Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Roman Otkupman (State Bar No. 249423)
Nidah Farishta (State Bar No. 312360)
OTKUPMAN LAW FIRM, A LAW CORPORATION
5743 Corsa Ave, Suite 123
Westlake Village, CA 91362
Telephone: (818) 293-5623
Facsimile (888) 850-1310

Attorneys for Plaintiffs and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MICHAEL FORD, as an individual and on behalf of all others similarly situated, Plaintiff, vs. AVARTARA LLC; and DOES 1 through 50, inclusive, Defendants.	Case No. 22STCV10348 [Assigned for all purposes to the Hon. Yvette M. Palazuelos, Department 9] **PLAINTIFFS' NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CERTIFICATION OF CLASS; MEMORANDUM OF POINTS AND AUTHORITIES** Date: October 30, 2024 Time: 10:00 a.m. Dept.: 9

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 30, 2024 at 10:00 a.m., or as soon thereafter as the matter may be heard, in Department 9 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiffs Michael Ford and Anthony Williams ("Plaintiffs"), as proposed representatives of the class, will and hereby do move this Court of the following:

(1) approving the Joint Stipulation of Class and Representative PAGA Consolidated Action Settlement ("Settlement Agreement" or "Settlement") in this matter;

(2) conditionally certifying the following class for settlement purposes only: all current and former non-exempt employees who are or previously were employed by Defendant Avartara, LLC ("Defendant") in the State of California during the period of August 25, 2018, and ending on April 25, 2024 ("Class" or "Class Members").

(3) appointing Plaintiffs as the Class Representatives and Larry W. Lee and Kristen M. Agnew of Diversity Law Group, P.C., and Roman Otkupman and Nidah Farishta of Otkupman Law Firm, A Law Corporation, as Class Counsel;

(4) preliminarily approving the Settlement and the Maximum Settlement Fund of Two Hundred Thousand Dollars ($200,000.00);

(5) finding on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement, including the amount of the PAGA penalties, Enhancement Payments to Plaintiffs, Class Counsel's fees and costs, the settlement administration fees, and the allocation of payments to Settlement Class Members, that could ultimately be given final approval by this Court;

(6) approving the Notice of Class Action Settlement ("Class Notice") to be sent to Class Members, which is attached as an exhibit to the Settlement Agreement;

(7) approving the distribution of the Class Notice to Class Members substantially in the manner and form set forth in the Settlement Agreement;

(8) appointing Phoenix Settlement Administrators as the settlement administrator; and

(9) setting the matter for a Final Fairness and Final Approval hearing.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify a class for settlement purposes. The basis for this Motion, filed without any opposition from Defendant, is that the proposed settlement is fair, adequate, and reasonable and the procedures proposed by the parties are adequate to ensure the opportunity of Class Members to participate in, opt-out of, or object to the settlement.

This Motion will be based on the attached Memorandum of Points and Authorities, the Settlement Agreement, the proposed Class Notice, and the supporting Declarations of Larry W. Lee, Kristen M. Agnew, Roman Otkupman, Nidah Farishta, Plaintiff Michael Ford, Plaintiff Anthony Williams and Jodey Lawrence of Phoenix Settlement Administrators, and upon the oral arguments of counsel (should there be any) and on the complete records and file herein.

DATED: July 3, 2024

By: ______________________

Roman Otkupman
Nidah Farishta
Attorneys for Named Plaintiffs,
MICHAEL FORD and ANTHONY WILLIAMS

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I. INTRODUCTION

This is a wage and hour class and representative Private Attorneys General Act ("PAGA") action. As set forth in the Second Amended Consolidated Class and Representative Action Complaint, Plaintiffs Michael Ford and Anthony Williams ("Named Plaintiffs" or "Plaintiffs") allege Defendant Avartara, LLC ("Defendant"): (1) failed to provide meal and rest periods, in violation of Labor Code sections 226.7, 512, 558; (2) failed to pay minimum and/or overtime wages, in violation of Labor Code sections 510, 1194, 1194.2; (3) failed to provide accurate itemized wage statements, and maintain accurate timekeeping records, in violation of Labor Code sections 226(a) and 1174(d); (4) failed to timely pay wages due at separation of employment, in violation of Labor Code sections 201, 202 and 203; (5) failed to reimburse employees for business expenses, in violation of Labor Code section 2802; (6) failed to pay all accrued and vested vacation/PTO wages, in violation of Labor Code section 227.3; (7) failed to provide a place of employment that is safe and healthful, in violation of Labor Code sections 6400, 6401, 6403, 6404, 6407 and 8 CCR 3202; (8) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Order; and (9) violated PAGA, Labor Code section 2698 *et. seq*. Plaintiffs seek to represent the Class and other PAGA Employees, and seek damages, penalties, attorneys' fees, and costs.

With the assistance of a private mediator, Plaintiffs and Defendant (collectively, the "Parties") have reached a proposed class-wide settlement, the terms of which are reflected in the Joint Stipulation of Class and Representative PAGA Consolidated Action Settlement ("Agreement" or "Settlement Agreement").[1] The Settlement Agreement calls for Defendant to pay the gross settlement amount of $200,000.000 ("Maximum Settlement Fund"), which will be distributed to the Class on a **non-reversionary** basis.

Prior to the settlement of this action, the Parties thoroughly investigated the facts relating to the class and PAGA claims alleged in the Action and engaged in a thorough study of legal principles applicable to the claims asserted against Defendant. Through the exchange of both formal and informal discovery, Defendant provided necessary data pertaining to the number of Class Members,

[1] The Settlement Agreement is attached as Exhibit "C" to the Declaration of Roman Otkupman submitted concurrently herewith.

the number of shifts worked by Class Members, the number of workweeks and pay periods at issue, the average hourly rates of Class Members, the number of wage statements issued to Class Members, and the number of Class Members who separated employment, which allowed Class Counsel to conduct a full damage analysis. The Parties believe that the settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, adequate, and reasonable, in light of all known circumstances and the expenses and risks inherent in litigation. Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties.

