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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANTHONY LINGLE, individually and on behalf of all other similarly situated employees, Plaintiff, vs. CENTIMARK CORPORATION, a Pennsylvania Corporation; and DOES 1 to 100, inclusive, Defendant.	**Case No. 2:22-CV-01471-KJM-JDP** **<u>CLASS ACTION</u>** **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: January 23, 2025 Time: 10:00 a.m. Courtroom: 3 Judge: Hon. Kimberly J. Mueller Filed: December 2, 2021 FAC Filed: July 22, 2022 SAC Filed: October 7, 2022 Trial Date: None Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL STATUTES AND OTHER AUTHORITIES

I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

Plaintiff Anthony Lingle ("Plaintiff") seeks preliminary approval of a non-reversionary wage and hour class action and Private Attorneys General Act ("PAGA") settlement in the gross amount of $600,000. *See generally* Exhibit A (Class and Representative Action Settlement Agreement and Release ["Agreement"]). Plaintiff brought this class action individually and on behalf of similarly situated employees who worked for Defendant Centimark Corporation, ("Defendant") (Plaintiff and Defendant are sometimes collectively referred to as the "Parties"). *See generally* Exhibit B (Plaintiff's Operative Complaint). There are approximately 241 Class Members.

Plaintiff has alleged that Defendant failed to pay overtime wages, failed to pay minimum wages, failed to provide meal and rest periods or premiums in lieu thereof, failed to provide accurate wage statements, failed to timely pay final wages, failed to pay all owed paid sick time, and engaged in unfair competition. *See generally* Exhibit B; *see also* Declaration of Justin P. Rodriguez ("Decl. Rodriguez"), ¶¶ 2, 9. Plaintiff has also alleged Defendant is liable for civil penalties under the PAGA based on these violations. *See id.*; Exhibit C (Plaintiff's Ltr. to the Labor and Workforce Development Agency ["LWDA"] Regarding PAGA Claims). Defendant has denied all of Plaintiff's allegations in their entirety and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 5. Defendant has also denied that this case is appropriate for class certification other than for purposes of settlement. *See id.* However, subject to Court approval, the Parties have been able to compromise and settle all asserted claims as a result of extensive investigations, document and data exchanges, and extended negotiations. *See* Exhibit A. Plaintiff and Class Counsel believe the proposed Agreement is fair, reasonable, and adequate based on the investigations, discovery, employee data exchanges, negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 6, 10; Declaration of Anthony Lingle ("Decl. Lingle") ¶ 10. In this Motion, Plaintiff believes he has also addressed the issues raised in the Court's November 15, 2024, Order denying Plaintiff's prior motion for preliminary approval without prejudice. Plaintiff believes he has provided the further details and arguments requested by the Court sufficient for the Court to find the Settlement is likely to be able to approved as fair, reasonable, and adequate at final approval. *See* Decl. Rodriguez, ¶ 1.

It is well within the discretion of this Court to grant preliminary and conditional approval of the proposed settlement, which satisfies all of the criteria for preliminary settlement approval under federal law, and preliminarily and conditionally certify the settlement class. Accordingly, Plaintiff requests that the Court: (1) preliminarily approve the proposed settlement class; (2) preliminarily approve the proposed Agreement (Exhibit A) (3) set dates for distribution of the Notice of Class Action Settlement (Exhibit F); (4) set a final approval hearing and briefing schedule; (5) set a briefing schedule for Plaintiff's Motion for Attorneys' Fees and Costs, Settlement Administrator Costs, and Class Representative Enhancement Award that will be held concurrently with the final approval hearing; and (6) adopt the implementation schedule contained in the proposed order.

II. PROCEDURAL AND LITIGATION HISTORY

Plaintiff filed a class action complaint against Defendant in Sacramento County Superior Court on approximately December 2, 2021. *See* Decl. Rodriguez, ¶¶ 2-3. Plaintiff exhausted administrative remedies under the PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a), (c)[1]; Decl. Rodriguez, ¶ 3. Thereafter, Plaintiff filed a First Amended Class Action Complaint on approximately July 22, 2022, to include the PAGA claim. *See* Decl. Rodriguez, ¶ 3. The Parties litigated the case and engaged in discovery in the state court proceedings until Defendant removed the action to federal court on or about August 23, 2022. *See* Decl. Rodriguez, ¶ 3. After removal, Plaintiff filed a Second Amended Complaint on October 7, 2022, to address several issues Defendant raised in meet and confer discussions regarding the sufficiency of the pleadings. *See id.* However, disputes remained and Defendant filed a partial motion to dismiss and strike, which the Court granted in part and denied in part. Prior to further amending the operative complaint, the Parties agreed to mediate and stay the litigation pending mediation. *See id.* The Parties were able to resolve the claims at mediation as a result of a mediator's proposal. *See id.* at ¶¶ 4, 8. As such, the Second Amended Complaint remains the operative pleading in this matter. *See* Exhibit B. *See id.*

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[1] Although the PAGA was recently amended, the amendments specifically state they are applicable to cases filed after June 19, 2024. *See* Cal. Lab. Code § 2699(v)(1). Because the PAGA notice predates this, all references to the PAGA in this Motion will be based on the statutory numbering applicable prior to the July 1, 2024, amendment.

