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16 on behalf of himself and others similarly situated

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **FOR THE COUNTY OF RIVERSIDE**

19 ANDREW SANCHEZ, on behalf of himself  
20 and others similarly situated,

21 PLAINTIFF,

22 vs.

23 FELLOWSHIP WAREHOUSING AND  
24 LOGISTICS, LLC; and DOES 1 to 100,  
25 inclusive,

26 DEFENDANTS.

Case No.: CVRI2104191

**CLASS ACTION**

*[Assigned for all purposes to the Hon. Harold Hopp, Dept. 1]*

**PLAINTIFF ANDREW SANCHEZ' NOTICE  
OF MOTION AND MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT; MEMORANDUM  
OF POINTS AND AUTHORITIES**

*[Filed concurrently with the Declaration of  
Millay Kogan in Support; Declaration of Andrew  
Sanchez; and [Proposed] Order]*

Hearing Information:

Date: April 4, 2024

Time: 8:30 A.M.

Dept.: 1



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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff ANDREW SANCHEZ on behalf of himself and others similarly situated (“Plaintiff”)  
4 respectfully submits this memorandum of points and authorities in support of his motion for  
5 preliminary approval of the proposed class action settlement with FELLOWSHIP  
6 WAREHOUSING AND LOGISTICS, LLC (“Defendant”) (Plaintiff and Defendant are collectively  
7 hereinafter referred to as “the Parties”). Plaintiff seeks entry of a proposed order granting  
8 preliminary approval of the class settlement which: (1) preliminarily approves the proposed  
9 settlement of the class action; (2) approves the form and method for providing notice and directs  
10 that notice be given to members of the settlement class; (3) preliminarily certifies the settlement  
11 class for settlement purpose; and (4) schedules a final approval hearing date.

12 As consideration for this Settlement, Defendant shall pay a sum equal to Six Hundred Ninety-  
13 Five Thousand Dollars and Zero Cents (\$695,000.00) (the “Gross Settlement Amount”) to fund the  
14 non-reversionary, no claims made settlement of this class and PAGA action (Class Action and  
15 PAGA Settlement, (“Settlement”) ¶ 3.1. attached as **Exhibit “1”** to the Declaration of Millay Kogan  
16 (“Kogan Dec.”). The Gross Settlement Amount is inclusive of settlement payments to participating  
17 Class Members, all attorneys’ fees and costs, the enhancement payment to Plaintiff for his services  
18 as class representative, PAGA penalties, and settlement administration as provided by this  
19 Settlement. (Settlement, ¶ 1.22.).

20 **II. SUMMARY OF LITIGATION**

21 **A. The Parties**

22 Plaintiff ANDREW SANCHEZ worked as an hourly non-exempt employee of Defendant  
23 from approximately October 2020 to May 28, 2021. Defendant operates logistics and warehouse  
24 service locations in California. Plaintiff seeks to represent current and former non-exempt  
25 employees who are or were employed by Defendant as hourly non-exempt employees in California  
26 at any time during the period from September 15, 2017, through April 7, 2023 (hereinafter “Class  
27 Members” or “Class”). As of February 7, 2023, there were 1,293 Class Members who worked  
28 approximately 17,325 workweeks. (Kogan Decl., ¶ 3.)

1           **B.       The Complaint and Allegations**

2           On September 15, 2021, *Andrew Sanchez v. Fellowship Warehousing and Logistics, LLC* was  
3 filed as Case Number CVRI2104191 in Riverside County Superior Court as a putative wage and  
4 hour class action. The original Complaint alleged claims for: (1) failure to authorize or permit meal  
5 periods or pay meal period premium wages in violation of Labor Code sections 512 and 226.7; (2)  
6 failure to authorize or permit rest periods in violation of Labor Code section 226.7; (3) failure to  
7 timely pay earned wages during employment in violation of Labor Code section 204; (4) failure to  
8 provide complete and accurate wage statements in violation of Labor Code section 226; (5) failure  
9 to timely pay all earned wages and final paychecks due at time of separation of employment in  
10 violation of Labor Code sections 201, 202, and 203, and (6) unfair business practices in violation of  
11 Business and Professions Code sections 1700, *et seq.* (Kogan Dec. ¶ 4.) Also on September 15,  
12 2021, Plaintiff submitted notice to the Labor and Workforce Development Agency (“LWDA”) of  
13 his intention to bring a claim for civil penalties pursuant to the Private Attorney General Act of  
14 2004 against Defendant. (Kogan Dec. ¶ 4.)

15           On November 22, 2021, Plaintiff filed a representative action pursuant to PAGA entitled  
16 *Andrew Sanchez v. Fellowship Warehousing and Logistics, LLC* in Riverside County Superior  
17 Court, Case No. CVRI2105337 (“PAGA Action”). On May 11, 2023, Plaintiff submitted to  
18 Defendant and the LWDA a letter amending the PAGA Notice by adding claims for unpaid  
19 minimum wages and overtime wages. (Kogan Dec. ¶ 5.)

20           On February 7, 2023, the Parties attended a private mediation session with Eve Wagner, Esq.,  
21 a well-respected mediator experienced in mediation wage and hour class and representative actions.  
22 As a result of the mediation, the Parties reached a settlement which if approved resolves this Action  
23 as well as the PAGA Action. (Kogan Dec. ¶ 6.)

24           On May 11, 2023, the Parties filed a Stipulation requesting leave to file a First Amended  
25 Complaint, adding Plaintiff’s PAGA cause of action to this Action as well as claims for unpaid  
26 minimum wages and overtime wages. The First Amended Complaint shall be the operative  
27 complaint in the Action (“Operative Complaint”). (Kogan Dec. ¶ 7.) On May 31, 2023, as a part of  
28 the Settlement, Plaintiff filed the First Amended Complaint (“FAC”). (*Id.*)

1 Defendant's defenses to Plaintiff's claims were as follows: With regard to Plaintiff's  
2 argument that Defendant failed to authorize or permit compliant meal and rest periods, Defendant  
3 argued that it always provided employees with timely and compliant meal periods. Defendant  
4 argued that to the extent non-compliant meal periods were taken, it was not at their direction, and it  
5 was unknown to Defendant. Regarding Plaintiff's rest period claim, Defendant contended that it  
6 permitted and authorized rest periods, that there are no records of when or if rest periods were  
7 taken, and the Defendant was not required to monitor whether compliant rest periods were taken.  
8 Finally, Defendant further argued that it maintained and provided to the class compliant meal and  
9 rest period policies. Regarding Plaintiff's claims that Defendant failed to pay for all hours worked  
10 at the minimum and/or overtime rate of pay, Defendant argued that they advised class members not  
11 to work "off the clock" and, to the extent the class members did work off the clock, it was not at the  
12 direction of Defendant and Defendant was unaware of such work. Based on the foregoing,  
13 Defendant concluded wages were properly paid to Plaintiff and Class Members, and that at the time  
14 wages were paid out upon separation of employment, Defendant believed, in good faith, that it was  
15 properly paying all wages to separating employees. Further, Defendant concluded that the wage  
16 statements provided to the class were complete and accurate as it was unaware that any additional  
17 wages were owed. In other words, Defendant concluded Plaintiff would not be able to establish the  
18 willful elements of his Labor Code sections 226 or 203 claims. For these reasons, Defendant  
19 concluded that Plaintiff would likely not prevail on his claims. Furthermore, Defendant argued that  
20 with respect to the PAGA claim, the Court has the discretion to lower penalties, thus it appears  
21 unlikely a court would find that any violations were knowing or intentional. (Kogan Dec. ¶ 22.)