Defendant is a California limited liability company doing business in California. (Otkupman Decl., ¶ 11) Defendant employed Named Plaintiffs during the relevant time period. (Otkupman Decl., ¶ 12).

B. The *Ford* Class and PAGA Actions.

On March 24, 2022, Plaintiff Michael Ford ("Plaintiff Ford") filed a written notice with the California Labor & Workforce Development Agency ("LWDA") alleging that Defendant violated Labor Code sections 204 and 226, pursuant to Labor Code section 2699 ("Ford PAGA Notice"). (Settlement Agreement, ¶ B(1); Otkupman Decl., ¶ 13, Exhibit A)

On March 24, 2022, Plaintiff Ford initiated this Consolidated Action in Los Angeles County Superior Court. The initial complaint asserted a single class action claim for violation of Labor Code section 226. Plaintiff Ford subsequently filed the First Amended Class Action Complaint for Damages. (Settlement Agreement, ¶ B(2); Otkupman Decl., ¶ 14)

On June 15, 2022, Plaintiff Ford filed a representative action under the Private Attorney General Act, entitled *Michael Ford v. Avartara LLC*, Los Angeles Superior Court Case No. 22STCV19614 (the "*Ford* PAGA Action"). (Settlement Agreement, ¶ B(3); Otkupman Decl., ¶ 15)

C. The *Williams* Action.

On August 25, 2022, Plaintiff Anthony Williams ("Plaintiff Williams") filed a written notice with the LWDA alleging that Defendant violated Labor Code sections 226.7, 512, 558, 510, 1194, 1194.2, 222, 226(a), 226(e), 226.3, 1174(d), 201-203, 2802, 227.3, 6400, 6401, 6402, 6403, 6404, and 6407, pursuant to Labor Code section 2699 ("Williams PAGA Notice"). (Settlement Agreement,

¶ B(4); Otkupman Decl., ¶ 16, Exhibit B)

On August 25, 2022, Plaintiff Williams filed a Class Action Complaint in Los Angeles County Superior Court, entitled *Anthony Williams, et all v. Avartara LLC, et al*., Los Angeles Superior Court Case No. 22STCV27658, alleging ten (10) causes of action as follows: (1) failure to provide meal periods in violation of Labor Code sections 226.7, 512, 558; (2) failure to provide rest periods in violation of Labor Code sections 226.7, 512, 558; (3) failure to pay all wages in violation of Labor Code sections 510, 1194, 1194.2; (4) knowing and intentional failure to comply with itemized employee wage statement provisions in violation of Labor Code sections 226(a), 226(e), 1174(d); (5) failure to timely pay wages due at termination in violation of Labor Code sections 201-203; (6) failure to reimburse for business expenses in violation of Labor Code section 2802; (7) failure to pay all accrued and vested vacation/PTO wages in violation of Labor Code section 227.3; (8) failure to pay for all hours worked, including overtime hours worked in violation of Labor Code sections 218, 222; (9) failure to provide a place of employment that is safe and healthful in violation of Labor Code sections 6400, 6401, 6403, 6404, 6407 and 8 CCR 3202; and (10) violation of Business and Professions Code section 17200 (the "*Williams* Action"). (Settlement Agreement, ¶ B(5); Otkupman Decl., ¶ 17)

D. The Parties Engaged in Informal Discovery Prior to a Global Mediation.

Prior to attending mediation, the parties informally exchanged information and documentation. Specifically, Defendant provided access to extensive payroll data, including data relating to the number of Class Members, the number of shifts worked by Class Members, the number of workweeks and pay periods at issue, the average hourly rates of Class Members, the number of wage statements issued to Class Members, and the number of Class Members who separated employment, which allowed Class Counsel to conduct a full damage analysis. (Settlement Agreement, ¶ B(6); Otkupman Decl., ¶ 20) Thereafter, the parties participated in an all-day mediation session with mediator Michael D. Young, which included lengthy and fully informed negotiations. (Settlement Agreement, ¶ B(7); Otkupman Decl., ¶ 21) Although the Parties made progress towards settlement at the mediation, they did not reach a resolution of the matters. However, after the exchange of further information and extended negotiations, and with assistance of the mediator, the Parties reached the present class-wide settlement. The settlement discussions were conducted at arm's-length. Defendant also provided Plaintiffs' counsel with its tax records over the past few years, which Plaintiffs took into consideration in deciding to resolve this case. (Otkupman Decl., ¶ 22)

E. The Settlement Calls for a Consolidated Complaint.

In connection with the Settlement, the Parties agreed to the filing of Second Amended Consolidated Class and Representative Action Complaint in the Action to include the claims alleged in both the *Ford* PAGA Action and *Williams* Action. (Settlement Agreement, ¶ C(1); Otkupman Decl., ¶ 18)

