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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

TONY HOWELL on behalf of himself and all others similarly situated Plaintiff, vs. QUANTA UTILITY ENGINEERING SERVICES, INC. a Missouri corporation, UTILITY LINE MANAGEMENT SERVICES, INC. a California corporation and DOES 1 through 50, inclusive, Defendants.	Case No. CIVSB 2117103 ASSIGNED FOR ALL PURPOSES TO: JUDGE: Hon. Christian Towns DEPT: S-26 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** (Declarations of Anthony Draper, Tony Howell and [Proposed] Order are concurrently filed herewith) Date: February 24, 2026 Time: 8:30 a.m. Dept. S-26

PLEASE TAKE NOTICE THAT on February 24, 2026 at 8:30 a.m. in Department S-26 of the above entitled Court located at 247 West 3rd Street, San Bernardino, CA 92415, Plaintiff Tony Howell ("Plaintiff") will and hereby does move the Court for an Order: (1) provisionally certifying the Class for Settlement purposes only; (2) preliminarily approving James R. Hawkins, Isandra Fernandez, and Anthony Draper of James Hawkins APLC as Class Counsel in this matter, (3) provisionally approving Plaintiff as the Class Representative; (4) preliminarily approving Apex Class Action, LLC as the Administrator; (5) preliminarily approving the Class Action and

PAGA Settlement Agreement ("Settlement Agreement"); (6) approving and directing distribution of the Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval; and (7) scheduling a Hearing Date for Final Approval.

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

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

Dated: January, 30 2026

JAMES R. HAWKINS, APLC

By: ______________________________

Isandra Y. Fernandez
Anthony Draper
Attorneys for Plaintiff
Tony Howell

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Tony Howell ("Plaintiff") respectfully seeks preliminary approval of the class and PAGA action settlement reached with Defendants PAR Western Line Contractors LLC DBA QUES F/K/A Quanta Utility Engineering Services, Inc. ("QUES") and Par Western Line Contractors LLC F/K/A Utility Line Management Services, Inc. ("ULMS"). (Plaintiff and Defendants hereinafter collectively referred to as "Parties").

Subject to Court approval, the Parties have reached a settlement of the claims asserted on behalf of the Class and Aggrieved Employees in the present action for a total of One Million Seven Hundred Twenty Thousand Dollars and Zero Cents ($1,720,000.00) inclusive of all settlement payments to Participating Class Members and Aggrieved Employees, Class Counsel's Court-approved attorneys' fees and reasonable litigation expenses, the Court-approved Class Representative Service Award to the Class Representative, Settlement Administration Expenses, interest and the LWDA's share of PAGA penalties. The total settlement amount excludes the employer's share of the payroll taxes. **This is a cash settlement**. Every Class Member who does not opt out of the Settlement will automatically be mailed an individual settlement payment. However, every Class Member who is also an Aggrieved Employee will be mailed their respective Individual PAGA Payment associated with the PAGA penalty portion of the settlement amount regardless of opt-out status. Class Members do not have to file a claim to be mailed a payment.

As discussed more thoroughly below, the proposed Settlement satisfies all of the criteria for preliminary settlement approval under California law and falls well within the range of proper approval. As such, Plaintiff moves this Court to: (i) provisionally certify the proposed Class; (ii) provisionally approve James R. Hawkins, Isandra Fernandez, and Anthony Draper of James Hawkins APLC as class counsel for Plaintiff and the Class in this matter; (iii) provisionally approve named Plaintiff Tony Howell as the Class Representative; (iv) appoint Apex Class Action, LLC ("Apex") as the Administrator; (v) preliminarily grant approval of the Class Action and PAGA Settlement Agreement (hereinafter "Settlement Agreement"); (vi) direct distribution of the Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval ("Class Notice") and; (vii) schedule a Final Approval Hearing on the terms and conditions set forth in the Settlement Agreement.

II. FACTUAL BACKGROUND

On June 15, 2021, Plaintiff commenced the Action by filing a Class Action Complaint in the Superior Court of California, County of San Bernardino, entitled *Tony Howell v. Quanta Utility Engineering Services, Inc., et al.,* Case No. CIVSB2117103. (Declaration of Anthony Draper "Draper Decl.", ¶ 2.) On June 14, 2021, Plaintiff gave timely written notice to Defendants and the LWDA by submitting a PAGA Notice. (Draper Decl., ¶ 3; Ex. 1.) On November 30, 2021, Plaintiff filed a First Amended Class Action Complaint to add a cause of action pursuant to the PAGA. (Draper Decl., ¶ 4.)

The First Amended Class Action Complaint is the operative complaint, which alleges California claims for: (1) failure to pay wages; (2) failure to provide meal periods or compensation in lieu thereof; (3) failure to provide rest periods or compensation in lieu thereof; (4) failure to reimburse necessary business expenses; (5) failure to pay sick pay wages; (6) failure to timely pay wages during employment; (7) failure to timely pay wages at termination of employment; (8) knowing and intentional failure to provide accurate itemized wage statements; (9) unfair business practices in violation of Business and Professions Code sections 17200, et seq., and (10) violation of the PAGA. (Draper Decl., ¶ 5.)

Throughout this litigation, Defendants have denied Plaintiff's allegations and raised defenses to his claims, both individually and on a representative basis. (Draper Decl., ¶ 6.) Defendants maintain that their employment policies and practices meet the requirements of the Labor Code and applicable Wage Orders (*Id*.) To date, no class has been certified and the Court has not made any findings that Defendants engaged in any wrongdoing or in violation of any state law, rule or regulation, with respect to the issues presented in the litigation. (Draper Decl., ¶ 7.)

