WOODALL LAW OFFICES
100 PINE STREET, SUITE 1250
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE: (415) 413-4629
FACSIMILE: (866) 937-4109
KEVIN@KWOODALLLAW.COM

KEVIN F. WOODALL, BAR NO. 180650

ATTORNEYS FOR PLAINTIFF, DAVID KELLEY, JOSHUA HENSON AND THOSE SIMILARLY SITUATED

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

DAVID KELLEY AND JOSHUA HENSON, INDIVIDUALLY AND ON BEHALF OF THOSE SIMILARLY SITUATED, PLAINTIFFS, V. OIL CHANGER, INC., A CALIFORNIA CORPORATION, AND DOES 1 THROUGH 10, INCLUSIVE, DEFENDANTS.	CASE NO. HG21091500 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION/PAGA SETTLEMENT** **DATE: JUNE 4, 2024** **TIME: 1:30 P.M.** **DEPT: 21** **JUDGE: HON. NOEL WISE** RESERVATION NO.: 982151955158

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I. INTRODUCTION

After thorough discovery, extensive analysis and a lengthy mediation session with Cynthia Remmers, Plaintiffs David Kelley and Joshua Henson and Defendant Oil Changer, Inc. ("Oil Changer") reached a settlement on behalf of non-exempt California employees of Oil Changer. The $3,000,000 settlement resolves all wage and hour claims brought in this case, including class action and/or Private Attorneys General Act ("PAGA") claims alleging failure to: pay minimum, regular and overtime wages and premium pay for missed/noncompliant meal and rest periods, timely pay wages during and after employment ended, provide compliant and accurate wage statements, reimburse business expenses, and maintain records, including unfair competition regarding the aforementioned wage and hour claims. As set forth below, the Class should be conditionally certified for purposes of settlement because the requirements of California Code of Civil Procedure § 382 and California Rules of Court are met. Further, the settlement is fair, adequate and reasonable, and the notice plan comports with due process.

Accordingly, Plaintiffs respectfully request that the Court (1) grant preliminary approval of the class action/PAGA settlement, (2) conditionally certify the Class, (3) approve the form and method of Class Notice, (4) approve Kevin Woodall of Woodall Law Offices as Class Counsel, (5) approve Plaintiff Henson as Class Representative (and Plaintiff Kelley as PAGA Representative), (6) appoint Phoenix Settlement Administrators as the settlement administrator, and (7) approve the mechanism for objections and elections to opt-out of the settlement.

II. STATEMENT OF FACTS

A. Background and Claims Asserted By Plaintiffs

On March 11, 2021, this Action was initiated in Alameda County Superior Court. The operative Second Amended Class Action and PAGA Complaint asserts causes of action for: (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum and Regular Wages; (3) Failure to Make Timely Final Wage Payments; (4) Failure to Provide Proper Itemized Wage Statements, (5) Failure to Reimburse Business Expenses; (6) Failure to Provide Meal Periods and Premium Pay; (7) Failure to provide Rest Periods and Premium Pay; and (8) Unfair Competition. In addition, the operative Second Amended Class Action and PAGA Complaint asserts all of the foregoing claims for penalties under the California Private Attorneys' General Act, along with additional PAGA claims for failure to timely pay wages during employment and failure to maintain records. (Woodall Declaration in Support of Mtn. for Preliminary Approval ("Woodall Decl."), ¶ 2.) In March, 2011, Plaintiff Kelley provided notice under the PAGA that Oil Changer committed the foregoing wage and hour violations. (*Id.*, Exh. 3.)

In January, 2024, the parties participated in a full-day mediation session with Cynthia Remmers, an experienced and well-respected wage and hour mediator who has resolved numerous class action and PAGA disputes. (Woodall Decl., ¶ 3.) The mediation was successful and the parties agreed to settle this matter for $3,000,000. (*Id.*)

B. Thorough Discovery Conducted

The parties engaged in thorough discovery prior to settling this matter. (Woodall Decl, ¶ 4.) Plaintiffs propounded and received responses to formal discovery requests for documents and information. Oil Changer produced all reimbursement records from 2000 to present, a greater than 10 percent random sample of wage statements and time entry records, termination and resignation records, employment policies, handbooks and information relating to the estimated 2,463 Class Members including, but not limited to, their rates of pay, workweeks and pay periods, and employment status (i.e., the number of former or current employees). (*Id.*) After a *Belaire West* notice, Oil Changer also produced the names and contact information of putative class members. (*Id.*) After receiving this information and documents, Plaintiffs' counsel and staff conducted an extensive analysis of the data and records. (*Id.*) Plaintiffs also hired an expert to further analyze time entry and wage statement data. (*Id.*) Additionally, Plaintiffs' counsel interviewed dozens of putative class and PAGA members. (*Id.*) Oil Changer's person most qualified testified during a two-day deposition as well. (*Id.*)