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiff thoroughly investigated the issues affecting certification, the merits, and potential damages. *See id.* at ¶¶ 6-10; Decl. Lingle, ¶¶ 3, 5-7. Plaintiff worked during the time all of Defendant's policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. *See* Decl. Lingle, ¶¶ 2, 5. The Parties engaged in written discovery, which involved a substantial amount of time meeting and conferring on discovery disputes. *See* Decl. Rodriguez, ¶ 7. The formal discovery, as well as the informal discovery conducted in connection with mediation, included an exchange of documents and review of a representative sample of Class Members' wage and hour data, such as timecards, paystubs, payroll data, and relevant policies for the entirety of the statute of limitations applicable to the asserted claims. *See id.* Several hundred pages of documents were produced in discovery as well as numerous electronic payroll and time card report excel files, which contained a total of more than 104,000 rows of data. In conducting the merits and damages analysis, Plaintiff had to cross reference data from several different spreadsheets at a time over the course of the statutory period to appropriately and accurately analyze the information. The discovery covered all aspects of the claims, including certification, the merits, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour policies at issue, and manageability concerns at trial, among other relevant areas. *See id.* The information allowed Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's contentions and create an accurate damages model to assess the reasonableness of any settlement. *See* Decl. Rodriguez, ¶¶ 7, 9-10.

IV. NEGOTIATION AND PROPOSED SETTLEMENT

a. <u>Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations</u>

The final settlement occurred only after extended, arm's length negotiations. Over the course of approximately three (3) years, Plaintiff has been investigating the claims and discussing with Defendant's counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 3, 5-8. The Parties exchanged substantial amounts of information and legal analysis in connection with these discussions. *See id.* It was only after these extended discussions, which included a full day mediation with Lou Marlin, Esq., that the Parties were able reach a resolution on the essential terms of the

Agreement, which only occurred after a mediator's proposal to bridge the Parties' opposing positions. *See id.* ¶ 8. After reaching resolution on the essential terms at mediation, the Parties continued to negotiate additional terms relevant to settlement administration and notice procedures, reaching agreement on all terms on November 20, 2023. *See id.* at ¶¶ 4, 8; *see, generally*, Exhibit A.

b. <u>The Terms of the Agreement</u>

1. Class Members will include all non-exempt employees, excluding any individuals employed solely as office or administrative staff, who have or continue to work for Defendant in California, and who have not signed, or opted out of, an arbitration agreement, during the Class Settlement Period (July 11, 2018, to November 19, 2023). PAGA Members will include all non-exempt employees, excluding any individuals employed solely as office or administrative staff, who have or continue to work for Defendant in California during the PAGA Settlement Period (May 17, 2021, to November 19, 2023). *See* Exhibit A, at pgs. 2 & 7, ¶¶ 5, 7, 24, 27.

2. Defendant will pay the Gross Settlement Amount of $600,000, which is exclusive of the employer's share of payroll taxes. *See id.* at pg. 5, ¶ 16. No portion of the Gross Settlement Amount will revert to Defendant. *See id.* at pg. 21, ¶ 56. PAGA Members will be paid their share of the PAGA Payment regardless of whether they opt out of being Class Members. *See id.* at pgs. 19-20, ¶ 53.e.

3. Up to $10,000 will be paid to Plaintiff as a Class Representative Enhancement Award. This amount will be in addition to any amount Plaintiff may be entitled to as a Class Member and PAGA Member under the terms of the Agreement. *See id.* at pgs. 3, 21, & 26, ¶¶ 9, 56, 60.

4. Subject to Court approval, the Parties have selected Apex Class Action, LLC, to act as the Settlement Administrator, who has provided a maximum cost estimate of $7,766.25. *See* Exhibit D at pg. 2 (Apex Class Action, LLC, Quote); Exhibit A, at pg. 12, ¶ 41; Decl. Rodriguez, ¶ 22.

5. The Parties agree that $140,000 of the Gross Settlement Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to PAGA Members. *See* Exhibit A at pgs. 5-7, ¶¶ 17, 20, 26. Given the risk of proving the claims on the merits, the derivative nature of the penalties, the efforts by Defendant to maintain compliant policies and take corrective action, the presence of what may likely be deemed good faith disputes, and the Court's discretion to reduce any penalty award,

Plaintiff believes the $140,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring non-compliance given the facts of this case. *See* Decl. Rodriguez, ¶¶ 6-10; *see also Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving $0 allocation to the resolution of PAGA claims based on their being disputed and being part of a class settlement which was evaluated based on the terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving $10,000 PAGA settlement allocation where total PAGA penalty exposure was approximately $5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc'ns California, LLC*, 2017 WL 1496407, *1 (S.D. Cal. 2017) (preliminarily approving $4,000 PAGA allocation in $275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 WL 12571448, *5 (S.D. Cal. 2014) (approving $2,500 PAGA allocation when attorneys' fees award alone amounted to $200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 WL 4899942, *6 (S.D. Cal. 2011) (approving $3,000 PAGA allocation in $1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 WL 2196104, *2 (S.D. Cal. 2010); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *1, *9 (N.D. Cal. 2009) (approving $1,500 PAGA allocation in $1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 WL 714367, *13 (E.D. Cal. 2017) (approving $100,000 PAGA allocation in $3,950,000 gross settlement amount allocated to California class even though PAGA exposure was calculated at $53,600,000, or 0.2% of total estimated potential value); *Garcia v. Gordon Trucking, Inc.*, 2012 WL 5364575, *6-*7 (E.D. Cal. 2012) (approving $10,000 PAGA allocation in a $3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, *14 (E.D. Cal. 2012) ($10,000 PAGA allocation from $2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) ($10,000 PAGA allocation from $6,900,000 settlement fund).

