g. injuryless violations, technical errors, and substantial
21 compliance) should lead to reductions in penalties. *See Thurman v. Bayshore Transit*
22 *Management, Inc.*, 203 Cal. App. 4th 1112, 1134-1135 (2012) (holding that reduction was
23 justified when employer “attempted to comply with the law”); *Fleming v. Covdien, Inc.*, No. ED
24 CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011)
25 (reducing PAGA penalties more than 80% – from \$2.8 million to \$500,000 – when “employees
26 suffered no injury” employers were “not aware” of the violation and “took prompt steps to correct
27 all violations once notified”).
28

1 Plaintiffs discounted potential penalties under this claim given this authority, and for other
2 reasons. The PAGA claims are premised on the same underlying unpaid wages, meal and rest
3 break, wage statement, and waiting time claims, and thus subject to the same disputes and
4 defenses. There is also a dispute as to whether violations in later pay periods trigger the \$200
5 penalty under PAGA as a “subsequent violation.” (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App.
6 4th 1157, 1203 (2008).) As such, there is a fair amount of risk associated with PAGA claims.
7 (Haritounian Decl., ¶¶ 53-56.) The parties also considered that the purpose of PAGA is to
8 “achieve maximum compliance with state labor laws,” and that through the proposed settlement,
9 Defendants have agreed to ensure policies comply with California law. (*Iskanian v. CLS Transp.*
10 *Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379.) This makes the settlement’s contemplated PAGA
11 payment of Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) appropriate.

12 Based on this analysis, Class Counsel believes that this settlement is fair and reasonable
13 and in the best interest of the Class. (Haritounian Decl., *passim*.)

14 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

15 Given the risks outlined above, the issues in this case were complex and the risk for
16 Plaintiffs and the Class Members associated with this litigation was high. (Haritounian Decl., ¶¶
17 60-63.) A class trial would have required the retention of expensive expert witnesses, the accrual
18 of extensive litigation costs, and the parties would have had to spend a substantial amount of
19 time. (*Id.*)

20 Finally, given the complexity and unsettled nature of the issues, it is likely that any
21 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
22 further delay for the Class Members who have already waited years for resolution in this matter.
23 (Haritounian Decl., ¶ 63.)

24 **F. The Risk of Maintaining Class Action Status Through Trial.**

25 In class actions, decertification is always a possibility. There is always a risk that a trial of
26 this magnitude can become unmanageable. Given cases like *Duran v. U.S. Bank Nat. Assn.*, 59
27 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples in class actions,
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1 decertification is a real risk that Class Counsel must take into account.

2 **G. The Amount Offered in Settlement.**

3 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-
4 collusive, and arms-length negotiations between the parties with an experienced mediator. In
5 order to determine the approximate potential damages which would be owed to each of the Class
6 Members, Class Counsel analyzed the time records for Plaintiffs and Defendants provided Class
7 Counsel with records for a sampling of the class members. By analyzing this information, Class
8 Counsel was able to estimate the full value of the case if Plaintiffs was to prevail at trial.

9 There are approximately 144 total Class Members. Based on the data provided, Class
10 Counsel estimated the following maximum exposures: unpaid wage claim at \$375,969.00, meal
11 period claim at \$276,053.85, rest period claim at \$276,053.85, wage statement claim at
12 \$372,000.00, waiting time penalties at \$342,885.00, reimbursement of business expenses claim at
13 \$7,200.00, and on PAGA, Plaintiffs estimated the maximum exposure at \$1,047,100.00.
14 (Haritounian Decl., ¶ 32.)

15 However, taking into account the difficulties of proof, the Defendants' defenses, and other
16 attendant risks, Plaintiffs estimate that the total amount of damages, monetary penalties, or other
17 relief that the class could reasonably expect to be awarded at trial is significantly less than the
18 maximum exposure. (Haritounian Decl., ¶ 33.)

19 Once Class Counsel was able to determine the maximum potential damages, it was able to
20 determine a fair and reasonable settlement for the Class. (*Id.* at ¶¶ 27-55) Class Counsel analyzed
21 the likelihood of success on the merits. (*Id.*) It believes that the Class had a reasonable likelihood
22 of success on the core claims. (*Id.*) However, Defendants dispute this contention, denies all
23 wrongdoing in this matter and are confident they have strong legal and factual defenses to
24 Plaintiffs' claims. Moreover, Class Counsel determined that the likelihood of success on the
25 claims for unpaid wages and waiting time penalties were not as strong, because various defenses
26 including issues not suitable for class treatment, no detriment to the class members over time, and
27 *de minimis* defenses. Defendants may have had the opportunity to establish that they had a good
28

1 faith belief that they were complying with the law. (*Id.*) After taking into account the likelihood
2 of success on each claim and the challenges faced with certifying these claims, Class Counsel
3 determined that the settlement amount of Six Hundred Ninety-Nine Thousand Dollars and Zero
4 Cents (\$699,000.00) was fair and reasonable.

