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HECTOR MARTINEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

HECTOR MARTINEZ, individually and as an aggrieved employee and Private Attorney General, Plaintiff, vs. SDP, Inc.; COLLEGE WORKS ISM, INC.; COLLEGE WORKS PAINTING, INC.; CWPNC, INC.; EMPAUS, INC.; EMPCC, INC.; EMPFL, LLC; EMPIE, INC. d.b.a. EMPIRE WORKS RECONSTRUCTION AND PAINTING, EMPIE, INC.; EMPJAX, LLC; EMPNC, INC.; EMPPBI, LLC; EMPSD, INC.; MJP EMPIRE, INC.; NATIONAL SERVICES GROUP, INC.; and DOES 1 through 50, inclusive Defendants.California corporation; EMPIE, INC. d.b.a. EMPIRE WORKS RECONSTRUCTION AND PAINTING, a Nevada corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: 30-2021-01184079-CU-OE-CXC *Assigned for All Purposes to Hon. Randall J. Sherman, Dept. CX105* **CLASS ACTION** **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: June 6, 2025 Time: 10:00 a.m. Dept: CX-105 Reservation ID: 1000534147 Complaint Filed: February 16, 2021 SAC Filed: January 31, 2022 Trial Date: Not set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on June 6, 2025, at 10:00 a.m. in Department CX-105 of the above-captioned Court, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, Plaintiff HECTOR MARTINEZ ("Plaintiff") will and hereby does move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendants SDP, Inc., College Works ISM, Inc., College Works Painting, Inc., CWPNC, Inc., Empaus, Inc., EMPCC, Inc., EMPFL, LLC, EMPIE, Inc. dba Empire Works Reconstruction and Painting Empire, Inc., EMPJAX, LLC, EMPNC, Inc., EMPPBI, LLC, EMPSD, Inc., MJP Empire, Inc., and National Services Group, Inc. (collectively, "Defendants").

Specifically, Plaintiff requests that the Court enter an Order:

1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement ("Settlement" or "Settlement Agreement") attached as Exhibit 2 to the Declaration of Heather Davis in support of Motion for Preliminary Approval ("Davis Decl.");

2. Certifying a Class for Settlement purposes;

3. Appointing Plaintiff Hector Martinez as the Class Representative for settlement purposes;

4. Appointing Protection Law Group, LLP as Class Counsel for Settlement purposes;

5. Approving the proposed Class Settlement Notice ("Class Notice"), Request for Exclusion Form, and Objection Form (collectively the "Notice Packet") attached as Exhibit A to the Settlement Agreement to be mailed to the Class;

6. Approving the opt-out and objection procedures provided in the Settlement Agreement set forth in the Notice Packet;

7. Directing Defendants to furnish the Class List to the Settlement Administrator within twenty-one (21) calendar days after the Court grants preliminary approval of the Settlement;

8. Approving the proposed deadlines for the settlement administration process; and

9. Setting a date for a hearing on final approval of the proposed settlement.

Pursuant to California Labor Code § 2699(l)(2), a copy of the proposed Joint Stipulation of Class Action Settlement and Release, as well as information regarding the preliminary approval hearing on this matter, were submitted to the California Labor Workforce Development Agency via online filing at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html on February 18, 2025. *See* Davis Decl. ¶103, Ex. 3.

The motion is based upon this Notice, the attached memorandum of points and authorities; the Declaration of Heather Davis filed concurrently herewith and exhibits thereto; the Declaration of Hector Martinez; the Declaration of Lisa Mullins on behalf of ILYM Group, Inc. filed concurrently herewith and exhibits thereto; the pleadings and other records on file with the Court in this matter; and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

DATED: February 18, 2025

PROTECTION LAW GROUP, LLP

By: ______________________

Heather Davis
Amir Nayebdadash
Brendan J. Burton
Shadi Sahebghalam
Attorneys for Plaintiff
HECTOR MARTINEZ

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Hector Martinez ("Plaintiff") seeks preliminary approval of a Joint Stipulation of Class Action Settlement and Release ("Settlement" or "Settlement Agreement") on behalf of all current and former hourly-paid, non-exempt employees employed by Defendants SDP, College Works ISM, Inc., College Works Painting, Inc., CWPNC, Inc., Empaus, Inc., EMPCC, Inc., EMPFL, LLC, EMPIE, Inc. dba Empire Works Reconstruction and Painting Empire, Inc., EMPJAX, LLC, EMPNC, Inc., EMPPBI, LLC, EMPSD, Inc., MJP Empire, Inc., and National Services Group, Inc. (collectively, "Defendants") in the state of California at any time between February 16, 2017, and the date the Court grants preliminary approval. The Settlement terms are outlined as follows:

- Size of the Class: 2,627 employees.
- Number of PAGA Members: 1,250 employees.
- Gross Settlement Amount: $2,000,000.00, exclusive of employer-side payroll taxes.
- Settlement Administration Costs: not to exceed $20,000.00.
- Requested Class Representative Incentive Payment: $10,000.00 to Plaintiff Martinez.
- PAGA Payment: $100,000.00; 75% of which ($75,000.00) will be paid to the California Labor and Workforce Development Agency ("LWDA") with the remaining 25% ($25,000.00) distributed to PAGA Members.
- Requested Class Counsel's Fees and Costs: $700,000.00 plus actual litigation costs and expenses not to exceed $35,000.00.
- Net Settlement Amount: approximately $1,135,000.00 to be distributed to Participating Class Members.