6. The Parties agree that up to one-third (1/3) of the Gross Settlement Amount ($200,000) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant will not oppose any application for attorneys' fees so long as it is within this threshold. *See id*. at pg. 26, ¶ 61. Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as

approved by the Court in an amount not to exceed $15,000. *See id.*; *see also* Exhibit E (Plaintiff's Itemized Costs). The proposed notice to be sent to Class Members will state this information. *See* Exhibit F at pg. 3.

7. Any allocated amounts under the Agreement for Settlement Administrator Costs, Class Representative Enhancement Award, and attorney's fees and costs that are not ultimately awarded by the Court will remain part of the Net Settlement Amount and be paid out to Participating Class Members on a pro rata basis as set forth in the Agreement. *See* Exhibit A, at pgs. 26 & 28, ¶¶ 60-61, 65. These amounts will be paid out from the Gross Settlement Amount, not in addition to the Gross Settlement Amount. *See id.* at pgs. 5-6, ¶¶ 16, 21.

8. Class Members who fail to timely opt-out of this settlement will waive all Released Class Claims as set forth in the Agreement. *See* Exhibit A at pgs. 7-8, 16, & 19, ¶¶ 28, 35, 49, 53.e. PAGA Members will waive all Released PAGA Claims as set forth in the Agreement regardless of whether they opt out of being a Class Member. *See id.* at pgs. 10, 16, & 20, ¶¶ 36, 50, 53.e.

9. For any portion of the Net Settlement Amount or PAGA Payment allocated to Participating Class Members and/or PAGA Members that is not claimed by them by cashing their respective settlement checks within 180 calendar days of issuance, that remaining amount shall be donated to Salvation Army Sacramento Metro under the doctrine of *cy pres*. *See* Exhibit A at pg. 28, ¶ 64. Because the Agreement provides for all funds such that there is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiary promotes the law consistent with the objectives and purposes underlying the lawsuit as it is a non-profit aimed at assisting individuals obtain gainful employment through workforce development and unemployment services. *See id.* at 722-724; *see also* Decl. Rodriguez, ¶¶ 25-26.

c. <u>Allocation of Settlement Funds</u>

Payment to Class Members and PAGA Members of their Individual Settlement Payment will <u>not</u> require the submission of a claim form. A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, Class Representative Enhancement Award, the Settlement Administrator Costs, and the PAGA Payment. Each Class Member's proportionate share will be determined by dividing the Net Settlement Amount by the Workweek Total of all Class Members to get a Workweek Value. Then each Participating Class Members workweeks will be multiplied by the Workweek Value to establish their Individual Settlement Payment. *See* Exhibit A at pgs. 21 & 24, ¶¶ 56, 58(i). Each PAGA Member's share of the PAGA Payment will be determined by dividing the 25% portion of the PAGA Payment, *i.e.* the aggregate of all Individual PAGA Payments, by the total number of pay periods worked by PAGA Members during the PAGA Settlement Period to get a per pay period value. Then each PAGA Member will have their respective number of pay periods worked during the PAGA Settlement Period multiplied by the per pay period value to arrive at their Individual PAGA Payment. *See id.* at pg. 25, ¶ 59. Twenty percent (20%) of Class Members' Individual Settlement Payment will be allocated for payment of disputed wages and eighty percent (80%) for disputed statutory penalties and interest. *See id.* at pgs. 26-27, ¶ 62. 100% of PAGA Members' Individual PAGA Payments will be allocated as penalties. *See id.* No portion of the Gross Settlement Amount will revert to Defendant. *See id.* at pgs. 21-22, ¶ 56.

V. ARGUMENT

a. <u>Class Action Settlements and PAGA Settlements are Subject to Court Review and Approval</u>

A class action may not be dismissed, compromised, or settled without Court approval and the decision to approve or reject a settlement is committed to the Court's sound discretion. *See* Fed. R. Civ. Proc. 23(e). Similarly, settlements under the PAGA require Court review and approval. *See* Cal. Lab. Code § 2699(l). Preliminary approval is appropriate when it has been shown that the Court will likely be able to (1) approve the proposed settlement under Rule 23(e)(2) as well as (2) certify the class. "Under Rule 23(e)(1), the court must direct notice to all class members who would be bound by the settlement proposal if the parties show that 'the court will likely be able to:' (i) approve the proposal under Rule 23(e)(2)'s fair, reasonable, and adequate standard; and (ii) certify the proposed class." *Martinez v. Knight Transportation, Inc.*, 2023 WL 2655541, *6 (E.D. Cal. 2023); Fed. R. Civ. P. 23(e)(1). While the standards for reviewing proposed class settlements are clear, "their application is painstakingly fact-specific and hampered by the much greater knowledge of the parties as to the give-and-take of the bargaining process. Judicial review also takes place in the shadow of the reality that rejection of a settlement creates not only delay but also a state of uncertainty on all sides, with whatever gains were potentially achieved for the putative class put at risk." *See Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). There is a "strong judicial policy that favors settlement, particularly where complex class action litigation is concerned." *In re Hyundai and Kia Fuel Economy Litigation*, 926 F.3d 539, 556 (9th Cir. 2019).

b. The Agreement Should Be Preliminarily Approved Because The Terms of The Agreement Are Fair, Reasonable and Adequate

A Court may grant preliminary approval of a proposed class settlement if it finds the settlement is "fair, reasonable, and adequate after considering whether: (1) the class representatives and class counsel have adequately represented the class; (2) the proposal was negotiated at arm's length; (3) the relief provided for the class is adequate; and (4) the proposal treats class members equitably relative to each other. *See* Fed. R. Civ. Proc. 23(e)(2); *see also* Fed. R. Civ. P. 23, Advisory Committee's Notes to 2018 Amendment (explaining factors listed in Rule 23(e)(2) not intended to "displace" factors identified in existing judicial decisions).

