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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

MARIA WONG-MIKHAIL on behalf of herself and all others similarly situated, Plaintiff, vs. SUTTER BAY MEDICAL FOUNDATION, doing business as SUTTER HEALTH, a California corporation; and DOES 1 through 50, inclusive, Defendants.	Case No. 21CV378378 ASSIGNED FOR ALL PURPOSES TO: JUDGE: Hon. Theodore C. Zayner DEPT: 19 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** [Declarations of Anthony Draper and Maria Wong-Mikhail, [Proposed] Order, concurrently filed herewith] Date: September 17, 2025 Time: 2:30 p.m. Dept.: 19

PLEASE TAKE NOTICE THAT on September 17, 2025, in Department 19 of the above-entitled court located at 191 N. First Street, San Jose, California 95113, Maria Wong-Mikhail ("Plaintiff") will and hereby does move the Court for an Order: (1) provisionally certifying the Class for Settlement purposes only; (2) provisionally approving James R. Hawkins, Isandra Fernandez, and Anthony Draper of James Hawkins APLC; counsel for Plaintiff, as Class Counsel in this matter, (3) provisionally approving Plaintiff as the Class Representative; (4) approving Apex Class Action, LLC as the Settlement Administrator; (5) preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement Agreement");(6) approving and directing distribution of the Court-Approved Notice of Pendency of Class Action Settlement and Final Hearing; 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 declarations of Anthony Draper and Maria Wong-Mikhail and upon the oral arguments of counsel (should there be any) and upon the complete records and file herein.

Dated: August 25, 2025

JAMES R. HAWKINS, APLC

By:____________________

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Isandra Y. Fernandez
Anthony Draper
Attorneys for Plaintiff
Maria Wong-Mikhail

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I. INTRODUCTION

On March 18, 2021, Plaintiff Maria Wong-Mikhail filed this wage and hour class action on behalf of herself and all employees employed by, or formerly employed by Defendant Sutter Bay Medical Foundation, (hereinafter "Defendant" and/or "Sutter Bay")(Plaintiff and Defendant hereinafter collectively referred to as "Parties") in the complaint captioned *Maria Wong-Mikhail v. Sutter Bay Medical Foundation dba Sutter Health,* Santa Clara County Superior Court, Case No. 21CV378378.

Subject to Court approval, the Parties have reached a settlement of the claims asserted on behalf of the class and representative PAGA group in the present action for a total of Six Million Dollars ($6,000,000) (hereinafter "Settlement Amount" or "SA"), which includes Individual Class Payments to Class Members, PAGA Payments to the LWDA, Individual PAGA Payments to PAGA-Eligible Employees, the Class Counsel's attorney fees and costs, the Class Representative Service Award payment, and the Settlement Administration Expenses.[1] The Settlement Amount excludes the employer's share of the payroll taxes. **<u>This is a cash settlement.</u>** Every Class Member who does not opt out of the Settlement will automatically be mailed an Individual Class Payment amount. However, every Class Member who is also within the PAGA group will be mailed their respective Individual PAGA Payment associated with the PAGA penalty portion of the settlement amount regardless of opt-out status. Class Members do not have to file a claim to be mailed a payment.

As discussed more thoroughly below, the proposed Settlement satisfies all of the criteria for preliminary settlement approval under California law and falls well within the range of proper approval. As such, Plaintiff moves this Court to: (i) provisionally certify the proposed Class; (ii) provisionally approve James R. Hawkins, Isandra Fernandez, and Anthony Draper of James Hawkins APLC class counsel for Plaintiff and the Class in this matter; (iii) provisionally approve named Plaintiff Maria Wong-Mikhail as the Class Representative; (iv) appoint Apex Class Action,

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[1] Capitalized terms herein have the same meaning as those terms in the Settlement Agreement attached as Exhibit 1 of the Declaration of James R. Hawkins ("Hawkins Decl.")

LLC, as the Settlement Administrator; (v) preliminarily grant approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (hereinafter "Settlement Agreement"); (vi) direct distribution of the Notice of Pendency of Class Action Settlement and Final Hearing (the "Class Notice") and; (vii) schedule a final approval hearing on the terms and conditions set forth in the Settlement Agreement.

II. FACTUAL BACKGROUND

On March 18, 2021, Plaintiff Maria Wong-Mikhail filed this wage and hour class action Complaint in this Action in Santa Clara County Superior Court. On March 29, 2021, Plaintiff filed a First Amended Complaint, which added a fifth cause of action for civil penalties under the PAGA (Labor Code §§ 2698, *et seq*.). (Draper Decl., ¶ 2.)