22 **C. The Exchange of Detailed Informal Discovery and Legal Analysis by the**  
23 **Parties' Counsel**

24 On February 7, 2023, the Parties participated in a full-day mediation session with Eve  
25 Wagner, Esq., a highly experienced and well-regarded class action mediator. (Kogan Dec. ¶ 6.) As a  
26 critical part of settlement negotiations, the Parties engaged in extensive informal discovery  
27 exchange which included Defendant's production of a complete class list; a near-complete sampling  
28 of timecards and wage statements for the period from March 2018 to February 2023; as well as

1 information regarding number of current and former hourly nonexempt employees; number of  
2 workweeks; number of pay periods; average rate of pay; and Plaintiff's counsel's analysis of both  
3 the aforementioned sample data and documentation. Defendant also provided a copy of Plaintiff's  
4 personnel file, Defendant's employee handbook, as well as their policy book, which state all of  
5 Defendant's relevant wage and hour policies. (Kogan Dec. ¶ 8.)

6 Counsel for the Parties have investigated the law as applied to the facts discovered regarding  
7 the alleged claims of Plaintiff and potential defenses thereto, and the potential damages claimed by  
8 Plaintiff, and multiple conference calls and email exchanges between Plaintiff's counsel,  
9 Defendant's counsel, and the mediator. (Kogan Dec. ¶¶ 6-11.)

10 Plaintiff and Class Counsel recognize the expense and length of continued proceedings  
11 necessary to litigate their disputes through trial and through any possible appeals. (*Id.*) Plaintiff has  
12 also taken into account the uncertainty and risk of the outcome of further litigation, and the  
13 difficulties and delays inherent in such litigation. (*Id.*) Plaintiff and Class Counsel are also aware of  
14 the burdens of proof necessary to establish liability for the claims asserted in the Action, both  
15 generally and in response to Defendant's compelling defenses thereto, and the difficulties in  
16 establishing damages for the Class Members. (*Id.*) Based on the foregoing, Plaintiff and Class  
17 Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and  
18 reasonable settlement, and is in the best interests of the Class Members. (*Id.*)

19 Defendant denies any liability or wrongdoing of any kind whatsoever associated with the  
20 claims alleged in the Complaints, and Defendant further denies that, for any purpose other than  
21 settling the Actions, that the Actions are appropriate for class or representative treatment.  
22 (Settlement, ¶¶ 2.3, 12.1.) However, the Settlement constituted a compromise of disputed claims  
23 and the monies being paid as part of the Settlement are genuinely disputed. (*Id.*)

### 24 **III. THE SETTLEMENT**

25 The settlement contemplates (i) entry of an Order preliminarily approving the settlement and  
26 approving certification of a provisional settlement class, contingent upon final approval of the  
27 settlement; and (ii) entry of an Order granting final approval of the settlement and judgment.

28 Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure

1 and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the Lawsuit  
2 by agreement upon the terms and conditions and for the consideration set forth in the Settlement, a  
3 copy of which is attached to the Declaration of Millay Kogan as **Exhibit “1.”**

4 A summary of the key terms of the Settlement is as follows:

- 5 **A.** “Class” means all current and former hourly non-exempt employees who worked for  
6 Defendant within the State of California During the Class Period. (Settlement, ¶ 1.5.)
- 7 **B.** “Class Member(s)” or “Settlement Class Member” means a member of the Class, as  
8 either a Participating Class Member or Non-Participating Class Member (including a  
9 Non-Participating Class Member who qualifies as an Aggrieved Employee). (Settlement,  
10 ¶ 1.9.)
- 11 **C.** “Class Period” means the period from September 15, 2017, to April 7, 2023.  
(Settlement, ¶ 1.12.)
- 12 **D.** “Aggrieved Employee” means all current and former hourly non-exempt employees  
13 who worked for Defendant within the State of California during the PAGA Period.  
(Settlement, ¶ 1.4.)
- 14 **E.** “PAGA Period” means the time period from September 15, 2020, to April 7, 2023.  
15 (Settlement, ¶ 1.31.)
- 16 **F.** “Gross Settlement Amount” means Six Hundred Ninety-Five Thousand Dollars and  
17 Zero Cents (\$695,000.00) which is the total amount Defendant agrees to pay under the  
18 Settlement except as provided in the escalator clause. The Gross Settlement Amount will  
19 be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA  
20 PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses  
21 Payment, Class Representative Service Payment, and the Administrator’s Expenses.  
(Settlement, ¶¶ 1.22, 8.)
- 22 **G.** “Net Settlement Amount” means the Gross Settlement Amount, less the following  
23 payments in the amounts approved by the Court: Individual PAGA Payments, the  
24 LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees  
25 Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses  
26 Payment. The remainder is to be paid to Participating Class Members as Individual Class  
27 Payments. (Settlement, ¶ 1.28.)
- 28 **H.** All Settlement Payments will be allocated as follows: fifteen percent (15%) to wages  
and eighty-five percent (85%) to penalties and interest, subject to applicable  
withholdings, to be reported on a W-2 form and on a 1099 form, respectively.  
(Settlement, ¶ 3.2.4.1.). Participating Class Members assume full responsibility and  
liability for any employee taxes owed on their Individual Class Payment. (*Id.*)

1 I. Defendant shall pay the first installment of Three Hundred Forty-Seven Thousand  
2 Five Hundred Dollars and Zero Cents (\$347,500.00) (half of the Gross Settlement  
3 Amount) plus an amount sufficient to pay Defendant's share of payroll taxes on the  
4 Wage Portion of the first installment by October 7, 2023, or within thirty (30) days after  
5 the Effective Date, whichever date is later. Defendant shall pay the second installment of  
6 Three Hundred Forty-Seven Thousand Five Hundred Dollars and Zero Cents  
7 (\$347,500.00) (half of the Gross Settlement Amount) plus an amount sufficient to pay  
8 Defendant's share of payroll taxes on the Wage Portion of the second installment within  
9 six (6) months after the first payment is made. In the event Defendant fails to make any  
10 payment on the date it is due as set forth in this Agreement, the Settlement Administrator  
11 will provide notice to Class Counsel and Defense Counsel within three (3) business days  
12 of the missed payment. Thereafter, Defendant will have fourteen (14) days to cure the  
13 untimely payment. (Settlement, ¶¶ 4.3, 4.3.1, 4.3.2, 4.4.4.) Within fourteen (14) calendar  
14 days of the full funding of the Settlement, the Settlement Administrator will mail checks  
15 for (a) all Individual Class Payments; (b) all Individual PAGA Payments; (c) the LWDA  
16 PAGA Payment; (d) the Administration Expenses Payment; (e) the Class Counsel Fees  
17 Payment; (f) the Class Counsel Litigation Expenses Payment; (g) and the Class  
18 Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the  
19 Class Counsel Litigation Expenses Payment and the Class Representative Service  
20 Payment shall not precede disbursement of Individual Class Payments and Individual  
21 PAGA Payments. (Settlement, ¶ 4.4.)