C. Primary Settlement Terms

The parties settled this matter for Three Million Dollars ($3,000,000) (hereinafter, "Maximum Settlement Amount"), which is non-reversionary. (Woodall Decl., ¶ 5, Exh. 1 at pp. 3, 7-10 (Section C, ¶¶ 1-8).) The Maximum Settlement Amount will be allocated as follows under the agreement: (1) $35,000 will be paid to the Labor Workforce Development Agency ("LWDA") and PAGA aggrieved employees (75 percent to the LWDA and 25 percent to PAGA aggrieved employees); (2) class counsel will seek thirty-three percent (33%) of the Maximum Settlement Amount in attorney's fees, along with the reimbursement of costs advanced—not to exceed $20,000 in costs; (3) the Settlement Administrator will receive approximately $19,000; (4) Plaintiffs will each seek an incentive payment of $7,500 relating to their efforts in advancing the interests of class and PAGA members; (5) Plaintiffs will each receive $15,000 relating to their non-class claims,[1] and (6) the Settlement Class Members will receive the remainder of the Maximum Settlement Amount ("Net Settlement Amount"). (*Id.*) In addition, Oil Changer will make important policy changes to improve practices relating to: (a) payment of meal premiums when non-exempt employees are not provided the opportunity to take a timely and complete meal period; (b) payment of travel time and mileage relating to pre or post shift bank deposits made on behalf of Oil Changer; and (c) payment of time worked by non-exempt employees performing post-shift closing duties after clocking out. (*Id.*) Oil Changer will separately pay the employer's share of payroll taxes. (*Id.*, Exh. 1, p. 3 (Section A, ¶ 16).)

The Net Settlement Amount will be distributed to Class Members who do not opt-out of the settlement as follows: the Settlement Administrator will divide the Net Settlement Amount (less the $8,870 PAGA payment) by the total number of workweeks in the Class Period (March 11, 2017 to January 31 2024) for all Settlement Class Members to arrive at an amount per workweek. That amount will then be multiplied by the number of workweeks of each Settlement

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[1] Plaintiffs Kelley and Henson both contend they were wrongfully terminated by Oil Changer. (Woodall Decl., ¶ 33.) Specifically, Plaintiff Henson contends he was discharged and retaliated against after reporting wage and hour violations. (Henson Decl. in Supp. of Preliminary Approval ("Henson Decl."), ¶ 7). Similarly, Plaintiff Kelley contends he was discriminated against after he reported injuries and disabilities. (Kelley Decl. in Supp. of Preliminary Approval ("Kelley Decl."), ¶ 4.) Plaintiffs Henson and Kelley both contend their damages resulting from the discrimination and retaliation were in the six figures, including lost income, emotional distress, attorney's fees and costs. Without admission of liability by Oil Changer, the parties entered into separate agreements to resolve the non-class allegations of Plaintiffs, including a Civil Code § 1542 waiver that does <u>not</u> release the class action claims in this case, in exchange for $15,000 payments to Plaintiffs. (Woodall Decl., Exh. 1, pp. 4 (¶ 19) and 7 (Section C, ¶ 1).) Separate agreements to address non-class claims of class representatives have been deemed acceptable by courts. *Amey v. Cinemark Inc.*, 2018 WL 3956326, *5 (N.D. Cal. Aug. 17, 2018); *Narouz v. Charter Commc'ns*, 591 F.3d 1261, 1265 (9th Cir. 2010).

Class Member to arrive at the Individual Settlement Payments. (Woodall Decl., ¶ 6, Exh. 1 at p. 10 (Section C, ¶ 7).) Likewise, the PAGA payment will be determined by dividing the $8,750 PAGA payment by the total number of workweeks in the PAGA Period and multiplying this amount by each PAGA member's workweeks in the PAGA Period. (*Id.*)

Assuming each of the projected 2,463 Class Members does not opt-out, the average compensation attributed to each Settlement Class Member before subtraction of the fees, costs and payments above will be approximately $1,218 ($3,000,000/2,463). (Woodall Decl., ¶ 7.) The amount attributed to Settlement Class Members who worked the entire Class Period, before subtraction of fees, costs and payments above, will be in excess of $6,050 ($3,000,000/ 177,484[2] workweeks in Class Period = $16.90 per workweek x 358 workweeks in the Class Period). It is also noteworthy that if not all Class Members participate in the settlement, the settlement amount for each Settlement Class Member would be higher. (*Id.*)

