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 8 and Collective

9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**

12 DAVID CHAVEZ and VINCENT
 13 SLAUGHTER, on behalf of themselves and all
 others similarly situated,

14 Plaintiffs,

15 vs.

16 STELLAR MANAGEMENT GROUP VII,
 17 LLC; STELLAR MANAGEMENT GROUP,
 INC. d/b/a QSI QUALITY SERVICE
 18 INTEGRITY; THE VINCIT COMPANY, LLC
 d/b/a THE VINCIT GROUP and VINCIT
 ENTERPRISES,

19 Defendants.

Case No.: 3:19-cv-01353-JCS

**PLAINTIFFS' NOTICE MOTION AND
 MOTION FOR PRELIMINARY
 APPROVAL OF SETTLEMENT;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT THEREOF**

Date: April 16, 2021

Time: 9:30 a.m.

Judge: Hon. Joseph C. Spero

Ctrm.: G, 15th Floor

Filed: March 13, 2019

Trial Date: None

1 TO THE HONORABLE COURT, ALL PARTIES, AND ATTORNEYS OF RECORD:

2 NOTICE IS HEREBY GIVEN that on April 16, 2021, at 9:30 a.m. by remote
3 videoconference via Zoom pursuant to Section A of the Court’s Standing Order Regarding COVID-
4 19 Procedures, before Magistrate Judge Joseph C. Spero of the United States District Court,
5 Northern District of California, Plaintiffs David Chavez and Vincent Slaughter (“Plaintiffs”) move
6 the Court for preliminary approval of the Class Action Settlement Agreement and Release (the
7 “Settlement Agreement” or the “Settlement,” attached as **Exhibit 1** to the accompanying
8 Declaration of Carolyn Hunt Cottrell) as to the California Class, and approval of the Settlement as
9 to the Collective. The Settlement globally resolves all of the claims in these actions on a class and
10 collective basis. In particular, Plaintiffs move for orders:

11 **As to the California Class:**

- 12 (1) Granting preliminary approval of the Settlement Agreement as to the Class;
- 13 (2) Conditionally certifying the Class for settlement purposes;
- 14 (3) Approving the proposed schedule and procedure for completing the final approval
15 process for the Settlement as to the Class, including setting the Final Approval Hearing;
- 16 (4) Approving the Notice of Settlement (“Class Notice”) as it pertains to the Class
17 (attached as **Exhibit A** to the Settlement Agreement);
- 18 (5) Preliminarily appointing and approving Schneider Wallace Cottrell Konecky LLP as
19 Counsel for the Class;
- 20 (6) Preliminarily approving Class Counsel’s request for attorneys’ fees and costs;
- 21 (7) Preliminarily appointing and approving Plaintiffs Chavez and Slaughter as Class
22 Representatives for the Class;
- 23 (8) Preliminarily appointing and approving Heffler Claims Group (“Heffler”) as the
24 Settlement Administrator for the Class; and
- 25 (9) Authorizing the Settlement Administrator to mail and email the approved Class
26 Notice to the Class (attached as **Exhibit A** to the Settlement Agreement).

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1 **As to the Collective:**

- 2 (1) Granting approval of the Settlement Agreement as to the Collective;
- 3 (2) Approving the Notice of Settlement (“Collective Notice”) as it pertains to the
4 Collective (attached as **Exhibit B** to the Settlement Agreement);
- 5 (3) Approving the proposed schedule for completing the settlement process as to the
6 Collective;
- 7 (4) Approving and appointing Schneider Wallace Cottrell Konecky LLP as Counsel for
8 the Collective for purposes of the Settlement;
- 9 (5) Appointing and approving the Plaintiff Slaughter as the Collective Representative for
10 the Collective for purposes of the Settlement;
- 11 (6) Appointing and approving Heffler as the Settlement Administrator for the Collective;
12 and
- 13 (7) Authorizing the Settlement Administrator to mail and email the approved Collective
14 Notice to the Collective as set forth in the Settlement Agreement.

15 Plaintiffs bring this Motion pursuant to Federal Rules of Civil Procedure 23(e) and long-
16 established precedent requiring Court approval for Fair Labor Standards Act settlements.¹ The
17 Motion is based on this notice, the following Memorandum of Points and Authorities, the
18 Declaration of Carolyn Hunt Cottrell, and all other records, pleadings, and papers on file in the
19 consolidated and related actions and such other evidence or argument as may be presented to the
20 Court at the hearing on this Motion. Plaintiffs also submit a Proposed Order Granting Preliminary
21 Approval of Class and Collective Action Settlement with their moving papers.

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26 ¹ See, e.g., *Lynn’s Food Stores, Inc. v. United States*, 679 F.2d 1350, 1352-53 (11th Cir. 1982);
27 *Dunn v. Teachers Ins. & Annuity Ass’n of Am.*, No. 13-CV-05456-HSG, 2016 WL 153266, at *3
28 (N.D. Cal. Jan. 13, 2016); *Otey v. CrowdFlower, Inc.*, No. 12-CV-05524-JST, 2015 WL 6091741,
at *4 (N.D. Cal. Oct. 16, 2015).

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES..... III

I. INTRODUCTION 1

II. BACKGROUND 1

A. Procedural Background..... 1

1. The Pleadings..... 1

2. Discovery..... 2

3. FLSA Conditional Certification..... 4

4. Substitution of Defendants’ Counsel, Mediation, and Settlement..... 4

B. Factual Background..... 4

III. TERMS OF THE SETTLEMENT..... 6

A. Basic Terms and Value of the Settlement..... 6

B. Class and Collective Definitions..... 9

C. Allocation and Awards..... 9

D. Scope of Release..... 11

E. Settlement Administration..... 12

IV. The Court Should Grant Preliminary Approval of the Settlement as to the California Class and Approval of the Settlement as to the Collective 13

A. The Court Should Grant Preliminary Approval of the Settlement as to the California Class..... 13

A. The California Class Meets the Requirements for Class Certification..... 13

1. The Class is numerous and ascertainable..... 14

2. Plaintiffs’ claims raise common issues of fact or law..... 14

3. Plaintiff’s claims are typical of the claims of the Class..... 15

4. Plaintiffs and Class Counsel will adequately represent the Class..... 16

5. The Rule 23(b)(3) requirements for class certification are also met..... 16

B. Plaintiff Slaughter and the Collective Members are Similarly Situated..... 17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
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18
19
20
21
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24
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27
28

C. The Settlement Should Be Preliminarily Approved as to the Class and Approved as to the Collective Because It Is Fair, Reasonable, and Adequate. 18

 1. The terms of the Settlement are fair, reasonable, and adequate..... 19

 2. The Parties have agreed to a fair distribution of the settlement proceeds that is tailored to the Class and Collective and their respective claims. 20

 3. The extensive discovery in this Action enabled the Parties to make informed decisions regarding settlement. 21

 4. Litigating the Action not only would delay recovery, but would be expensive, time consuming, and involve substantial risk. 21

 5. The Settlement is the product of informed, non-collusive, and arm’s-length negotiations between experienced counsel. 23

D. The Class Representative Enhancement Payments Are Reasonable. 24

E. The Requested Attorneys’ Fees And Costs Are Reasonable. 24

F. The Proposed Notices of Settlement and Claims Process Are Reasonable. 26

G. The Court Should Approve the Proposed Schedule. 29

V. CONCLUSION..... 30

TABLE OF AUTHORITIES

CASES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Amchem Prod., Inc. v. Windsor
521 U.S. 591 (1997).....17

Balderas v. Massage Envy Franchising, LLP
2014 WL 3610945 (N.D. Cal. July 21, 2014).....19

Benton v. Telecom Network Specialists, Inc.
220 Cal.App.4th 701 (Cal. Ct. App. 2014)17

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485 F.Supp. 610 (N.D. Cal. 1979)21

Carter v. Anderson Merchandisers, LP
No. EDCV 08-0025-VAP OPX, 2010 WL 1946784 (C.D. Cal. May 11, 2010).....23

Caudle v. Sprint/United Mgmt. Co.
No. C 17-06874 WHA, 2018 WL 6618280 (N.D. Cal. Dec. 18, 2018)14

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No. CV-01-5093-RHW, 2005 WL 6304840 (E.D. Wash. May 16, 2005)14

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Nos. C 05–4526 MHP, C 06–7924 MHP, 2011 WL 672645 (N. D. Cal. Feb.16,2011)25

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361 F.3d 566 (9th Cir. 2004)19, 27

Dunn v. Teachers Ins. & Annuity Ass’n of Am.
No. 13-CV-05456-HSG, 2016 WL 153266 (N.D. Cal. Jan. 13, 2016).....2, 18

Eisen v. Carlisle & Jacquelin
417 U.S. 156 (1974).....26

Fry v. Hayt, Hayt & Landau
198 F.R.D. 461 (E.D. Pa. 2000).....15, 16

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2012 WL 2236752 (N.D. Cal. 2012)8

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No. 3:13-cv-04357-VC, Dkt. No. 181 (N.D. Cal. Apr. 15, 2016)24

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150 F.3d 1011 (9th Cir. 1998) passim

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745 F.3d 1249 (9th Cir. 2014)8

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706 F.2d 1144 (11th Cir. 1983)20, 21

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122 F.R.D. 258 (S.D. Cal. 1988)14

3

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723 F.Supp. 1373 (N.D. Cal. 1989)25

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789 F.Supp.2d 935 (N.D. Ill. 2011)20, 21

6

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289 F.R.D. 526, 539 (N.D. Cal. 2012), aff'd, No. 17-17533, 2019 WL 4898684 (9th Cir. Oct. 4,
2019)22

8

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213 F.3d 454 (9th Cir. 2000)19

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516 F.3d 1095 (9th Cir. 2008)19

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Case No. 3:17-cv-02229-EMC, ECF 232 (N.D. Cal. June 1, 2020).....10, 25

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No. 14CV984-MMA BGS, 2015 WL 5117080 (S.D. Cal. July 29, 2015).....22

14

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No. C05-1428JLR, 2006 WL 2381797 (W.D. Wash. Aug. 16, 2006)14

16 *Knight v. Red Door Salons, Inc.*
2009 WL 248367 (N.D. Cal. 2009)25

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2008)21

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679 F.2d 1350 (11th Cir. 1982)2, 18, 19

20

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2014 WL 360196 (C.D. Cal. Jan. 31, 2014)19

22 *Monterrubio v. Best Buy Stores, L.P.*
291 F.R.D. 443 (E.D. Cal. 2013)21

23

24 *Mousai v. E-Loan, Inc.*
No. C 06-01993 SI (N.D. Cal. May 30, 2007).....24

25 *Mullane v. Cent. Hanover Bank & Trust Co.*
339 U.S. 306 (1950)27

26

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2:02-CV-2685-GEB-CMK, 2008 WL 3154681 (E.D. Cal. Aug. 4, 2008).....26

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688 F.2d 615 (9th Cir. 1982)19, 20

2 *Otey v. CrowdFlower, Inc.*
3 No. 12-CV-05524-JST, 2015 WL 6091741 (N.D. Cal. Oct. 16, 2015)2, 18, 19

4 *Phillips Petroleum Co. v. Shutts*
472 U.S. 797 (1985)26

5 *Regino Primitivo Gomez, et al. v. H&R Gunlund Ranches, Inc.*
6 No. CV F 10–1163 LJO MJS, 2011 WL 5884224 (E.D. Cal. 2011)25