22 J. "Effective Date" means the date by when both of the following have occurred: (a)  
23 the Court enters a Judgment on its Order Granting Final Approval of the Settlement and  
24 (b) the Judgment is final. The Judgment is final as of the latest of the following  
25 occurrences: (a) if no Participating Class Member objects to the Settlement, the day the  
26 Court enters Judgment; (b) if one or more Participating Class Members objects to the  
27 Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or  
28 (c) if a timely appeal from the Judgment is filed or other judicial review is commenced,  
the day after the appellate court affirms the Judgment and issues a remittitur.  
(Settlement, ¶ 1.18.)

29 K. Upon the date when Defendant fully funds the entire Gross Settlement Amount and  
30 funds all employer payroll taxes owed on the Wage Portion of the Individual Class  
31 Payments, Plaintiff, and Class Members will release claims against all Released Parties.  
32 (Settlement, ¶ 5.)

33 L. All Participating Class Members, on behalf of themselves and their respective former  
34 and present representatives, agents, attorneys, heirs, administrators, successors, and  
35 assigns, release Released Parties from any and all claims that were or could have been  
36 alleged in the Operative Complaint that arose during the Class Period including without  
37 limitation with respect to the following claims: (a) failure to pay minimum wages owed;  
38 (b) failure to pay all overtime wages owed; (c) failure to provide meal periods, or  
premium pay for non-compliant meal periods; (d) failure to authorize and permit rest  
periods, or provide premium pay for non-compliant rest periods; (e) failure to timely pay  
all wages due during employment; (f) failure to issue accurate, itemized wage statements  
and maintain payroll records; (g) failure to timely pay all wages due upon separation of

1 employment; (h) all claims under California Business & Professions Code § 17200 for  
2 unfair business practices that could have been premised on the facts, claims, causes of  
3 action or legal theories described above; (i) violation of or claims under the following  
4 sections of the California Labor Code, sections 201, 202, 203, 204, 210, 226, 226.7, 510,  
5 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198; and (j) violation of the California  
6 Industrial Wage Orders that could have been premised on the facts, claims, causes of  
7 action or legal theories described above, as well as any potential penalties, interest or  
8 attorneys' fees associated with all of such causes of action under California law.  
9 ("Released Class Claims"). Participating Class Members do not release any other claims,  
10 including claims for vested benefits, wrongful termination, violation of the Fair  
11 Employment and Housing Act, unemployment insurance, disability, social security,  
12 workers' compensation, or claims based on facts occurring outside the Class Period.  
13 (Settlement, ¶ 5.2.)

14  
15 **M.** "Released PAGA Claims" means the released PAGA Claims by Plaintiff, Aggrieved  
16 Employees and the State of California. Plaintiff, Aggrieved Employees and the State of  
17 California hereby releases Releasees from all claims, demands, rights, liabilities and  
18 causes of action under the California Labor Code Private Attorneys General Act that  
19 were alleged, or reasonably could have been alleged, based on the claims asserted in the  
20 Operative Complaint, the PAGA Notice (and any amendments thereto) and ascertained  
21 in the course of the Action, arising during or with respect to the PAGA Period.  
22 ("Released PAGA Claims"). (Settlement, ¶ 5.3.)

23  
24 **N.** "Released Parties" means: Defendant Fellowship Warehousing & Logistics, LLC  
25 and each of its officers, directors, employees, and agents. With respect to those Class  
26 Members who were employed with Defendant through a staffing agency and limited to  
27 Released Class Claims and Released PAGA Claims arising during Class Members'  
28 staffing with Defendant, "Released Parties" also includes any staffing agencies,  
including without limitation, Lobos Staffing and Velasco Lumper Service.  
(Settlement, ¶ 1.41.)

**O.** "Settlement Administrator" means CPT Group, Inc., the neutral entity the Parties  
have agreed to appoint to administer the Settlement. (Settlement, ¶ 1.2.) The Settlement  
Administrator will pay from the GSA an Administrator Expenses Payment not to exceed  
\$13,750.00, except for a showing of good cause and as approved by the Court. To the  
extent the Administration Expenses Payment are less or the Court approves payment less  
than \$13,750.00, the Administrator will retain the remainder in the Net Settlement  
Amount. (Settlement, ¶ 3.2.3.)

**P.** "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment"  
means the amounts allocated to Class Counsel for reimbursement of reasonable  
attorneys' fees and expenses, respectively, incurred to prosecute the Action and awarded  
to the Plaintiff's Attorneys by the Court. (Settlement, ¶ 1.7.) Specifically, Plaintiff's  
Attorneys' application for a reasonable payment of Class Counsel Fees in a total amount  
not to exceed 33.3% of \$695,000.00 (*i.e.*, \$231,666.67), and a Class Counsel Litigation  
Expenses Payment of not more than \$15,000.00. (Settlement, ¶ 3.2.2.)

1           **Q.**     "Class Representative Service Payment" means the payment to the named Plaintiff in  
2     the operative complaint in the Action as compensation for his role as class  
3     representative, and for the risks and work attendant to that role. (Settlement, ¶¶ 1.13 and  
4     1.14.) Subject to the Court granting final approval of this Settlement Agreement and  
5     subject to the exhaustion of any and all appeals, Plaintiff will request Court approval of  
6     Class Representative Enhancement of Seven Thousand Five Hundred Dollars and Zero  
7     Cents (\$7,500.00). As part of the motion for Class Counsel Fees Payment and Class  
8     Litigation Expenses Payment, Plaintiff will seek Court approval for any Class  
9     Representative Service Payment no later than sixteen (16) court days prior to the Final  
10    Approval Hearing. If the Court approves a Class Representative Service Payment less  
11    than the amount requested, the Administrator will retain the remainder in the Net  
12    Settlement Amount. The Administrator will pay the Class Representative Service  
13    Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for  
14    employee taxes owed on the Class Representative Service Payment. (Settlement, ¶  
15    3.2.1.)

16           **R.**     The Parties have agreed that Fifty Thousand Dollars and Zero Cents (\$50,000.00) of  
17    the Gross Settlement Amount will be allocated to the resolution of the Aggrieved  
18    Employees' claims arising under PAGA. Pursuant to PAGA, Seventy Five Percent  
19    (75%), or Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00), of  
20    the PAGA Payment will be paid to the California Labor and Workforce Development  
21    Agency ("LWDA Payment"), and Twenty Five Percent (25%), or Twelve Thousand  
22    Five Hundred Dollars and Zero Cents (\$12,500.00), of the PAGA Payment will be  
23    distributed to Aggrieved Employees. (Settlement ¶ 3.2.5.) Class Members who are  
24    PAGA Employees will not be permitted to exclude themselves from this portion of the  
25    Settlement. The Administrator will calculate each Individual PAGA Payment by (a)  
26    dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties which  
27    is \$12,500.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved  
28    Employees during the PAGA Period and (b) multiplying the result by each Aggrieved  
29    Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility  
30    and liability for any taxes owed on their Individual PAGA Payment. (Settlement, ¶¶  
31    3.2.5, 3.2.5.1.)