Payroll withholdings will be made on the twenty percent (20%) portion deemed unpaid wages, while there will be no taxes withheld regarding the eighty percent (80%) portion deemed penalties, interest, reimbursed expenses and other non-wage damages. (Woodall Decl, ¶ 8, Exh. 1 at p. 16 (Section C, ¶ 25).) In exchange for their participation, the Settlement Class Members will provide a *limited* release that covers the claims asserted in this action for the Class Period (March 11, 2017 through January 31, 2024), including those claims that were brought or could have been brought and that arose from or relate to the facts alleged in the Second Amended Complaint. (*Id.*, Exh. 1 at p. 5 (Section A, ¶ 27).)[3]

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[2] See Woodall Decl., Exh. 1 at p. 3 (Section A, ¶ 16).

[3] As set forth more fully below, within five (5) business days of a preliminary approval order by the Court, Oil Changer shall provide the Settlement Administrator with the names and contact information of Class Members, along with the information necessary to make the payments described above. (Woodall Decl., ¶ 9, Exh. 1 at pp. 11-14 (Section C, ¶¶ 10-18), Exh. 2.) Within five (5) business days of receiving the class list and data from Oil Changer, the Settlement Administrator will send to the Class Members via first class mail a Notice Packet. (*Id.*) The Class Notice includes detailed information regarding the claims asserted, the settlement and amounts to be paid under the settlement (above), the number of workweeks worked by the employee during the Class Period, the impact on the rights of Class Members if they choose to opt-out of the settlement or do nothing, and how to submit an opt-out request and object to the settlement, along with the final approval hearing date. (*Id.*) If any Notices are returned, the Settlement Administrator will update the address using a national address search service and resend the Notice Packet. (*Id.*) Class Members will have forty-five (45) days from the mailing of

III. DISCUSSION

A. Preliminary Approval of Class Action Settlement Standard

Pursuant to California Rules of Court, Rule 3.769 ("Rule 3.769"), a class action settlement requires court approval. Likewise, under PAGA, the "superior court shall review and approve any penalties sought as part of a proposed settlement agreement." Cal. Labor Code § 2699(l).[4] Wage-and-hour cases such as this action "routinely proceed as class actions." *Prince v. CLS Transp., Inc.*, 118 Cal. App. 4th 1320, 1328 (2004). When they settle before the court has certified a class action, "[a] trial court unquestionably ha[s] the authority to conditionally certify a class for settlement purposes." *Hernandez v. Vitamin Shoppe Indus. Inc.*, 174 Cal. App. 4th 1441, 1457 (2009). Here, the parties negotiated a settlement prior to the filing of a class certification motion.

In determining whether to approve a class action settlement, courts must determine whether the proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-235 (2001). Specifically, California Code of Civil Procedure section 382 requires that the Court find the proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (quoting *Officers for Justice v. Civil Serv. Comm'n,* 688 F.2d 615, 625 (9th Cir. 1982)). A class action settlement is presumed fair under the following circumstances: (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal. App. 4th at 1802. In addition to showing a class action settlement is fair, adequate and reasonable, the settlement class must satisfy the normal prerequisites for a class action. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625-627 (1997).[5] Under Rule 3.769(b) and (c), the Court should review and approve the

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the Class Notice to opt-out or object to the settlement. (*Id.*)

[4] Under the PAGA, the parties must provide notice of the proposed settlement to the Labor Workforce Development Agency, which has already been provided. (Woodall Decl, ¶ 34, Exh. 4.)

[5] California courts have routinely followed Rule 23 of the Federal Rules of Civil Procedure and federal cases regarding class action procedures, especially where gaps exist in the California Rules of Court. *City of San Jose v. Superior Court*, 12 Cal. 3d 447, 453 (1974). Under Code of Civil Procedure § 382, "when the question is one of a common or general interest, of many persons,

proposed notice to settlement class members and the settlement agreement. Rule 3.769(e) further provides that upon preliminary approval of class action settlement, the Court's "order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing."

B. Conditional Certification of The Settlement Class is Appropriate

Based upon the standard above, the Class should be conditionally certified for settlement purposes because (1) the Class is ascertainable and sufficiently numerous, (2) there is a well-defined community of interest, and (3) substantial benefits from certification will render the Class superior to the alternatives.