As set forth herein, the Settlement is the product of informed discovery, arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the Class in light of the relative strength of Plaintiff's claims, the risk, expense and uncertainty of further litigation, and the benefit conferred by the Settlement. Plaintiff therefore respectfully requests that the Court grant preliminary approval of the proposed Settlement, conditionally certify the Class, approve the proposed Notice Packet, and set a hearing date for final approval of the settlement, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants are a large commercial painting and decorating conglomerate. Plaintiff was employed by Defendants as a Painter from approximately May 2020 to approximately August 2020. Declaration of Heather Davis in support of Motion for Preliminary Approval ("Davis Decl.") ¶13; Declaration of Hector Martinez ("Martinez Decl.") ¶2.

On February 9, 2021, Plaintiff served his Letter providing notice to Defendants and the California Labor and Workforce Development Agency ("LWDA") of the alleged wage and hour violations and his intent to seek civil penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA"). Davis Decl. ¶14, Ex. 1.

On February 16, 2021, Plaintiff filed a class action complaint with the Orange County Superior Court, Case No. 30-2021-01184079-CU-OE-CXC, against Defendants, alleging the following causes of action: (1) failed to pay overtime wages; (2) failed to provide meal periods and pay meal period premiums; (3) failed to provide rest periods and pay rest period premiums; (4) Failed to pay minimum wages; (5) failed to timely pay wages during employment; (6) failed to pay all wages upon termination of employment; (7) failed to provide accurate itemized wage statements; (8) failed to reimburse necessary business expenses; and (9) violated California Business and Professions Code § 17200. Plaintiff seeks to represent a class of current and former non-exempt employees employed by Defendants in California for, *inter alia*, alleged violations of the California Labor Code and the California Business and Professions Code §17200, *et seq*. Davis Decl. ¶15.

After having exhausted Plaintiff's administrative remedies pursuant to Labor Code § 2699.3, and more than sixty-five (65) days having lapsed since the mailing of Plaintiff's notice, and the LWDA not having indicated that it intended to investigate the violations discussed in the notice, on April 16, 2021, pursuant to the Private Attorneys General Act of 2004, California Labor Code 2698, *et seq.*, my office filed Plaintiff's First Amended Complaint ("FAC"), adding one cause of action under PAGA. Davis Decl. ¶16.

On May 18, 2021, Defendants filed their Answer to Plaintiff's FAC. Davis Decl. ¶17.

On June 2, 2021, Plaintiff propounded (i) Form Interrogatories – General, Set One, (ii) Special Interrogatories, Set One, (iii) Requests for Production of Documents, Set One, and (iv) Notice of Deposition of Defendants' Person(s) Most Qualified ("PMQ"). My office served extensive discovery and exhaustively met and conferred with Defendants regarding the propounded written discovery. Because of my office's extensive efforts, Defendants responded and provided supplemental responses to interrogatories and produced various documents for the putative class/aggrieved employees. Davis Decl. ¶18.

After meeting and conferring, Plaintiff was informed of the identity of necessary parties to the Action, namely EMPSD, INC., EMPCC, INC.; COLLEGE WORKS ISM, INC.; COLLEGE WORKS PAINTING, INC.; CWPNC, INC.; EMPAUS, INC.; EMPJAX, LLC; EMPNC, INC.; EMPPBI, LLC; MJP EMPIRE, INC.; EMPIE, INC.; EMPFL, LLC; NATIONAL SERVICES GROUP, INC.; and EMPIE, INC. d.b.a. EMPIRE WORKS RECONSTRUCTION AND PAINTING. On September 9, 2021, Plaintiff served his Amended Letter providing notice to the LWDA and new Defendants. Davis Decl. ¶19, Exhibit ("Ex.") 1.

On January 28, 2022, the Parties filed a Joint Stipulation re: Filing of Second Amended Complaint ("SAC"). Davis Decl. ¶20. On January 31, 2022, Plaintiff filed his SAC, adding the new Defendants to the Action. Davis Decl. ¶21.

Additionally, after extensively meeting and conferring with Defendants' counsel on discovery issues, in or about June 2022, the Parties met and conferred and agreed to attend private mediation and continue their formal discovery discussions and their respective motions to compel discovery, if any, until a date after mediation. The Parties agreed to exchange informal discovery and attend private mediation in the Action with the Hon. Jay C. Gandhi, a mediator with substantial experience handling wage and hour matters, to be held on September 30, 2022. Davis Decl. ¶22.

In advance of the September 30, 2022 Mediation, Defendants provided Plaintiff with extensive informal discovery including all relevant policies and handbooks in place during the Class Period, which included all applicable policies relating to meal breaks, rest breaks, timekeeping, the payment of wages and other relevant areas of investigation; Plaintiff's personnel file; time and payroll data for all putative class members; and figures and information regarding the class size and composition. With this data for the Class, Class Counsel and their retained expert were able to perform a comprehensive damages analysis and estimate Defendants' potential violations, liability, and exposure, including, and not limited to, analyzing time and pay data, considering potential meal period violations, potential rest period violations, potential synthetic meal period recordings, potential unpaid and rest period premiums, rounding, overtime and premium payments, etc. This discovery and investigation allowed Class Counsel to perform a comprehensive damages analysis and estimate Defendants' potential liability. Davis Decl. ¶23.