The First Amended Complaint is the operative complaint, which alleges California claims for (1) failure to pay lawful wages; (2) failure to timely pay wages; (3) knowing and intentional failure to comply with itemized employee wage statement provisions; (4) violation of the Unfair Competition Law; and (5) PAGA (Draper Decl., ¶ 3.)

Throughout this litigation, Defendant has denied Plaintiff's allegations, denies any failure to comply with the laws identified in the First Amended Complaint, denies any and all liability for the causes of action that are or reasonably could have been alleged based on the facts in the First Amended Complaint, and denies the case is manageable or amenable to class treatment and raised defenses to her claims, both individually and on a representative basis (Draper Decl., ¶ 4). Defendant maintains that its employment policies and practices meet the requirements of the Labor Code and applicable Wage Orders (*Id*.) To date, no class has been certified and the Court has not made any findings that Defendant 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., ¶ 5.)

Through formal and informal discovery, Plaintiff and Defendant have exchanged extensive documents and information related to the claims asserted (Draper Decl., ¶ 6.) Defendant 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.

Plaintiff also utilized an expert for a detailed review of the timekeeping and payroll data provided (*Id*.).

On December 3, 2024, after conducting formal and informal discovery, exchanging relevant information, and engaging in numerous discussions regarding the claims alleged, the Parties participated in a full-day mediation before Lisa Klerman, an experienced wage and hour class action mediator. (Draper Decl., ¶ 7.) At the conclusion of the mediation, the mediator memorialized the terms of a proposed settlement in a Mediator's Proposal, which the Parties subsequently accepted (Draper Decl., ¶ 8.) Thereafter, the Parties exchanged multiple drafts of the proposed settlement agreement and class notice documents 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 April 11, 2024 (Draper Decl., ¶ 9.; Exhibit 1.- 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, the discovery and investigation conducted to date, Plaintiff and her 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., ¶ 10.)

III. SUMMARY OF SETTLEMENT TERMS

A. Settlement Class

The "Class" and/or "Settlement Class means all current and former non-exempt employees employed by Defendant at any time from March 18, 2017 through August 11, 2024 ("the Class Period"). (Settlement Agreement, ¶¶ 2(F.);2(I.))

B. PAGA-Eligible Employees

PAGA- Eligible Employees means current and former non-exempt employees who were employed by Defendant in non-exempt Class positions at any time from January 21, 2020 through August 11, 2024. ("PAGA Period") (Settlement Agreement, ¶¶ 2(CC.);2(EE.))

C. <u>Allocation of the Maximum Settlement Amount</u>

1. The total maximum amount of settlement is Six Million Dollars ($6,000,000) (Settlement Agreement, ¶ 2(X.)) 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 Eligible Employees, Class Counsel's Court-approved attorneys' fees and expenses, the Court-approved Service Award to the Class Representative, Court-approved Settlement Administration Expenses and the LWDA's share of PAGA penalties. (*Id.*)

2. Subject to Court approval, Class Counsel may seek approval from the Court of a maximum of Two Million Dollars ($2,000,000), in attorneys' fees (one-third of the Settlement Amount), and a maximum of Twenty Thousand Dollars ($20,000) in litigation costs, for serving as Class Counsel, neither of which Sutter Bay will oppose (Settlement Agreement, ¶11.)

3. Subject to Court approval, the Class Representative may seek approval from the Court of a Service Award payment not to exceed Ten Thousand Dollars ($10,000) from the Settlement Amount for a general release of her claims and for serving as a Class Representative, which Sutter Bay will not oppose. (Settlement Agreement, ¶ 12.)

4. Subject to Court approval, reasonable Settlement Administration Expenses shall be taken from the Settlement Amount, which are estimated not to exceed Fifty- Seven Thousand Dollars ($57,000). (Settlement Agreement, ¶ 13.)

5. Subject to Court approval, One Hundred Fifty Thousand Dollars ($150,000) shall be allocated to PAGA penalties, from which One Hundred Twelve Thousand Five Hundred Dollars ($112,500) (75%) shall be payable to the LWDA, representing the LWDA's share of PAGA penalties ("PAGA Allocation") and Thirty-Seven Thousand Five Hundred Dollars ($37,500) (25%) to the PAGA Eligible Employees, whether or not they opt out of the Class Settlement. (Settlement Agreement, ¶ 14.)