7 *Romero v. Producers Dairy Foods, Inc.*
235 F.R.D. 474 (E.D. Cal. 2006)14

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18 F.3d 1449 (9th Cir. 1994)27

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12 Case No. 3:17-cv-00251-VC, ECF 304-305 (N.D. Cal. Oct. 23, 2019)10, 24, 25

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327 F.3d 938 (9th Cir. 2003)24, 25

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15 2015 WL 3776765 (N.D. Cal. June 17, 2015)19

16 *Thurman v. Bayshore Transit Mgmt., Inc.,*
203 Cal.App.4th 1112 (Cal. App. Ct. 2012)8

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18 901 F. Supp. 294 (N.D. Cal. 1995)24

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266 F.R.D. 482 (E.D. Cal. 2010)25

20 *Viceral v. Mistras Grp., Inc.,*
21 Case No. 15-cv-2198-EMC, 2016 WL 5907869 (N.D. Cal. Oct. 11, 2016) (Chen, J.)19

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290 F. 3d 1043 (9th Cir. 2002)25

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24 737 F.3d 538 (9th Cir. 2013)15, 16

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No. C-06-05778 JCS, 2011 WL 1230826 (N.D. Cal. Apr. 1, 2011)19, 23, 25

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28

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 No. CV 08-07919 GAF PJWX, 2011 WL 8199987 (C.D. Cal. Nov. 23, 2011)22

2
 3 **STATUTES**

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 6 29 U.S.C. § 2558
 7 Cal. Lab. Code § 1194.28
 8 Cal. Lab. Code § 2038
 9 Cal. Lab. Code § 2268
 10 Cal. Lab. Code § 26998

11 **RULES**

12 Fed. R. Civ. P. 23 passim

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 15 § 8.21 (3rd Ed. 1992)28
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 § 8.39 (3rd Ed. 1992)27
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 21
 22
 23
 24
 25
 26
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 28

1 **I. INTRODUCTION**

2 This class and collective action (the “Action”) is brought on behalf of Defendants² current and
 3 former non-exempt employees throughout the United States, including in California, , who primarily
 4 provide sanitation services at meat processing locations of Defendants’ clients.³ The Action is based
 5 on Defendants’ alleged violations of federal and California labor laws. After nearly two years of
 6 intensive litigation, including formal discovery, extensive motion practice, amendments to the
 7 complaint, conditional certification, mediation and exhaustive pre-mediation discovery and outreach,
 8 and extensive arm’s-length negotiations between counsel, the Parties have reached a global settlement
 9 of the Actions, memorialized in the proposed Class Action Settlement Agreement and Release
 10 (“Settlement”). Plaintiffs now seek preliminary approval of the Settlement as to the California Class
 11 and approval of the Settlement as to the Collective.⁴

12 The Parties have resolved the claims of approximately 5,923 Sanitation Workers and similarly
 13 situated non-exempt employees, for a total non-reversionary settlement of \$4,250,000. With this
 14 proposed Settlement, the Parties are resolving numerous wage and hour claims unlikely to have been
 15 prosecuted as individual actions. The Settlement provides an excellent benefit to the Class and
 16 Collective and an efficient outcome in the face of expanding litigation. The Settlement is fair,
 17 reasonable, and adequate in all respects, and Plaintiffs respectfully request that the Court grant the
 18 requested approval.

19 **II. BACKGROUND**

20 **A. Procedural Background.**

21 **1. The Pleadings.**

22 On March 13, 2019, Plaintiff Chavez filed a Class and Collective Action alleging violations of
 23 the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 et seq., ECF 1, and subsequently filed an

24 _____
 25 ² Defendants refers to Stellar Management Group VII, LLC (“SMGVII”; Stellar Management Group,
 Inc. d/b/a QSI Quality Service Integrity (“SMGINC”); and The Vincit Company, LLC d/b/a The Vincit
 Group and Vincit Enterprises (“Vincit”) (collectively, “Defendants” or “QSI”).

26 ³ For ease of reference, Class and Collective Members are referred to as “Sanitation Workers.”

27 ⁴ The Settlement is attached as **Exhibit 1** to the accompanying Declaration of Carolyn Hunt Cottrell
 in Support of Plaintiff’s Motion for Preliminary Approval of Class and Collective Action Settlement
 (“Cottrell Decl.”).

1 amended complaint (“FAC”) to add named Plaintiff Vincent Slaughter on May 21, 2020. ECF 83.⁵
 2 Plaintiffs allege Defendants violated the Fair Labor Standards Act (“FLSA”) and California wage and
 3 hour laws by failing to pay non-exempt employees their earned wages, failing to provide legally
 4 compliant meal and rest periods, and failing to reimburse for work-related expenditures. Declaration of
 5 Carolyn H. Cottrell (“Cottrell Decl.”), ¶ 8.

6 Defendants filed multiple motions on the pleadings in this matter: a motion to dismiss for lack
 7 of personal jurisdiction, a renewed motion to dismiss for lack of personal jurisdiction, a motion for
 8 leave to file motion for reconsideration on Defendants’ renewed motion to dismiss, and a final motion
 9 to dismiss for lack of personal jurisdiction as to out-of-state putative FLSA collective members. *See*
 10 ECF 18 (filed May 6, 2019), 45 (filed Nov. 22, 2019), 64 (filed March 6, 2020), 84 (filed June 4, 2020).
 11 The Court denied all four motions. *See* ECF 28 (filed July 1, 2020), 63 (filed Feb. 21, 2020), 73 (filed
 12 April 1, 2020), 103 (filed Aug. 5, 2020). Defendants also moved for partial summary judgement, ECF
 13 76, which was also denied, without prejudice to refile, upon the filing of the FAC. ECF 81.

14 **2. Discovery.**

15 During the Parties’ extended litigation on the pleadings, on June 28, 2019, the Court granted
 16 Plaintiff’s request to conduct jurisdictional discovery, ECF 28-29; *see also* ECF 40. On August 8,
 17 2019, Plaintiff Chavez propounded written, jurisdictional discovery requests, including 17 requests for
 18 production of documents and 19 special interrogatories on each Defendant. Cottrell Decl., ¶ 18. The
 19 Parties met and conferred extensively regarding the scope of Plaintiff’s requests and appeared before
 20 this Court for discovery conference; as a result, Plaintiffs were allowed to conduct jurisdictional
 21 depositions of Defendants’ corporate witnesses. ECF 28-29, 35-36, 39-41. In October 2019, Plaintiff
 22 took the depositions of Stellar’s Rule 30(b)(6) witness, Juanisela Hamilton; QSI’s Rule 30(b)(6)

23
 24 ⁵ On March 14, 2019, David Chavez filed a complaint pursuant to the Labor Code Private Attorneys
 25 General Act of 2004 (“PAGA”) in the California Superior Court of Sonoma County (“State Action”)
 26 against Defendants. *See* ECF 54-5, at pp. 7-28. On May 6, 2019, Defendants Vincit and QSI filed a
 27 motion to quash service for lack of personal jurisdiction, which was granted. *See id.*, at pp. 30-31; ECF
 28 54-3, at p. 7. For purposes of the Settlement, the Parties agreed to dismiss the State Action without
 prejudice, and to stipulate to amending the First Amended Complaint to assert claims under the PAGA
 and Labor Code Section 2802. Settlement, ¶ 14. Plaintiffs intend to file that stipulation and request
 for dismissal shortly following the filing of the instant motion. Cottrell Decl., ¶ 7, n. 1.

1 witness, Jeffrey W. Bryant; and Vincit's Rule 30(b)(6) witness, Rebecca Hulgán and Tammy Way.
2 Cottrell Decl., ¶ 18. The jurisdictional discovery process concluded on October 30, 2019. *Id.*

3 Following the Court's order opening of the formal discovery process, ECF 41-42, on December
4 20, 2019, Plaintiff propounded non-jurisdictional written discovery requests, including 76 requests for
5 production of documents and 18 special interrogatories to each Defendant. *Id.*, ¶ 19. Plaintiffs also
6 served three third-party subpoena duces tecum to Foster Farms, Perdue Foods, and La Mexicana LLC
7 in October 2020. *Id.* Plaintiff Chavez served similar written discovery requests in the State Action as
8 well. *Id.*, ¶ 20.⁶ Numerous, lengthy meet and confer efforts, including meet and confer calls that took
9 hours at a time, between the Parties followed in both actions. *Id.*, ¶ 21.

10 Plaintiffs additionally completed extensive outreach with Sanitation Workers, including nearly
11 100 in-depth interviews, which covered topics including dates and locations of work, hours of work,
12 pre-shift and post-shift off-the-clock work, meal and rest breaks, and reimbursement of work-related
13 expenses. *Id.*, ¶ 22. Multiple Sanitation Workers that completed interviews also provided additional
14 documents to Plaintiff's counsel. *Id.* Through this process, Plaintiffs garnered substantial factual
15 background regarding the alleged violations, which Plaintiffs' counsel utilized to build their case and
16 to assess Defendants' potential exposure in this action. *Id.*

17 Defendants produced over 27,100 documents in this Action, and hundreds of documents in the
18 State Action, including their general policies as well as time records, payroll records, schedules, and
19 personnel records. *Id.*, ¶ 23. Plaintiffs also received extensive informal discovery in advance of
20 mediation, including job descriptions, timekeeping and break policies, and time and pay records for a
21 sampling representing 20% of the Class. *Id.*, ¶ 24. Defendants also provided class-wide figures,
22 including the total number of Sanitation Workers, average hourly rates, and additional data points,
23 ahead the mediation, to enable Plaintiffs' counsel to evaluate damages on a Class and Collective basis.
24 *Id.* Plaintiffs' counsel completed an exhaustive review of these documents, and used the information
25 and data from them to prepare for mediation. *Id.*

26 _____
27 ⁶ Upon Defendants' insistence, Plaintiffs agreed to stipulate that any discovery produced in this action
28 and the State Action could not be interchanged, and as a result there was some overlap of discovery
produced in the two actions. Cottrell Decl., ¶ 20.

1 **3. FLSA Conditional Certification.**

2 On October 21, 2020, Plaintiff Slaughter moved for conditional certification of the Collective to
3 facilitate nationwide notice pursuant to 29 U.S.C., § 216(b), on behalf of a nationwide collective of
4 non-exempt employees of Defendants. ECF 116. Soon thereafter, the Parties settled the Action and
5 agreed to stay the case pending settlement. *See* ECF 118-119; Cottrell Decl., ¶ 25.

6 **4. Substitution of Defendants' Counsel, Mediation, and Settlement**

7 On July 7, 2020, Defendants substituted their former counsel, Hopkins & Carley, ALC, with
8 Defendants' current counsel, Goodwin Procter LLP. ECF 96-97. Plaintiffs worked with Defendants'
9 new counsel to come up to speed in this action, and the Parties subsequently agreed to participate in
10 private mediation. Cottrell Decl., ¶ 26. The Parties then engaged in pre-mediation informal discovery,
11 including documents and data regarding payroll, timekeeping, policies, and additional data points
12 regarding the proposed Class and Collective. *Id.*⁷

13 The Parties attended mediation before Mark S. Rudy on September 24, 2020. *Id.*, ¶ 27. The case
14 did not settle that day. *Id.* Throughout the mediation process, the Parties engaged in serious and arm's-
15 length negotiations, culminating in a mediator's proposal. *Id.* Following extensive arm's length
16 negotiations, the Parties eventually accepted the mediator's proposal on October 30, 2020. *Id.* The
17 Parties extensively met and conferred over the detailed terms of the settlement for purposes of executing
18 a memorandum of understanding, and eventually agreed to instead memorialize those terms in a long-
19 form settlement. *Id.*, ¶ 28. The Parties finalized the long-form settlement agreement on March 12,
20 2021, which was executed on that same day. *Id.*

21 **B. Factual Background.**

22 Defendants provide animal processing services, including engineering, chemical application,
23 equipment outfitting, and logistics support nationwide, including sanitation services throughout the
24 country at meat processing facilities as a subcontracted service provider to plants, such as Foster Farms,
25 Perdue Foods, and Rocky and Rosie Poultry Plant. *Id.*, ¶ 9. The proposed Class and Collective

26 _____
27 ⁷ In advance of mediation, the Parties also entered into a Tolling Agreement on August 19, 2020, which
28 tolled the statute of limitations on any FLSA claims of putative Collective Members and memorialized
the Parties' agreement to suspend formal motion practice. Cottrell Decl., ¶ 26.