Consistent with the terms of the Settlement, on June 25, 2024, Plaintiff Ford filed a stipulation for leave to file the Second Amended Consolidated Class and Representative Action Complaint.[2] The Second Amended Consolidated Class and Representative Action Complaint is the operative Complaint ("Complaint"). As alleged in the Complaint, Plaintiffs contend that Defendant: (1) failed to provide meal and rest periods, in violation of Labor Code sections 226.7, 512, 558; (2) failed to pay minimum and/or overtime wages, in violation of Labor Code sections 510, 1194, 1194.2; (3) failed to provide accurate itemized wage statements, and maintain accurate timekeeping records, in violation of Labor Code sections 226(a) and 1174(d); (4) failed to timely pay wages due at separation of employment, in violation of Labor Code sections 201, 202 and 203; (5) failed to reimburse employees for business expenses, in violation of Labor Code section 2802; (6) failed to pay all accrued and vested vacation/PTO wages, in violation of Labor Code section 227.3; (7) failed to provide a place of employment that is safe and healthful, in violation of Labor Code sections 6400, 6401, 6403, 6404, 6407 and 8 CCR 3202; (8) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Order; and (9) violated PAGA, Labor Code section 2698 *et. seq*. Plaintiffs seek to represent the Class and other PAGA Employees, and seek damages, penalties, attorneys' fees, and costs. (Settlement Agreement, ¶ C(3); Otkupman Decl., ¶ 19)

III. <u>SUMMARY OF THE PROPOSED SETTLEMENT TERMS</u>

A. <u>The Class Definition</u>

The parties have agreed to certification of the following class, for settlement purposes only:

[2] As of the date of this filing, the Court has not yet approved the filing of the Second Amended Complaint.

all current and former non-exempt employees who are or previously were employed by Avartara LLC in the State of California during the period from August 25, 2018, and ending on April 25, 2024. (Settlement Agreement, ¶ A(3), (11)). Based on Defendant's records and representations, there are approximately 784 putative Class Members. (Otkupman Decl., ¶ 33)

B. <u>Settlement Relief</u>

Pursuant to the terms of the Settlement Agreement, Defendant shall pay an aggregate sum of two hundred thousand dollars ($200,000.00) (the "Maximum Settlement Fund") to be allocated as follows (Settlement Agreement ¶ (A)(19)):

1. <u>Reasonable Expenses of the Settlement Administrator</u>: From the Maximum Settlement Fund, Defendant will pay the reasonable expenses of the Settlement Administrator, Phoenix, in administering the settlement in an amount up to eleven thousand dollars ($11,000.00). The Parties have received a bid for administration of this settlement from Phoenix in the amount of eleven thousand dollars ($11,000.00). (*See* Declaration of Jodey Lawrence Regarding Plaintiffs' Unopposed Motion for Preliminary Approval ["Admin. Decl."] ¶¶ 15, Exhibit B.)

2. <u>Reasonable Enhancement Payments to Named Plaintiffs</u>: Class counsel requests, and Defendant does not oppose, an award of up to ten thousand dollars ($10,000.00) to each Named Plaintiff as enhancement payments for their services as Class Representatives. The Class Representative Service Payments will include the issuance of an IRS form 1099 in connection with this payment. (Settlement Agreement, ¶ D(5))

3. <u>Reasonable Attorney's Fees and Litigation Expenses</u>: Class Counsel requests, and Defendant does not oppose, an award of attorneys' fees in the amount of seventy thousand dollars ($70,000.00) for all work previously performed with regards to the present case and all remaining work to be performed, and litigation costs in an amount not to exceed twenty-five thousand dollars ($25,000.00).[3] (Settlement Agreement ¶ D(4))

4. <u>Private Attorney General Act ("PAGA") Penalties</u>: The parties have agreed to a PAGA Payment in the amount of twenty thousand dollars ($20,000.00) in consideration for a full and

[3] Any awarded attorneys' fees will be split amongst Class Counsel as follows: Diversity Law Group (70%); and Otkupman Law Firm (30%). The Named Plaintiffs have consented to this fee split. (Ford Decl. ¶ 13; Williams Decl. ¶ 12.)

complete release of any claim of penalties that may be owed pursuant to PAGA for the alleged violations of the Labor Code that were or could have been asserted in the Operative Complaint. Seventy-five percent (75%) of this amount, fifteen thousand dollars ($15,000.00), will be paid to California Labor & Workforce Development Agency ("LWDA") in satisfaction of any claim for penalties that may be owed to that agency under PAGA. Twenty-five percent (25%) of this amount, five thousand dollars ($5,000.00), will be included in the amount to be distributed to all PAGA Employees. (Settlement Agreement ¶ D(7))

5. **Allocations to the Class**: Each Class Member shall be entitled to receive a *pro rata* portion of the Net Settlement Amount (his/her "Individual Settlement Class Payment") based on the number of Workweeks worked by the Class Member during the Class Period. (Settlement Agreement, ¶ D(9)) The Settlement Administrator shall calculate the number of Workweeks worked by each Class Member, the amount to be paid per Workweek, and the Individual Class Payment of each Class Member. (Id.) Payments to Settlement Class Members will be allocated as follows: ten percent (10%) to the satisfaction of claims for unpaid wages, and ninety percent (90%) to the satisfaction of claims for civil penalties. (Settlement Agreement ¶ D(27)) The payment for interest and penalties will be issued through a Form 1099 and will not be subject to tax withholdings or deductions. (Id.)

C. Release of Claims

Upon the payment of the full payment of the Maximum Settlement Fund, Plaintiffs and all Settlement Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, successors, and assigns, heirs, executors, administrators, trustees, and/or permitted assigns, hereby do and shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged, to the fullest extent possible, any and all of the Released Parties of and from any and claims that were pled or could have been pled against Defendant based on the factual allegations set forth in the Second Amended Consolidated Class and Representative PAGA Action Complaint, and that accrued during the Class Period, including without limitation all claims arising out of any violation of Labor Code sections 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d), 201-203, 2802, 227.3, 218, 222, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, and Business and Professions Code section 17200 ("Released Class Claims"). (Settlement Agreement ¶¶ A(27), D(33))