32           **S.**     Any Class Member wishing to exclude themselves (opt-out of) from the Class  
33    Settlement must send the Administrator, by fax, email, or mail, a signed written Request  
34    for Exclusion not later than sixty (60) days after the Administrator mails the Class  
35    Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is  
36    re-mailed). A Request for Exclusion is either a completed exclusion form or a letter from  
37    a Class Member or his/her representative that reasonably communicates the Class  
38    Member's election to be excluded from the Settlement and includes the Class Member's  
39    name, address and email address or telephone number. To be valid, a Request for  
40    Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. The  
41    Administrator may not reject a Request for Exclusion as invalid because it fails to  
42    contain all the information specified in the Class Notice. The Administrator shall accept  
43    any Request for Exclusion as valid if the Administrator can reasonably ascertain the  
44    identity of the person as a Class Member and the Class Member's desire to be excluded.  
45    (Settlement, ¶¶ 7.5.1, 7.5.2.)



1  
2           **B.       This Settlement Is Fair, Reasonable, And Adequate**

3           The purpose of the preliminary evaluation of class action settlements is to determine only  
4 whether the proposed settlement is within the *range of reasonableness* and, therefore, whether  
5 notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple*  
6 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4<sup>th</sup> Ed.) §11:25.)  
7 Courts have broad powers to determine whether a proposed settlement is fair under the  
8 circumstances of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-35; *Mallick v. Superior Court*  
9 (1979) 89 Cal.App.3d 434, 438.) In evaluating preliminary approval, courts must consider several  
10 relevant factors, including “the strength of the plaintiff’s case, the risk, expense, complexity and  
11 likely duration of further litigation, the risk of maintaining class action status through trial, the  
12 amount offered in settlement, the extent of discovery completed and the stage of the proceedings,  
13 [and] the experience and views of counsel...” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th  
14 1794, 1801.) “The list of factors is not exclusive and the court is free to engage in a balancing and  
15 weighing of the factors depending on the circumstances of each case.” (*Wershba, supra*, 91  
16 Cal.App.4th at 245.) Furthermore, courts must give “proper deference to the private consensual  
17 decision of the parties” because “the court’s intrusion upon what is otherwise a private consensual  
18 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to  
19 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or  
20 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,  
21 reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.* (9<sup>th</sup> Cir. 1998) 150 F.3d  
22 1011, 1027.)

23           A proposed class action settlement is presumed fair under the following circumstances: (1)  
24 the parties reached settlement after arm’s-length negotiations; (2) investigation and discovery were  
25 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
26 litigation, and (4) the percentage of objections is small. (*Dunk v. Ford Motor Co., supra*, 48  
27 Cal.App.4th at 1802.) The Declaration of Class Counsel Millay Kogan demonstrates that the  
28

1 proposed settlement was the product of serious, informed, and non-collusive negotiations and  
2 demonstrates counsel’s extensive experience in both employment law as well as class action  
3 litigation.

4 **1. The Settlement is the result of serious, informed, and non-collusive**  
5 **negotiations**

6 The Settlement was reached as a result of arm’s-length negotiations facilitated by a highly  
7 regarded and experienced wage and hour mediator, Eve Wagner, Esq., and analysis by Plaintiff’s  
8 counsel. (Kogan Dec. ¶¶6-21.) While Plaintiff believes in the merits of his case, he also recognizes  
9 the inherent risks of litigation and understands the benefit of the Class receiving settlement funds  
10 immediately as opposed to risking an unfavorable decision on class certification, summary  
11 judgment, at trial and/or the damages awarded, on an appeal that can take several more years to  
12 litigate. (*Id.*)

13 **2. The extent of the information provided through informal discovery and the**  
14 **stage of the proceedings support the Settlement**

15 As described herein, the Parties investigated and evaluated the factual strengths and  
16 weaknesses of this case before reaching the proposed Settlement and engaged in sufficient  
17 investigation and discovery, as referenced above, to support the Settlement. (*Id.*) Accordingly, the  
18 proposed Settlement was reached following probative factual evaluation of Defendant’s relevant  
19 policies and procedures including a sampling of timecards for approximately 99.8% of the class for the  
20 period from March 2018 to February 2023 and a sampling of wage statements; as well as information  
21 regarding number of current and former hourly nonexempt employees; number of workweeks; number  
22 of pay periods; average rate of pay; and Plaintiff’s counsel’s analysis of both the aforementioned  
23 sample data and documentation. (*Id.*)

24 Thus, the Settlement came only after the case was fully investigated by counsel, as set forth  
25 above. This litigation, therefore, has reached the stage where “the Parties certainly have a clear view  
26 of the strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*  
27 *Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

### 3. Plaintiff's counsel are experienced in similar litigation

1  
2 Experienced counsel, operating at arm's-length, have weighed the strengths of the case and  
3 examined all of the issues and risks of litigation and endorse the proposed settlement. The view of  
4 the attorneys actively conducting the litigation "is entitled to significant weight" in deciding  
5 whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985)  
6 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.*  
7 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp., supra*, 485 F.Supp. at 617.)

8 Both Plaintiff's and Defendant's counsel are experienced in employment, wage and hour  
9 and class action matters. Lavi & Ebrahimian LLP is a well-regarded firm that handles almost  
10 exclusively employment matters. (Kogan Dec. ¶24.) Joseph Lavi, of Lavi & Ebrahimian, LLP, has  
11 been approved as class counsel in numerous actions and has been named a Southern California  
12 Super Lawyer in the area of Plaintiff's employment litigation - class action from 2011-2021. (*Id.*)  
13 Defendant's counsel, Roxana Verano and Evelyn Zarraga of Landegger Verano & Davis, ALC are  
14 also highly-regarded and respected as employment defense counsel. Counsel on both sides share  
15 the view – endorsed by an experienced wage and hour class action mediator – that this is a fair and  
16 reasonable settlement in light of the complexities of the case, the state of the law and uncertainties  
17 of class certification and litigation, and the benefit the settlement confers on the class. (Kogan Dec.  
18 ¶¶6-21.) Given the risks inherent in litigation, in class certification proceedings, and in the defenses  
19 asserted, this settlement is fair, adequate, reasonable, and in the best interests of the class. (*Id.*)

### 4. The Settlement is fair and reasonable based on the strengths of Plaintiff's case and the risks and costs of further litigation

20  
21  
22 Plaintiff and his counsel have concluded it was reasonable to enter into the proposed  
23 Settlement. Defendant has vigorously contested and continues to contest liability for the claims  
24 asserted in the action. Although Defendant believes that class certification would be unlikely on  
25 such claims, it nevertheless agreed to attempt resolution of the case through extensive informal  
26 discovery and mediation to avoid the expense, distraction and uncertainty of protracted litigation.  
27 There are significant legal uncertainties associated with cases such as this as they can be factually  
28 complex and require protracted litigation to resolve. A settlement is not judged solely against what

1 might have been recovered had plaintiff prevailed at trial, nor does the settlement have to provide  
2 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th  
3 Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney v. Wells Fargo*  
4 *Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, “[c]ompromise is inherent and necessary in the  
5 settlement process...even if the relief afforded by the proposed settlement is substantially narrower  
6 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement  
7 because the public interest may indeed be served by a voluntary settlement in which each side gives  
8 ground in the interest of avoiding litigation” (*Wershba*, 91 Cal.App.4th at 250.)

