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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN FRANCISCO**

10 LUIS MORENO, an individual, on behalf of
11 himself and others similarly situated

12 **PLAINTIFF,**

13 v.

14 HATHAWAY DINWIDDIE
CONSTRUCTION COMPANY; and DOES 1
15 thru 50, inclusive,

16 **DEFENDANTS.**

CASE NO. CGC-16-554443

[Case Assigned for All Purposes to Hon. A.C.
Massullo]

**DECLARATION OF LIANE
KATZENSTEIN LY IN SUPPORT OF
PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS SETTLEMENT**

*[Filed concurrently with Notice of Motion
and Motion for Final Approval of Class
Action Settlement; Memorandum of Points
and Authorities, Declarations of Liane
Katzenstein Ly, Luis Moreno and Stephen
Gomez, Proposed Order, and Proposed
Judgment]*

Date: February 11, 2020

Time: 9:15 a.m.

Dept.: 304

Trial Date: None

Complaint Filed: September 22, 2016

1 **DECLARATION OF LIANE KATZENSTEIN LY**

2 I, Liane Katzenstein Ly, declare as follows:

3 1. I am an attorney licensed to practice before all of the courts of the State of
4 California. I am the attorney of record for Plaintiff LUIS MORENO in the above-entitled action.
5 I have personal knowledge of the facts set forth herein, and if called upon as a witness, I could and
6 would testify competently thereto.

7 2. I make this declaration in support of Plaintiff’s Motion for Final Approval of Class
8 Action Settlement in the above-captioned case.

9 3. I graduated from Florida State University in 2005 with a degree in English. I
10 graduated from University of California, Davis School of Law in 2008. I am admitted to practice
11 before the following Courts: United States District Court, Northern, Southern, Eastern, and Central
12 of California; all of California State Courts.

13 4. I have been involved in all of the settlement discussions leading to the present
14 settlement as embodied in the Fifth Amended Joint Stipulation of Resolution (“Settlement
15 Agreement”). A true and correct copy of the Settlement Agreement is attached hereto as Exhibit
16 “A”.

17 **LITIGATION BACKGROUND**

18 5. On September 22, 2016, Plaintiff Luis Moreno filed a class action against
19 Defendant, asserting the following claims: (1) Failure to Reimburse Expenses pursuant to Labor
20 Code section 2802; (2) Failure to Provide Itemized Wage Statements pursuant to Labor Code
21 section 226(a); and (3) a violation of Business and Professions Code section 17200. Plaintiff
22 Moreno asserted a claim for Failure to Provide Employment and Payroll records under Labor Code
23 sections 226 and 1198.5, on behalf of himself (hereinafter referred to as "The Action").

24 6. On September 22, 2016, pursuant to Labor Code §2699.3(a)(1), Plaintiff gave
25 written notice by online filing to the LWDA and mailed notice to Defendant.

26 7. Plaintiff provided the LWDA with a copy of the Complaint on November 29, 2016.

27 8. Plaintiff has also filed this Motion with LWDA.

28 9. On November 29, 2016, Plaintiff filed a First Amended Complaint, adding a claim

1 for penalties under the Private Attorney General Act of 2004 ("PAGA").

2 10. On August 28, 2017, the Parties stipulated to a Second Amended Complaint.

3 11. On September 25, 2017, the Parties attended mediation with Mark Rudy, Esq. and
4 reached an agreement through arms-length negotiations and Plaintiff and his counsel believe it to
5 be fair and reasonable.

6 12. Plaintiff moved for preliminary approval on six occasions (February 14, 2018;
7 April 26, 2018; June 8, 2018, August 29, 2018; October 11, 2018; February 25, 2019) which were
8 each denied without prejudice, with instructions.

9 13. After the denials, the Parties re-drafted the Settlement Agreement.

10 14. Plaintiff filed a Third Amended Class Action Complaint on April 24, 2019
11 eliminating a sub-class and modifying the class definition.

12 **THE DISCOVERY PROCESS**

13 15. The Parties engaged in extensive informal discovery to arrive at the proposed
14 settlement.

15 16. Defendant provided Plaintiff with all versions of itemized wage statements issued
16 to the Class, the number of itemized wage statements issued during the Class Period, and the date
17 upon which the alleged deficiencies on the wage statements were corrected.

18 17. Finally, Defendant provided Plaintiff with various collective bargaining
19 agreements ("CBAs").

20 18. This discovery permitted Class Counsel to fairly evaluate the strength of the case
21 and the risks associated with litigation.

22 **SETTLEMENT**

23 19. Defendant provides contract management and complete project
24 planning/management for large commercial/institutional projects, tenant improvements and
25 historic renovations.

26 20. Plaintiff was a member of the Carpenter's Local Union #405 and worked as a
27 Journeyman Carpenter from May 15, 2012 through July 17, 2016.

28 21. Since the filing of the first Motion for Preliminary Approval, one sub-class (The

1 Reimbursement Class) has been eliminated and the Class has been narrowed to included only
2 members of a Union with a collective bargaining agreement to which HATHAWAY DINWIDDIE
3 CONSTRUCTION COMPANY is a signatory, from September 22, 2015 to October 16, 2016.

4 22. The Proposed Class is made up of 513 union members, issued approximately
5 19,420 wage statements during the Class Period (September 22, 2015 to October 16, 2016).

6 23. Plaintiff is alleging that the wage statements did not include the name and address
7 of the employer, the inclusive pay dates, and only the last four digits of the social security number.

8 **CLASS NOTICE**

9 24. The Court approved the proposed Class Notice and directed the mailing of the
10 Notice by first-class mail to Class Members in accordance with the proposed implementation
11 schedule.

12 **CLASS COUNSEL'S KULLAR ANALYSIS**

13 25. All settlement discussions were made by experienced and informed counsel, who
14 believe that this settlement represents a favorable resolution for the Class.

15 26. As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive,
16 and arm's-length negotiations. The settlement negotiations have been, at all times, adversarial and
17 non-collusive, and no self-dealing or other type of misconduct by either side has taken place.

18 27. Second, the Parties engaged in discovery that permitted Class Counsel to fairly
19 evaluate the strength of the case and the risks associated with ongoing litigation. This included
20 the number of allegedly violating itemized wage statements at issue, all versions of itemized wage
21 statements issued to the Class, and numerous collective bargaining agreements.

22 28. This allowed Class Counsel to fairly evaluate the exposure and risks associated with
23 each claim alleged in the lawsuit.

24 29. Third, Class Counsel have significant experience in cases of this type, including
25 over 17 years prosecuting wage, hour, and working condition violations.

26 30. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the
27 best interests of the class and that the average recovery for each Class Member of \$722.41 is
28 substantial, given the risks inherent in litigation and the defenses asserted.

1 31. As all of the *Dunk* factors are satisfied, this settlement is entitled to a presumption
2 of fairness.

3 32. In this matter, the proposed settlement satisfies each of these factors and Class
4 Counsel has provided information exceeding the threshold required to provide this Court with "an
5 understanding of the amount that is in controversy and the realistic range of outcomes of the
6 litigation.". Class Counsel conducted extensive informal discovery before entering into meaningful
7 settlement negotiations in this matter as previously noted.

8 33. This discovery permitted Class Counsel to fairly evaluate the strength of the case
9 and the risks associated with ongoing litigation.

10 34. Class Counsel is experienced in handling wage and hour class actions and supports
11 this Settlement.

12 35. Plaintiff is alleging that during the relevant time period, Defendant failed to furnish
13 accurate and complete itemized wage statements by omitting the full name and address of the
14 employer, the start dates of the pay periods, and each employee's identification number.

15 36. Informal discovery produced by Defendant established that Defendant amended its
16 wage statements on October 26, 2016, and Plaintiff is satisfied that the revised wage statements
17 are in compliance.

18 37. Here, Plaintiff was very confident that he could establish liability. It is Plaintiffs
19 position that a simple review of the itemized wage statements at issue reveals that Defendant failed
20 to comply with the Labor Code.

21 38. However, there were certainly risk factors that Plaintiff was forced to consider.

22 39. First, Defendant took immediate corrective action. Counsel for Defendant
23 demonstrated that within a month of receiving notice of Plaintiff's allegations, Defendant took
24 immediate efforts to ensure that its wage statements were corrected.

25 40. Defendant argued that, at least as it relates to Labor Code section 226(a)(6), the
26 employee could have promptly and easily determined the period start date from the face of the
27 wage statement by doing simple math.

28 41. Defendant argued that the employees could easily determine the start date by

1 counting back one week.

2 42. Plaintiff disagrees, but this issue would have to be litigated and there is risk.

3 43. Third, Defendant argued that none of Defendant's employees suffered any harm,
4 injury, or actual damage as a result of the conduct that forms the basis for Plaintiffs allegations all
5 of which, Defendant argued, should mitigate in favor of reducing any penalties.

6 44. Finally, Defendant contends that the Class Members were covered by collective
7 bargaining agreements, and Defendant has argued that those Class Members are exempt from
8 California's wage statement requirements under the Labor Code.

9 45. The full value of the Section 226(a) claim amounted to approximately \$1,942,000.

10 46. This comes to approximately \$19.08 per wage statement for this claim from the Net
11 Settlement Amount and to \$33.92 per statement when calculated from the Total Settlement
12 Amount.

13 47. Class Counsel believes that this is well within the range of settlements approved
14 across the State for these types of claims.

15 48. Class Counsel believes that this is a fair and reasonable settlement when accounting
16 for the risks identified above and taking into consideration the amount usually apportioned to these
17 types of claims at the settlement stage.

18 49. Here, the aggrieved employees' PAGA claims are predicated on the wage statement
19 claim described above. The Class is compensated for these violations in the proposed settlement,
20 and thus any PAGA recovery for these same violations would be duplicative.

21 50. The significant uncertainty associated with PAGA claims increased the Plaintiffs'
22 and required a discount of those claims' settlement value.

23 51. Given that there was no independent basis for the PAGA allegations and any
24 penalties awarded would be duplicative, Plaintiff felt that a significant discount was warranted.

25 52. Class Counsel believes this could also lead the Court to use its discretion to award
26 a lesser amount.

27 53. This is especially true in light of the fact that Defendant promptly corrected the
28 deficiencies in the wage statements, provided evidence that the omission of the wage statement

1 information was a result of inadvertence.

2 54. There 19,420 itemized wage statements in the one-year PAGA Period.

3 55. As such, the full value of the PAGA penalties attributed to the itemized wage
4 statement claim is \$1,942,000 (\$100 per pay period).

5 56. The Parties have allocated approximately \$2.57 per wage statement.

6 57. The Parties felt that given the duplicative nature of the PAGA penalties, the fact
7 that the wage statement violation was promptly fixed, and the inadvertence evidence described
8 above, the decrease in penalty amount was appropriate.

9 58. Given the risks outlined above, the issues in this case were complex and the risk for
10 Plaintiff and the Class Members associated with this litigation was high.

11 59. If the Court did eventually certify this case, trial involving 500 Class Members
12 would require the retention of expensive expert witnesses, the accrual of extensive litigation costs,
13 and a significant time overlay by the parties.

14 60. Finally, given the complexity and unsettled nature of the issues in this case it is
15 likely that any outcome at trial would have resulted in a lengthy and costly appeal.

16 61. This case has not been certified, but Plaintiff believes there is strong evidence to
17 support certification. However, decertification is always a possibility. In attempting to certify a
18 class, the parties would need to conduct multiple depositions, and there is a risk for both sides as
19 to whether the depositions support class certification.

20 62. It was very difficult for the Parties to reach this Settlement. They arrived at it only
21 after hours of negotiation, aided by Mr. Rudy, and a careful evaluation of the records.

22 63. The full value of the claims was approximately \$3,884,000.00, but this the
23 maximum amount of penalties for each claim. Once Class Counsel was able to determine the
24 maximum damages, they decided on a fair and reasonable settlement for the Class considering the
25 risks outlined above.

26 64. The proposed plan of allocation compensates each participating Class Member on
27 a pro rata share of the Distribution Amount based on the number of wage statements they received
28 during the Class Period.

1 ATTORNEY COMPETENCE

2 65. Kingsley & Kingsley is experienced in prosecuting and defending employment
3 litigation, and since 2000 we have focused a substantial percentage of our practice on wage, hour,
4 and working condition violations. My firm is well versed in class action litigation and has
5 diligently and aggressively pursued this action. Kingsley & Kingsley currently serves as class
6 counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California.
7 Below is a representative sampling of wage and hour class cases handled by my firm:

- 8 a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January
9 2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount
10 of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.
- 11 b. *Daniel v. Network Management Corp.* (No. BC274004, L.A. Super. Ct.) In
12 September 2003, the court granted final approval of Settlement in the gross amount
13 of \$475,000 and the court approved the attorneys' fee request of 30%.
- 14 c. *Sciba v. Chicago Pizza* (04CC04231, O.C. Super. Ct.) In January 2005, the court
15 granted final approval of Settlement in the gross amount of \$900,000 and the court
16 approved the attorneys' fees request of 30%.
- 17 d. *Schnebly v. California Amplifier* (No. CIV226265, Vent. Super. Ct.) In February
18 2005, the court granted final approval of Settlement in the gross amount of
19 \$650,000 and the court approved attorneys' fees in the amount of 30%.
- 20 e. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In
21 December 2015, Honorable Rita Miller granted final approval of Settlement in the
22 gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.
- 23 f. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the
24 Honorable Conrad R. Aragon granted final approval of Settlement in the gross
25 amount of \$1,000,000 and the court granted attorneys' fees request of 30%.
- 26 g. *Chatman v. HVM LLC*, (No. BC343861, L.A. Super. Ct.) In March 2007, the
27 Honorable Elihu M. Berle granted final approval of Settlement in the gross amount
28 of \$957,000.00 and the court granted attorneys' fees request of 20.8%.

- 1 h. *King v. Closet World, Inc.*, (No. BC345834, L.A. Super. Ct.) In May 2007, the
2 Honorable William H. Mackey in May 2007 granted final approval of Settlement
3 in the gross amount of \$475,000.00 and the court granted attorneys' fees request of
4 30%.
- 5 i. *Gray v. Beverly Hills Steakhouse*, (No. BC357498, L.A. Super. Ct.) In December
6 2007, the Honorable John P. Shook granted final approval of Settlement in the gross
7 amount of \$750,000.00, and the court granted attorneys' fees request of 30%.
- 8 j. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March
9 2008, the Honorable Mary Thornton House granted final approval of Settlement in
10 the gross amount of \$1,675,000.00 and the court granted attorneys' fees request of
11 33 1/3%.
- 12 k. *Fowzer v. Northstar Moving Corporation*, (No. BC369338, L.A. Super. Ct.) In
13 September 2008, the Honorable Richard L. Fruin granted final approval of
14 Settlement in the gross amount of \$600,000.00 and the court granted attorneys' fees
15 request of 30%.
- 16 l. *Benitez v. GRA-GAR LLC*, (No. CIVSS709965, San Bern. Super. Ct.) In February
17 2009, the Honorable W. Robert Fawke granted final approval of Settlement in the
18 gross amount of \$250,000.00 and the court granted attorneys' fees request of 33
19 1/3%.
- 20 m. *Rollins v. Big Wangs, Inc.*, (No. BC393775, L.A. Super. Ct.) In October 2009, the
21 Honorable Malcolm H. Mackey granted final approval of Settlement in the gross
22 amount of \$195,000.00 and the court granted attorneys' fees request of 33 1/3%.
- 23 n. *Keene v. The Gap, Inc.*, (No. CGC-07-466574, S.F. Super. Ct.) In October 2009,
24 the Honorable John E. Munter granted final approval of Settlement in the gross
25 amount of \$475,000.00 and the court granted attorneys' fees request of 30%.
- 26 o. *Sevier v. Excalibur Well Service*, (No. S-1500-CV-265391-WDP, Kern Super. Ct.)
27 In May 2010, the Honorable William D. Palmer granted final approval of
28 Settlement in the gross amount of \$550,000.00 and the court granted attorneys' fees

1 request of 33 1/3%.

2 p. *Boske v. Toys "R" Us - Delaware, Inc.*, (No. BC378328, L.A. Super. Ct.) In
3 September 2009, the Honorable Anne I. Jones granted final approval of Settlement
4 in the gross amount of \$1,850,000.00 and the court granted attorneys' fees request
5 of approximately 25%.

6 q. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September
7 2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the
8 gross amount of \$2,000,000.00, and the court granted attorneys' fees request of
9 33.3%.

10 r. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In
11 March 2012, the Honorable James P. Kleinberg granted final approval of
12 Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys'
13 fees request of 33.3%.

14 s. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No.
15 BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund
16 granted final approval of Settlement in the gross amount of \$4,700,000.00, and the
17 court granted attorneys' fees request of 38%.

18 t. *Perry v. GSF Properties*, (No. 11CECG02434MWS, Fres. Super. Ct.) In October
19 2013, the Honorable Mark W. Snauffer granted final approval of Settlement in the
20 gross amount of \$700,000.00 and the court granted attorneys' fees request of
21 33.3%.

22 u. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January
23 2014, the Honorable William F. Highberger granted final approval of Settlement in
24 the gross amount of \$1,500,000.00 and the court granted attorneys' fees request of
25 33.33%.

26 v. *Randell v. Tuesday Morning, Inc.*, (No. BC403298, L.A. Super. Ct.) In October
27 2014, the Honorable Richard E. Rico granted final approval of Settlement in the
28 gross amount of \$899,000.00, and the court granted attorney's fees request of

1 33.33%.

2 w. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super.
3 Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement
4 in the gross amount of \$995,000.00, and the court granted attorney's fees request
5 of 33.33%.

6 x. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March 2016
7 after a class trial with a verdict in the class's favor, the Honorable Daniel P.
8 Maguire, awarded Kingsley & Kingsley and co-counsel \$996,232.72 in attorney's
9 fees.

10 y. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.) In
11 June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in the
12 gross amount of \$2,000,000.00, and the court granted attorney's fees request of
13 33.33%.

14 66. Kingsley & Kingsley has also been appointed class counsel on numerous wage and
15 hour class actions that have been approved for class certification, some of which include:

16 a. *Tran v. Progressive Gaming Group*, No. BC 316988, (L.A. Super. Ct., filed June
17 11, 2004) (court granted contested class certification and appointed Kingsley &
18 Kingsley class counsel).

19 b. *Devian v. Leegin Creative Leather Products, Inc.*, No. BC 325161, (L.A. Super.
20 Ct., filed November 2004) (court granted contested class certification and
21 appointed Kingsley & Kingsley class counsel).

22 c. *Munoz, et al. v. Giumarra Vineyards Corporation*, No. 1:09-cv-00703 AWI-JLT,
23 (E.D. Cal., filed November 9, 2005) (court granted contested class certification and
24 appointed Kingsley & Kingsley co-class counsel).

25 d. *Rojas v. Sunview Vineyards of California*, No. 1:09-cv-00705-AWI-JLT), (E.D.
26 Cal., filed November 9, 2005) (court granted contested class certification and
27 appointed Kingsley & Kingsley co-class counsel).

28 e. *Budrow v. Dave & Buster's of California, Inc.*, No. BC349060, (L.A. Super. Ct.,

1 filed March 15, 2006) (court granted contested class certification and appointed
2 Kingsley & Kingsley class counsel).

3 f. *Isaguirre v. Guess?, Inc.*, No. BC357631, (L.A. Super. Ct., filed August 25, 2006)
4 (court granted contested class certification and appointed Kingsley & Kingsley
5 class counsel).

6 g. *Agnew v. Black Tie Even Services, Inc.*, No. BC378413, (L.A. Super. Ct., filed
7 September 4, 2007) (court granted contested class certification and appointed
8 Kingsley & Kingsley class counsel).

9 h. *De Doroteo v. Servicon Systems, Inc.*, No. BC381938, (L.A. Super. Ct., filed
10 December 7, 2007) (court partially granted contested class certification and
11 appointed Kingsley & Kingsley class counsel).

12 i. *Anderson v. Total Renal Care, Inc.*, No. BC388335, (L.A. Super. Ct., filed April 1,
13 2008) (court partially granted contested class certification and appointed Kingsley
14 & Kingsley class counsel).

15 j. *Kane et al. v. Valley Slurry Seal*, No. CV08-2483 (Yolo Super. Ct., filed April 8,
16 2008) (court partially granted contested class certification and appointed Kingsley
17 & Kingsley class counsel).

18 k. *Hirschinger v. Blue Cross of California*, No. BC402739, (L.A. Super. Ct., filed
19 December 1, 2008) (court granted contested class certification and appointed
20 Kingsley & Kingsley class counsel).

21 l. *Randell v. Tuesday Morning, Inc.*, No. BC403298, (L.A. Super. Ct., filed December
22 5, 2008) (court granted contested class certification and appointed Kingsley &
23 Kingsley class counsel).

24 m. *Lewis v. Collabrus, Inc.*, No. 109CV-142927, (Santa Clara Super. Ct., filed April
25 23, 2009) (court granted contested class certification and appointed Kingsley &
26 Kingsley class counsel).

27 n. *Driscoll v. Staff Pro, Inc.*, No. BC417925, (L.A. Super. Ct., filed July 16, 2009)
28 (court granted contested class certification and appointed Kingsley & Kingsley

1 class counsel).

2 o. *Westbrook v. International Surfacing Systems*, No. RG10510015, (Alameda Super.
3 Ct., filed April 16, 2010) (court granted contested class certification and appointed
4 Kingsley & Kingsley co-class counsel).

5 p. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Ct., filed
6 December 19, 2012) (court granted contested class certification and appointed
7 Kingsley & Kingsley class counsel).