5 Under the Settlement, each of the approximately 144 Class Members would receive on
6 average, assuming they worked every workweek during the class period, \$2,600.69 after
7 expenses. (Haritounian Decl., ¶ 59) Plaintiffs feel that this Settlement is fair, reasonable, and
8 advantageous to the class. (*Id.*)

9 To summarize, the Settlement here is fair because it provides a substantial payment to
10 each Class Member for releasing his or her claims; extinguishes the risk of litigation; and
11 provides a fair and adequate distribution of the settlement proceeds whereby the funds are
12 allocated to Class Members proportionally based on their Payout Ratio.

13 As detailed at length in the accompanying Declaration of Natalie Haritounian, the
14 settlement is the result of extensive settlement negotiations between the parties, conducted at
15 arm's length, and informed by substantial factual and legal investigations. (Haritounian Decl.,
16 *passim.*) Throughout this case, Class Members have been represented by experienced counsel
17 with many years of experience in employment class action litigation. (Haritounian Decl., ¶¶ 4-10.)

18 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
19 including but not limited to, interviewing Plaintiffs on repeated occasions; drafting pleadings;
20 conducting formal and informal discovery, and meeting and conferring with Defense Counsel
21 about same; reviewing and analyzing time records and various handbooks and policies, Plaintiffs'
22 personnel file, and other documentation; researching California law; interviewing numerous class
23 members regarding their experiences; preparing for and attending mediation; and negotiating and
24 finalizing the Settlement Agreement and related documents. (Haritounian Decl., ¶¶ 17-18.)

25 Among those matters considered during the course of settlement negotiations were the
26 strength of Plaintiffs' case versus the amounts offered in settlement; the risks, expenses, and
27 length of further litigation, including class certification and the appeals process; the present state
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1 of the law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present
2 value of a settlement versus the long wait necessitated by any potential judgment in class
3 members' favor; the burdens of proof necessary to establish liability against Defendants; and
4 Defendants' defenses to the action. (Haritounian Decl., *passim*).

5 These factors each indicated that the interests of Class Members are best served by a
6 settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.
7 The Settlement Agreement confers a substantial benefit on the class of up to Six Hundred Ninety-
8 Nine Thousand Dollars and Zero Cents (\$699,000.00). Moreover, the settlement awards for each
9 Class Member will be tailored to their workweeks during the class period.

10 Class Counsel believes that the settlement is fair and reasonable and serves the best
11 interests of the Class Members. Although the recommendations of counsel proposing the class
12 settlement are not conclusive, the Court can properly take the recommendations into account,
13 particularly if counsel has been involved in litigation for some period of time, appear to be
14 competent, and have experience with this type of litigation, and significant discovery has been
15 completed. *See Newberg*, §11.47.

16 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS ARE FAIR** 17 **AND REASONABLE**

18 It is appropriate to provide a relatively modest additional incentive payment to the class
19 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901
20 F.Supp. 294.

21 Plaintiffs are entitled to reasonable service payments for their efforts and initiative in
22 bringing and helping to prosecute this class action. Plaintiffs spent significant time better
23 apprising themselves of their rights, deciding whether remedial action should be taken, how it
24 should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours
25 with Plaintiffs discussing their case and the law. (Haritounian Decl., ¶ 71) In the end, Plaintiffs
26 decided to vindicate not only their own rights but also those of their co-workers by filing a class
27 action lawsuit.
28

1 The courage it took to do this should not be underestimated. By suing Defendants,
2 Plaintiffs contend they increased the risk of retaliation by prospective employers. (Haritounian
3 Decl., ¶ 72) Plaintiffs' lawsuit has now cost Defendants considerable resources, and Plaintiffs
4 contend such conduct will not be lost on a prospective employer who has to choose between an
5 applicant who has never sued a prior employer and one who has. (*Id.*) Plaintiffs contend this risk
6 is particularly real in the information age, where employers can, more easily than ever, perform
7 background checks of prospective employees, sometimes with the stroke of a key. (*Id.*)

