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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, SPRING STREET

SILVIA OSUNA, individually and on behalf of others similarly situated, and as an aggrieved employee and Private Attorney General; ASHLEY LOPEZ, individually and on behalf of others similarly situated, and as an aggrieved employee and Private Attorney General, Plaintiffs, vs. M. PERNECKY MANAGEMENT CORP., a California corporation d/b/a McDonald's; MICHAEL EMMETT PERNECKY, an individual; and DOES 1 through 50, inclusive, Defendants.	Case No.: 21STCV19885 *Assigned for All Purposes to: Hon. Stuart M. Rice, Department 1* **<u>CLASS ACTION</u>** **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Hearing Date: November 19, 2025 Hearing Time: 8:30 A.M. Department: 1 Complaint Filed: March 26, 2021 Jury Trial Date: None Set

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Attorneys for PLAINTIFF ASHLEY LOPEZ

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on November 19, 2025, at 8:30 a.m., in Department 1 of the Los Angeles County Superior Court, Spring Street Courthouse, located at 312 N. Spring Street, Los Angeles, California 90012, pursuant to Code of Civil Procedure § 382 and California Rules of Court, rule 3.769, Plaintiffs SILVIA OSUNA and ASHLEY LOPEZ ("Plaintiffs") will and hereby do move the Court for an Order granting preliminary approval of the proposed Joint Stipulation of Class Action Settlement between Plaintiffs and Defendants M. PERNECKY MANAGEMENT CORP., and MICHAEL EMMETT PERNECKY. ("Defendants").

Specifically, Plaintiffs request that the Court enter an Order:

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

2. Certifying a Class for settlement purposes;

3. Preliminarily appointing Plaintiffs Silvia Osuna and Ashley Lopez as the Class Representatives for settlement purposes;

4. Preliminarily appointing Protection Law Group, LLP, Proxy Law Firm, LLP, and Kyle Todd, P.C., as Class Counsel for settlement purposes;

5. Approving the proposed Court Approved Notice of Proposed Class Action Settlement ("Class Notice") 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 and set forth in the Class Notice;

7. Directing Defendant 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; and

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

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 Silvia Osuna filed concurrently herewith; the Declaration of Ashley Lopez filed concurrently herewith; the Declaration of Jodey Lawrence of Phoenix Class Action 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: June 11, 2025

PROTECTION LAW GROUP, LLP

By: ______________________________

Heather Davis
Amir Nayebdadash
Brendan J. Burton
Shadi Sahebghalam
Attorneys for Plaintiff
SILVIA OSUNA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Silvia Osuna ("Plaintiff Osuna") and Ashley Lopez ("Plaintiff Lopez") (collectively "Plaintiffs") seek preliminary approval of a Class Action Settlement Agreement ("Agreement" or "Settlement Agreement") for all current and former employees directly employed by Defendants M. Pernecky Management Corp., and Michael Emmett Pernecky ("Defendants") in a non-exempt position within the State of California at any time from May 26, 2017, through February 28, 2025. The Settlement Agreement's terms are outlined as follows:

- Size of the Class: approximately 3,983 individuals.
- Gross Settlement Amount: $2,000,000.00, exclusive of employer-side payroll taxes.
- Settlement Administration Costs: not to exceed $15,000.00.
- Requested Class Representative Incentive Awards: $10,000.00 Plaintiff Silvia Osuna and $10,000.00 to Plaintiff Ashley Lopez, for a total of $20,000.00.
- Requested Class Counsel's Fees and Costs: $700,000.00 plus actual litigation costs and expenses not to exceed $50,000.00.
- Net Settlement Amount: approximately $1,115,000.00 to be distributed to Participating Class Members.