8 q. *Amaro et al. v Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB (E.D. Cal.,
9 filed February 3, 2014) (court granted contested class certification and appointed
10 Kingsley & Kingsley co-class counsel).

11 r. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct.,
12 filed January 27, 2015) (court granted contested class certification and appointed
13 Kingsley & Kingsley class counsel).

14 s. *Badillo v. SG Labor, Inc.*, Kern County Superior Court (BCV-15-100192-SPC),
15 Hon. Sidney Chapin certified class and appointed Kingsley & Kingsley as class
16 counsel on May 12, 2017.

17 t. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court (16 C 0214),
18 contested class certification approved in 2018.

19 u. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court
20 (BCV-16-102833), contested class certification approved in 2018.

21 **THE NAMED PLAINTIFF'S ENHANCEMENT SHOULD BE APPROVED**

22 67. The claims of the Representative Plaintiff, Luis Moreno, are typical of the Class
23 Members' claims.

24 68. Mr. Moreno is an adequate Representative Plaintiff because he has diligently,
25 adequately and fairly represented the Class and has not placed his interests above any member of
26 the Class.

27 69. Class Counsel requests an enhancement for Mr. Moreno's valiant effort and time
28 expended in this matter. The time spent by Mr. Moreno include identifying competent counsel,

1 providing information to Class Counsel regarding his relevant employment experiences, compiling
2 documents, conducting several telephone conferences with his attorneys, and reviewing settlement
3 documents.

4 70. Thus, in addition to the sums paid to Class Members, Class Counsel requests
5 approval of an enhancement payment to the Representative Plaintiff of \$5,000.00, to be paid from
6 the Total Settlement Amount. Class Counsel considers this to be a fair and reasonable
7 enhancement.

8 71. The enhancement takes into consideration the time, effort, and expenses incurred
9 by Mr. Moreno in coming forward to litigate this matter on behalf of all Class Members.

10 72. Additionally, the Representative Plaintiff was at risk for paying Defendant's legal
11 fees and costs in the event that Defendant prevailed at trial.

12 73. Plaintiff's Motion for Preliminary Approval of Class Action Settlement was
13 submitted to the LWDA's website on August 13, 2019 and Plaintiff's Motion for Final Approval
14 of Attorneys' Fees and Costs was submitted on December 10, 2019. Plaintiff's Motion for Final
15 Approval of Class Action Settlement will also be concurrently uploaded to the LWDA's website
16 on the date this Motion is filed. Please see the Proof of Service.

17 **EXHIBITS**

18 74. Attached hereto as Exhibit "A" is a true and correct copy of the fully-executed Fifth
19 Amended Joint Stipulation of Resolution that was preliminary approved by this Court on October
20 15, 2019.

21 75. Attached hereto as Exhibit "B" is a true and correct copy of the Order Granting
22 Final Approval of Class Action Settlement in *Sparks v. Diamond Foods, Inc.*, No. CGC 15-549147
23 (San Francisco Sup. Court, Nov. 25, 2015).

24 76. Attached hereto as Exhibit "C" is a true and correct copy of the Order Granting
25 Final Approval of Class Action Settlement in *Knox et al. v. Gerdau Ameristeel US Inc., et al.*, No.
26 FCS046622 (Solano Sup. Court, Feb. 7, 2017).

27 77. Attached hereto as Exhibit "D" is a true and correct copy of the Order Granting
28 Final Approval of Class Action Settlement in *Lopez v. Red Robin International, Inc.*, No. 30-2016-

1 00846001-CU-OE-CXC (Orange County Sup. Court, Apr. 13, 2016).

2 78. Attached hereto as Exhibit "E" is a true and correct copy of the Order Granting
3 Final Approval of Class Action Settlement in *Adams v. Sam's West, Inc.*, No. CIVDS1403987 (San
4 Bernardino County Sup. Court, Oct. 9, 2015).

5 79. Attached hereto as Exhibit "F" is a true and correct copy of the Order Granting
6 Final Approval of Class Action Settlement in *Figueroa v. San Jose Water*, No. 2015-1-CV-288483
7 (Santa Clara Sup. Court, October 28, 2016).

8 80. Attached hereto as Exhibit "G" is a true and correct copy of the Order Granting
9 Final Approval of Class Action Settlement in *Esparza v. Spectrolab, Inc.*, No. BC628479 (Los
10 Angeles Sup. Court, May 18, 2017).

11 I declare under penalty of perjury under the laws of the state of California that foregoing
12 is true and correct and if called as a witness I could and would competently testify to each of the
13 matters stated herein, and I state that these matters are based upon personal knowledge and/or
14 belief.

15 This declaration was executed this 28th day of January, 2020, in Encino, California.

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18 Liane Katzenstein Ly
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EXHIBIT "A"

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HATHAWAY DINWIDDIE CONSTRUCTION COMPANY

13
14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SAN FRANCISCO

17 LUIS MORENO, an individual, on behalf of)
and others similarly situated)

18 Plaintiff,)

19 vs.)

20 HATHAWAY DINWIDDIE)
CONSTRUCTION COMPANY; DOES 1)
21 thru 50, inclusive,)

22 Defendants.)

) CASE NO. CGC-16-554443
)
) **FIFTH AMENDED JOINT**
) **STIPULATION OF**
) **CLASS ACTION SETTLEMENT**
) **AND RELEASE**
)
)
) Complaint Filed: Sept. 22, 2016
) Second Amended Complaint Filed: Aug.
) 28, 2017
) Third Amended Complaint Filed: xx
) Judge: The Honorable Anne-Christine
) Massullo

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**FIFTH AMENDED STIPULATION RE: CLASS ACTION SETTLEMENT
AGREEMENT**

This FIFTH Amended Stipulation re: Class Action Settlement Agreement (the “Agreement”), is entered into between Plaintiff Luis Moreno (“Plaintiff Moreno” or “Representative Plaintiff”), individually, and on behalf of all others similarly situated (“Class Members” as defined below), on one hand, and Defendant Hathaway Dinwiddie Construction Company (“Defendant”) on the other hand (collectively the Representative Plaintiff, Class Members, and Defendant are referred to as the “Parties”), in the lawsuit entitled *Luis Moreno, et al. v. Hathaway Dinwiddie Construction, Co.* in the San Francisco County Superior Court, Case No. CGC-16-554443 (the “Lawsuit”). This Agreement resolves all claims that were asserted or could have been asserted against Defendant pertaining to the claims in the Lawsuit.

This Agreement was reached after a mediation before Mark S. Rudy, Esq., of Rudy, Exelrod, Zieff, & Lowe, LLP and arms-length settlement negotiations between counsel for the Parties. Before the mediation and negotiations, Defendant produced collective bargaining agreements, an Employee Handbook, information and employee payroll data pertaining to the putative Class Members sufficient to enable the Representative Plaintiff and his counsel, Eric B. Kingsley and Liane Katzenstein Ly with Kingsley and Kingsley, APC (“Class Counsel”), to rigorously evaluate the strengths and risks of the case and perform an analysis of the potential damages arising from the claims made in this case.

This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the “Released Claims” (as defined below) pertaining to the “Released Parties” (as defined below) upon and subject to the terms and conditions contained herein. This Agreement, which is contingent upon Final Court approval, contains the essential terms of the Parties’ agreement. The Representative Plaintiff and Class Counsel believe, and the Parties have agreed, that the settlement set forth in this Agreement confers substantial benefits upon the Class Members. Class Counsel has determined that the settlement set forth in this Agreement is fair and reasonable to the Class Members and is in their best interest. The Representative Plaintiff and Defendant have also settled the Representative Plaintiff’s

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1 individual claims, the terms of which are also memorialized in this Agreement. Pursuant to
2 California Rule of Court 3.770, judgment shall be entered in the Lawsuit upon Final approval
3 of this Agreement and proposed settlement by the Court.

4 **I. THE LAWSUIT**

5 On September 22, 2016, Plaintiff Luis Moreno filed the instant class action against
6 Defendant, asserting the following claims on behalf of himself and the Class Members: (1)
7 Failure to Reimburse Expenses pursuant to Labor Code section 2802; (2) Failure to Provide
8 Itemized Wage Statements pursuant to Labor Code section 226(a); and (3) a violation of
9 Business and Professions Code section 17200. Plaintiff Moreno asserted a claim for Failure to
10 Provide Employment and Payroll records under Labor Code sections 226 and 1198.5, on
11 behalf of himself.

12 In the Lawsuit, Plaintiff Moreno sought for himself and Class Members damages,
13 interest, penalties, restitution, declaratory relief, and attorneys' fees and costs.

14 On November 29, 2016, Plaintiff Moreno filed a First Amended Complaint ("FAC"),
15 adding a claim for penalties under the Private Attorney General Act of 2004 ("PAGA"), on
16 behalf of himself and Class members. The PAGA claim seeks penalties for the failure to
17 reimburse cell phone expenses under Labor Code section 2802 and the alleged inaccurate
18 wage statements under Labor Code section 226.7.

19 Defendant timely filed an answer to the FAC on February 16, 2017, asserting general
20 and affirmative defenses.

21 On April 12, 2017, this Court issued an Order that this case should be deemed complex
22 per rule 3.400 of the California Rules of Court.

23 On August 28, 2017, the Parties stipulated to the filing of a Second Amended
24 Complaint ("SAC"), wherein Plaintiff Moreno removed a typographical error referencing a
25 claim for violation of Labor Code section 203 in the FAC, which he was not asserting against
26 Defendant.

27 On September 25, 2017, the Parties executed a short-form Memorandum of
28 Understanding outlining the settlement terms agreed to through mediation.

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1 The Parties executed a long-form Settlement Agreement in November 2017 and the
2 Agreement has been amended several times. This Agreement is intended to reflect the terms
3 agreed to by the Parties, including those terms previously agreed to at mediation and it
4 supersedes all previous agreements.

5 Plaintiff filed a Third Amended Complaint (“TAC”) on April 24, 2019. The TAC is
6 the operative complaint.

7 **II. STATEMENT OF NO ADMISSION OR LIABILITY**

8 Defendant continues to deny any and all liability to the Representative Plaintiff and to
9 the Class Members, and denies that Defendant has violated any laws, including without
10 limitation, sections of the California Labor Code, the California Business & Professions Code,
11 and any IWC Wage Orders referred to above or raised in the Lawsuit. Defendant also denies
12 all charges of wrongdoing or liability against it arising out of the conduct, statements, acts or
13 omissions alleged or which could have been alleged in the Lawsuit. Defendant denies that
14 they or any of their respective officers, directors, members, employees, managers,
15 shareholders, attorneys or representatives have engaged in any Labor Code or Business &
16 Professions Code violation, or that they have engaged in any other unlawful conduct as alleged
17 in the Lawsuit. Defendant also denies, *inter alia*, that the Representative Plaintiff or the Class
18 Members were harmed by the conduct alleged in the Lawsuit. Defendant further denies that
19 the Lawsuit is properly maintainable as a collective action.

20 Defendant has nonetheless concluded that the Lawsuit could be protracted and
21 expensive, and that it is desirable that the Lawsuit be fully and finally settled in the manner
22 and upon the terms and conditions set forth in this Agreement in order to limit further expense
23 and inconvenience; to dispose of burdensome and potentially protracted litigation; and to
24 permit the operation of Defendant’s business without further expensive litigation and the
25 diversion of Defendant’s personnel with respect to the matters at issue in the Lawsuit.
26 Defendant has also taken into account the uncertainty and the risks inherent in any litigation,
27 especially in complex cases like this Lawsuit, and has, therefore, determined that it is desirable
28 and beneficial that the Lawsuit be settled in the manner and upon the terms and conditions set

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1 forth in this Agreement.

2 This Agreement does not constitute and shall not be deemed to be a finding or

3 determination by the Court, nor an admission by any party, regarding the merits, validity or

4 accuracy of any of the allegations, claims or defenses. This Agreement represents the

5 compromise of disputed claims that the Parties recognize would require protracted and costly

6 litigation to adjudicate. Defendant's entry into and consent to this Agreement are not and may

7 not be used by any person in any proceeding as an admission or evidence that Defendant

8 and/or their officers, employees, managers, and/or attorneys have on any occasion engaged in

9 illegal employment practices or any other unlawful conduct, such being expressly denied.

10 Neither this Agreement nor the settlement, nor any act performed or document executed

11 pursuant to or in furtherance of this Agreement or the settlement: (i) is or may be deemed to

12 be or may be used as an admission of, or evidence of, the validity of any Released Claim (as

13 defined below), or of any wrongdoing or liability of Defendant or any of the Released Parties

14 (as defined below), or of the propriety of the Class Counsel's maintaining this Lawsuit as a

15 collective action; or (ii) is or may be deemed to be or may be used as an admission of, or

16 evidence of, any fault or omission of Defendant in any civil, criminal or administrative

17 proceeding in any court, administrative agency or other tribunal, other than in such

18 proceedings as may be necessary to consummate or to enforce this Agreement, the settlement

19 or the Judgment, except that Defendant may file this Agreement or the Judgment in any action

20 that may be brought against it in order to support a defense or counter claim based on

21 principles of *res judicata*, *collateral estoppel*, release, judgment bar or reduction or any other

22 theory of claim preclusion or similar defense or counterclaim. The Parties themselves agree

23 not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other

24 judicial, arbitral, administrative, investigative or other forum or proceeding, as purported

25 evidence of any violation of any state, or local law, statute, ordinance, regulation, rule or

26 executive order, or any obligation or duty at law or in equity, or for any other purpose.

27 Notwithstanding the foregoing, this Agreement may be used in any proceeding before the

28 Court that has as its purpose the interpretation, implementation, approval, or enforcement of

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1 this Agreement or any orders or judgments of the Court entered in connection with the
2 Lawsuit.

3 None of the documents produced or exchanged in discovery or during the Lawsuit are
4 intended to constitute, an admission by Defendant of any violation of any state, or local law,
5 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in
6 equity.

7 **III. STIPULATION OF CLASS CERTIFICATION UNDER CALIFORNIA
8 CODE OF CIVIL PROCEDURE SECTION 382**

9 Pursuant to California’s Code of Civil Procedure (“CCP”) § 382, Defendant hereby
10 consents, solely for purposes of this Agreement and proposed settlement, to the conditional
11 certification of a Section 382 Class Action based on the State Law Claims consisting of no
12 more than 520 individuals, (known as “Class Members”):

13 “All persons who are employed or have been employed as an employee by
14 HATHAWAY DINWIDDIE CONSTRUCTION COMPANY, in the State of
15 California who are or were members of a Union with a collective bargaining
16 agreement to which HATHAWAY DINWIDDIE CONSTRUCTION COMPANY
17 is a signatory, from September 22, 2015 to October 16, 2016. (“Proposed Class”)

18 **IV. SETTLEMENT AMOUNT**

19 For and in consideration of the mutual covenants contained herein, the Parties agree,
20 subject to approval by the Court, that Defendant shall, subject to the conditions and releases
21 set forth herein, pay the amount of Six Hundred and Fifty Eight Thousand Six Hundred and
22 Forty Two Dollars and fifty cents (\$658,642.50) (the “Total Settlement Amount”), on an “all-
23 in,” non-reversionary basis to settle the claims asserted in the Lawsuit. The Total Settlement
24 Amount will be used to pay: (1) all class member payments; (2) class representative
25 enhancement; (3) attorneys’ fees and costs to be paid to Class Counsel for the Representative
26 Plaintiff and Class Members; (4) the PAGA payment; and (5) payment to a third party Claims
27 Administrator for Administration Costs (defined below). Counsel for the Parties will jointly
28 select a suitable, experienced “Claims Administrator,” soliciting bids from at least two
different claims administrators. All costs associated with notice to the Class Members
regarding the settlement, all costs associated with administering the claims procedure, and all

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1 costs associated with distribution of the Individual Settlement Amount to the Representative
2 Plaintiff (collectively, "Administration Costs") shall be paid from the Total Settlement
3 Amount.

4 The entire amount paid to each Class Member will be treated as penalties on which
5 there will be no tax withholding and for which an IRS Form 1099 (marked "Other Income")
6 shall be issued if the payment is above the minimum threshold required for the issuance of a
7 Form 1099.

8 Defendant shall deliver the Total Settlement Amount to the third-party Claims
9 Administrator no later than fifteen (15) calendar days after the Court's entry of Final
10 Approval, unless any timely objections have been filed with the Court; in which case, the
11 Total Settlement Amount shall be due to the third-party Claims Administrator no later than
12 thirty (30) business day after the settlement becomes final.

13 Defendant will not receive reversion of any part of the Total Settlement Amount, unless
14 the settlement is not finally approved by the Court with terms materially identical to the terms
15 articulated herein. In the event the settlement is not given Final Approval by the Court,
16 Defendant will bear only the already-accrued cost of the third party Claims Administrator.

17 Upon payment of the amounts set forth above, Defendant will have no further monetary
18 obligation hereunder to the Representative Plaintiff or the other members of the Settlement
19 Class, or to Class Counsel.

20 **V. FEES AND COSTS OF COUNSEL FOR THE REPRESENTATIVE**
21 **PLAINTIFF AND CLASS MEMBERS**

22 Defendant will not oppose Class Counsel's request for fees, which are not to exceed
23 one-third (33%) of the Total Settlement Amount, or \$219,547.50. Defendant also will not
24 oppose Class Counsel's requests for reimbursement of costs, up to \$15,000 (separate and apart
25 from attorney's fees). These amounts will include all attorneys' fees, costs, and expenses
26 directly or indirectly related to the Lawsuit, which includes all such fees, costs and expenses
27 incurred to date, as well as all such fees, costs and expenses which may hereafter be incurred
28 in documenting the Agreement and the proposed settlement herein, monitoring and securing

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1 the Court’s Preliminary and Final approval of the Agreement and the proposed settlement,
2 obtaining entry of judgment in the Lawsuit, and handling any future work concerning the
3 Agreement, the proposed settlement, or entry of judgment in the Lawsuit.

4 The Parties agree that the Court’s approval or denial of any request for attorney’s fees
5 and costs are not material conditions to this Agreement, and are to be considered by the Court
6 separately from the relief to the Class Members, which shall be based on reasonableness,
7 adequacy, and good faith in settlement. If the Court does not approve attorneys’ fees, costs
8 and expenses, all other terms of this Agreement will remain in full force and effect. Any order
9 or proceeding relating to the application by Class Counsel for an award for fees and costs shall
10 not operate to terminate or cancel this Agreement. To the extent the Court awards less than
11 the amount of attorney’s fees and costs requested by Class Counsel, the remaining amount will
12 be redistributed amongst participating Class Members as part of the Distribution Amount
13 based on the formula described in paragraph IX below.

14 **VI. CLASS REPRESENTATIVE PLAINTIFF’S ENHANCEMENT & RELEASE**

15 Defendant will not oppose Class Counsel’s request for an enhancement to the
16 Representative Plaintiff Moreno, not to exceed Five Thousand Dollars (\$5,000), to be paid out
17 of the Total Settlement Amount. The Parties agree that the Court’s approval or denial of any
18 request for a class representative enhancement is not a material condition to this Agreement,
19 and is to be considered by the Court separately from the relief to the Class Members, which
20 shall be based on reasonableness, adequacy, and good faith in settlement. Any order or
21 proceeding relating to the application by the Class Counsel of an award for a class
22 representative enhancement shall not operate to terminate or cancel this Agreement. To the
23 extent the Court awards less than the amount of the requested for a class representative
24 enhancement amount, the remaining amount will be redistributed amongst participating Class
25 Members on a *pro rata* basis. The Representative Plaintiff will also be entitled to his
26 settlement allocation, as described in Section VIII, *infra*.

27 Upon Final Approval, for and in consideration of the mutual promises, terms and
28 agreements between the Representative Plaintiff, on the one hand, and Defendant, on the other

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1 hand, set forth herein, the sufficiency of which consideration is hereby acknowledged, the
2 Representative Plaintiff, on behalf of himself, his heirs, spouses, executors, administrators,
3 attorneys, agents and assigns, hereby fully, finally and forever generally release and discharge
4 Defendant, and their respective parents, subsidiaries, affiliates, officers, directors, managers,
5 employees, shareholders, insurers and attorneys (collectively, the "Released Parties") from any
6 and all claims, demands, causes of action, suits, liabilities, assessments, judgments, obligations
7 of any kind, whether known or unknown, including without limitation those claims or causes
8 of action that they asserted or could have asserted in the Lawsuit, based on the facts,
9 circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or
10 failures to act alleged in Plaintiff's Third Amended Complaint, regardless of whether such
11 claims arise under state and/or local law, statute, ordinance, regulation, common law, or other
12 source of law ("the Released Claims"). The Released Claims specifically include, but are not
13 limited to: (1) failure to provide itemized wage statements pursuant to Labor Code section
14 226(a); (2) Penalties Pursuant to Labor Code § 2699(f), and (3) failure to provide employment
15 and payroll records under Labor Code sections 226 and 1198.5 and any other known and
16 unknown claims that were or could have been asserted through the date of Preliminary
17 Approval, as well as any damages, restitution, disgorgement, civil penalties, statutory
18 penalties, taxes, interest or attorneys' fees resulting therefrom.

19 The Representative Plaintiff agrees he has received all wages, bonuses, severance, and
20 benefits owed to him by Defendant except as may be owed to him as a Class Member. The
21 Representative Plaintiff further agrees the consideration set forth herein constitutes the entire
22 consideration provided to him under this Agreement and that he shall not seek any further
23 compensation or consideration from the Released Parties, or any of them, or from any other
24 person and/or entity for any other claimed damages, costs or attorneys' fees in connection with
25 the claims encompassed and released by this Agreement. The entire amount paid to the
26 Representative Plaintiff will be treated as penalties and expense reimbursement on which there
27 will be no tax withholding and for which an IRS Form 1099 (marked "Other Income") shall be
28 issued if the payment is above the minimum threshold required for the issuance of a Form

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1099.