Through formal and informal discovery, Plaintiff and Defendants have exchanged extensive documents and information related to the claims asserted. (Draper Decl., ¶ 8.) Plaintiff obtained hundreds of pages of information, including timecard records and wage reports of putative Class Members. Defendants provided Plaintiff with class data and random samples of time records, wage statements, and information regarding the number of non-exempt employees during the relevant time-period. (*Id*.)

On October 18, 2022, the Parties participated in a private mediation with Lou Marlin, Esq. but were unable to reach a settlement. (Draper Decl., ¶ 9.) On February 11, 2025, the Parties participated in a second private mediation with Steven G. Mehta, Esq. and were unable to reach a settlement at the conclusion of the mediation. (Draper Decl., ¶ 10.) The parties continued with the litigation and also engaged in settlement discussions. (*Id*.) On or about August 12, 2025, the Parties accepted a mediator's proposal, resulting in a settlement in principle, which they memorialized in a Memorandum of Understanding ("MOU") executed on or about October 22, 2025. (Draper Decl., ¶ 11.)

Thereafter, the Parties exchanged multiple drafts of the proposed settlement agreement and class notice documents and engaged in numerous communications regarding the settlement terms (Draper Decl., ¶ 12.) The final terms and provisions of the settlement agreement were approved and executed by all the parties on or about January 2026 (Draper Decl., ¶ 13.; Exhibit 2.- Settlement Agreement.)

Based on their own respective independent investigations and evaluations and after taking into account the sharply disputed factual and legal issues involved in this matter, the risks attending further prosecution in light of certification issues faced due to the *Brinker Rest. Corp. v. Super. Ct.*, (2012) 53 Cal. 4th 1004 ("*Brinker*") decision, the discovery and investigation conducted to date, Plaintiff and his counsel are of the opinion that settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and adequate and is in the best interests of the named Plaintiff and Class Members. (Draper Decl., ¶ 14.)

III. SUMMARY OF SETTLEMENT TERMS

A. Settlement Class

"Class Member" means all current and former non-exempt hourly employees employed by Defendants in California who occupied positions of "construction site representative" and/or similar positions from June 14, 2017 through March 13, 2025 ("Class Period"). (Settlement Agreement, ¶¶1.5,1.13.)

B. <u>Aggrieved Employees</u>

"Aggrieved Employees" means all current and former non-exempt hourly employees employed by Defendants in California from June 14, 2020 through March 13, 2025 ("PAGA Period"). (Settlement Agreement, ¶¶ 1.4,1.32.)

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

1. The Gross Settlement Amount ("GSA") is One Million Seven Hundred Twenty Thousand Dollars and Zero Cents ($1,720,000). This Settlement Amount is in addition to the employer's share of the payroll taxes, inclusive of all settlement payments to Participating Class Members and Aggrieved Employees, Class Counsel's Court approved attorneys' fees and litigation expenses, the Court-approved Class Representative Service, Administration Expenses, interest and the LWDA's share of PAGA penalties. (Settlement Agreement, ¶ 1.24.)

2. Subject to Court approval, Class Counsel may seek approval from the Court of a maximum of Six Hundred and Two Thousand Dollars ($602,000) in attorneys' fees (35% the GSA), and a maximum of Forty Thousand Dollars ($40,000) in litigation expenses, for serving as Class Counsel. (Settlement Agreement, ¶ 3.2.2.)

3. Subject to Court approval, the Class Representative may seek approval from the Court of a Service Award payment not to exceed Ten Thousand Dollars ($10,000) for a general release of his claims and for serving as a Class Representative. (Settlement Agreement, ¶ 3.2.1.)

4. Subject to Court approval, Administration Expenses Payment to be taken from the GSA which is estimated not to exceed Eight Thousand Nine Hundred and Ninety Dollars ($8,990). (Settlement Agreement, ¶ 3.2.3.)

5. Subject to Court approval, Three Hundred and Seventy-Five Thousand Dollars ($375,000) shall be allocated to PAGA penalties, from which Two Hundred Eighty- One Thousand Two Hundred Fifty Dollars $281,250 (75%) shall be payable to the LWDA, representing the LWDA's share of PAGA penalties ("PAGA Allocation") and Ninety-Three

Thousand Seven Hundred and Fifty Dollars ($93,750) (25%) to the Aggrieved Employees. (Settlement Agreement, ¶ 3.2.5.)

6. The portion of the GSA remaining after subtracting the Administration Expenses, Court-approved attorneys' fees and litigation costs, Court-approved Service Enhancement, PAGA penalties, shall be designated the "Net Settlement Amount" or "NSA" (Settlement Agreement, ¶ 1.30.)

7. "Individual Class Payment" means a Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period. (Settlement Agreement, ¶ 1.25.) Said amount shall be allocated as follows: 20% of each Individual Class Payments to settle wage claims, subject to withholding and reported on an IRS W-2 form, and 80% to settlement of interest and penalties which shall be reported on an IRS 1099 without withholdings. (Settlement Agreement, ¶ 3.2.4.1.)

8. "Individual PAGA Payment" means an Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA Period. (Settlement Agreement, ¶ 1.26.)

9. Defendant shall be responsible for paying the employer's share of payroll taxes, separately and in addition to the maximum settlement amount. (Settlement Agreement, ¶ 1.24.)