6. The portion of the Settlement Amount remaining after subtracting the Settlement Administration Expenses, Court-approved attorneys' fees and litigation costs, Court-approved Service Award, and the PAGA penalties payable to the LWDA and the PAGA-Eligible

Employees, shall be designated the "Net Settlement Amount" or "NSA" (Settlement Agreement, , ¶ 2.Y.)

7. Individual Class Payments- The Settlement Administrator will calculate each Participating Class Member's Individual Class Payment by determining the total number of Compensable Workweeks worked by all Participating Class Members during the Class Period, dividing that number into the Net Settlement Amount to determine the per-workweek value of each Compensable Workweek, and then multiplying that sum by the number of Compensable Workweeks worked by each Participating Class Member during the Class Period. (Settlement Agreement, ¶ 15.)

8. Individual PAGA Payments- The Settlement Administrator will calculate each eligible employee's Individual PAGA Payment by dividing the 25% portion of the PAGA Payment to be distributed to those individuals, i.e. $37,500, by the total number of Compensable Workweeks worked by all of the PAGA-Eligible Employees during the PAGA Period to derive the per-workweek value of the Individual PAGA Payments, and then multiplying that sum by the number of Compensable Workweeks worked by each such employee during the PAGA Period (Settlement Agreement, ¶ 16.)

9. Individual Class Payments shall be allocated as follows: 20% to alleged unpaid wages, subject to withholding and reported on a W-2 form, and 80% to non-wage compensation which shall be reported on an IRS 1099 without withholdings (Settlement Agreement, ¶ 17.)

10. Defendant shall be responsible for paying the employer's share of payroll taxes, separately and in addition to the maximum settlement amount. (Settlement Agreement, ¶ 18.)

Here, there are estimated to be 16,290 putative Class Members and thus, the estimated average net recovery of Class Members will be approximately Two Hundred and Thirty One Dollars ($231.00), should the Court approve the amounts set forth above.[2] This average net recovery amount is considerably more than other wage and hour class action settlements

[2] This figure is calculated based on the NSA ($3,763,000) divided by the number of putative Class Members (16,290).

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. Releases

1) Class Member Released Claims Summary

Effective on the date when Defendant fully funds the MSA and its share of employer-side payroll taxes owed, Plaintiff and all Participating Class Members will fully, finally and forever release, settle, compromise, relinquish, and discharge Defendant and all of the Released Parties from any and all claims, rights, demands, liabilities arising during the Class Period, including statutory, contractual, or common law claims for wages, damages, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief – whether asserted under the California Labor Code, Business and Professions Code §§ 17200 *et seq.*, the applicable wage orders at California Code of Regulations, Title 8, Section 11000 *et seq.*, or otherwise – that were or could have been alleged based on the factual allegations in Plaintiff's Operative Complaint and Plaintiff's notices to the LWDA, including but not limited to any and all claims for: (a) failure to pay all wages owed and (b) all derivative claims arising from said claims. (Settlement Agreement, ¶ 19.)

2) PAGA-Released Claims Summary

Effective on the date when Defendant fully funds the MSA and its share of employer-side payroll taxes owed, Plaintiff, as agent and proxy of the State of California, and the State of California (including the LWDA), acting on behalf of the PAGA-Eligible Employees, shall release Defendant and all the Released Parties from any and all claims for PAGA civil penalties arising during the PAGA Period, based on any of the underlying claims and factual allegations that were alleged, or reasonably could have been alleged, based on the facts contained in Plaintiff's Operative Complaint, and/or in Plaintiff's notices provided to the LWDA in connection with this Action. (Settlement Agreement, ¶ 20.)

3) <u>Class Representative Released Claims</u>

Plaintiff, in her individual capacity, agrees to release the Released Parties from any and all claims they may have, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, arising as of the date of execution of this Agreement, including but not limited to claims arising from or related to her employment with Defendant, her termination, her compensation while in Defendant's employ, and all other dealings she may have had with the Released Parties. Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California. (Settlement Agreement, ¶ 21.)

E. <u>Notice Procedure</u>

Defendant will provide the name, last known address, social security number, and the total Applicable Workweeks worked by each Class Member and PAGA Pay Periods worked by the PAGA Employees to the Settlement Administrator, only ("Class Data"). Defendant will provide the Class Data to the Settlement Administrator no later than forty-five (45) calendar days after the Court grants Preliminary Approval of the settlement. (Settlement Agreement, ¶ 27.)