The Representative Plaintiff expressly acknowledges and agrees that these individual releases contained in this Agreement include a waiver of all rights under Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS/HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Accordingly, if the facts relating in any manner to this Lawsuit and proposed settlement are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained herein shall be effective as to all unknown claims.

VII. CLASS MEMBERS' RELEASE

Upon Final Approval, for and in consideration of the mutual promises, terms and conditions by and between the Class Members (except for those who submit timely valid requests for exclusion) and Defendant set forth herein, the sufficiency of which consideration is expressly acknowledged, the Class Members, on behalf of themselves, their heirs, spouses, executors, administrators, attorneys, agents and assigns, do hereby fully, finally and forever release and discharge the Released Parties from any and all claims, charges, complaints, liens, demands, causes of action, obligations, damages, and liabilities that each participating Class Member had, now has, or may hereafter claim to have for those claims or causes of action that were asserted in or could have been asserted in the Lawsuit, as alleged in Plaintiff's Third Amended Complaint, regardless of whether such claims arise under state and/or local law, statute, ordinance, regulation, common law, or other source of law. The Released Claims specifically include, but are not limited to: (1) failure to provide itemized wage statements pursuant to Labor Code section 226(a); (2) Penalties Pursuant to Labor Code § 2699(f) for failure to provide itemized wage statements, that were or could have been asserted during the Class Period.

Payments to Class Members will be allocated as follows: two-thirds as penalties and

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1 one-third interest. The entire amount paid to each Class Member will be treated as penalties
2 and interest on which there will be no tax withholding and for which an IRS Form 1099
3 (marked "Other Income") shall be issued if the payment is above the minimum threshold
4 required for the issuance of a Form 1099. In the event that a court or agency orders tax
5 withholdings each Class Member and Defendant will pay his/her/its respective shares.

6 **VIII. THE PAGA PAYMENT**

7 Plaintiff Moreno and Class Counsel shall submit the Joint Stipulation of Class Action
8 Settlement and Release to the Labor and Workforce Development Agency ("LWDA") at the
9 time it is submitted to the Court for preliminary approval. The Parties agree that \$50,000 of
10 the Total Settlement Amount shall be allocated as settlement of the claims under PAGA.
11 Seventy-five percent (75%) of that total PAGA payment, or \$37,500, shall be paid to the
12 LWDA pursuant to the provisions of the PAGA. The remaining twenty-five percent (25%) of
13 the total PAGA payment, or \$12,500, shall be distributed to the Settlement Classes as part of
14 the Total Settlement Amount. If the Court reduces the LWDA payment, the un-awarded
15 amount shall be added into the Distribution Settlement Amount to be available to the Class
16 Members for distribution.

17 **IX. SETTLEMENT PAYMENTS AND ALLOCATION**

18 Subject to Court approval of attorneys' fees and costs, Representative Plaintiff
19 Enhancements, and the PAGA payment, the \$658,642.50 Total Settlement Amount will be
20 apportioned as follows: \$219,547.50 for Class Counsel's attorneys' fees; \$15,000 for Class
21 Counsel's costs; \$12,750.00 for Administration Costs; \$5,000 for Representative Plaintiff
22 Enhancements; \$50,000 as the PAGA payment to the LWDA (with \$12,500 distributed to the
23 Class); and \$368,845.00 to be distributed to Class Members (the "Distribution Amount"). The
24 proposed plan for the Distribution Amount amongst the Class Members is as follows: (1) each
25 Class Member shall receive a pro rata share of the Distribution Amount based on the number
26 of wage statements they received during the Class Period; and (2) the wage statements for
27 each Class Member in the Class will be derived from the hire and termination dates and
28 payroll data contained in the records kept by Defendant in the ordinary course of business

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1 during the respective Class Period. As noted above, any unapproved attorneys' fees, costs, the
2 PAGA Payment, or Representative Plaintiff Enhancements will be added to the Distribution
3 Amount. This is the proposed plan for the Distribution Amount. The Parties agree to
4 distribute the Distribution Amount in a different manner deemed fair and appropriate by the
5 Court. The entire amount paid to each Class Member will be treated as penalties and expense
6 reimbursement on which there will be no tax withholding and for which an IRS Form 1099
7 (marked "Other Income") shall be issued if the payment is above the minimum threshold
8 required for the issuance of a Form 1099. In the event that a court or agency orders tax
9 withholdings each Class Member and Defendant will pay his/her/its respective shares.

10 **X. NOTICE TO CLASS MEMBERS REGARDING SETTLEMENT**

11 Within ten (10) days of the Court's Preliminary Approval of the Agreement and
12 proposed settlement, Defendant will provide the Claims Administrator and Class Counsel a list
13 of all the Class Members belonging to the proposed Class, their social security numbers, their
14 last known mailing addresses, and their last known telephone number. Defendant shall
15 indicate which of the Class Members already received reimbursement payments during their
16 employment with Defendant. The Claims Administrator shall sign an agreement with
17 Defendant to keep this information strictly confidential in a password protected database and
18 shall not disclose it to anyone. Within seven (7) days of receipt of this information, the Claims
19 Administrator shall determine the settlement allocation for each Class Member utilizing the
20 formulas provided in this Agreement.

21 The Claims Administrator shall provide the Notice to all Class Members via first-class
22 regular U.S. mail. The Notice will be in both English and Spanish. Prior to mailing, the
23 Claims Administrator will perform a search based on the National Change of Address
24 Database to update and correct for any known or identifiable address changes. For each
25 Notice Packet returned as undeliverable, without a forwarding address, the Claims
26 Administrator will perform a "skiptrace" search to obtain an updated address. For each Notice
27 Packet returned with a forwarding address, the Claims Administrator re-mail the Notice Packet
28 to that forwarding address within two (2) days of receipt. Included in this mailing will be an

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1 envelope addressed to the Claims Administrator, for use by the Class Member in the event
2 they want to object or be excluded from the settlement. The Settlement Notice and envelope
3 shall be, collectively, the "Settlement Packet." The Proposed Settlement Packet is attached
4 hereto as Exhibit A. The Settlement Notice will advise Class Members of their minimum
5 settlement allocations and opportunity to object to or opt-out of the settlement. Additionally,
6 the Claims Administrator will set up a website where the Notice Packet, Settlement
7 Agreement, all papers filed with the final and preliminary approval, the operative complaint,
8 and all orders regarding approval are available. The Notice will prominently display the URL.

9 Class Members may object to the Agreement. Class Members who wish to object in
10 writing must do so within sixty (60) calendar days after the Settlement Notice is first mailed.
11 However, in the case of a Settlement Notice returned because of an incorrect address or a new
12 forwarding address and re-mailed to an updated address, the Class Member shall have thirty
13 (30) calendar days after the first re-mailing or sixty (60) calendar days after Notice was first
14 mailed, whichever is later, to object. Written objections must be sent to the Claims
15 Administrator at the address stated in the Settlement Notice and postmarked on or before the
16 date specified in the Preliminary Approval Order. Class Members wishing to object may also
17 appear at the Final Approval hearing, even if they have not filed a written objection.

18 Class members may exclude themselves, or opt out, of the Agreement. Class Members
19 must do so in writing within sixty (60) calendar days after the Settlement Notice is first
20 mailed. However, in the case of a Settlement Notice returned because of an incorrect address
21 or a new forwarding address and re-mailed to an updated address, the Class Member shall
22 have thirty (30) calendar days after the first re-mailing or sixty (60) calendar days after Notice
23 was first mailed, whichever is later, to object. Information on how to opt out of the settlement
24 shall also be made available by the Claims Administrator.

25 The allocation of any Class Members who opt out will be reallocated *pro rata* to the
26 participating Class Members. Any checks that remain uncashed after 180 days will be voided.
27 Any uncashed amounts in excess of \$7,350.00, shall be redistributed amongst the Class
28 Members that cashed their checks on a pro rata basis based on the number of itemized wage

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1 statements each Class Member that cashed their check received during the Class Period. The
2 costs associated with this second distribution shall be deducted from the uncashed amounts
3 prior to the second distribution and shall not exceed \$2,750.00. If the uncashed amounts do
4 not exceed \$7,350.00, these amounts shall be allocated pursuant Section 384 of the Code of
5 Civil Procedure, subject to Court approval. The Parties have selected the Homeless Advocacy
6 Project as the cy pres designee. As per Section 384 of the Code of Civil Procedure, in addition
7 to any uncashed funds remaining after the second distribution, Defendant shall pay any interest
8 that has accrued on the uncashed funds.

9 Only Class Members who do not opt out of the proposed settlement shall be eligible to
10 receive a settlement payment pursuant to the terms and conditions of this Agreement. Upon
11 the Final Approval of this Agreement and proposed settlement by the Court, all Class
12 Members who do not opt out of this settlement shall be bound by all of the provisions of this
13 Agreement and Orders issued pursuant thereto.

14 The Claims Administrator shall have the sole responsibility for mailing the Settlement
15 Packet to all Class Members; receiving and processing all claims; determining eligibility for
16 payment; and promptly furnishing to counsel for the Parties copies of any written or electronic
17 communications received from Class Members. If any Class Member raises a dispute based
18 on the dates of employment used to calculate their specific settlement allocations, the Claims
19 Administrator will promptly inform the Parties. Defendant will then cooperate with Class
20 Counsel to resolve the dispute; however, Defendant's payroll records will be presumptively
21 determinative in any dispute over entitlement to payment or over membership in the Class.

22 **XI. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

23 The amounts paid under this Agreement to any Class Member do not represent a
24 modification of any previously credited hours of service under any employee benefit plan,
25 policy or bonus program sponsored by Defendant. Such amounts will not form the basis for
26 additional contributions to, benefits under, or any other monetary entitlement under, benefit
27 plans (self-insured or not) sponsored by Defendant, policies or bonus programs. Any
28 payments made under the terms of this Agreement and proposed settlement shall not be

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1 applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any
2 other form of compensation for the purposes of Defendant’s benefit plan, policy or bonus
3 program. Defendant retains the right to modify the language of their benefit plans, policies
4 and bonus programs to effect this intent and to make clear that any amounts paid pursuant to
5 this Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any similar
6 measuring term as defined by applicable plans, policies and bonus programs for purpose of
7 eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or
8 benefits are not required by this Agreement.

9 **XII. PUBLICITY**

10 The Representative Plaintiff and Class Counsel agree that they have not and will not,
11 disclose or publish this Agreement or proposed settlement (with the exception of a website in
12 which Class Counsel will set up solely for the purposes of providing settlement information to
13 Class Members) to the press, reporters, or general media at any time. As used herein, “press,
14 reporters, or general media” shall refer to and include newspapers, periodicals, magazines,
15 online publications, and television and radio stations and programs, and any representative of
16 the foregoing. Nothing herein shall prevent Class Counsel from communicating with the
17 Representative Plaintiff and Class Members, or from making truthful statements to judicial
18 authorities, regarding the terms of this Agreement the proposed settlement, or the status of the
19 Lawsuit.

20 **XIII. COURT APPROVAL**

21 This Agreement is contingent upon Final Approval by the Court and entry of judgment
22 pursuant to California Rule of Court 3.770 in the Lawsuit. The Parties agree to take all steps
23 as may be reasonably necessary to secure both Preliminary and Final Approval of the
24 Agreement and proposed settlement, to the extent not inconsistent with the terms of this
25 Agreement, and will not take any action adverse to each other in obtaining Court approval,
26 and, if necessary, appellate approval, of the settlement in all respects. Class Counsel agrees to
27 prepare the Preliminary Approval papers, subject to Defendant’s review and approval, within
28 forty-five (45) days of the Parties executing this Agreement, and Class Counsel will request a

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San Francisco, CA 94111

1 hearing date as soon as possible (subject to the Court’s calendar). If Defendant does not
2 respond with approval or corrections to the Preliminary Approval papers within seven (7) days
3 of receipt of the papers, Class Counsel can file the Preliminary Approval papers without
4 permission from Defendant. Class Counsel also agrees to prepare the Final Approval papers,
5 with the intention of obtaining Final Approval no more than ninety (90) days after the Court
6 provides Preliminary Approval (subject to the Court’s calendar). The Parties expressly agree
7 that they will not file any objection (as opposed to request for correction) to the terms of this
8 Agreement or assist or encourage any person or entity to file any such objection.

9 If there is no Final Approval by the Court of this Agreement, then Defendant shall have
10 no obligation to make any monetary payments to the Representative Plaintiff, the Class
11 Members or Class Counsel under this Agreement, and the Lawsuit shall return to the *status*
12 *quo* that existed before the proposed settlement was reached. In addition, under those
13 circumstances, Defendant shall be entitled to recover any sums it has paid into the Total
14 Settlement Amount account, minus any costs reasonably incurred by the Claims Administrator
15 up until the date at which it is notified that the Agreement will not be approved.

16 **XIX. MISCELLANEOUS PROVISIONS**

17 **A. Stay of Litigation.**

18 The Representative Plaintiff and Defendant agree to the stay of all discovery in the
19 Lawsuit, pending Final Approval of the Agreement and proposed settlement by the Court.

20 **B. Interpretation of the Agreement.**

21 This Agreement constitutes the entire agreement between the Representative Plaintiff
22 and Defendant. Except as expressly provided herein, this Agreement has not been executed in
23 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
24 written representations or terms shall modify, vary or contradict its terms. In entering into this
25 Agreement, the parties agree that this Agreement is to be construed according to its terms and
26 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted
27 and enforced under the laws of the State of California, both in its procedural and substantive
28 aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating

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1 to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the
2 Superior Court of California in and for the County of San Francisco, and the Representative
3 Plaintiff and Defendant hereby consent to the personal jurisdiction of the Court over them
4 solely in connection therewith. The Representative Plaintiff and Defendant participated in the
5 negotiation and drafting of this Agreement and had available to them the advice and assistance
6 of independent counsel. As such, neither the Representative Plaintiff nor Defendant may
7 claim that any ambiguity in this Agreement should be construed against the other.

8 The terms and conditions of this Agreement constitute the exclusive and final
9 understanding and expression of all agreements between the Representative Plaintiff and
10 Defendant with respect to the resolution of the Lawsuit. The Agreement may be modified
11 only by a writing signed by the original signatories and approved by the Court.

12 **C. Counterparts.**

13 The Agreement may be executed in one or more actual or non-original counterparts, all
14 of which will be considered one and the same instrument and all of which will be considered
15 duplicate originals.

16 **D. Authority.**

17 Each individual signing below warrants that he or she has the authority to execute this
18 Agreement on behalf of the party for whom or which that individual signs. Class Counsel is
19 expressly authorized by the Representative Plaintiff to take all appropriate actions required or
20 permitted to be taken pursuant to this Agreement to effectuate its terms.

21 **E. No Third Party Beneficiaries.**

22 The Representative Plaintiff, Class Members, Class Counsel and counsel for Defendant
23 are direct beneficiaries of this Agreement, but there are no third party beneficiaries.

24 **F. Force Majeure.**

25 The failure of any party to perform any of its obligations hereunder shall not subject
26 such party to any liability or remedy for damages, or otherwise, where such failure is
27 occasioned in whole or in part by acts of God, fires, accidents, earthquakes, other natural
28 disasters, explosions, floods, wars, interruptions or delays in transportation, power outages,

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1 labor disputes or shortages, shortages of material or supplies, governmental laws, restrictions,
2 rules or regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any
3 other similar or different circumstances or causes beyond the reasonable control of such party.

4 **G. Deadlines Falling on Weekends or Holidays.**

5 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
6 or legal holiday, that deadline shall be continued until the following business day.

7 **H. Severability.**

8 In the event that any one or more of the provisions contained in this Agreement shall
9 for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
10 illegality, or unenforceability shall in no way effect any other provision if Defendant and Class
11 Counsel, on behalf of the Parties, mutually elect in writing to proceed as if such invalid,
12 illegal, or unenforceable provision had never been included in this Agreement.

13 IT IS SO AGREED.

14
15 Dated: June 21, 2019

16
17 By: Luis G Moreno
18 Plaintiff Luis Moreno on behalf of himself and the
19 Proposed Class

20 Dated: June , 2019

KINGSLEY & KINGSLEY, APC

21
22 By: [Signature]
23 ERIC B. KINGSLEY
24 LIANE KATZENSTEIN LY
25 Attorneys for Plaintiff Luis Moreno and
26 The Proposed Class

27 Dated: June , 2019

HATHAWAY DINWIDDIE CONSTRUCTION
28 COMPANY

Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

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Dated: June 21, 2019

By: 
PAUL DOMMES
Vice-President/Chief Financial Officer

GORDON & REES SCULLY MANSUKHANI,
LLP


By: 
MOLLIE M. BURKS
HIEU T. WILLIAMS
Attorneys for Defendant
HATHAWAY DINWIDDIE CONSTRUCTION
COMPANY

EXHIBIT "B"

FILE

San Francisco County Superior Court



JUL 19 2017

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

PATRICIA SPARKS,
Plaintiffs,

vs.

DIAMOND FOODS, INC., ET AL.,
Defendants.

Case No. CGC – 15 – 549147

**ORDER GRANTING FINAL
APPROVAL OF ATTORNEYS' FEES,
COSTS, AND SERVICE AWARD TO
NAMED PLAINTIFF**

The Motion for Final Approval of Class Action Settlement came before this Court, on July 5, 2017. After oral argument was heard, Plaintiff submitted supplemental papers in support of Final Approval on July 14, 2017.

1. The Court hereby confirms Kingsley & Kingsley, APC and United Employees Law Group as Class Counsel in the Action.

2. The fees sought by Class Counsel are awarded in the sum of \$180,400.00. This is based on an evaluation (A) of a reasonable percentage of the common fund created, which in this case I find to be 27.5% , and (B) a cross check with the lodestar which I calculate as follows (1) a 1.0 multiplier for all work done after the settlement was reached and the risks of the case had vanished, and (2) a multiplier of about 1.65 for the pre-settlement work. I consider a 1.5 lodestar multiplier to better account for various factors such as risk, complexity of the action, and such, but I have given more weight here to the common fund approach because it is wise to encourage

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early settlement and not implicitly suggest that plaintiffs' counsel must work more hours to justify reasonable compensation.


3. The unopposed application of Class Counsel for litigation cost to Class Counsel is hereby granted in the sum of \$10,115.56.

4. The unopposed application of Class Counsel for claims administration fees to Rust Consulting, Inc. is hereby granted in the sum of \$20,000.00.

5. The application of Class Counsel for a Service Award is hereby granted, in the sum of \$2500.00.

6. The Parties shall bear their own costs and attorneys' fees, except as otherwise provided by the Settlement Agreement and this Order.

Dated: July 19, 2017


Curtis E.A. Karnow
Judge of The Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, DANIAL LEMIRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On JUL 19 2017, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: JUL 19 2017

T. Michael Yuen, Clerk

By: 

DANIAL LEMIRE, Deputy Clerk

EXHIBIT "C"

By Fax

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ENDORSED FILED
Clark of the Superior Court

MAY 19 2017
D. Callison

By _____
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO

FLAVIUS KNOX and ANTOINE GENTLE,
individuals, on behalf of the State of
California, as a private attorney general,

PLAINTIFF,

v.

GERDAU AMERISTEEL US INC.;
GERDAU REINFORCING STEEL and
DOES 1 through 5, inclusive,

DEFENDANTS.

Case No. FCS046622

~~PROPOSED~~ ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTERING
JUDGMENT THEREON (CRC 3.769(h))

Assigned For All Purposes To:
Judge: Hon. Scott Kays
Dept.: 16

[Complaint Filed: February 16, 2016]

EXHIBIT

1 Plaintiff's motions for an order finally approving the Stipulation and Settlement of
2 Class Action Claims ("Stipulation") and for an award of attorneys' fees, costs, service payment to
3 the Class Representative, and claims administration expenses, duly came on for hearing on April
4 27, 2017, before the Honorable Scott Kays, Judge of the above entitled Court. Kelsey Szamet of
5 the law firm of Kingsley & Kingsley, APC appeared on behalf of Plaintiff Antoine Gentle
6 ("Named Plaintiff"). Ashley Hirano of the law firm of Sheppard, Mullin, Richter & Hampton LLP
7 appeared on behalf of Defendant Gerdau Reinforcing Steel ("Defendant").

8
9 I.

10 FINDINGS

11 Based on the oral and written argument and evidence presented in connection with
12 the motions, the Court makes the following findings:

13 1. All terms used herein shall have the same meaning as defined in the
14 Stipulation.

15 2. This Court has jurisdiction over the subject matter of this litigation pending
16 before the Honorable Scott Kays in Department 16 of the California Superior Court for the County
17 of Solano ("Superior Court"), Case No. FCS046622, *Antoine Gentle v. Gerdau Reinforcing Steel*
18 and over all Parties to this litigation, including all Plaintiffs.

19 **Preliminary Approval of the Settlement**

20 3. On February 14, 2017, the Court granted preliminary approval of a class-
21 wide settlement. At this same time the Court approved certification of a provisional settlement
22 class ("Plaintiffs") for settlement purposes only.

23 **Notice to Plaintiffs**

24 4. In compliance with the Preliminary Approval Order, class notice was
25 mailed by first class mail to 1,009 Plaintiffs at their last known addresses on or about March 3,
26 2017. Mailing of the Class Notice to their last known addresses was the best notice practicable
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1 under the circumstances and was reasonably calculated to communicate actual notice of the
2 litigation and the proposed settlement to Plaintiffs.

