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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

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| TEODORO S. FRANCISCO on behalf of himself and all others similarly situated<br><br>Plaintiff,<br><br>vs.<br><br>CURIO MANAGEMENT LLC a Delaware limited liability company, HILTON MANAGEMENT LLC a Delaware limited liability company, HILTON DOMESTIC OPERATING COMPANY, INC. and DOES 1 through 50, inclusive,<br><br>Defendants. | Case No. 20CV365920<br>ASSIGNED FOR ALL PURPOSES TO:<br>JUDGE: Hon. Charles F. Adams<br>DEPT: 7<br><br>**PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**<br><br>(Declarations of Anthony Draper, Teodoro S. Francisco and [Proposed] Order are concurrently filed herewith)<br><br>Date: July 24, 2025<br>Time: 1:30 p.m.<br>Dept. 7 |

**PLEASE TAKE NOTICE THAT** on July 24, 2025, in Department 7 of the above-entitled court located at 191 N. First Street, San Jose, California 95113, Teodoro S. Francisco ("Plaintiff") will and hereby does move the Court for an Order: (1) provisionally certifying the Class for Settlement purposes only; (2) preliminarily approving James R. Hawkins, Isandra

Fernandez, and Anthony Draper of James Hawkins APLC as Class Counsel in this matter, (3) provisionally approving Plaintiff as the Class Representative; (4) preliminarily approving Simpluris, Inc., as the Settlement Administrator; (5) preliminarily approving the Joint Stipulation of Class and Representative Action Settlement and Release ("Settlement Agreement"); (6) approving and directing distribution of the Notice of Class and Representative PAGA Action Settlement  Class Notice; and (7) scheduling a Hearing Date for Final Approval.

This Motion is made pursuant to Rule 3.769 of the California *Rules of Court*, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify a class for settlement purposes.  The basis for this Motion is that the proposed Settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to participate in, opt out of, or object to the Settlement.

This Motion will be based on the Memorandum of Points and Authorities included herein, the Declaration of Anthony Draper, the Settlement Agreement attached to the Declaration of Anthony Draper as Exhibit 1, the Declaration of Teodoro S. Francisco and upon the oral arguments of counsel (should there be any) and upon the complete records and file herein.

Dated: July 1, 2025 **JAMES R. HAWKINS, APLC**

By:______________________________
Isandra Y. Fernandez
Anthony Draper
Attorneys for Plaintiff
Teodoro S. Francisco

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiff Teodoro Francisco (hereinafter "Plaintiff"), on behalf of himself and all Class Members, brings this Motion pursuant to Labor Code §§ 200, 201, 202, 203, 226, 226.7, 227.3, 510, 512, 558, 1174, 1194, 1197 and 1198, Title 8, Section 11050 and any other applicable Industrial Welfare Commission ("IWC") Wage Orders, seeking unpaid lawful wages, unpaid meal period compensation, penalties, other equitable relief, and reasonable attorneys' fees and costs.

Subject to court approval, Plaintiff and Defendants Curio Management LLC, Hilton Management LLC, and Hilton Domestic Operating Company, Inc. (collectively "Defendants" and collectively with Plaintiff the "Parties") have reached a settlement of the claims asserted on behalf of the putative class for a total of Six Hundred and Five Thousand Dollars and Zero Cents ($605,000) ("Maximum Settlement Amount"). Defendants deny the claims alleged and dispute any liability for the damages sought. The Maximum Settlement Amount will be used to pay Individual Settlement Payments, PAGA Payments, Class Counsel Fees and Costs, Class Representative Enhancement Payment and the Settlement Administration Costs. **This is a non-reversionary cash settlement**. All Class Members who do not opt out of the Settlement will automatically be mailed an Individual Settlement Payment. Additionally, each Class Member who is within the PAGA group will be mailed their respective PAGA Payments associated with the PAGA penalty portion of the settlement amount regardless of whether they opt out of the Settlement. There is no claim filing process, and Class Members do not have to file a claim to be mailed a payment.

As discussed more thoroughly below, the proposed Settlement satisfies all necessary criteria for preliminary approval under California law and falls well within the range of reasonableness, making approval both proper and appropriate. As such, Plaintiff moves this Court for an Order: (i) provisionally certifying the proposed Class; (ii) provisionally approving James Hawkins, Isandra Fernandez and Anthony Draper of James Hawkins APLC as Class Counsel for the named Plaintiff and putative Class Members; (iii) provisionally approving

Teodoro Francisco as the Class Representative ("Plaintiff" or "Class Representative"); (iv) provisionally appointing Simpluris, Inc. ("Simpluris") as the Settlement Administrator; (v) provisionally granting preliminary approval of the Join Stipulation of Class and Representative Action Settlement and Release ("Settlement Agreement"); (vi) provisionally directing distribution of the Notice of Class and Representative PAGA Action Settlement ("Class Notice") pursuant to the terms and conditions set forth in the Settlement Agreement; and (vii) scheduling a final approval hearing.