i. The Class Representative and Class Counsel Adequately Represented the Class

Class Counsel has extensive experience and has been found by several Courts to be adequate class counsel in numerous complex wage and hour class actions. *See* Decl. Rodriguez ¶¶ 13-19. Because Plaintiff shares a common nexus of legal and factual issues with Class Members, he has the same interest in pursuing the most beneficial result and has assisted his counsel in obtaining this result over a period of nearly three (3) years. *See* Decl. Rodriguez, ¶¶ 7-8; Decl. Lingle, ¶¶ 3-7. Plaintiff and his counsel do not have any conflicts with class members. *See* Decl. Rodriguez, ¶ 3; Decl. Lingle, ¶¶ 2-7. Plaintiff and his counsel have continually taken steps to investigate the claims in this case, analyze information and documents, and determine potential damages. Plaintiff and his counsel have thoroughly investigated the claims in this case through informal and formal discovery, including interviewing Class Members, reviewing and analyzing pay records for a representative sample of Class Members, and reviewing several hundred pages of documents produced by Defendant and numerous payroll spreadsheets. *See* Decl. Rodriguez, ¶¶ 6-7. It was only after nearly three (3) years of thorough investigation, discovery, an extensive damages analysis, a full day of mediation and mediator's proposal, as further negotiations regarding terms relevant to settlement administration and notice procedures that this settlement was negotiated and final. *See* Decl. Rodriguez, ¶¶ 3-4, 6-10. Thus, Plaintiff and his counsel have adequately represented the class.

ii. The Settlement is a Result of Serious, Informed, Non-Collusive Arm's Length Negotiations Between the Parties

While the mere presence of a neutral mediator will not alone be sufficient to establish a proposed settlement is fair, reasonable, and adequate, the assistance of a neutral mediator has been repeatedly recognized as evidence that a settlement process was, in fact, non-collusive. *See, e.g., Villegas v. J.P. Morgan Chase & Co.*, 2012 WL 5878390, *6 (N.D. Cal. 2012); *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 948 (9th Cir. 2011) (noting the presence of a neutral mediator is "a factor weighing in favor of a finding of non-collusiveness"); *Wilson v. Metals USA, Inc.*, 2021 WL 516585, *3 (E.D. Cal. 2021) ("The court was satisfied the settlement was the product of an arms-length negotiation, especially given that the parties participated in private mediation with two experienced mediators"). A finding that the settlement process was non-collusive is further supported where the parties engaged in sufficient formal and/or informal discovery to make informed decisions regarding the settlement. *See Villegas*, 2012 WL 5878390, *6; *Kang v. Credit Bureau Connection, Inc.*, 2023 WL 6811994, *5 (E.D. Cal. 2023); *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 454 (E.D. Cal. 2013).

In this case, the Parties were in possession of all necessary information during the negotiations and mediation facilitated by a neutral mediator. *See* Decl. Rodriguez, ¶¶ 7-8. Class Counsel conducted investigations and engaged in formal and informal discovery, including an exchange of documents, records, and company policies that covered all aspects of the class claims and sought information regarding the class members to ensure that Plaintiff could determine liability and create an accurate damages model. *See* Decl. Rodriguez, ¶¶ 6-10. As a result, Plaintiff was able to make a reasonable estimation of Defendant's potential liability against which the results of any settlement could be compared. *See id.* The settlement now before the Court was reached at a stage where the parties had a clear view of the strengths and weaknesses of claims and defenses at issue sufficient to support the settlement.

There was no collusion in reaching the proposed class settlement as the negotiations were adversarial and contentious, although still professional in nature, at all times. *See* Decl. Rodriguez, ¶ 8. There are no signs of the collusion present in the Agreement. First, no portion of the Gross Settlement Amount will revert to Defendant for any reason. *See* Exhibit A, at pgs. 21-22, ¶ 56; *Rodriguez v. Penske Logistics, LLC*, 2019 WL 246652, *10 (E.D. Cal., 2019). Second, any attorney's fees and costs, Enhancement Payment, and Settlement Administrator Costs are to be paid from the Gross Settlement Amount, not on top of the Gross Settlement Amount. *See id.*; *see also Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 961 n.5 (9th Cir. 2009) (noting "this scenario does not signal the possibility of collusion"). Third, any amounts allocated for potential attorney's fees and costs, Settlement Administrator Costs, and any Enhancement Payment that are not approved by the Court will go back to the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. *See* Exhibit A, at pgs. 26 & 28, ¶¶ 60-61, 65; *United States ex rel. Terry v. Wasatch Advantage Group, LLC*, 2024 WL 4582295, *4 (E.D. Cal. 2024) (noting the fact that no awards would be paid before being approved by the court as reasonable supported a finding that any risk of collusion was low); *see also In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (leaving incentive awards for final approval of the court suggests lack of conflict of interest).

The amount allocated for potential attorney's fees and costs, an Enhancement Payment, and Settlement Administrator Costs, is not disproportionate to the value provided by the Settlement or suggestive of collusion in the settlement process. First, the amounts allocated are all within amounts that have been approved by District Courts, including the Eastern District. *See Pena v. Taylor Farms Pacific, Inc.*, 2021 WL 916257 *5 (E.D. Cal. 2021) (approving 35 percent award in wage and hour class action because case had been hard-fought and lasted many years); *Barbosa v. Cargill Meat Sol'ns Corp.*, 297 F.R.D. 431, 450 (E.D. Cal. 2013) (collecting authority supporting 33 percent award); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010) (same); *Acosta v. Evergreen Moneysource Mortgage Company*, 2019 WL 6051117, *18 (E.D. Cal. 2019) (awarding $10,000 as an enhancement payment to the class representative and collecting cases). Class Counsel was recently awarded 35% of a common fund settlement in the Eastern District at the same rates used to calculate their lodestar in this matter. *See Insixiengmay v. Hyatt Corporation*, 2024 WL 4454035, *2 (E.D. Cal.