3 5. The deadline for opting out or objecting was April 18, 2017. There was an
4 adequate interval between notice and deadline to permit Plaintiffs to choose what to do and act on
5 their decision. Zero (0) Plaintiffs opted out, leaving 1,009 Class Members. There were zero (0)
6 objections to the Settlement.

7 **Fairness Of Settlement**

8 6. The Stipulation is entitled to a presumption of fairness. (*Dunk v. Ford*
9 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

10 a. The settlement was reached through arm's-length bargaining
11 between the parties during a mediation before Michael Dickstein, a respected mediator of wage
12 and hour class actions. There has been no collusion between the parties in reaching the proposed
13 settlement.

14 b. Plaintiffs' investigation and discovery have been more than
15 sufficient to allow the Court and counsel to act intelligently.

16 c. Counsel for both parties are experienced in similar employment
17 class action litigation. All counsel recommended approval of the Stipulation.

18 d. As of the date of the filing of Plaintiff's Motions, Zero (0)
19 objections were received and zero (0) requests for exclusion were received.

20 7. The consideration to be given to the Class Members under the terms of the
21 Stipulation is fair, reasonable and adequate considering the strengths and weaknesses of the claims
22 asserted in this action and is fair, reasonable and adequate compensation for the settlement of this
23 action and release of Class Members' claims, given the uncertainties and risks of the litigation and
24 the delays which would ensue from continued prosecution of the action.

25 8. The proposed Stipulation is approved as fair, adequate and reasonable and
26 in the best interests of the Class Members.

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1 **Attorneys' Fees**

2 9. The Stipulation provides for an award of up to \$158,333.33 to Class
3 Counsel as attorneys' fees in this action, subject to the Court's approval. The Stipulation also
4 provides for an award of up to \$15,000.00 for litigation costs. Class Counsel requests an award of
5 \$11,560.52 as reimbursement for litigation costs, and \$158,333.33 for attorneys' fees.

6 10. An award of \$158,333.33 for attorneys' fees and \$11,560.52 for litigation
7 costs is reasonable, in light of the contingent nature of Class Counsel's fee, the hours worked by
8 Class Counsel, and the results achieved by Class Counsel. The requested attorneys' fee award
9 represents one-third (1/3) of the Common Fund, which is reasonable and within the benchmark
10 range for fee awards in common fund cases.

11 **Service Award**

12 11. The Stipulation provides for a service award of up to \$7,500.00 for Named
13 Plaintiff Antoine Gentle, subject to the Court's discretion. The amount of the payment is
14 reasonable in light of the risks and burdens undertaken by a named plaintiff in class action
15 litigation.

16 **Claims Administration Expenses**

17 12. The Stipulation provides for claims administration expenses in an amount
18 not to exceed \$17,500.00. The Court awards \$17,500.00 to the Claims Administrator, which is
19 reasonable in light of the work it has performed and will perform through the conclusion of the
20 administration process.

21 **II.**

22 **ORDERS**

23 Based on the foregoing findings, and good cause appearing, IT IS HEREBY
24 ORDERED, ADJUDGED AND DECREED:

25 1. The Class is certified for the purposes of settlement only. The Settlement
26 Class is hereby defined to include:

1 All individuals employed by Defendant in the State of California at
2 any time during the Class Period February 16, 2015, and February
3 20, 2016, but excluding all claims of those individuals for pay
4 periods released in the class action settlement entitled *Valdez v.*
5 *Pacific Coast Steel*, San Diego Superior Court Case No. 37-2012-
6 0087017-CU-OE-CTL

7 2. All persons who meet the foregoing definition are members of the Class,
8 except for those individuals who filed a timely request for exclusion from the class.

9 3. The Stipulation is hereby approved as fair, reasonable, adequate, and in the
10 best interest of the stipulated Class.

11 4. Class Counsel are awarded attorneys' fees in the amount of \$158,333.33
12 and litigation costs in the amount of \$11,560.52. Class Counsel shall not seek or obtain any other
13 compensation or reimbursement from Defendant, Plaintiff or members of the Class.

14 5. The payment of a service award in the amount of \$7,500.00 for Named
15 Plaintiff is approved.

16 6. The payment of \$17,500.00 to the Claims Administrator for claims
17 administration services is approved.

18 7. Pursuant to California Rules of Court, rule 3.769(h), the Court hereby enters
19 Judgment in this Action. This Final Approval Order and Judgment binds each Class Member and
20 operates as a full release and discharge of the Released Claims. This Final Judgment shall have a
21 res judicata effect and bar all Class Members and Named Plaintiff from bringing any action
22 asserting "Released Claims" as that term is defined in the Stipulation.

23 8. The Stipulation and Settlement are not an admission by Gerdau or any of
24 the other Released Parties, nor is this Final Approval Order and Judgment a finding, of the validity
25 of any claims in the Actions or of any wrongdoing by Gerdau or any of the other Released Parties.
26 Neither this Final Approval Order, the Final Judgment, the Stipulation, nor any document referred
27 to herein, nor any action taken to carry out the Stipulation is, may be construed as, or may be used
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1 as an admission by or against Gerdau or any of the other Released Parties of any fault,
2 wrongdoing or liability whatsoever. The entering into or carrying out of the Stipulation, and any
3 negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be
4 evidence of, an admission or concession with regard to the denials or defenses by Gerdau or any of
5 the other Released Parties and shall not be offered in evidence in any action or proceeding against
6 Gerdau or any of the Released Parties in any court, administrative agency or other tribunal for any
7 purpose whatsoever other than to enforce the provisions of this Final Approval Order, the Final
8 Judgment, the Stipulation, or any related agreement or release. Notwithstanding these restrictions,
9 any of the Released Parties may file in the Action or in any other proceeding this Final Approval
10 Order and Judgment, the Stipulation, or any other papers and records on file in the Action as
11 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other
12 theory of claim or issue preclusion or similar defense as to the Released Claims.

13 9. Notice of entry of this Final Approval Order and Judgment shall be given to
14 Class Counsel on behalf of Named Plaintiff and all Class Members. It shall not be necessary to
15 send notice of entry of this Final Approval Order or the ensuing Final Judgment to individual
16 Class Members. The time for any appeal shall run from service of Notice of entry of the Final
17 Approval Order and Final Judgment, by Class Counsel on Defendant.

18 10. After entry of this Final Approval Order and Judgment, the Court shall
19 retain jurisdiction to construe, interpret, implement, and enforce the Stipulation, to hear and
20 resolve any contested challenge to a claim for settlement benefits, and to supervise and adjudicate
21 any dispute arising from or in connection with the distribution of settlement benefits.

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11. If the Stipulation does not become final and effective in accordance with the terms of the Stipulation, resulting in the return and/or retention of the Settlement Fund to Gerdau consistent with the terms of the Stipulation, then this Final Approval Order and Judgment, and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

Dated: MAY 19 2017

Michael Mattice

FOR: BY ORDER OF THE COURT
HON. SCOTT KAYS
SUPERIOR COURT OF CALIFORNIA
Per CCP § 635

EXHIBIT "D"

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

11/02/2017 at 02:44:00 Pst

Clerk of the Superior Court
By Olga Lopez, Deputy Clerk

1 **KINGSLEY & KINGSLEY, APC**
ERIC B. KINGSLEY, Esq., Cal. Bar No. 185123
2 eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq., Cal. Bar No. 260264
3 kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
4 Encino, CA 91436
Telephone: (818) 990-8300
5 Fax: (818) 990-2903

6 **LAW OFFICES OF SAHAG MAJARIAN II**
Sahag Majarian II, Esq. SBN-146621
7 18250 Ventura Blvd.
Tarzana, CA 91356
8 (818) 609-0807, Fax (818) 609-0892

9 Attorneys for Plaintiff and all aggrieved employees

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**

12 REYMUNDO LOPEZ, an individual, on
13 behalf of himself and others similarly situated

14 **PLAINTIFF,**

15 v.

16 RED ROBIN INTERNATIONAL, INC.
17 WHICH WILL DO BUSINESS IN
CALIFORNIA AS RED ROBIN BURGER
18 AND SPIRITS EMPORIUMS; and DOES 1
thru 50, inclusive,

19 **DEFENDANTS.**

CASE NO. 30-2016-00846001-CU-OE-CXC

[Case Assigned for All Purposes to Hon.
Glenda Sanders in Dept. CX101]

**REVISED ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: September 15, 2017
Time: 1:30 p.m.
Dept.: CX101

Trial Date: None Scheduled
Complaint Filed: April 13, 2016
FAC Filed: November 3, 2016

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EXHIBIT

1 WHEREAS, Plaintiff REYMUNDO LOPEZ has applied to the Court for an order finally
2 approving the settlement of the above-captioned matter in the Superior Court for the State of
3 California, County of Orange (the "Court") pursuant to the Parties' Stipulation of Resolution
4 ("Settlement" or "Settlement Agreement") attached as Exhibit "1" to the Declaration of Kelsey
5 M. Szamet filed concurrently herewith.

6 WHEREAS the Settlement Agreement sets forth the terms and conditions for the
7 proposed Settlement and for entry of a final judgment as against Defendant and any Released
8 Parties thereon. The Court having read and considered Plaintiff's Motion for Preliminary
9 Approval, Plaintiff's Motion for Final Approval of Settlement, Plaintiff's Motion for Approval
10 of Attorneys' Fees and Costs, and the supporting documents and exhibits annexed thereto
11 including the Declarations of Eric B. Kingsley, now finds:

12 **NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED**
13 **AND JUDGMENT IS HEREBY ENTERED THAT:**

14 1. The terms of the Settlement Agreement are fair, adequate, and reasonable as to
15 the settling Parties, including the Participating Class Members, and is hereby finally approved in
16 all respects. The Parties are hereby directed to perform the terms of the Settlement as described
17 in the Settlement Agreement and herein.

18 2. Distribution of the Notice Packet has been completed in conformity with the
19 Court's Preliminary Approval Order issued on May 2, 2017, including individual notice to the
20 members of the Settlement Class who could be identified through reasonable effort, and the best
21 notice practicable under the circumstances. The Notice provided due and adequate notice of the
22 proceedings and of the proposed Settlement to all persons entitled to such notice, and the Notice
23 fully satisfied the requirements of due process. All members of the Settlement Class and all
24 Released Claims are covered by and included within the Settlement, this Order, and the Final
25 Judgment.

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1 3. The Settlement Class is hereby made final. The Settlement Class is defined as:

2 “All persons employed by Defendant as hourly, non-exempt employees in the
3 State of California from March 7, 2015 to September 28, 2016 that were paid
4 overtime or double time on a paystub from March 7, 2015 to September 28, 2016.
 (the “Settlement Class”).

5 4. The Settlement Agreement provides, and the Court hereby orders, that Defendant
6 shall create a Gross Settlement Fund in the amount of Four Hundred Ninety-Seven Thousand and
7 Five Hundred dollars and zero cents (\$497,500.00). The Net Settlement Amount shall be
8 determined according to the terms of the Settlement Agreement.

9 5. The Settlement Administrator will calculate the Individual Settlement Payment(s)
10 according to the terms of the Settlement Agreement.

11 6. Pursuant to the Settlement Agreement, upon entry of this Final Approval Order
12 and Judgment, each Settlement Class Member shall fully release and discharge the Released
13 Parties pursuant to the following release: Upon the Date of Final Approval, Named Plaintiff and
14 all Participating Class Members (and their assigns, heirs, successors and personal
15 representatives) will release any and all claims and causes of action, known or unknown,
16 contingent or accrued, against Defendant, Defendant’s parents, subsidiaries, affiliates, their
17 insurers, employees, attorneys and all officers, directors, shareholders and agents thereof, arising
18 out of the facts and claims asserted in the Litigation, including the alleged violation of Labor
19 Code §§226, 226.3, and 558; penalties and fees under the Private Attorneys General Act; and any
20 other applicable provisions of state or federal law, including the applicable IWC wage order.

21 7. Named Plaintiff has executed a general release of all claims including a waiver of
22 rights under Code of Civil Procedure section 1542.

23 8. The Court hereby finds the payments and allocation provided for in the Settlement
24 Agreement are fair and reasonable in light of all the circumstances. The Court, therefore, orders
25 the calculations and the payments to be made and administered in accordance with the terms of
26 the Settlement Agreement.

27 9. All Participating Class Members are bound by the instant Final Order, Final
28 Judgment and by the Settlement as described in the Settlement Agreement. Each Participating

1 Class Member is hereby deemed conclusively to have released Defendant and any Released
2 Parties, as defined in the Settlement Agreement. Each Participating Class Member is barred and
3 permanently enjoined from commencing or prosecuting any of the claims, either directly,
4 representatively, or in any other capacity, that are released by the Settlement Agreement.

5 10. The Court hereby confirms Eric B. Kingsley of Kingsley & Kingsley, APC as
6 Class Counsel in the Action.

7 11. The Court hereby finds the unopposed application of Class Counsel for a costs
8 and attorneys' fees award provided for under the proposed Settlement to be fair and reasonable in
9 light of all the circumstances and is hereby granted. Of the Gross Settlement Fund, the Court
10 approves a 25% fee award in the amount of \$124,375 paid to Kingsley & Kingsley, APC and
11 \$6,542.24 for litigation costs.

12 12. The unopposed application of Class Counsel for a Service Award is hereby
13 granted. Of the gross settlement amount, a \$5,000.00 Service Award shall be allocated to
14 Named Plaintiff Reymundo Lopez. In making this award, the Court has considered the time and
15 effort Plaintiff expended in prosecution of this action, the benefit conferred on the Class, and all
16 other relevant factors.

17 13. The unopposed application of Class Counsel for claims administration fees to
18 Rust Consulting, Inc. is hereby granted. Of the gross settlement amount, \$35,000.00 shall be
19 paid for settlement administration fees.

20 14. The Court approves a payment pursuant to Labor Code §2699, et seq. to the
21 California Labor Workforce Development Agency in the amount of \$22,500 in accordance with
22 the terms of the Settlement Agreement.

23 15. Pursuant to California Rule of Court Rule 3.769(h) and C.C.P. §664.4, the Court
24 shall retain jurisdiction of this action to enforce the terms of the judgment.

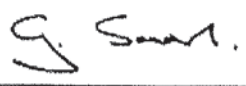
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16. The Court shall conduct a non-appearance compliance hearing on March 20, 2018 at 1:30 pm in Dept. CX 101. If Plaintiff files a timely compliance declaration that satisfies the Court, the compliance hearing will come off calendar. If Plaintiff needs more time to provide proof of compliance with the terms of the Settlement, Plaintiff shall apply to the Court to continue the March 20, 2018 compliance hearing.

17.

Date Judge Signed: November 02, 2017



JUDGE OF THE SUPERIOR COURT
HONORABLE GLENDA SANDERS

EXHIBIT "E"

2016 WL 7655313 (Cal.Super.) (Trial Order)
Superior Court of California.
San Bernardino County

Raymond ADAMS, on behalf of himself and all others similarly
situated, and on behalf of the general public, Plaintiff,

v.

SAM'S WEST, INC., an Arkansas corporation, and Does 1 through 10 inclusive, Defendants.

No. CIVDS 1403987.
May 12, 2016.

Order Granting Motion for Final Approval of Class Action Settlement and Judgment

Eric A. Grover, Esq. (SBN 136080), Keller Grover LLP, 1965 Market Street, San Francisco, California 94103, Telephone: (415) 543-1305, Facsimile: (415) 543-7861, [eagrover@kellergrover.com](mailto: eagrover@kellergrover.com); Kenneth S. Gaines, Esq. (SBN 049045), Daniel F. Gaines, Esq. (SBN 251488), Alex P. Katořsky, Esq. (SBN 202754), Gaines & Gaines, APLC, 27200 Agoura Road, Suite 101, Calabasas, California 91301, Telephone: (818) 703-8985, Facsimile: (818) 703-8984, [daniel@gaineslawfirm.com](mailto: daniel@gaineslawfirm.com), [alex@gaineslawfirm.com](mailto: alex@gaineslawfirm.com), for plaintiff Raymond Adams and the Class.

Steven C. Gonzalez, Esq., Caleb H. Liang, Esq., for defendant, Sam's West, Inc.

Bryan F. Foster, Judge.

CLASS ACTION

*1 Time: 8:30 a.m.

Dept. S22

Complaint Filed: April 1, 2014

FAC Filed: April 25, 2016

This matter having come before the Court on May 12, 2016 for final approval of the Joint Stipulation for Settlement of Class Action ("Stipulation") entered into by Plaintiff Raymond Adams ("Plaintiff") and Defendant Sam's West, Inc. ("Defendant"), due and adequate notice having been given to the Class Members as required by the Preliminary Approval Order, and the Court, having considered all the papers filed and proceedings herein, having received no objections to the settlement, having determined that the settlement is fair, adequate and reasonable, and otherwise being fully informed, **IT IS HEREBY ORDERED:**

1. All capitalized terms used herein shall have the same meanings as given them in the Stipulation.
2. The Court has jurisdiction over the subject matter of this proceeding and over all parties to this proceeding, including all Class Members.

3. The Court hereby unconditionally certifies the following class for settlement purposes only: "All associates who worked at a Sam's Club in California between February 13, 2013 and August 31, 2015, and were issued one or more wage statements."

4. Distribution of notice of the settlement directed to the Class Members as set forth in the Stipulation has been completed in conformity with the Preliminary Approval Order. The class notice program set forth in the Stipulation and completed in conformity with the Preliminary Approval Order provided due and adequate notice of the nature of the case, the proposed settlement, and the other matters set forth in the Preliminary Approval Order. The notice program provided adequate and appropriate notice to persons entitled to notice of the settlement and therefore fully satisfied the requirements of due process. Except for the one Class Member who timely opted out of the settlement (Gloria Estrada Ramirez), all Class Members and all Released Claims are covered by and included within the settlement and within this Order Granting Final Approval of Class Action Settlement and Judgment (the "Order and Judgment").

5. No Class Member has objected to the settlement or the proposed award of attorneys' fees and costs, administration costs or the enhancement payment, and based on the record as a whole, the Court hereby affirms the findings in the Preliminary Approval Order and finds the settlement is fair and reasonable and that Plaintiff has satisfied the standards and applicable requirements for final approval of this settlement under California law.

6. The Court hereby approves the settlement as set forth in the Stipulation and finds that the settlement is, in all respects, fair, adequate, and reasonable, and directs the parties to effectuate the settlement according to the terms set forth in the Stipulation and this Order and Judgment. The Court finds that the settlement has been reached as a result of intensive, serious and non-collusive arm's-length negotiations. In granting final approval of the Stipulation, the Court considered the nature of the claims, the amounts and kinds of benefits paid in settlement, the allocation of settlement proceeds among the Class Members, and the fact that a settlement represents a compromise of the parties' respective positions rather than the result of a finding of liability at trial. Additionally, the Court finds that the terms of the Stipulation have no obvious deficiencies and do not improperly grant preferential treatment to any individual Class Member.

*2 7. The Court hereby finds the \$1,725,000 Maximum Settlement Amount provided for in the Stipulation to be fair, reasonable, and adequate. Defendant shall deposit into the Qualified Settlement Fund the amount of the Maximum Settlement Amount necessary to make all payments required by the Stipulation and this Order and Judgment in accordance with the terms of the Stipulation.

8. The Court hereby confirms Keller Grover LLP and Gaines & Gaines, APLC as Class Counsel.

9. Pursuant to the terms of the Stipulation and the authorities, evidence, and argument set forth in Class Counsel's application, an award of attorneys' fees and costs in the total amount of \$568,500 as final payment for and complete satisfaction of any and all attorneys' fees and costs incurred by and/or owed to Class Counsel is hereby granted. The Court finds that Class Counsel's request falls within the range of reasonableness and that the result achieved justifies the award. The payment of fees and costs to Class Counsel shall be made in accordance with the terms of the Stipulation.

10. The Court hereby confirms its prior approval of Raymond Adams as Settlement Class Representative and orders payment to Plaintiff Adams in the sum of \$10,000 for his service as Settlement Class Representatives. The payment of the enhancement award shall be made in accordance with the terms of the Stipulation.

11. The Court approves the payment of \$31,000 to the Claims Administrator, ILYM Group, Inc., for the costs of administering the settlement. The payment authorized by this paragraph shall be made in accordance with the terms of the Stipulation.

12. The Court approves the settlement of the California Labor Code § 2698, et seq. claim alleged in the Lawsuit and the allocation of \$100,000.00 to settle that claim. Of that amount, and in accordance with California Labor Code § 2699(i), 75%, or \$75,000, shall be paid to the State of California Labor and Workforce Development Agency ("LWDA") in accordance with the terms of the Stipulation. The remaining 25%, or \$25,000, shall be distributed on a pro-rata basis to all Class Members who submitted timely and valid Claim Forms in accordance with the terms of the Stipulation.

13. The Court approves the settlement of the Released Claims set forth in the Stipulation. In consideration of the terms of the Stipulation, and for other good and valuable consideration, each Class Member other than the one opt-out shall, by operation of this Final Order and Judgment, have fully, finally, and forever, released, relinquished and discharged all Released Claims as set forth in the Stipulation, shall have covenanted not to sue Defendant with respect to the Released Claims and shall be permanently barred and enjoined from instituting, commencing, prosecuting or asserting any such Released Claims against Defendant.

14. The Court approves as timely all otherwise valid Claim Forms postmarked by May 12, 2016. Payments to the Class Members who submitted timely and valid Claim Forms shall be calculated and made in accordance with the terms of the Stipulation.

