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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

JACKSON CHOU, aka JACKSON CHOM, on behalf of himself and on behalf of all persons similarly situated, and on behalf of himself, the Labor Workforce Development Agency, and similarly situated aggrieved current and former employees Plaintiff vs. THE DING DOCTOR, INC., doing business as DANNY'S DEALER SOLUTIONS and DANNY'S DETAIL; DANIEL MICHAEL CHAVES; GARY MICHAEL CHAVES; and DOES 1 through 20 inclusive Defendants	Case Number: CGC-22-597414 CLASS AND REPRESENTATIVE ACTION [Assigned for all purposes to the Honorable Ethan P. Schulman, Department 304] PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND REPRESENTATIVE ACTION SETTLEMENT Date: June 2, 2025 Time: 11:00 a.m. Dept.: 304 [Date and Time Approved by Department 304] Action Filed: January 3, 2022 Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 2, 2025 at 11:00 a.m., or as soon thereafter as the matter may be heard, in Department 304 of the above-entitled court located at 400 McAllister Street, San Francisco, California 94102, Plaintiff Jackson Chou will and does hereby move this Court for an Order as follows:

1. Preliminarily approving the STIPULATION OF SETTLEMENT OF CLASS AND PAGA ACTION CLAIMS AND RELEASE OF CLAIMS ("Settlement Agreement");

2. Certifying a Class for settlement purposes;

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

4. Appointing Patrick R. Co, Esq., of the Co Law Firm and G. Martin Velez, Esq., of the Law Office of G. Martin Velez as Class Counsel for settlement purposes;

5. Approving the proposed NOTICE OF PENDENCY OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND FINAL HEARING DATE ("Notice") to be mailed to the Class Members;

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

7. Appointing Phoenix Class Action Administration Solutions as the Settlement Administrator;

8. Directing that Defendant The Ding Doctor, Inc. provide the Settlement Administrator no later than ten (10) business days after the Court grants preliminary approval of the Settlement Agreement the following information for each Class Member: each Class Member's full name; last known address; email address (if any known to The Ding Doctor, Inc.); Social Security Number; start dates and end dates of employment and/or number of Pay Periods worked during the Class Period ("Class Data");

9. Directing that the Settlement Administrator mail the Notice to the Settlement Class not less than twenty-one (21) calendar days after preliminary approval of the Settlement via regular First-Class U.S. Mail and electronic mail; and

10. Scheduling a hearing date for the Motion for Final Approval of Class Action

Settlement.

This motion is made pursuant to Code of Civil Procedure section 382 and California Rules of Court, rules 3.766 and 3.769. This motion will be based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Patrick R. Co, the Declaration of G. Martin Velez, the Declaration of Jackson Chou, the arguments of counsel, the documents filed in this action, and any other matters as may be properly presented on or before the hearing on this motion.

Dated: April 30, 2025

The Co Law Firm

/s/ Patrick Co

Patrick R. Co
Attorney for Plaintiff Jackson Chou,
on behalf of himself and on
behalf of all persons similarly situated, and on
behalf of himself, the Labor Workforce
Development Agency, and similarly situated
aggrieved current and former employees

Dated: April 30, 2025

Law Office of G. Martin Velez

/s/ Martin Velez

G. Martin Velez
Attorney for Plaintiff Jackson Chou,
on behalf of himself and on
behalf of all persons similarly situated, and on
behalf of himself, the Labor Workforce
Development Agency, and similarly situated
aggrieved current and former employees

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Jackson Chou submits this memorandum of points and authorities in support of his Motion for Preliminary Approval of Class Action and Representative Action Settlement. The Parties negotiated the proposed settlement at arm's length and reached a resolution following a full day mediation before Judicate West's Mike Young, Esq., an experienced wage and hour class action mediator, and subsequent negotiations facilitated by Mr. Young. The proposed settlement is fair and reasonable and will resolve this class action and representative action in its entirety.

I. Introductory Information

A. Introduction

Plaintiff Jackson Chou moves for preliminary approval of a wage and hour class action and Private Attorneys General Act ("PAGA") representative action settlement in the gross amount of SIX HUNDRED FIFTY THOUSAND DOLLARS ($650,000.00). The proposed class consists of all persons within the State of California who are or were employed by Defendant The Ding Doctor, Inc. as non-exempt employees, or exempt employees working as location managers, regional managers, area managers and on-site supervisors during the Class Period of October 25, 2020, to January 31, 2025. (Declaration of G. Martin Velez ("Velez Decl."), Ex. A, ¶ I.E.) There are approximately 57,000 Pay Periods during the Class Period. (*Id*. Ex. A, III.A.2.) If the final accounting of the number of Pay Periods during the Class Period is more than 10% higher than the estimated 57,000 Pay Periods, The Ding Doctor shall notify Plaintiff that it will, at The Ding Doctor's sole discretion, either (i) increase the Gross Settlement Amount by a proportional amount over the 10% grace; or (ii) The Ding Doctor can elect to have the Class Period be deemed to end on the date that the total number of Pay Periods in the Class Period exceeds 57,000 by 10%. (*Ibid*.) For example, if the total number of Pay Periods in the Class Period is 11% more than 57,000 (i.e. 63,270 Pay Periods), then The Ding Doctor agrees to increase the Gross Settlement Amount by 1%, unless The Ding Doctor exercises the right to end the Class Period on the date that the Pay Periods in the Class Period totaled 10% more than 57,000 Pay Periods. (*Ibid*.) On average, the proposed class members will each receive a gross amount of approximately $11.40 for each week worked during the Class Period. (*Id*. at ¶ 28.)