After extensive review of these documents and investigations, on September 30, 2022, the Parties attended a full day mediation. At the mediation, the Parties engaged in intensive settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims. Unfortunately, the Parties were not able to reach an agreement with the help of the mediator. Davis Decl. ¶24.

Following mediation, Defendants informed Plaintiff of their intent to file a Motion to Compel Arbitration. However, after meeting and conferring, the Parties decided to stay the Action pending the outcome of critical Supreme Court and California Supreme Court precedent. Davis Decl. ¶25. On October 28, 2022, the Parties stipulated to stay the Action until April 26, 2023, to allow the Courts determine the outcome of the Supreme Court's decisions in *Viking River Cruises, Inc. v. Moriana,* 142 S. Ct. 1906, and the California Supreme Court's decision in *Adolph v. Uber,* Supreme Court Case No. S274671. Davis Decl. ¶26. On April 25, 2023, the Parties again stipulated to stay the Action until September 26, 2023, with Defendants reserving their right to file a Motion to Compel Arbitration after the stay is lifted. Davis Decl. ¶27. Following the *Viking River Cruises* and *Adolph* decisions in 2023, the Parties extensively met and conferred on the impact of these decisions on the instant Action, and agreed to attend a second mediation and stay the Action. On October 24, 2023, the Parties stipulated to stay the Action until November 23, 2023. Davis Decl. ¶28.

On March 1, 2024, the Parties filed a Joint Stipulation regarding Discovery and mediation, and agreed to attempt to settle the Action through a second private mediation with Jeff Ross, Esq., a mediator with substantial experience handling wage and hour matters, to be held on May 15, 2024. Davis Decl. ¶29.

In advance of the May 15, 2024, Mediation, Defendants provided Plaintiff with extensive updated informal discovery including all relevant policies and handbooks in place during the Class Period, which included all applicable policies relating to meal breaks, rest breaks, timekeeping, the payment of wages and other relevant areas of investigation; Plaintiff's personnel file; time and payroll data for all putative class members; and figures and information regarding the class size and composition. With this data for the Class, Class Counsel and their retained expert were able to perform a comprehensive damages analysis and estimate Defendants' potential violations, liability, and exposure, including, and not limited to, analyzing time and pay data, considering potential meal period violations, potential rest period violations, potential synthetic meal period recordings, potential unpaid and rest period premiums, rounding, overtime and premium payments, etc. This discovery and investigation allowed Class Counsel to perform a comprehensive damages analysis and estimate Defendants' potential liability. Davis Decl. ¶30.

After extensive review of these documents and investigations, on May 15, 2024, the Parties attended a full day mediation. At the mediation, the Parties engaged in intensive settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims. However, after a full-day of mediation, the Parties were very close, but again unable to come to an agreement. The Parties agreed to continue negotiations while pushing the Action forward. Davis Decl. ¶31.

On July 26, 2024, Defendants filed their Notice of Motion and Motion to Compel Arbitration, Strike Putative Class Claims, and Stay Proceedings, which was set for December 6, 2024, at 10:00 a.m. Davis Decl. ¶32. On October 14, 2024, after meeting and conferring extensively, the Parties stipulated to continue the briefing schedule and hearing date on Defendants' Motion to Compel Arbitration to December 13, 2024, to allow the Parties time to further meet and confer regarding settlement. Davis Decl. ¶33. On December 2, 2024, Plaintiff filed his Opposition to Defendants' Motion to Compel Arbitration. Davis Decl. ¶34. On December 5, 2024, the Parties stipulated once more to extend the briefing of Defendants' Reply brief, as well as the hearing date on Defendants' Motion to Compel Arbitration, to February 12, 2025. Davis Decl. ¶35.

On December 11, 2024, after extensive meeting and conferring, the Parties reached an agreement to settle this matter. Davis Decl. ¶36.

The Parties worked diligently to negotiate and memorialize the terms of a long form settlement agreement. On January 30, 2025, after extensive discussions and multiple revisions to the agreement, the Parties entered into a fully executed Joint Stipulation of Class Action and PAGA Settlement. Davis Decl. ¶37, Exs. 2, A-C.

Now, following substantial investigation and extensive settlement negotiations, Plaintiff moves for preliminary approval of this Settlement and has provided notice of the proposed settlement to the LWDA. Davis Decl. ¶¶39, 103, Ex. 4.

III. <u>THE SETTLEMENT TERMS</u>

A. Class and PAGA Members Definition

For purposes of settlement only, the Parties have agreed that the Class shall be defined as: all current and former hourly-paid, non-exempt employees employed by Defendants within the State of California at anytime between February 16, 2017, through the date the Court grants preliminary approval of settlement. Davis Decl. ¶41; Settlement Agreement ¶¶3, 7. The Class Period and release of claims covers the time period from February 16, 2017, through the date Court grants preliminary approval. *Id.;* Settlement Agreement ¶¶3, 7, 28, 67. The proposed Class consists of 2,627 Class Members. Davis Decl. ¶43. For purposes of settlement only, the Parties have agreed that PAGA Members shall be defined as: all current and former hourly-paid, non-exempt employees of Defendants who were employed by Defendants in the State of California at any time from February 9, 2020, through the date the Court grants preliminary approval of settlement. Davis Decl. ¶42; Settlement Agreement ¶¶20, 22. The PAGA Period and release of PAGA claims covers the time period from February 9, 2020, and ending on the date the Court grants preliminary approval. *Id;* Settlement Agreement ¶¶20, 22, 29, 68. There are 1,250 PAGA Members. Davis Decl. ¶43.