### 9 **5. The Proposed Settlement is a Reasonable Compromise of Claims**

10 To evaluate a settlement, the trial court must receive “basic information about the nature  
11 and magnitude of the claims in question and the basis for concluding that the consideration being  
12 paid for the release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker*  
13 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) However, the record need not contain an explicit  
14 statement of the maximum theoretical recovery:

15 “Greenwell misunderstands *Kullar*, apparently interpreting it to require the record  
16 in all cases to contain evidence in the form of an explicit statement of the  
17 maximum amount the plaintiff class could recover if it prevailed on all its  
18 claims—a number which appears nowhere in the record of this case. But *Kullar*  
19 does not, as Greenwell claims, require any such explicit statement of value; it  
requires a record which allows “an understanding of the amount that is in  
controversy and the realistic ranges of outcomes of the litigation.”

20 (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

21 Based on the information informally produced by Defendant’s during the period from  
22 March 2018 to February 2023, Defendant employed approximately 1,293 Class Members over the  
23 course of approximately 17,325 workweeks with an average rate of pay of \$18.12/hour. (Kogan  
24 Dec. ¶12.) Additionally, the number of PAGA pay periods amounted to 13,002 for approximately  
25 648 aggrieved employees. (*Id.*) Based on our analysis, the maximum exposure for Plaintiff’s  
26 claims were as follows:

27 With regard to Plaintiff’s Unpaid Wages claims (i.e., the minimum and overtime wage  
28 claims), the maximum that Plaintiff could recover amounted to approximately \$235,446.75.

1 [Calculated as follows: 17,325 workweeks x 1/2 hour off the clock work per week x \$27.18/OT  
2 Rate (based on \$18.12 average rate of pay) = \$235,446.75.] Plaintiff's minimum and overtime  
3 wage claim was based on Plaintiff and other class members being required to arrive before their  
4 shift began and assist other employees prior to being permitted to clock in. However, given that  
5 there is no evidence of this claim because the work occurred off the clock and is reliant on  
6 Plaintiff's and class members' testimony, recovery of any damages for Plaintiff's unpaid wages  
7 claims are unlikely and the risks are great. Plaintiff applied a 70% risk of certifying this claim.  
8 Afterwards, because of the risks in bringing the claim to trial, Plaintiff estimated that if he were  
9 successful on this claim at trial, it could result in a maximum of **\$35,317.01**, which assumes an  
10 additional 50% merits risk. (Kogan Dec. ¶13.)

11 With regard to Plaintiff's Meal Break Claim, Plaintiff alleged that he and other class  
12 members regularly were provided meal periods after the end of their fifth hour of work, and were  
13 required to always keep their employer-issued walkie-talkies on them during their meal periods to  
14 respond to calls from Defendant's management personnel resulting in meal periods that were not  
15 duty free. Based on Plaintiff's expert witness' analysis of the sampling of data, provided that  
16 approximately 65.8% of shifts in the sampling evidenced a meal period violation. Therefore, the  
17 maximum that Plaintiff could recover amounted to approximately **\$1,032,826.41**. [Calculated as  
18 follows: 17,325 workweeks x 5 violations a week x \$18.12 average rate of pay x 65.8% violation  
19 rate = \$1,032,826.41.] However, Defendant would likely argue that it never pressured employees  
20 to skip, interrupt, cut short, or postpone their meal periods, and consequently, employees were  
21 voluntarily choosing to forego their meal periods. Specifically, Defendant contends that even  
22 though it issued walkie-talkies to employees, Plaintiff and putative class members were permitted  
23 to turn them off during their meal periods. Defendant would also point out that many shifts were  
24 not long enough to entitle employees to a meal period. Additionally, Defendant argued that  
25 determining the specific reason why employees took a non-compliant meal was a question that  
26 could only be answered through individualized inquiries, and as such, class certification was  
27 inappropriate. As such, Plaintiff estimated that there was a 50% chance of success on the merits.  
28 Therefore, the maximum recovery at trial is likely **\$258,206.60**. (Kogan Dec. ¶14.)

1 With regard to Plaintiff's Rest Break Claim, Plaintiff alleged that Defendant required  
2 Plaintiff and similarly situated employees to always keep their employer-issued walkie-talkies on  
3 them during rest periods, required employees to take and respond to calls from Defendants'  
4 management personnel, and regularly failed to provide a third rest period when Plaintiff and  
5 similarly situated employees worked shifts over 10 hours. Additionally, Defendant regularly  
6 failed to pay rest period premium wages. Based on these allegations, Plaintiff concluded that a  
7 fifty percent (50%) violation rate was appropriate. Thus, the maximum that Plaintiff could recover  
8 amounted to approximately \$1,569,645. [Calculated as follows: 17,325 workweeks x 5 violations  
9 a week x \$18.12 average rate of pay x 50% violation rate = \$784,822.50.] Given that there is no  
10 evidence whether rest periods were or were not taken in compliance with the Labor Code,  
11 Plaintiff estimates that there was a 30% chance of success on certification and another 20%  
12 chance of success on the merits. Therefore, the maximum recovery at trial is likely \$47,089.35.  
13 (Kogan Dec. ¶15.)

14 With regard to Plaintiff's Labor Code § 203 waiting time penalties claim, based on the  
15 underlying unpaid wages, meal period, and rest period claims, Plaintiff alleges that Defendant  
16 failed to timely pay wages at employees' termination. The maximum that Plaintiff could recover  
17 amounted to approximately \$3,666,038.40. [Calculated as follows: 843 former employees x 30  
18 days x 8 hours per day x \$18.12 = \$3,666,038.40.]. Plaintiff estimated that there is a 70% chance  
19 of success on certification and another 60% chance of success on the merits. Therefore, the  
20 maximum recovery at trial is likely \$1,539,736.13. (Kogan Dec. ¶16.)

21 Regarding Plaintiff's Wage Statement claim, which is wholly derivative of Plaintiff's  
22 underlying claims for minimum, overtime, meal, and rest period claims, the maximum that  
23 Plaintiff could recover amounted to approximately \$5,172,000. [450 employees (within the Labor  
24 Code § 226 statute of limitations) x \$4,000 maximum penalty = \$1,800,000.00] Plaintiff alleged  
25 that derivative of the aforementioned violations, Defendant failed to provide employees with  
26 wage statements which accurately stated the wages earned. However, Defendant could argue that  
27 because this claim was derivative, the claim was subject to the below described defenses. In  
28 addition, Defendant would likely argue that Plaintiff could not show that any inaccuracy was

1 based on a knowing and intentional failure—an element of a violation of Labor Code section  
2 226—or a violation of law in the manner required by Labor Code section 226. However, Plaintiff  
3 believes he could be successful on this claim in at least pay periods which a provable meal period  
4 violation occurred. As such, Plaintiff contends that there is a 70% chance of success on  
5 certification and another 60% chance of success on the merits. Therefore, the maximum recovery  
6 for wage statement penalties at trial is likely \$756,000.00. (Kogan Dec. ¶17.)