Upon the payment of the full payment of the Maximum Settlement Fund, Plaintiffs and all PAGA Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, successors, and assigns,heirs, executors, administrators, trustees, and/or permitted assigns, hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged, to the fullest extent possible, any and all of the Released Parties of and from all claims for penalties under the California Private Attorneys General Act, including interest, costs and attorneys' fees related thereto, predicated on the violation of Labor Code sections 204, 226(a), 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d), 201-203, 2802, 227.3, 218, 222, 6400, 6401, 6403, 6404, and 6407, that accrued during the PAGA Period and were or could have been alleged in the Second Amended Consolidated Class and Representative PAGA Action Complaint, the Ford PAGA Notice and the Williams PAGA Notice, based on the factual allegations set forth therein ("Released PAGA Claims"). (Settlement Agreement ¶¶ A(28), D(34))

D. Administration of Settlement

The parties have agreed that Phoenix will manage administration of the settlement and payment, including the preparation and dissemination of the Class Notice to Class Members, requests for exclusion, and the determination and distribution of each Participating Class Members' settlement payment. (Settlement Agreement, ¶¶ A(34), D(13))

IV. RELEVANT DATES AND DEADLINES

1. Within ten (10) business days of Preliminary Approval, Defendant shall provide the Class Data and List to the Settlement Administrator. (Settlement Agreement, ¶ D(14))

2. Within ten (10) business days after receiving the Class Data and List from Defendant, the Settlement Administrator shall mail a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List. (Settlement Agreement, ¶ D(15))

3. Prior to mailing, the Settlement Administrator shall perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. (Settlement Agreement, ¶ D(16)) Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline shall be re-sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the

Settlement Administrator shall indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security Number of the Class Member involved and shall then perform a re-mailing. Those Class Members who receive a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) days from the original Response Deadline. (Settlement Agreement, ¶ D(18))

4. Any Class Member, other than Plaintiffs, may opt-out from the Settlement by submitting a written Request for Exclusion to the Settlement Administrator postmarked by the Response Deadline, which is defined as: sixty (60) days after the Settlement Administrator initially mails the Notice Packet to Class Members, and the last date on which Class Members may submit Requests for Exclusion or Notices of Objections to the Settlement. By submitting a Request for Exclusion, a Class Member shall be deemed to have exercised his or her option to opt out of the Settlement and not be bound by this Agreement. Provided, however, that no Class Member may opt out of or be excluded from participating in the settlement of the Released PAGA Claims. No PAGA Employee can seek exclusion from the PAGA portion of the Settlement. (Settlement Agreement ¶ D(20))

5. Any Class Member who does not opt-out of this Settlement shall be entitled to object to the Settlement. To object to the Settlement, a Class Member must return by mail a written statement of objection to the Settlement Administrator at the specified address by the Response Deadline. Class Members may present objections at the final approval hearing, regardless of whether they submitted a written objection. (Settlement Agreement ¶ D(22))

6. Defendant shall pay the Maximum Settlement Fund in twenty-four (24) equal installment payments following preliminary court approval of the Settlement. The first installment payment shall be deposited into a Qualified Settlement Fund to be established by the Settlement Administrator within thirty (30) calendar days of the Court's order granting preliminary approval of the Settlement. The remaining twenty-three (23) installment payments shall be made on the 30th of each month, beginning with the month following the month in which the first installment payment is made, until the full amount of the Maximum Settlement Fund is paid to the Settlement Administrator. For example, if the first installment payment is made September 24, 2024, the next monthly

installment is due no later than October 30, 2024. (Settlement Agreement ¶ D(3))

7. Within ten (10) calendar days of the transfer to the Settlement Administrator of the portion of the Maximum Settlement Fund sufficient to pay the Net Class Settlement Amount, Gross PAGA Payment and Enhancement Payments, the Settlement Administrator shall pay: (1) the Individual Settlement Class Payments to Settlement Class Members; (2) the Individual PAGA Penalty Payments to PAGA Employees; (3) seventy-five percent (75%) of the Gross PAGA Payment to the Labor and Workforce Development Agency; and (4) the Enhancement Payments to Plaintiffs. The Class Counsel Award shall be paid to Class Counsel pursuant to Class Counsel's instructions, after the distribution of the Net Class Settlement Amount to Settlement Class Members, Gross PAGA Payment and Enhancement Payments, and only when sufficient amounts of the Maximum Settlement Fund are received by the Settlement Administrator to cover such fees and costs of Class Counsel. The Settlement Administration Costs shall be paid to the Settlement Administrator pursuant to Class Counsel's instructions, after the distribution of the Net Class Settlement Amount to Settlement Class Members, Gross PAGA Payment and Enhancement Payments, and only when sufficient amounts of the Maximum Settlement Fund are received by the Settlement Administrator to cover the Settlement Administration Costs. (Settlement Agreement ¶ D(10))

8. Any checks issued by the Settlement Administrator to Settlement Class Members and PAGA Employees shall be negotiable for one hundred and eighty (180) calendar days. Those funds represented by settlement checks returned as undeliverable and the funds which correspond with the settlement checks that are not negotiated within one hundred and eighty (180) calendar days after issuance shall be to the Unclaimed Property Fund maintained by the State Controller's Office in the name of the Settlement Class Member or PAGA Employee (Settlement Agreement ¶ D(11))

V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENTAS IT FAIR, REASONABLE AND ADEQUATE

A class action may not be dismissed, compromised or settled without approval of the Court. See Cal. Civ. Code § 1781(f); Cal. Rules of Court 3.769. The decision to approve or reject a proposed settlement is committed to the sound discretion of the court. *Wershba v. Apple Computer, Inc.*, 91 Cal. App.4th 224, 234-325 (2001). The law favors the settlement of lawsuits, particularly in class actions and other complex cases where substantial resources can be served by avoiding time, expense and rigors of protracted litigation. *Neary v. Regents of Univ. of California*, 3 Cal. 4^{th} 273, 277-81 (1992); *Lealao v. Beneficial California, Inc*. 82 Cal. App. 4^{th} 19, 53, (2000).