1 members, who are classified as non-exempt employees, carry out these services throughout the United
2 States, including in California. *Id.*, ¶ 10. These Sanitation Workers provide support for Defendants’
3 clients’ facilities and complete a variety of duties, including: donning and doffing protective equipment,
4 convening for safety meetings, cleaning off and sanitizing poultry equipment, preparing and spraying
5 liquid chemicals, performing regular maintenance on sanitation equipment, preparing the facility for
6 audits by federal and state agencies, and practicing food safety procedures. *Id.*

7 Plaintiffs allege that Sanitation Workers work long and difficult hours, at least five days a week
8 and seven hours a day, and experience wage and hour violations in their work with Defendants. *Id.*, ¶
9 11. In particular, Plaintiffs allege that the Sanitation Workers experience significant amounts of pre-
10 and post-shift off-the-clock work, including unpaid, on-duty time traveling to the actual work location
11 through the massive facilities, retrieving protective gear, donning and doffing protective gear, waiting
12 for and undergoing security inspections, filling out paperwork, traveling to and from other facilities
13 off-the-clock, and additional off-the-clock work particular to COVID-19 protocols. *Id.* Plaintiffs
14 further allege that the Sanitation Workers cannot take timely, full, off-duty meal and rest periods, due
15 to a lack of break relief and pursuant to Defendants’ policies and practices.⁸ *Id.*, ¶ 12. Moreover,
16 Plaintiffs allege that the Sanitation Workers are required to pay out-of-pocket for equipment including
17 chemical protective suits, goggles, boots pumps, squeegees, and chemical spray bottles. *Id.*, ¶ 13.

18 As a result of these alleged violations, Plaintiffs allege that Defendants systematically violate the
19 Fair Labor Standards Act, as well as California labor law. *Id.*, ¶ 14. Plaintiffs allege that throughout the
20 relevant time period, Defendants eschewed their obligations to Plaintiffs and Sanitation Workers by
21 allegedly: (1) not paying Class and Collective Members proper minimum and overtime wages for work
22 performed off-the-clock on a daily basis; (2) failing to provide Class Members with a reasonable

23 _____
24 ⁸ Plaintiffs allege that all Sanitation Workers are required to follow Defendants’ “Sunshine Policy,”
25 whereby they are scheduled to work seven hours per day except on “mass sanitation” days, which takes
26 place at least one day each week during which Sanitation Workers are required to remain at their
27 assigned plant at the end of their shifts to wait for an auditor to check the cleanliness of the machines,
28 and are required to remain and clean the machines again for further inspection if the auditor determines
the machines do not pass their cleanliness standards. *Id.*, ¶ 12. Plaintiffs understand that, on “mass
sanitation” days, Sanitation Workers are required to take a 30-minute lunch break. *Id.* However,
Plaintiffs allege that Defendants instruct Sanitation Workers to work through any breaks they receive.
Id.

1 opportunity to take meal and rest periods, and failing to compensate Class Members when such meal
 2 and rest periods are not taken; (3) failing to reimburse Class Members for necessarily-incurred
 3 expenses; and (4) failing to issue Class Members accurate, itemized wage statements. *Id.*

4 Defendants have at all times denied, and continue to deny, all of these allegations, including any
 5 liability for alleged failure to pay overtime compensation or any alleged wage payment, wage and hour
 6 or similar violation. Settlement, ¶ 9. Defendants further deny that Plaintiffs' allegations are appropriate
 7 for class/collective and/or representative treatment for any purpose other than for settlement purposes.
 8 *Id.*, ¶ 12.

9 **III. TERMS OF THE SETTLEMENT**

10 **A. Basic Terms and Value of the Settlement.**

11 Defendants have agreed to pay a non-reversionary Gross Settlement Amount of \$4,250,000 plus
 12 interest to settle all aspects of this Action and the State Action. Settlement, ¶ 2.q. Defendants will pay
 13 \$4,250,000 into an interest-bearing Qualified Settlement Fund ("QSF") ten (10) business days
 14 following preliminary approval of the Settlement. *Id.*, ¶ 27. Pursuant to the Settlement, neither Party
 15 may remove any portion of the Gross Settlement Amount once it has been deposited into the QSF. *Id.*
 16 Once the Court issues an order granting final approval of the Settlement, the Settlement Administrator
 17 will distribute all funds from the Qualified Settlement Fund; and if final approval is denied, then the
 18 Gross Settlement Amount plus any interest thereon will be returned to the Defendants. *Id.*

19 The Net Settlement Amount, which is the amount available to pay settlement awards to the Class
 20 Members, is defined as the Gross Settlement Amount less: the PAGA Settlement Amount
 21 (\$30,000.00)⁹; any enhancement payments awarded to the Class Representatives (up to \$12,000.00 for
 22 Plaintiff Chavez and up to \$10,000 for Plaintiff Slaughter); the Settlement Administrator's fees and
 23 costs (estimated not to exceed \$85,000); and any attorneys' fees and costs awarded to Plaintiff's counsel
 24

25 _____
 26 ⁹ The Parties agreed to allocate \$30,000.00 of the Gross Settlement Amount to the settlement of the
 27 PAGA claims, which the Parties believe in good faith is a fair and reasonable apportionment.
 28 Settlement, ¶¶ 2.x, 29.c. The Settlement Administrator shall pay 75%, or \$22,500.00, of this amount to
 the LWDA, and 25%, or \$7,500.00, the "Net PAGA Amount," shall remain as part of the Net
 Settlement Amount. Settlement, ¶ 29.c.

1 (fees of up to one third of the Gross Settlement Amount, or approximately \$1,416,666.52, plus costs
2 not to exceed \$50,000). *Id.*, ¶ 2.r.

3 The Gross Settlement Amount is a negotiated amount that resulted from substantial arm's-
4 length negotiations and significant investigation and analysis by Plaintiffs' counsel. Cottrell Decl., ¶
5 31. Plaintiffs' counsel based their damages analysis and settlement negotiations on formal and informal
6 discovery (including the payroll and timekeeping data), depositions, and nearly 100 interviews with
7 Sanitation Workers. *Id.* Plaintiffs' counsel obtained average rates of pay for Sanitation Workers, which
8 were then used in conjunction with amounts of unpaid time to determine estimated damages for off-
9 the-clock and overtime violations. *Id.* Based on interview analysis and cross-checked with Defendants'
10 data, Plaintiffs applied a high-end damage assumption of 15 minutes of off-the-clock time per day,
11 along with each Sanitation Worker missing 80% of their meal and rest periods, and an average of \$50
12 out-of-pocket expenses per Sanitation Worker. *Id.*, ¶ 32.

13 Using these assumptions and further assuming that Plaintiff and the Sanitation Workers would
14 certify all of their claims and prevail at trial, Plaintiffs' counsel calculated the total potential substantive
15 exposure if Plaintiffs fully prevailed on all of their claims at approximately \$5.5 million and the total
16 exposure (including liquidated damages, derivative claims, and penalties) of \$16.6 million. *Id.*, ¶ 33.

17 The total amount of damages is broken down as follows:

- 18 • Plaintiffs calculated that unpaid wages owed, based on the assumption of 15 minutes of off-
19 the-clock work in each workday and inclusive of overtime and any applicable liquidated
20 damages, would total approximately \$3.8 million for all Sanitation Workers. *Id.*, ¶ 34.
- 21 • California Class Members are able to recover for meal and rest break violations. Based on
22 the assumption that 80% of their meal and rest periods are missed or otherwise non-
23 compliant, Class Members are owed approximately \$3.2 million under the premium pay
24 provisions of the California Labor Code, taking into account Section 203 premium pay hours
25 paid by Defendants. *Id.*, ¶ 35.
- 26 • Class Members are also able to recover directly for unreimbursed business expenses under
27 California Labor Code § 2802, which Plaintiff estimates at less than \$76,000. *Id.*, ¶ 36.
- 28 • Totaling the estimated damages for substantive (non-derivative) violations under California
law and the FLSA, as applicable, for unpaid off-the-clock work, meal and rest period
violations, and unreimbursed business expenses, Plaintiffs estimate that the total substantive
damages are approximately \$5.5 million. When liquidated damages are included, the total
exposure is \$7.1 million. *Id.*, ¶ 37. This amount does not include derivative claims (e.g.,
waiting time penalties, wage statement claims) and penalty claims (e.g., PAGA claims). *Id.*

- For derivative and penalty claims, Plaintiffs estimate the waiting time penalty claim for California Class Members under California Labor Code § 203 at approximately \$3.5 million and the wage statement penalty under California Labor Code § 226 at approximately \$2.2 million. *Id.*, ¶ 38. Plaintiff estimates the PAGA penalties for applicable Sanitation Workers at approximately \$3.8 million. *Id.* Totaling the estimated damages for derivative and penalty claims violations, Plaintiffs estimate that the total derivative and penalty damages are approximately \$9.5 million. *Id.*
- Plaintiffs calculated the total potential exposure—including of derivative claims, penalty claims,¹⁰ claims for liquidated damages from willful or bad faith conduct,¹¹ and interest—at approximately \$16.6 million. *Id.*, ¶ 39.

The negotiated non-reversionary Gross Settlement Amount of \$4,250,000 represents approximately 77% of the \$5.5 million total that Plaintiffs calculated for unliquidated, core claims for unpaid wages, meal and rest breaks, and expense reimbursements. *Id.*, ¶ 40. The \$4,250,000 represents 60% of the approximately \$7.1 million that Plaintiffs calculated for the liquidated total of such core claims. *Id.*

When adding derivative claims and potential penalties, the \$4,250,000 million settlement amount represents approximately 26% of Defendants’ total potential exposure of \$16.6 million. *Id.*, ¶ 41. These figures are based on Plaintiffs’ assessment of a best-case-scenario and does not account for any interest gained on the initial funding of the settlement. To have obtained such a result at trial, Plaintiffs would have to: (1) certify all claims and withstand any decertification motions; (2) prevail on the merits on all claims; (3) prove that Defendants acted knowingly or in bad faith; and (4) prove that all Sanitation Workers experienced the violations at the levels described above for every shift. *Id.*, ¶ 42.