7       Regarding Plaintiff’s claims for the civil penalties associated with the foregoing alleged  
8 violations of the Labor Code, Plaintiff’s maximum recovery amounted to approximately  
9 \$1,300,200.00. [13,002 pay periods x \$100 penalty (no stacking) = \$1,300,200.00]. It is more  
10 realistic to assume that Defendant will only be found liable for an initial violation in the amount  
11 of \$100 for each aggrieved employee, bringing the likely recovery to approximately \$64,800 [648  
12 total aggrieved employees x \$100 penalty (no stacking) = \$64,800] on the low end and \$225,000  
13 [648 total aggrieved employees x \$100 penalty x 5 theories of recovery = \$324,000] on the high  
14 end. Defendant would likely argue that PAGA penalties would be limited in any event. As  
15 discussed in detail below, Defendant denies any liability. Moreover, Defendant would argue that  
16 even if Plaintiff prevailed, the recoverable penalties under PAGA are minimal. Indeed, courts  
17 have refused to “stack” PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal. Ct. App.  
18 Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty reduction to  
19 \$5 per pay period). Thus, the Parties contend the value of the PAGA claim if the case proceeded  
20 to trial is approximately \$65,010.00 (13,002 pay periods x \$5 penalty). (Kogan Dec. ¶18.)

21       As such, Plaintiff’s maximum potential recovery in this matter, inclusive of PAGA  
22 penalties, would amount to approximately \$2,766,159.09. The settlement reached in this matter  
23 was \$695,000.00 or approximately 25% of maximum potential damages. (Kogan Dec. ¶19.)

24       As explained above, however, defenses to Plaintiff’s claims were as follows: with regard to  
25 Plaintiff’s claim for failure to pay for all hours worked at the minimum and/or overtime rate of pay,  
26 Defendant would likely argue that they advised class members not to work off the clock, and to the  
27 extent the class members did work off the clock, it was not at the direction of Defendant and  
28 Defendant was unaware of such work. Regarding Plaintiff’s argument that Defendant failed to

1 authorize or permit compliant meal and rest periods, Defendant would argue it always provided  
2 employees with timely and compliant meal periods. Defendant would likely argue that to the extent  
3 non-compliant meal periods were taken, it was not at their direction and it was unknown to  
4 Defendant. Regarding Plaintiff's rest period claim, Defendant would likely contend that there are no  
5 records of when or if rest periods were taken, and Defendant was not required to monitor whether  
6 compliant rest periods were taken. Finally, Defendant would further argue that it maintained and  
7 provided to the class compliant meal and rest period policies. Based on the foregoing, Defendant  
8 concluded, wages were properly paid to Plaintiff and Class Members, and that at the time wages  
9 were paid out upon separation of employment, Defendant believed, in good faith, that it was  
10 properly paying all wages to separating employees. Further, Defendant would likely conclude that  
11 wage statements provided to the class were complete and accurate as it was unaware that any  
12 additional wages were owed. In other words, Defendant concluded, Plaintiff would not be able to  
13 establish the willful elements of their Labor Code sections 226 or 203 claims. For these reasons,  
14 Defendant concluded, Plaintiff would not likely prevail on his claims. Furthermore, Defendant  
15 argued that with respect to the PAGA claim, the Court has the discretion to lower penalties given  
16 that it appears unlikely a court would find that any violations were knowing or intentional. For these  
17 reasons, Defendant concluded Plaintiff would not likely prevail on his claims. Furthermore,  
18 Defendant argued that with respect to the PAGA claim, the Court has the discretion to lower  
19 penalties, and that it appears unlikely a court would find that any violations were knowing or  
20 intentional. (Kogan Dec. ¶20.)

21 If the Plaintiff continued litigating this matter, the class members could potentially receive  
22 **nothing** if the court agreed with Defendant's position, or if Defendant was able to defeat  
23 certification based on the individual inquiries that would be required regarding Plaintiff's minimum  
24 wage, overtime wage, and meal and rest claims. Furthermore, even if the Court agreed with  
25 Plaintiff, Plaintiff still had to prove Defendant acted intentionally and *willfully* in order to receive  
26 the additional penalties under Labor Code Section 203. As such, Plaintiff's decision to settle this  
27 matter was in the best interest of the Class Members.

1 This is a fair and reasonable result. Other substantial benefits also include that it is a non-  
2 reversionary, non-claims made settlement, which distributes the Net Settlement Amount to each  
3 Settlement Class Member. Settlement Payments to Settlement Class Members will be calculated  
4 pro-rata by the Settlement Administrator. The pro-rata share will be determined by comparing the  
5 individual Settlement Class Member's Covered Workweeks of all the Settlement Class Members  
6 during the Class Period as follows:  $[[\text{Workweeks worked by a Settlement Class Member}] \div [\text{Sum of}$   
7  $\text{all Covered Workweeks worked by all Settlement Class Members}]] \times [\text{Net Settlement Amount}] =$   
8 individual Settlement Payment for a Settlement Class Member. (Settlement, ¶ 3.2.4.). The PAGA  
9 Settlement Payment to aggrieved employees will be calculated by comparing the individual PAGA  
10 Employee's PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the  
11 PAGA Employees during the PAGA Period as follows:  $[[\text{PAGA Pay Periods worked by a PAGA}$   
12  $\text{Employee}] \div [\text{Sum of all PAGA Pay Periods worked by all PAGA Employees}]] \times [\text{PAGA}$   
13  $\text{Settlement Payment}] =$  individual PAGA Employee's portion of the PAGA Settlement Payment.  
14 (Settlement, ¶ 3.2.5.1.). In addition, in the event any Settlement Payment and/or PAGA Settlement  
15 Payment check has not been cashed within one hundred eighty (180) days, funds shall be  
16 transmitted by the Settlement Administrator to the California State Controller's Office for  
17 Unclaimed Property in the name of each Settlement Class Member and/or PAGA Employee who  
18 failed to cash their Settlement Payment check prior to the void date. (Settlement, ¶ 4.3.3.). The  
19 Gross Settlement Amount is reasonable in light of the risks involved in this case—including the  
20 prospect of a potential adverse summary judgment ruling, class certification issues as well as the  
21 uncertainty of class certification, defenses to the case, potential appeal, the elements of willfulness  
22 and/or injury required for certain penalties. Based on information provided by Defendant, the class  
23 worked an average of 17 workweeks with the lowest number of workweeks worked being 1 and the  
24 highest number of workweeks worked being 229. Therefore, Plaintiff estimates the average  
25 settlement payment to the class to be \$292.60; the lowest settlement payment to be \$21.83; and the  
26 highest settlement payment to be \$4,999.07. Based 648 PAGA Employees and 13,002 weekly pay  
27 periods during the PAGA Period, the average PAGA share is approximately \$19.29 and the value  
28 per pay period is 96¢. (Kogan Decl., ¶21.)