B. Amount of Settlement

The Parties have agreed to settle the Class and PAGA claims at issue for a non-reversionary Gross Settlement Amount of $2,000,000.00, exclusive of any employer-side payroll taxes. Davis Decl. ¶45;Settlement Agreement ¶¶14, 40, 41, 47.

/ / /

C. Timing of Funding of the Gross Settlement Amount

Defendants shall fund the Gross Settlement Amount in two installments: (i) the first installment of $1,000,000.00 shall be paid on October 30, 2025, ("First Installment"), and (ii) the second installment of $1,000,000.00 shall be paid on November 3, 2025 ("Second Installment"). The Gross Settlement Amount shall include all applicable employer-side payroll taxes following Final Approval by the Court and the Effective Date, and at which time such Order becomes final and is no longer appealable. The following will be paid out of the Gross Settlement Amount: the sum of the Individual Settlement Payments, the Class Representative Incentive Payment, Class Counsel's Fees and Costs, the PAGA Penalties, and the Settlement Administration Costs, as specified in this Agreement. Except for any employer-side taxes due on the Individual Settlement Payments, or as a result of an increase in the number of Workweeks set forth below, Defendants shall not be required to pay more than the Gross Settlement Amount. The Gross Settlement Amount is non-reversionary; no portion of the Gross Settlement Amount will revert to Defendant. Davis Decl. ¶44; Settlement Agreement ¶40.

D. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a common fund and therefore, includes all requested costs, fees, and other allocations. As stated above, the Gross Settlement Amount includes: (1) attorneys' fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, equaling $2,000,000.00; (2) actual litigation costs, not to exceed $35,000.00; (3) settlement administration costs, not to exceed $20,000.00; (4) a class representative incentive payment to Plaintiff Martinez in the amount of $10,000.00; and (5) PAGA Payment of $100,000.00, 75% of which will be paid to the LWDA and 25% of which will be distributed to PAGA Members. Davis Decl. ¶46; *see also* Settlement Agreement ¶¶5, 9, 14, 21, 35, 43-47.

After deducting these amounts, the Net Settlement Amount of approximately $1,135,000.00 shall be distributed to the Participating Class Members. The Net Settlement Amount will be distributed and paid to Participating Class Members on a *pro-rata* basis based on the number of weeks worked during the Class Period. Davis Decl. ¶47; Settlement Agreement ¶¶16, 47-48. The Net Settlement Amount will be distributed and paid to Participating Class Members on a *pro-rata* basis based on the number of weeks worked during the Class Period. Davis Decl. ¶47; Settlement Agreement ¶¶16, 47-48. In addition, PAGA Members shall receive a *pro-rata* share of the 25% portion of the PAGA Payment allocated for aggrieved employees. PAGA Members shall receive their portion of the PAGA Payment regardless of their decision to opt-out of the Class Settlement. Davis Decl. ¶48; Settlement Agreement ¶47(c).

Each Class Member's settlement allocation will be allocated between wage and nonwage payments as follows: twenty percent (20%) wages, forty percent (40%) as interest, and forty percent (40%) as penalties. Davis Decl. ¶51; Settlement Agreement ¶¶15, 48(c). Employer-side payroll taxes shall be paid by Defendants separately from and in addition to the Gross Settlement Amount. Davis Dec. ¶52; Settlement Agreement ¶¶14, 67.

The proposed Settlement is a non-reversionary and non-claims made settlement. All money from the Net Settlement Amount will be distributed to the Class Members. No money from the Settlement will revert to Defendants. Davis Decl. ¶53; Settlement Agreement ¶¶14, 40. Any checks issued by the Settlement Administrator to Participating Class Members and PAGA Members will be negotiable for at least one hundred eighty (180) calendar days. If a Participating Class Member or PAGA Member does not cash his or her Settlement Check or PAGA payment check within one hundred eighty (180) days, the uncashed funds, subject to Court approval, shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code§ 1500, *et. seq.* for the benefit of those Participating Class Members and PAGA Members who did not cash their checks until such time that they claim their property. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Participating Class Members and PAGA Members, whether or not they all cash their Settlement Checks or PAGA payment checks. Therefore, Defendant will not be required to pay any interest on such amounts. The Individual Settlement Payments provided to Participating Class Members and to PAGA Members shall prominently state the expiration date or a statement that the Settlement Check will expire in one hundred eighty (180) days, or alternatively, such a statement may be made in a letter accompanying the Individual Settlement Payment. Expired Individual Settlement Payments will not be reissued, except for good cause and as mutually agreed by the Parties in writing. The Parties agree no unclaimed funds will result from the Settlement, and therefore Defendants will not be required to pay any interest on such amounts. Davis Decl. ¶54; Settlement Agreement ¶62.