1. Ascertainability and Numerosity

Conditional class certification for settlement purposes is proper because the Class is sufficiently numerous and ascertainable. "[A] class definition is sufficient if the description of the class is 'definite enough so that it is administratively feasible for the court to ascertain whether an

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or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." Thus, in order to certify a class, one must demonstrate: (1) the existence of an ascertainable and sufficiently numerous class, (2) a well-defined community of interest, and (3) substantial benefits from certification that render proceeding as a class superior to the alternatives. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1021 (2012); *Villacres v. ABM Indus. Inc.*, 189 Cal. App. 4th 562, 573 (2010). Ascertainability and numerosity are determined by examining the class definition, the size of the class and the means available to identify class members, such that notice can be given to putative class members who will be bound by the judgment. *Sotelo v. MediaNews Group, Inc.*, 207 Cal. App. 4th 639, 647-648 (2012); *Reyes v. Board of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). The community of interest requirement is comprised of three separate factors: (1) predominant common questions of law or fact; (2) class representatives whose claims or defenses are typical of the class; and (3) class representatives who can adequately represent the class. *Brinker*, 53 Cal. 4th at 1021, *Richmond v. Dart Indus., Inc.*, 29 Cal. 3d 462, 470 (1981); *Fireside Bank v. Superior Court*, 40 Cal. 4th 1069, 1089 (2007). The substantial benefits requirement is satisfied where "on balance, a class action is superior to other methods available for adjudicating the controversy." *Bradley v. Networkers Int'l, LLC*, 211 Cal. App. 4th 1129, 1148-1156 (2012). Courts have held that "'wage and hour disputes (and others in the same general class) routinely proceed as class actions.'" *Hill v. Bauer*, 242 F.R.D. 556, 562 (CD Cal. 2007) (quoting *Prince v. CLS Transportation, Inc.*, 118 Cal. App. 4th 1320, 1328 (2004)); see also *Leyva v. Medline Indus.*, 716 F.3d 510 (9th Cir. 2013) (class certification proper with unpaid wage, waiting time penalties and inaccurate wage statement allegations); *Kamar v. Radio Shack Corp.*, 254 F.R.D. 387, 402 (C.D. Cal. 2008) (class certified where employees were allegedly denied wages); *Boyd v. Bank of Am. Corp.*, 300 F.R.D. 431 (C.D. Cal. 2014) (Rule 23(a) and (b)(3) met where putative class was denied overtime wages, meal and rest periods, accurate wage statements and all wages due at termination); *Lopez v. Bank of Am., N.A.*, 2014 U.S. Dist. LEXIS 132149, *10 (N.D. Cal. Sept. 19, 2014) (preliminary certification of wage statement settlement class granted); *Willner v. Manpower Inc.*, 2015 U.S. Dist. LEXIS 65 (N.D. Cal. Jan. 2, 2015) (preliminary certification granted where there were claims relating to improper wage statements).

individual is a member.'" *Vietnam Veterans of Am. v. CIA*, 288 F.R.D. 192, 211 (N.D. Cal. 2012) (quoting *O'Connor v. Boeing N. Am., Inc.*, 184 F.R.D. 311, 319 (C.D. Cal. 1998)); see also *Dyer v. Wells Fargo Bank, N.A.*, 2014 U.S. Dist. LEXIS 65199 at *6-7 (N.D. Cal. May 12, 2014); *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 858 (2003). There is no minimum number of plaintiffs required as a matter of law for maintenance of a class action in California. *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981); *Consolidated Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2nd Cir. 1995) (numerosity is presumed at 40 or more).

Here, there are approximately 2,463 Class Members, which easily satisfies the numerosity standard. (Woodall Decl., ¶ 27, Exh 1 at p. 3 (Section A, ¶ 16.) Class Members can be easily identified as well, as the Class is defined as "persons currently or formerly employed by Defendant, either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt, hourly-paid employees during the Class Period, defined as March 11, 2017 through January 31, 2024, in the State of California." (Woodall Decl., Exh. 1 at p. 2 (Section A, ¶ 3.) Class Members can be ascertained from Oil Changer's records, as it maintains records regarding current and former California employees during this period of time, along with wage statement and time entry records of California employees and dates of California employees' employment. (*Id.*)

2. Well-Defined Community of Interest

There is a well-defined community of interest for purposes of settlement because there are (1) predominant common questions of law or fact; (2) the class representative's claims are typical of the Settlement Class; and (3) the class representative and his counsel can adequately represent the class.

a. Predominant Common Questions of Law and Fact

Numerous courts have determined that common issues predominate and the case is manageable where the claims involve inaccurate or noncompliant wage statements, unreimbursed expenses, unpaid wages, missed meal and rest periods, and failure to timely pay final wages. *Boyd*, 2014 U.S. Dist. LEXIS 90670 at *22-29.[6] In this case, common issues of fact and law predominate.