1 Plaintiff's Counsel is convinced that the proposed Settlement is in the best interest of the class  
2 based on the negotiations and a detailed knowledge of the issues present in this action. The  
3 affirmative defenses asserted by Defendant, the prospect of a potential adverse summary judgment  
4 ruling, preemption issues, class certification issues as well as the uncertainty of class certification,  
5 the difficulties of complex litigation, the lengthy process of establishing specific damages and  
6 various possible delays and appeals, were also carefully considered by Class Counsel in agreeing to  
7 the proposed Settlement. In light of the above, the proposed Settlement is well within the "ballpark"  
8 of reasonableness and should be granted preliminary approval.

#### 9 **V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES**

10 The court may make an order approving certification of a provisional settlement class after  
11 the preliminary settlement hearing. (California Rules of Court, Rule 3.769(d).) For settlement  
12 purposes, courts use a less stringent standard for certification of classes. (*Global Minerals & Metals*  
13 *Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) "The reason for this is that no trial is  
14 anticipated in a settlement class case, so the case management issues inherent in the ascertainable  
15 class determination need not be confronted." (*Id.*; see also *7-Eleven Owners for Fair Franchising v.*  
16 *Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming certification of class action  
17 for settlement purposes only].) Accordingly, this Court has discretion to certify Plaintiff's class for  
18 settlement purposes only.

19 The requirements under California Code of Civil Procedure Section 382 are all met for the  
20 purposes of certifying this case for settlement purposes:

21 • Numerosity: The settlement class consists of approximately 1,293 Class Members.  
22 Thus, the requirement of numerosity is easily met because joinder of 1,293 individual plaintiffs into  
23 a single case is otherwise impracticable in light of the circumstances of this case.

24 • Typicality: The claims of the class representatives are typical of the claims of the  
25 class members as a whole. Plaintiff suffered the same alleged violations (e.g. failure to pay for all  
26 hours worked; failure to pay proper overtime wages overtime hours worked; failure to pay meal  
27 period premium wages for missed meal periods; failure to pay rest period premium wages for  
28

1 missed rest periods; failure to timely pay earned wages during employment; failure to provide  
2 complete and accurate wage statements; and failure to pay all wages due upon separation of  
3 employment) as the class as a whole did, and, thus, the claims of the named Plaintiff fairly  
4 represents the claims of the class as a whole.

5 • Ascertainability: The proposed “Class” is easily ascertainable based on Defendant’s  
6 own payroll records.

7 • Adequacy: Plaintiff has proven to be an adequate class representatives. He has  
8 conducted himself diligently and responsibly in representing the class in this litigation, he  
9 understands his fiduciary obligations, and he has actively participated in the prosecution of this  
10 case. (Kogan Dec. ¶28.) Plaintiff has spent hours in meetings and conferences with counsel to get a  
11 better understanding of their work environment and requirements. Plaintiff was readily available  
12 during the lengthy mediation of the matter and has continued to be actively engaged in the ongoing  
13 settlement negotiations following mediation that were ultimately required to finalize settlement.  
14 (*Id.*) Further, Plaintiff does not have any interest that is adverse to the interests of the other class  
15 members. (*Id.*) Moreover, proposed class counsel is adequate to represent the class for settlement  
16 purposes and has been appointed as class counsel before by this Court as well as both State and  
17 Federal Courts. (Kogan Dec. ¶24.)

18 • Commonality: Many common issues of law and fact unite the class. The common  
19 questions of law and fact include, but are not limited to:

- 20 1) Whether Defendant failed to pay the Class Members for all hours worked at  
21 minimum wage
- 22 2) Whether Defendant failed to pay the Class Members for overtime hours  
23 worked at the proper overtime rate of pay;
- 24 3) Whether Defendant failed to provide the Class Members timely meal periods  
25 and premium wages for missed meal periods;
- 26 4) Whether Defendant failed to provide the Class Members timely rest periods  
27 and premium wages for missed rest periods;
- 28 5) Whether Defendant failed to timely pay earned wages during employment;
- 6) Whether Defendant failed to provide the Class Members complete and  
accurate wage statements;
- 7) Whether Defendant failed to timely pay all earned wages and final paychecks

1 due at separation of employment; and

2 8) Whether Defendant engaged in unfair business practices;

3 • Superiority: A class action is superior to other available means for the fair and  
4 efficient adjudication of this controversy. Joinder of all members of the proposed class is  
5 impractical. Class treatment will permit a large number of similarly situated persons to prosecute  
6 their common claims in a single forum simultaneously for settlement purposes without the  
7 unnecessary duplication of effort and expense that numerous individual actions would engender.

8 **VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE APPROVED**

9 The proposed Notice of Class Action Settlement, Objection Form, and Exclusion Form in  
10 the form attached to the Settlement Agreement as Exhibit A and to the [Proposed] Order Granting  
11 Preliminary Approval of Class Action as Exhibit A, should be approved for dissemination to the  
12 Class Members. These documents inform the Class of the terms of the Settlement; of their right to  
13 receive their proportional share of the Settlement and the manner in which to do so; an estimate of  
14 their estimates shares and the average amount of the Class Members' shares; of their right to request  
15 exclusion or object to the Settlement by using the respective forms or written submissions; and of  
16 their right to appear in person or by counsel at the final approval hearing and to be heard regarding  
17 approval of the Settlement. Adequate periods of time are provided by each of these procedures.  
18 Furthermore, the date and time of the Final Approval hearing will be inserted in the Notice of Class  
19 Action Settlement, and the Settlement Administrator will calculate the Class Member's estimated  
20 settlement payments and PAGA payments as well as insert the Settlement Administrator's contact  
21 information in the necessary locations amongst the notice documents.

22 **VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

23 Plaintiff's Counsel seeks an attorneys' fees and costs award of One Third of the Gross  
24 Settlement Amount, which comes to Two Hundred Thirty-One Thousand Six Hundred Sixty-Six  
25 Dollars and Sixty-Seven Cents (\$231,666.67) and Class Counsel's costs not to exceed Fifteen  
26 Thousand Dollars (\$15,000), for the time spent litigating this matter as well as expenses incurred in  
27 the prosecution of this Lawsuit thus far. Defendant will not object to an award of attorneys' fees  
28 and costs in these amounts. The requested fees fall well within the historical range of attorneys' fee

1 awards under the common fund theory, which is generally from 20% to 50%. The requested fee is  
2 a fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a  
3 contingent fee basis, especially in light of the substantial benefits achieved by Plaintiff’s counsel  
4 for the Class Members. Plaintiff’s counsel diligently litigated and investigated this case.

5 California courts have recognized that an appropriate method for awarding attorney’s fees in  
6 class actions is to award a percentage of the “common fund” created as a result of the settlement.  
7 (*City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15  
8 Cal. 3d 162, 168; *see also Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253,  
9 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26.) The basis of the  
10 common fund is fairness to the successful litigant, who might otherwise receive no benefit because  
11 his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to  
12 others who are entitled to share in the fund and who should bear their share of the burden of its  
13 recovery; encouragement of the attorney for the successful litigant, who will be more willing to  
14 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he  
15 is assured that he will be properly and directly compensated should his efforts be successful. (*City*  
16 *& County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 111.) In *Quinn*, the California Supreme  
17 Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from  
18 which others derive benefits may require those passive beneficiaries to bear a fair share of the  
19 litigation costs.” (*Quinn v. State, supra*, 15 Cal. 3d at 167.) Similarly, in *Sweet*, the California  
20 Supreme Court recognized that the common fund doctrine has been applied “consistently in  
21 California when an action brought by one party creates a fund in which other persons are entitled to  
22 share.” (*City & County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 110.)