Within fourteen (14) calendar days from the date the Settlement Administrator receives the Class Data, the Settlement Administrator shall mail Settlement Documents to the Class Members described herein. (Settlement Agreement, ¶ 28.) The Settlement Administrator shall mail the Settlement Documents to Class Members by First Class Mail. With respect to any returned envelopes, 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) calendar days of obtaining an updated address. (Settlement Agreement, ¶ 29.)

Class Members 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 (the "Opt-Out Period") (Settlement Agreement, ¶ 33.) Participating Class Members will receive their Individual Class Payment amount from the Net Settlement Amount as calculated by the Settlement Administrator. (Settlement Agreement, ¶ 30.) The Class Member shall have until the end of the Opt-Out Period, or an additional fourteen (14) calendar days if notice was remailed. (Settlement Agreement, ¶ 29.) Class Members submitting untimely or invalid Requests for Exclusions shall be bound by the Settlement Agreement and its releases. (Settlement Agreement, ¶ 33.)

IV. PRELIMINARY APPROVAL OF SETTLEMENT IS APPROPRIATE

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 a full day mediation with Lisa Klerman, an experienced wage and hour class action mediator. (Draper Decl., ¶ 7.) In sum, armed with all of the relevant information and with the help of an experienced mediator, 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 Defendant through formal and informal discovery and in exchanges of information in preparation for mediation. (Draper Decl., ¶¶ 6,7). 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 Defendant and the benefits of the proposed Settlement under the circumstances of the case. (Draper Decl., ¶¶ 15-18.)

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.,* 168 Cal. App. 4th 116, 131-32 (2008). 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*, 688 F.2d 615, 628 (9th Cir. 1982). "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., 295 F.R.D. 438, 453 (C.D. Cal. 2014). 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 Plaintiff 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 further below, the recovery of over $3,800,000 for the Class and PAGA-Eligible Employees is well within the range of reasonableness and 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 Defendant 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 Defendant's defenses thereto. (Draper Decl., ¶ 6.)

The damages model used in calculating potential liability was largely based on the number of class members, the number of pay periods, the average rate of pay and a random sample of time records, wage statements and documents produced by Defendant in preparation for mediation. Based on the information provided by Defendant, the estimated number of work weeks is 2,395,045 during the Class Period and over 420,955 pay periods during the PAGA Period. The average hourly rate of pay is approximately $41.39. (Draper Decl., ¶ 11.) 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 wages owed is based on allegations that Defendant implemented a time-keeping policy and practice for non-exempt employees which rounded their clock-in and clock-out times in a manner that resulted in a loss of time worked. As a result, Plaintiff and Class Members were underpaid overtime compensation when required to work more than eight (8) hours in a day or more than forty (40) hours in a workweek.

Defendant disputes the allegations that it did not pay the correct overtime compensation to its non-exempt employees and disputes that its non-exempt employees were not paid for all hours worked as a result of its rounding policies and practices. Defendant contends that its time clock rounding policy is neutral and does not systematically undercompensate its non-exempt employees. Based on the information provided by Defendant and Plaintiff's expert analysis, Defendant's underpayment of overtime was estimated to be a maximum of $12,359,000. However, taking into consideration the nature of the claim and Defendant's defenses, for purposes of settlement, this claim was valued between an estimated maximum of $6,179,498 (50%) and $3,707,699. (30%) (Draper Decl., ¶ 11(a.))

b. <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. Plaintiff contends that Class Members are entitled to recover penalties for Defendant's alleged failure to issue compliant wage statements under Labor Code section 226, subdivision (e) for the derivative impact of the failure to pay all wages owed in connection with alleged unpaid wages. Defendant denies that it provided inaccurate wage statements. Defendant further argues that, if any wage statements were in fact inaccurate, it 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 Defendant and Plaintiff's expert analysis, there were approximately14,160 Class Members working during the relevant time period for this claim with a maximum potential liability of $47,009,200. For purposes of settlement negotiations, said claim was valued between an estimated maximum of $9,401,840 (20%) and 4,700,920 (10%). (Draper Decl., ¶ 11(b.))

c. <u>Failure to Timely Pay Wages</u>

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, Defendant's failure to pay wages for all hours worked and failure to pay premium wages. The estimated maximum potential liability was determined to be $70,931,078.4.