[6] See also *Leyva*, 716 F.3d at 513-515 (predominance met because inaccurate wage statement and other wage and hour violations could be established through the employer's own pay records); *Dyer v. Wells Fargo Bank, N.A.*, 2014 U.S. Dist. LEXIS 65199, *11-12 (N.D. Cal.

Here, Oil Changer had defective, uniform policies and practices relating to the payment of wages, the timing of payments, meal and rest periods and reimbursement of expenses that affected all Class Members. (Woodall Decl., ¶¶ 28-30.) Upon extensive examination of wage statements and time entry records, Oil Changer utilized unlawful, company-wide practices with respect to overtime and regular pay, reimbursement of expenses, meal and rest periods, wage statements and payment of final wages. (*Id.*) Indeed, from the wage statements, time entry records and reimbursement records alone, it can be demonstrated that Class Members were uniformly affected by the unlawful policies and practices. (*Id.*)

b. Plaintiff's Claims Are Typical

The "test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Martinez v. Joe's Crab Shack Holdings*, 231 Cal. App. 4th 362, 375 (2014); *Classen v. Weller*, 145 Cal. App. 3d 27, 45 (1983). In this case, Plaintiff Henson's claims are typical of the Class. He was not paid overtime and regular wages for all hours worked during his employment and when his employment ended, including when he closed the store and performed bank runs after closing, which supports the unpaid wage claims and derivative failure to timely pay final wages claim. (Woodall Decl., ¶ 31); Henson Decl., ¶¶ 2-5.) Further. Plaintiff Henson was not reimbursed mileage when he drove to banks for Oil Changer. (*Id.*) In addition, Plaintiff Henson's wage statements do not include the correct gross wages earned, the number of hours worked at each rate of pay or the correct total

May 12, 2014); *Brinker*, 53 Cal.4th at 1021; *Bradley v. Superior Court*, 211 Cal.App.4th 1129, 1150 (2012) (noncompliant meal and rest period policies subject to class certification); *Faulkinbury v. Boyd & Assoc., Inc.*, 216 Cal.App.4th 220, 236-237 (2013) (same); *Seckler v. Kindred Healthcare Operating Group, Inc.*, 2013 U.S. Dist. LEXIS 29940, *20 (C.D. Cal. March 5, 2013) (class certified where plaintiffs alleged their regular rates of pay did not include bonus compensation and shift differentials); *Kurihara v. Best Buy Co.*, 2007 U.S. Dist. LEXIS 64224, *27-30 (N.D. Cal. Aug. 30, 2007) (while individualized liability issues existed, predominance standard met where question was whether the company-wide policies or practices resulted in unpaid compensation); *In re Wal-Mart Stores, Inc. Wage & Hour Litig.*, 2008 U.S. Dist. LEXIS 14756 at *46 (N.D. Cal. Feb. 13, 2008) (derivative waiting time penalty claim certified); *McKenzie v. Fed. Express Corp.*, 275 F.R.D. 290, 293, 299-300 (C.D. Cal. 2011) (where company "implemented pay stub system" and "controlled how the wage statements were formatted," class certification was proper).

hours worked. (*Id.*) Plaintiff Henson also regularly missed or was not provided compliant meal and rest periods, yet Oil Changer did not provide him with premium pay for said violations. (*Id.*)[7]

c. Plaintiff and His Counsel Will Adequately Represent The Class

The class representative, through qualified counsel, must be capable of "vigorously and tenaciously" protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834, 846 (1984). Plaintiff Henson has demonstrated he will vigorously and tenaciously protect the interests of Class Members. Plaintiff Henson assisted with the preparation of a complaint and discovery, the production of detailed information to his counsel and the preparation of his declaration, participated in a lengthy mediation session, and reviewed and entered settlement agreements. (Woodall Decl., ¶ 32; Henson Decl., ¶ 5.) Finally, Plaintiffs' counsel is qualified to represent the Class in this litigation, given his extensive class action and employment litigation experience. (Woodall Decl., ¶¶ 23-24.)

3. Superiority

This standard is satisfied where judicial economy is achieved through common adjudication/ settlement of the claims of proposed class members. *Dyer*, 2014 U.S. Dist. LEXIS 65199, *11; *Boring*, 2013 U.S. Dist. LEXIS 165909, *15. Where, as here, the total potential value of each class member's claims is relatively low and the class includes a large number of members, certification of a class achieves judicial economy because a class action is superior to alternative procedures for adjudicating the individual claims. *Id.* In other words, judicial economy will be served by having all Class Members' cases resolved at the same time.