As set forth herein, the Settlement Agreement 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 Plaintiffs' claims, the risk, expense and uncertainty of further litigation, and the benefit conferred by the Settlement Agreement. Plaintiffs therefore respectfully request that the Court grant preliminary approval of the proposed Settlement Agreement, conditionally certify the Class, approve the proposed Class Notice, and set a hearing date for final settlement approval, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants operate McDonald's restaurants in various locations in California. Defendant employed Plaintiff Osuna as a Line Cook from approximately November 2016 until September 2021. Defendant also employed Plaintiff Lopez as a Crew Member from approximately January 10, 2020, until April 2021. Plaintiffs Osuna and Lopez were classified as non-exempt employees and paid on an hourly basis. *See* Declaration of Heather Davis in Support of Motion for Preliminary Approval ("Davis Decl.") ¶13; *see also* Declaration of Silvia Osuna in Support of Motion for Preliminary Approval ("Osuna Decl.") ¶3 and Declaration of Ashley Lopez in Support of Motion for Preliminary Approval ("Lopez Decl.") ¶3.

On May 26, 2021, Plaintiff Osuna represented by Protection Law Group, LLP filed a representative lawsuit against Defendants with the Los Angeles County Superior Court, Case No. 21STCV19885 for civil penalties pursuant to California's Private Attorneys General Act ("PAGA"). On July 2, 2021, Plaintiff filed a first amended complaint to include her wage and hour class action claims, alleging the following ten (10) causes of action: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not Timely Paid; (6) Wages Not Timely Paid During Employment; (7) Failure to Provide Accurate Wage Statements; (8) Failure to Reimburse Necessary Business Expenses; (9) Violation of California Business & Professions Code §§ 17200, *et. seq*.; and (10) Violation of the Private Attorneys General Act (PAGA). Davis Decl. ¶14, Exhibit ("Ex.") 1.

On July 9, 2021, Plaintiff Osuna served (i) a sample *Belaire-West* Notice, (ii) Form Interrogatories – General, Set One, (iii) Special Interrogatories, Set One, (iv) Requests for Production of Documents, Set One, and (v) a Notice of Deposition of Defendants' Person(s) Most Qualified. Davis Decl. ¶15.

The Parties met and conferred regarding the discovery, and the prospect of staying formal discovery and attending a private mediation. The Parties agreed to attend a private mediation on September 15, 2022, with Mark Rudy, Esq., a mediator with substantial experience with wage and hour matters. Davis Decl. ¶16.

On August 15, 2022, the Parties filed a Joint Stipulation Regarding Mediation and Discovery, setting forth certain conditions and pre-requisites for mediation. Davis Decl. ¶17.

In advance of mediation, Defendants provided Plaintiffs' Counsel with extensive informal discovery including all relevant policies and handbooks in place during the Class Period, which included Plaintiffs' personnel records; all applicable policies relating to meal breaks, rest breaks, timekeeping, the payment of wages and other relevant areas of investigation; a randomly selected 20% sampling of time and payroll data for the putative class; and figures and information regarding the class size and composition. The randomly-selected 20% sampling included records for putative class members who were employed throughout different time periods during the Class Period, that is representative of the Class. Davis Decl. ¶18.

On September 15, 2022, the Parties attended mediation with Mark Rudy, Esq. At mediation, Defendants raised financial distress of their company, which was struggling after the COVID-19 pandemic. The mediation was hotly contested, but after a full-day of mediation, the Parties were unable to come to a resolution, and agreed to return to litigation pending Defendants' production of confidential financial information to substantiate their financial distress claims. Davis Decl. ¶19.

On October 18, 2022, Defendants served Supplemental Responses to both Plaintiffs' discovery. Davis Decl. ¶20.

In December 2022, Defendants produced detailed, extensive financial documentation substantiating Defendants' financial distress. Davis Decl. ¶21. On March 17, 2023, the Court set a briefing schedule for Plaintiff's Motion for Class Certification. Davis Decl. ¶22.

From March 2023 through July 2023, the Parties met and conferred extensively regarding Defendants' Supplemental Responses to Plaintiffs' discovery, and attended several Informal Discovery Conferences ("IDC"). Davis Decl. ¶23. On July 3, 2023, Defendants propounded discovery on Plaintiffs totaling over 500 requests (130 Requests for Admission; 155 Special Interrogatories; and 182 Requests for Production). Davis Decl. ¶24.