B. The Parties

Defendant The Ding Doctor, doing business as Danny's Detail, operates car washing and car detailing services across California, including at car dealerships, and employs individuals to wash and detail vehicles. (Velez Decl., ¶ 21.) Defendant Daniel Michael Chavez is the Chief Executive Officer, Secretary, Chief Financial Officer, and a Director of The Ding Doctor, Defendant Gary Michael Chavez is a Director of The Ding Doctor.

Plaintiff Jackson Chou worked for The Ding Doctor as a car washer, car detailer, supervisor, and location manager at various locations in both Southern California and Northern California from on or about September 2016 through August 2021, including at Concord BMW, BMW of San Francisco, and Weatherford BMW. (Declaration of Jackson Chou ("Chou Decl."), ¶ 2.) The putative class Plaintiff seeks to represent consists of all persons within the State of California who are or were employed by The Ding Doctor as non-exempt employees, or exempt employees working as location managers, regional managers, area managers, and on-site supervisors during the Class Period. (Velez Decl., Ex. A, ¶ I.E.)

C. Procedural History and Claims Asserted

On October 25, 2021, Plaintiff submitted a PAGA claim notice to the Labor & Workforce Development Agency and to Defendants The Ding Doctor, Daniel Michael Chaves, and Gary Michael Chaves pursuant to Labor Code section 2699.3 et seq. alleging rest break violations, overtime violations, wage statement violations, and waiting time penalties. On January 3, 2022, Plaintiff filed a Class Action and Representative Action Complaint in the Superior Court of the State of California, County of San Francisco alleging claims for (1) failure to pay overtime wages, (2) failure to provide rest periods, (3) failure to provide accurate wage statements, (4) failure to pay all wages due upon separation, (5) violation of Business and Professions Code, and (6) violation of Private Attorneys General Act. The Ding Doctor is named as a defendant in all six causes of action and Daniel Michael Chaves and Gary Michael Chaves are named as defendants in the seventh cause of action, i.e., the PAGA action. Upon learning that Plaintiff had signed an arbitration agreement with a class action waiver, Plaintiff filed a First Amended Private Attorneys General Act Complaint on February 28, 2022 alleging claims for (1) PAGA penalties for failure to pay overtime wages, (2) PAGA penalties for failure to provide rest periods and rest period premium pay, (3) PAGA penalties for failure to provide accurate wage statements, (4) PAGA penalties for failure to timely pay wages owed, and (5) declaratory relief. (Velez Decl., ¶¶ 3-6.)

Defendants filed a motion to compel arbitration, which the trial court granted on September 2, 2022, ordering Plaintiff's individual claims to arbitration and staying Plaintiff's representative claims pending arbitration. (Velez Decl., ¶ 7.)

Thereafter, Plaintiff arbitrated his individual claims before the Honorable Fred K. Morrison, Judge (Ret.) with JAMS, and in an around April 2024 Plaintiff's individual claims that were the subject of the arbitration were resolved without prejudice to Plaintiff's right to pursue the PAGA claim. (Velez Decl., ¶ 8.)

On May 24, 2024, the trial court issued an order lifting the stay placed on Plaintiff's representative PAGA claims. (Velez Decl., ¶ 9.)

The Parties reached a resolution of this action, which they memorialized in the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Stipulation of Settlement") signed by the Parties, effective April 1, 2025. (Velez Decl., ¶ 16.) As part of the settlement discussions, Plaintiff agreed to file an amended PAGA notice, which Plaintiff filed with the Labor & Workforce Development Agency on March 10, 2025, and Plaintiff agreed to file a Second Amended Complaint. (*Id*. at ¶ 17.)