Here, there are estimated to be 100 Class Members. The NSA, subject to Court approval, is Six Hundred Eighty-Four and Ten Dollars ($684,010). Thus, the estimated average net recovery of Class Members will be approximately Six Thousand Eight Hundred and Forty Dollars ($6,840). This average net recovery amount is more than other wage and hour class action settlements approved by California state and federal courts. *See*, *e.g.*, *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately $90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately $65); *Sorenson v. Defendants, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately $60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately $35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A.

Super. Ct.) (average net recovery of approximately $20); and *Jones v. Bath& Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately $50).

D. Releases

1) Participating Class Member Released Claims

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall be deemed to have fully and forever released and discharged the Released Parties from any and all claims, demands, causes of action, rights, liabilities, or damages of every kind and nature, known or unknown, suspected or unsuspected, arising during the Class Period and relating to the allegations in the Action, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged based on the facts contained in the Complaint, including the (1) failure to pay minimum, regular, and overtime wages, (2) failure to provide meal periods or pay meal period premiums in lieu thereof, (3) failure to provide rest breaks or pay rest break premiums in lieu thereof, (4) failure to reimburse necessary business expenses, (5) failure to provide accurate itemized wage statements, (6) failure to maintain accurate records, (7) failure to timely pay wages during employment, (8) failure to timely pay wages at termination of employment, (9) failure to pay sick pay wages; and (10) unfair business practices pursuant to the Unfair Competition Law ("UCL"), Business and Professions Code §§ 17200, et seq.; and (b) any and all wage-and-hour or related statutory, regulatory, or common-law claims that could have been asserted based on the same facts, matters, transactions, or occurrences alleged therein, including claims premised on any duties or rights under Labor Code sections 200, 201, 202, 203, 204, 210, 212, 218.5, 221, 225, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198, 1199, 2699, and 2802; California Code of Regulations, Title 8, section 11090 et seq.; and any other applicable Industrial Welfare Commission ("IWC") Wage Orders. This release (the "Class Release") extends to all theories of relief and direct or derivative claims that can be brought, whether under federal, state, or common law—including, without limitation, claims for violations of the Labor Code, IWC Wage Orders, applicable regulations and the UCL, (Settlement Agreement, ¶ 5.2.)

2) PAGA-Released Claims

All Aggrieved Employees, whether or not they are Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall be deemed to have fully and forever released and discharged the Released Parties from any and all claims to recover civil penalties pursuant to the PAGA for alleged violations of the Labor Code during the PAGA Period that were alleged, or reasonably could have been alleged, in the PAGA Notice that Plaintiff submitted to the LWDA or in the Complaint filed in the Action, including the (1) failure to pay minimum, regular, and overtime wages, (2) failure to provide meal periods or pay meal period premiums in lieu thereof, (3) failure to provide rest breaks or pay rest break premiums in lieu thereof, (4) failure to reimburse necessary business expenses, (5) failure to provide accurate itemized wage statements, (6) failure to maintain accurate records, (7) failure to timely pay wages during employment, (8) failure to timely pay wages at termination of employment, and (9) failure to pay sick pay wages. This release (the "PAGA Release") includes, without limitation, all PAGA claims premised on alleged violations of Labor Code sections 200, 201, 202, 203, 204, 206, 210, 212, 218.5, 221, 225, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198, 1199, 2699, and 2802; and any applicable IWC Wage Orders and regulations, which are resolved by the Settlement. (Settlement Agreement, ¶ 5.3.)

3) Plaintiff's Released Claims

Plaintiff, on behalf of himself and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, fully and forever releases and discharges the Released Parties from all claims, transactions, or occurrences arising out of or relating to his employment with Defendants, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged based on the facts contained in the Complaint and PAGA Notice; and (b) all claims for civil penalties under the PAGA that were, or reasonably could have been, alleged based on facts contained in the Complaint and PAGA Notice, or ascertained during the Action. Plaintiff also waives claims covered by California Civil Code § 1542. (Settlement Agreement, ¶¶ 5.1,.5.1.1.)

E. Notice Procedure

No later than fourteen (14) calendar days after the Court grants Preliminary Approval of the settlement, Defendant will provide the name, last known address, social security number, and the total Class Period Workweeks worked by each Class Member and PAGA Pay Periods worked by the Aggrieved Employees to the Administrator ("Class Data"). (Settlement Agreement, ¶¶ 1.8, 7. 4.1.)

Within fourteen (14) calendar days from the date the Administrator receives the Class Data, the Administrator shall mail the Class Notice to the Class Members and Aggrieved Employees by First Class Mail. (Settlement Agreement, ¶ 7.4.3.) With respect to any returned envelopes, the Administrator shall take all reasonable steps to locate any Class Member whose Class Notice is returned as undeliverable, such as a skip trace procedure or other independent research, to obtain a current address and, if an updated address is located, then re-mail the envelope to such address within three (3) business days of receipt of the returned Class Notice. (Settlement Agreement, ¶ 7.4.4.)

Class Members shall have forty-five (45) days from the date of mailing of the Settlement Documents to return a valid Request for Exclusion from the Settlement to the Settlement Administrator (the "Opt-Out Period"). (Settlement Agreement, ¶ 7.5.1.) Class Members shall have until the end of the Opt-Out Period, or an additional fourteen (14) calendar days if Class Notice is re-mailed. (*Id*.) Class Members submitting untimely or invalid Requests for Exclusions shall be deemed to be a Participating Class Member and will be bound by the terms and conditions of the Settlement (Settlement Agreement, ¶ 7.5.3.)