Plaintiffs and their counsel considered the significant risks of continued litigation, described hereinafter, when considering the proposed Settlement. *Id.*, ¶ 43. These risks were front and center,

¹⁰ The damages figure includes Defendants’ additional exposure to PAGA penalties. But note, because Labor Code §§ 1194.2, 203, and 226 already incorporate their own penalty provisions, an award of additional PAGA penalties – or an award of the maximum penalty amount provided by PAGA – is uncertain. *See* Cal. Lab. Code § 2699(f); *see also* *Guifi Li v. A Perfect Day Franchise Inc.*, 2012 WL 2236752 at *17 (N.D. Cal. 2012). Moreover, even assuming Plaintiffs’ remaining claims qualify for PAGA penalties, any such award is not automatic. Cal. Lab. Code § 2699(e)(2); *see also* *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135-36 (Cal. App. Ct. 2012).

¹¹ This figure includes liquidated damages for unpaid overtime under the FLSA during a three-year statute of limitations period. 29 U.S.C. § 216(b) (liquidated damages for unpaid overtime is in an amount equal to the unpaid overtime); *Haro v. City of Los Angeles*, 745 F.3d 1249, 1259 (9th Cir. 2014). If an employer’s conduct constitutes a “knowing violation” of the statute, the FLSA’s standard two-year statute of limitations may be extended to three years. 29 U.S.C. § 255(a). Damages for unpaid overtime are not liquidated under California law.

1 particularly given the nature of the off-the-clock work, that the Sanitation Workers work in numerous
 2 and varying locations owned by various third-party entities, which could invariably complicate
 3 certification efforts and proving the claims on the merits. *Id.* In contrast, the Settlement will result in
 4 immediate and certain payment to Sanitation Workers of meaningful amounts. *Id.* The average recovery
 5 is \$1,110 per Class Member and \$205 per Collective Member.¹² *Id.*, ¶ 44. This amount provides
 6 significant compensation to the Sanitation Workers, and the Settlement provides an excellent recovery
 7 in the face of expanding and uncertain litigation. In light of all of the risks, the settlement amount is
 8 fair, reasonable, and adequate. *Id.*

9 **B. Class and Collective Definitions.**

10 An individual is eligible to share in the proposed Settlement if he or she belongs to either of the
 11 following:¹³

- 12 • The **Rule 23 Settlement Class** means Plaintiffs and all individuals employed by Defendants
 13 in non-exempt positions in the State of California at any time between March 13, 2015 and
 the date the Court grants preliminary approval of the Settlement.¹⁴
- 14 • **Opt-In Plaintiffs** are Plaintiff Slaughter, all individuals who prior to the date of the Court's
 15 Preliminary Approval Order have filed a consent form to join this Action, and all additional
 Collective Members who opt in to the litigation and consent to the terms of the Settlement
 16 by negotiating the check in the gross amount of his or her Settlement Award.¹⁵

17 **C. Allocation and Awards.**

18 The Net Settlement Amount to be paid to Sanitation Workers is approximately \$2,653,833.48,

19 ¹² The averages provided here do not incorporate any interest gained on the Gross Settlement Amount,
 20 assume all Class and Collective Members participate in the Settlement and that each member worked
 identical lengths of employment, and incorporate workweek weightings that reflect the increased value
 of state law claims and differing average rates of pay by state, described below. Cottrell Decl., ¶ 44.

21 ¹³ The class definitions slightly differ from those presented in the operative complaint. *See* Settlement,
 22 2.p, 2.ee; ECF 83, ¶¶ 52, 59. They are to be certified for settlement purposes only under Federal Rule
 of Civil Procedure 23. Settlement, ¶ 12.

23 ¹⁴ Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, Defendants will also be required to
 24 serve upon the appropriate state official of each state in which a class member resides and the
 appropriate federal official, a notice of the proposed settlement within 10 days after the Settlement is
 filed. *See* Procedural Guidance for Class Action Settlements (updated Dec. 5, 2018).

25 ¹⁵ Collective Members who have yet to join this Collective Action will receive notice of the Settlement,
 26 which will state that they may join the Collective as an Opt-In Plaintiff by cashing the Settlement Award
 check that they receive following final approval of the Settlement. A similar opt-in procedure was
 27 approved in this District. *See Morris v. Fidelity Investments, et al.*, No. C 17-06027-WHA, ECF 68
 (filed Feb. 12, 2019), ECF 70 (filed Feb. 15, 2019) (granting preliminary approval of class and
 28 collective action settlement where collective members receive notice of their ability to opt-in to the
 action and do so by cashing their settlement checks following final approval of the settlement).

1 excluding any interest gained on the Gross Settlement Amount. Cottrell Decl., ¶ 47. Sanitation Workers
 2 will each receive a settlement award check without the need to submit a claim form.¹⁶ *Id.*, ¶ 48. Each
 3 Sanitation Worker's settlement share will be determined based on the total number of weeks that the
 4 respective Sanitation Worker was employed by Defendants during the applicable limitations period(s).
 5 *Id.*, ¶¶ 49-52. Specifically, each Sanitation Worker will be credited for the number of weeks that he or
 6 she was employed by Defendants at any time (1) from March 13, 2015 to the date of Preliminary
 7 Approval for Rule 23 Class Members; and (2) if the Participating Individual is an Opt-In Plaintiff, in
 8 all states other than California, from March 13, 2016 to the date of Preliminary Approval. Settlement,
 9 ¶ 49. Participating Individuals who also worked for Defendants at any time from October 19, 2017 in
 10 California through the date of Preliminary Approval will also receive a pro rata portion of the Net
 11 PAGA Amount, based on the number of workweeks they were employed by Defendants during the
 12 PAGA period. *Id.*

13 Each workweek will be equal to one settlement share, but to reflect the increased value of state
 14 law claims and differing average rates of pay by state, workweeks during which work was performed
 15 in California will be weighted more heavily. *Id.*, ¶ 50. Specifically, each workweek during which work
 16 was performed in California will be equal to three settlement shares and workweek during which an
 17 Opt-In Plaintiff performed work in any state other than California will be equal to one settlement
 18 share.¹⁷ Settlement, ¶ 32. In the event that a Rule 23 Class Member, who is also an Opt-In Plaintiff,
 19 opts out of the Rule 23 component of the Settlement, he or she will receive credit under the Settlement
 20 for all of his or her Workweeks nationwide from March 13, 2016 to the date of Preliminary Approval.

22 ¹⁶ Class Members are not required to submit an Opt-In Form to receive payment under the Settlement
 23 for their work in California during the relevant time periods. However, only Opt-In Plaintiffs will be
 24 credited for work in other states, as the damages for work in those states are attributable to FLSA claims
 25 only. Class Members may opt out of the Rule 23 component of the Settlement, but those who are Opt-
 26 In Plaintiffs may not opt out of the FLSA component of the Settlement. Settlement, ¶ 24; Exs. A, B.

27 ¹⁷ Plaintiffs performed an in-depth analysis of Workweek weightings and the underlying state law
 28 provisions to develop the weightings. Cottrell Decl., ¶ 50. Additionally, courts in this district recently
 granted final approval of a hybrid FLSA/Rule 23 wage and hour settlement that incorporated a
 workweek weighting of three for California state law claims and a workweek weighting of one for
 FLSA-only Workweeks. *See Jones, et al. v. CertifiedSafety, et al.*, 3:2017-cv-02229, ECF 232 (N.D.
 Cal. June 1, 2020) (Chen, J.); *Soto, et al. v. O.C. Communications, Inc., et al.*, Case No. 3:17-cv-00251-
 VC, ECF 299 at 10:11-14, 305 (N.D. Cal. Oct. 23, 2019) (Chhabria, J.).

1 *See id.*, ¶ 32.a.ii. In this circumstance, none of the Workweeks will be subject to any weighting (i.e., all
2 Workweeks will be equal to one settlement share on an FLSA basis), even for work in California. *See*
3 *id.*, ¶ 32; Cottrell Decl., ¶ 51.

4 The total number of settlement shares (as weighted) for all Participating Individuals will be
5 added together and the Net Settlement Amount will be divided by that total to reach a per share dollar
6 figure. Settlement, ¶ 32.a.iii. The resulting per share dollar figure will then be multiplied by each
7 Participating Individual's number of settlement shares (as weighted) to determine his or her Individual
8 Settlement Payment. *Id.* The Class and Collective Notices will provide the estimated Individual
9 Settlement Payment and number of Workweeks for each Sanitation Worker, assuming full participation
10 in the Settlement. *Id.*, Exs. A, B. The Collective Notice will also notify potential Collective Members
11 that they will be considered to have "opted-in" to this Action and to have agreed to the Settlement upon
12 cashing their Settlement Award checks. *Id.*, Ex. B. Settlement Award and eligibility determinations
13 will be based on employee workweek information that Defendants will provide to the Settlement
14 Administrator; however, Sanitation Workers will be able to dispute their workweeks by submitting
15 evidence that they worked more workweeks than shown by Defendants' records. *Id.*, ¶¶ 22, 34, Exs. A,
16 B.

17 Settlement Awards will be paid to Sanitation Workers by the Settlement Administrator within
18 30 days after the occurrence of the "Effective Date." *Id.*, ¶¶ 29.e, 40. Settlement Award checks will
19 remain valid for 180 days from the date of their issuance. *Id.*, ¶ 41. Any funds from checks that are
20 returned as undeliverable or are not negotiated within 180 calendar days after issuance will either: (a)
21 if less than \$50,000.00, revert to the Parties' agreed-upon *cy pres* beneficiary, Legal Aid at Work, or
22 (b); if \$50,000.00 or greater, be redistributed to the Participating Individuals who negotiated their
23 checks on a *pro rata* basis. *Id.*, ¶ 42; Cottrell Decl., ¶ 55. Upon completion of administration of the
24 Settlement, the Settlement Administrator will provide a Post-Distribution Accounting in accordance
25 with the Northern District's Procedural Guidance. *See* Settlement, ¶ 56.

26 **D. Scope of Release.**

27 The releases contemplated by the proposed Settlement are dependent upon whether the
28

1 Participating Individual is an Opt-In Plaintiff and/or a Rule 23 Class Member, and are tethered to the
2 factual allegations in the pleadings. Opt-In Plaintiffs will release any and all claims under the FLSA
3 that were or could have been pled based the factual allegations pled in the Second Amended Complaint.
4 *Id.*, ¶ 17.a, 17.d. Similarly, Rule 23 Class Members will release any and all claims under California
5 law, that were or could have been pled based on the factual predicates pled in the Second Amended
6 Complaint, including wage and hour claims for damages, penalties, interest, attorneys' fees, and
7 equitable relief. *Id.*, ¶ 17.b, 17.d. As to Rule 23 Class Members who are not Opt-In Plaintiffs, those
8 who negotiate their Rule 23 Settlement Checks will also release any and all claims under the FLSA that
9 were or could have been pled based the factual allegations pled in the Second Amended Complaint. *Id.*,
10 ¶ 17.e. If such a Rule 23 Class Member does not deposit his or her check, he or she will not release any
11 claims under the FLSA. *Id.* Aggrieved Employees also release the specific wage and hour claims
12 provided in the Complaint and Plaintiff Chavez's initial letter to the LWDA, extending through the
13 PAGA period. *Id.*, ¶ 17.c.

14 The releases are effective upon final approval of the Settlement. *Id.*, ¶ 17. The release timing
15 extends through the date of preliminary approval, and the Released Parties are Defendants and their
16 related persons and entities. *Id.* The Class and Collective Representatives, Plaintiffs Chavez and
17 Slaughter, also agree to a general release. *Id.*, ¶ 19.