## II. <u>FACTUAL BACKGROUND</u>

### A. <u>Pleadings</u>

On April 1, 2020, Plaintiff filed a wage and hour class action in Santa Clara County Superior Court on behalf of himself and all current and former non-exempt employees employed by Defendants in the State of California to work in the Juniper Hotel Cupertino, Curio Collection by Hilton, based on allegations that Defendants: (1) failed to pay all lawful wages owed including minimum wage and/or overtime; (2) failed to provide statutorily compliant meal periods and/or to pay one (1) hour of compensation at the employees regular rate of pay for each workday that a compliant meal period was not properly provided; (3) failed to timely pay all wages owed at the termination of employment; (4) failed to provide accurate itemized wage statements; and (6) UCL violations (See concurrently filed Declaration of Anthony Draper "Draper Decl.", ¶ 2.)

On April 1, 2020, Plaintiff also gave notice to Defendants and the Labor Workforce Development Agency ("LWDA") of his intention to file a PAGA complaint based on the above violations. (Draper Decl., ¶ 3.) On June 5, 2020 Plaintiff filed a First Amended Complaint ("FAC") adding a cause of action for PAGA violations (Draper Decl., ¶ 4.) The FAC is the Operative Complaint in the Action. (*Id*.)

Throughout this litigation, Defendants have denied Plaintiff's allegations and raised appropriate defenses, both individually and on a class wide basis. Defendants maintain that their policies and/or practices are consistent with the requirements of the California Labor Code, and all applicable Wage Orders. (Draper Decl., ¶ 5.) To date, no class has been certified and the

Court has not made any findings that Defendants engaged in any wrongdoing or in violation of any state law, rule or regulation, with respect to the issues presented in the litigation. (Draper Decl., ¶ 6.)

Through informal discovery, Plaintiff and Defendants have exchanged extensive documents and information related to the claims asserted. (Draper Decl., ¶ 7.) Defendants have produced thousands of pages of information, including timecard records and wage reports of putative Class Members (*Id*.) Defendants also provided Plaintiff with class data and random samples of time records, wage statements, and information regarding the number of non-exempt employees during the relevant time-period (*Id*.)

On April 15, 2022, Plaintiff and Defendants participated in mediation before Kelley Knight, a respected mediator for wage and hour class actions. (Draper Decl. ¶ 8.) The Parties were unable to reach a settlement at the conclusion of the mediation. (*Id*.) Subsequently, on November 16, 2023, after engaging in numerous discussions and exchange of information regarding the claims alleged, the Parties participated in a second full-day mediation with Lisa Klerman, another respected mediator for wage and hour class actions. (Draper Decl., ¶ 9.) With the assistance of Ms. Klerman, the parties were able to reach a settlement. (*Id.*) Thereafter, the Parties exchanged multiple drafts of the Memorandum of Understanding ("MOU"). (Draper Decl., ¶ 10.) After execution the MOU, the Parties exchanged numerous drafts of the long form settlement agreement and engaged in numerous communications regarding the settlement terms (*Id*.) The final terms and provisions of the settlement agreement were approved and executed by all the parties on or about January 27, 2025 (Draper Decl., ¶ 11; Exhibit 1.- Join Stipulation of Class and Representative Action Settlement and Release - "Settlement Agreement")

Based on their own respective independent investigations and evaluations and after taking into account the sharply disputed factual and legal issues involved in this matter, the risks attending further prosecution in light of certification issues faced due to the *Brinker Rest. Corp. v. Super. Ct.*, (2012) 53 Cal. 4th 1004 ("*Brinker*") decision, the discovery and investigation conducted to date, Plaintiff and his counsel are of the opinion that settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and adequate and is in the best interests of the named Plaintiff and Class Members. (Draper Decl., ¶ 12.)

## III. SUMMARY OF SETTLEMENT TERMS

### A. Settlement Class

The "Class" and/or "Settlement Class" means all current and former non-exempt employees employed by Defendants in the State of California to work in the Juniper Hotel Cupertino, Curio Collection by Hilton during the Class Period (April 1, 2016 through July 31, 2024) (Settlement Agreement, ¶¶ 8.3, 8.8.)

### B. PAGA Members

PAGA Members means the group of Class Members employed by Defendants in the State of California to work in the Juniper Hotel Cupertino, Curio Collection by Hilton during the PAGA Period (April 1, 2019 through July 31, 2024) who constitute the allegedly Aggrieved Employees within the meaning of PAGA in this Action. (Settlement Agreement, ¶¶ 8.20,8.23.)

### C. Allocation of the Maximum Settlement Amount

1. The Maximum Settlement Amount ("MSA") is Six Hundred and Five Thousand Dollars ($605,000). (Settlement Agreement, ¶ 8.18.) This Settlement Amount is in addition to the employer's share of the payroll taxes, inclusive of all settlement payments to Participating Class Members and PAGA Members, Class Counsel's Court-approved attorneys' fees and costs, the Court-approved Enhancement Payment to the Class Representative, Settlement Administration Expenses, and the LWDA's share of PAGA penalties. (Settlement Agreement, ¶ ¶ 8.18,8.19.)

2. Subject to Court approval, Class Counsel may seek approval from the Court of a maximum of Two Hundred Eleven Thousand Seven Hundred and Fifty Dollars ($211,750). in attorneys' fees (35% of the MSA), and a maximum of Thirty Thousand Dollars ($30,000) in actual litigation costs. (Settlement Agreement, ¶ 8.2.)

3. Subject to Court approval, the Class Representative may seek approval from the Court of an Enhancement payment not to exceed Ten Thousand Dollars ($10,000) from the MSA

for a general release of his claims and for serving as a Class Representative. (Settlement Agreement, ¶¶ 8.13.)