The Class Notice will include a procedure by which a Class Member may dispute the number of Class Workweeks and PAGA Pay Periods, if any, allocated to the Class Member by communicating with the Settlement Administrator via fax, email or mail. (Settlement Agreement, ¶ 7.6.)

IV. PRELIMINARY APPROVAL OF SETTLEMENT IS APPROPRIATE

The law favors settlement, particularly in class actions and other complex cases in which substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation.

(*Class Plaintiffs v. Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Potter v Pacific Coast Lumber Company* (1951) 37 Cal. 2d. 592, 602-603; 4 NEWBERG § 11.41.) To grant preliminary approval of this class action settlement, the Court need find only that the settlement falls within the "range of reasonableness." (*North County Contractor's Ass. Inc. v. Touchstone Ins. Svcs.,* (1994) 27 Cal. App. 4th 1085, 1089-1090.) In determining whether a class settlement is fair, adequate and reasonable, courts must consider the following relevant factors: the strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount of offered settlement, the extent of discovery completed and the range of the proceedings, and the experience and views of counsel. (*Dunk v. Ford Motor Co.,* (1996) 48 Cal. App. 4th 1794, 1801; *Clark v American Residential Services, LLC* (2009) 175 Cal. App. 4th. 785, 799.) The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case. (*Clark, supra,* at p. 799; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.)

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

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

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

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

As already discussed herein, the Parties have conducted themselves in informed, good faith arm's-length negotiations after exchanging extensive information about the claims and defenses of this lawsuit and engaging in pre-mediation and post mediation discussions aimed at settling their dispute. In attempts to settle this lawsuit, the Parties participated in two full day mediations with Lou Marlin, Esq. and Steven G. Mehta, Esq. respectively and thereafter continued to engage in settlement discussions with the assistance of the mediator. (Draper Decl., ¶¶ 19-10.) In sum, armed with all of the relevant information and with the help of an experienced mediator, counsel for the parties participated in lengthy, serious and informed negotiations which have resulted in the proposed Settlement Agreement that is now placed before this Court.

3. <u>Investigation and Discovery Were Sufficient for the Parties to Evaluate the Risks Intelligently</u>

Plaintiff conducted significant investigation of the facts and law both before and after the Action was filed. Plaintiff's counsel reviewed voluminous supporting documents provided by Defendants through formal and informal discovery and in exchanges of information in preparation for mediation (Draper Decl., ¶ 8.) Plaintiff also undertook an extensive expert analysis of timekeeping and payroll data for the class. (*Id.*)

4. <u>Plaintiff's Counsel is Experienced in Similar Litigation</u>

Moreover, counsel for Plaintiff has represented, mediated and settled hundreds of other employee class actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the claims against Defendants and the benefits of the proposed Settlement under the circumstances of the case. (Draper Decl., ¶¶ 21-24.)

B. <u>The Settlement Provides For Reasonable Compensation To Class Members</u>

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

Settling parties are not, however, required to partake in a hypothetical accounting exercise: "**Kullar does not … require any such explicit statement of [maximum] value**; it requires a record which allows 'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal. App. 4th 399, 409-10 (citing *Kullar,* 168 Cal. App. 4th at 120 (emphasis added). Overall, "the most important factor" in determining "whether a settlement is fair and reasonable" is the "strength of the case for Plaintiff on the merits, balanced against the amount offered in the settlement." (*Id*. at 409 n.6 (quoting *Kullar,* 168 Cal. App. 4th at 130). As discussed further below, the recovery of $1,720,000 for the Class and Aggrieved Employees is well within the range of reasonableness and undeniably fair, adequate and reasonable considering the risks and hurdles of continued litigation.

Plaintiff's counsel analyzed the potential liability in this matter based on documents and information produced by Defendants in formal discovery and in preparation for mediation, expert analysis of timekeeping records and payroll data, and took into account the nature of the claims and Defendants' defenses thereto. (Draper Decl., ¶¶ 8, 15.)

The damages model used in calculating potential liability was largely based on the number of class members, the number of pay periods, the average rate of pay and a random sample of time records, wage statements and documents produced by Defendants in preparation for mediation. Based on the information provided by Defendants, the estimated number of work weeks and work shifts during the Class Period are 16,214 and 81,070, respectively. There are an estimated 38,295 pay periods during the PAGA Period. The average hourly rate of pay is approximately $54.75. (Draper Decl. ¶ 16.) The estimated maximum potential violations were calculated as follows: (Draper Decl., ¶ 17.)

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

a) <u>Off the Clock</u>

Plaintiff's claim for failure to pay all lawful wages owed is premised on allegations that, during the Class Period, Plaintiff and Class Members were not paid for the time spent "off the clock" during their scheduled work shifts. Specifically, Plaintiff alleges that he and Class Members were required to arrive at their designated substations and perform between fifteen (15) to thirty (30) minutes of pre shift opening duties. Plaintiff alleges that he and Class Members were not compensated for the work performed "off the clock" prior to the scheduled start of their shifts.

Defendants adamantly dispute Plaintiff's allegations that he and Class Members were not properly compensated for all hours worked and claim that Plaintiff lacked evidence in support of the same. Further, Defendants assert that this claim would be difficult to certify given the predominance of the individualized inquiry as to whether, and to what extent, each Class Member performed any work "off the clock."