15. Settlement checks mailed out to Class Members who submitted timely and valid Claim Forms shall be valid for 90 days from the date of issuance. At the end of the 90-day period, the Claims Administrator will distribute funds remaining from uncashed checks to any later discovered Class Members or Class Members who submit late but otherwise valid claims based on the settlement formula set forth in the Stipulation. If there are no such recipients or if any funds remain after that further distribution, the Claims Administrator shall pay the remaining amount to the LWDA.

*3 16. If the settlement does not become final and effective in accordance with the terms of the Stipulation, this Order and Judgment, and all orders entered in connection herewith, shall be vacated and shall have no further force or effect.

17. Pursuant to Rule 3.769(h), California Rules of Court, the Court hereby enters Judgment in this action; provided, however, that, without affecting the finality of the settlement or the Judgment entered herein, this Court shall retain exclusive and continuing jurisdiction over the Lawsuit and the Parties, including all Class Members, for purposes of enforcing and interpreting this Order and Judgment, the settlement, and the claims process established therein.

IT IS SO ORDERED.

Dated: 5-12, 2016

<<signature>>

JUDGE OF THE SUPERIOR COURT

BRYAN F. FOSTER

Respectfully submitted,

Dated: May 2, 2016

KELLER GROVER LLP

By: <<signature>>

Eric A. Grover, Esq.

Attorneys for Plaintiff and Class Counsel

Dated: May 2, 2016

LTJ ATTORNEYS LLP

By: <<signature>>

Steven C. Gonzalez, Esq.

Caleb H. Liang, Esq.

Attorney for Defendant

Sam's West, Inc.

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2015 WL 12912219 (Cal.Super.) (Trial Motion, Memorandum and Affidavit)
Superior Court of California.
San Bernardino County

Raymond ADAMS, on behalf of himself and all others similarly
situated, and on behalf of the general public, Plaintiff,

v.

SAM'S WEST, INC., an Arkansas corporation, and DOES 1 through 10 inclusive, Defendants.

No. CIVDS 1403987.
October 9, 2015.

**Notice of Motion and Motion for Preliminary Approval of Class Action
Settlement; Memorandum of Points and Authorities In Support Thereof**

Eric A. Grover, Esq. (SBN 136080), eagrover@kellergrover.com, Keller Grover LLP, 1965 Market Street, San Francisco, California 94103, Telephone: (415) 543-1305, Facsimile: (415) 543-7861, Kenneth S. Gaines, Esq. (SBN 049045), Daniel F. Gaines, Esq. (SBN 251488) daniel@gainlawfirm.com, Alex P. Katofsky, Esq. (SBN 202754), alex@gainlawfirm.com, Gaines & Gaines, APLC, 27200 Agoura Road, Suite 101, Calabasas, California 91301, Telephone: (818) 703-8985, Facsimile: (818) 703-8984, Raymond Adams, for plaintiff.

Judge: Hon. Bryan F. Foster.

CLASS ACTION

Date: November 20, 2015

Time: 8:30 a.m.

Dept. S35J

Complaint Filed: April 1, 2014

PLEASE TAKE NOTICE THAT on November 20, 2015, at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department S35J of the above-entitled Court, located at 237 W. Third Street, San Bernardino, California, Plaintiff Raymond Adams ("Plaintiff" or "Named Plaintiff") will and hereby does move for an Order (1) granting preliminary approval of the proposed class action settlement, (2) provisionally certifying the proposed Settlement Class, (3) appointing ILYM Group, Inc. as Claims Administrator, (4) approving and directing distribution of the class notice packet in the approved envelope to the Settlement Class, (5) appointing Raymond Adams as Class Representative, (6) appointing Keller Grover LLP and Gaines & Gaines, APLC as Class Counsel, and (7) setting a final fairness and approval hearing.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a class action. The basis for this Motion is that the proposed settlement is fair, adequate, and reasonable and in the best interests of the settlement class as a whole, and that the procedures proposed are adequate to ensure the opportunity of the proposed settlement Class Members to participate in, opt out of, or object to the settlement.

WESTLAW

This Motion will be based on the Memorandum of Points and Authorities set forth herein, the Joint Stipulation for Settlement of Class Action, the Declarations of Eric A. Grover and Daniel F. Gaines, and such evidence or oral argument as may be presented at the hearing, and on the complete records and file herein.

Dated: October 8, 2015

Respectfully submitted,

KELLER GROVER LLP

By: <<signature>>

ERIC A. GROVER

Attorneys for Plaintiff and Proposed Class Counsel

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PROCEDURAL BACKGROUND AND SUMMARY OF CLAIMS 2

III. SUMMARY OF SETTLEMENT TERMS 4

 A. The Settlement Class 4

 B. Notice procedure and claims process 4

 C. Benefits to the Settlement Class 5

 D. Benefit to the State 6

 E. Scope of release 7

 F. Class Representative's enhancement 7

 G. Attorneys' fees and costs 7

 H. Administration costs 8

 I. Other settlement terms 9

IV. LEGAL ANALYSIS 9

 A. Preliminary approval of a class settlement involves a two-step approval process 9

 B. Procedures for settlement before class certification 10

 1. The proposed class should be certified solely for settlement purposes 11

 a) The proposed Settlement Class is ascertainable and too numerous to make joinder practicable 11

 b) Questions of law and fact common to the Settlement Class Members predominate 12

 c) The proposed Class Representative's claims are typical of the Class' claims 12

 d) The proposed Class Representative will adequately represent the C lass 13

 C. The Settlement is fair and reasonable and not the result of fraud or collusion 13

 D. Plaintiff requests that the Court approve the PAGA portion of the settlement 15

V. CONCLUSION 16

TABLE OF AUTHORITIES

State Cases

Classen v. Weller (1983) 145 Cal.App.3d 27 12

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794 2, 10, 11

Green v. Obledo (1981) 29 Cal.3d 126 9

Nordstrom Com'n Cases (2010) 186 Cal.App.4th 576 15

Reyes v. Board of Supervisors (1987) 196 Cal.App.3d 1263 11

Yasquez v. Superior Court (1971) 4 Cal.3d 800 9

Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224 10

Federal Cases

Amchem Products, Inc. v. Windsor (1987) 521 U.S. 591 11

Hammon v. Barry (D.D.C. 1990) 752 F. Supp. 1087 13

In re Armored Car Antitrust Litig. (N.D. Ga. 1979) 472 F. Supp. 1357 13

<u>In re Baldwin-United Corp.</u> (S.D.N.Y. 1984) 105 F.R.D. 475	10
<u>In re Chicken Antitrust Litig.</u> (N.D. Ga. 1980) 560 F. Supp. 957	13
<u>In re Paine Webber Ltd. P'ships Litig.</u> (S.D.N.Y. 1997) 171 F.R.D. 104	14
<u>Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.</u> (7th Cir. 1987) 834 F.2d 677	13
<u>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</u> (C.D. Cal. 2004) 221 F.R.D. 523	13
<u>Priddy v. Edelman</u> (6th Cir. 1989) 883 F.2d 438	13
<u>Schulken v. Washington Mut. Bank</u> (N.D. Cal. Apr. 2, 2013) No. 09-cv-02708-LHK, 2013 WL 1345716	13
<u>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n</u> (E.D. Pa. 1978) 79 F.R.D. 571	13
<u>Steinberg v. Carey</u> (S.D.N.Y. 1979) 470 F. Supp. 471	13
<u>Statutes</u>	
California Private Attorney General Act <u>Labor Code §§ 2698, et seq.</u> ("PAGA")	1
<u>Labor Code § 226</u>	passim
<u>Labor Code § 2699</u>	passim
<u>Labor Code § 2699.3</u>	2
<u>Rules</u>	
<u>California Rule of Court Rule 3.76</u> 2	9, 10
<u>Federal Rules of Civil Procedure Rule 23</u>	9
<u>Treatises</u>	
<u>Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 11.26, § 11.47</u> (4th ed. 2002)	10, 11, 14
<u>The Manual for Complex Litigation</u> (Third) § 30.41	9

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Raymond Adams ("Plaintiff" or "Named Plaintiff") brought this representative action against Defendant Sam's West, Inc. ("Defendant" or "Sam's West") on behalf of himself and all similarly situated associates who worked at Sam's Club stores in California and were issued one or more wage statements between February 13, 2013 and August 31, 2015 ("Class Members"). Plaintiff alleges that Defendant issued wage statements that did not include the name and address of the legal entity that employed Sam's Club associates in California in violation of Labor Code § 226(a)(8) and seeks penalties under the California Private Attorney General Act, Labor Code §§ 2698, et seq. ("PAGA").¹ With the Court's permission, and in accordance with the Parties' settlement agreement, Plaintiff intends to file a First Amended Complaint adding a class action claim seeking Labor Code § 226(c) penalties based on the same alleged wage statement practices.²

¹ See Declaration of Eric A. Grover submitted herewith, Ex. B (original Complaint). Hereinafter, all "Ex." references are to the exhibits attached to the Grover Declaration unless otherwise noted.

² Ex. A (Joint Stipulation for Settlement of Class Action ("Stipulation")) at ¶ 2. Exhibit 4 attached thereto, which is the proposed First Amended Complaint).

Plaintiff now seeks the Court's preliminary approval of a proposed class settlement in this action, all of the terms of which are set forth in the Stipulation.³ The Stipulation was reached after Plaintiff initiated discovery and Defendant provided the information necessary for Plaintiff to engage in settlement discussions.⁴ To reach a settlement, the Parties engaged in arm's-length settlement negotiations through their experienced counsel. The negotiations included a formal mediation session with an experienced mediator and several subsequent months of negotiations concerning the settlement terms.⁵

³ Ex. A.

⁴ Grover Decl. at ¶¶ 9-10.

⁵ *Id.*

The settlement is an excellent result for the settlement Class Members. The settlement will result in significant financial benefit to those Class Members who participate, on terms that Plaintiff believes to be fair, reasonable and adequate.⁶ Defendant is required to make a payment of up to \$1,725,000, the Maximum Settlement Amount, to settle the matter.⁷

⁶ See *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801-02.

⁷ Ex. A at ¶ 7.

For the foregoing reasons, Plaintiff respectfully requests that the Court (a) grant preliminary approval of the Stipulation, including the PAGA portion of the settlement, (b) conditionally grant certification of the proposed settlement class solely for the purposes of settlement, (c) approve the appointment of ILYM Group, Inc. as the Claims Administrator, (d) authorize the mailing of the proposed class action notice packet; (e) schedule a final fairness and approval hearing, (f) appoint Raymond Adams as Class Representative, and (g) appoint Keller Grover LLP and Gaines & Gaines, APLC as Class Counsel.

II. PROCEDURAL BACKGROUND AND SUMMARY OF CLAIMS

On April 1, 2014, after exhausting the administrative requirements set forth in Labor Code § 2699.3(a), Plaintiff filed this PAGA representative action on behalf of himself and all “aggrieved” employees⁸ in California to whom Defendant allegedly issued wage statements that did not include the name and address of the legal entity that employed Plaintiff and all California Sam’s Club employees in violation of Labor Code § 226(a)(8).⁹

⁸ Labor Code § 2699(c) defines aggrieved employees as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

⁹ See Ex. B; see also Grover Decl. at ¶ 6.

As part of the settlement discussed below, the Parties agreed that, with the Court’s approval, Plaintiff will file the proposed First Amended Complaint.¹⁰ The proposed First Amended Complaint will add a Labor Code § 226(e) penalty cause of action based on the same alleged conduct. The Parties agreed that Defendant may file an answer to the First Amended Complaint but no other responsive pleading. If Defendant does not file an answer to the First Amended Complaint, its answer to the original complaint herein will be deemed to stand as its answer to the First Amended Complaint. Defendant also has agreed that the First Amended Complaint is being filed for purposes of this settlement and it will not remove the Lawsuit to federal court based on the filing of the First Amended Complaint.¹¹

¹⁰ Ex. A (see Stipulation at ¶ 2, Exhibit 4); Grover Decl. at ¶ 7.

¹¹ Ex. A at ¶ 2; Grover Decl. at ¶ 7.

Defendant has vigorously denied all of the allegations in their entirety. To date, no class has been certified and no court has made any findings that Defendant engaged in any wrongdoing or in any wrongful conduct or otherwise acted improperly or in violation of any state law, rule or regulation, with respect to the issues presented in the litigation.¹²

¹² Grover Decl. at ¶ 8.

Plaintiff served formal discovery, propounding numerous written discovery requests, including interrogatories, form interrogatories and requests for production of documents. Defendant responded to those requests and the Parties engaged in substantive meet and confer communications regarding certain discovery disputes. After the discovery was propounded, the Parties began discussing settlement and agreed to participate in formal mediation. On January 19, 2015, the Parties participated in a lengthy mediation session with respected mediator Hon. John L. Wagner (Ret.). The case did not settle at mediation. Thereafter, counsel for the Parties met in person on March 17, 2015, at which time they reached agreement on the broad parameters of a settlement. Between March 17, 2015 and the end of September 2015, counsel negotiated over the terms of the settlement, culminating in the signing of the Stipulation.¹³ All terms of the Parties' settlement are set forth in the Stipulation.¹⁴

¹³ Grover Decl. at ¶ 9.

¹⁴ See Ex. A; Grover Decl. at ¶ 14.

In preparation for mediation and as part of the subsequent settlement discussions, Defendant provided relevant documents and information, including:

(A) The number of Settlement Class Members:

?? As of August 31, 2015, there are approximately 11,000 Settlement Class Members.

(B) The number of wage statements that Defendant issued to California Sam's Club employees during the relevant time period:

- As of August 31, 2015, the total is estimated to be 400,000 wage statements, or an average of 36 per Settlement Class Member.¹⁵

¹⁵ Grover Decl. at 10.

III. SUMMARY OF SETTLEMENT TERMS

A. The Settlement Class.

The Parties agreed that the Settlement Class should be defined as:

All associates who worked at a Sam's Club in California between February 13, 2013 and August 31, 2015, and were issued one or more wage statements.¹⁶

¹⁶ Ex. A at ¶3.

In this memorandum, the members of the Settlement Class are referred to as the "Class Members."

B. Notice procedure and claims process.

The proposed settlement Notice and Claim Form (collectively, "Class Notice") explain in plain language the nature of the lawsuit, terms of the settlement, Class Members' rights, the expected settlement that each individual Class Member can expect to receive, and the steps necessary to make a claim, request exclusion from, or object to the settlement.¹⁷

¹⁷ See Ex. A at ¶ 11, and Exs. 1, 2 and 3 (the proposed Notice, Claim Form and envelope).

The Parties agreed upon a notice procedure that is intended to ensure the highest number of Class Members receive the Class Notice. ILYM Group, the company selected to handle the notice and claims administration, subject to the Court's approval, will mail the Class Notice in the approved envelope to Class Members based on contact information Defendant will provide from its records.¹⁸ In the event any Class Notices are returned by the post office as undeliverable, the proposed notice procedure requires ILYM Group to perform a reasonable search to attempt to locate Class Members' correct addresses.¹⁹

¹⁸ See Ex. A at ¶ 11.

¹⁹ *Id.*

Class Members will have 60 days from the date the Claims Administrator mails the Class Notice to postmark Claim Forms.²⁰ For any Class Notice returned as "undeliverable," the Claims Administrator will attempt to locate an updated address and re-mail it, in which case the Class Member will be allowed 75 calendar days from the date the Class Notice was first mailed to postmark a Claim Form.²¹ The settlement also provides all Class Members with the same 60 day opportunity to request exclusion from the settlement or object to the settlement terms.²² C. Benefits to the Settlement Class.

²⁰ Ex. A at 12.

²¹ *Id.*

²² Ex. A at ¶¶ 14-15.

Plaintiff believes the settlement provides fair and adequate benefits for the Class Members. The Stipulation provides that, to resolve the claims covered by the settlement, Defendant will pay up to \$1,725,000 (the "Maximum Settlement Amount"). The Parties agreed to allocate \$100,000 of the Maximum Settlement Amount to the PAGA cause of action. Of that amount, 75% - or \$75,000 - will be paid to the Labor and Workforce Development Agency ("LWDA") for enforcement of labor laws and education of employers and employees about their rights and responsibilities under the Labor Code²³ and 25% - or \$25,000 - will be allocated to the Net Settlement Amount payable to Class Members.²⁴

²³ See Labor Code § 2699(f).

²⁴ Ex. A at ¶¶ 9, 10.

After subtracting out the amounts allocated to pay the costs of administration, the \$75,000 PAGA payment to the LWDA, Class Counsels' fees and costs, and the Class Representative's enhancement, the Net Settlement Amount ("NSA") is estimated to be approximately \$1,040,500. The NSA will be available for distribution to Class Members who file timely and valid claims and do not opt out ("Qualified Claimants") based on the formula set forth in the Stipulation, as summarized below.

According to Defendant's records, there are approximately 11,000 Class Members who received, in the aggregate, approximately 400,000 wage statements during the Class Period.²⁵ Based on that data, the Stipulation provides that (1) Qualified Claimants who worked 12 pay periods or less during the Class Period shall be eligible to receive \$25; (2) Qualified Claimants who worked between 13 and 26 pay periods during the Class Period shall be eligible to receive \$65; (3) Qualified Claimants who worked between 27 and 52 pay periods during the Class Period shall be eligible to receive \$95; (4) Qualified Claimants who worked 53 pay periods or more during the Class Period shall be eligible to receive \$135.²⁶

²⁵ Ex. A at ¶ 10(e).

²⁶ Ex. A at ¶ 10(e).

The Stipulation also provides that, at minimum, \$315,500 (which includes the \$25,000 PAGA allocation payable to Class Members) of the NSA must be paid to Qualified Claimants.²⁷ If the total claims are equal to or greater than \$315,500, each Qualified Claimant will receive a settlement payment according to the formula described above, as set forth in the Stipulation. If the total claims are less than \$315,500, then the payment to each Qualified Claimant shall be increased in proportion to his or her relative percentage of the final calculated Net Settlement Amount so that the final amount required to pay the claims of all Qualified Claimants is increased to \$315,500. Defendant is not required to fund any portion of the NSA not needed to make settlement payments to Qualified Claimants.²⁸

²⁷ Ex. A at ¶ 10(f).

²⁸ Ex. A at 10(f); Grover Decl. at ¶ 19.

D. Benefit to the State.

Subject to the Court's approval, the settlement allocates \$100,000 of the Maximum Settlement Amount to the settlement of the PAGA claims.²⁹ Of that amount, the settlement provides that 75%, or \$75,000, will be paid to the LWDA as required by Labor Code § 2699(i).³⁰ Those funds must be used for the enforcement of labor laws and education of California employers and employees about their rights and responsibilities under the Labor Code.³¹ The \$25,000 PAGA allocation payable to Class Members is included in the minimum portion of the NSA payable to Qualified Claimants.³²

²⁹ Ex. A at ¶ 8; Lab. Code § 2699(l) (requires court approval of any PAGA settlement).

³⁰ *Id.*

³¹ See Lab. Code § 2699(i).

³² Ex. A at ¶¶ 8, 9, 10(f).

E. Scope of release.

The settlement includes a release provision that is very narrowly tailored to cover only the claims alleged in the proposed First Amended Complaint.³³ Specifically, the release includes only Labor Code § 226(a)(8) claims and PAGA claims limited to Labor Code § 226(a)(8) violations.³⁴

³³ Ex. A at ¶ 18; Ex. B (Complaint) and Ex. A (Exhibit 4, First Amended Complaint).

³⁴ *Id.*

F. Class Representative's enhancement.

The Stipulation provides for a reasonable enhancement for the Class Representative to compensate him for the risks, time and effort he expended in coming forward to provide invaluable information in support of the claims alleged in the First Amended Complaint.³⁵ Subject to the Court's approval, the settlement provides that Plaintiff Adams will receive a \$10,000 enhancement payment.³⁶ With the final approval motion, Plaintiff will submit a declaration detailing the time and effort he put in to this case.

³⁵ Ex. A at ¶ 10(j).

³⁶ *Id.*

G. Attorneys' fees and costs.

The Stipulation also provides that, at final approval, Class Counsel will seek attorneys' fees and costs in the total amount of \$568,500, which is 32.96% of the Maximum Settlement Amount.³⁷ Defendant will not oppose Class Counsel's fee and cost application that will be submitted with the final approval papers, should the Court grant preliminary approval of the settlement.³⁸ The fee request of approximately slightly less than one-third is reasonable given that Class Counsel conducted formal and informal discovery and engaged in successful settlement negotiations.³⁹

³⁷ Ex. A at ¶ 10(i).

³⁸ *Id.*

³⁹ See Grover Decl. at ¶¶ 9, 10, 23.

H. Administration costs.

The Stipulation allocates up to \$31,000 of the Maximum Settlement Amount for the costs of claims administration, subject to the Court's approval.⁴⁰ If the costs of administration are less than \$31,000, the Parties have agreed that the difference shall be held as a contingency for unanticipated items for 60 days after the settlement's Effective Date.⁴¹ If any funds allocated to administration costs are left after that time, the Claims Administrator will distribute them to any later discovered Class Members or Class Members who submit late but otherwise valid claims based proportionally on the settlement formula provided in the Stipulation.⁴² If there are no such recipients or if any funds remain after such further distribution, all remaining amounts will be returned to Defendant.⁴³

⁴⁰ Ex. A at ¶ 10(1).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

If the Court approves the Parties' selection of ILYM Group as the Claims Administrator, a representative from ILYM Group will submit a declaration and final invoice with the final approval motion in support of a request for payment.