The purpose of preliminary evaluation of a proposed class action settlement is to determine only whether the settlement is within the range of possible approval, and thus whether notice to the class of the terms and conditions and the scheduling of a formal fairness hearing is warranted. *Wershba*, 91 Cal.App.4^{th} at 234-235, 251. In determining whether a class settlement is fair, adequate, and reasonable the trial court should consider relevant factors, such as "the strength of plaintiffs' case, the risk, expenses, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in the settlement, the extent of discovery contemplated and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Officers of Justice v. Civil Service Com'n*, *Etc.*, supra 688 F.2d at p. 624. The list of factors is not exclusive and the court is free to engage in balancing and weighing of factors depending on the circumstances of case. *Wershba.* The burden is on the proponent of the settlement to show that it is fair and reasonable. However "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." *Dunk v. Ford Motor Co., (1996)* 48 Cal.App.4th at p. 1802, 56 Cal.Rptr.2d 483.

Here, the parties engaged in extensive discussions and comprehensive informal discovery in which Defendant provided Plaintiffs with relevant information, including data pertaining to the class. (Settlement Agreement, ¶ B(6); Otkupman Decl., ¶ 20) The parties further participated in an all-day mediation session with mediator Michael D. Young, an experienced and well-respected mediator. (Settlement Agreement, ¶ B(7), Otkupman Decl., ¶ 21)

A. <u>The Amount Offered in Settlement is Fair and Reasonable</u>

The total settlement amount is an all-inclusive amount of two hundred thousand dollars (200,000.00), which includes payment to Participating Class Members, the Class Representative Enhancement Payments, the costs of administration of the settlement, attorneys' fees and costs, and payment for PAGA Penalties. Class Representatives request and Defendant does not oppose an award of attorneys' fees in the amount of seventy thousand dollars ($70,000.00) for all work previously performed in connection with the action and all remaining work to be performed and reimbursement of costs in an amount not to exceed twenty-five thousand dollars ($25,000.00). (Otkupman Decl., ¶¶ 39 - 42) Further, Class Representatives request and Defendant does not oppose Class Representative Enhancement Payments of ten thousand dollars ($10,000.00) to each Class Representative. (Otkupman Decl., ¶ 36) The settlement administration costs shall not exceed eleven thousand dollars ($11,000.00). Subject to Court approval, fifteen thousand dollars ($15,000.00) shall be paid to the LWDA for PAGA penalties and five thousand dollars ($5,000.00) shall be distributed amongst Aggrieved Employees who worked for Defendant during the PAGA Period. The remaining amount of approximately fifty-four thousand dollars ($54,000.00) will be available to the Class Members pursuant to the formulas described above. As discussed more fully below, these amounts are entirely fair and reasonable under all of the relevant circumstances. The claims asserted in the complaint are typically subject to class certification. *Sav – On Drug Stores, Inc. v. Superior Court, 34 Cal. 4th 319, 340 (2004)* (explaining that California "has a public policy which encourages the use of class action device, "particularly in wage and hour cases").

B. A Review of the Facts and Legal Contentions

Defendant contends that its employment policies and practices did not violate applicable wage and hour laws. (Otkupman Decl., ¶ 26) It further contends that the evidence mustered by Plaintiffs does not evince any common policy or practice that is violative of California wage and hour laws; in fact, according to Defendant, the evidence, merely demonstrates that any violations arose from individualized and isolated events that would not be susceptible to class-wide determination. (Id.) Defendant further contends that even if class certification was granted, there is no guarantee of a good outcome for Plaintiffs at trial. (Id.) Specifically, Defendant alleges that it complied with wage and hour and Labor Code laws. (Id.) Defendant alleges its employees were entitled to and actually provided meal and rest breaks, all wages owed, timely payment of wages during employment, all wages due at time of separation of employment, reimbursements for business expenses, a safe and healthful place of employment, and Labor Code compliant wage statements. (Id.)

Defendant claims that none of Plaintiffs' claims are suitable for class certification because individual issues predominate over common issues on these claims. (Id.) Individualized inquiries preclude class certification because a class action cannot be maintained where the existence of damage, the cause of damage and the extent of damage have to be determined on a case-by-case basis, even if there are some common questions. See *Brinker Restaurant Corp. v. Superior Ct., 54 Cal.4th 1004, 1021 (2012)*; (whether common issues predominate turns on whether the theory of recovery advanced by proponents of certification is, as an analytical matter, likely to prove amenable to class treatment). Here, the individualized inquiry could be focused on each individual who was not paid their requisite wages. (Id.)

Defendant is represented by competent and experienced counsel, and would undoubtedly have raised all of the above arguments, and more, in continued litigation. (Otkupman Decl., ¶ 27) Despite Plaintiffs' confidence in their ability to prove all of their claims on a class wide basis, any one of the above defenses, if decided in favor of Defendant could reduce or even eliminate any potential damage award. (Id.) These defenses, if successful, would severely, if not completely, reduce the damages recoverable by Class Members. (Id.)

By virtue of this settlement, each member of the class shall receive a guaranteed settlement depending on the total number of workweeks worked by the class members during the class period. While the amount is below the maximum penalty allowed by Labor Workforce and Development Agency, the law is clear in that the Commissioner imposes the penalty based on the willfulness of Defendant's conduct. Defendant strongly denies that there was any willfulness on its part. Furthermore, Defendant adamantly denies the existence of any liability on its part.