E. Release of Wage and Hour Claims

In exchange for participating in the Settlement, Participating Class Members will release their wage and hour claims against Defendants and the Released Parties, as defined in the Settlement Agreement. The release for Participating Class Members is narrowly tailored to only release claims based upon the facts alleged in Plaintiff's February 9, 2021, Letter to the LWDA, and the operative Second Amended Complaint ("SAC") in the Action, for the Class Period. Davis Decl. ¶55; Settlement Agreement ¶¶28-30, 67. The proposed Settlement also resolves all PAGA Members' claims that are asserted in the Operative SAC or could have been asserted under the California Labor Code Private Attorneys General Act of 2004 based on the legal and factual allegations contained in Plaintiff's February 9, 2021, Letter to the LWDA, for the PAGA Period. Davis Decl. ¶56; Settlement Agreement ¶68.

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The settlement of a class action requires court approval. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794 (1996). "In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds).

The review and approval of a proposed class action settlement involves a two-step process. *See* Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of settlement and the Court makes a preliminary assessment of whether the settlement is sufficiently fair to justify providing notice of the settlement to the class. After notice is provided to the class, the Court must conduct a second inquiry into whether the proposed settlement is fair, reasonable and adequate. *Id.*

The initial evaluation of the settlement at the preliminary approval step "is not a fairness hearing." *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed settlement is within the range of possible approval and, as a result, "whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing." A presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).

Preliminary approval does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after class members have been given an opportunity to review and voice their views of the settlement or exclude themselves from the settlement. *See* Cal. Rules of Court, Rule 3.769(g). In considering a potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. *See Officers for Justice v. Civil Service Comm. of S.F.*, 688 F.2d 615, 625 (1982).

V. <u>THE SETTLEMENT IS PRESUMED FAIR</u>

A. Arm's-Length Bargaining

California courts recognize that "a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining." *Wershba*, 91 Cal.App.4th at 245 (disapproved on other grounds); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). Here, the Parties engaged in arm's-length, non-collusive negotiations at all times. This litigation was hotly contested and settlement negotiations were at all times at arm's length and adversarial. The Parties engaged in two full days of private mediation with highly respected mediators. Thereafter, the Parties engaged in additional negotiations before agreeing to settlement, and even more negotiations finalizing the long-form settlement agreement presently before the Court. At all times, Plaintiff was willing and prepared to litigate this matter if the Parties had been unable to reach a favorable resolution. Davis Decl. ¶¶60-61.

B. Sufficient Investigation and Discovery by Experienced Class Counsel

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. As discussed above, the

Parties engaged in extensive formal and informal discovery prior to reaching a settlement. Prior to both mediations, Defendants informally produced updated time and payroll records for all Class Members, written policies including the employee handbooks in effect during the Class Period, stand-alone wage and hour policies, and other relevant documents. Defendants also provided information regarding the number of putative class members, the number of current versus former employees, the total workweeks and pay periods worked by the Class; and the Class Members' average rate of pay. With the time and pay records, Class Counsel and our retained expert were able to perform a comprehensive damage analysis and estimate Defendants' potential violations, liability, and exposure, including, and not limited to analyzing time and pay data, considering potential meal period violations, potential rest period violations, potential synthetic meal period recordings, rounding, overtime and premium payments, etc. The Parties extensively briefed issues regarding class certification and liability and provided their analyses to the mediators for their consideration. The Parties also met and conferred extensively regarding the mediators' findings. Davis Decl. ¶60.

Additionally, settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel are respected members of the bar with strong records of vigorous and effective advocacy, and are experienced in handling complex wage and hour class action litigation. Davis Decl. ¶¶2-11. Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 246, 250 (disapproved on other grounds). In evaluating the reasonableness of a settlement, a trial court must consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008).

Here, the reasonableness of the Settlement is underscored by the fact that Defendants have legal and factual grounds for defending the Action. Based upon Class Counsel's experience litigating similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification and the merits absent a settlement. Davis Decl. ¶¶62-78, 81-88.

1. Class Counsel's Analysis of the Maximum Available Liability and Damages

Prior to mediation, Class Counsel analyzed the time and payroll records for all putative class members provided by Defendants and other relevant documents and discovery. With this data, Class Counsel and their retained expert were able to perform a comprehensive damages analysis and estimate Defendants' potential violations, liability, and exposure, including, and not limited to, analyzing time and pay data, considering potential meal period violations, potential rest period violations, potential synthetic meal period recordings, potential unpaid meal or rest period premiums, overtime and premium payments, etc. This discovery and investigation allowed Class Counsel to perform a comprehensive damages analysis and estimate Defendants' potential liability. Davis Decl. ¶61. Based on the discovery provided, Class Counsel estimated with respect to the claims at issue, with all claims adjudicated in favor of the Class, Defendants faced a maximum potential liability of $29,881,928.43. This estimated maximum liability includes: $7,356,950.80 for meal period violations; $8,978,572.80 for rest period violations; $1,795,428.03 for unpaid wages; waiting time penalties in the amount of $8,212,276.80; penalties for inaccurate wage statements in the amount of $3,538,700.00; and unreimbursed business expenses in the amount of $85,000.00. Plaintiff also estimated non-duplicative PAGA penalties of approximately $27,725,204.00 including penalties for violations of Labor Code §§ 204 and 1174(d). Davis Decl. ¶62.