I. Other settlement terms.

The settlement provides that settlement checks issued to Qualified Claimants will be valid for 90 days from the date of issuance.⁴⁴ At the end of the 90-day period, the Claims Administrator will distribute funds remaining from uncashed checks to any later discovered Class Members or Class Members who submit late but otherwise valid claims based on the settlement formula set forth in the Stipulation.⁴⁵ If there are no such recipients or if any funds remain after that further distribution, the Claims Administrator will pay the remaining amounts to the LWDA.⁴⁶

⁴⁴ Ex. A at 10 (g).

⁴⁵ *Id.*

⁴⁶ *Id.*; *see also*, Grover Decl. at ¶ 35.

IV. LEGAL ANALYSIS

A. Preliminary approval of a class settlement involves a two-step approval process.

Any settlement of class litigation must be reviewed and approved by the Court.⁴⁷ This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the Class Members for their comment or objections. *The Manual for Complex Litigation (Third) § 30.41* states:

⁴⁷ *Cal. Rule of Court 3.769; Fed. R. Civ. Pro. 23(e)*. The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as undue preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice ... be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.⁴⁸

⁴⁸ *Manual* at § 30.41.

Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing.”⁴⁹

⁴⁹ Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

The procedures for the submission of a proposed settlement for preliminary approval by the court also are discussed in 4 *Newberg on Class Actions*:

When the parties to an action reach a monetary settlement, they will usually prepare and execute a joint Stipulation, which is submitted to the court for preliminary approval. The stipulation should set forth the essential terms of the agreement, including but not limited to, the amount of settlement, form of payment, manner of determining the effective date of settlement and any recapture clause.⁵⁰

⁵⁰ *Id.* at § 11.24.

Here, the Parties have reached such an agreement, which Plaintiff now submits to this Court, in connection with this Motion. The Stipulation sets forth all terms of the agreement reached by the Parties.⁵¹

⁵¹ See Ex. A.

B. Procedures for settlement before class certification.

Pursuant to California Rules of Court, Rule 3.769, the Parties also may, at the preliminary approval stage, request that the court provisionally approve certification of the class - conditional upon final approval of the settlement. “[P]re-certification settlements are routinely approved if found to be fair and reasonable.”⁵²

⁵² *Wershiba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244; accord *Dunk, supra*, 48 Cal.App.4th at 1803 (although the settlement was reached before any “adversary certification,” the court was satisfied that it was “fair, adequate and reasonable.”); see also, *In re Baldwin-United Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478 (“many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”).

The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal ... may be set out in conditional orders granting tentative approval to the various items submitted to the court. Three basic rulings are often conditionally entered at this preliminary hearing. These conditional rulings may approve a temporary settlement class, the proposed settlement, and the class counsel’s application for fees and expenses.⁵³

⁵³ 4 *Newberg on Class Actions*, at § 11.26.

Each such condition is appropriate here (although, as mentioned, the Parties do not hereby seek final approval of the award to proposed Class Counsel, which will be addressed at the final approval stage).

1. The proposed class should be certified solely for settlement purposes.

It is well established that trial courts should use a lower standard for determining the propriety of certifying a settlement class, as opposed to a litigation class.⁵⁴ The reason for this is that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted.⁵⁵ The proposed Settlement Class meets all requirements for certification, as discussed below.

⁵⁴ *Dunk, supra*, 48 Cal.App.4th at 1807, n. 19.

⁵⁵ *Amchem Products, Inc. v. Windsor* (1987) 521 U.S. 591, 620.

a) The proposed Settlement Class is ascertainable and too numerous to make joinder practicable.

The proposed Settlement Class is ascertainable. The class definition, the size of the class and the means for identifying the members of the class determine whether the class is ascertainable.⁵⁶ In this case, the members of the proposed Settlement Class are identifiable from Defendant's records.

⁵⁶ *Reves v. Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1274.

Further, the size of the proposed Settlement Class is sufficiently numerous to warrant certification. According to Defendant's records, the Settlement Class is comprised of 11,000 associates who worked at Sam's Club in California and were issued at least one wage statement during the relevant period.⁵⁷

⁵⁷ Ex. A at ¶ 4; Grover Decl. at ¶ 28.

b) Questions of law and fact common to the Settlement Class Members predominate.

The proposed Class Members' claims all stem from a common set of circumstances. All of the Class Members worked at Sam's Club stores in California during the relevant time period. Plaintiff contends that all Class Members were subject to Defendant's uniform policy and practice regarding the issuance of wage statements. That uniform policy and practice are at the core of Plaintiff's allegations that Defendant violated PAGA and Labor Code § 226(a)(8) and create questions of law and fact common to all Class Members. All Class Members seek the same legal remedies under the same state laws.⁵⁸

⁵⁸ Ex. A at ¶ 4; Grover Decl. at ¶ 29.

Furthermore, the common questions regarding Defendant's wage statement policy and practice are the key issues that will determine Defendant's alleged liability to the proposed Settlement Class. Plaintiff contends that common questions will predominate over any individual questions that may arise. Under these circumstances, the requirements that common questions of law and/or fact exist among the proposed Class Members and will predominate over individual questions are satisfied for purposes of certifying the proposed class for settlement.⁵⁹

⁵⁹ Ex. A at ¶ 4; Grover Decl. at ¶ 29.

c) The proposed Class Representative's claims are typical of the Class' claims.

A class representative's claims are typical when they arise from the same event or course of conduct that gives rise to the claims of the class, and are based on the same legal theory.⁶⁰ In this case, Plaintiff Adams, the proposed Class Representative, contends that he was a California Sam's Club employee who, like all of the putative Class Members, received at least one wage statement from Defendant during the relevant period that is alleged to not include the legal name of the employer in violation of Labor Code § 226(a)(8). Thus, Plaintiff's claims arise from the same course of conduct from which the Class Members' claims arise.⁶¹

⁶⁰ *Clussen v. Weller* (1983) 145 Cal.App.3d 27, 46-47.

⁶¹ Ex. A at ¶ 4; Grover Decl. at ¶ 30.

d) The proposed Class Representative will adequately represent the Class.

The Named Plaintiff also has demonstrated that he aggressively and competently will assert the Class Members' interests. Plaintiff has retained competent counsel, experienced in litigating class action claims in the employment context.⁶²

⁶² See Grover Decl. at ¶¶ 2-4, 13, 31.

Thus, the Court should conditionally certify the proposed Class solely for settlement purposes.

C. The Settlement is fair and reasonable and not the result of fraud or collusion.

Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence to the contrary is offered.⁶³ Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation.⁶⁴ That is especially so when experienced counsel reach an agreement only after mediation with an experienced mediator.⁶⁵

⁶³ *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mary Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962.

⁶⁴ *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hannon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.

⁶⁵ See, e.g., *Schulken v. Washington Mut. Bank* (N.D. Cal. Apr. 2, 2013) No. 09-cv-02708-LHK, 2013 WL 1345716 at *5 (granting final approval where "parties' proposed settlement had been conducted in good faith, by experienced attorneys negotiating at arms-length, and with the assistance of an experienced mediator").

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, such counsel have been involved in discovery and negotiations for some period of time, appear to be competent, have experience with this type of litigation, and have exchanged substantial evidence with the opposing party.⁶⁶ Here, both Plaintiff's and Defendant's counsel have a great deal of experience in wage and hour matters and class action litigation. Moreover, both class counsel and defense counsel conducted an extensive investigation of the factual allegations involved in this case. The Parties have engaged in the exchange of relevant documents, records and other information necessary to evaluate the strengths and weaknesses of the case. Each side has

apprised the other, informally and at the formal mediation, of their respective factual contentions, legal theories and defenses, resulting in extensive arm's-length negotiations taking place between the Parties.⁶⁷

⁶⁶ See *Newberg on Class Actions*, *supra*, § 11.47; *In re Paine Webber Ltd. P'ships Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 ("[s]o long as the integrity of the arm's length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement... [citations] and 'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation").

⁶⁷ Grover Decl. at ¶¶ 9, 10, 23.

Plaintiff believes the settlement for each Class Member to be fair, reasonable and adequate, given the inherent risk of litigation and the costs of pursuing such litigation.⁶⁸ The settlement shall finally resolve the claims arising out of or related to the alleged violation of Labor Code § 226(a)(8) and related PAGA violations, (all as specified in the Stipulation), as well as costs and attorneys' fees.⁶⁹

⁶⁸ See Grover Decl. at ¶¶ 13-25.

⁶⁹ See Ex. A at 18.

The settlement also compensates the Named Plaintiff with a modest incentive payment, taking into consideration the risks, time, effort, and expenses he incurred in coming forward to provide invaluable information, negotiate, and litigate this matter on behalf of all Class Members.⁷⁰

⁷⁰ Ex. A at ¶ 10(j); Grover Decl. at ¶¶ 21, 32-33.

Fairness of the settlement is further demonstrated by the uncertainty and risks to Plaintiff involved both in not prevailing on one or more of the causes of action or theories alleged in the complaint and in non-certification of the Labor Code § 226(e) claim. Defendant adamantly disputes Plaintiff's ability to certify a class and prove that Defendant is liable to the Class Members for its wage statement practices. Although the PAGA claim would survive, were a class not certified, it is unlikely that any additional putative Class Members would maintain individual actions against Defendant.⁷¹

⁷¹ See Grover Decl. at ¶¶ 13, 24-25.

Despite the asserted fairness of the settlement terms, should any proposed Class Member, upon reviewing the notice of proposed settlement, object to the terms of the settlement as set forth in the Stipulation, each has the right to submit a request for exclusion (*i.e.*, opt out) from the settlement, pursuant to which the Class Member would retain any claim he or she may have against Defendant.⁷² Moreover, Class Members who do not opt out may, upon providing proper notice to the Parties and the Court, attend the final fairness and approval hearing for the purpose of objecting to one or more of the settlement terms set forth in the Stipulation.⁷³

⁷² Ex. A at 14.

⁷³ Ex. A at ¶ 15.

D. Plaintiff requests that the Court approve the PAGA portion of the settlement.

Labor Code § 2699(1) requires that the Court review and approve the settlement of penalties sought under PAGA. The circumstances of the settlement, rather than the amount allocated to PAGA claims, determine whether a PAGA settlement is appropriate.⁷⁴ In *Nordstrom Com'n Cases*, the appellate court held that the court can approve a settlement even when the parties did not allocate any dollars to the PAGA claims.⁷⁵ In the settlement in that case, the PAGA penalty claims at issue were included in the release of claims as a part of the overall settlement.⁷⁶ The court found that the settlement's allocation of zero dollars to the PAGA claims was not improper even in light of the inclusion of PAGA liability in the settlement terms.⁷⁷

⁷⁴ *Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589.

⁷⁵ *Id.* at 589.

⁷⁶ *Id.*

⁷⁷ *Id.*

In this case, as part of the settlement, Defendant has agreed to pay \$100,000 to settle the PAGA penalty claims, of which a payment of \$75,000 will go to the LWDA.⁷⁸ If the Parties had agreed to allocate more settlement funds to the PAGA claims, they would have had to lessen the funds available for the settlement of the Labor Code § 226 claim. Because the Class Members receive only 25% of the PAGA settlement funds, they gained greater benefits from the settlement dollars allocated to the non-PAGA claims which form the underlying basis for the PAGA claims. Weighing the Class Members' best interest Plaintiff found that the \$100,000 allocated to the PAGA claims was sufficient to address those claims while preserving adequate funds for the settlement of the Labor Code § 226 (c) claim. Plaintiff requests that the Court preliminary approval of this portion of the settlement.

⁷⁸ Ex. A at 8.

V. CONCLUSION

Based on the foregoing, Plaintiff requests that this Court, as part of its preliminary approval of the settlement, do the following:

1. Review the proposed Stipulation setting forth the settlement terms;
2. Consider whether the proposed settlement preliminarily appears to be fair, reasonable and adequate, and whether the proposed Settlement Class preliminarily appears to meet the applicable certification criteria;
3. Confirm Raymond Adams as Class Representative and appoint Keller Grover LLP and Gaines & Gaines, APLC, as Class Counsel;
4. Approve ILYM Group, Inc. as Claims Administrator with regard to handling the notice and claims procedure as set forth more particularly in the Stipulation;
5. Enter an Order provisionally approving the proposed Settlement Class, including the PAGA allocation, on a non-mandatory basis, approve notice to be distributed to Class Members, direct notice to be given to Class Members, and set the following schedule of settlement proceedings (see Ex. B at ¶¶ 11, 12, 14, 15):
 - a. Last day for Defendant to provide Claims Administrator with Class List: 20 days after entry of the Court's order preliminarily approving the Stipulation.

- b. First mailing of Notice and Claim Form to the Class: 35 days after entry of the Court's order preliminarily approving the Stipulation.
- c. Deadline to submit claim forms: 60 days after the date on which the Class Notice is first mailed to Class Members.
- d. Deadline to submit opt-out forms: 60 days after the date on which the Class Notice is first mailed to Class Members.
- e. Deadline to submit objections to the proposed settlement to the Court and to Plaintiff's and Defendant's counsel: 60 days after the date on which the Class Notice is first mailed to Class Members.
- f. Final Fairness Hearing: at least 115 days after the date of the Order granting preliminary approval and set forth in the Class Notice,

Dated: October 8, 2015

Respectfully submitted,

KELLER GROVER LLP

ERIC A. GROVER

Attorneys for Plaintiff and Proposed Class Counsel

EXHIBIT "F"

12 Trials Digest 21st 7, 2017 WL 8403216 (Cal.Super.) (Verdict and Settlement Summary)

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Superior Court, Los Angeles County, California.

Esparza v. Spectrolab Inc.

TOPIC:

Synopsis: Solar panel manufacturer allegedly issues non-compliant wage statements

Case Type: Labor & Employment; Wage Disputes

DOCKET NUMBER: BC628479

STATE: California

COUNTY: Los Angeles

Related Court Documents:

Plaintiff's first amended complaint: [2016 WL 10849575](#)

Plaintiff's motion for final approval of class action settlement: [2017 WL 7292628](#)

Amended order: [2017 WL 7313256](#)

Verdict/Judgment Date: November 09, 2017

JUDGE: [Carolyn B. Kuhl](#)

ATTORNEYS:

Plaintiff: [Paul K. Haines](#), Haines Law Group A.P.C., El Segundo, CA; [Tuvia Korobkin](#), Haines Law Group A.P.C., El Segundo, CA; [Fletcher W. Schmidt](#), Haines Law Group A.P.C., El Segundo, CA; [Andrew J. Rowbotham](#), Haines Law Group A.P.C., El Segundo, CA

Defendant: None mentioned

SUMMARY:

Verdict/Judgment: Settlement

Verdict/Judgment Amount: \$240,000

Range Amount: \$200,000 - 499,999

\$240,000 to plaintiff class from defendant for damages

The total settlement included \$80,000 to class counsel for attorney fees, \$8,722 to class counsel for costs, \$2,500 to plaintiff Esparza for class representative payment, \$10,000 to settlement administrator for claims administration costs, and \$30,000 to the Labor and Workforce Development Agency for its 75 percent share of civil penalties under PAGA.

Trial Type: Settlement

FACTS/CONTENTIONS:

WESTLAW

EXHIBIT _____

According to court records: Plaintiff Rosario Esparza was reportedly a non-exempt employee of defendant Spectrolab Inc, which was in the business of manufacturing solar panels. Plaintiff said defendant provided her and other non-exempt employees with wage statements that did not comply with California law.

Plaintiff, on behalf of herself and a group of similarly-situated individuals, alleged defendant violated Cal. Lab. Code Sec. 226(a)(8) by issuing wage statements that failed to include the name and address of the legal entity that was plaintiff's employer. Plaintiff further alleged defendant's wage statements were in violation of Cal. Lab. Code Sec. 226(a)(9) by failing to list all applicable rates of pay. Plaintiff also sought civil penalties pursuant to the Private Attorneys General Act, Cal. Lab. Code Sec. 2698 et seq. Defendant denied liability but agreed to settle the claims.

CLAIMED DAMAGES:

Not reported.

SETTLEMENT DISCUSSIONS:

Not reported.

COMMENTS:

According to court records: The complaint was filed July 26, 2016.

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2016 WL 6822274 (Cal.Super.) (Trial Order)
Superior Court of California.
Santa Clara County

Patricia FIGUEROA,

v.

SAN JOSE WATER CO., et al.

No. 2015-1-CV-288483.

October 28, 2016.

Trial Order

Peter H. Kirwan, Judge.

*1 In this putative class action, plaintiff alleges that her employer, defendant San Jose Water Company, violated the Labor Code by failing to indicate the start and end dates of the associated pay period on paychecks that it issued to its employees. (Complaint, ¶ 3.) Plaintiff asserts a single cause of action for violation of Labor Code section 226, subdivision (a).

The parties have now reached a settlement. Plaintiff moves for an order preliminarily approving the settlement, provisionally certifying the settlement class and appointing the class representative, designating class counsel and the settlement administrator, approving the form and method for providing notice to the class, and scheduling a final fairness hearing.

I. Legal Standard for Approval of a Class Action Settlement

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, ... and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794.)

In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, ... the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

(*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, internal citations and quotations omitted.)

The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a

whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, quoting *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801, internal quotation marks omitted.)

The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802.) The presumption does not permit the Court to "give rubber-stamp approval" to a settlement; in all cases, it must "independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished," based on a sufficiently developed factual record. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.)

II. The Proposed Settlement

A. Settlement Process and Considerations

*2 Since this action was filed on November 25, 2015, the parties engaged in informal discovery that permitted class counsel to fairly evaluate the strength of plaintiff's case and the risks associated with ongoing litigation. (Decl. of Eric B. Kingsley ISO Mot., ¶¶ 3-4.) Counsel confirmed that defendant's wage statements did not include the start date of the pay period at issue, in violation of Labor Code section 226, subdivision (a). (Mot., p. 4.) However, to obtain damages for these violations, plaintiff must show they were knowing and intentional (a requirement which plaintiff contends establishes only a low standard, but which scant case law addresses) and resulted in injury. (Mot., pp. 5-9.) While plaintiff's counsel believes that the class could make these showings, there would be risk involved, particularly as to the requirement of a knowing and intentional violation, where the unsettled state of the law would likely lead to an appeal. (Mot., p. 9.)

By multiplying the number of wage statements at issue by the \$50 penalty per violation, plaintiff's counsel estimated the maximum value of the class's claim to be \$472,200. (Kingsley Decl., ¶23.) He consequently views the proposed settlement of \$140,000 as fair and reasonable in light of the issues discussed above and the general risks associated with class action litigation. (*Id.* at ¶ 26.)

B. Provisions of the Settlement

The non-reversionary net settlement of approximately \$78,333.34 will be distributed proportionally among participating class members based on their total number of eligible itemized wage statements received. (Stipulation of Resolution, § XI(A).) In exchange, class members who do not opt out of the settlement will release all claims and causes of action "arising out of, or that could have arisen out of, the facts and claims asserted in the Litigation" (*Id.* at § VII(A).) The named plaintiff will also provide a general release. (*Id.* at § VII(B).)

Class counsel will petition the Court for fees not to exceed one-third of the gross settlement, plus costs not to exceed \$2,500. (Stipulation, § XIII.) The settlement administration costs are estimated to be \$7,500. (*Id.* at § VIII.) Class counsel may apply for an incentive award on behalf of the named plaintiff not to exceed \$5,000. (*Id.* at § XIV.)

C. Analysis

In light of the above, it appears that the settlement amount is fair and will be fairly apportioned among class members. The settlement was reached through arm's-length bargaining following sufficient investigation and discovery, and

plaintiff's counsel is experienced in employment litigation. Accounting for the deductions described above, the net settlement will result in an average recovery of \$184.75 to each of the 424 class members.

Plaintiff has submitted a declaration specifically detailing her participation in the case in support of the requested incentive payment. The Court also has an independent right and responsibility to review the requested attorney fees and award only so much as it determines to be reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) While one-third of the common fund for attorney fees is generally considered reasonable, counsel should submit billing records and lodestar information prior to the final approval hearing in this matter so the Court can compare the lodestar information with the requested fees. The settlement administrator, Rust Consulting, Inc., should also submit a declaration detailing its actual expenses associated with the settlement.

III. Proposed Settlement Class

Plaintiff requests that the following settlement class be provisionally certified: all individuals who were employed by defendant in California who worked one or more pay periods from November 25, 2014 to December 14, 2015. (Stipulation, § I(V).)

A. Legal Standard

Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court" As interpreted by the California Supreme Court, Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence (1) an ascertainable class and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 326, 332.)

*3 The "community-of-interest" requirement encompasses three factors: (1) predominant questions of law or fact, (2) class representatives with claims or defenses typical of the class, and (3) class representatives who can adequately represent the class. (*Ibid.*) "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court (Botney)* (1976) 18 Cal.3d 381, 385.)

In the settlement context, "the court's evaluation of the certification issues is somewhat different from its consideration of certification issues when the class action has not yet settled." (*Luckey v. Superior Court (Cotton On USA, Inc.)* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the settlement-only context, the case management issues inherent in the ascertainable class determination need not be confronted, and the court's review is more lenient in this respect. (*Id.*, pp. 93-94.) However, considerations designed to protect absentees by blocking unwarranted or overbroad class definitions require heightened scrutiny in the settlement-only class context, since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.*, p. 94.)

B. Ascertainable Class

"The trial court must determine whether the class is ascertainable by examining (1) the class definition, (2) the size of the class and (3) the means of identifying class members." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) "Class

members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932.)

Here, there are an estimated 424 members of the clearly-defined proposed class. Class members are easily identifiable from defendant's payroll records. The Court consequently finds that the class is numerous and ascertainable.