18 **E. Settlement Administration.**

19 The Parties have agreed to use Heffler Claims Group to administer the Settlement, for total fees
20 and costs currently estimated at \$81,350, and not to exceed \$85,000. *Id.*, ¶¶ 2.gg-2.hh; Cottrell Decl.,
21 ¶¶ 60-64 (describing settlement administration process consistent with the Northern District's
22 Procedural Guidance for Class Action Settlements). The Settlement Administrator will distribute the
23 Notice of Settlement via mail and email, calculate individual settlement payments, calculate all
24 applicable payroll taxes, withholdings and deductions, and prepare and issue all disbursements to Class
25 Members, the LWDA, the Class Representatives, Plaintiffs' counsel, and applicable state, and federal
26 tax authorities. Cottrell Decl., ¶ 63; Settlement, ¶ 21. The Settlement Administrator is also responsible
27 for the timely preparation and filing of all tax returns and reporting, and will make timely and accurate
28

1 payment of any and all necessary taxes and withholdings. *Ibid.* The Settlement Administrator will
 2 establish a settlement website that will allow Class Members to view the Class, Collective, and
 3 Class/Collective Notices (in generic form), the Settlement Agreement, and all papers filed by Class
 4 Counsel to obtain preliminary and final approval of the Settlement. *Id.*, ¶ 21.b. The Settlement
 5 Administrator will also establish a toll-free call center for telephone inquiries from Class Members. *Id.*

6 **IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE**
 7 **SETTLEMENT AS TO THE CALIFORNIA CLASS AND APPROVAL OF THE**
 8 **SETTLEMENT AS TO THE COLLECTIVE**

9 **A. The Court Should Grant Preliminary Approval of the Settlement as to the**
 10 **California Class.**

11 A certified class action may only be settled with Court approval. *See* Fed. R. Civ. P. 23(e).
 12 Approval of a class action settlement requires three steps: (1) preliminary approval of the proposed
 13 settlement upon a written motion; (2) dissemination of notice of the settlement to all class members;
 14 and (3) a final settlement approval hearing at which objecting class members may be heard, and at
 15 which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement
 16 is presented. Manual for Complex Litigation, *Judicial Role in Reviewing a Proposed Class Action*
 17 *Settlement*, § 21.61 (4th ed. 2004). The decision to approve or reject a proposed settlement is committed
 18 to the sound discretion of the court. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

19 Rule 23 requires that all class action settlements satisfy two primary prerequisites before a court
 20 may grant certification for purposes of preliminary approval: (1) that the settlement class meets the
 21 requirements for class certification if it has not yet been certified; and (2) that the settlement is fair,
 22 reasonable, and adequate. Fed. R. Civ. P. 23(a), (e)(2); *Hanlon*, 150 F.3d at 1020. As discussed below,
 23 this class action settlement satisfies the requirements of Rule 23(a) and (b), and it is fair, reasonable,
 24 and adequate in accordance with Rule 23(e)(2). Cottrell Decl., ¶ 65. Accordingly, the Court should
 25 preliminarily approve the Settlement as to the Class.¹⁸

26 **A. The California Class Meets the Requirements for Class Certification.**

27 ¹⁸ Plaintiff acknowledges that, in the event that the Settlement is not approved by the Court, class and
 28 collective certification would be contested by Defendants, and Defendants fully reserve and do not
 waive any arguments and challenges regarding the propriety of class and collective action certification.

1 A class may be certified under Rule 23 if (1) the class is so numerous that joinder of all members
 2 individually is “impracticable”; (2) questions of law or fact are common to the class; (3) the claims or
 3 defenses of the class representative are typical of the claims or defenses of the class; and (4) the person
 4 representing the class is able to fairly and adequately protect the interests of all members of the class.
 5 Fed. R. Civ. P. 23(a). Furthermore, Rule 23 (b)(3) provides that a class action seeking monetary relief
 6 may only be maintained if “the court finds that the questions of law or fact common to class members
 7 predominate over any questions affecting only individual members, and that a class action is superior
 8 to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P.
 9 23(b)(3). Applying this standard, numerous cases similar to this case have certified classes of
 10 employees who have suffered wage and hour violations under the wage and hour laws of these states.¹⁹
 11 Likewise, the California Class meets all of these requirements.

12 **1. The Class is numerous and ascertainable.**

13 The numerosity prerequisite demands that a class be large enough that joinder of all members
 14 would be impracticable. Fed. R. Civ. P. 23(a)(1). While there is no exact numerical cut-off, courts have
 15 routinely found numerosity satisfied with classes of at least forty members. *See, e.g., Ikonen v. Hartz*
 16 *Mountain Corp.*, 122 F.R.D. 258, 262 (S.D. Cal. 1988); *Romero v. Producers Dairy Foods, Inc.*, 235
 17 F.R.D. 474, 485 (E.D. Cal. 2006). The approximately 1,595 members of the California Class render the
 18 class so large as to make joinder impracticable. Cottrell Decl., ¶ 66. The Class Members may be readily
 19 identified from Defendants’ payroll records. *Id.*

20 **2. Plaintiffs’ claims raise common issues of fact or law.**

21 The commonality requirement of Rule 23(a)(2) “is met if there is at least one common question
 22

23 ¹⁹ *See, e.g., Caudle v. Sprint/United Mgmt. Co.*, No. C 17-06874 WHA, 2018 WL 6618280, at *7 (N.D.
 24 Cal. Dec. 18, 2018) (certifying California Rule 23 class in a case asserting policy-driven wage
 25 violations); *Shaw v. AMN Healthcare, Inc.*, 326 F.R.D. 247, 275 (N.D. Cal. 2018) (certifying California
 26 Rule 23 class in a case asserting policy-driven off-the-clock, overtime, and meal and rest break
 27 violations, in joint employment context); *Kirkpatrick v. Ironwood Commc’ns, Inc.*, No. C05-1428JLR,
 2006 WL 2381797, at *14 (W.D. Wash. Aug. 16, 2006) (certifying Washington Rule 23 class in a case
 28 involving off-the-clock, overtime, and meal break violations under Washington law); *Chavez v. IBP,*
Inc., No. CV-01-5093-RHW, 2005 WL 6304840, at *2 (E.D. Wash. May 16, 2005) (denying motion
 to decertify FLSA and Rule 23 classes of employees asserting federal and Washington law claims for
 wage and hour violations).

1 or law or fact.” *Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461, 467 (E.D. Pa. 2000). Rule 23(a)(2) has
2 been construed permissively. *Hanlon*, 150 F.3d at 1019. Plaintiffs “need not show that every question
3 in the case, or even a preponderance of questions, is capable of classwide resolution.” *Wang v. Chinese*
4 *Daily News, Inc.*, 737 F.3d 538, 544 (9th Cir. 2013). “[E]ven a single common question” can satisfy
5 the commonality requirement of Rule 23(a)(2). *Id.*

6 Common questions of law and fact predominate here, satisfying paragraphs (a)(2) and (b)(3) of
7 Rule 23, as alleged in the operative complaints. Cottrell Decl., ¶ 67. Defendants have uniform policies
8 applicable to all Sanitation Workers. *Id.* Specifically, Plaintiffs allege that Sanitation Workers all
9 perform essentially the same job duties—performing sanitation duties pursuant to Defendants’
10 standards and requirements. *Id.* Plaintiffs allege that the wage and hour violations are in large measure
11 borne of Defendants’ standardized policies, practices, and procedures, creating pervasive issues of fact
12 and law that are amenable to resolution on a class-wide basis. In particular, Plaintiffs allege that
13 Sanitation Workers are subject to the same: hiring and training process; timekeeping, payroll, and
14 compensation policies and systems; meal and rest period policies and practices; and reimbursement
15 policies. *Id.* Plaintiffs’ other derivative claims will rise or fall with the primary claims. *Id.* Because
16 these questions can be resolved at the same juncture, Plaintiffs contend the commonality requirement
17 is satisfied for the Class. *Id.*

18 **3. Plaintiff’s claims are typical of the claims of the Class.**

19 “Rule 23(a)(3) requires that the claims of the named parties be typical of the claims of the
20 members of the class.” *Fry*, 198 F.R.D. at 468. “Under the rule’s permissive standards, a
21 representative’s claims are ‘typical’ if they are reasonably coextensive with those of absent class
22 members; they need not be substantially identical.” *Hanlon*, 150 F.3d at 1020. Here, Plaintiffs’ claims
23 are typical of those of all other Class Members. Cottrell Decl., ¶ 68. They were subject to the alleged
24 illegal policies and practices that form the basis of the claims asserted in this case. *Id.* Interviews with
25 Class Members and review of timekeeping and payroll data confirm to Plaintiffs that the employees
26 throughout the United States were subjected to the same alleged illegal policies and practices to which
27 Plaintiff was subjected. *Id.* Thus, the typicality requirement is also satisfied. *See id.*

28

1 **4. Plaintiffs and Class Counsel will adequately represent the Class.**

2 To meet the adequacy of representation requirement in Rule 23(a)(4), Plaintiffs must show “(1)
3 that the putative named plaintiff has the ability and the incentive to represent the claims of the class
4 vigorously; (2) that he or she has obtained adequate counsel, and (3) that there is no conflict between
5 the individual's claims and those asserted on behalf of the class.” *Fry*, 198 F.R.D. at 469. Plaintiffs’
6 claims are in line with the claims of the Class, and Plaintiffs’ claims are not antagonistic to the claims
7 of Class Members. Cottrell Decl., ¶ 69. Plaintiffs have prosecuted this case with the interests of the
8 Class Members in mind. *Id.* Moreover, Class Counsel has extensive experience in class action and
9 employment litigation, including wage and hour class actions, and do not have any conflict with the
10 classes. *Id.*, ¶¶ 5-7, 69.

11 **5. The Rule 23(b)(3) requirements for class certification are also met.**

12 Under Rule 23(b)(3), Plaintiffs must demonstrate that common questions “predominate over any
13 questions affecting only individual members” and that a class action is “superior to other available
14 methods for fairly and efficiently adjudicating the controversy.” “The predominance analysis under
15 Rule 23(b)(3) focuses on ‘the relationship between the common and individual issues’ in the case and
16 ‘tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.’”
17 *Wang*, 737 F.3d at 545.

18 Here, Plaintiffs contend the common questions raised in this action predominate over any
19 individualized questions concerning the California Class. Cottrell Decl., ¶ 70. The Class is entirely
20 cohesive because resolution of Plaintiffs’ claims hinge on the uniform policies and practices of
21 Defendants, rather than the treatment the Class Members experienced on an individual level. *Id.* As a
22 result, the resolution of these alleged class claims would be achieved through the use of common forms
23 of proof, such as Defendants’ uniform policies, and would not require inquiries specific to individual
24 class members.²⁰ *Id.*

25
26 ²⁰ Although the amount of time worked off-the-clock and number of missed meal and rest periods may
27 vary, these are damages questions and should not impact class certification. *Yokoyama v. Midland Nat.*
28 *Life Ins. Co.*, 594 F.3d 1087, 1094 (9th Cir. 2010). The fact that individual inquiry might be necessary
to determine whether individual employees were able to take breaks despite the Defendants’ allegedly

1 Further, Plaintiffs contend the class action mechanism is a superior method of adjudication
2 compared to a multitude of individual suits. *Id.*, ¶ 71. To determine whether the class approach
3 is superior, courts are to consider: (A) the class members' interests in individually controlling the
4 prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the
5 controversy already begun by or against class members; (C) the desirability or undesirability of
6 concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in
7 managing a class action. Fed. R. Civ. P. 23(b)(3)(A)-(D).