2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments

While Plaintiff believes Defendants faced significant exposure, substantial barriers to a class recovery existed and Plaintiff faced numerous challenges attempting to bring the alleged claims on a class and representative basis. Defendants contended that Plaintiff's claims were not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1051 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014). While Plaintiff and Class Counsel disagree with

Defendants' predictions, they also recognize that there is a significant risk that the Court may deny class certification. Davis Decl. ¶64; *see also*, *Findings of the Study of California Class Action Litigation*, 2000-2006, available at http://www.courts.ca.gov/documents/class-action-lit-study.pdf (finding only 21.4% of all class actions were certified either as part of a settlement ***or*** as part of a contested certification motion).

A large portion of Defendants' overall estimated liability lies in Plaintiff's meal period claim. Plaintiff's meal period theory of liability was based upon Defendants' failure to provide timely, full, and/or uninterrupted meal periods. Defendants argued that they had compliant policies and practices and that there were individualized issues with respect to the alleged violations. Meal period claims have become increasingly difficult to certify in recent years and Defendants contended their practices were lawful. *See Brinker*, 53 Cal.4th at 1034-35. Accordingly, Class Counsel had to consider the risk that the Court would find validity in this individualized proof defense to the certification of Plaintiff's meal period claim. Davis Decl. ¶¶65-67.

Similarly, Plaintiff would likely face difficulties proving the alleged rest period violations, as Defendants were not required to record these breaks. Plaintiff contended that Defendants failed to provide Class Members with timely, full, and uninterrupted rest periods and also failed to implement a compliant rest period policy during the class period. Plaintiff believed that Defendants' written policy requiring employees remain on premises during their rest breaks was unlawful and violated California law. *See Augustus v. ABM Securities*, 2 Cal. 5th 257, 270 (2016) (holding that employers must relieve employees of all duties during rest breaks and relinquish control over how employees spend their time). Defendants claimed they allowed employees to take their state mandated rest periods and that their practices complied with California law. Given the lack of records demonstrating rest period violations, there were legitimate concerns Plaintiff would not be able to certify this claim or prove substantial damages even assuming a uniform practice could be established. Davis Decl. ¶¶68-70.

Plaintiff also faced challenges certifying and proving liability for her minimum wage and overtime claims. These claims were largely based on alleged unrecorded, off-the-clock work performed by Class Members both before and after their shifts and during purported meal periods.

Defendants contended they did not permit off-the-clock work and that they were not aware off-the-clock work was being performed. Defendants argued even if a class could be certified, the individualized nature of the claims presented substantial concerns regarding the manageability of the case and the risk the Court could find these issues prevented certification. Davis Decl. ¶¶71-73. Plaintiff's reimbursement claim would likely present similar problems of individualized proof. Davis Decl. ¶78.

There are also substantial risks associated with Plaintiff's waiting time penalties, recordkeeping, and wage statement claims. First, these claims were largely derivative of Plaintiff's previous claims and if certification was denied on those underlying claims, these claims would also likely fail. Further, even if Plaintiff prevailed on his underlying off-the-clock claims, he would still be required to demonstrate that Defendants' violations of Labor Code § 203 were willful violations, a difficult prospect. *See, e.g.*, *Choate v. Celite Corp.*, 215 Cal.App.4th 1460, 1468 (2013) (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding of willfulness"). Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them rather than a pure calculation of damages after liability is proven. *Cf., Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011). Accordingly, these derivative claims, which comprised a substantial portion of Defendants' estimated liability, are extremely risky. Davis Decl. ¶¶74-75.

Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the amount of wages due to each Class Member would be an expensive, time-consuming, and extremely uncertain proposition. In order to prove liability and damages, Class Counsel would be required to spend hundreds of additional hours obtaining discovery and likely substantial motion practice. Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. On the other hand, Defendants would likely be able to obtain the cooperation of their employees. Moreover, even if Plaintiff prevailed, possible appeals would substantially delay recovery by the Class. Davis Decl. ¶89.

Class Counsel also separately contemplated the risks of proceeding with the PAGA cause of action and potential penalties Defendants could face under this cause of action. Davis Decl. ¶79. As part of the valuation of the potential PAGA claims, Class Counsel included claims under Labor Code §§ 204 and 1174(d). My office did not assign independent value for Plaintiff's Claims arising under Labor Code § 204, Labor Code § 1174(d), or Violation of California Business and Professions Code § 17200 *et. seq*. Plaintiff's claims were violations of Labor Code § 204 and Labor Code § 1174(d) were included in my office's evaluation of Plaintiff's PAGA claims. Labor Code § 210 authorizes the recovery of penalties arising from violations of Labor Code § 204, but explicitly states that such penalties may be recovered either through section § 210 or PAGA, but not both. *See* Labor Code §210(c) (permitting recovery of penalties through section 210 or PAGA but prohibiting duplicative recovery). Penalties under 1174(d) may arguably only be recovered by the Labor Commissioner, *see Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal.App.4th 365, 383 (2005), and accordingly my office included this recovery when evaluating Plaintiff's PAGA claims, but again would not appear to be entitled to a duplicative recovery even if Plaintiff successfully persuaded the Court that an independent right to such recovery exists. Davis Decl. ¶80.