C. <u>The Settlement Amount Takes into Consideration that Defendant is a Company with Limited Funds</u>

As part of the approval of a settlement, Courts are to consider the amount of money that a Defendant has available. *Hemphill v. San Diego Ass'n of Realtors* (S.D. Cal. 2004) 225, F.R.D. 616, 624 ("[I]nformation concerning the Defendants' current financial position is relevant to the District Judge's determination of whether the settlement is fair, reasonable and adequate to the class.") A "defendant's ability to pay a judgment larger than that provided by the proposed settlement" is relevant for these motions. Here, Defendant provided Plaintiffs' counsel with its tax records over the years which showed that Defendant would not have been able to pay a large settlement or a large judgment, if one were to be required or have occurred. (Otkupman Decl., ¶ 22) Plaintiffs and Plaintiffs' counsel took this into consideration in the decision to resolve this case. (Id.)

D. <u>Attorney's Estimate of Total Damages Recoverable:</u>

In evaluating the allegations, Plaintiffs determined that the estimated maximum potential recovery for a total victory in this case would be **$1,662,969.17**. The Parties settled for **$200,000.00**, which equates to approximately **12%** of the maximum potential recovery. To assist the parties in coming to the settlement, the parties relied upon the following exposure calculations:

Overtime Violations: Plaintiffs maintained that Plaintiffs and Defendant's California employees were not properly compensated for all overtime hours worked. Based on our investigation, which included discussing the merits with our clients and reviewing and analyzing the informal data provided by Defendant, we concluded that approximately 10 unpaid overtime minutes were worked without adequate compensation per workweek. There are a total of approximately 24,558 workweeks in the class and the average overtime rate is $21.95. The total amount was calculated to be **$91,638.18**. Counsel believed we had a 30% probability of prevailing on this claim based on the sample data provided by Defendant and because Defendant had lawful policies. As such, Plaintiffs felt the real exposure of this claim was **$27,491.45**.

Rest Break Violations: Counsel's investigation from speaking with Plaintiffs, reviewing Defendant's policies and addressing the practices with Plaintiff, and analyzing the data, revealed that approximately twice per week, Plaintiffs' and other Class Member's rest breaks were interrupted. Therefore, based on Plaintiffs' allegations and the investigation, it was estimated that there were 2 missed rest breaks per workweek with no premium pay during the Class Period. Based on this estimate, Plaintiffs and other putative Class Members missed a total of 49,116 rest periods at an average hourly rate of $14.63 for a total of **$718,567.08** in rest period exposure. We believed we had a 20% probability of prevailing on this claim. The law further does not require that Defendant keep the necessary records of the rest breaks taken so proving this claim on a class basis would be a challenge. Yet another challenge with this claim is that the failure to take the rest breaks may require an individualized inquiry, something that may have contributed to the class not being certified. This settlement avoided that risk. As such, Plaintiffs felt that the real exposure for this claim was approximately **$143,713.42.**

Meal Break Violations: According to Plaintiffs, approximately once per week, theirs and other Class Members' meal breaks were interrupted. Based on the sample data provided, which included punch records, and according to Plaintiff, it was determined that Defendant's employees were provided the opportunity to take uninterrupted meal breaks, and the majority of deviations were voluntary on the part of the employees. Therefore, it was estimated that there was 1 missed meal break per workweek with no premium pay during the Class Period. Based on this determination, Plaintiff and other putative Class Members missed a total of 24,558 meal breaks at an average hourly rate of $14.63 for a total **of $359,283.54** in meal period exposure. We believed we had a 30% probability of prevailing on this claim as several risk factors exist as follows: Defendant had a legally compliant meal period policy in place. Plaintiffs and the rest of the Class would have to prove that their reason for failure to take a compliant meal break was not unique and that a similar practice applied to the rest of the Class. This can be especially difficult considering that Defendant had a compliant meal period policy. As such, the realistic exposure was approximately **$107,785.06**.

Reimbursement for Business Expenses Claim: According to Plaintiffs, they and other employees of Defendant were not reimbursed for using their personal cell phones to perform work for Defendant. Plaintiffs estimated $5.00 per workweek in reimbursements owed to Plaintiffs and others, for a total of **$122,790.00.**

Derivative Wage Statement Claim: Based on our investigation and the extrapolation of data, it was calculated that there would have been a 30% violation rate if this case was taken to trial. Defendant issued approximately 12,279 wage statements during the relevant period. Plaintiff used a penalty of $50 for the initial violation and $100 for all subsequent violations to determine the potential penalty for wage statement violations if this case was taken to trial. As such the damages are as follows: 50 x 1 + 100 x 12,278 x 0.30 = **$368,355.00**.

Derivative Waiting Time Penalty Claim: Based on our investigation and the extrapolation of data, it was calculated that there would have been a 30% violation rate if this case was taken to trial. Plaintiff used the number of former employees in the class (784 employees) and calculated their average rate of pay ($14.63) times 8 hours a day times 30 days to determine that potential penalty for waiting time penalties at a 30% violation rate was $**825,834.24.**