On June 5, 2024, the Parties participated in a second global private mediation with Kevin Barnes, Esq., which included the matter of: *Ashley Lopez v. M. Pernecky Mgmt. Corp. et al.,* Los Angeles County Superior Court Case No. 21STCV31848 (the "*Lopez* Action"). After a full-day of mediation, the Parties were unable to come to an agreement, but agreed to continue settlement discussions through the mediator and push forward with Depositions of Plaintiff and Defendants' Person(s) Most Qualified ("PMQ"). Davis Decl. ¶24.

On August 25, 2023, Defendants produced Second Supplemental Responses and supplemental production of documents. Davis Decl. ¶25.

Thereafter, the Parties met and conferred regarding Defendants' Second Supplemental Responses and production of documents, and the possibility of attending a Second Mediation, which would include Defendants' updated financial information. However, due to Defendants' conditions placed on mediation, the Parties could not agree to attend. Davis Decl. ¶26.

On November 7, 2023, Plaintiff Osuna filed an Ex Parte Application to Continue Hearing on Plaintiffs' Motion for Class Certification and All Related Deadlines. The Court granted Plaintiff's Ex Parte Request on November 8, 2023. Davis Decl. ¶27.

On April 26, 2024, Defendants served Third Supplemental Responses and production of documents to Plaintiffs' discovery. Davis Decl. ¶28.

On May 22, 2024, Plaintiff filed a Second Ex Parte Application to Continue Hearing on Plaintiffs' Motion for Class Certification and All Related Deadlines. The Court granted Plaintiffs' Ex Parte Request on May 23, 2024. Davis Decl. ¶29.

On June 21, 2024, Plaintiff served Defendants with an Amended Deposition Notice of Defendants' PMQ. Contained in the Amended Deposition Notice were topics of examination, and Requests for Production of Documents at the time of Deposition. Davis Decl. ¶30.

Thereafter, the Parties met and conferred and agreed to attend a Second Mediation on August 22, 2024, with Kevin Barnes, Esq., a highly-respected mediation with substantial experience handling wage and hour matters. Defendants agreed to produce updated data points, records, and confidential financial documentation prior to mediation. Davis Decl. ¶31.

With this data for the Class, my Office was 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, unpaid and rest period premiums, rounding, overtime and premium payments, etc. This discovery and investigation allowed Plaintiffs' Counsel to perform a comprehensive damages analysis and estimate Defendants' potential liability. Davis Decl. ¶32.

On July 25 and 26, 2024, Plaintiff Osuna took the deposition of Defendants' Person Most Qualified, Miriam Gobrial. The deposition lasted two full days, where Ms. Gobrial testified to numerous documents that were withheld or destroyed despite being responsive to various document Demands. Due to the missing documents, the Parties' stipulated to suspend the deposition and meet and confer on the missing documents and resume the deposition on a mutually agreeable date after the production. Davis Decl. ¶33.

On June 5, 2024, the Parties participated in a second global private mediation with Kevin Barnes, Esq., which included the matter of: *Ashley Lopez v. M. Pernecky Mgmt. Corp. et al.,* Los Angeles County Superior Court Case No. 21STCV31848 (the "*Lopez* Action"). After a full-day of mediation, the Parties were unable to come to an agreement, but agreed to continue settlement discussions through the mediator and push forward with Depositions of Plaintiff and Defendants' Person(s) Most Qualified ("PMQ"). Davis Decl. ¶34.

However, just prior to the second global mediation, Defendants represented more serious financial difficulties, which would impact Defendants' ability to settle the matter on a class wide basis. Defendants provided updated extensive confidential financial documentation to Plaintiffs, who then provided them to Plaintiffs' outside financial expert to confirm Defendant's representations. However, the Parties' respective experts found discrepancies that needed to be worked out. Davis Decl. ¶35.

On November 7, 2024, the Parties attended a Further Status Conference, where the Court implored the Parties to further meet and confer regarding the outstanding written discovery issues, setting of remaining depositions, and attempting to resolve the Action. The Court also indicated that it was inclined to grant an *Ex Parte* Application by Plaintiff to Continue the Motion for Class Certification filing deadline as requested by Plaintiff. Davis Decl. ¶36.