2024). Second, when considering the value provided by the Settlement in comparison to any potential attorney's fees award, the amount paid to the LWDA should not be discounted. The amount paid to the LWDA is not some mere administrative fee. It goes towards the "enforcement of labor laws ... and for education of employers and employees about their rights and responsibilities" under the California Labor Code. *See O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1134 (N.D. Cal. 2016). After the proposed attorney's fees and costs, Enhancement Payment, and Settlement Administrator Costs ($240,000) are deducted from the Gross Settlement Amount, the remaining value provided by the Settlement is $360,000, not $255,000. *See* Exhibit A, at pgs. 21-22, ¶ 56. This amount represents a lesser proportional share of the settlement (in absolute terms and in comparison to the total benefit provided to Class Members and the LWDA) than has been approved in other cases in the Eastern District. For example, in *Greer v. Dick's Sporting Goods, Inc.*, 2020 WL 5535399 (E.D. Cal. 2020), the Court awarded $966,667 in attorney's fees (1/3), $200,000 in attorney's costs, $65,000 in administrator costs, and $10,000 for an enhancement payment to the class representative. *See Greer v. Dick's Sporting Goods, Inc.*, 2020 WL 5535399, *4-*6, *8, *11 (E.D. Cal. 2020). These deductions totaled $1,241,667, which was 42.8% of the total settlement ($2,900,000) and 74.9% of the amount available for distribution to class members ($1,658,333). In the present case, the $240,000 in deductions represent 40% of the total settlement ($600,000) and 66.7% of the amount available for distribution to Class Members and the LWDA ($360,000). Thus, the fees and costs allocated are not disproportionate to the benefits provided under the Settlement nor are they indicative of collusion.

iii. The Relief Provided For the Class Is Adequate

To make this determination the Court should take into account: (1) the costs, risks, and delay of trial and appeal, (2) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims, (3) the terms of any proposed award of attorney's fees, including timing of payment, and (4) any agreement required to be identified under Rule 23(e)(3).

A. The Settlement Is Adequate In Light Of Potential Costs, Risks, and Delays

A review of the Agreement's terms in light of potential risks, costs, and delays does not give rise to any doubts about its fairness. Class Counsel carefully took into consideration risks involved with each of the claims, including, but not limited to, whether Plaintiff would be successful in proving certain types of pay should have been incorporated into the regular rate of pay, the viability of off the clock and travel time pay claims, the viability of meal and rest period claims in light of Defendant's timekeeping software and its effects on the presumption of violations based on payroll records, whether recovery of wage statement and waiting time penalties may be precluded by a good faith defense by Defendant, and the Court's discretion to reduce any PAGA penalties. *See* Decl. Rodriguez, ¶¶ 9-10. Class Counsel also carefully evaluated the prospect of potential class certification issues, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals in agreeing to the proposed settlement, and the potential PAGA manageability issues. *See id.* at ¶¶ 5-10.

Based on the records and facts of this case, Plaintiff has secured a gross recovery of approximately 10.63% to 37.49% and a net recovery of approximately 5% to 16% of the claims' more realistic range of maximum recovery. *See* Decl. Rodriguez, ¶ 10. Additionally, on average class members will receive a net award of approximately $912.86. *See id.* This settlement is a reasonable compromise of the claims and is within the percentile ranges of the total available damages that have been approved in other class settlements. *See Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766, *2, *10 (C.D. Cal. 2017) (approving a settlement where the net recovery to class members was approximately 7.5% of the projected maximum recovery amount [$210,500/$2,750,000]); *Avila v. Cold Spring Granite Co.*, 2018 WL 400315, *2, *6 (E.D. Cal. 2018) (approving a settlement with a gross recovery of 11% of the projected maximum damages available [$500,000/$4,441,633.60]) and a net recovery of approximately 6.7% of the projected maximum recovery [$297,332.98/$4,441,633.60]); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015) (approving a settlement where the gross recovery was approximately 8.5% of the projected maximum recovery [$1,000,000/$11,565,677]).

Defendant's evidence in support of removal and Plaintiff's election not to challenge the removal does not undermine the exposure analysis in any way. The scope of individuals analyzed in Defendant's notice of removal is larger than the defined class. Under the Agreement, "Class Member" excludes any individuals employed solely as office or administrative staff and any other non-exempt employee subject to an arbitration agreement. *See* Exhibit A, pg. 2, ¶ 5. "PAGA Member" similarly excludes office and administrative staff. *See id.* at pg. 7, ¶ 24. Thus, while Defendant's removal analysis was based on 469 non-exempt employees and 26,127 weekly pay periods, there are only 241 Class Members who worked 11,964 weekly pay periods. *Compare* Decl. Rodriguez, ¶ 9 *with* ECF Doc. No. 11, pg. 3, ¶ 7 (Decl. of Ariel Kumpinsky ISO Deft. Notice of Removal). Additionally, the amount in controversy for removal does not take into account the impact of discovery or legal defenses to the value of claims. *See Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1198 n. 1 (9th Cir. 2015); *Riggins v. Riggins*, 415 F2d 1259, 1261-1262 (9th Cir. 1969). Yet that is precisely the type of analysis required when evaluating a proposed class settlement. *See Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) ("The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators"); *Rodriguez*, 563 F.3d at 965 ("In reality, parties, counsel, mediators, and district judges naturally arrive at a reasonable range for settlement by considering the likelihood of a plaintiffs' or defense verdict, the potential recovery, and the chances of obtaining it, discounted to present value"). Rather than risk a potentially extended period of delay in challenging the removal, Plaintiff elected to remain in federal court. *See Acosta v. Evergreen Moneysource Mortgage Company*, 2017 WL 3433205 (E.D. Cal. 2017) (remand motion filed 3/17/17, resolved 8/10/2017); *Gil v. Outback, Inc.*, 2023 WL 8433682 (E.D. Cal. 2023) (remand motion filed 1/21/22, resolved 12/5/23).