The Parties agreed during settlement negotiations to allocate $100,000.00 of the Settlement towards the PAGA claims, which represents 5% of the Gross Settlement Amount. This percentage of the settlement is well-within the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. Settlements that allocate only 1% of the total settlement value to resolve PAGA claims is typical of wage and hour settlements and PAGA allocations as little as 0.27% of the total settlement amount have been approved as reasonable by courts. Davis Decl. ¶81. Class Counsel also recognizes that the PAGA claims would be subject to the same defenses and risks as Plaintiff's class claims, as well as defenses unique to PAGA, that PAGA penalties may not be stacked for violations based on the same conduct, and the substantial risk that PAGA penalties may be reduced where they are duplicative, arbitrary or oppressive. Davis Decl. ¶¶82-87. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 80%); *Carrington v. Starbucks Corp.*, 30

Cal.App.5th 504, 529 (2018) (reducing penalties from $50 per pay period to $5 per pay period based on good faith attempt to comply with obligations and minimal violations).

Therefore, in consideration of risks regarding certification of the class claims, as well as the unique risk posed to the Class, Class Counsel discounted Defendants' estimated potential liability by 75%. In light of merits-based risk factors, even if a class were certified and the claims were brought to trial, Class Counsel reduced Defendants' estimated liability for Plaintiff's meal and rest period claims, unpaid wages, and 226(e) penalties claims by 80%. In light of the fact that Plaintiff's waiting time penalty claims were not only derivative and reliant upon the prior claims but faced its own unique risks, Plaintiff discounted this claims by 75% for merits related defenses. Moreover, in light of the unique risks for unreimbursed business expenses claim, Plaintiff discounted this claim by 75% for merits related defenses. Davis Decl. ¶¶67, 70, 73, 75, 77-80. Finally, as to Plaintiff's PAGA claims, there was a 75% discount applied to account for the risks associated with establishing manageability, a discount of 75% was applied to account for the risks associated with succeeding on the merits, establishing liability, and proving the extent of penalties that are warranted, and a discount of 65% was applied in light of the unique risks to PAGA including the likely discretionary reduction of penalties by the Court given the circumstances of the Action and outside considerations. Davis Decl. ¶88. This resulted in an adjusted liability of $1,991,885.95. The slightly higher figure achieved on behalf of the Settlement Class is warranted not only because it benefits the Class, but it may address any conservative calculations that cannot be accounted for from off-the-clock work as this time was unrecorded. Accordingly, in light of the Parties' respective legal positions and the risks to potential recovery, it is clear that the Gross Settlement Amount is fair, adequate, and reasonable. Davis Decl. ¶¶89-91.

VI. <u>CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED</u>

Code of Civil Procedure § 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, *i.e.*, proceeding as a class is superior to other methods. *See Dunk*, 48 Cal.App.4th at 1806. Plaintiff contends that this Action, which is primarily based upon Defendants' wage and hour policies and practices, satisfies the class certification requirements under California Code of Civil Procedure § 382. Defendants deny Plaintiff's allegations, but for purposes of this Settlement, Defendants have stipulated to certification of the proposed class.

A. An Ascertainable Class Exists Which Is So Numerous That Joinder Of All Members Is Impracticable

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is defined as all current and former hourly-paid, non-exempt employees employed by Defendants withing the State of California at anytime between February 16, 2017, through the date the Court grants preliminary approval of settlement. Settlement Agreement ¶¶3, 7. This provides a clear and definite scope for the proposed class.

Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Under the Federal Rules, the minimum number of a class is one-hundred individuals. Under California law, that number is significantly less. *See e.g., Rose v. City of Haywood*, 126 Cal.App.3d 926, 934 (1981) (holding forty-two class members sufficient to satisfy numerosity). Here, the fact that the Class consists of 8,387 Class Members plainly favors class certification.

Finally, the question whether class members are easily identifiable turns on whether a plaintiff can establish "the existence of an ascertainable class." *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 706 (1967). The existence of an ascertainable class in this case can be established through Defendants' payroll records, and the class definition is sufficiently specific to enable the Parties, potential Class Members, and the Court to determine the parameters of the Class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d 605, 617 (1987) (proposed class defined as all persons nationwide subscribing to telephone service since January 1, 1981, who were charged for long distance calls deemed "plainly" ascertainable).

B. The Class Shares a Well-Defined Community of Interest

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. Plaintiff easily satisfies all three requirements.

The commonality criterion requires the existence of common question of law or fact and is generally established with the issues of predominance and typicality. *See Daar*, 67 Cal. 2d at 706. What is required is that a common question of fact or law exist which predominates over issues unique to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising from employment—is not a bar to class certification as long as they do not render class litigation unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

Here, the claims present sufficient common issues of law and fact that predominate and warrant class certification. Plaintiff alleges that Defendants denied compliant meal and rest periods to employees, failed to properly compensate employees for missed meal or rest periods, required employees to perform work off-the-clock, and failed to fully compensate employees for all time worked. Plaintiff alleges that these policies and practices mean that Defendants failed to pay minimum and overtime wages, and other related claims. Plaintiff alleges that Defendants' policies and practices were uniform as to all Class Members. Thus, class treatment is appropriate.