On November 14, 2024, the Parties' confidentially met and conferred with each sides' respective financial experts. The experts were able to work out the data discrepancies, and the Parties were able to objectively agree to the controlling data set. Davis Decl. ¶37.

On November 26, 2024, the Court continued Plaintiff's Motion for Class Certification filing deadline. Davis Decl. ¶38.

After the Parties' experts met and conferred, and after Plaintiffs' Counsel's extensive review of the informal production of documents, 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. After weeks of back and forth meeting and conferring, the Parties, with the help of the mediator, were able to reach a settlement for a Gross Settlement Amount of Two Million Dollars ($2,000,000.00) to be paid out over two installments, given Defendants' financial distress. Davis Decl. ¶39.

The Parties then worked diligently to negotiate and memorialize the terms of a long form settlement agreement. On May 23, 2025, after extensive discussions, meet and confer calls, and multiple revisions to the agreement, the Parties entered into a fully executed Joint Stipulation of Class Action Settlement. Davis Decl. ¶40.

Now, following significant investigation into the alleged claims, and lengthy settlement discussions, Plaintiffs hereby move for preliminary approval of the proposed Settlement Agreement and have notified the LWDA of the proposed Agreement. Davis Decl. ¶41, Ex. 2.

III. <u>THE SETTLEMENT AGREEMENT'S TERMS</u>

A. Class Definition

For purposes of settlement only, the Parties have agreed that the Class shall be defined as: all current and former hourly paid or non-exempt employees employed by Defendants within the state of California at any time during the Class Period. Davis Decl. ¶43; Settlement Agreement ¶3. The Class Period and release of claims covers the time period between May 26, 2017, and February 28, 2025 ("Class Period"). Davis Decl. ¶43; Settlement Agreement ¶¶3, 7. The proposed Class consists of approximately 3,983 Class Members. Davis Decl. ¶44.

B. Funding of the Gross Settlement Amount

Pursuant to the Settlement Agreement, Defendants shall fund the Gross Settlement Amount and all applicable employer-side payroll taxes following Final Approval by the Court and the Effective Date, and (i) the First Installment payment of one-million dollars and zero cents ($1,000,000.00) to be paid on the Effective Date (the "First Installment"); and (ii) the Second Installment payment of one-million dollars and zero cents ($1,000,000.00) to be paid on December 15, 2026 (the "Second Installment"). Davis Decl. ¶44; Settlement Agreement ¶40.

C. Amount of Settlement Agreement

The Parties have agreed to settle the Class claims at issue in the Action for a non-reversionary Gross Settlement Amount of $2,000,000.00. Davis Decl. ¶46; Settlement Agreement ¶¶14, 40.

D. Allocation of the Gross Settlement Agreement 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 one-third of the Gross Settlement Amount, equaling $700,000.00; (2) litigation costs, not to exceed $50,000.00; (3) settlement Administration Costs not to exceed $15,000; (4) class representative incentive awards to Plaintiffs in the amount of $10,000.00 each for a total of $20,000.00; and (5) Payment of PAGA Penalties in the amount of $100,000 ($75,000 of which to be paid to the California Labor and Workforce Development Agency and $25,000 – to PAGA Members). Davis Decl. ¶47; *see also* Settlement Agreement ¶¶ 14, 21, 35, 42-47. *See* also Declaration of Jodey Lawrence of Phoenix Class Action Administration ("Phoenix Decl.") ¶¶1-7, Ex. A and B.

After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount of approximately $1,115,000.00 shall be distributed and paid to the Participating Class Members. Davis Decl. ¶48; Settlement Agreement ¶¶14, 16, 42-47. 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. ¶¶48; Settlement Agreement ¶¶14, 16, 48.

Twenty Percent (20%) of each Individual Settlement Payment will be allocated as wages, Forty Percent (40%) shall be allocated as interest and Forty Percent (40%) will be allocated as penalties. Davis Decl. ¶50; Settlement Agreement ¶48.

Defendants shall be responsible for all employer-side payroll taxes on the wage portion of each Individual Class Payment. Davis Decl. ¶51; Settlement Agreement ¶¶14, 40. The proposed Agreement is a non-reversionary, non-claims made settlement. All money from the Net Settlement Agreement Amount will be distributed to the Class Members. No money from the Settlement will revert to Defendant, unless the Settlement is not approved. Davis Decl. ¶52; Settlement Agreement ¶¶14, 40.