Concurrent with the filing of this motion, Plaintiff filed a Joint Stipulation for the filing of a Second Amended Complaint in which Plaintiff filed a Second Amended Class Action and Representative Action Complaint alleging claims for (1) failure to pay overtime wages, (2) failure to pay minimum wage, (3) failure to provide meal periods, (4) failure to provide rest periods, (5) failure to reimburse business expenses, (6) failure to pay sick leave, (7) failure to provide accurate wage statements, (8) failure to pay all wages due upon separation, (9) violation of Business and Professions Code, and (10) violation of Private Attorneys General Act. The Ding Doctor is named as a defendant in all ten causes of action and Daniel Michael Chaves and Gary Michael Chaves are named as defendants in the tenth cause of action, i.e., the PAGA action. (Velez Decl., ¶¶ 10, 17.)

The trial court has not set a date for a motion for certification or trial in this action.

D. **Factual Basis for Claims**

Plaintiff worked for The Ding Doctor as a car washer, detailer, supervisor, and location manager at various locations from on or about September 2016 through August 2021. Plaintiff alleges that, during the time he worked as a location manager, The Ding Doctor misclassified Plaintiff as an exempt employee, as Plaintiff spent the vast majority of his workday detailing and washing cars, i.e., performing the exact same work that non-exempt hourly car detailers and car washers performed, making Plaintiff a non-exempt hourly employee. (See *Heyen v. Safeway Inc.* (2013) 216 Cal.App.4th 795, 817 [to fall within the executive exemption, an employee must be "primarily engaged" in managerial duties, i.e., the employee must spend "'more than one-half [his] work time' engaged in such duties"].) As a location manager, Plaintiff worked overtime hours for which he did not receive overtime wages. Additionally, Plaintiff alleges that, at the various locations Plaintiff worked, Plaintiff and car detailers, car washers, supervisors, location managers, regional managers, and area managers received a one hour mid-shift break, which allegedly constituted both a thirty minute meal period and two rest breaks. The one hour mid-shift break was the only break Plaintiff and his co-workers received during the workday. Based on these violations, Plaintiff alleges that The Ding Doctor also failed to issue accurate wage statements and failed to pay all wages due upon separation of employment. In the Second Amended Complaint, and as agreed to under the settlement, Plaintiff also alleges claims for failure to pay minimum wage, failure to provide meal periods, failure to reimburse business expenses, and failure to pay sick leave. (Velez Decl., ¶¶ 17, 22-23; Chou Decl., ¶¶ 3-4; Declaration of Patrick Co ("Co Decl."), ¶ 9.)

The Ding Doctor has denied all of Plaintiff's allegations, has denied liability, and has denied that this case is appropriate for class certification other than for purposes of settlement. (Velez Decl., ¶ 11, 22-24, 30; Co Decl., ¶¶ 10, 16.)

E. **The Class Size**

As of July 24, 2023, the class size consists of approximately 1,785 individuals within the State of California who are or were employed by The Ding Doctor as non-exempt employees, or exempt employees working as location managers and on-site supervisors during the Class Period. (Velez Decl., ¶ 25.)

F. **The Proposed Settlement - Key Terms**

The Parties have agreed, subject to the court's approval, to settle this action according to the following key settlement terms:

- Class - all persons within the State of California who are or were employed by The Ding Doctor as non-exempt employees, or exempt employees working as location managers, regional managers, area managers, and on-site supervisors during the Class Period. (Velez Decl., Ex. A, ¶ I.E.)

- Class Period - Class Period of October 25, 2020, to January 31, 2025. (*Id*. at Ex. A, ¶ I.I.)

- Settlement Amount - The Ding Doctor will pay the Gross Settlement Amount of $650,000.00 to a Settlement Fund to provide settlement payments (including PAGA penalty payments) to the Class, an Enhancement Award to the Plaintiff, settlement administration fees and costs, and attorney fees, costs, litigation expenses incurred by class counsel. The Ding Doctor shall separately pay all required employer payroll contributions for the portion of the Gross Settlement Amount allocated to wages. (*Id*. at Ex. A, ¶¶ I.O-P, III.A.1, 4.)

- Allocation of the Net Settlement Amount - 10 percent of the Net Settlement Amount shall be allocated as wages and the remaining 90 percent of the Net Settlement Amount shall be allocated as penalties and pre-judgment interest. (*Id*. at Ex. A, ¶¶ I.T, III.N. 3.)

- PAGA Allocation - $40,000.00 of the Gross Settlement Amount shall be allocated to penalties under PAGA, with $30,000.00, representing 75 percent of the amount allocated to penalties under PAGA, paid to the State of California by the Settlement Administrator and the remaining 25 percent to be included as part of the Net Settlement Amount and paid to class members proportionately based on their respective workweeks during the PAGA period. (*Id*. at Ex. A, ¶¶ I.AA, III.N.11.)

- Service Award - subject to court approval, a sum of $10,000.00 out of the Settlement Fund shall be paid to Plaintiff Jackson Chou for a service award. (*Id*. at Ex. A, ¶ III.N.9.)

- Settlement Administration Fees - all settlement administration fees and costs shall be paid out of the Settlement Fund, and are not to exceed $30,000.00. (*Id*. at Ex. A, ¶¶ I.MM, III.N.12.)