C. Community of Interest

With respect to the first community of interest factor, "[i]n order to determine whether common questions of fact predominate the trial court must examine the issues framed by the pleadings and the law applicable to the causes of action alleged." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916.) The court must also give due weight to any evidence of a conflict of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants. (*Lockheed Martin Corp. v. Superior Court, supra*, 29 Cal.4th at pp. 1104-1105.) "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Hicks v. Kaufman & Broad Home Corp., supra*, 89 Cal.App.4th at p. 916.)

Here, common legal and factual issues predominate, including primarily whether defendant knowingly and intentionally failed to include required information on paychecks.

As to the second factor,

The typicality requirement is meant to ensure that the class representative is able to adequately represent the class and focus on common issues. It is only when a defense unique to the class representative will be a major focus of the litigation, or when the class representative's interests are antagonistic to or in conflict with the objectives of those she purports to represent that denial of class certification is appropriate. But even then, the court should determine if it would be feasible to divide the class into subclasses to eliminate the conflict and allow the class action to be maintained.

*4 (*Medraza v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations, brackets, and quotation marks omitted.) Here, like other members of the class, plaintiff suffered the alleged Labor Code violations. There are no anticipated defenses unique to plaintiff, and there is no indication that plaintiff's interests are otherwise in conflict with those of the class.

Finally, adequacy of representation "depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class representative does not necessarily have to incur all of the damages suffered by each different class member in order to provide adequate representation to the class. (*Wershiba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 238.) "Differences in individual class members' proof of damages [are] not fatal to class certification. Only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." (*Ibid.*, internal citations and quotation marks omitted.)

Plaintiff has the same interest in maintaining this action as any class member would have. Further, she has hired experienced counsel. Plaintiff has sufficiently demonstrated adequacy of representation.



D. Substantial Benefits of Class Certification

"[A] class action should not be certified unless substantial benefits accrue both to litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120, internal quotation marks omitted.) The question is whether a class action would be superior to individual lawsuits. (*Ibid.*) "Thus, even if questions of law or fact predominate, the lack of superiority provides an alternative ground to deny class certification." (*Ibid.*) Generally, "a class action is proper where it provides small claimants with a method of obtaining redress and when numerous parties suffer injury of insufficient size to warrant individual action." (*Id.* at pp. 120-121, internal quotation marks omitted.)

Here, there are hundreds of members of the proposed class. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits both to the litigants and the Court in this case.

In sum, plaintiff has demonstrated that this action is appropriate for class treatment, and that she and her counsel will adequately represent the class.

IV. Notice

The content of a class notice is subject to court approval. (Cal. Rules of Court, rule 3.769(f)) "The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (*Ibid.*) In determining the manner of the notice, the court must consider: "(1) The interests of the class; (2) The type of relief requested; (3) The stake of the individual class members; (4) The cost of notifying class members; (5) The resources of the parties; (6) The possible prejudice to class members who do not receive notice; and (7) The res judicata effect on class members." (Cal. Rules of Court, rule 3.766(e).)

*5 Here, the notice describes the lawsuit, explains the settlement, and instructs class members that they may opt out of the settlement or object. The release language is provided. The gross settlement amount is set forth along with itemized estimated deductions. Class members are informed of their expected settlement payments and instructed how to dispute their number of eligible itemized wage statements. The notice indicates that class members may appear and object at the final fairness hearing without submitting any written objection. The Court deems the notice adequate.⁸

⁸ On October 18, 2016, plaintiff filed an updated version of the notice as an exhibit to the supplemental declaration of Eric B. Kingsley. The updated notice corrects certain minor errors in the original notice.

To administer notice to the class, defendant will provide the settlement administrator with the name, last known mailing address, number of eligible itemized wage statements, and social security number for each class member. (Stipulation, § IX(A).) The settlement administrator will perform a search using the United States Postal Service National Change of Address List to update each class member's address, and will mail the notices within 25 days of receiving the class list. (*Ibid.*) If any notice is returned as undeliverable, the administrator will submit the class member's information to a company that specializes in address skip tracing and will re-mail the notice if a more current address can be located. (*Ibid.*) Opt-out requests and challenges to a class member's number of eligible itemized wage statements must be postmarked no later than 45 days from initial mailing of the notice. (*Id.* at §§ IX(C), X(A).) These notice procedures are adequate under the circumstances.

V. Conclusion and Order

Plaintiff's motion for preliminary approval is GRANTED. The final approval hearing shall take place on *March 3, 2017* at 9:00 a.m. in Dept. I.

End of Document

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EXHIBIT "G"

2017 WL 7292626 (Cal.Super.) (Trial Motion, Memorandum and Affidavit)
Superior Court of California.
Los Angeles County

Rosario ESPARZA, as an individual and on behalf of all others similarly situated, Plaintiff,

v.

SPECTROLAB, INC., a California corporation; and Does 1 through 100, Defendants.

No. BC628479.
May 18, 2017.

Plaintiff's Notice of Motion and Motion for Preliminary Approval of Class Action Settlement

Haines Law Group, Apc, Paul K. Haines (Sbn 248226), phaines@haineslawgroup.com, Tuvia Korobkin (Sbn 268066), tkorobkin@haineslawgroup.com, Fletcher W. Schmidt (Sbn 286462), fschmidt@haineslawgroup.com, Andrew J. Rowbotham (Sbn 301367), arowbotham@haineslawgroup.com, 2274 East Maple Avenue, El Segundo, California 90245, Tel: (424) 292-2350, Fax: (424) 292-2355, for plaintiff, the Class, and Aggrieved Employees.

Honorable Carolyn B. Kuhl.

CLASS ACTION

Dept. 309

Date: June 9, 2017

Time: 2:15 p.m.

Complaint Filed: July 26, 2016

Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June 9, 2017 at 2:15 p.m., or as soon thereafter as the matter may be heard in Department 309 of the above-entitled Court, located at 600 S. Commonwealth Avenue, Los Angeles, California 90005, Plaintiff Rosario Esparza ("Plaintiff"), individually and on behalf of a class of similarly-situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;

2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification of the Settlement Class defined as follows:

All non-exempt employees of Spectrolab, Inc. ("Spectrolab") who worked in California at any time from July 26, 2015 through the date of preliminary approval of the Settlement Agreement (the "Class Period") and received at least one wage statement from Spectrolab at any time from July 26, 2015 through December 31, 2015.

3. Preliminary appointment of Plaintiff Rosario Esparza as Class Representative;

WESTLAW

EXHIBIT

- 4. Preliminary appointment of Paul K. Haines, Tuvia Korobkin, Fletcher W. Schmidt and Andrew J. Rowbotham of Haines Law Group, APC as Class Counsel;
- 5. The scheduling of a hearing to consider whether the class settlement should be finally approved and to award an amount for incentive payments to the Class Representatives, and attorneys' fees and costs to Class Counsel;
- 6. Appointment of CPT Group, Inc., as the third-party Settlement Administrator; and
- 7. Approval of the proposed Class Notice, and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

This motion is based on this notice of motion, the attached memorandum of points and authorities, the declarations of Paul K. Haines, Tuvia Korobkin, Fletcher W. Schmidt, and Andrew J. Rowbotham, and exhibits attached thereto, the declaration of Julie Green and exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: May 17, 2017

Respectfully Submitted,

HAINES LAW GROUP, APC

By: <<signature>>

Paul K. Haines

Attorneys for Plaintiff, the Class, and Aggrieved Employees

TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	2
A. THE PARTIES	2
B. PLAINTIFF'S COMPLAINT AND PAGA LETTER	2
C. SPECTROLAB'S "CURE" OF DEFECTIVE WAGE STATEMENTS	3
D. PLAINTIFF AMENDS COMPLAINT TO ADD PAGA CLAIM	3
E. DEFENDANT DENIES PLAINTIFF'S CLAIMS	3
F. DISCOVERY AND MEDIATION	5
III. THE PROPOSED SETTLEMENT	6
A. ESSENTIAL TERMS OF THE SETTLEMENT	6
1. The Settlement Provides for Reasonable Monetary Payments	6
2. Attorneys' Fees and Costs, Incentive and PAGA Payments	7
IV. ARGUMENT	9
A. PRELIMINARY APPROVAL IS WARRANTED	9
1. Standard for Preliminary Approval	9
a. The Strength of Plaintiffs Case	10
b. Risk, Expense, Complexity, and Duration of Further Litigation	10
c. Risk of Maintaining Class Action Status	10
d. Amount Offered in Settlement Given Realistic Value of Claims	11
e. The Experience and Views of Counsel	12
2. The Preliminary Approval Standard Is Met	13
a. The Settlement Is Within The Range Of Possible Approval	13

b. The Settlement Resulted from Serious, Informed Negotiations	13
c. The Settlement Is Devoid of Obvious Deficiencies	14
B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS	14
1. The Proposed Class Is Ascertainable and Numerous	15
2. Common Issues of Law and Fact Predominate	15
3. The Claims of the Named Plaintiff Are Typical	15
4. Plaintiff and Class Counsel Will Adequately Represent the Class	16
C. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED CLASS NOTICE ...	16
D. THE COURT SHOULD SET A FINAL APPROVAL HEARING	17
V. CONCLUSION	17

TABLE OF AUTHORITIES

Federal Cases

<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156 (1974)	16
<i>Hanon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	9
<i>Hernandez v. BCI Coca-Cola Bottling Co.</i> , 554 F.App'x 661 (9th Cir. 2014)	4
<i>In re Pacific Enterprises Securities Litigation</i> , 47 F.3d 373 (9th Cir. 1995)	12
<i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008)	9
<i>Sandoval v. MI Auto Collision Centers</i> , 309 F.R.D. 549 (N.D. Cal. 2015)	15

State Cases

<i>Amoral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008)	11
<i>B. W. I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987)	15
<i>Capital People First v. State Dept. of Developmental Svcs.</i> , 155 Cal.App.4th 676 (2007)	15
<i>Chindarah v. Pick Up Stix, Inc.</i> , 171 Cal.App.4th 796 (2009)	11
<i>Collins v. Rocha</i> , 7 Cal.3d 232 (1972)	14
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	9
<i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010)	7
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008)	9, 13
<i>Laffitte v. Robert Half Int'l, Inc.</i> , 1 Cal.5th 480 (2016)	8
<i>Lubin v. Wackenhut Corp.</i> , 5 Cal.App.5th 926 (2016)	15
<i>McGhee v. Bank of America</i> , 60 Cal.App.3d 442 (1976)	15
<i>Morgan v. United Retail Inc.</i> , 186 Cal.App.4th 1136 (2010)	4
<i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011)	4
<i>Reed v. United Teachers Los Angeles</i> , 208 Cal.App.4th 322 (2012)	9
<i>Stay-On Drug Store, Inc. v. Sup. Ct.</i> , 34 Cal.4th 319 (2004)	14
<i>Sevidal v. Target Corp.</i> , 189 Cal.App.4th 905 (2010)	14
<i>Thurman v. Bayshore Transit Mgmt., Inc.</i> , 203 Cal.App.4th 1112 (2012)	5, 12
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001)	10
<i>Federal Statutes and Rules</i>	
Federal Rules of Civil Procedure 23	9
<i>State Statutes and Rules</i>	
Civil Code § 1542	7
Code Civ. Proc. § 382	14
Labor Code § 226	2, 4, 5, 15
Labor Code § 226(a)	4, 7
Labor Code § 226(a)(8)	3
Labor Code § 226(a)(9)	3
Labor Code § 226(e)	4, 11
Labor Code § 226.3	7
Labor Code § 1021.5	7
Labor Code § 2698 <i>et seq.</i>	1, 7
Labor Code § 2699	7
Labor Code § 2699(e)(2)	5, 12

<u>Labor Code § 2699(i)</u>	8
<u>Labor Code § 2699.3(a)</u>	3
<u>Labor Code § 2699.3(c)</u>	3
<u>Labor Code § 2699.3(c)(2)(A)</u>	3
<u>Labor Code § 2699.3(d)</u>	3
<u>Labor Code § 2699.5</u>	3, 7
<u>Rule of Court 3.766(d)</u>	16
<u>Rule of Court 3.766(e)</u>	16
<u>Rule of Court 3.769</u>	9, 16
<i>Unpublished Cases</i>	
<u>Alvarado v. Neclerend Case No. 1:08-cv-01099, 2011 WL 90228 (E.D. Cal. 2011)</u>	8
<u>Fleming v. Covidien, Inc. Case No. CV 10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011)</u>	5, 12
<u>Green v. Lawrence Service Co. Case No. LA CV12-06155 JAK (VBKx), 2013 WL 3907506 (C.D. Cal. 2013)</u>	12
<u>Ross v. U.S. Bank Nat'l Ass'n Case No. C 07-02951, 2010 WL 3833922 (N.D. Cal. 2010)</u>	8
<i>Other Sources</i>	
<u>Manual for Complex Litig.</u> , § 30.41 (3rd Ed. 1995)	13
<u>Newberg on Class Actions</u> , § 1:24-25 (4th Ed. 2013)	13
<u>Newberg on Class Actions</u> , § 14.6 (4th Ed. 2013)	9

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Rosario Esparza (“Plaintiff”) respectfully moves this Court for an order granting preliminary approval of the Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement Agreement”) between Plaintiff and Spectrolab, Inc. (“Spectrolab”), which resolves Plaintiff’s claims for penalties under Labor Code § 226 and civil penalties under the Labor Code Private Attorneys General Act (“PAGA”), Labor Code § 2698 et seq. Plaintiff’s claims are predicated on Spectrolab’s alleged failure to include (i) Spectrolab’s address and (ii) employee hourly wage rates on employee wage statements, in violation of Labor Code § 226(a)(8) and (9), respectively. Notably, Spectrolab has already taken steps to cure the alleged violations, and there is no allegation that Plaintiff or any other employees were underpaid any wages as a result of these violations. The relief provided for in the Settlement is solely for the payment of penalties under Labor Code § 226 and the PAGA.

Pursuant to the proposed non-reversionary, common-fund class action settlement,¹ Spectrolab has agreed to pay Two Hundred Forty Thousand Dollars (\$240,000.00) on behalf of the following Settlement Class, which is currently estimated to consist of 187 individuals:

¹ The Settlement Agreement is attached as Exhibit I to the Declaration of Paul K. Haines filed herewith. The proposed Class Notice and Dispute Form are attached as Exhibits A and B, respectively, to the Settlement Agreement.

All non-exempt employees of Spectrolab who worked in the State of California at any time from July 26, 2015 through the date of Preliminary Approval of the Settlement Agreement (the “Class Period”) and received at least one wage statement from Spectrolab at any time from July 26, 2015 to December 31, 2015.

The Settlement Agreement was reached after the parties engaged in mediation with Steve Cerveris, Esq., an experienced wage and hour class action mediator. In connection with mediation, Spectrolab provided Plaintiff with relevant classwide information including the total number of putative class members as well as the total number of wage statements provided to putative class members during the Class Period that did not contain Spectrolab’s address and/or the employee’s hourly rates of pay. Plaintiff also prepared a detailed mediation brief, which analyzed Plaintiff’s claims, the likelihood

of recovery, as well as potential damages. The parties attended a full-day mediation with Mr. Cerveris on February 16, 2017, during which the parties exchanged their views regarding the likelihood of certification, the merits of Plaintiffs' claims, and potential classwide damages. Ultimately, the parties reached a classwide resolution at the mediation that later was formalized in the Settlement Agreement.

As stated, if the settlement is approved, Spectrolab will pay a non-reversionary Gross Settlement Amount of \$240,000.00. Significantly, Settlement Class members do not need to file a claim to reap the financial benefits of the Settlement. Settlement Shares will be distributed to all Settlement Class members who do not opt out of the Settlement. After deductions for proposed settlement administration costs, attorneys' fees and verified costs, Plaintiffs' incentive payment, and PAGA penalties to be paid to the Labor & Workforce Development Agency ("LWDA"), the average estimated payment to Settlement Class members is projected to be approximately \$580.21--an excellent result, especially considering that Plaintiffs' only claims in this case are for penalties and not for any underlying unpaid wages. Accordingly, and for the reasons stated herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES

Spectrolab, according to its website, is "the world's leading manufacturer of high-efficiency multijunction space solar cells and panels currently providing power to hundreds of satellite and interplanetary spacecraft, and terrestrial concentrator solar cells for the emerging alternative energy market." Plaintiff and Settlement Class members are current and former non-exempt employees who worked for Spectrolab in California during the Class Period.

B. PLAINTIFF'S COMPLAINT AND PAGA LETTER

On July 26, 2016, Plaintiff filed the instant action in Los Angeles Superior Court, alleging claims for failure to provide accurate itemized wage statements under Labor Code § 226. As stated, Plaintiffs' claims are based solely on Spectrolab's alleged failure to include its address and employee rates of pay on employee wage statements. Also on July 26, 2016, Plaintiff sent a PAGA letter to Spectrolab and the LWDA, describing Plaintiff's allegations and stating Plaintiff's intention to assert a claim for PAGA penalties.

C. SPECTROLAB'S "CURE" OF DEFECTIVE WAGE STATEMENTS

On August 23, 2016, Spectrolab sent a letter to Plaintiff and the LWDA, informing both that Spectrolab had exercised its right to "cure" under Labor Code § 2699.3(c)(2)(A), which provides employers a 33-day safe harbor period within which to "cure" certain Labor Code violations and thereby avoid PAGA penalties for those violations. Spectrolab's letter stated that within 33 days of the receipt of Plaintiff's PAGA letter, it had issued compliant wage statements to all aggrieved employees for each pay period for the three-year period prior to the date of the PAGA letter, as required to effect a "cure" pursuant to Labor Code § 2699.3(d). See Declaration of Paul K. Haines ("Haines Decl."), ¶ 11. The wage statements that Plaintiff received from Spectrolab in connection with its attempt to cure included Spectrolab's address and Plaintiffs' applicable rates of pay. *Id.*

D. PLAINTIFF AMENDS COMPLAINT TO ADD PAGA CLAIM

Although Spectrolab purported to "cure" its wage statement violations by mailing compliant wage statements to all aggrieved employees, Plaintiff contends that Spectrolab's efforts could only have effected a "cure"--and thereby avoid PAGA penalties--with respect to its failure to include its address on employee wage statements (Section 226(a)(8)), but *not*

with respect to its failure to include employees' rates of pay (Section 226(a)(9)). This is because Labor Code § 2699.3(c), which contains the "cure" provision, applies to Section 226(a)(8) but not to Section 226(a)(9). Rather, Section 226(a)(9) is covered by Labor Code § 2699.3(a)², which does not contain a cure provision. Accordingly, on September 29, 2016, Plaintiff filed her First Amended Complaint ("FAC"), which added a claim for civil penalties under the PAGA based on Spectrolab's failure to include rates of pay on employee wage statements.

² Section 226(a)(9) is among the Labor Code sections listed in Section 2699.5. Accordingly, alleged violations of Section 226(a)(9) are governed by the PAGA procedures listed in Section 2699.3(a), which covers "civil action[s] by an aggrieved employee... alleging a violation of any provision listed in Section 2699.5..."

E. DEFENDANT DENIES PLAINTIFF'S CLAIMS

On November 28, 2016, Spectrolab answered the FAC. Spectrolab denied, and continues to deny, all of Plaintiff's material allegations. Spectrolab contends it is not liable for any damages, including penalties of any kind, to Settlement Class members.

With respect to wage statement penalties under Labor Code § 226, Spectrolab maintains that Plaintiff cannot show that she or any other employee actually "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. See Haines Decl., ¶ 12. Section 226(e) provides that an employee will be deemed to have suffered "injury" if the required information cannot be "promptly and easily determin[e]d from the wage statement alone." Spectrolab asserts that employees could determine their rates of pay simply by dividing their total pay earned by their hours worked, and thus they could have determined their rates of pay "from the wage statement alone," by performing simple math. Haines Decl., ¶ 12. Courts have held that if an employee need only perform "simple math" to determine the required information, the employee has not suffered "injury" under Section 226. See Hernandez v. BCI Coca-Cola Bottling Co., 554 F.App'x 661, 662 (9th Cir. 2014) ("Wage statements comply with § 226(a) when a plaintiff employee can ascertain the required information by performing simple math, using figures on the face of the wage statement.") (citing Morgan v. United Retail Inc., 186 Cal.App.4th 1136 (2010)). Moreover, Spectrolab argues that whether an individual putative class member "suffer[ed] injury" would require an individualized, employee-by-employee (or perhaps even wage statement-by-wage statement) inquiry into whether each employee suffered injury with respect to each wage statement.

Spectrolab further contends that its alleged wage statement violations could not be shown to be "knowing and intentional," which is also required under Section 226(e) for the imposition of penalties, particularly given that Spectrolab issued revised, compliant wage statements less than one month after Plaintiff informed Spectrolab of the alleged violation in her initial Complaint and her PAGA letter. See Haines Decl., ¶ 12.

With respect to PAGA civil penalties, Spectrolab asserts Plaintiff's PAGA claim fails because Plaintiff's underlying claim is without merit. See, e.g., Price v. Starbucks Corp., 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). In addition, Spectrolab maintains that its "cure" efforts-- which included sending compliant wage statements to all affected employees for the three-year period prior to Plaintiff's PAGA letter--absolve it of all PAGA penalties, and at the very least, absolve it of PAGA penalties with respect to the failure to list its address on wage statements. See Haines Decl., ¶ 13. Spectrolab further maintains that given its good-faith defenses to Plaintiff's claims, the Court would utilize its discretion to substantially reduce any penalties. See Labor Code § 2699(e)(2) (granting courts discretion to award less than the maximum PAGA penalty amount); see also Thurman v. Bayshore Transit Mgmt., Inc., 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); Fleming v. Covidien, Inc., No. CV 10-01487 RJK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties from \$2.8 million to \$500,000).