4. Subject to Court approval, reasonable Settlement Administration Costs to be taken from the MSA which are estimated to be Seven Thousand Dollars ($7,000). (Settlement Agreement, ¶ 11.4.)

5. Subject to Court approval, Twenty Five Thousand Dollars ($25,000) shall be allocated to PAGA penalties, from which Eighteen Thousand and Seven Hundred and Fifty Dollars ($18,750) (75%) shall be payable to the LWDA and Six Thousand Two Hundred and Fifty Dollars ($6,250) will be distributed to the PAGA Members. (Settlement Agreement, ¶ 8.22.)

6. "Individual Settlement Payment" means the total amount a Participating Class Member will receive consisting of his/her share of the Net Class Settlement Amount and his or her share of the portion of the PAGA Payment that will be distributed to allegedly Aggrieved Employees under the terms of the Settlement Agreement. Subject to Court approval, each Individual Settlement Payment will be allocated as follows: 20% as disputed wages; 40% as interest; and 40% as penalties. (Settlement Agreement, ¶¶ 8.16, 14.7.)

7. The portion of the MSA remaining after subtracting the Settlement Administration Expenses, Court-approved attorneys' fees and litigation costs, Court-approved Enhancement payment and the portion of PAGA penalties payable to the LWDA, shall be designated the "Net Class Settlement Amount" or "NSA" (Settlement Agreement, ¶ 8.19.)

8. Defendants shall be responsible for paying the employer's share of payroll taxes, separately and in addition to the Maximum Settlement Amount. (Settlement Agreement ¶ 8.18.)

9. Individual Settlement Payments will be calculated by dividing the NSA by the total number of work weeks for all Participating Class Members during the Class Period ("Class Work Week Value"), and then multiplying the Class Pay Work Week Value by the number of work weeks worked by each Participating Class Member during the Class Period. (Settlement Agreement, ¶ 11.6(3).)

10. PAGA Payment will be calculated by dividing $6,250 by the total number of pay periods for all PAGA Members during the PAGA Period ("PAGA Pay Period Value"), and then multiplying the PAGA Pay Period Value by the number of pay periods worked by each PAGA Member during the PAGA Period. (Settlement Agreement, ¶ 11.6(4).)

Here, there are estimated to be 270 putative Class Members. The NSA, subject to Court approval, is Three Hundred Twenty- Seven Thousand Five Hundred Dollars ($327,500). Thus, subject to Court approval, the estimated average net recovery of Class Members will be approximately One Thousand Two Hundred Thirteen Dollars ($1,213). This average net recovery amount is significantly more than other wage and hour class action settlements approved by California state and federal courts. *See*, *e.g.*, *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately $90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately $65); *Sorenson v. Defendants, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately $60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately $35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately $20); and *Jones v. Bath& Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately $50).

**D. <u>Releases</u>**

1) <u>Class Member Released Claims Summary</u>

The claims released by Plaintiff and Participating Class Members shall include all claims under state, federal, or local law, whether statutory or based in common law, arising out of the claims expressly pleaded in the Action and all other claims that could have been pleaded based on the facts pleaded in the Action including but not limited to failure to pay wages owed, including minimum and overtime wages; failure to provide compliant meal periods and associated meal break premiums; failure to timely pay all wages due to discharged or quitting employees; failure to provide accurate wage statements; alleged violation of Business and Professions Code Section 17200 based on the alleged Labor Code violations; alleged violation of the IWC Wage Orders based on the claims alleged; any claims for injunctive relief; liquidated damages, penalties, interest, fees, and costs; and all other claims and allegations made or that could have been made in the Action based on the facts and alleged in the Action. (Settlement Agreement, ¶ 8.27.)

2) PAGA-Released Claims Summary

The claims released by the PAGA Members shall be the following: all claims for civil penalties, attorneys' fees, and costs arising out of the Labor Code claims and allegations expressly pleaded in the PAGA Notice and the Action, and all other Labor Code claims that could have been asserted based on the facts and allegations pleaded in the PAGA Notice and the Action, including but not limited to: failure to pay wages owed, including minimum and overtime wages; failure to provide compliant meal periods and associated meal break premiums; failure to timely pay all wages due to discharged or quitting employees; and failure to provide accurate wage statements. (Settlement Agreement, ¶ 8.29.)

3) Class Representative Released Claims

Plaintiff, as the Class Representative, shall separately release the following: all claims, demands, rights, liabilities, and/or causes, of any form whatsoever, arising under federal, state or local wage-and-hour laws, rules, or regulations, whether known or unknown, unforeseen, unanticipated, unsuspected or latent, that have been or could have been asserted by Plaintiff, or the heirs, successors and/or assigns of Plaintiff, whether directly, indirectly, representatively, derivatively or in any other capacity, against Defendants, and each of them, or any of the other Released Parties, arising at any time prior to entry of the Final Approval Order. Plaintiff also expressly waives all rights and benefits under the terms of California Civil Code § 1542. (Settlement Agreement, ¶ 12.3.)

**E. Notice Procedure**

Defendants will provide the name, last known address, social security number, and dates of employment of Class Members ("Class Data") to the Settlement Administrator no later than fourteen (14) calendar days after the Court issues and order granting Preliminary Approval of the settlement. (Settlement Agreement, ¶¶ 8.5, 13.2.)