23 Several courts have expressed frustration with the alternative “lodestar” approach for  
24 deciding fee awards, which usually involves wading through voluminous and often indecipherable  
25 time records. (*Lealao, supra*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D.  
26 Cal 1989)] 723 F. Supp. 1373, 1375].) The percentage approach is preferable to the lodestar  
27 because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages  
28 efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement;

1 and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at  
2 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to  
3 determine the award of attorney’s fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific*  
4 *Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 [approving attorney’s fee of 33%.])

5 Plaintiff’s counsel’s request for fees equal to One Third of the Gross Settlement Amount is  
6 within the range of reasonableness. Historically, courts have awarded percentage fees in the range  
7 of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig.*, *supra*,  
8 723 F. Supp. at 1378.) According to Professor Newberg: “No general rule can be articulated on  
9 what is a reasonable percentage of a common fund...Usually 50 percent of the fund is the upper  
10 limit on a reasonable fee award from a common fund, in order to assure that fees do not consume a  
11 disproportionate part of the recovery obtained for the class, though somewhat larger percentages  
12 are not unprecedented.” (Newberg, *supra*, §14.6.)

13 Class Counsel has borne, and continues to bear, the entire risk and cost of litigation  
14 associated with this class action on a pure contingency basis. The factual and legal issues posed in  
15 this case were highly disputed, and there were also risks as to whether or not a class would be  
16 certified, leaving a large number of putative class members unlikely to receive any recovery.

17 Based on Class Counsel’s past experience in class action wage and hour litigation, it is safe  
18 to state that Class Counsel is very likely to be called upon, after the Notice has been sent, to expend  
19 substantial amounts of additional time to help Class Members understand the terms of the proposed  
20 Settlement and to assist Class Members in the preparation and documentation of their Notice. It is  
21 also likely that, even after final approval of the Settlement has been granted, Class Counsel will be  
22 called upon to expend additional amounts of time in the presentation and resolution of contests and  
23 disputes relating to Class Members’ allocation under the terms of the proposed Settlement, as to the  
24 amounts of individual claims and perhaps other individual issues.

25 The Court should preliminarily approve the requested attorney’s fees and costs, which are  
26 justified by the results achieved, the complexity of the issues, the difficulty of the case, and the  
27 great risk undertaken by Class Counsel. The requested attorneys’ fees and costs will not be opposed  
28 by Defendant and are well within established guidelines. The Class Members will also be notified

1 of the requested amount and have an opportunity to object to the requested fees.

2  
3 **VIII. THE REQUESTED SERVICE PAYMENT IS REASONABLE**

4 The named Plaintiff is entitled to a Class Representative Service Payment for his service as  
5 a class representative and the risks associated with his role as the Class Representative and named  
6 Plaintiff in this Lawsuit. Plaintiff understood and continues to understand his role as the Class  
7 Representative, he has protected the interests of Class Members during the pending of this matter  
8 and will continue to do so. (Kogan Dec. ¶28; See also, the Declaration of Andrew Sanchez.)  
9 Plaintiff has spent hours in meetings and conferences with counsel to get a better understanding of  
10 their work environment and requirements, and Plaintiff was readily available during the lengthy  
11 mediation in this matter. (*Id.*) Even after mediation, Plaintiff continued to be engaged with counsel  
12 for the months of the continued negotiations that it took to ultimately finalize a settlement as well  
13 as understanding and discussing the settlement agreement with his attorneys. (*Id.*) Further,  
14 Plaintiff does not have any interest that is adverse to the interests of the other class members. (*Id.*)  
15 Defendant will not oppose the application for a service payment of \$7,500 to be paid from the  
16 Gross Settlement Amount to Plaintiff for his services to the Class in this Lawsuit as well as  
17 providing the Defendant with a general release of any and all of his rights and claims against the  
18 Defendant. Class Counsel can attest that Plaintiff devoted a proportionate amount of time and  
19 work assisting counsel in the case, communicating with counsel frequently, providing documents  
20 and information regarding his employer and employment, which led to increase in the value and  
21 ultimate success of the Settlement. (*Id.*)

22 **IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS**

23 The Parties propose the following schedule for the fairness hearing and final proceedings:

- 24
- 25 1. Within fifteen (15) days from the date of preliminary approval of this Settlement  
26 by the Court, Defendant shall provide the Settlement Administrator Class Data  
27 based on Defendant's payroll and other business records containing the  
28 following information for each Class Member: (1) name; (2) last known address;  
(3) social security number; and (4) number of Class Period Workweeks and  
PAGA Pay Periods. (Settlement, ¶¶ 1.8, 4.2.)

- 1                   2. Within fourteen (14) days after the Class Data is provided to the Settlement  
2                   Administrator, the Settlement Administrator will mail the Notices to the Class  
3                   Members by First Class United States mail. The Notice will be mailed in  
4                   English and Spanish to each Class Member. (Settlement, ¶ 7.4.2.)
- 5                   3. Class Counsel shall provide to the Court, at least fourteen (14) days prior to the  
6                   deadline to file the motion for final approval, or such other date as set by the  
7                   Court, a declaration by the Settlement Administrator of due diligence, including,  
8                   but not limited to, its mailing of Class Notice, the Class Notices returned as  
9                   undelivered, the re-mailing of Class Notices, attempts to locate Class Members,  
10                  the total number of Requests for Exclusion from Settlement it received (both  
11                  valid or invalid), the number of written objections and attach the Exclusion List.  
12                  The Administrator will supplement its declaration as needed or requested by the  
13                  Parties and/or the Court. Class Counsel is responsible for filing the  
14                  Administrator's declaration(s) in Court. (Settlement, ¶ 7.8.5.)
- 15                  4. Plaintiff shall file a Motion for Final Approval of the Class Action Settlement,  
16                  and Motion for Final Approval of Plaintiffs' Attorneys' Fees and Costs and  
17                  Service Payments to the Class Representative sixteen (16) court days prior to the  
18                  Final Approval Hearing date. (Settlement, ¶ 3.2.1.)
- 19                  5. The Final Fairness and Approval Hearing date will be determined by Court. The  
20                  parties request that the Final Fairness and Approval Hearing be set approximately  
21                  one hundred forty (140) days following the Court's granting of preliminary  
22                  approval of the proposed Class Action Settlement. The Parties' respective  
23                  counsel will bring their calendars to the preliminary approval hearing for  
24                  purposes of scheduling the Final Fairness and Approval Hearing.

## 25                  **X. CONCLUSION**

26                  The proposed class action settlement is fair, adequate, and reasonable. It will result in fair and  
27                  immediate payment to Class Members; it is non-collusive; and it was achieved as the result of  
28                  informed, extensive, and arms' length negotiations conducted by counsel for respective parties who  
29                  are experienced in wage and hour class action litigation. For the foregoing reasons, the parties  
30                  respectfully request that the Court grant preliminary approval of the proposed Settlement, sign the  
31                  proposed Order, approve and authorize mailing of the proposed notice packet and set a date for a  
32                  final approval hearing.