8 Here, the Class Members do not have a strong interest in controlling their individual claims.
9 Cottrell Decl., ¶ 71. The action involves thousands of workers with very similar, but relatively small,
10 claims for monetary injury. *Id.* If the Class Members proceeded on their claims as individuals, their
11 many individual suits would require duplicative discovery and duplicative litigation, and each Class
12 Member would have to personally participate in the litigation effort to an extent that would never be
13 required in a class proceeding. *Id.* Thus, the class action mechanism would efficiently resolve numerous
14 substantially identical claims at the same time while avoiding a waste of judicial resources and
15 eliminating the possibility of conflicting decisions from repetitious litigation and arbitrations. *Id.*

16 The issues raised by the present case are much better handled collectively by way of a settlement.
17 *Id.*, ¶ 72. Manageability is not a concern in the settlement context. *Amchem Prod., Inc. v. Windsor*,
18 521 U.S. 591, 593 (1997). The Settlement presented by the Parties provides finality, ensures that
19 workers receive redress for their relatively modest claims, and avoids clogging the legal system with
20 numerous cases. Cottrell Decl., ¶ 72. Accordingly, class treatment is efficient and warranted, and the
21 Court should conditionally certify the California Class for settlement purposes. *Id.*

22 **B. Plaintiff Slaughter and the Collective Members are Similarly Situated.**

23 In the FLSA context, court approval is required for FLSA collective settlements, but the Ninth
24 Circuit has not established the criteria that a district court must consider in determining whether an
25 FLSA settlement warrants approval. *See, e.g., Dunn v. Teachers Ins. & Annuity Ass'n of Am.*, No. 13-

26
27 unlawful policy is not a proper basis for denying certification. *Benton v. Telecom Network Specialists,*
28 *Inc.*, 220 Cal.App.4th 701 (Cal. Ct. App. 2014).

1 CV-05456-HSG, 2016 WL 153266, at *3 (N.D. Cal. Jan. 13, 2016); *Otey v. CrowdFlower, Inc.*, No.
2 12-CV-05524-JST, 2015 WL 6091741, at *4 (N.D. Cal. Oct. 16, 2015). Most courts in this Circuit,
3 however, first consider whether the named plaintiffs are “similarly situated” to the putative class
4 members within the meaning of 29 U.S.C. § 216(b), and then evaluate the settlement under the standard
5 established by the Eleventh Circuit in *Lynn’s Food Stores, Inc. v. United States*, 679 F.2d 1350, 1355
6 (11th Cir. 1982), which requires the settlement to constitute “a fair and reasonable resolution of a bona
7 fide dispute over FLSA provisions.” *Otey*, 2015 WL 6091741, at *4. “If a settlement in an employee
8 FLSA suit does reflect a reasonable compromise over issues...that are actually in dispute,” the district
9 court may “approve the settlement in order to promote the policy of encouraging settlement of
10 litigation.” *Lynn’s Food Stores*, 679 F.2d at 1354; *Otey*, 2015 WL 6091741, at *4.

11 Plaintiff Slaughter has already moved for conditional certification of the FLSA collective once,
12 and is confident that he would satisfied his burden of making substantial allegations and a modest
13 factual showing Sanitation Workers were subject to a common practice or policy that violated the
14 FLSA. ECF 116. Because Defendants maintain various common policies and practices as to what work
15 they compensate and what work they do not compensate, and apply these policies and practices to the
16 Sanitation Workers, Plaintiff Slaughter contends that there are no individual defenses available to
17 Defendants. Cottrell Decl., ¶ 73.

18 During the course of the litigation, 29 Sanitation Workers have filed opt-in forms to join the
19 Collective, and there are approximately 4,328 non-California Collective Members. *See* ECF 115;
20 Cottrell Decl., ¶ 74. Defendants have not moved for decertification of the FLSA claim, and have
21 stipulated as part of the Settlement that the Collective Members are similarly situated to Plaintiff for
22 purposes of settlement. *Id.*, ¶ 75; Settlement, ¶ 12. The Court should find that Plaintiff Slaughter and
23 the Collective Members are similarly situated for purposes of preliminary settlement approval.

24 **C. The Settlement Should Be Preliminarily Approved as to the Class and Approved**
25 **as to the Collective Because It Is Fair, Reasonable, and Adequate.**

26 In deciding whether to approve a proposed class or collective settlement, the Court must find
27 that the proposed settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2); *Officers for*
28

1 *Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982); *Lynn's Food Stores*, 679 F.2d at 1354-
 2 55; *Otey*, 2015 WL 6091741, at *4. Included in this analysis are considerations of: (1) the strength of
 3 the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the
 4 risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the
 5 extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel;
 6 (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed
 7 settlement. *Churchill Village, LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (citing *Hanlon*,
 8 150 F.3d at 1026). Importantly, courts apply a presumption of fairness "if the settlement is
 9 recommended by class counsel after arm's-length bargaining." *Wren v. RGIS Inventory Specialists*, No.
 10 C-06-05778 JCS, 2011 WL 1230826, at *6 (N.D. Cal. Apr. 1, 2011). There is also "a strong judicial
 11 policy that favors settlements, particularly where complex class action litigation is concerned." *In re*
 12 *Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). In light of these factors, the proposed
 13 settlement is fair, reasonable, and adequate.

14 **1. The terms of the Settlement are fair, reasonable, and adequate.**

15 In evaluating the fairness of a proposed settlement, courts compare the settlement amount with
 16 the estimated maximum damages recoverable in a successful litigation. *In re Mego Fin. Corp. Sec.*
 17 *Litig.*, 213 F.3d 454, 459 (9th Cir.2000). Courts routinely approve settlements that provide a fraction
 18 of the maximum potential recovery. *See, e.g., Officers for Justice*, 688 F.2d at 623; *Viceral v. Mistras*
 19 *Grp., Inc.*, Case No. 15-cv-2198-EMC, 2016 WL 5907869, at *7 (N.D. Cal. Oct. 11, 2016) (Chen, J.)
 20 (approving wage and hour settlement which represented 8.1% of the total verdict value).²¹ A review of
 21 the Settlement Agreement reveals the fairness, reasonableness, and adequacy of its terms. Cottrell
 22 Decl., ¶¶ 76-87. The Gross Settlement Amount of \$4,250,000, which represents approximately 26%
 23 of the approximate \$16.6 million that Plaintiffs calculated in total damages that would have been owed
 24

25 ²¹ *See also Stovall-Gusman v. W.W. Granger, Inc.*, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015)
 26 ("10% gross and 7.3% net figures are 'within the range of reasonableness'"); *Balderas v. Massage Envy*
 27 *Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (gross settlement amount of 8%
 28 of maximum recovery and net settlement amount of 5%); *Ma v. Covidien Holding, Inc.*, 2014 WL
 360196, at *4-5 (C.D. Cal. Jan. 31, 2014) (9.1% of "the total value of the action" is within the range of
 reasonableness).

1 to all Sanitation Workers if each had been able to prove that he or she worked 15 minutes off-the-clock
2 in every workday during the relevant time period. *Id.*, ¶ 77.

3 Again, these figures are based on Plaintiffs' assessment of a best-case-scenario. To have obtained
4 such a result at trial(s), Plaintiffs would have had to prove that each Class Member worked off-the-
5 clock for 15 minutes in each workday and that Defendants acted knowingly or in bad faith. *Id.* These
6 figures would of course be disputed and hotly contested. *Id.* The result is well within the reasonable
7 standard when considering the difficulty and risks presented by pursuing further litigation. *Id.* The final
8 settlement amount takes into account the substantial risks inherent in any class action wage-and hour
9 case, as well as the procedural posture of the Actions and the specific defenses asserted by Defendants,
10 many of which are unique to this case. *Id.*; see *Officers for Justice*, 688 F.2d at 623.

11 **2. The Parties have agreed to a fair distribution of the settlement proceeds that is**
12 **tailored to the Class and Collective and their respective claims.**

13 In an effort to ensure fairness, the Parties have agreed to allocate the settlement proceeds amongst
14 Class and Collective Members in a manner that recognizes that amount of time that the particular
15 Sanitation Worker was employed by Defendants in the applicable limitations period. The allocation
16 method, which is based on the number of Workweeks, will ensure that longer-tenured workers receive
17 a greater recovery. Moreover, the allocation tracks the differences in substantive law and penalty claims
18 by weighting the Workweek shares more heavily for work performed in California. Cottrell Decl., ¶
19 78. The allocation was made based on Class Counsel's assessment to ensure that employees are
20 compensated accordingly and in the most equitable manner. *Id.* To the extent that any Class Member
21 is *both* a FLSA Opt In Plaintiff and a member of a Rule 23 Class, these workers will only receive a
22 recovery based on their workweeks as a Rule 23 Class Member for their work in California. *Id.* Such
23 workers will not receive a "double recovery." *Id.*, ¶ 79.

24 A class action settlement need not benefit all class members equally. *Holmes v. Continental Can*
25 *Co.*, 706 F.2d 1144, 1148 (11th Cir. 1983); *In re AT & T Mobility Wireless Data Services Sales Tax*
26 *Litigation*, 789 F.Supp.2d 935, 979–80, 2011 WL 2204584 at *42 (N.D. Ill. 2011). Rather, although
27 disparities in the treatment of class and collective members may raise an inference of unfairness and/or
28

1 inadequate representation, this inference can be rebutted by showing that the unequal allocations are
2 based on legitimate considerations. *Holmes*, 706 F.2d at 1148; *In re AT & T*, 789 F.Supp.2d at 979–80,
3 2011 WL 2204584, at *42. Plaintiffs provide rational and legitimate bases for the allocation method
4 here, and the Parties submit that it should be approved by the Court.

5 **3. The extensive discovery in this Action enabled the Parties to make informed**
6 **decisions regarding settlement.**

7 The amount of discovery completed prior to reaching a settlement is important because it bears
8 on whether the Parties and the Court have sufficient information before them to assess the merits of the
9 claims. *See, e.g., Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617, 625 (N.D. Cal. 1979); *Lewis v. Starbucks*
10 *Corp.*, No. 2:07-cv-00490-MCE-DAD, 2008 WL 4196690, at *6 (E.D. Cal. Sept. 11, 2008). Informal
11 discovery may also assist parties with “form[ing] a clear view of the strengths and weaknesses of their
12 cases.” *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 454 (E.D. Cal. 2013).