Within twenty-one (21) calendar days from the date Defendants provide the Class Data to the Settlement Administrator, Simpluris shall mail the Class Notice to the Class Members via First Class Mail. (Settlement Agreement, ¶ 13.3.) With respect to any returned envelopes, the Settlement Administrator will skip-trace return mail and re-mail within five (5) calendar days. The Settlement Administrator shall take all reasonable steps to locate any Class Member whose Class Notice is returned as undeliverable, such as a skip-trace procedure or other independent research, to obtain a current address and, if an updated address is located, then re-mail the envelope to such address within five (5) business days of obtaining an updated address. (Settlement Agreement, ¶ 13.4.)

Class Members shall have forty-five (45) calendar days from the date of mailing of the Settlement Documents to return a valid Request for Exclusion from the Settlement to the Settlement Administrator (the "Opt-Out Period"). Class Members submitting untimely or invalid Requests for Exclusions shall be bound by the Settlement Agreement and its releases (Settlement Agreement, ¶ 13.7.) PAGA Members have no right to object or exclude themselves from the settlement of the PAGA claims. Thus, any timely request for exclusion from the Settlement shall be construed as relating only to the Released Class Claims and shall have no effect on the settlement of the Released PAGA Claims. (Settlement Agreement, ¶ 13.9.)

## IV. <u>PRELIMINARY APPROVAL OF SETTLEMENT IS APPROPRIATE</u>

The law favors settlement, particularly in class actions and other complex cases in which substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation. (*City of Seattle* 955 F.2d at 1276; *Potter v. Pacific Coast Lumber Company*, (1951) 37 Cal. 2d. 592, 602-603.; 4 NEWBERG § 11.41.) To grant preliminary approval of this class action settlement, the Court need find only that the settlement falls within the "range of reasonableness." (*North County Contractor's Ass. Inc. v. Touchstone Ins. Svcs.,* (1994) 27 Cal. App. 4th 1085, 1089-1090.) In determining whether a class settlement is fair, adequate and reasonable, courts must consider the following relevant factors: the strength of the Plaintiff' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount of offered settlement, the extent of discovery completed and the range of the proceedings, and the experience and views of counsel. (*Dunk v. Ford Motor Co.,* (1996) 48 Cal. App. 4th 1794, 1801; *Clark v. American Residential Services, LLC*, (2009) 175 Cal. App. 4th. 785,799.) The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." (*Clark,* 175 Cal. App. 4th at 799; *Wershba*, 91 Cal. App. 4th at 245.)

Furthermore, courts must give "proper deference to the private consensual decision of the parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Hanlon v. Chrysler Corp.*, (9th Cir. 1998), 150 F.3d 1011, 1027.)

**A. <u>The Terms of the Proposed Settlement are Fair</u>**

A preliminary review of the terms of the Settlement Agreement provides no reason to doubt its fairness. A presumption of fairness exists where: 1) the settlement is reached through arms-length negotiations; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small (*Dunk v. Ford Motor Co., supra,* at 1802.) The first three of these factors apply at the preliminary approval stage; the percentage of objectors is determinable only at the final approval stage.

1. <u>The Settlement was Reached Through Extensive Arm's Length Bargaining and Based on the Recommendation Proposed by the Mediator</u>

As already discussed herein, the Parties have conducted themselves in informed, good faith arm's-length negotiations after exchanging extensive information about the claims and defenses of this lawsuit and engaging in pre-mediation and post mediation discussions aimed at settling their dispute. In attempts to settle this lawsuit, the Parties participated in two full day mediations with experienced wage and hour class action mediators, Kelly Knight and Lisa Klerman, respectively. (Draper Decl., ¶¶ 8-9.) In sum, armed with all of the relevant information and with the help of experienced mediators, counsel for the parties participated in lengthy, serious and informed negotiations which have resulted in the proposed Settlement Agreement that is now placed before this Court.

2. Investigation and Discovery Were Sufficient for the Parties to Evaluate the Risks Intelligently

Plaintiff conducted significant investigation of the facts and law both before and after the Action was filed. Plaintiff's counsel reviewed voluminous supporting documents provided by Defendants through informal discovery and in exchanges of information in preparation for mediation (Draper Decl., ¶ 7.) Plaintiff also undertook an extensive expert analysis of timekeeping and payroll data for the class. (*Id*.)

3. Plaintiff's Counsel is Experienced in Similar Litigation

Moreover, counsel for Plaintiff has represented, mediated and settled hundreds of other employee class actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the claims against Defendants and the benefits of the proposed Settlement under the circumstances of the case (Draper Decl., ¶¶ 19-22.)

4. The Settlement Provides For Reasonable Compensation To Class Members

In seeking approval, a settling party must provide sufficient information to "enable the court to make an independent assessment of the adequacy of the settlement terms." (*Kullar v. Foot Locker Retail, Inc.* (2008). 168 Cal. App. 4th 116, 131-32.) However, "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." (*See Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco* (9th Cir. 1982) 688 F.2d 615, 628.) "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*Id*. at 625.) "Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." (*In re Toys R Us-Delaware, Inc*.--Fair & Accurate Credit Transactions Act (FACTA) Litig., (C.D. Cal. 2014) 295 F.R.D. 438, 453.) In other words, in valuing the claims within a realistic range of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.