- Attorney Fees and Costs - class counsel will request, by way of motion, attorney fees in an amount not to exceed $216,645.00, which represents one-third of the Gross Settlement Amount, plus reimbursement of reasonable costs not to exceed $500.00, to be paid from the Settlement Fund. (*Id*. at Ex. A, ¶¶ I.G., III.N.10.)

- Funding Date - The Ding Doctor shall pay the Gross Settlement Amount in two installments. The first installment of $500,000.00 shall be paid the later of April 23, 2025 or within twenty-one calendar days after the Parties approve the Settlement Administrator's final calculations of the settlement payments and The Ding Doctor's employer side payroll taxes. The second installment of $150,000.00 shall be paid the later of July 23, 2025 or within twenty-one calendar days after the parties approve the settlement administrator's final calculations of the settlement payments and The Ding Doctor's employer side payroll taxes. (*Id*. at Ex. A, ¶ I.O.)

II. <u>The Settlement Is Fair, Reasonable, and Adequate - *Dunk* / *Kullar* Analysis</u>

"The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.' " (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) " '[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.' " (*Ibid*.) As discussed below, these factors are satisfied here.

A. <u>Summary of the Case and Legal and Factual Basis for Each Claim</u>

1. Failure to Pay Overtime Wages and Minimum Wages

Labor Code section 510 requires employers to compensate employees at the rate of no less than one and one-half times the regular rate of pay for work in excess of eight hours in one workday and any work in excess of 40 hours in any workweek. (Lab. Code, § 510, subd. (a); Industrial Wage Order Number 9, ¶ 3; 8 Cal. Code Regs., § 11090, ¶ 3.) Labor Code section 1194 establishes an employee's right to receive no less than the minimum wage for hours worked. (Lab. Code, § 1194, subd. (a); Industrial Wage Order Number 9, ¶ 4; 8 Cal. Code Regs., § 11090, ¶ 4.) Plaintiff alleges that The Ding Doctor misclassified Plaintiff and similarly situated location managers, regional managers, and area managers as exempt employees, as they primarily performed car detailing and car washing duties (see *Heyen v. Safeway Inc.*, *supra*, 216 Cal.App.4th at p. 817 [to fall within the executive exemption, an employee must be "primarily engaged" in managerial duties, i.e., the employee must spend "'more than one-half [his] work time' engaged in such duties"]), and failed to pay them an overtime wage and minimum wage for overtime hours worked. (Velez Decl., ¶¶ 22, 26.c; Co Decl., ¶ 17.B.; Chou Decl., ¶¶ 2-3.) Plaintiff's allegations are supported by co-workers familiar with Plaintiff's work who were interviewed by Plaintiff's counsel as part of Plaintiff's investigation. (Velez Decl., ¶¶ 12, 13, 26.c.) Consequently, Plaintiff has raised meritorious claims for failure to pay overtime wages and minimum wages.

2. Rest Period Violations

The Ding Doctor has a statutory and regulatory obligation to authorize and permit non-exempt hourly employees to take rest periods which, insofar as practicable, are in the middle of four hours of work or major fraction thereof. (Lab. Code, §§ 226.7, subd. (b); Wage Order Number 9, ¶ 12; 8 Cal. Code Regs., § 11090, ¶ 12.) If The Ding Doctor fails to authorize and permit rest periods as required, The Ding Doctor shall pay the employee one hour of pay at the employee's regular rate for each workday in which a violation occurred. (Lab. Code, § 226.7, subd. (c); Wage Order Number 9, ¶ 12; 8 Cal. Code Regs., § 11090, ¶ 12.)

Plaintiff contends that The Ding Doctor maintained a meal and rest period policy whereby non-exempt employees and exempt employees working as location managers, regional managers, area managers and on-site supervisors were required to take a one hour break mid-shift, which purportedly encompassed an unpaid 30 minute lunch and two unpaid rest breaks. (Velez Decl., ¶¶ 23-24, 26.a; Co Decl., ¶¶ 9-10; Chou Decl., ¶ 4.) By doing so, Plaintiff asserts that The Ding Doctor failed to authorize and permit Plaintiff and proposed class members to take rest periods as mandated by statute and regulation. (See *Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1030 [an employer must make a good faith effort to authorize and permit rest break in the middle four hours of work or major fraction thereof, absent factors rendering such schedule impracticable], citing *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1031, 1036.) Additionally, Plaintiff maintains that The Ding Doctor failed to pay Plaintiff and proposed class members an additional hour of pay for each workday in which a rest break violation occurred. (Velez Decl., ¶ 23.) Plaintiff's allegations are supported by other employees interviewed on behalf of Plaintiff as part of Plaintiff's investigation and Plaintiff's review of wage statement information which shows that The Ding Doctor failed to pay Plaintiff and proposed class members with premium pay for rest break violations. (Velez Decl., ¶¶ 12-13.)