PAGA Claim: Maximum exposure was based upon an analysis of a 100% violation rate. While this would be unlikely, even for the purposes of the maximum exposure, Plaintiffs calculated the PAGA liability at 100%. Plaintiffs used the data provided by Defendant and determined that there were approximately 6,700 PAGA pay periods. Since the Labor Code allows for a maximum of $100 per pay period and there were 6,700 pay periods in the PAGA Period, the maximum exposure was **$670,000.00**. PAGA claims are subject to a one-year statute of limitations, and penalties can be recovered for a period of one year prior to the date notice is sent to the LWDA. *Taylor v. Interstate Grp., LLC*, No. 15-CV-05462-YGR, 2016 WL 335226, at *1 (N.D. Cal. Jan. 28, 2016). Unless a Labor Code provision provides for a specific civil penalty, PAGA imposes a default civil penalty of "one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation." Cal. Lab. Code § 2699(f)(2). Some courts have held that subsequent violations are all violations after the first; no notice to the employer is required. *See, e.g.*, *Gonzalez v. CoreCivic of Tennessee, LLC*, No. 16 Civ. 01891, 2018 WL 4388425, at *8 (E.D. Cal. Sept. 13, 2018) (applying heightened rate to penalties in calculating amount of controversy without considering notice to defendant); *Gaasterland v. Ameriprise Fin. Servs., Inc.*, No. 16 Civ. 03367, 2016 WL 4917018, at *4 (N.D. Cal. Sept. 15, 2016) (same). Other courts have held that subsequent violations constitute violations that occur after the plaintiff has put the employer on notice that its conduct is unlawful. *See, e.g.*, *Bernstein v. Virgin Am., Inc.*, No. 15 Civ. 02277, 2018 WL 3344316, at *9 (N.D. Cal. July 9, 2018) (in awarding penalties, subsequent violations subject to heightened penalty were those after plaintiff gave written notice to employer); *Steenhuyse v. UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1067–68 (N.D. Cal. 2018) (in calculating amount in controversy, subsequent violations are those after plaintiff served LWDA notice). The California Court of Appeal has not issued a binding decision on which approach is proper. Here, PAGA penalties were discounted by using only initial violation rates, based on Defendant's argument that "courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code." *Vieyara-Flores v. Sika Corp.*, 2019 U.S. Dist. LEXIS 98081, *13 (C.D. Cal. 2019). Counsel believed that since the violations were not willful and Defendant had compliant policies as to meals and rest breaks, that the Court would award a small portion of the potential PAGA Claim. Plaintiffs believed that it would be difficult to obtain penalties for wage statement violations and waiting time penalties in addition to the PAGA penalties. Plaintiffs believed that the realistic exposure was 10% probability of success. As such, Plaintiffs estimated their realistic value if prevailed at trial would be at **$67,000.00**. (Otkupman Decl., ¶ 43)

The amount of a PAGA settlement need not represent any particular percentage of the potential penalty amount that may be recovered after trial. *See Manzo v. McDonald's Restaurants of California, Inc.*, 2022 WL 4586236, at *6 (E.D. Cal., 2022) ("There is no express or even baseline percentage of recovery required"). Consequently, trial courts routinely approve PAGA settlements representing only a tiny fraction of the potential verdict value of the claim. *See id.* (approving PAGA allocation that "is less than one percent (1%) of the verdict value" of the claim"); *Hartley v. On My Own, Inc.*, 2020 WL 5017608, * 4 (E.D. Cal. Aug. 25, 2020) (approving settlement at 3.47% of verdict value of PAGA penalty, resulting in average payment per employee of $61); *Ramirez v. Benito Valley Farms, LLC*, 2017 WL 3670794, *4 (N.D. Cal. Aug. 25, 2017) (considering early stage of litigation, defendant's weak financial condition, and injunctive relief provided by settlement, approving PAGA settlement of 4.5% of verdict value). Here, the Parties have allocated $20,000 to PAGA penalties, which is approximately 29.8% of the realistic verdict value of the claim and 2.98% of the maximum exposure on civil PAGA penalties.

Furthermore, in approving the allocation to PAGA, the trial court's focus is not the amount that aggrieved employees will ultimately receive as a result of a settlement. Instead, "a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate *in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws*." *See Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021) (emphasis added); *see also Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230, at *15 (N.D.Cal., 2021) (evaluating a PAGA settlement under the standard of whether the settlement terms "are fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals"). Here, the Settlement vindicates the rights of Aggrieved Employees who have experienced violations of the Labor Code. Additionally, the six-figure Maximum Settlement Fund acts as a deterrent to both Defendant and other California employers. *See O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1134 (N.D. Cal. 2016) ("[I]if the settlement for the Rule 23 class is robust, the purposes of PAGA may be concurrently fulfilled. By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of the class members as employees but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA").

E. <u>The Payment to the Class Representatives for Services to the Class is Reasonable and Routinely Awarded by Courts</u>.

Plaintiffs seeks enhancement awards up to ten thousand dollars ($10,000.00) each. Plaintiffs' lawyers believe that the enhancement awards are reasonable, proper and supported by the circumstances of this case and applicable law. Defendant does not oppose this. (Otkupman Decl., ¶ 36) Plaintiffs have also signed a general release of all claims pursuant to California Civil Code section 1542. (Settlement Agreement, ¶ D(32))

Courts have long acknowledged that active litigants are entitled to be compensated for bearing the risk and time to represent others. Where class representatives are provided with special compensation as part of class settlement, the Court should ensure that it is fair and reasonable. However, "it is the complete package, taken as a whole, rather than the individual component parts, that must be examined." *Officers of Justice v. Civil Service Commission of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). Incentive awards are not uncommon and can serve an important function in promoting class action settlements." *Sheppard v. Consol. Edison Co. of N.Y. Inc.* U.S.D.C. Case No, 94-CV-0403 (JG). The service awards sought here are justified by the Class Representatives' level of involvement in the lawsuit. The Class Representatives assisted in the investigation, provided counsel with relevant information and also provided counsel with wage statements pertaining to the relevant period Defendant allegedly did not comply with the pertinent labor laws. (Otkupman Decl., ¶ 36; Ford Decl. ¶¶ 8, 9; Williams Decl. ¶ 7, 8.) The Class Representatives further helped investigate the documents provided by Defendant to Plaintiffs in the course of Plaintiffs' investigation. (Otkupman Decl., ¶ 36; Ford Decl. ¶¶ 8, 9; Williams Decl. ¶ 7, 8.) Further, the Class Representatives consulted extensively with Class Counsel in order to assist in various aspects of investigation and litigation. (Otkupman Decl., ¶ 36; Ford Decl. ¶¶ 8, 9; Williams Decl. ¶ 7, 8.) In short, the Class Representatives were extremely active and motivated to assist the attorneys in resolving this matter. Class Representatives stuck their necks out for the benefit of their fellow employees. (Ford Decl. ¶

10; Williams ¶ 9.) The participation of the Class Representatives was crucial to the mediation eventually resulting in a settlement as it did, which is the reason the enhancement amount up to ten thousand dollars ($10,000.00) each is reasonable in light of all of the circumstances. (Otkupman Decl., ¶ 36.)