Settling parties are not, however, required to partake in a hypothetical accounting exercise: "**Kullar does not … require any such explicit statement of [maximum] value;** it requires a record which allows 'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co*. (2010) 186 Cal. App. 4th 399, 409-10 (citing *Kullar*, 168 Cal. App. 4th at 120 (emphasis added).) Overall, "the most important factor" in determining "whether a settlement is fair and reasonable" is the "strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement." (*Id.* at 409 n.6 (quoting *Kullar,* 168 Cal. App. 4th at 130).) As discussed below, the recovery of $605,000 is within the range of reasonableness, undeniably fair, adequate, and reasonable considering the risks and hurdles of continued litigation.

Plaintiff's counsel analyzed the potential liability in this matter based on documents and information produced by Defendants in formal discovery and in preparation for mediation, expert analysis of timekeeping records and payroll data, and took into account the nature of the claims and Defendants' defenses thereto. (Draper Decl., ¶ 13.)

The damages model used in calculating potential liability was largely based on the number of class members, the number of workweeks and pay periods, the average rate of pay and a random sample of time records, wage statements and documents produced by Defendants in preparation for mediation. Based on the information provided by Defendants, the estimated number of work weeks is 21,784 and estimated number of shifts is 84,834 during the Class Period. There is an estimated 11,656 pay periods during the PAGA Period. The average hourly rate of pay is approximately $18.88 (Draper Decl., ¶ 14.) Plaintiff's counsel estimated the maximum potential liability as follows:

a. <u>Failure to Pay Lawful Wages for All Hours Worked</u>

Plaintiff's claim for failure to pay all lawful wages owed, including minimum wage and overtime, is primarily based on allegations that during the liability period, he and class member worked "off the clock" during their work shifts without compensation.

Defendants adamantly dispute the allegations that employees were required to perform any work "off the clock."

Plaintiff's counsel calculated the estimated potential maximum value for this claim at approximately $543,225 based on twenty (20) minutes of "off the clock" work per shift. However, taking into consideration the nature of the claim and Defendants' defenses thereto, including the inability to establish the violation with respect to the majority of the Class Members, this claim was valued at an estimated maximum potential liability between $108,645 (20%) and $27,161.25. (Draper Decl., ¶ 15(a.))

b. Meal Period Claim

The meal break violation claim is also based primarily on Plaintiff's allegations that due to the requirements in the performance of their job duties, time constraints and Defendants' policies and practices, Plaintiff and Class Members were frequently not provided a timely, uninterrupted thirty (30) minute meal breaks during their shifts as required by law. Plaintiff also contends that, in the shifts in which he and Class Members were scheduled to work over 5 hours up to six hours, they were not provided a 30 minute meal period nor did he sign a meal break waiver.

Defendants adamantly deny Plaintiff's meal break allegations in their entirety and maintains that Plaintiff and Class Members were provided with the opportunity to take full, timely and uninterrupted meal periods as per its policies and the law. Defendants dispute the propriety of certification on this claim as well, under the holding in *Brinker* and other state and federal decisions.

Based upon Plaintiff's review of the documents and information provided in anticipation of mediation and the analysis provided by the expert, the estimated maximum potential of the meal break claim was $638,231. However, taking into consideration the nature of the claim, Defendants' defenses and issues faced due to *Brinker,* for purposes of settlement, the meal break was valued at an estimated maximum potential liability between $319,115.50 (50%) and $191,469.30 (30%) (Draper Decl., ¶ 15(b.))

c. Failure to Timely Pay Wages

This claim is derivative of the other claims asserted. Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory period (i.e., three years before the filing of the initial Complaint) is entitled to 30 days' worth of wages as a waiting time penalty for not being paid all wages upon the separation of employment. Plaintiff alleges that penalties are owed under Labor Code section 203 due to, at a minimum, Defendants' failure to pay wages for all hours worked and failure to pay premium wages. With respect to Lab. Code §203 claim, there were an estimated total of 166 former Class Members to whom this claim applied. The estimated maximum potential liability was determined to be $658,157 using the formula (30 x $18.88 x average 7 hours worked per day x 166).

Defendants once again defend that no unpaid wages are owed as Defendants did not fail to pay the correct wages. Defendants further contend that its actions were not willful as required for penalties to issue and that, thus, waiting time penalties cannot be awarded. For purposes of settlement negotiations, said claim was valued between $197,447 (30%) and $98,723.55. (15%) (Draper Decl., ¶ 15(c.))

d. <u>Failure to Provide Accurate Itemized Wage Statements</u>

Under Lab. Code § 226(e), an employee suffering "injury as a result of a knowing and intentional failure by an employer" to provide accurate wage statements is entitled to $50 for the initial violation and $100 for each subsequent violation up to $4,000. This claim is derivative of the alleged unpaid wages claims asserted. Defendants deny that they provided inaccurate wage statements. Defendants also state that because they believe no wages are unpaid, there can be no derivative penalties. Further, Defendants argue that, if any wage statements were in fact inaccurate, they did not "knowingly and intentionally" fail to provide accurate statements and that Plaintiff and the class did not suffer any "injury" from such inaccurate wage statements.