8 But Plaintiffs did not allow their fear of the potential repercussions of being a class
9 representative deter them from acting for the benefit of the Class Members. (Haritounian Decl., ¶
10 72) To the contrary, Plaintiffs have been intimately involved in this case since its inception. (*Id.*)
11 They have devoted a substantial amount of time to helping Class Counsel effectively develop and
12 prosecute this action at every stage of the litigation. (*Id.*) Both before and after the filing of this
13 lawsuit, Plaintiffs conferred with Class Counsel to discuss every aspect of this case; Plaintiffs
14 have provided Class Counsel with information about Defendants and about the industry generally,
15 reviewed documents, identified witnesses, consulted Class Counsel throughout the litigation,
16 participated in the mediation process, monitored the progress of the litigation with Class Counsel,
17 and reviewed and signed the settlement agreement. (*Id.*)

18 Plaintiffs spent a significant amount of time with Class Counsel detailing their knowledge
19 of Defendants' practices. (Haritounian Decl., ¶ 74) They have diligently, adequately, and fairly
20 represented Class Members, and have not placed their interests above any member of the putative
21 class. (*Id.*) This sort of payment to a class representative has been a common feature of
22 settlements negotiated by Class Counsel and has been routinely approved by trial courts. (*Id.*)

23 In light of the foregoing, Class Counsel believes that the incentive award in the amount of
24 Ten Thousand Dollars and Zero Cents (\$10,000.00) to each Class Representative is fair and
25 reasonable. (Haritounian Decl., ¶ 75)

1 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE**
2 **CLASS MEMBERS.**

3 Constitutional due process requires that class members be provided with notice sufficient
4 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
5 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
6 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*
7 at 314.) The notice must apprise the class members of the pendency of the action; reasonably
8 convey information regarding the settlement and the class members' rights, entitlements, and
9 obligations; and afford class members the opportunity to present their objections. (*Id.*)

10 The Class Notice meets constitutional standards because it provides all the information a
11 reasonable person would need to make a fully informed decision about the settlement. It will
12 notify all class members of the terms of the settlement, of its effect on their rights, of their options
13 as class members (i.e., participate, object, opt out, do nothing), and of the consequences of
14 exercising those options. (Haritonian Decl., ¶¶ 64-66.) Moreover, the Class Notice will
15 specifically direct any class members who have questions or concerns to contact the Settlement
16 Administrator, Apex Class Action, or Class Counsel. (*Id.*)

17 The standard for determining the adequacy of notice is whether the notice has "a
18 reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior*
19 *Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California's Deskbook on the
20 Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual
21 notice by mail is preferred when possible and dissemination of combined certification/settlement
22 notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820,
23 828.)

24 Here, the Class Notice will be sent via first-class mail to each class member. (Haritonian
25 Decl., ¶ 64.) If any Class Notices are returned undeliverable without a forwarding address, the
26 Settlement Administrator will use the national change of address database and perform a skip
27 trace to locate the class member and mail a new Class Notice to him or her at the correct address.
28 (*Id.*) Thus, most, if not all, class members will likely receive the Class Notice.

1 Pursuant to controlling authority, the proposed Class Notice and method of distribution
2 fully comport with due process requirements. Therefore, the Court should approve the Class
3 Notice and direct that it be distributed as proposed herein.

4 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

5 Non-settling parties and third parties periodically may attempt to object to proposed class
6 action settlements, but the right of non-settling parties to object at the final settlement approval
7 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
8 members have standing to object to a proposed settlement. “Beginning from the unassailable
9 premise that settlements are to be encouraged, it follows that to routinely allow non-class
10 members to inject their concerns via objection at the settlement stage would tend to frustrate this
11 goal.” (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being
12 filed to obtain a good faith determination, no persons other than class members have standing to
13 object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d
14 1330.)

15 **X. THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS**
16 **REASONABLE AND SHOULD BE APPROVED.**

17 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will
18 seek an award of fees of no more than Two Hundred and Thirty-Three Thousand Dollars and
19 Zero Cents (\$233,000.00), approximately one-third of the Gross Settlement Amount, and not
20 more than Thirty-Thousand Dollars and Zero Cents (\$30,000.00) in costs. The requested fees are
21 fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-
22 consuming litigation solely on a contingent basis. (Haritounian Decl. ¶¶ 68-70.) Defendants will
23 not oppose Class Counsel’s fees and cost request.

24 California courts routinely look to the federal courts on class action approvals. The Ninth
25 Circuit has recognized that an appropriate method for awarding attorneys’ fees in class actions is
26 to award a percentage of the “common fund” created as a result of the settlement. (*Vincent v.*
27 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common
28 fund/percentage approach is to “spread litigation costs proportionally among all the beneficiaries

1 so that the active beneficiary does not bear the entire burden alone.” (*Id.*) Accordingly, courts
2 have discretion to choose either the percentage-of-the-fund method or the lodestar method. (*In re*
3 *Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.)