B. Plaintiff's Method of Distributing Relief Will Be Effective

It is not required that Class Members be given actual notice of a class settlement; instead, the best practicable notice under the circumstances is all that is required. *See Silber v. Mabon*, 18 F.3d 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017); *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, *12-14 (N.D. Cal. 2017); *Wright v. Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir. 1994), the Court rejected a class member's argument that he had not received due process because he did not receive notice until after the opt out period, finding that, so long as the notice process utilized is the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra*

Foods, Inc., 844 F.3d 1121 (9th Cir. 2017). With regard to any potential for undeliverable notice mailings, the Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members who did not receive actual notice due to their mailings being deemed undeliverable were still properly held to be part of the class settlement because they received the best notice practicable under the circumstances. *See Rannis v. Recchia*, 380 F. App'x at 650-651.

Under the Agreement, Plaintiff proposes using an exhaustive method to ensure the best practical means possible is used to provide notice and payment to the class. Defendant will provide the Settlement Administrator with Class Members' names, last known address, and social security numbers ("Class Information" or "Class Data" under the Agreement). The Settlement Administrator will then update this information by doing an address trace for each individual. The notices will be sent to Class Members via first class mail. If any notices are returned as undeliverable, further investigation will be performed and the notices will be re-mailed. Checks will be sent to the addresses obtained through the notice process and after class members have had an opportunity to update their addresses with the Settlement Administrator if necessary. *See* Exhibit A at pgs. 19-21, ¶¶ 53.e.-53.f; Exhibit F. This notice method is regularly utilized in wage and hour class actions and similar to the one approved in *Rannis*. Thus, the proposed procedures satisfy due process and should be approved in this case.

C. The Relief Is Adequate In Light of The Proposed Award of Attorneys' Fees And Timing of Payment

As noted above, the amount allocated for attorneys' fees is within the ranges approved by other District Courts, any amounts not approved will be added back to the Net Settlement Amount, the amount is proportional to the benefit provided under Agreement, and the Agreement is not contingent on the full fee allocation being awarded. *See, Supra,* Section V.b.ii, 10:3-11:21; *see also Yanez v. HL Welding, Inc.*, 2022 WL 788703, *12 (S.D. Cal. 2022) (collecting California District Court wage and hour class action cases awarding 1/3 of the gross settlement for attorney's fees). In the Court's November 15, 2024, Order, it stated it "could grant preliminary approval with the understanding that any fees not awarded would revert to the class" in discussing its concerns about the allocated amounts for attorney's fees. *See* ECF Doc. 47, 11:21-22, 12:1-3. The Agreement says just that: any amounts not awarded will be added back to the Net Settlement Amount for distribution to Class Members on a pro rata basis. *See* Exhibit A, at pgs. 26 & 28, ¶¶ 60-61, 65.

This is not a case where Plaintiff filed his complaint in state court and was immediately removed to federal court. The Parties litigated this matter in state court for nearly a year before being removed to federal court under the Class Action Fairness Act. *See* Decl. Rodriguez, ¶ 3. Plaintiff did engage in formal discovery and substantial informal discovery related to mediating the claims. *See* Decl. Rodriguez, ¶¶ 6-10. Plaintiff has provided authority that common fund fee awards of 1/3 are within accepted ranges, has provided authority and factual detail demonstrating that the potential fee award in this case is not disproportionate to the benefit provided to Class Members and the LWDA, and basic information regarding the hours spent litigating the case and the lodestar based on judicially approved rates. *See*, *Supra*, Section V.b.ii, 10:3-11:21; *see also Yanez*, 2022 WL 788703, *12; Decl. Rodriguez, ¶ 21. All payments are being issued simultaneously and no preference is given to payment of attorney's fees and costs over other payments. *See id.* Exhibit A, pgs. 23-24, ¶ 57. Based on these facts, it is clear the relief is adequate in light of the proposed award of attorneys' fees and timing of payment. However, Plaintiff also seeks to defer any determination on such amounts to final approval, consistent with how Courts have addressed the matter in the Eastern District and other jurisdictions. *See, e.g., Greer v. Dick's Sporting Goods, Inc.*, 2019 WL 4034478, *5-*7 (E.D. Cal. 2019) (granting preliminary approval but deferring ultimate decision on fees and incentive awards); *Hale v. Manna Pro Prod, LLC*, 2020 WL. 3642490, *11 (E.D. Cal. 2020) (same); *Avery v. Akima Support Operations*, 2021 WL 3579197, *8 (E.D. Cal., 2021) (same). Consistent with applicable case law, Class Counsel will file a motion for attorney's fees and costs, an Enhancement Payment, and Settlement Administrator Costs at least fifteen calendar days before the end of the notice period providing further authority and more detailed analysis as has been done in prior cases. *See, generally, Acosta*, 2019 WL 6051117; *Insixiengmay*, 2024 WL 4454035.