Per information provided by Defendants, Plaintiff believes there were approximately 163 Class Members working during the relevant time period for this claim. Thus, if a calculation is performed using the maximum exposure permitted per Class Member under Labor Code section 226, this amounts to a maximum exposure for Defendants of $652,000 based on 163 Class Members x $4,000. For purposes of settlement negotiations, said claim was valued between an estimated maximum of $195,600(30%) and $130,400 (20%). (Draper Decl., ¶ 15(d.))

e. Bus. & Prof. Code § 17200 Claim

The only remedies available under the unfair competition law ("UCL") Business and Professions Code Section 17200 *et seq.* are restitution and injunction, as opposed to damages *Clark v. Superior Court*, (2010) 50 Cal. 4th605, 610. The UCL provides that "[t]he court may make such orders or judgments ... as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition." (Bus. & Prof. Code, § 17203.) Restitution under the UCL includes "earned wages." *Cortez v. Purolator Air Filtration Prods. Co*., (2000) 23 Cal. 4th 163, 177-78. Restitution under the UCL is not available for all violations of the Labor Code. (*See Pineda v. Bank of Am., N.A.* (2010) 50 Cal. 4th 1389, 1401-02.) In *Pineda*, the California Supreme Court held Labor Code section 203 is "not designed to compensate employees for work performed [but] it is intended to encourage employers to pay final wages on time, and to punish employers who fail to do so." (*Id.*) Like Labor Code section 203, section 226 for wage statement violations is also intended to "punish" the employer and is not an action brought to recover wages. (*See Gomez v. Jacobo Farm Labor Contractor, Inc.* (2019) 334 F.R.D. 234, 267-268.)

Here, Plaintiff's UCL claim is solely premised on the failure to pay lawful wages and premium wages claims discussed above. Plaintiffs' Counsel assigned a zero-dollar value to the UCL claim because it does not provide any additional value in this Action other than to increase the statute of limitations to four years for the underlying claims. Those claims are valued and analyzed above based on the four-year statute of limitations provided by the UCL. However, the UCL claim in and of itself does not provide any additional damages. Therefore, there is no additional or separate monetary value that this statute provides based on the facts of this Action. (Draper Decl., ¶ 15(e.))

f. Lab. Code § 2699 *et seq.* (PAGA Claim)

Plaintiff's claims under PAGA are primarily predicated on or derivative of the other claims asserted. The estimated maximum PAGA penalty was calculated as $1,165,600. This figure attributes a $100 penalty to each of the estimated 11,656 pay periods in scope during the PAGA period. The figure also assumes that there is a 100% violation rate during the PAGA period, such that every single pay period in question involved at least one Labor Code violation, despite disputes regarding Defendants' liability. However, PAGA claims under the facts and circumstance of this case may result in no award or at best a very minimal award by the trial court. See specifically §2699(e)(2) which states in its pertinent part: "[A] court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

For instance, in *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of 82.2%, because the court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code violations are established. *See Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5 7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40 43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice*, Inc., 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove that each Alleged Aggrieved Employee suffered all violations for each pay period the alleged employee worked. As discussed herein, the nature of the PAGA based claims (i.e., failure to pay all wages owed, meal period, wage statements, failure to timely pay wages) and Defendants' asserted defenses thereto present a strong risk that some or all of the PAGA penalties sought may not be awarded.

Defendants deny that a violation for each pay period can be established. Defendants state that because the PAGA Action heavily relies on the same allegations made in the Class Action, they are subject to the same defenses, and, thus, for the same reason Defendants believe there will be no damages collectible in the class action, no PAGA penalties would be awarded, either. Defendants also assert that individualized issues predominate the PAGA claims, making the claims unmanageable for trial. Given the nature of these claims, as analyzed above and Defendants' defenses thereto, Plaintiff's Counsel believes it to be likely that if there were any award, it could be reduced considerably. Therefore, the amount of $25,000 (which has been reserved for the PAGA claim) is both fair and reasonable. (Draper Decl., ¶ 15(f.))

Through his counsel, Plaintiff took into consideration the significant risks that class certification could be denied on the central claim, or that a merits decision on the central claim would not favor the Class. Plaintiff has considered the expense and length of continued proceedings necessary to continue the Action against Defendants through trial and any possible appeals. Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, Defendants' defenses thereto, and the difficulties in establishing Plaintiff's damages (Draper Decl., ¶ 16.)

The proposed Settlement requires Defendants to pay each Class Member who does not opt out a portion of the Settlement Amount as specifically set forth in the Settlement Agreement (Draper Decl., ¶ 17.) The amount to be paid to the Class Members is undoubtedly fair, adequate and reasonable especially in light of the significant risk to Plaintiff and Class Members in continuing with the litigation and not prevailing on class certification or at trial. (*Id.*)

For all the foregoing reasons, the proposed Settlement Agreement is fair, adequate and reasonable, and is in the best interests of the Class Members.

**B.** <u>The Plaintiff's Class Representative Enhancement Payment and Class Counsel Attorneys' Fees Are Reasonable and Should be Awarded</u>

The Settlement Agreement provides for an award to be paid to the Class Representative. The primary purpose is to provide Plaintiff an enhancement payment, taking into consideration the risks, time, effort and expenses incurred by his coming forward to provide invaluable information and negotiate and litigate this matter on behalf of all Class Members. (Draper Decl., ¶ 18.) Plaintiff actively participated in this litigation by providing significant supporting documents and information and assisting counsel in developing information necessary to litigate and settle this case which has resulted in a favorable settlement for the putative Class Members. (*Id*.) Thus, the payment to the Class Representative of $10,000 represents a small portion of the aggregate settlement amount and should be awarded.