13 The Parties engaged in extensive formal and informal discovery, including multiple depositions,
14 and class interviews that have enabled Plaintiffs to assess the claims and potential defenses in this
15 action. Cottrell Decl., ¶ 80. Plaintiffs were able to accurately assess the legal and factual issues that
16 would arise if the cases proceeded to trial(s). *Id.* In addition, in reaching this Settlement, Plaintiffs’
17 counsel relied on their substantial litigation experience in similar wage and hour class and collective
18 actions. *Id.* Plaintiffs’ counsel’s liability and damages evaluation was premised on a careful and
19 extensive analysis of the effects of Defendants’ compensation policies and practices on Class Members’
20 pay. *Id.* Ultimately, facilitated by mediator Mark S. Rudy, the Parties used this information and
21 discovery to fairly resolve the litigation. *See id.*

22 **4. Litigating the Action not only would delay recovery, but would be expensive,**
23 **time consuming, and involve substantial risk.**

24 The monetary value of the proposed Settlement represents a fair compromise given the risks and
25 uncertainties posed by continued litigation. *Id.*, ¶ 81. If this Action were to go to trial(s) as class,
26 representative, and collective actions (which Defendants would vigorously oppose if this Settlement
27 Agreement were not approved), Class Counsel estimates that fees and costs would exceed
28 \$5,000,000.00. *Id.* Litigating the class, representative, and collective action claims would require

1 substantial additional preparation and discovery. *Id.* It would require depositions of experts, the
2 presentation of percipient and expert witnesses at trial, as well as the consideration, preparation, and
3 presentation of voluminous documentary evidence and the preparation and analysis of expert reports.
4 *Id.*

5 Recovery of the damages and penalties previously referenced would also require complete
6 success and certification of all of Plaintiffs' claims, a questionable feat in light of developments in wage
7 and hour and class and collective action law as well as the legal and factual grounds that Defendants
8 have asserted to defend this action. *Id.*, ¶ 82. Off-the-clock claims are difficult to certify for class
9 treatment, given that the nature, cause, and amount of the off-the-clock work may vary based on the
10 individualized circumstances of the worker. *See, e.g., In re AutoZone, Inc., Wage & Hour Employment*
11 *Practices Litig.*, 289 F.R.D. 526, 539 (N.D. Cal. 2012), *aff'd*, No. 17-17533, 2019 WL 4898684 (9th
12 Cir. Oct. 4, 2019); *Kilbourne v. Coca-Cola Co.*, No. 14CV984-MMA BGS, 2015 WL 5117080, at *14
13 (S.D. Cal. July 29, 2015); *York v. Starbucks Corp.*, No. CV 08-07919 GAF PJWX, 2011 WL 8199987,
14 at *30 (C.D. Cal. Nov. 23, 2011). While Plaintiffs are confident that they would establish that common
15 policies and practices give rise to the off-the-clock work for Sanitation Workers, Plaintiffs
16 acknowledged that the work was performed by hourly employees holding various job titles at dozens
17 of different locations around the country, which were operated by numerous different processing
18 companies. Cottrell Decl., ¶ 82. With differing facilities' policies and practices, the physical layout,
19 and the nature of the work varying by location, Plaintiffs recognized that obtaining class certification
20 would present a significant obstacle, with the risk that the Sanitation Workers could only pursue
21 individual actions in the event that certification was denied. *Id.* Certification of off-the-clock work
22 claims is complicated by the lack of documentary evidence and reliance on employee testimony, and
23 Plaintiffs would likely face motions for decertification as the case progressed. *Id.* Plaintiffs also
24 recognized similar obstacles may hinder class certification of Plaintiffs' class claims regarding
25 Sanitation Workers' meal and rest breaks. *Id.* Given that the substantive damages are largely driven by
26 the alleged off-the-clock work and meal and rest breaks, and that the derivative and penalty claims are
27 tethered to off-the-clock claims, Plaintiffs' counsel was required to significantly discount the
28

1 hypothetical value of the claims when assessing the mediator’s proposal for Settlement. *Id.*

2 Plaintiffs would also encounter difficulties in moving for certification and proving their claims
3 on the merits in part due to the fact that key Class Member timekeeping documents were kept in paper
4 format. *Id.*, ¶ 83. For example, Class Member timesheets that tracked the time Class Members arrived
5 and left their shifts were largely written by hand. *Id.* Plaintiffs would face fundamental logistical
6 difficulties in reviewing and analyzing the massive amounts of hard copy records. *Id.*

7 In contrast to litigating this suit, resolving this case by means of the Settlement will yield a
8 prompt, certain, and very substantial recovery for the Class Members. *Id.*, ¶ 84. Such a result will
9 benefit the Parties and the court system. *Id.* It will bring finality to over two years of arduous litigation
10 and will foreclose the possibility of expanding litigation.

11 **5. The Settlement is the product of informed, non-collusive, and arm’s-length**
12 **negotiations between experienced counsel.**

13 Courts routinely presume a settlement is fair where it is reached through arm’s-length bargaining.
14 *See Hanlon*, 150 F.3d at 1027; *Wren*, 2011 WL 1230826, at *14. Furthermore, where counsel are well-
15 qualified to represent the proposed class and collective in a settlement based on their extensive class
16 and collective action experience and familiarity with the strengths and weaknesses of the action, courts
17 find this factor to support a finding of fairness. *Wren*, 2011 WL 1230826, at *10; *Carter v. Anderson*
18 *Merchandisers, LP*, No. EDCV 08-0025-VAP OPX, 2010 WL 1946784, at *8 (C.D. Cal. May 11,
19 2010) (“Counsel’s opinion is accorded considerable weight.”).

20 Here, the settlement was a product of non-collusive, arm’s-length negotiations. Cottrell Decl., ¶
21 86. The Parties participated in mediation before Mark S. Rudy, who is a skilled mediator with many
22 years of experience mediating employment matters. *Id.* The Parties then spent several months
23 negotiating the memorandum of understanding and long form settlement agreement, with several
24 rounds of meet and confer and correspondence related to the terms and details of the Settlement. *Id.*,
25 ¶¶ 27-28, 86. Plaintiffs are represented by experienced and respected litigators of representative wage
26 and hour actions, and these attorneys feel strongly that the proposed Settlement achieves an excellent
27 result for the Class Members. *See id.*, ¶ 87.
28

1 **D. The Class Representative Enhancement Payments Are Reasonable.**

2 Named plaintiffs in class action litigation are eligible for reasonable service awards. *See Staton*
 3 *v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003).²² The enhancement payments of up to \$12,000 for
 4 Plaintiff Chavez and \$10,000 for Plaintiff Slaughter are intended to compensate them for broader
 5 releases and for the critical roles they played in this case, and the time, effort, and risks they undertook
 6 in helping secure the result obtained on behalf of the Sanitation Workers.²³ Cottrell Decl., ¶ 88. In
 7 agreeing to serve as Class and Collective representatives, Plaintiffs formally agreed to accept the
 8 responsibilities of representing the interests of all Class Members. *Id.*, ¶ 89. Defendants do not oppose
 9 the requested payments to the Plaintiffs as reasonable service awards. *Id.*, ¶ 90; Settlement, ¶¶ 2.ff,
 10 29.a.

11 Moreover, the service awards are fair when compared to the payments approved in similar cases.
 12 *See, e.g., Soto, et al. v. O.C. Communications, Inc., et al.*, Case No. 3:17-cv-00251-VC, ECF 304 (N.D.
 13 Cal. Oct. 23, 2019) (approving \$15,000 and \$10,000 service awards in recent hybrid FLSA/Rule 23
 14 settlement); *Guilbaud v. Sprint/United Management Co., Inc.*, No. 3:13-cv-04357-VC, Dkt. No. 181
 15 (N.D. Cal. Apr. 15, 2016) (approving \$10,000 service payments for each class representative in FLSA
 16 and California state law representative wage and hour action).²⁴

17 **E. The Requested Attorneys' Fees And Costs Are Reasonable.**

18 In their fee motion to be submitted with the final approval papers, Plaintiffs' counsel will request
 19 up to one-third of the Gross Settlement Amount, or \$1,416,666.52, plus reimbursement of costs up
 20 \$50,000. Cottrell Decl., ¶ 91. Plaintiffs' counsel will provide their updated lodestar information with
 21 their fee motion, which will demonstrate the reasonableness of Plaintiffs' Counsel's rates. *See id.*, ¶¶
 22 92-97 (providing current lodestar and costs consistent with the Northern District's Procedural Guidance
 23 for Class Action Settlements); *see, e.g., Vizcaino v. Microsoft Corp.*, 290 F. 3d 1043, 1050-51 (9th Cir.

24 _____
 25 ²² "Courts routinely approve incentive awards to compensate named plaintiffs for the services they
 26 provided and the risks they incurred during the course of the class action litigation." *Van Vranken v.*
Atl. Richfield Co., 901 F. Supp. 294, 300 (N.D. Cal. 1995) (named plaintiff received \$50,000 for work
 in class action).

²³ Moreover, Plaintiffs agreed to a general release, unlike other Class Members. *See Settlement*, ¶ 19.

²⁴ *See also, e.g., Mousai v. E-Loan, Inc.*, No. C 06-01993 SI (N.D. Cal. May 30, 2007) (approving
 service award of \$20,000).

1 2002) (“Calculation of the lodestar, which measures the lawyers’ investment of time in the litigation,
2 provides a check on the reasonableness of the percentage award”).

3 The typical range of acceptable attorneys’ fees in the Ninth Circuit is 20% to 33 1/3% of the total
4 settlement value, with 25% considered the benchmark.²⁵ However, the exact percentage varies
5 depending on the facts of the case, and in “most common fund cases, the award exceeds that
6 benchmark.” *Vasquez*, 266 F.R.D. at 491 (citing *Knight v. Red Door Salons, Inc.*, 2009 WL 248367
7 (N.D. Cal. 2009); *In re Activision Sec. Litig.*, 723 F.Supp. 1373, 1377-78 (N.D. Cal. 1989) (“nearly all
8 common fund awards range around 30%”). In California, federal and state courts have customarily
9 approved payments of attorneys’ fees amounting to one-third of the common fund in comparable wage
10 and hour class actions.²⁶

11 In this case, given the excellent results achieved, the effort expended litigating the Action,
12 including the difficulties attendant to litigating this case, such an upward adjustment is warranted.
13 Cottrell Decl., ¶ 93. There was no guarantee of compensation or reimbursement. *Id.* Rather, counsel
14 undertook all the risks of this litigation on a completely contingent fee basis. *Id.* These risks were front
15 and center. *Id.* Defendants’ vigorous and skillful defense further confronted Plaintiffs’ counsel with the
16 prospect of recovering nothing or close to nothing for their commitment to and investment in the case.
17 *Id.* Nevertheless, Plaintiffs and their counsel committed themselves to developing and pressing
18 Plaintiffs’ legal claims to enforce the employees’ rights and maximize the class and collective recovery.
19 *Id.* During the litigation, counsel had to turn away other less risky cases to remain sufficiently resourced
20 for this one. *Id.* The challenges that Class Counsel had to confront and the risks they had to fully absorb

21
22 ²⁵ *Vasquez v. Coast Valley Roofing*, 266 F.R.D. 482, 491-492 (E.D. Cal. 2010) (citing *Powers v. Eichen*,
229 F.3d 1249, 1256 (9th Cir. 2000)); *Hanlon*, 150 F.3d at 1029; *Staton*, 327 F.3d at 952; *see also, Chu*
23 *v. Wells Fargo Investments, LLC*, Nos. C 05-4526 MHP, C 06-7924 MHP, 2011 WL 672645, at *4
(N. D. Cal. Feb.16,2011) percentage-of-the-fund method is appropriate where—as here—the amount
of the settlement is fixed without any reversionary payment to the defendant).

24 ²⁶ *See, e.g., Jones, et al. v. CertifiedSafety, Inc., et al.*, Case No. 3:17-cv-02229-EMC, ECF 232 (N.D.
25 Cal. June 1, 2020) (approving attorneys’ fees of one-third of the gross settlement in recent hybrid
FLSA/Rule 23 settlement); *Soto, et al. v. O.C. Communications, Inc., et al.*, Case No. 3:17-cv-00251-
26 VC, ECF 304 (N.D. Cal. Oct. 23, 2019) (approving attorneys’ fees of one-third of the gross settlement
in recent hybrid FLSA/Rule 23 settlement); *Regino Primitivo Gomez, et al. v. H&R Gunlund Ranches,*
27 *Inc.*, No. CV F 10-1163 LJO MJS, 2011 WL 5884224 (E.D. Cal. 2011) (approving attorneys’ fees
award equal to 45% of the settlement fund); *Wren*, 2011 WL 1230826 (approving attorneys’ fee award
28 of just under 42% of common fund).