iv. The Settlement Treats Class Members Equitably Relative to Each Other

Class Members are all subject to the same distribution formula to determine their share of the Net Settlement Amount. *See* Exhibit A, at pgs. 24-25, ¶ 58. Thus, there is no difference in treatment between them under the terms of the Agreement. Although class members may ultimately receive different amounts under the Agreement, this is not a sufficient reason to deny settlement approval as it is appropriate to account for potential differences in the amount of damages suffered by class members and the risks associated with the various asserted claims. *See Lane v. Facebook, Inc.*, 696 F.3d 811, 823-825 (9th Cir. 2012). To the extent a Class Member worked for Defendant for a longer period of time, they would have potentially been subject to more violations. Thus, it is entirely reasonable to tie the amount allocated to any individual Class Member to their length of employment.

c. <u>Preliminary and Conditional Approval of the Settlement Class is Appropriate</u>

To proceed as a class action it must be found that "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. Proc. 23(a). Additionally, in cases seeking certification under Federal Rules of Civil Procedure 23(b)(3), the questions of law or fact must predominate over questions affecting individual members and a class action must be superior to other methods for fairly and efficiently adjudicating the controversy. *See* Fed. R. Civ. Proc. 23(b)(3); *Sciortino v. PepsiCo, Inc.*, 2016 U.S. Dist. LEXIS 83937, *10 (N.D. Cal. 2016). Public policy favors the use of class actions such that "[a]ny doubts regarding the propriety of class certification should be resolved in favor of certification." *Wixon v. Wyndham Resort Dev. Corp.*, 2009 U.S. Dist. LEXIS 100451, *5 (N.D. Cal. 2009); *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015). It is a procedural question; it does not ask whether an action is legally or factually meritorious. *See Amgen, Inc. v. Connecticut Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1194-1195 (2013); *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 983 n.8 (9th Cir. 2011). The parties agree that, for the purposes of settlement, the class should be certified. *See* Exhibit A at pg. 30, ¶ 70.

i. Numerosity

A class with more than forty putative members is presumed to satisfy the numerosity prerequisite. *See Romero v. Producers Dairy Foods, Inc.*, 235 F.R.D. 474, 485 (E.D. Cal. 2006); *In re Scorpion Techs., Inc. Sec. Litig.*, 1994 U.S. Dist. LEXIS 21413, *10 (N.D. Cal. 1994). In the present case, there are approximately 241 Class Members employed across northern and southern California, which vastly exceeds what other Courts have found to be sufficient for satisfying the numerosity requirement. *See id.* Thus, the numerosity requirement has been met.

ii. Commonality, Typicality, and Predominance

The commonality element is construed liberally, not requiring every issue of law or fact to be common. *See In re ConAgra Foods, Inc.*, 90 F.Supp.3d 919, 972-73 (C.D. Cal. 2015); *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1019-1020 (9th Cir. 1998); *Jimenez v. Allstate Ins. Co.*, 2012 U.S. Dist. LEXIS 65328, *17 (C.D. Cal. 2012). Similarly, the typicality element is permissively construed, only requiring the representative's claims to be "reasonably co-extensive with those of absent class members; they need not be substantially identical." *See Hanlon*, 150 F.3d at 1020.

The question of predominance begins with the elements of the underlying cause of action and then considers whether those elements are capable of being proven by answers to questions common to the class. *See Rica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 810 (2011); *Lilly v. Jamba Juice Co.*, 308 F.R.D. 231, 241 (N.D. Cal. 2014); *Wixon*, 2009 U.S. Dist. LEXIS 100451, *20-21. The existence of "some variation among the individual employees . . . do not defeat predominance." *See Alba v. Papa John's USA*, 2007 U.S. Dist. LEXIS 28079, *30 (C.D. Cal. 2007). This is especially true where the focus of the conduct alleged to be unlawful is on the defendant. *See Alba*, 2007 U.S. Dist. LEXIS 28079, *31 (finding that while an overtime exemption was a fact intensive inquiry, it does not defeat predominance due to the actual focus on defendant's conduct). For example, the presence of unlawful policies or practices will support a finding of predominance. *See, e.g., Tierno v. Rite Aid Corp.*, 2006 U.S. Dist. LEXIS 66436 (N.D. Cal. 2006). Challenges to the plaintiff's legal theories and doubts regarding the plaintiff's ability to prove the claims at trial are irrelevant to determining predominance. *See United Steel, Paper & Forestry, Rubber, Mfg. v. ConocoPhillips Co.*, 593 F.3d 802, 809 (9th Cir. 2010). Similarly, Courts have found that "individual questions about the number of hours worked, wages earned, and compensation paid . . . will not defeat certification." *Gomez v. Rossi Concrete, Inc.*, 270 F.R.D. 579, 595 (S.D. Cal. 2010). Nor will individualized damages issues act as a basis to deny certification. *See Leyva v. Medline Industries, Inc.*, 716 F.3d 510, 513-514 (9th Cir. 2013) (reversing a denial of certification based on individual issues in determining damages).

In the present case, questions of law or fact are common to the class and also predominate over any potential individualized issue. Plaintiff's theories of recovery are based on allegedly common policies and practices of Defendant, *i.e.*, failing to include the value of bonuses and zone pay into the regular rate of pay for premium wage payments (overtime, meal and rest period premiums, sick leave wages, etc.), failing to pay for all hours worked as a result of off-the-clock travel time, work while clocked out during meal periods, unpaid time due to rounding, and the failure to reimburse for cell phone expenses incurred in connection with their being used for work purposes. The waiting time penalty and wage statement penalty claims are entirely derivative.