Further, as will be discussed in more detail in Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement, class counsel fees in the amount of $211,750 is reasonable within California's standard benchmark and well within the range customarily approved by the California courts in comparable class actions.

## V. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE

In addition to such terms as class definition, settlement amounts and payment procedures, the Settlement Agreement reached between the Parties contains a provision by which the Parties stipulate to the Court's provisional certification of the Class, but do so for the purposes of this settlement only. Plaintiff now requests that this Court to provisionally certify the Class.

It is well established that trial courts should use a lower standard for determining the propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor Co.,* (1996) 48 Cal.App.4th at 1794, 1807, fn. 19.) Under California law, a class action is appropriate when the Class is ascertainable and there is a "well defined community of interest in the questions of law and fact affecting the parties to be represented." (Code Civ. Proc., §382; *Dunk,* 48 Cal. App. 4th at 1806.) State law requirements under *California Code of Civil Procedure* section 382 for class certification largely mirrors *Federal Rules of Civil Procedure* Rule 23 – namely, numerosity and typicality of the class representative's claims, adequacy of representation, predominance of common issues and superiority. As discussed below, although Defendants adamantly disputed and continues to dispute Plaintiff's ability to certify a litigation class, all of the requirements of certification for settlement purposes are met for the proposed settlement Class Members.

### A. The Proposed Class is Ascertainable

Here, the proposed class is ascertainable because all of the Class Members are/were employed directly by Defendants and received their compensation directly from Defendants. The

Class Members have been identified through Defendants' employee and personnel files. (*See Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 ["Class Members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records"].)

**B. Numerosity of the Class is Sufficient**

If the class is sufficiently large that joinder of all members is impractical or that individual joinder is impractical, the numerosity requirement is met. (*Hebberd v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030.) Here, the proposed class consists of 270 members, consisting of current and former employees of Defendants. Therefore, joinder of individual claims would be impractical and the numerosity requirement is met.

**C. There are Common Questions of Law and Fact to the Class**

Commonality is met if there are common questions of fact and law to the class. (*Hanlon v. Chrysler Corp.* 150 F.3d at 1019 ["The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class"].) Here, Plaintiff alleges that the proposed Class Members' claims all stem from the same alleged conduct. Specifically, Plaintiff alleges that Defendants violated California wage and hour law by (1) failure to pay lawful wages; (2) failure to provide lawful meal periods or compensation in lieu thereof; (3) failure to timely pay wages at termination; (4) knowing and intentional failure to comply with itemized employee wage statement provisions; (5) violation of the Unfair Competition Law; and (6) PAGA. Plaintiff seeks recovery of all alleged wages, premium wages, penalties, and interest pursuant to the California Labor Code, the California Industrial Welfare Commission ("IWC") Wage Orders, Bus. & Prof. Code § 17200 *et seq*., and PAGA. Although Defendants disagree with these contentions for purposes of certifying a litigation class, for purposes of a settlement class, these circumstances create questions of law and fact common to all proposed Class Members.

**D. The Typicality Requirement is Met**

The typicality requirement is met if the claims of the named Class Representative(s) are typical of those of the class, though "they need not be substantially identical." (*Hanlon* 150 F.3d at 1020.) Factual differences may exist between the Class Members and the Class Representative so long as the claims arise from the same events or course of conduct and are based on the same legal theories (*Id*.) Here, the claims of the Class Representative are typical of the other Class Members because they arise from the same factual basis and are based on the same legal theories as those applicable to all Class Members. (*Wherner v. Syntex* (N.D. Cal. 1987) 117 F.R.D. 641, 644.) Thus, for purposes of a settlement class, the typicality requirement is met.

**E. <u>The Adequacy Requirement is Met</u>**

If the named representative and his counsel have no interests adverse to the interest of the proposed Class Members and are committed to vigorously prosecuting the case on behalf of the class, then the adequacy requirement is met. (*McGhee v. Bank of America,* (1976) 60 Cal. App. 3d 442,450.) Here, under the proposed settlement, the Class Representative will receive a reasonable award for his time and efforts assisting counsel with factual issues surrounding the case and risk incurred in bringing this action on behalf of the Class Members. Other than this specific payment, all Class Members will receive a percentage of the NSA based on his or her respective number of covered work weeks. Therefore, no "settlement allocation" questions are raised. (*Hanlon,* 150 F.3d at 1020.)

Any Class Member who wishes to opt-out of the settlement shall have forty-five (45) days from the date of mailing of the Settlement Documents to return a valid Request for Exclusion from the Settlement to the Settlement Administrator (Settlement Agreement, ¶ 13.4.) As a result, there is no conflict of interest between the Class Representative and the Class Members. Additionally, the Class Representative and his counsel have been committed to prosecuting this action on behalf of the Class.

**F. <u>Common Issues Predominate and Class-wide Settlement is Superior to Other Available Methods of Resolution</u>**

Class certification is authorized where common questions of law and fact predominate over individual questions and where class-wide treatment of a dispute is superior to individual litigation. (*Richmond v. Dart Industries, Inc.,* (1981) 29 Cal.3d 462, 469.) The test is whether the proposed class is sufficiently cohesive to warrant adjudication by representation. (*Hanlon*, *supra*, at p. 1022.) Plaintiff contends that the proposed Class in this case is sufficiently cohesive, since all Class Members share a "common nucleus of facts and potential legal remedies." Specifically, the Class Members and the Class Representative seek compensation for alleged unpaid wages, premium wages for failure to provide compliant meal periods, as well as penalties and interest for the allegations described herein; common questions about compensation or lack thereof for worked performed by Class Members predominate over individual questions, and the Class Members' potential legal remedies are identical. Although Defendants disagree with Plaintiff's contentions, they have agreed the Class may be certified for settlement purposes only.