The maximum off-the-clock work claim was calculated based on estimated 30 minutes of unpaid overtime per shift for an estimated 81,070 shifts. Thus, the maximum potential liability for this claim was calculated at $3,328,734. However, taking into consideration the nature of the claim and Defendants' defenses thereto including the inability to establish the violation with respect to all of the Class Members, for purposes of settlement, this claim was valued between an estimated maximum of $665,747 (20%) and $332,873.4. (10%). (Draper Decl., ¶ 17(a)(1).)

b) <u>Invalid Alternative Work Week Schedule</u>

Plaintiff also alleges that Defendants required Plaintiff and Class members to work under unenforceable or invalid Alternative Work Week Schedules ("AWS"). Specifically, the weekly work shifts were either scheduled as 5 days/ 8 hours or 4 days/10 hours depending on the work to be performed that week. Plaintiff alleges that on the 4/days/10 hour shifts, they were not paid overtime for work over 8 hours. Here, Defendants did not implement a valid alternative work week as they failed to fulfill the regulatory requirements as the Division of Labor Standards Enforcement does not have record of an AWS election filed by Defendants.

Defendants dispute Plaintiff's allegations and contend that they complied with the requirements for the implementation of alternative work week schedules

Per the analysis conducted by Plaintiff's expert, the maximum potential liability for the underpayment of overtime for the AWS claim was calculated at $1,234,888. Taking into consideration the nature of the claim and Defendants' defenses thereto, for purposes of settlement, this claim was valued at the estimated maximum of $1,234,888.

2. <u>Meal Period Claim</u>

Plaintiff alleges that, during the class period, Defendants did not provide Plaintiff and Class Members with compliant meal breaks nor paid them one hour of their wages in lieu thereof. As stated above, Plaintiff contends that due to the work requirements, Plaintiff and Class Members's meal periods were at times interrupted and thus required to work "off the clock" during their meal periods.

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

Assuming a 100% violation rate during every shift the estimated maximum potential liability was calculated at $4,438,582 ($54.75 x 81,070 shifts). Taking into consideration the nature of the claim, Defendants' defenses and issues faced due to *Brinker,* for purposes of settlement, the meal break claim was valued between an estimated maximum of $443,858.25 (10%) and $221,929 (5 %) (Draper Decl., ¶ 17(b).)

3. <u>Rest Break Claim</u>

As with the meal breaks, Plaintiff alleges that he and Class Members were regularly unable to take a minimum ten (10) minute rest breaks for every four hours worked or major fraction thereof. Plaintiff also allege he and Class Members were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a lawful rest period was not provided, in violation of California labor laws, regulations, and IWC Wage Orders (IWC Wage Order 5-2001(12); Cal. Lab. Code § 226.7.

Defendants dispute Plaintiff's allegations regarding rest break violations and contend that Class Members were allowed to take compliant ten (10) minute rest periods under their policies and practices and regularly took such breaks. Defendants also argue that this claim would be difficult to certify given the predominance of the individualized inquiry as to whether, and to what extent, each Class Member was unable to take compliant rest breaks during their shifts.

Assuming a 100% violation rate during every shift the estimated maximum potential liability was calculated at $4,438,582 ($54.75 x 81,070 shifts). Taking into consideration the nature of the claim, Defendants' defenses and issues faced due to *Brinker,* for purposes of settlement, the rest break claim was valued between an estimated maximum of $221,929 (5 %) and $44,385.82 (1%) (Draper Decl., ¶ 17(c).)

4. Expense Reimbursement Claim

Plaintiff's claim under *Labor Code* § 2802 is premised on the fact that Defendants failed to adequately reimburse Plaintiff and Class Members for the protective gear that they were required to wear in the performance of their job duties. For instance, Plaintiff and Class Members were required to wear fire retardant pants and jackets. Although Defendants paid an annual stipend of $150 towards the purchase of the gear, Plaintiff contends it was not sufficient to cover the costs of the gear.

Defendants dispute this allegation and assert that all employees were provided with the tools and items necessary for the performance of their job duties and that the stipend was sufficient to cover said expenses. Defendants also contend that this claim would be difficult to certify given the predominance of the individualized inquiry and the defenses raised. As per the analysis, the estimated maximum potential liability for this claim was valued at $162,140. This claim had minimal value given the predominance of the individualized inquiry and the difficulty of obtaining class wide evidence for damage calculations. For purposes of settlement, this claim was valued between an estimated maximum of $24,321 (20%) and $0. (Draper Decl., ¶ 17(d).)

5. Failure to Timely Pay Wages During Employment

This claim is based on allegations that Plaintiff and Class Members did not receive payment of all wages owed, including overtime and minimum wages and meal and rest period premiums, within the requisite time under Labor Code section 204. That statute requires that all wages are due and payable twice in each calendar month. For any initial violation under this statute, one hundred dollars ($100) is due for each failure to pay each employee. For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) is due for each failure to pay each employee, plus twenty-five (25) percent of the amount unlawfully withheld. As discussed herein, Defendants dispute that they failed to pay any lawful wages owed and is therefore not liable for any penalties under this statute. Defendants also contend that liability only applies when employers fail to pay wages on a timely basis; not whether the correct amount of wages were paid. *(See's Candy Shops, Inc. v. Superior Ct.* (2012) 210 Cal. App. 4th 889, 904-905.)

Here, employees can recover penalties either Labor Code section 210 or PAGA but not both. For purposes of settlement, Plaintiff is pursuing this claim under PAGA, which is discussed below. (Draper Decl., ¶ 17(e).)