3. Wage Statement Violations

An employer is required to furnish an employee with accurate itemized wage statements. (Lab. Code, § 226, subd. (a); Wage Order Number 9, ¶ 7.) Premium pay for rest break violations constitutes wages "that must be reported on statutorily required wage statements during employment." (*Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, 101, 121.) Thus, an employer's failure to report premium pay on itemized wage statements violates Labor Code section 226.

Wage statement information produced by The Ding Doctor supports Plaintiff's allegation that The Ding Doctor issued inaccurate itemized wage statements, as it shows The Ding Doctor failed to account for premium pay for rest period violations in wage statements issued to its employees. (Velez Decl., ¶¶12, 14, 22-24, 26.d.)

4. Failure to Pay All Wages Due Upon Separation

Labor Code sections 201 and 202 specify that an employer must pay its employees all wages due immediately at the time of discharge, layoff, or resignation made with at least 72 hours' notice, or within 72 hours of resignation made without 72 hours' notice. (Lab. Code, §§ 201, 202.) When an employer fails to do so, the employer is required to pay waiting time penalties of up to 30 days' wages. (Lab. Code, § 203.)

Wage statement information produced by The Ding Doctor shows that The Ding Doctor failed to pay premium pay for rest period violations in final paychecks issued (see *Naranjo v. Spectrum Security Services, Inc.*, *supra*, 13 Cal.5th at 117 [premium pay for violating rest break provisions constitutes wages for purposes of waiting time penalties]), and thus failed to pay its former employees all wages due at the time of separation. (Velez Decl., ¶¶ 12, 14, 22-24, 26.e.)

5. **Meal Period, Sick Pay, and Business Reimbursement Claims**

Plaintiff's counsel has considered the meal period, sick pay, and business reimbursement causes of action and has determined that the alleged violations regarding these claims are de minimis, making class certification unlikely. (Velez Decl., ¶ 26; Co Decl., ¶ 17.)

6. Business and Professions Code

Business and Professions Code sections 17200 et seq. prohibit unlawful, unfair, or fraudulent business acts or practices. Plaintiff's Business and Professions Code cause of action is derivative of the aforementioned wage and hour violations.

7. Private Attorneys General Act

Plaintiff's PAGA cause of action is derivative of the aforementioned wage and hour violations.

B. <u>Summary of Investigation and Discovery Conducted</u>

Plaintiff, through his counsel, has conducted a diligent investigation of the issues affecting certification, the merits of the class and representative claims, and potential damages and penalties for the claims alleged. (Velez Decl., ¶¶ 12-13, 20, 24, 26; Co Decl., ¶¶ 11-12, 14.) Plaintiff is a long-term employee and has been subjected to all of The Ding Doctor's policies and practices that are alleged to be unlawful in this litigation during the relevant time period. (Chou Decl., ¶¶ 2-4.) Based on his employment history with The Ding Doctor, Plaintiff provided factual background which enabled Plaintiff's counsel to investigate, research, and assess the legal issues and claims that formed the basis for this action. (Velez Decl., ¶¶ 33-39; Chou Decl., ¶¶ 2-4.) Additionally, Plaintiff's Counsel's own investigation included interviews of approximately two dozen current and former employees in locations throughout California. (Velez Decl., ¶¶ 12-13, 20, 24, 26; Co Decl., ¶¶ 11-12, 14.)

Upon the filing of this action, Plaintiff conducted thorough and focused discovery, resulting in the production of eight Excel spreadsheets, equating to approximately 60,000 pages of documents, consisting of timesheets and corresponding wage statement information for a requested twenty-five percent sample size of members of the putative class for the relevant time period, and the production of The Ding Doctor's relevant policies. Plaintiff extensively examined the documents produced, analyzing the timesheets and wage statements in conjunction with information obtained through witness interviews to determine the extent and frequency of rest break violations which provided the framework for assessing damages and penalties. Through discovery, Plaintiff ascertained that the putative class consists of approximately 1,785 employees and 57,000 pay periods during the Class Period, as of July 24, 2023 and immediately before the August 8, 2023 mediation with Mr. Young. (Velez Decl., ¶¶ 12-13, 14, 20, 25; Co Decl., ¶¶ 11-12, 14.)