Any checks issued by the Settlement Administrator to Participating Class Members will be negotiable for at least one hundred eighty (180) calendar days (not less than 180 days after the date of the mailing). Davis Decl. ¶53; Settlement Agreement ¶62. If a Participating Class Member does not cash his or her settlement check within one hundred eighty (180) calendar 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. in the name of and for the benefit of those Participating Class Members. Davis Decl. ¶¶54-55; Settlement Agreement ¶62. As such, no "unpaid residue" will result from the Settlement. Davis Decl. ¶56; Settlement Agreement ¶62.

E. Release of Wage and Hour Claims

In exchange for participating in the Settlement Agreement, Participating Class Members will release their wage and hour claims against Defendant 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 the operative complaint in the Action, for the Class Period. Davis Decl. ¶57; Settlement Agreement ¶¶9, 28-30, 44, 59, 67-69.

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 appears to be sufficiently within the range of a fair settlement to justify providing notice of the proposed settlement to class members. After notice is provided to the Class, the Court must conduct a second inquiry into whether the proposed settlement is fair, reasonable and adequate. *See 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 notice of the settlement has been given to the class members and they have had an opportunity to object or exclude themselves from the settlement. *See* Cal. R. Ct. 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, and need not engage in a trial on the merits. *See Officers for Justice v. Civil Service Commission of City and County of San Francisco*, 688 F.2d 615, 625 (1982).

V. <u>THE SETTLEMENT IS REASONABLE</u>

A. Method of Distribution

The proposed settlement is based on the number of Workweeks worked by each Class Member during the Class Period. This method is commonly used in wage and hour class actions because it relies upon objective evidence of the total days of employment, which Class Members can easily review and confirm for themselves. This information is readily available from Defendant's records, and the Settlement Administrator can apply the formula in a fair and transparent manner. Davis Decl. ¶58.

Additionally, this method of distribution is commonly used in wage and hour class actions because it allows for a distribution that corresponds closely to the alleged damages since employees experience the same working conditions, so their damages are directly related to the amount of time they were employed. Davis Decl. ¶59.

The effectiveness of Class Counsel in prosecuting this case has translated into monetary benefits for the Settlement Class in the following respects: (1) the Settlement Class, will recover over a reasonably short period of time as opposed to waiting additional years for the same, or possibly, a worse, result; (2) a guaranteed result that compares favorably with other similar class action settlements of this type, (3) significant savings in Class Counsel's fees and costs which would have only increased significantly had the case progressed through trial, appeals, and continued litigation. Davis Decl. ¶60.

B. Arm's-Length Bargaining and Discovery

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 arms-length, non-collusive negotiations at all times. This litigation was hotly contested, and settlement negotiations were at all times arm's length and adversarial. The Parties engaged in two full-day private mediations with highly respected mediators. Thereafter, the Parties engaged in extensive negotiations before finalizing the long-form agreement presently before the Court. At all times, Plaintiffs were willing and prepared to litigate this matter if the Parties had been unable to reach a favorable resolution. Davis Decl. ¶¶61-64.

Courts typically assess the status of discovery to determine 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 informal discovery prior to reaching a settlement. Prior to the second mediation, Defendants produced a 20% sampling of time and pay records for putative class members; 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. Plaintiff was able to conduct a class-wide assessment and analysis of potential damages with this information and data. The Parties extensively briefed these issues and provided their analyses to the mediator who helped the Parties debate the strengths and weakness of their positions. Davis Decl. ¶¶18-32, 61-62.

Additionally, settlement negotiations were conducted by highly capable and experienced counsel. Plaintiffs' 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, Plaintiffs' Counsel had sufficient information and experience to act intelligently to negotiate the Settlement.

C. The Settlement Agreement 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 Agreement is underscored by the fact that Defendant has legal and factual grounds to defend the Action. Based upon Plaintiffs' Counsel's experience litigating similar complex matters, Plaintiffs reasonably expected a vigorous and lengthy defense to both class certification and the merits absent a settlement. Davis Decl. ¶¶63-78.