To satisfy the typicality requirement, California law does not require that Plaintiff has claims identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality requirement for a class representative refers to the nature of the claim or defense of the representative, and not to the specific facts from which it arose or the relief sought. *See Id*.

Here, Plaintiff alleges that her claims are similar to that of the other Class Members. Plaintiff alleges her claims arise out of the same alleged facts and course of conduct giving rise to the claims of the other Class Members. Finally, Plaintiff's claims are typical of the other Class Members because he seeks the exact same relief for the alleged violations. Because Plaintiff's claims are based upon the same alleged conduct and practices as those of Class Members, the typicality requirement has been satisfied.

Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations are satisfied. Counsel for Plaintiff include well-regarded and accomplished lawyers who are qualified and experienced in employment-related, class-action litigation. Davis Decl. ¶¶2-11. Plaintiff will vigorously, adequately, and fairly represent the interests of the class. Because Plaintiff's claims are typical of other class members and are not based on unique circumstances, there is no antagonism between the interests of Plaintiff and the Class.

C. A Class Action is Superior to a Multiplicity of Litigation

Under the circumstances, proceeding as a class action is a superior means of resolving this dispute, as the class members and the court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will come forward to prove his or her separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior to individual litigation.

VII. <u>THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE</u>

Plaintiffs in class action and PAGA lawsuits are eligible for reasonable enhancement payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representative, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives helped obtain. S*ee In re Online DVD Rental*, 779 F.3d 934, 947-48 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments).

Plaintiff initiated and has stepped forward in this litigation on behalf of his former co-workers and the LWDA, who will now benefit from the settlement. Plaintiff invested substantial time and effort into this litigation including his own research, reviewing documents, and extensive discussions with Class Counsel. Further, the requested amount is also extremely reasonable given the benefit gained by other Class Members. For these reasons, Plaintiff requests that a Class Representative Enhancement Payment of $10,000.00 to Plaintiff Martinez be preliminarily approved by the Court. *See* Davis Decl. ¶92; Martinez Decl. ¶¶3-11, 13.

VIII. REQUESTED ATTORNEYS' FEES AND COSTS

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id*. at 47. In common fund cases where the defendant agrees to the fees constituting a percentage of the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

The requested attorneys' fees of $700,000.00, which is thirty-five percent (35%) of the common fund, are disclosed to Class Members in the proposed Class Settlement Notice ("Notice"). *See* Settlement Agreement, Ex. A. The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendants. The Motion for Final Approval will elaborate on the legal services provided the time incurred in performing those services, Class Counsel's hourly rates, in order to demonstrate the fee sought is reasonable under a lodestar analysis. The Motion for Final Approval will also provide additional evidence supporting Class Counsel's request for the reimbursement of litigation costs not to exceed $35,000.00. Davis Decl. ¶93.

IX. NOTICE TO THE CLASS, THE OPT-OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS

The Parties have jointly drafted the Notice Packet which will be delivered to the Class Members and have agreed to having ILYM Group, Inc. administer the Settlement subject to the Court's Approval. Davis Decl. ¶94; *see* Settlement Agreement, Ex. A. The Notice Packet will include information regarding the nature of the lawsuit, a summary of the terms of the Settlement, the Class definition, information on how to object and opt-out, information regarding the release of the class and PAGA claims, and the date of the Final Approval Hearing. The Notice Packet will also list each

Class Member's total workweeks and the approximate Individual Settlement Payment. *Id.* No later than fourteen (14) days after entry of the Preliminary Approval Order, Defendants will provide the Class List to the Settlement Administrator including the full name, last known home address, last known telephone number, social security number, dates of employment, number of workweeks worked during the Class Period, and number of workweeks worked during the PAGA Period for each Class Member. The Settlement Administrator shall perform any searches necessary to confirm the Class Members' addresses, shall translate the Notice Packet, and shall mail the Notice Packet in both English and Spanish to all Class Members within seven (7) calendar days of receiving the Class List from Defendants. Davis Decl. ¶95; Settlement Agreement ¶¶51-52, 54.

In determining whether to approve a settlement of a class action, a trial court has complete discretion as to the manner of giving notice to class members, and review on appeal is governed by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380 (2010). Here, Class Counsel is not aware of an alternative method that would result in a higher likelihood of actual notice. The original source of the mailing addresses is from each Class Member, who provided the information to Defendants. As a fail-safe, additional searches will be performed on any notice returned as non-deliverable. Davis Decl. ¶96; Settlement Agreement ¶53.

Any Class Member who wishes to be excluded from the Settlement must mail the Settlement Administrator a written request for exclusion including their name, address, telephone number, signature, and last 4 digits of their social security number or employee ID number. The request for exclusion must be received no later than 60 days after mailing of the Notice Packet. Settlement Agreement, ¶57, Ex. B. Any Class Member wishing to object to the approval of this Settlement shall provide a signed written statement stating the specific reason for the objection as well as their full name, address, telephone number, and last 4 digits of their social security number or employee ID number. Such written statement must be served on the Settlement Administrator within 60 days following the initial mailing of the Notice Packet. Settlement Agreement ¶57, Ex. B.

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X. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's Motion for Preliminary Approval and the relief requested herein.

DATED: February 18, 2025

Respectfully Submitted,

PROTECTION LAW GROUP, LLP

By: ______________________________

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