4. Appointment of Class Representative and Class Counsel

Plaintiff Henson and his counsel should be appointed as class representative and class counsel, respectively, for purposes of settlement. When class requirements are met, plaintiffs should be appointed as class representatives. *Lopez*, 2014 U.S. Dist. LEXIS 132149 at *10-12. When appointing class counsel, the Court must consider: (a) the work counsel has done in

[7] Under the PAGA, Plaintiff Kelley must show he was an aggrieved employee – that he was subjected to at least one violation. Lab. Code § 2699(c). Plaintiff Kelley can demonstrate he was not paid all wages earned or reimbursed business expenses, among other things. (Kelley Decl., ¶ 2.) Thus, Plaintiff Kelley is a proper PAGA representative.

identifying or investigating potential claims in the action; (b) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (c) counsel's knowledge of the applicable law; and (d) the resources that counsel will commit to representing the class. *Id.* Here, Plaintiffs' counsel has diligently and vigorously prosecuted this action by: (1) filing and amending complaints; (2) investigating Class Members' potential claims; (3) propounding and receiving discovery; (4) analyzing information and documents that Oil Changer provided in discovery; (5) preparing for and participating in a mediation; (6) negotiating the settlement agreement; and (7) briefing the instant motion for preliminary approval. (See Woodall Decl., ¶ 32.) Further, Plaintiffs' counsel has significant experience prosecuting and defending class actions, and handling wage and hour matters. (*Id.* at ¶¶ 23-24.) Thus, Plaintiff Henson should be appointed class representative and Plaintiffs' counsel should be appointed class counsel.

C. The Class Settlement is Fair, Adequate and Reasonable

The class settlement is fair, adequate and reasonable because the settlement was reached after arms-length negotiations with an experienced mediator, Plaintiffs' counsel engaged in extensive discovery efforts to allow Plaintiffs and the Court to act intelligently, and Plaintiffs' counsel is experienced in similar litigation and believes the settlement is a very good result in light of the risks, expense, complexity and duration of continued litigation.[8] *Mallick*, 89 Cal. App. 3d at 438; *Wershba*, 91 Cal. App. 4th at 234-235; *Dunk*, 48 Cal. App. 4th at 1801-1802.

1. The Settlement Was the Result of Extensive Negotiations Conducted at Arm's Length with the Assistance of an Experienced Mediator

Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co*., 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig*., 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their judgment for that of the proponents of the settlement, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *Nat'l Rural*

[8] Plaintiff also believes the number of objectors will be small and the Class Members will have a positive reaction to the settlement, but that issue will need to be settled after notice is provided to Class Members.

Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979).

After extensive discovery, including obtaining information and documents in response to formal discovery requests and taking a person most qualified deposition, the parties participated in a full-day mediation with a well-respected mediator, Cynthia Remmers, prior to reaching the agreement. (Woodall Decl., ¶ 22.) After the arm's length negotiations, the parties came to terms on a fair and reasonable settlement after conducting a close analysis of the evidentiary record, the costs of protracted litigation, and the risks associated with a contested class certification motion and trial on the merits.

2. The Settlement Gives No Class Member Preferential Treatment

The settlement does not grant preferential treatment to segments of the Class, as all Class Members are affected by Oil Changer's conduct and they will receive a settlement amount based upon their number of workweeks in the Class Period (i.e., they will receive more compensation the longer they were subjected to Oil Changer's alleged unlawful conduct). (Woodall Decl. at ¶ 22, Exh. 1 at p. 10 (Section C, ¶ 7).)

3. Plaintiffs' Counsel is Experienced and Knowledgeable in this Area and Has Concluded the Settlement is a Favorable Result for the Class in Light of the Risks at the Class Certification and Merits Stages of the Action

Plantiffs' counsel has vast experience and knowledge with respect to wage and hour class actions (Woodall Decl., ¶¶ 23-24) and although he believes Plaintiffs could have ultimately prevailed if this case did not settle, Plaintiffs' counsel realizes his clients and the putative class would have to overcome hurdles to demonstrate liability, damages and class action status. (*Id.* at ¶ 25.) Specifically, Plaintiffs contend that Oil Changer did not properly pay regular and overtime wages, issued inaccurate wage statements, did not provide compliant meal and rest periods or premium pay for the same, failed to reimburse business expenses and did not timely pay final wages to putative class members and PAGA members in violation of Labor Code §§ 203, 226, 226.7, 510, 512 and 2802. Oil Changer denies the allegations and stood ready and willing to oppose a motion to certify a class action for trial purposes and to litigate the case on the merits. In reaching the settlement, Plaintiffs were mindful of the risk that the Court may not certify a class action for purposes of trial or that Oil Changer may prevail on the merits. (*Id.)*