1. <u>Plaintiffs' Counsel's Analysis of the Maximum Available Liability and Damages</u>

Prior to mediation, Plaintiffs' Counsel analyzed Defendants' sampling of time and payroll records and other relevant documents and discovery. The randomly selected sampling included records for putative class members who were employed throughout different time periods during the Covered Period, that is representative of the Class. With this sampling, Plaintiffs' Counsel 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 synthetic meal period recordings, unpaid meal, minimum wage issues, etc. This discovery and investigation allowed Plaintiffs' Counsel to perform a comprehensive damages analysis and estimate of Defendants' potential liability. Davis Decl. ¶61. Based on the discovery provided, Plaintiffs' 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 $31,551,897,70. This estimated maximum liability includes: $3,460,096.92 for meal period violations, $3,460,096.92 for rest period violations, $5,994,407.06 for unpaid overtime, waiting time penalties of $11,547,196.80, and penalties for inaccurate wage statements in the amount of $7,090,100.00. Plaintiff also estimated maximum non-duplicative PAGA penalties of approximately $58,269,300.00 which also includes penalties under Labor Code §§ 204 and 1174(d). Davis Decl. ¶63.

2. <u>Plaintiffs' Counsel's Risk-Based Analysis and Risk-Based Adjustments</u>

While Plaintiffs believe Defendants faced significant exposure, substantial barriers to a class recovery exist and Plaintiffs faced numerous challenges attempting to bring the alleged claims on a class and representative basis. For example, Defendants contend that Plaintiffs' claims are 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 Plaintiffs and Plaintiffs' Counsel disagree with Defendants' predictions, they also recognize that there is a significant risk that the Court may deny class certification. Davis Decl. ¶¶64-65; *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 that only 21.4% of class actions were certified either as part of a settlement ***or*** as part of a contested certification motion). Additionally, Plaintiffs considered Defendants' financial condition and its limited ability to satisfy a full-value judgment. While Plaintiffs believe the potential exposure could be significantly higher, Defendants' documented financial constraints created a meaningful risk of non-collection. Davis Decl. ¶64.

For instance, a large portion of Defendants' overall liability lies in Plaintiffs' meal and rest period claims. Meal period claims have become increasingly difficult to certify in recent years and Defendants contended that its practices were lawful. *See Brinker*, 53 Cal. 4th at 1034-35. Similarly, Plaintiff will likely face difficulties proving the alleged rest period violations, as Defendants were not required to record these breaks. Plaintiffs' Counsel had to consider the risk that the Court would find validity in the individualized proof defense to the certification of Plaintiffs' meal and rest period claims. Davis Decl. ¶¶66-67.

Plaintiffs also faced challenges certifying and proving liability for their 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. As such, 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. ¶¶69-72.

There are also substantial risks associated with Plaintiffs' claims for waiting time penalties, recordkeeping, and wage statement claims. First, these claims are derivative of Plaintiffs' previous claims and if certification was denied on those underlying claims, these claims would also likely fail. Even if Plaintiffs prevailed on their underlying off-the-clock claims, they would still be required to demonstrate that Defendant's violations of Labor Code § 203 were willful violations, a difficult prospect. *See, e.g.*, *Choate v. Celite Corp*., 215 Cal App. 4th 1460 (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 Defendant's estimated potential liability are extremely risky. Davis Decl. ¶¶73-76.

Plaintiffs' Counsel also recognized that, even if Plaintiffs 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, Plaintiffs' 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 Plaintiffs prevailed, possible appeals would substantially delay any recovery by the Class. Davis Decl. ¶82.

Plaintiffs' Counsel also recognizes that the PAGA claims would be subject to the same defenses and risks as Plaintiffs' class claims, as well as defenses unique to PAGA, the substantial risk 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. As part of the valuation of the potential PAGA claims (which includes penalties for the failure to reimburse necessary business-related expenses damages), Plaintiffs' Counsel also included claims under Labor Code §§ 204, and 1174(d). Davis Decl. ¶¶77-82.