Sutter Bay once again defends that no unpaid wages are owed as Defendant did not fail to pay the correct wages. Defendant further contends 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 an estimated maximum of $14,186,216 (20%) and $3,546,554 (5%). (Draper Decl., ¶ 11(c.))

d. 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. 4th 605, 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 § 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 FRD. 234, 267-268 (*Id.*)

Here, Plaintiff's UCL claim is solely premised on the failure to pay lawful wages discussed above. Class 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. 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., ¶ 11(d.))

e. 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 $42,095,500. This figure attributes a $100 penalty to each of the estimated 420,955 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 Defendant's 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 PAGA Employee suffered all violations for each pay period the employee worked. Given the nature of these claims, as analyzed above, Class Counsel believes it to be likely that if there would be any award it would be a minimal amount. Therefore, the amount of $150,000 (which has been reserved for the PAGA claim) is both fair and reasonable.

Defendant denies that a violation for each pay period can be established. Defendant states 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 Defendant believes there will be no damages collectible in the class action, no PAGA penalties would be awarded, either. (Draper Decl., ¶ 11(e.))

Through her 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 Defendant 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, Defendant's defenses thereto, and the difficulties in establishing Plaintiff's damages. (Draper Decl., ¶ 12.)

The proposed Settlement requires Defendant 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., ¶ 13.) The amount to be paid to the Class is undoubtedly fair, adequate and reasonable especially in light of the 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. The Plaintiff's Class Representative Enhancement Payment and Class Counsel Attorneys' Fees Are Reasonable and Should be Awarded

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 their coming forward to provide invaluable information and negotiate and litigate this matter on behalf of all Class Members. (Draper Decl., ¶ 14.) 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 (See generally the Declaration of Maria Wong-Mikhail in Support of the Motion for Preliminary Approval of Class Action and PAGA Settlement).

Further, as will be addressed in more detail in Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement, class counsel fees in the amount of $2,000,000 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 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 Defendant 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.

A. <u>The Proposed Class is Ascertainable</u>

Here, the proposed class is ascertainable because all of the Class Members are/were employed directly by Defendant and received their compensation directly from Defendant . The Class Members have been identified through Defendant's 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. <u>Numerosity of the Class is Sufficient</u>

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 approximately 16,200 members, consisting of current and former employees of Defendant. Therefore, joinder of individual claims would be impractical and the numerosity requirement is met.

C. <u>There are Common Questions of Law and Fact to the Class</u>

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 Defendant violated California wage and hour law by (1) failure to pay wages owed including proper overtime compensation; (2) failure to timely pay wages; (3) knowing and intentional failure to comply with itemized employee wage statement provisions; (4) violation of the Unfair Competition Law; and (5) PAGA. Plaintiff seeks recovery of all alleged 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 Defendant disagrees 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. <u>The Typicality Requirement is Met</u>

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 and the Class Representative(s) 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 her 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 Net Settlement Amount 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, ¶ 33.) As a result, there is no conflict of interest between the Class Representative and the Class Members. Additionally, the Class Representative and her 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 and derivative claims as well as penalties and interest for the allegations described herein; common questions about compensation or lack thereof for work performed by Class Members predominate over individual questions, and the Class Members' potential legal remedies are identical (*Id.*) Although Defendant disagrees with Plaintiff's contentions, it has 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 16,000 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 Defendant's payroll records and provides for a reasonable chance of reaching a significant percentage of Class Members. (*See* Settlement Agreement, ¶¶ 27-29.) 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 attorneys' fees from the settlement amount, the date, the time and place of the Final Fairness and 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 Defendant 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 comports with CA Rules of Court, Rule 3.766(d). As per Rule 3.766, the contents of the Class Notice providing for an opt out procedure for the Class Members must include 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).[3] (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 named Plaintiff Maria Wong-Mikhail as the Class Representative;

3. Confirm attorneys James R. Hawkins, Isandra Fernandez, and Anthony Draper of James Hawkins APLC as Class Counsel;

4. Approve and appoint Apex Class Action, LLC as the Settlement Administrator;

5. Enter an Order granting preliminary approval of the proposed settlement and the Notice, and;

6. Schedule the Final Approval Hearing Date.

Respectfully submitted,

Dated: August 25, 2025

JAMES HAWKINS, APLC

James R. Hawkins
Isandra Y. Fernandez
Anthony Draper
Attorneys for Plaintiff
Maria Wong-Mikhail

[3] 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 plaintiff's 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.