Oil Changer was prepared to argue that putative class members are not owed regular or overtime wages because its policies were compliant with Labor Code §§ 510 and 1197 and employees did receive regular and overtime pay. (Woodall Decl., 11.) In addition, Oil Changer contends that it was not liable for missed or noncompliant meal and rest periods under Labor Code §§ 226.7 and 512, as it maintained policies encouraging employees to take meal and rest periods and paid premium pay. (*Id.*) Oil Changer would have argued that if employees chose not to take meal or rest periods, including at the correct time or for the full time permitted, it was not liable. (*Id.*) Oil Changer was prepared to argue that Plaintiffs and other employees received their final pay when their employment ended in accordance with Labor Code §§ 201-203. (*Id.*) Moreover, Oil Changer maintains that it properly reimbursed employees for mileage and other expenses when employees informed them of the expenses. (*Id.*) Finally, Oil Changer maintains that the wage statements provided to Plaintiffs and other employees complied with Labor Code § 226. (*Id.*) For purposes of settlement, Plaintiffs weighed these risks against the full value of the class and PAGA claims.

If Plaintiffs were to prevail on liability and class certification, the total amount of unpaid regular and overtime wages during the Class Period (March 11, 2017 to January 31, 2024) would have been approximately $898,946 ($303,015 relating to the failure to pay wages relating to closing stores, and $595,931 relating to the failure to pay wages relating to performing bank deposits after store closings). (Woodall Decl., ¶ 12.) Plaintiffs' counsel also determined that during the Class Period, Labor Code § 203 penalties relating to the failure to timely pay final wages would have been approximately $6,162,480. (*Id.* at ¶ 13.) In addition, Plaintiffs' counsel determined statutory penalties relating to inaccurate wage statements during the one-year Class Period (March 11, 2020 to January 31, 2024) were $4,142,383 under Labor Code § 226. (*Id.* at ¶ 14.) From the records produced, Plaintiffs' counsel also estimated that unpaid premium pay for missed and noncompliant meal period claims is $9,584,082. Lastly, Plaintiffs' counsel determined the unreimbursed expenses would be $539,656.65. (*Id.* at ¶¶ 15- 16.)

Despite the maximum potential recovery of $21,327,547.65 for the class claims, there are risks associated with certifying a class action and establishing liability, including the very same arguments made by Oil Changer (above). (Woodall Decl, ¶ 17.) Moreover, where well over half of the potential theoretical recovery consists of penalties, courts have found they may be substantially discounted when evaluating the proposed distribution of a settlement fund. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 964 (9th Cir. 2009).[9]

Given the risks involved with obtaining and certifying a class action, prevailing on the merits regarding the class claims and collecting on a judgment, the realistic potential recovery on the class action claims is a fraction of the maximum theoretical recovery.[10] Specifically, given the arguments and defenses raised by Oil Changer, the realistic potential recovery is approximately 30% of the maximum theoretical recovery or $6,398,264.29. (Woodall Decl., ¶ 18.) Thus, this

[9] In addition to the statutory penalties sought as part of the class action, Plaintiff Kelley seeks civil penalties under PAGA relating to the same alleged violations of Labor Code §§ 201-202, 226, 226.7, 510, 512 and 2802. Plaintiff Kelley also seeks civil penalties under PAGA relating to the failure to timely pay wages during employment under Labor Code § 204 and the failure to maintain records under Labor Code § 1174. (Woodall Decl., ¶¶ 19-20.) Plaintiff Kelley seeks $100 per pay period for each violation, along with attorney's fees and costs. Oil Changer raises the same defenses mentioned above and contends it timely paid wages during employment and maintained all records. (*Id.*) During the one-year statute of limitations relating to the released PAGA claims (March 11, 2020 to January 31, 2024), Plaintiff Kelley was not able to identify instances of failure to maintain records or the failure to timely pay wages during employment, other than his own. With respect to violations of Labor Code §§ 201-202, 226, 226.7, 510, 512 and 2802, if Plaintiff Kelley were able to demonstrate that Oil Changer violated said Labor Code sections during this same period of time, the maximum potential penalties would be in excess of $22 million. (*Id.*) However, all of the risks identified above relating to the underlying alleged Labor Code section violations apply equally to the PAGA claim. In addition, Oil Changer would rely on the Court's discretion under PAGA to reduce or eliminate the award of civil penalties under Labor Code § 2699 et seq. Oil Changer would have argued the violations were not intentional, but inadvertent. As a result, Oil Changer would argue that it would be unjust to award substantial PAGA penalties on top of the statutory penalties and damages available under Labor Code §§ 201-203, 226, 226.7, 510, 512 and 2802 for the same underlying statutory violations. Further, if the PAGA claims were successful, the LWDA would obtain 75% of the penalties and aggrieved employees would be entitled to 25% of the penalties. Given the above, it is common for PAGA penalties to be greatly reduced. *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052 at *21-22 (E.D. Cal. Oct. 31, 2012) (approving $10,000 allocation to PAGA claim in $3.7 million settlement of wage and hour class action); *Chu v. Wells Fargo Investments*, 2011 U.S. Dist. LEXIS15821 at *4 (N.D. Cal. Feb. 16, 2011) (approving $10,000 allocation to PAGA claims in $6.9 million settlement of wage and hour class action); *Franco v. Ruiz Food Products, Inc.*, 2012 U.S. Dist. LEXIS 169057 at *41 (E.D. Cal. Nov. 27, 2012) (approving $10,000 allocation to PAGA claim in context of $2.5 million settlement of claims of 2,055 member class); *Shepard v. Lowe's HIW, Inc.*, 12-CV-03893-JSW (N.D. Cal. 2014).