C. Summary of Settlement Negotiations

After Plaintiff engaged in sufficient discovery to ascertain the liability and damages issues in this action such that Plaintiff was in a position to engage in meaningful and informed settlement discussions, the Parties participated in a mediation on August 8, 2023 with Mike Young, Esq., an experienced wage and hour class action mediator. The Parties were unable to resolve the matter at the mediation and proceeded to litigate Plaintiff's individual claims in arbitration before the Honorable Fred K. Morrison, Judge (Ret.) with JAMS, resolving them in and around April 2024 without prejudice to Plaintiff's right to purse the PAGA representative claims. Thereafter, the Parties engaged in further settlement discussions with the assistance of Mr. Young. Initially, the settlement discussions involved resolving the representative PAGA claims. As settlement discussions progressed, the Parties agreed to attempt to resolve this action as a class action and representative PAGA action, and ultimately reached an agreement to resolve this matter as a class action and PAGA representative action for the sum of $650,000.00. (Velez Decl., ¶¶ 8, 14-17; Co Decl., ¶¶ 11-13.)

D. Summary of Risks, Expenses, Complexity, and Duration of Further Litigation if Settlement is Not Approved

Throughout this litigation, The Ding Doctor has contested liability and damages in this action and has set forth defenses that create risks. Plaintiff anticipates that The Ding Doctor will maintain that it properly classified Plaintiff and location managers, regional managers, and area managers as exempt employees; that it has policies that accurately inform employees of their meal period and rest period rights under California law, which management instructs its employees to follow; and that it authorizes and permits nonexempt employees to take rest breaks in compliance with the requirements set forth in the Labor Code, and employees who did not take rest breaks did so voluntarily. The Ding Doctor's arguments create a risk that Plaintiff may not be able to establish liability as to one or more of the alleged causes of action. (Velez Decl., ¶¶ 11, 22-24, 30; Co Decl., ¶¶ 10, 16, 20.) Additionally, Plaintiff's counsel has considered the meal period, sick pay, and business reimbursement causes of action and has determined that the alleged violations regarding these claims are de minimis, making class certification unlikely. (Velez Decl., ¶ 26; Co Decl., ¶ 17.)

In order to refute The Ding Doctor's defenses, Plaintiff would have to conduct numerous depositions, including the depositions of the person(s) most knowledgeable regarding The Ding Doctor's meal, rest break, overtime policies, sick pay, and business expense reimbursements policies, depositions of location managers, supervisors, car washers and car detailers, and depositions of the two named individual defendants. Discovery would be extensive, as The Ding Doctor has various locations throughout California and there is a risk that the practices regarding meal and rest breaks, sick pay, and business expense reimbursements, and the duties of location managers, vary from location to location. Additionally, ongoing litigation could result in motions related to unresolved discovery disputes as well as a defense motion for summary judgment and/or adjudication. Further litigation will result in both sides logging extensive billable hours and substantial litigation costs, including court reporter fees and expert witness fees. (Velez Decl., ¶¶ 30-31; Co Decl., ¶¶ 14-16, 19-20.)

E. <u>Summary of Risks of Achieving and Maintaining Class Action</u>

There are significant legal and factual uncertainties associated with certifying and prosecuting the claims. Class certification is committed to the trial court's discretion and, following *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, courts have reached different conclusions with respect to certification of wage and hour claims, as shown by several conflicting decisions. (Compare *Lampe v. Queen of the Valley Medical Center* (2018) 19 Cal.App.5th 832, 847-852 [affirming certification denial where evidence showed that employees' ability to take meal breaks varied] with *Palacio v. Jan & Gail's Care Homes, Inc.* (2015) 242 Cal.App.4th 1133, 1138-1141 [affirming denial of class certification where plaintiff failed to prove the employer operated under a general policy or practice of not providing proper meal breaks].) Further, The Ding Doctor is positioned to assert that Plaintiff would not be able to establish that uniform policies related to the alleged wage and hour violations exist at its various locations. (Velez Decl., ¶¶ 24, 30; Co Decl., ¶¶ 10, 14-16, 19-20.)

Further, The Ding Doctor requires its employees, including Plaintiff, to sign an arbitration agreement which contains a class action waiver clause, making class action certification, absent an agreement by the Parties, untenable. Plaintiff engaged in settlement discussions mindful of the arbitration agreement and class action waiver clause, but negotiated a class action and PAGA representative action with the understanding that such a settlement was mutually beneficial to all parties. (Velez Decl., ¶¶ 6-8, 28-29; Co Decl., ¶ 18.)

F. **Information Sufficient for Court to Make Independent Determination Consideration Reasonable**

The proposed settlement is fair. Based on Plaintiff's analysis, Plaintiff estimates the potential maximum recovery in this action for the wage and hour violations totals $22,830,000.00, and Plaintiff estimates the reasonable maximum recovery in this action for the wage and hour violations totals $2,850,000.00. The $650,000.00 settlement amount represents 22.8 percent of the reasonable maximum recovery. Additionally, the $650,000.00 settlement amount represents a gross recovery of $11.40 per workweek for the putative class members. (Velez Decl., ¶¶ 26-29; Co Decl., ¶¶ 17-22.)