Therefore, after taking into account the risks strengths, and weaknesses of each claim, the unique risks associated therewith, the general risks associated with litigating the case, the significant additional costs and expenses that would be incurred in litigating this Action through class certification, trial, and appeals, Class Counsel estimated a final overall adjusted risk-based liability of $1,965,071.06. Davis Decl. ¶¶81-82. 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. ¶84.

VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

Code of Civil Procedure section 382 provides that three basic requirements must be met 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. Plaintiffs contend that this matter, which is primarily based upon Defendant's wage and hour policies and practices, satisfies the class certification requirements under California Code of Civil Procedure section 382. Defendants deny Plaintiffs' allegations, but for purposes of this Settlement Agreement only, Defendants stipulated to certification of the proposed class action.

A. An Ascertainable and Numerous Class Exists

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 or non-exempt employees of

Defendants M. Pernecky Management Corp., dba McDonald's and Michael Emmett Pernecky who within the state of California, at any time from May 26, 2017, through February 28, 2025. Davis Decl. ¶43; 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 estimated Class size of 3,983 Class Members plainly favors class certification.

Finally, the question of 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 at 706 (1967). The existence of an ascertainable class in this case can be established through Defendant's 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.*, 191 Cal. App. 3d at 617 (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 695, 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).

In this matter, the alleged claims present sufficient common issues of law and fact that predominate and warrant class certification. Plaintiffs allege that Defendants denied employees from taking compliant meal periods, failed to properly compensate employees for missed meal periods, required employees to perform work off-the-clock, and failed to fully compensate employees for all time worked. These policies and practices mean that Defendants failed to pay minimum wages, and other related claims. Plaintiff alleges that these practices were uniform as to all Class Members and thus, class treatment is appropriate.

To satisfy the typicality requirement, California law does not require that a plaintiff have 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 alleged 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, Plaintiffs allege that their claims are similar to those of the other Class Members. Plaintiffs allege their claims arise out of the same alleged facts and course of conduct giving rise to the claims of the other Class Members. Finally, Plaintiffs' claims are typical of the other Class Members because they seek the same relief for the alleged violations. Because Plaintiffs' 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 Plaintiffs include well-regarded and accomplished lawyers who are qualified and experienced in employment-related, class-action litigation. Davis Decl. ¶¶2-11. Plaintiffs will vigorously, adequately and fairly represent the interests of the Class. Osuna Decl. ¶¶1-22; Lopez Decl. ¶¶1-18. Because Plaintiffs' claims are typical of other Class Members and are not based on unique circumstances, there is no antagonism between the interests of Plaintiffs 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 the Actions, 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 lead to inconsistent results. Therefore, class action proceedings are superior to individual litigation.

VII. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT AWARDS ARE REASONABLE

Plaintiffs in class action and PAGA lawsuits are eligible for reasonable enhancement awards 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 representatives, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. *See Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995) (approving $50,000 enhancement).

Plaintiffs initiated and stepped forward in this Action on behalf of their former co-workers, who will now benefit from the Settlement Agreement. Plaintiffs invested substantial time and effort into the Action, including searching for and reviewing documents, and extensive discussions with Plaintiffs' Counsel. *See* Osuna Decl. ¶¶2-22; Lopez Decl. ¶¶2-18; Davis Decl. ¶85. Further, the requested amount is also extremely reasonable given the benefit gained by other Class Members. For these reasons, Plaintiffs would request that the Court award them a class representative enhancement award of $10,000.00 each, for a total of $20,000.00.

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VIII. REQUESTED ATTORNEYS' FEE 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 cases where class members present claims against a common fund and the defendant agrees to the use of a percentage of the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

Here, 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 Court Approved Notice of Proposed Class Action Settlement ("Class 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 nature of the legal services provided and will also support Plaintiffs' Counsel's request for the reimbursement of litigation costs not to exceed $50,000.00. Davis Decl. ¶86; Settlement Agreement, Ex. A.