6. Failure to Timely Pay Wages at Separation

Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory period (i.e., three years before the filing of the initial Complaint) is entitled to thirty (30) days' worth of wages as a waiting time penalty for not being paid all wages upon the separation of employment. Plaintiff alleges that penalties are owed under Labor Code section 203 due to, at a minimum, Defendants' failure to pay wages for all hours worked and failure to pay premium wages. With respect to Labor Code section 203 claim, there were an estimated 403 Class Members to whom this claim applied. The estimated maximum potential liability was determined to be $683,280 using the formula: (52 former employees) x (30 x $54.75 x 8 hours per day).

Defendants once again assert that no unpaid wages are owed as Defendants did not fail to pay the correct wages owed, including overtime or minimum wages, nor did they fail to pay premium wages. Defendants further contend that their actions were not willful as required for penalties to issue and that, thus, waiting time penalties cannot be awarded. Plaintiff believes that he can prevail on this claims especially with respect to failure to pay proper overtime wages under the AWS claim. However, taking into consideration the costs and risks of proceeding, and the defenses faced, for purposes of settlement negotiations, said claim was valued between an estimated maximum of $341,640 (50%) and $204,984 (30%). (Draper Decl., ¶ 17(f).)

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

Under Lab. Code § 226(e), an employee suffering "injury as a result of a knowing and intentional failure by an employer" to provide accurate wage statements is entitled to $50 for the initial violation and $100 for each subsequent violation up to $4,000. This claim is derivative of the unpaid wages claims asserted. The estimated maximum potential liability for this claim was calculated at $312,000 based on an estimated 78 employees x $4,000.

Defendants contend that the wage statements issued to the employees fully complied with Labor Code section 226. Defendants state that because they believe no wages are unpaid, there can be no derivative penalties. Further, Defendants argue that, if any wage statements were in fact inaccurate, it did not "knowingly and intentionally" fail to provide accurate statements and that Plaintiff and the Class did not suffer any "injury" from such inaccurate wage statements. For purposes of settlement negotiations, said claim was valued between an estimated maximum of $124,800 (40%) and $ 62,400 (20%). (Draper Decl., ¶ 17 (g).)

8. <u>Failure to Pay Correct Sick Pay Compensation</u> – This claim is premised on Plaintiff's allegation that Defendants failed to pay the correct amount sick time pay. Labor Code section 204 requires that employers pay sick time pay to non -exempt employees at the employees' regular rate. Plaintiff alleges that Defendants paid the employees' sick time pay at the base hourly rate and not the regular rate, thus paying a lower rate of sick pay compensation. Defendants dispute this claim. There is no private right of action for recovery available under Labor Code section 210 and thus any penalties are encompassed within Labor Code section 203

or PAGA claims. (Draper Decl., ¶ 17 (h).)

9. Business & Professions Code § 17200 *et seq*. (“UCL”) Claim

The only remedies available under the unfair competition law (“UCL”) Business and Professions Code section 17200 *et seq.* are restitution and injunction, as opposed to damages (C*lark v. Superior Court* (2010) 50 Cal. 4th 605, 610.) The UCL provides that “[t]he court may make such orders or judgments ... as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.” (Bus. & Prof. Code, § 17203.) Restitution under the UCL includes “earned wages.” (*Cortez v. Purolator Air Filtration Prods. Co*. (2000) 23 Cal. 4th 163, 177-78.) Restitution under the UCL is not available for all violations of the Labor Code.(*See Pineda v. Bank of Am., N.A.* (2010) 50 Cal. 4th 1389, 1401-02.)

Here, Plaintiff’s UCL claim is solely premised on the failure to pay lawful wages and premium wages claims discussed above. Plaintiff’s counsel assigned a zero-dollar value to the UCL claim because it does not provide any additional value in this Action other than to increase the statute of limitations to four years for the underlying claims. Those claims are valued and analyzed above based on the four-year statute of limitations provided by the UCL. However, the UCL claim in and of itself does not provide any additional damages. Therefore, there is no additional or separate monetary value that this statute provides based on the facts of this Action (Draper Decl., ¶ 17(i).)

10. Labor Code § 2699 (PAGA Claim) – Plaintiff’s claims under PAGA are predicated on or derivative of the claims discussed above and as set forth in the Operative Complaint. The estimated maximum PAGA penalty was calculated as $3,829,500. This figure attributes a $100 penalty to each of the estimated 38,295 pay periods in scope during the PAGA Period. This figure is based on an assumption that there is a 100% violation rate during the PAGA Period, such that every single pay period in question involved at least one Labor Code violation, despite disputes regarding Defendants’ liability. However, PAGA claims under the facts and circumstances of this case may result in no award or at best a very minimal award by the trial court. See specifically § 2699(e)(2) which states in its pertinent part: “… a court may

award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

For instance, in *Fleming v. Covidien* (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, a federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of 82.2%. The court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code violations are established. (*In re Taco Bell Wage & Hour Actions* (E.D. Cal. Apr. 6, 2016) 2016 U.S. Dist. LEXIS 48557, *40-43 (PAGA penalties denied after trial).)

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

Defendants deny that a violation for each pay period can be established. Defendants state that because the PAGA Action heavily relies on the same allegations made in the Class Action, they are subject to the same defenses, and, thus, for the same reason Defendants believe there will be no damages collectible in the class action, no PAGA penalties would be awarded, either. Defendants also assert that individualized issues predominate the PAGA claims, making the claims unmanageable for trial.

Given the nature of these claims, as analyzed above, Plaintiff's Counsel believes it to be likely that if there were any award, it could be a minimal amount. Therefore, the amount of $375,000 (which has been reserved for the PAGA claim) is both fair and reasonable. (Draper

Decl., ¶ 17 (j).)