1 on behalf of the class and collective here are precisely the reasons for multipliers in contingency fee
2 cases. *See, e.g., Noyes v. Kelly Servs., Inc.*, 2:02-CV-2685-GEB-CMK, 2008 WL 3154681 (E.D. Cal.
3 Aug. 4, 2008); Posner, *ECONOMIC ANALYSIS OF THE LAW*, 534, 567 (4th ed. 1992) (“A contingent fee
4 must be higher than a fee for the same legal services paid as they are performed... because the risk of
5 default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that
6 of conventional loans”).

7 Attorneys who litigate on a wholly or partially contingent basis expect to receive significantly
8 higher effective hourly rates in cases where compensation is contingent on success, particularly in hard-
9 fought cases where, like in the case at bar, the result is uncertain. Cottrell Decl., ¶ 94. This does not
10 result in any windfall or undue bonus. *Id.* In the legal marketplace, a lawyer who assumes a significant
11 financial risk on behalf of a client rightfully expects that his or her compensation will be significantly
12 greater than if no risk was involved (*i.e.*, if the client paid the bill on a monthly basis), and that the
13 greater the risk, the greater the “enhancement.” *Id.* Adjusting court-awarded fees upward in contingent
14 fee cases to reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor
15 simply makes those fee awards consistent with the legal marketplace, and in so doing, helps to ensure
16 that meritorious cases will be brought to enforce important public interest policies and that clients who
17 have meritorious claims will be better able to obtain qualified counsel. *Id.*

18 For these reasons, Plaintiffs’ counsel respectfully submits that a one-third recovery for fees is
19 modest and appropriate. *Id.*, ¶ 95. Class Counsel also requests reimbursement for their litigation costs.
20 *Id.*, ¶ 96. Class Counsel’s efforts resulted in an excellent settlement, and the fee and costs award should
21 be preliminarily approved as fair and reasonable. *Id.*, ¶ 97.

22 **F. The Proposed Notices of Settlement and Claims Process Are Reasonable.**

23 The Court must ensure that Class Members receive the best notice practicable under the
24 circumstances of the case. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985); *Eisen v.*
25 *Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974). Procedural due process does not guarantee any
26 particular procedure but rather requires only notice reasonably calculated “to apprise interested parties
27 of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v.*
28

1 *Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th
2 Cir. 1994). A settlement notice “is satisfactory if it ‘generally describes the terms of the settlement in
3 sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be
4 heard.’” *Churchill Village LLC*, 361 F.3d at 575.

5 The Notices of Settlement, attached as **Exhibit A** and **B** to the Settlement Agreement (together,
6 “Notices”), and manner of distribution negotiated and agreed upon by the Parties are “the best notice
7 practicable.” Cottrell Decl., ¶ 98; Fed. R. Civ. P. 23(c)(2)(B); *see* Procedural Guidance for Class Action
8 Settlements (updated Dec. 5, 2018). All Class Members have been identified and the Notices will be
9 mailed directly to each Class Member and emailed to those for whom Defendants have an email
10 address. Cottrell Decl., ¶ 99. The proposed Notices are clear and straightforward, and provide
11 information on the nature of the action and the proposed Class and Collective, the terms and provisions
12 of the Settlement, and the monetary awards that the Settlement will provide Class Members. *See id.*, ¶
13 100; Exs. A-B. In addition, the Parties will provide a settlement website that provides a generic form
14 of the Notices, the Settlement Agreement, and other case related documents and contact information.
15 *Id.*, ¶¶ 61, 63, 99.

16 The proposed class Notice fulfills the requirement of neutrality in class notices. *Id.*, ¶ 100. *See*
17 Conte, NEWBERG ON CLASS ACTIONS, § 8.39 (3rd Ed. 1992). It summarizes the proceedings necessary
18 to provide context for the Settlement Agreement and summarize the terms and conditions of the
19 Settlement, including an explanation of how the settlement amount will be allocated between the
20 Named Plaintiffs, Class Counsel, the Settlement Administrator, and the Class or Collective Members,
21 as applicable, in an informative, coherent and easy-to-understand manner, all in compliance with the
22 Manual for Complex Litigation’s recommendation that “the notice contain a clear, accurate description
23 of the terms of the settlement.” Cottrell Decl., ¶ 100; MANUAL FOR COMPLEX LITIGATION, Settlement
24 Notice, § 21.312 (4th ed. 2004).

25 The proposed class Notice clearly explain the procedures and deadlines for requesting exclusion
26 from the Settlement, objecting to the Settlement, the consequences of taking or foregoing the various
27 options available to Class Members, and the date, time and place of the Final Approval Hearing. Cottrell
28

1 Decl., ¶ 101. Pursuant to Rule 23(h), the proposed Notices also set forth the amount of attorneys' fees
2 and costs sought by Plaintiffs, as well as an explanation of the procedure by which Class Counsel will
3 apply for them. *Id.* The Notices clearly state that the Settlement does not constitute an admission of
4 liability by Defendants. *Id.* It makes clear that the final settlement approval decision has yet to be made.
5 *Id.*, ¶ 102. Accordingly, the Notices comply with the standards of fairness, completeness, and neutrality
6 required of a settlement class notice disseminated under authority of the Court. *See* Conte, NEWBERG
7 ON CLASS ACTIONS, §§ 8.21 and 8.39 (3rd Ed. 1992); MANUAL FOR COMPLEX LITIGATION, Certification
8 Notice, § 21.311; Settlement Notice, § 21.312 (4th ed. 2004).

9 Furthermore, reasonable steps will be taken to ensure that all Class Members receive the Notices.
10 Cottrell Decl., ¶ 103. Before mailing, Defendants will provide to the Settlement Administrator a
11 database that contains the names, last known addresses, last known email addresses (if any), and social
12 security numbers of each Class Member, along with the applicable number(s) of Workweeks for
13 calculating the respective settlement shares. *Id.* The Notices will be sent by United States Mail, and
14 also via email to the maximum extent possible. The Settlement Administrator will make reasonable
15 efforts to update the contact information in the database using public and private skip tracing methods.
16 Within 10 days of receipt of the Class List from Defendants, the Settlement Administrator will mail the
17 Notices to each Class Member. *Id.*

18 With respect to Notices returned as undeliverable, the Settlement Administrator will re-mail any
19 Notices returned to the Settlement Administrator with a forwarding address following receipt of the
20 returned mail. *Id.*, ¶ 104/ If any Notice is returned to the Settlement Administrator without a forwarding
21 address, the Settlement Administrator will undertake reasonable efforts to search for the correct
22 address, including skip tracing, and will promptly re-mail the Notice to any newly found address. *Id.*

23 Rule 23 Class Members will have 60 days from the mailing of the Notices to opt-out or object
24 to the Settlement, consistent with the Northern District's Procedural Guidance for Class Action
25 Settlements. *Id.*, ¶ 105. Any Rule 23 Class Member who does not submit a timely request to exclude
26 themselves from the Settlement will be deemed a Participating Individual whose rights and claims are
27 determined by any order the Court enters granting final approval, and any judgment the Court ultimately
28

1 enters in the case.²⁷ *Id.* Administration of the Settlement will follow upon the Court’s issuance of final
 2 approval of the Settlement. *Id.*, ¶ 106. The Settlement Administrator will provide Class Counsel and
 3 Defendants’ Counsel with a report of all Settlement payments within 10 business days after the Notice
 4 Deadline (the opt-out and objection deadline). Settlement, ¶ 21.g.

5 Because the proposed Notices clearly and concisely describe the terms of the Settlement and the
 6 awards and obligations for Class Members who participate, and because the Notices will be
 7 disseminated in a way calculated to provide notice to as many Class Members as possible, the Notices
 8 should be preliminarily approved.

9 **G. The Court Should Approve the Proposed Schedule.**

10 The Settlement Agreement contains the following proposed schedule, which Plaintiffs
 11 respectfully request this Court approve:

12	Deadline for Defendants to pay the Gross Settlement Amount in the QSF	Within 10 business days after Preliminary Approval Order
13	Deadline for Defendants to provide Heffler with the Class List	Within 15 business days after the Court’s preliminary approval of the Settlement
14	Deadline for Heffler to mail the Notice of Settlement to Class Members	Within 10 business days after Heffler receives the Class List
15	Deadline for Rule 23 Class Members to postmark requests to opt-out or file objections to the Settlement (“Notice Deadline”)	65 days after Notice of Settlement are mailed
16	Deadline for Heffler to provide all counsel with a report showing (i) the names of Rule 23 Class Members and Opt In Plaintiffs; (ii) the Individual Settlement Payments owed to each Rule 23 Class Member and Opt In Plaintiff; (iii) the final number of Rule 23 Class Members who have submitted objections or valid letters requesting exclusion from the Settlement; and (iv) the number of undeliverable Notices of Settlement.	Within 10 business days after the opt out/objection deadline (the “Notice Deadline”)
17	Deadline for filing of Final Approval Motion	At least 35 days before Final Approval Hearing
18	Deadline for Heffler to provide the Court and all Parties’ counsel with a statement detailing	As soon as practicable
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 27 ²⁷ However, Rule 23 Class Members who are not the Named Plaintiff or Opt-In Plaintiffs will only
 28 release FLSA claims (related to their work in California) if they endorse or cash their Individual Settlement Payment checks. Cottrell Decl., ¶ 105, n. 7.

1	the Settlement Administration Costs and the notice administration process	
2	Final Approval Hearing	At least 30 days after Notice Deadline
3	Effective Date	The latest of the following dates: (i) if there are one or more objections to the settlement that are not subsequently withdrawn, then the date after the expiration of time for filing a notice of appeal of the Court’s Final Approval Order, assuming no appeal or request for review has been filed; (ii) if there is a timely objection and appeal by one or more objectors, then the date after such appeal or appeals are terminated (including any requests for rehearing) resulting in the final judicial approval of the Settlement; or (iii) if there are no timely objections to the settlement, or if one or more objections were filed but subsequently withdrawn before the date of Final Approval, then the first business day after the Court’s order granting Final Approval of the Settlement is entered
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12	Deadline for Heffler to calculate the employer share of taxes and provide Defendants with the total amount of Defendants’ Payroll Taxes	Within 5 business days after final Settlement Award calculations are approved
13	Deadline for Heffler to make payments under the Settlement to Participating Individuals, the LWDA, Class Representatives, Plaintiffs’ counsel, and itself	Within 30 days after the Effective Date or as soon as reasonably practicable
14		
15	Check-cashing deadline	180 days after issuance
16	Deadline for Heffler to tender uncashed check funds to cy pres recipient Legal Aid at Work or redistribute such uncashed funds to Participating Individuals who cashed their Settlement Award checks	As soon as practicable after check-cashing deadline
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19	Deadline for Heffler to provide written certification of completion of administration of the Settlement to counsel for all Parties and the Court	Within 21 business days after the distribution of any uncashed funds
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V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement Agreement as to the Rule 23 Class and approval of the Settlement Agreement as to the Collective, in accordance with the schedule set forth herein.

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Date: March 12, 2021

Respectfully Submitted,

/s/ Carolyn H. Cottrell

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document(s) with the Clerk of the Court for the United States District Court, Northern District of California, by using the Court’s CM/ECF system on March 12, 2021.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Court’s CM/ECF system.

/s/ Carolyn H. Cottrell
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