Additionally, particularly in the settlement context, class resolution is superior to other methods for the fair and efficient adjudication of the controversy. (*Hanlon*, 150 F. 3d at p. 1023; *Dunk, supra*, 45 Cal. App. 4th at p. 1087.) The superiority requirement involves a "comparative evaluation of alternative mechanisms of dispute resolution." (*Hanlon*, *supra*, at p. 1023.) Here, the alternative methods of resolution are a plethora of individual claims from potentially over 270 Plaintiffs. The class action device can thus conserve judicial resources by avoiding the waste and delay of repetitive proceedings and prevent inconsistent adjudication of similar issues and claims. (*Sav-On Drug Stores, Inc. v Superior Court* (2004) 34 Cal. 4th 319, 340; *Bell v Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 741.) Therefore, settlement on a class-wide basis is superior.

## VI. THE PROPOSED CLASS NOTICE IS APPROPRIATE

The Class Notice is attached as Exhibit A to the Settlement Agreement. The Class Notice provides the requisite, pertinent information to Class Members and the options available to them. Should any Class Members wish to exclude themselves from the Settlement, they can send a Request for Exclusion to the settlement administrator. Should a Class Member wish to object to the Settlement, they can object as described in the Notice. If a Class Member does nothing in response to the Notice, the Class Member will be mailed an individual settlement payment.

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

California statutory and case law vests the Court with broad authority to fashion an appropriate notice process. (Cal. Rules of Court 3.760 *et seq*.) A proposed method of notice of a proposed settlement is fair, adequate and reasonable if it has "a reasonable chance of reaching a substantial percentage of the Class Members. (*Cartt v. Superior Court*, (1975) 50 Cal. App. 3d 960, 974.) The Class Notice plan described herein entails mailing the Class Notice to all known and reasonably ascertainable Class Members based on Defendants' payroll records and provides for a reasonable chance of reaching a significant percentage of Class Members. (*See* Settlement Agreement, ¶¶ 13.2,13.3.) Further, such individual notice by first class mail is routinely approved as consistent with due process. (*See, e.g*., MANUAL at §§21.311, 21.312; Wright & Miller, Fed. Practice & Procedure §1797.6 ["Of course, notice by mail to all of the identified Class Members . . . will suffice."] (citing cases).) The Class Notice is consistent with the class certification notices approved by numerous state and federal courts and is the best notice practicable under circumstances of this case.

### B. **The Proposed Class Notice is Accurate and Informative**

Not only is the manner of the proposed notice proper, so too is the content of the said notice. The proposed notice provides information on the meaning and the nature of the proposed settlement, the terms and provisions of the settlement, the relief the settlement will provide the Class Members, the application of Plaintiff's counsel for reimbursement of costs and for attorneys' fees from the settlement amount, the date, the time and place of the Final Approval Hearing, and the procedure and deadlines for opting out of the Settlement or for submitting comments and objections. (Cal. Rule of Court 3.769(f).)

The Class Notice also fulfills the requirement of neutrality in class notices. (2 NEWBERG §8.39.) It summarizes the proceedings to date and the terms and conditions of the settlement in an informative and coherent manner, in compliance with the MANUAL'S statement, "the notice should be accurate, objective, and understandable to class members….." (MANUAL at §30.21.) The Class Notice clearly states the settlement does not constitute an admission of liability by Defendants and recognizes the Court has not ruled on the merits. It also states the final settlement approval decision has yet to be made. Accordingly, the Notice complies with the standards of fairness, completeness and neutrality required of a settlement class notice disseminated under the authority of the Court. (F.R.C.P. 23(c)(2).)

Moreover, the Class Notice complies with CA Rules of Court, Rule 3.766(d) because it provides for an opt-out procedure for the class members and includes the following: (1) a brief explanation of the case, including the basic contentions or denials of the parties; (2) a statement that the court will exclude the member from the class if the member so requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. The Class Notice contains the information required under Rule 3.766(d).[1] (See Ex. A attached to the Settlement Agreement.)

## VII. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court enter the [Proposed] Order Granting Preliminary Approval submitted concurrently herewith, and thus: (1) grant preliminary approval of the Settlement Agreement, and certify the Settlement Class for the purposes of settlement only; (2) confirm Plaintiff Teodoro S. Francisco as Class Representative; (3) confirm James Hawkins, Isandra Fernandez and Anthony Draper of James Hawkins APLC provisionally as Class Counsel; (4) approve and appoint Simpluris, Inc. as Settlement Administrator; (5) enter an Order preliminarily approving the proposed Settlement and approving of the Class Notice; and (6) schedule the Final Approval Hearing Date on , _______2025 (to be determined by the Court at the hearing for preliminary approval of settlement)

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[1] The Class Notice also contains, in compliance with Santa Clara County Superior Court complex litigation requirements: (1) contact information for class counsel (2) a URL to a web site, maintained by the claims administrator or plaintiffs' counsel, that has links to the notice and the most important documents in the case; (3) and the URL for the Court's electronic filing and service website.

Respectfully submitted,

Dated: July 1, 2025

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