Through his counsel, Plaintiff took into consideration the significant risks that class certification could be denied on the central claim, or that a merits decision on the central claim would not favor the Class. Plaintiff has considered the expense and length of continued proceedings necessary to continue the Action against Defendants through trial and any possible appeals. Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, Defendants' defenses thereto, and the difficulties in establishing Plaintiff's damages. (Draper Decl., ¶ 18.)

The proposed Settlement requires Defendants to pay each Class Member who does not opt out a portion of the Net Settlement Amount as specifically set forth in the Settlement Agreement. (Draper Decl., ¶ 19.) The amount to be paid to the Class is undoubtedly fair, adequate and reasonable especially in light of the risk to Plaintiff and Class Members in continuing with the litigation and not prevailing on class certification or at trial, and thus leaving employees with no recovery. (*Id*.)

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

C. <u>The Class Representative Service Payments and Class Counsel Fees Are Reasonable and Should be Awarded.</u>

The Settlement Agreement provides for an award to be paid to the Class Representative. The primary purpose is to provide Plaintiff an enhancement award, taking into consideration the risks, time, effort and expenses incurred by him in coming forward to provide invaluable information and litigate this matter on behalf of all Class Members and Aggrieved Employees. (Draper Decl., ¶ 20; Howell Decl., ¶¶ 3-7.) Plaintiff has actively participated in this litigation by providing significant supporting documents and information and assisting counsel in developing information necessary to litigate and settle this case which has resulted in a favorable settlement for the putative Class Members and Aggrieved Employees. (*Id*.) Thus, the payment of $10,000 to him represents a small portion of the aggregate settlement amount and should be awarded.

Further, as will be discussed in more detail in Plaintiff's motion for final approval of the

Settlement, Class Counsel's Attorneys' Fees in the amount of $602,000 (35% of the GSA) is reasonable within California's standard benchmark and within the range customarily approved by California courts in comparable class actions.

V. <u>PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE</u>

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

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

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

Here, the proposed class is ascertainable because all of the Class Members are/were employees of Defendants and received their compensation directly from Defendants. The Class Members have been identified through Defendants' employee and personnel files. (*See Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 ["Class Members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records."].)

B. <u>Numerosity of the Proposed Settlement Class is Satisfied.</u>

If the class is sufficiently large that joinder of all members is impractical or that individual joinder is impractical, the numerosity requirement is met. (*Hebberd v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030). Here, the proposed class consists of 100 putative Class Members. Therefore, joinder of individual claims would be impractical and the numerosity requirement is met.

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

Commonality is met if there are common questions of fact and law to the class. (*Hanlon*, *supra*, 150 F.3d at 1019 ["The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class"].) Here, Plaintiff alleges that the proposed Class Members' claims all stem from the same alleged conduct. Specifically, Plaintiff alleges that Defendants violated California wage and hour law because they: (1) failed to pay all lawful wages owed including overtime compensation; (2) failed to provide statutorily compliant rest and meal periods and/or to pay one (1) hour of pay at the employees regular rate of compensation for each workday that a compliant meal period and/or rest period was not properly provided; (3) failed to timely pay all wages owed during and at the termination of the Class Members' employment and (4) failed to provide accurate itemized wage statements and (5) failed to reimburse expenses. Plaintiff seeks recovery of alleged wages, premium wages, penalties and interest pursuant to the California Labor Code, the IWC Wage Orders, Business and Professions Code § 17200 and PAGA. Although Defendants disagree with Plaintiff's contentions for purposes of certifying a litigation class, for purposes of a settlement class, these circumstances create questions of law and fact common to all proposed Class Members.

D. <u>The Typicality Requirement is Met as to the Proposed Settlement Class.</u>

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

E. <u>The Adequacy Requirement is Met as to the Proposed Settlement Class.</u>

If the named representative and their counsel have no interests adverse to the interest of the putative Class Members and are committed to vigorously prosecuting the case on behalf of the class, then the adequacy requirement is met. (*McGhee v. Bank of America* (1976) 60 Cal. App.3d 442, 450.) Here, under the proposed Settlement, the Class Representative will receive a reasonable award for his time and effort assisting counsel with factual issues surrounding the case and risk incurred in bringing this action on behalf of the Class Members. Other than this specific payment, all Class Members who do not opt out of the Settlement will receive a percentage of the NSA based on the number of weeks each Class Member worked during the class period. Therefore, no "settlement allocation" questions are raised. (*Hanlon*, 150 F.3d at 1020.)

Finally, Class Members who wish to exclude themselves from the Settlement may do so. As a result, there is no conflict of interest between the Plaintiff and the Class Members. Additionally, Plaintiff and his counsel have prosecuted this action vigorously on behalf of the Class, and they have no interest contrary to the Class either.

F. <u>Common Issues Predominate and a Class-Wide Settlement of the Proposed Settlement Class is Superior to Other Available Methods of Resolution.</u>

Class certification is authorized where common questions of law and fact predominate over individual questions and where class-wide treatment of a dispute is superior to individual litigation. (*Richmond v. Dart Industries, Inc*. (1981) 29 Cal.3d 462, 469.) The test is whether the proposed class is sufficiently cohesive to warrant adjudication by representation. (*Hanlon,* 150 F.3d at 1022.) Plaintiff contends that the proposed Class in this case is sufficiently cohesive, since all Class Members share a "common nucleus of facts and potential legal remedies." Specifically, Plaintiff asserts that because all of the Class Members seek compensation for alleged wage and hour violations discussed herein, common questions about compensation or lack thereof for worked performed by Class Members predominate over individual questions, and the Class Members' potential legal remedies are identical. Although Defendants disagree with Plaintiff's contentions, it has agreed the Class may be certified for settlement purposes only.