Finally, Spectrolab points to the fact that beginning in January 2016, The Boeing Company, Spectrolab's parent company, began issuing wage statements to Spectrolab employees that appear to comply with Labor Code § 226. Haines Decl., ¶ 14. Accordingly, any liability for penalties is necessarily cut off after that point. *Id.*

F. DISCOVERY AND MEDIATION

In preparation for mediation, the parties engaged in informal discovery, including Spectrolab's production of the total number of class members and the total number of potentially non-compliant wage statements during the Class Period. *See* Haines Decl., ¶ 15. Plaintiff analyzed the data and constructed a damages model based on the data, and prepared a detailed mediation brief outlining the procedural history of the litigation, Plaintiff's claims and theories of liability, and potential damages. *Id.* This exchange allowed the parties to assess the merits and value of Plaintiff's claims, as well as Spectrolab's potential defenses. *Id.*

The parties attended a full-day mediation on February 16, 2017 with Steve Cerveris, Esq., a respected California wage and hour class action mediator. *See* Haines Decl., ¶ 16. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal bases for the claims and defenses. *Id.* Ultimately, the parties negotiated a class-wide resolution at the mediation. *Id.* In the months that followed, the parties finalized the terms of settlement and executed the Settlement Agreement. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court approves this settlement, Spectrolab will pay a non-reversionary total of \$240,000.00 ("Gross Settlement Amount"). This amount is predicated on Spectrolab's representation at mediation that Spectrolab issued a total of 3,737 wage statements to Settlement Class members between July 25, 2015 and December 31, 2015. If, however, the number of wage statements actually issued to Settlement Class members between July 25, 2015 and December 25, 2015, is more than 10% greater than this number (i.e., if the number is greater than 4,110), then the Gross Settlement Amount will be increased on a *pro rata* basis for each additional wage statement issued that exceed 4,110. *See* Settlement Agreement, ¶ 12.

Importantly, no Settlement Class member will be required to file a claim form in order to reap financial benefit from the Settlement. All Settlement Class members will automatically receive a Settlement Share unless they affirmatively opt-out. The monetary terms of the settlement are summarized below:

• Gross Settlement Amount ("GSA"):	\$240,000.00
• Minus Court-approved attorneys' fees (one-third of GSA, currently estimated at):	\$80,000.00
• Minus Court-approved verified costs (estimated):	\$9,000.00
• Minus Court-approved incentive payment:	\$2,500.00
• Minus PAGA penalties to LWDA:	\$30,000.00
• Minus estimated settlement administration costs:	\$10,000.00
Net Settlement Amount ("NSA"):	\$108,500.00

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for court-approved incentive payments to Plaintiff, settlement administration costs, reasonable attorneys' fees and verified costs, and PAGA payment to the LWDA, the settlement requires Spectrolab to pay a at least \$108,500.00 to all members of the Settlement Class who do not timely opt-out. See Haines Decl., ¶ 17; Settlement Agreement, ¶¶ 14, 31. According to Spectrolab, there are approximately 187 total Settlement Class members. See Haines Decl., ¶ 18. Thus, the average estimated settlement share is projected to be \$580.21. *Id.* Settlement Class members will have 60 days from the mailing of the Notice to opt-out or object, thereby providing ample time to review the Notice without unduly delaying the settlement. See Settlement Agreement, ¶¶ 37-39.

The Net Settlement Amount will be allocated on a *pro rata* basis among all Settlement Class members who do not opt out, based on the number of workweeks³ employed between July 26, 2015 and December 31, 2015. Each Class Member's allocated amount shall be referred to as that Class Member's "Settlement Share." See Settlement Agreement, ¶ 30(b).

³ Spectrolab paid its non-exempt employees weekly during the relevant time period. Accordingly, the number of workweeks worked will correspond to the number of wage statements provided to Settlement Class members during the relevant time period, and thus correspond to their potential damages under Plaintiff's theories of liability.

Those Settlement Class members who do not opt out of the settlement will be bound by its terms, and will be releasing any and all claims against Spectrolab arising from or related to the allegations and/or claims asserted in this action, including all claims arising from or based on California Labor Code sections 226, 226.3, 1021.5, 2698, 2699, and 2699.5. See Settlement Agreement, ¶ 52. In addition, Plaintiff has agreed to a general release of all claims, known or unknown, subject to a waiver of Civil Code § 1542. *Id.*, ¶ 54.

2. Attorneys' Fees and Costs, Incentive and PAGA Payments

As part of the Settlement, Plaintiff will separately apply for incentive payments at the time of seeking final approval of the proposed class action settlement in the amount of \$2,500 for her services to the Settlement Class. Haines Decl., ¶ 23; see also Settlement Agreement, ¶ 31(a). "[I]ncentive awards are fairly typical in class action cases ... and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." In re Cellphone Fee Termination Cases, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final approval, Plaintiff's requested incentive payment is intended to recognize the substantial time and effort that Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Plaintiff's counsel, identifying potential witnesses, attending in-person and telephonic meetings with Plaintiff's counsel to discuss the claims and theories at issue in the litigation, and otherwise actively participating in the prosecution of her claims. Haines Decl., ¶ 23. Plaintiff respectfully submits that this requested incentive payment is well within the range of permissible approval and in line with incentive payments approved in similar class action settlements. See, e.g., Alvarado v. Nederend, No. 1:08-cv-01099, 2011 WL 90228 (E.D. Cal. 2011) (approving \$7,500 incentive award to each of five named plaintiffs out of \$505,058.60 settlement); Ross v. U.S. Bank Nat'l Ass'n, No. C 07-02951, 2010 WL 3833922 (N.D. Cal. 2010) (approving \$20,000 to each of four named plaintiffs out of \$1,050,000 settlement).

In addition, the parties have agreed to designate \$40,000.00 of the GSA as PAGA penalties, of which \$30,000.00 will be paid to the LWDA, with the remaining \$10,000.00 distributed to the Settlement Class as part of the Net Settlement Amount, consistent with the PAGA's requirement that 75% of such penalties be allocated to the LWDA with the remaining 25% of penalties allocated to aggrieved employees, per Labor Code § 2699(f). See Settlement Agreement, ¶ 14.

Should the Court grant preliminary approval, Class Counsel will, at the time of seeking final approval, request an attorneys' fees award of one-third of the GSA, and approximately \$9,000 in verified cost reimbursement. See Settlement Agreement, ¶¶ 31(b); Haines Decl., ¶ 24. Plaintiff submits that the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent basis. Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing and analyzing the documents and data produced by Spectrolab, preparing for and attending mediation, negotiating and preparing the Settlement Agreement, preparing this Motion for Preliminary Approval, and otherwise prosecuting the case. Haines Decl., ¶ 24. Class Counsel also anticipate incurring significant future attorneys' fees in appearing at the hearing on this Motion for Preliminary Approval, supervising the Notice process, and preparing the Final Approval motion and appearing at the Final Approval Hearing. *Id.*

California courts have recognized that an appropriate method for awarding attorneys' fees in class actions is as a percentage of the "common fund" created as a result of a settlement. See Laffite v. Robert Half Int'l, Inc., 1 Cal.5th 480 (2016) (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of one third of the GSA is well within the range of reasonableness, and is considered the typical rate for common fund settlements. See Newberg on Class Actions § 14.6 (4th Ed. 2013) (historically, courts have awarded percentage fees in the range of 20% to 50%). Class Counsel submit their request for fees is reasonable when viewed as an overall percentage of the settlement and in light of the substantial risks and significant work undertaken by Class Counsel; the positive results obtained for the Settlement Class; and the efficiency with which Class Counsel conducted the litigation.

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions the settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. See Reed v. United Teachers Los Angeles, 208 Cal.App.4th 322, 337 (2012) (stating that Rule 3.769 requires the trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); Hanton v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998) (stating that Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). To be approved, a settlement must be "fair, reasonable and adequate to all concerned." Reed, 208 Cal.App.4th at 337. Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. See In re Syncor ERISA Litig., 516 F.3d 1095, 1101 (9th Cir. 2008). The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is within the range of reasonableness. See, e.g., Hanton, *supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arms' length by class counsel. See, e.g., Kullar v. Foot Locker Retail, Inc., 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval

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

a. The Strength of Plaintiffs Case

Although she maintains her claims are meritorious, Plaintiff acknowledges there were substantial risks and uncertainty in proceeding with class certification and eventual trial on the merits. As described in section [I.E., *supra*], Spectrolab presented multiple defenses to Plaintiff's claims, both on the merits and as to class certification. While Plaintiff was prepared to litigate her claims through class certification and ultimately trial, success was far from certain. Thus, this factor supports preliminary approval.

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

Although the parties engaged in a significant amount of informal discovery in advance of the mediation, the parties had not yet commenced formal written and deposition discovery, which would have required the expenditure of substantial time and resources by all parties. Haines Decl., ¶ 19. Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.* Even if the class sought to be certified by Plaintiff was in fact certified, the parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id.* This settlement avoids those risks and the accompanying expense. Thus, this factor supports preliminary approval.

c. Risk of Maintaining Class Action Status

Plaintiff had not yet filed her motion for class certification, and as such, the extent to which Plaintiff's proposed class was certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Settlement Class, and the expected recovery would be significantly reduced.

This is especially true given the relatively small size of the class and that Spectrolab could have potentially entered into individual settlement agreements with putative class members by way of *Pick Up Stix*-style settlement agreements,⁴ for less than what Settlement Class members will recover through this settlement. Thus, this factor supports preliminary approval.

⁴ In *Chindurub v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an employer may enter into pre-certification settlement agreements with individual putative class members in which the putative class members release claims for past unpaid wages in exchange for consideration. The Court further held that such settlements could preclude those individual employees from recovery in class action litigation against the employer for the same wage claims.

d. Amount Offered in Settlement Given Realistic Value of Claims

This proposed settlement provides a fair and reasonable monetary recovery for the Settlement Class in the face of disputed claims. Based on the data provided to Plaintiff in connection with mediation, Plaintiff conducted an analysis of potential wage statement penalties and PAGA civil penalties based on Plaintiff's claims:

Wage Statement Penalties: \$127,058

Spectrolab represented at mediation that there were approximately 3,737 wage statements issued to Settlement Class members from July 26, 2015 to December 31, 2015. *See* Haines Decl., ¶ 20. In calculating Spectrolab's potential exposure, Plaintiff gave Spectrolab the benefit of assuming that Plaintiff could only obtain the "initial" wage statement violation of \$50 per each violation, for a total of \$186,850 in potential wage statement penalties. *Id.*; *see also* Labor Code § 226(e) (providing \$50 penalty for "initial" violations); *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding that "initial" violation rate applies until employer has been notified that it is violating a Labor Code provision). However, given Spectrolab's arguments (described *supra*) that any alleged violations were not "knowing and intentional" and did

not cause any employee to suffer "injury," as well as its argument that individual employees would need to establish "injury" with respect to each individual wage statement (thus precluding class certification), Plaintiff discounted the calculated exposure by 15% for risk of non-certification, and by an additional 20% for risk of being unsuccessful on the merits, to arrive at an estimated total of \$127,058. Haines Decl., ¶ 20.

PAGA Penalties: \$74,740

Plaintiff estimated a total maximum PAGA exposure of \$373,700 (calculated from 3,737 "initial violations" at \$100 each). Haines Decl., ¶ 21; *see also Anaral, supra*, 163 Cal.App.4th at 1209. However, these penalties derived from the underlying wage statement violations discussed herein, each of which Spectrolab disputes. *See, e.g., Green v. Lawrence Service Co., No. L.A. CV 12-06155 JAK (VBKs), 2013 WL 3907506 at *5, fn. 5 (C.D. Cal. 2013)* (explaining that PAGA claim's success is determined by merits of its underlying claims). Spectrolab also argues, as explained *supra*, that it may not be assessed any PAGA penalties because it took advantage of the PAGA's cure provision, at the very least with respect to the failure to include its address on wage statements. Moreover, as stated above, the PAGA specifically grants courts the discretion to reduce penalties (Labor Code § 2699(e)(2)), and Spectrolab argued the Court would reduce penalties significantly (indeed, to close to zero) given (i) the technical nature of the alleged violations, (ii) Spectrolab's good-faith defenses, as well as (iii) Spectrolab's good-faith cure efforts, through which it provided compliant wage statements to all affected employees for the three-year period prior to Plaintiff's PAGA letter. Indeed, Plaintiff anticipated it would be highly unlikely for the Court to award an amount of PAGA penalties equal to, or even close to, the amount of the underlying wage statement violations on which the PAGA penalties were based, particularly given that Plaintiff's did not allege any underpayment of wages. Haines Decl., ¶ 21. Of particular relevance is that Spectrolab acted swiftly in disseminating compliant wage statements after being alerted to its potential violations, which could have potentially been used to justify a significant reduction of the total penalties. *See Fleming v. Covidien, supra*, 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties from \$2.8 million to \$500,000, noting the defendant took prompt steps to correct all violations once notified).

Based on these considerations, Plaintiff discounted the maximal PAGA penalties amount by 50% for a risk of losing on the merits and by an additional 60% for the risk of this Court reducing penalties, to arrive at an estimated total of \$74,740. Haines Decl., ¶ 21; *see also Thurman, supra*, 203 Cal.App.4th at 1135-36 (affirming reduction of PAGA penalties).

Using these estimated figures for each of the claims described above, Plaintiff predicted that the realistic total recovery for the Settlement Class would be approximately \$145,743 (\$127,058 in wage statement penalties plus the aggrieved employees' 25% share of projected PAGA civil penalties). Haines Decl., ¶ 22. The projected *Net Settlement Amount* of \$108,500 therefore represents more than 74% of Plaintiff's reasonably forecasted recovery. *Id.* Thus, preliminary approval is appropriate since the settlement will provide significant monetary relief to the Settlement Class. The percentage of liability exposure recovered in this case also exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finam. Servs.*, 2007 WL 221862, *4 (C.D. Cal. 2007) (approving settlement which represented 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement which represented "roughly one-sixth of the potential recovery")

e. *The Experience and Views of Counsel.*

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by competent and experienced counsel who possess extensive experience litigating wage and hour class actions from both the plaintiff and defense side and have been appointed as class counsel in numerous cases alleging similar claims. *See* Haines Decl., ¶¶ 2-7; Declaration of Tuvia Korobkin ("Korobkin Decl."), ¶¶ 2-4; Declaration of Fletcher W. Schmidt ("Schmidt Decl."), ¶¶ 2-6; Declaration of Andrew J. Rowbotham ("Rowbotham Decl."), ¶¶ 2-5. Plaintiff's counsel reviewed the data and information supplied by Spectrolab, and drew on their extensive

experience in similar cases to assess the strengths and weaknesses of Plaintiffs case. Haines Decl., ¶ 15. The settlement was also reached with the assistance of Steve Cerveris, Esq., an experienced and respected wage and hour class action mediator. *Id.* at ¶ 16. Thus, this factor strongly supports preliminary approval. See, Kullar, supra, 168 Cal.App.4th at 130.

2. The Preliminary Approval Standard Is Met.

The Court can grant preliminary approval of the proposed settlement and direct that notice be given if the settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed negotiations; and (3) has no obvious deficiencies. See *Manual for Complex Litig.*, § 30.41 (3rd Ed. 1995); *Newberg on Class Actions*, §§ 11:24-25 (4th Ed. 2013).

a. The Settlement Is Within The Range Of Possible Approval

The proposed *net* settlement amount reflects more than 74% of the estimated recovery that the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible, monetary compensation (more than \$580 per Settlement Class member, on average) for hotly disputed claims. Plaintiff submits the settlement is within the range of possible approval, such that notice should be provided to the Settlement Class so that they can consider the settlement. The Court will again have the opportunity to assess the reasonableness of the settlement after the Settlement Class has had the opportunity to opt-out and/or object.

b. The Settlement Resulted from Serious, Informed Negotiations

This proposed classwide settlement is the result of the exchange of substantial information, arm's-length negotiations by counsel, a full-day mediation before an experienced wage and hour class action mediator, and additional months of negotiating the Settlement Agreement. Thus, the proposed settlement is entitled to an initial presumption of fairness. See Kullar, supra, 168 Cal.App.4th at 130. Plaintiff carefully vetted the claims at issue and conducted a detailed review of the relevant data and the law to arrive at her estimated classwide damages figures. See Haines Decl., ¶¶ 15, 20-22. Thus, this factor also supports preliminary approval.

c. The Settlement Is Devoid of Obvious Deficiencies

Preliminary approval of the proposed settlement is also warranted because there are no obvious deficiencies. This settlement will provide tangible monetary relief to the Settlement Class members, and the amounts proposed for attorneys' fees and costs, the incentive payments to the named Plaintiff, and the PAGA set-aside are all reasonable and appropriate based on the particular facts of this case. Because the proposed settlement is devoid of obvious deficiencies, this final factor supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

The proposed Settlement Class satisfies the criteria for certification of a settlement class under California law because: 1) the individuals in the Settlement Class are ascertainable and numerous; 2) common questions of law and fact predominate; 3) Plaintiff's claims are typical of the claims of absent Settlement Class members; and 4) Plaintiff and her counsel will fairly and adequately represent the interests of the Settlement Class. See Cal. Code Civ. Proc. § 382.

1. The Proposed Class Is Ascertainable and Numerous

A class is "ascertainable" where members "may be readily identified without unreasonable expense or time by reference to official [or business] records." See *Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 919 (2010) (alterations in original). Here, the Settlement Class is defined as non-exempt employees who worked for Spectrolab in California during the Class Period. Thus, class members can be identified from Spectrolab's personnel and employment records. As stated, Spectrolab represents that there are approximately 187 Settlement Class members, rendering it impracticable to bring all class members before the Court. Thus, the proposed Settlement Class satisfies the numerosity requirement. See, e.g., *Collins v. Rocha*, 7 Cal.3d 232, 234 (1972) (finding class of 44 farm workers sufficiently numerous).

2. Common Issues of Law and Fact Predominate

The focus on certification is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. See *Say-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Here, Plaintiff's claims are predicated on Spectrolab's allegedly facially defective wage statements. These sorts of claims are commonly held proper for class certification. See, e.g., *Lubin v. Wackenhut Corp.*, 5 Cal.App.5th 926, 958-60 (2016) (reversing trial court's decertification of wage statement claim based in part on facially defective wage statements that did not contain, *inter alia*, employees' hourly rates of pay); *Sandoval v. M1 Auto Collision Centers*, 309 F.R.D. 549, 568 (N.D. Cal. 2015) (certifying wage statement class and finding that whether defendants' statements were inaccurate and injured plaintiffs under Labor Code § 226 presents common questions).

3. The Claims of the Named Plaintiff Are Typical

The typicality requirement is satisfied where the class representative's claims are typical of those of the rest of the class. *B. WI. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Here, Plaintiff's claims are typical of those held by Settlement Class members. Plaintiff was employed by Spectrolab as a non-exempt employee in California during the proposed Class Period and received Spectrolab's allegedly defective wage statements during that time period. See *Esparza Decl.*, ¶ 2. As a result, Plaintiff was injured by the same conduct, and in the same manner, by which other Settlement Class members were injured. Typicality is satisfied because Plaintiff has suffered the same injuries as other Settlement Class members.

4. Plaintiff and Class Counsel Will Adequately Represent the Class

The adequacy of representation requirement examines conflicts of interest between named parties and the class(es) they seek to represent. See *Capital People First v. State Dept. of Developmental Svcs.*, 155 Cal.App.4th 676, 697 (2007). Plaintiff and her counsel will adequately represent the class, as there are no conflicts between the named Plaintiff and the class she seeks to represent. See *McGhee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976) (finding adequacy satisfied where there was no indication that plaintiffs counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation. See, *Haines Decl.*, ¶¶ 2-7; *Korobkin Decl.*, ¶¶ 2-4; *Schmidt Decl.*, ¶¶ 2-6; *Rowbotham Decl.*, ¶¶ 2-5.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED CLASS NOTICE

This Court should order distribution to the Settlement Class of the proposed notice by U.S. Mail, postage prepaid, using last known mailing address information provided by Spectrolab. See Settlement Agreement, ¶ 36. This manner of giving notice is the "best notice practicable" under the circumstances as it provides "individual notice to all members who can be identified through reasonable effort." See *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff proposes that the settlement be administered by CPT Group, Inc., an experienced class action settlement administrator. See Declaration of Julie Green ("Green Decl.") and attached exhibits. Settlement Class members' addresses will be

ascertainable through Spectrolab's personnel and payroll records. To the extent that the addresses of former employees have changed, CPT will run all the addresses provided through the U.S. Postal Service National Change of Address database and/or perform "skip traces" to obtain current address information. See Settlement Agreement, ¶ 36(c).

The content of the proposed Notice satisfies Cal. Rule of Court 3.766(d) because it advises class members of the nature of the claims, the basic contentions and denials of the parties and the key terms of the settlement, the uniform 60-day deadline to opt-out or object to the settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each class member, and advises them that they will be bound by the terms of the settlement if they do not request exclusion. See Haines Decl., Exh. A to Exh. 1. The proposed notice will also notify Settlement Class members of the final approval hearing date and time and provides contact information for Class Counsel, and advises Settlement Class members that they may enter an appearance through counsel if they wish. This Notice satisfies Cal. Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, the Court should set a hearing for final approval of the settlement on a date appropriately scheduled to follow the deadline by which Settlement Class members must file objections to the settlement or opt-out. See Cal. Rule of Court 3.769.

V. CONCLUSION

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

Dated: May 17, 2017

Respectfully submitted,

HAINES LAW GROUP, APC

By: <<signature>>

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