4 Several courts have, however, expressed frustration with the “lodestar” approach for
5 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
6 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns
7 the interests of class counsel and absent class members; (2) it encourages efficient resolution of
8 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
9 demands on judicial resources. (*In re Activision Securities Litigation*, (N.D. Cal. 1989) 723
10 F.Supp. 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach
11 to determine the award of attorneys’ fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir.
12 1994) 47 F.3d 373, 378-79 (approving attorneys’ fee of 33 1/3% of settlement fund).)

13 Class Counsel’s application for attorneys’ fees in light of the facts and circumstances
14 surrounding this case is well within the range of reasonableness. Historically, courts have
15 awarded percentage fees in the range of 20% to 50% of the common fund, depending on the
16 circumstances of the case. (*Newberg*, at §14.03; *see also In re Activision Securities Litigation*,
17 723 F. Supp. at 1378.) *Newberg* further notes: “[A]chievement of a substantial recovery with
18 modest hours expended should not be penalized but should be rewarded for considerations of
19 time saved by superior services performed.” (*Id.* at §§ 14-10:14-11.)

20 The attorneys’ fees request provided for in the Settlement Agreement is commensurate
21 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or
22 greater than the percentage requested in this case. (*See, e.g., In re Pacific Enterprises Securities*
23 *Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common
24 fund); *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding
25 plaintiff’ counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin*
26 *Antitrust Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement
27 fund); *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to
28

1 counsel of one-third (1/3) of recovery achieved).)

2 In wage and hour class actions in particular, California trial courts have customarily
3 approved attorney's fees consistent with or greater than the percentage of the common fund
4 requested in this case. (*See Stevenson v. Vanguard Security Services Inc.* San Joaquin County
5 Superior Court Case No. STK-CV-UOE-2003-6232 (Hon. Linda L. Lofthus) (November 2017)
6 (approving an award of attorneys' fees of 50% of the settlement); *Lehmeidi v. Quality Restaurant*
7 *Enterprises Inc.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2018-4096 (Hon.
8 George Abdallah) (July 2023) (approving an award of attorneys' fees of at least 33-1/3% of the
9 settlement); *Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC 220525 (Hon.
10 Richard C. Hubbell) (Dec. 2001); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County
11 Super. Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*,
12 Los Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning);
13 *Josiah Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140
14 (Hon. Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County
15 Super.Ct. Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper*
16 *Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).)

17 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive
18 any compensation until recovery is obtained. (Haritounian Decl., ¶¶ 68-70) The Court should also
19 consider the benefit obtained by Class Counsel on behalf of class members. Thus, the requested
20 award for Class Counsel is reasonable.

21 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
22 **APPROVAL**

23 The parties respectfully request this Court, as part of the preliminary approval process, to
24 grant the following relief and make the following orders:

- 25 1. Review and approve the Settlement Agreement;
- 26 2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit

27 A;

- 28 3. Consider and determine that the proposed class action settlement as set forth in the

1 Settlement Agreement preliminarily appears fair, reasonable, and adequate;

2 4. Enter an order conditionally certifying the action as a class action for settlement
3 purposes only and preliminarily approving the proposed class action settlement and the
4 Settlement Agreement;

5 5. Approve and appoint Emil Davtyan, David Yeremian, and Natalie Haritoonian of
6 D.Law, Inc., and Adam Corren and Spencer Sinclair of Law Offices of Corren & Corren to serve
7 as Class Counsel for settlement purposes;

8 6. Approve and appoint Apex Class Action as the Settlement Administrator to handle the
9 notice and claims procedures as set forth in the Settlement Agreement;

10 7. Approve the proposed settlement's allocation of funds to claims made under PAGA;

11 8. Order Defendants to disclose to Apex Class Action the names, last-known addresses,
12 telephone numbers, dates of employment, and social security numbers of class members as set
13 forth in the Settlement Agreement;

14 9. Order that Apex Class Action mail the Class Notices to class members; and

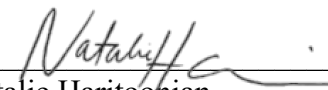
15 10. Set a date for the Final Approval Hearing.

16
17 Dated: May 15, 2025

Respectfully submitted,

18 D.LAW, INC.

19
20 By


Natalie Haritoonian
Attorneys for Plaintiffs, JORGE LEYVA and
LUCKY SYSAVATH, on behalf of themselves
and others similarly situated