Claims similar to Plaintiff's have been found to be sufficient for class certification in several cases. *See, e.g., See Magadia v. Wal-Mart Assocs.*, 2018 U.S. Dist. LEXIS 4715 (N.D. Cal. 2018) (certifying a class action for meal period premiums paid at an employee's regular rate of pay); *Leyva*, 716 F.3d at 513; *Snipes v. Dollar Tree Distrib.*, 2017 U.S. Dist. LEXIS 195460, *14-16 (E.D. Cal. Nov. 27, 2017). Certification on this theory will also support certification of waiting time penalty and wage statement claims as derivative violations. *See, e.g. Jimenez*, 2012 U.S. Dist. LEXIS 65328, *67-68; *Lubin v. Wackenhut Corp.*, 5 Cal.App.5th 926, 958-960 (2016) ("First, the question whether Wackenhut's wage statements contained the required elements under Labor Code section 226, subdivision (a) is a common question, and Labor Code section 226, subdivision (e)(2)(B)(i) clarifies that injury arises from defects in the wage statement, rather than from a showing that an individual experienced harm as a result of the defect . . . Second, because plaintiffs' meal and rest period claims are suitable for class treatment, their theory that the wage statements failed to include premium wages earned for missed meal and rest periods also is suitable for class treatment"); *Pena v. Taylor Farms Pac., Inc.*, 305 F.R.D. 197, 223 (E.D. Cal. 2015) ("Because the claims of this subclass [regarding waiting time penalties] that may proceed are entirely derivative of the meal break claims of the mixed hourly worker subclass, they meet or fail to meet the commonality and predominance requirements to the same extent"). It is the lawfulness of Defendants' policies and practices themselves that are at issue, which renders certification appropriate. *See Brinker Restaurant Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1033 (2012) (finding such determinations to be "the sort routinely, and properly, found suitable for class treatment"). Plaintiff's claims are typical of the class members claims. *See* Exhibit B; Decl. Lingle ¶ 3.

Plaintiff was subjected to, and experienced, the same policies and practices being alleged to be unlawful. *See id.* As a result, the basis for Plaintiff's claims and the types of remedies sought will be similar amongst all Class Members. Plaintiff's claims are, therefore, reasonably co-extensive with those of absent class members. *See* Exhibit B; Decl. Lingle ¶ 3.

iii. The Adequacy Requirement is Met

To determine adequacy, answers to the following questions must be given: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 943 (finding no conflict because there were no structural differences in the claims of the representative and other class members under the settlement agreement and the enhancement awards were not conditioned on the representative's approval of the settlement). As to the second question, "[t]he relevant inquiry is whether the plaintiffs maintain a sufficient interest in, and nexus with, the class so as to ensure vigorous representation." *See id.* In the present case, Plaintiff and Class Members are subject to the same distribution formula based on weeks worked. This does not structurally favor Plaintiff in any way. *See* Exhibit A at pgs. 24-25, ¶ 58. Neither Plaintiff nor his counsel have any conflicts with Class Members and have conducted an exhaustive review and analysis of the claims to obtain a beneficial result for the class. *See* Decl. Lingle ¶¶ 2-7; Decl. Rodriguez ¶¶ 3, 6-10. For the same reasons discussed above regarding typicality, Plaintiff shares a common nexus of legal and factual issues with the class ensuring they have the same interest in pursuing the most beneficial results possible in this case. Additionally, Class Counsel are experienced and have been found by several Courts to be adequate class counsel in numerous complex wage and hour class actions. *See* Decl. Rodriguez ¶¶ 13-19. Thus, Plaintiff and Class Counsel are adequate representatives of the settlement class members.

iv. Superiority

Factors relevant to determining whether a class action is superior to individual claims include "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; [and] (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum . . . ." Fed. R. Civ. Proc. 23(b)(3). Where certification is for settlement purposes only, considerations regarding manageability are irrelevant. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997). Additionally, where there are relatively few or no other individual lawsuits concerning the same issues being litigated by members of the putative class, this favors a finding that a class action is superior. *See Dirks v. Layton Brokerage Co. of St. Louis, Inc.*, 105 F.R.D. 125 (D. Minn. 1985). In the present case, class certification would be superior to alternative forms of adjudication. Plaintiff has uncovered no evidence of any separate individual lawsuits being filed by Class Members against Defendant litigating the same regular rate of pay issue. *See* Decl. Rodriguez ¶ 11. Second, there may be only relatively small awards at stake for class members if they were to attempt individual litigation, which supports a superiority finding. *See Leyva*, 716 F.3d 510. Third, the class is composed of individuals working in California, asserting claims based on California substantive law, and Defendant was located within Sacramento, California, including the Eastern District, which supports the desirability of concentrating the litigation in the Eastern District. *See* Decl. Lingle ¶ 2; Exhibit B.

For the reasons set forth above, the Court should preliminarily and conditionally approve the settlement class, subject to a final fairness hearing, as all the prerequisites of Rule 23(a) and the additional requirements of Rule 23(b)(3) are satisfied.

VI. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court preliminarily and conditionally approve the proposed settlement class, grant preliminary approval of the Agreement, approve the proposed form and content, and set dates for distribution of, the Notice of Settlement, set a final fairness and settlement class certification hearing and briefing schedule therefor, set a hearing for Plaintiff's Motion for Attorneys' Fees, Costs and Representative Enhancement and briefing schedule therefor that will be heard at the same time as the final fairness and certification hearing, and adopt the implementation schedule contained in the proposed order filed concurrently herewith.

Shimoda & Rodriguez Law, PC

Dated: December 16, 2024 By: /s/ Justin P. Rodriguez

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