This settlement is a reasonable compromise of the class and PAGA claims, and is within the percentile ranges of the total available damages that have been approved in other class settlements. (See *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 ["A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable"], disapproved of on other grounds in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260; *Rebney v. Wells Fargo Bank, N.A.* (1990) 220 Cal.App.3d 1117, 1139 [settlement found to be fair and reasonable even though monetary relief provided was "relatively paltry"]; *Officers for Justice v. The Civil Service Commission* (9 Cir. 1982) 688 F.2d 615, 628 ["It 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"]; *Bellinghausen v. Tractor Supply Co.* (N.D. Cal 2015) 306 F.R.D. 245, 256-257 [wage and hour class action settlement deemed fair, adequate, and reasonable where recovery represented between 11 and 27 percent of total potential liability exposure].)

G. **Fairness of Amount Allocated to PAGA**

Given the derivative nature of the PAGA penalties, the efforts by The Ding Doctor to maintain compliant policies, as set forth in written meal period, rest break, and overtime policies contained in its employee handbook, and the court's discretion to reduce any penalty award, Plaintiff believes that the $40,000 PAGA allocation represents a meaningful settlement aimed at deterring non-compliance. (See *Davis v. Cox Communications California, LLC* (S.D. Cal. 2017) 2017 WL 1496407, * 1 [preliminarily approving $4,000 PAGA allocation in $275,000 settlement]; *Jack v. Hartford Fire Insurance Co.* (S.D. Cal. 2011) 2011 WL 4899942, * 6 [approving $3,000 PAGA allocation in $1,200,000 settlement]; *Hopson v. Hanesbrands Inc.* (N.D. Cal. 2009) 2009 WL 928133, * 9 [approving $1,500 PAGA allocation in $1,026,000 settlement].)

H. <u>The Enhancement Award to Plaintiff Is Reasonable and Should Be Awarded</u>

The settlement agreement calls for an Enhancement Award in the sum of $10,000.00 to Plaintiff, subject to the court's approval. In this case, Plaintiff was instrumental in the prosecution of this action. Plaintiff consulted with counsel regarding the factual basis for this action, provided important information that allowed counsel to conduct discovery and investigation, assisted counsel in interpreting discovery, sat for a full day deposition, and was available at all times to confer with counsel. (Velez Decl., ¶¶ 33-39; Chou Decl., ¶¶ 1-14.)

The $10,000.00 enhancement payment is intended to recognize the time and effort expended by Plaintiff on behalf of the class. Enhancement payments are routinely approved to compensate named plaintiffs for services they provide and risks they incur for participating in the litigation. (See e.g., *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-1395 [approving enhancement awards of $10,000.00 to four named class representatives].) An Enhancement Award to Plaintiff in the sum of $10,000.00 is appropriate given the time, assistance, and risk involved in bringing this action and resolution of this action.

I. <u>The Proposed Attorneys' Fees and Costs Are Reasonable</u>

Putative Class Counsel seeks, and The Ding Doctor does not oppose, an award of attorneys' fees not to exceed the amount of $216,645.00, which represents one-third of the settlement amount. The requested fees and costs are fair compensation for prosecuting this complex, risky, expensive, and time consuming litigation solely on a contingency basis. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503 [use of percentage method to calculate a fee in common fund case, where award served to spread attorneys' fee among all beneficiaries of fund falls within the trial court's discretion].) Further, as will be shown at the time of the Motion for Final Approval, Plaintiff's Counsel's requested fees are reasonable when a lodestar cross-check is performed. (*Id*. at p. 505 [trial court may conduct a lodestar cross-check to determine reasonableness of requested fees].) At the final approval hearing, Plaintiff will respectfully request that the court approve the attorneys' fees and costs. (Velez Decl., ¶¶ 40-42; Co Decl., 23-24.)

III. The Proposed Settlement Class Should Be Conditionally Certified for Purposes of Settlement Approval

Class certification is warranted where there is "a numerous and ascertainable class with a well-defined community of interest among its members" and a "class action proceeding is superior to other means for a fair and efficient adjudication of the litigation." (*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at pp. 326, 332; Code Civ. Proc., § 382.) Class certification is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." (*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 326.) The certification issue involves whether the theory of recovery advanced by the plaintiff is likely to prove amendable to class treatment. (*Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1298.) In ruling on a certification motion, a trial court's task is to determine whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Id*.) Where the determination involves "the propriety of a settlement class, as opposed to a litigation class certification," the trial court applies "a lesser standard of scrutiny." (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) The law favors settlement of lawsuits, and in particular settlement of class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. (*Neary v. Regents of the University of California* (1992) 3 Cal.4th 273, 277-281.) Here, as discussed below, the settlement of this action meets the criteria for certification for settlement purposes.