[10] As set forth above, the PAGA civil penalties are separate and distinct from the realistic class action damages and statutory penalties.

$3,000,000 settlement represents approximately forty-seven percent (47%) of the realistic potential recovery, excluding the important policy changes that will be made by Oil Changer. As Plaintiffs expect the policy changes will conservatively result in millions of dollars of wages and reimbursed expenses paid to employees over the next few years, Plaintiffs contend this settlement represents seventy to eighty percent (70-80%) of the realistic potential recovery. (*Id.*) Courts have found that a settlement is fair when it is a fraction of the potential recovery for class members. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) ($2 million settlement was fair even though potential damages were $12 million); *Dyer*, 303 F.R.D. at 331 (although settlement was a third of the potential recovery, it was fair due to the uncertainties of continued litigation); *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965-967 (9th Cir. 2009) (counsel is in the best position to determine the value of the case, especially given the challenges of obtaining a favorable verdict). Based upon the risks involved, the settlement is a very good result for the Class Members. (*Id.*)

D. The Proposed Class Notice Plan Should Be Approved

Class notice must comport with the requirements of due process. "'[T]he plaintiff must receive notice plus an opportunity to be heard and participate in litigation, whether in person or through counsel.' The notice must be 'the best practicable,' 'reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Dyer*, 2014 U.S. Dist. LEXIS 65199 at *19 (quoting *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985)). "'The notice should describe the action and the plaintiffs' rights in it.'" *Id.* "'The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members . . . .'" *Id.* Lastly, "'an absent plaintiff [must] be provided with an opportunity to remove himself from the class by executing and returning an "opt out" or "request for exclusion" form to the court.'" *Id.*

In this case, the proposed Settlement Administrator is Phoenix Settlement Administrators, a company with substantial experience in this area that submitted a reasonable bid. (Woodall Decl, ¶ 5.) The Settlement Administrator will provide notice via first class mail, calculate the awards of class members, process opt-out requests and objections, mail settlement awards to participating Settlement Class Members, issue tax reporting forms, provide regular updates to counsel for the parties, and any necessary declarations regarding the relevant information. (*Id.*, Exh. 1 at pp. 11-14 (Section C, ¶¶ 10-18).) After the Class Notices are sent via first class mail, Class Members will have 45 calendar days to postmark a Request for Exclusion and make objections. (*Id.*) The Settlement Administrator will perform skip-traces on any returned mail and re-mail class notice to the updated addresses, providing an additional 30 days to Request Exclusion or object to the settlement. (*Id.*) Thus, the proposed Notice procedures are appropriate.

The Notices to the Class Members are appropriate as well. The Notices clearly and concisely state, in easily understood language: (a) the nature of the action; (b) the definition of the Settlement Class; (c) the class claims, issues or defenses; (d) that Class Members may enter an appearance though an attorney if the member so desires; (e) that the Court will exclude from the Settlement Class any member who requests exclusion; (f) the time and manner for requesting exclusion; and (g) the binding effect of a class judgment on members. (Woodall Decl., Exh. 2.) The Notice also provides the contact information of Class Counsel and the Administrator. (*Id.*)

IV. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully requests that the Court grant this unopposed Motion for Preliminary Approval of Class Action/PAGA Settlement.

DATE APRIL 25, 2024

WOODALL LAW OFFICES

BY /S/ KEVIN F. WOODALL
KEVIN F. WOODALL
ATTORNEYS FOR PLAINTIFFS, DAVID KELLEY, JOSHUA HENSON AND SIMILARLY SITUATED FORMER AND CURRENT EMPLOYEES OF DEFENDANTS