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

The Parties jointly drafted a Class Notice which will be delivered to the Class Members and have agreed to use Phoenix Settlement Administration Solutions to administer the Settlement Agreement subject to the Court's Approval. Davis Decl. ¶87; Settlement Agreement ¶¶5, 17, 28-29, 32, 41-45, Ex. A. The Class Notice will include information regarding the nature of the lawsuit, a summary of the terms of the Settlement Agreement, the Class definition, information on how to object and opt-out, information regarding the release of the class claims, and the date of the Final Approval Hearing. The Class Notice will also list each Class Member's total work weeks and the approximate Individual Class Payment. *Id.* The Class Notice will indicate that the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate and reasonable, and a final determination of such issues will be made at the final hearing. *Id.*

No later than twenty one (21) calendar days after the Court grants preliminary approval of the

Settlement Agreement, Defendant will provide the Class List to the Settlement Administrator including the (1) full name; (2) last known home address; (3) last known telephone number; (4) social security number; (5) start and end dates of active employment as a non-exempt employee of Defendant in the State of California; (6) total Workweeks during the Class period; (7) total Pay Periods during the PAGA Period and (8) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement. Davis Decl. ¶88; Settlement Agreement ¶¶6, 51. The Settlement Administrator shall perform any searches necessary for confirmation of the Class Members' addresses and shall mail the Class Notice to the Class Members no later than fourteen (14) calendar days after receiving the Class List from Defendant. Davis Decl. ¶¶81; Settlement Agreement ¶¶ 52, 53

To determine whether to approve a settlement of a class action, a trial court has virtually 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, Plaintiffs' Counsel is not aware of an alternative method of providing notice to the Class which would result in a higher likelihood of actual notice. Davis Decl. ¶89. The original source of the mailing addresses are 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. ¶89; Settlement Agreement ¶53.

Any Class Member who wishes to be excluded from the Settlement must submit a written Request for Exclusion by mail. In the event the 45th day falls on a Sunday or Federal holiday, the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. A written request for exclusion must include (a) the Class Member's name, address, telephone number, and last four digits of their social security number and/or the Employee ID number and; (b) a clear statement requesting to be excluded from the settlement of the class claims. The date of the postmark on the return mailing envelope will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. All Requests for Exclusion will be submitted to the Settlement Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the Requests for Exclusion that were timely submitted. All Class Members who do not submit a valid and timely

Request for Exclusion will be bound by all terms of the Settlement Agreement if the Settlement Agreement is granted Final Approval. The request for exclusion must be postmarked by the Response Deadline (no later than sixty (45) days (plus an additional fifteen (15) calendar days for Class Members whose Class Notice is re-mailed)) after mailing of the Class Notice. Davis Decl. ¶90; Settlement Agreement ¶¶ 31-32, 56-57.

Any Participating Class Member who wishes to object to the approval of this Settlement Agreement must postmark a valid written Objection to the Settlement Administrator on or before the Response Deadline. The written Objection must be signed by the Participating Class Member and contain all information required by this Settlement Agreement including the Class Member's full name, address, telephone number, the last four digits of their social security number and/or Employee ID number, the name of the case and case number; and a clear statement requesting to be excluded from the settlement of the Class claims. The postmark date will be deemed the exclusive means for determining that the Objection is timely. Participating Class Members who fail to submit a valid and timely written objection will be foreclosed from making a written objection, but they may still appear and object at the final approval hearing, regardless of whether they have submitted a written objection. Davis Decl. ¶91; Settlement Agreement ¶57.

X. SETTLEMENT ADMINISTRATOR – PHOENIX SETTLEMENT ADMINISTRATION SOLUTIONS

Subject to the Court's Approval, the Parties have stipulated to have Phoenix Settlement Administration Solutions ("Phoenix") serve as the Settlement Administrator in this action. Phoenix is an experienced settlement administrator who has been approved to administer settlements by Courts across the state. Phoenix estimates it will incur no more than $15,000.00 in costs administering the settlement. Davis Decl. ¶84; Settlement Agreement ¶¶34-35, Ex. A. *See* also Declaration of Jodey Lawrence of Phoenix Settlement Administration Solutions ¶¶1-7, Ex. A and B.

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XI. CONCLUSION

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

Respectfully submitted,

DATED: June 11, 2025

PROTECTION LAW GROUP, LLP

By: ____________________________

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