Additionally, particularly in the settlement context, class resolution is superior to other methods for the fair and efficient adjudication of the controversy. (*Hanlon,* 150 F. 3d at 1023; *Dunk*, 45 Cal. App. 4th at 1087.) The superiority requirement involves a "comparative evaluation of alternative mechanisms of dispute resolution." (*Hanlon*, *supra*, at 1023.) Here, the alternative methods of resolution are a plethora of individual claims from potentially 100 Class Members. The class action device can thus conserve judicial resources by avoiding the waste and delay of repetitive proceedings and prevent inconsistent adjudication of similar issues and claims. (*Sav-On Drug Stores, Inc. v. Superior Court,* (2004) 34 Cal. 4th 319, 340; *Bell v. Farmers Ins. Exchange,* (2004) 115 Cal.App.4th 715, 741.) Therefore, settlement on a class-wide basis is superior.

VI. THE PROPOSED CLASS NOTICE IS APPROPRIATE.

The proposed Class Notice is attached as Exhibit A to the Settlement Agreement. Should a Class Member wish to exclude himself/herself from the Settlement, he/she can send a request for exclusion to the Administrator as detailed in the Class Notice. Should a Class Member wish to object to the Settlement, he/she can object as described in the Class Notice. If a Class Member does nothing in response to the Class Notice, the Class Member will be mailed an individual settlement payment.

A. The Proposed Class Notice Satisfies Due Process.

California statutory and case law vests the Court with broad authority to fashion an appropriate notice process. (Cal. Rules of Court, Rule 3.760, *et seq.*) A proposed method of notice of a proposed settlement is fair, adequate, and reasonable if it has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court,* (1975) 50 Cal.App.3d 960, 974.) The procedure for notice to Class Members described herein entails mailing the Class Notice to all known and reasonably ascertainable Class Members based on

Defendants' payroll records and provides for a reasonable chance of reaching a significant percentage of Class Members. Further, such individual notice by first class mail is routinely approved as consistent with due process. (*See*, e.g., Federal Judicial Center, *Manual For Complex Litigation* (3rd ed. 1995) (hereinafter "*Manual*") §30.41,; Wright & Miller, Fed. Practice & Procedure, §1797.6 ["Of course, notice by mail to all of the identified class members . . . will suffice"] (citing cases).) Notice by mail is consistent with the class certification notices approved by numerous state and federal courts and is the best notice practicable under circumstances of this case. Other potential alternatives, such as publication of notice in a newspaper, or electronic dissemination of notice through email, are unlikely to be as effective as mail notice. Given the geographic range of Class Members, notice by publication is not feasible or reasonably likely to satisfy due process.

B. <u>The Proposed Class Notice Is Accurate and Informative.</u>

Not only is the manner of the proposed Class Notice proper, so too is the content of the said notice. The proposed Class Notice provides information on the meaning and the nature of the proposed Settlement, the terms and provisions of the Settlement (and where it may be found), the relief the Settlement will provide the Class Members, the application of Plaintiff's counsel for reimbursement of costs and attorneys' fees from the Settlement amount, the date, time and place of the final fairness and approval hearing, and the procedure and deadlines for opting out of the Settlement and for submitting objections. Counsel for Plaintiff and Defendants have spent considerable time attempting to draft a Class Notice that is likely to be readily understood by members of the Class.

The Class Notice also fulfills the requirement of neutrality. It summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner. The Class Notice clearly states the Settlement does not constitute an admission of liability by Defendants and recognizes the Court has not ruled on the merits. It also states that the final settlement approval decision has yet to be made, and that any final determination of that issue will be made at the final approval hearing. Accordingly, the Class Notice complies with the standards of fairness, completeness and neutrality required of a class notice disseminated under the authority of the Court.

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

The Class Notice contains the information required under Rule 3.766 (d). (*See* Exhibit A attached to Settlement Agreement.)

VII. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court enter the Proposed Order Granting Preliminary Approval submitted concurrently herewith, and thus: (1) grant preliminary approval of the Settlement Agreement, and certify the Settlement Class for the purposes of settlement only; (2) confirm Plaintiff Tony Howell as Class Representative; (3) confirm James R. Hawkins, Isandra Fernandez, and Anthony Draper of James Hawkins APLC preliminarily as Class Counsel; (4) approve and appoint Apex Class Action, LLC. As the Administrator; (5) enter an Order preliminarily approving the proposed Settlement and approving of the Class Notice; and (6) schedule the Final Fairness Hearing Date on _______, 2026 (to be determined by the Court at the hearing for preliminary approval of settlement).

Respectfully submitted,

Dated: January 30, 2026

JAMES HAWKINS, APLC

By: ____________________

Isandra Y. Fernandez
Anthony Draper
Attorneys for Plaintiff Tony Howell

<u>PROOF OF SERVICE, COUNTY OF ORANGE</u>

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On January 30, 2026, I served on the interested parties in this action the following document(s) entitled:

-PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
-DECLARATION OF ANTHONY DRAPER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA SETTLEMENT
-DECLARATION OF TONY HOWELL IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
-[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address irma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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[X] STATE: I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on January 30, 2026, at Irvine, California.

IRMA CEJA