A. Numerosity

The class must be numerous in size and, although there is no fixed minimum or maximum number, the class must be so numerous that "it is impracticable to bring them all before the court." (Code Civ. Proc., § 382.) Here, the class consists of approximately 1,785 current and former non-exempt employees, or exempt employees working as location managers, regional managers, area managers and on-site supervisors (as of July 24, 2023) during the Class Period of October 25, 2020, to January 31, 2025.

B. Ascertainability

A class is ascertainable where it is possible to determine who will be bound by the judgment, as set forth by the class definition and the size of the class. (*Noel v. Thrifty Payless* (2019) 7 Cal.5th 955, 980-981, 985-986.) In this case, the proposed settlement class is ascertainable as all class members work or have worked for The Ding Doctor and are identifiable through employee personnel, timesheet, and payroll files.

C. Community of Interest

"[C]ommunity of interest embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Brinker Restaurant Corp. v. Superior Court*, *supra*, 53 Cal.4th at p. 1021; *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

Predominant common questions exist where there are some, not necessarily all, common legal or factual questions which predominate over individual questions making class-wide treatment of a dispute superior to individual litigation. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469, 473.) Here, common questions of law and fact arise from The Ding Doctor's failure to pay overtime wages and minimum wages, failure to provide rest breaks in compliance with California law, failure to provide accurate wage statements as the wage statements do not account for wages for premium penalties as required under California law, and failure to pay all wages due upon separation. The PAGA action is derivative of these Labor Code violations. Plaintiff and the class members seek the same remedies under state law. Under these circumstances, the predominant common questions requirement is established.

"[A] plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." (*Rosario v. Livaditis* (1992) 963 F.2d 1013, 1018.) In this case, Plaintiff, like all class members, worked for The Ding Doctor, and, like all class members, was subject to The

Ding Doctor's same practices and course of conduct causing overtime and minimum wage violations, rest period violations, wage statement violations, and waiting time penalties violations under the same legal theories.

D. <u>Adequacy</u>

1. Class Representative

The Plaintiff must show that he "can adequately represent the class by vigorously and tenaciously protecting the class members' interest" (*Sharp v. Next Entertainment, Inc.* (2008) 163 Cal.App.4th 410, 432) and that Plaintiff's "interests are not antagonistic to the interests of the class" (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-451). Here, Plaintiff has actively participated in the prosecution of this case, providing factual information regarding The Ding Doctor's practices. Plaintiff's claims are the same as those sought to be asserted by class members, and there is no interest Plaintiff has that is antagonistic to class members. Moreover, Plaintiff understands that he is seeking to represent the class and understands his responsibilities in that capacity. (Chou Decl., ¶¶ 1-14.)

2. Class Counsel

Class Counsel have together over 50 years' experience as practicing attorneys, with substantial experience in employment litigation, including wage and hour litigation, and have previously been certified as class counsel. Class counsel have no interests adverse to the proposed class and believe that the settlement is fair and reasonable in light of all the known facts and circumstances, the risk of significant delay, the defenses that could be asserted by The Ding Doctor both to certification and the merits, trial risk, and appellate risk. (Velez Decl., ¶¶ 44-46; Co Decl., ¶¶ 1-5.)

IV. The Proposed Class Notice is Appropriate

"The notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the option open to dissenting class members." (*Trotsky v. L.A. Federal Savings & Loan Association* (1975) 48 Cal.App.3d 134, 151-152.) "The notice must be structured to enable class members to decide whether to intervene or object, 'opt out,' or accept the settlement." (*Id.*)

Here, the notice satisfies the criteria set forth in the California Rules of Court. (Cal. Rules of Court, rule 3.766, subd. (d).) The notice briefly explains the nature of the case, lists the contentions and denials of the parties, states that the trial court will exclude a class member who makes a timely request, contains a procedure to request exclusion, advises that all members will be bound by the judgment who do not request exclusion, and informs that any member not requesting exclusion may enter an appearance through counsel. Additionally, the notice sets forth the settlement amount, the approximate individual amount each class member will receive, the requested amount of attorneys' fees to class counsel, and the requested enhancement award for the class representative. Finally, the settlement administrator will send out the notice to class members using the last known addresses and email addresses provided by The Ding Doctor and will perform skip traces to obtain correct addresses for notices returned as undeliverable and thereafter will attempt re-mailing notices where new addresses are ascertained. (Velez Decl., Ex. A, Ex. A.)

Conclusion

For the foregoing reasons, Plaintiff requests that the Court grant preliminary approval of the Settlement Agreement.

Dated: April 30, 2025

The Co Law Firm

/s/ Patrick Co

Patrick R. Co, Esq.
Attorney for Plaintiff Jackson Chou, on behalf of herself and on behalf of all persons similarly situated, and on behalf of herself, the Labor Workforce Development Agency, and similarly situated aggrieved current and former employees

Dated: April 30, 2025

Law Office of G. Martin Velez

/s/ Martin Velez

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