F. The Attorneys' Fee Award Is Reasonable and Routinely Awarded

California Rule of Court 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any application for the approval of the dismissal or settlement of an action that has been certified as a class action." In the present case, Plaintiffs' counsel requests up to 35% of the Maximum Settlement Fund or seventy thousand dollars ($70,000.00) to include all work previously rendered by Plaintiffs' counsel and any work that will be rendered throughout the conclusion of this case. (Otkupman Decl., ¶¶ 39 - 41) Plaintiffs' counsel achieved a result whereby each member of the Class will receive a payment depending on the amount of Workweeks that person worked during the relevant time. The Class Members will not be obliged to submit a claim form or worry about sending it in. Moreover, Plaintiffs' counsel's work is not yet complete, as they will spend a significant amount of time overseeing and participating in the settlement administration process and final approval proceedings. (Id.)

V. THE PROPOSED SETTLEMENT CLASS SHOULD BE CONDITIONALLY CERTIFIED FOR SETTLEMENT PURPOSES

California courts are authorized to adjudicate class wide claims based on a common course of conduct. California law and policy favors the fullest and most flexible use of the class action procedure, so any doubt as to the appropriateness of certification should be resolved in favor of certification. *See Richmond v. Dart Industries, Inc.,* 29 Cal. 3d 462, 469, 473-474 (1981). Class certification is appropriate when (1) the class is ascertainable and (2) there is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." *Dunk*, supra, 48 Cal. App. 4^{th} at 1806. The "community of interest" element 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." Finally, the court must determine that a class action proceeding is the superior means for the fair and efficient adjudication of the litigation. *Id*. For settlement purposes, each of these prerequisites must be met.

Plaintiffs meet each of the requirements for class certification. First, the class is readily ascertainable from the payroll records of Defendant. *See Rose v. City of Hayward*, 126 Cal. App.3d 926, 932 (1981) (finding that "class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records"). The class is also sufficiently numerous, as there are approximately 784 Class Members, making joinder impracticable. (Otkupman Decl., ¶ 33) See *Gay v. Waiters' & Dairy Lunchmen's Union* 489 F. Supp. 282 (N.D. Cal. 1980), aff'd 694 F.2d 531 (9th Cir. 1982; See *Hebbard v. Colgrove* 28 Cal. App. 3d 1017, 1030 (1972) [no set minimum to meet the numerosity prerequisite, but class as few as 28 members is acceptable]. Typicality is also met as Plaintiffs' claims are the same as that of the Class (*See Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983) [the purported representative's claim need not be identical to the claims of other members of the class; it is sufficient that the representative is similarly situated, so that he or she will have the motive to litigate on behalf of all class members]).

The predominance factor is satisfied here as well. Each of the class members did not receive: meal and rest breaks, all wages owed, timely payment of wages, all wages due at termination, reimbursement for business expenses, wage statements that were in compliance with Labor Code 226(a), and a safe and healthful place of employment. *See Wershba v. Apple Computer*, supra, 91 Cal.App.4th at 238 (where all class members have suffered a common alleged wrong", class action is appropriate); *Employment Development Department v. Superior Court* 30 Cal. 3d 256, 265 (1981) [class action appropriate where a large number of applicants have been harmed on the basis of an invalid government administrative practice]. *Armstrong v. Davis* 275 F. Rd 849, 868 (9th Cir.2001)(commonality is generally satisfied where (as here) "the lawsuit challenges a system-wide practice or policy that affects all of the putative class members:]; *Laduke v. Nelson* 762 F.2d 1318, 1332 (9th Cir. 1985); *Kincaid v. City of Fresno* 244 F.R.D. 597, 602 (E.D. Cal. 2007); *Gasperoni v. Metabolife, International* 2000 WL 33365948 (E.D. Mich. 2000) [where all plaintiffs allege a common method of misrepresentation and the same legal claim, class action is appropriate]. The adequacy requirement is met here too since Plaintiffs' counsel has been involved in numerous wage and hour actions throughout their careers. (Otkupman Decl., ¶¶ 5-6) Furthermore, there is no indication of any actual (or potential) conflicts between Plaintiffs and the Class. (Otkupman Decl., ¶ 36) It is sufficient to show that the representative stands in the same shoes as every other member of the class, and seeks the same relief. No more is required. *Bowles v. Superior Court* 44 Cal. 2d 574, 587 (1955); *McGhee v. Bank of America* 60 Cal. App. 3d 442, 450 (1976). Plaintiffs are, therefore, adequate representatives.

Class resolution is superior to other available methods for the fair and efficient adjudication of the controversy. (See *Hanlon*, 150 F.3d at 1023; see *Dunk*, 48 Cal. App. 4th at 1807 n. 19). The superiority requirement involves a comparative evaluation of alternative mechanics of dispute resolution." *Hanlon*, 150 F.3d at 1023. Here, as in *Hanlon,* the alternative methods of resolution are individual claims for a very small amount of damages. *Id*. These claims "would prove uneconomic for potential plaintiffs "because litigation costs would dwarf potential recovery." *Id*. For this reason, in this case, as in *Hanlon*, a class action is the preferred method of resolution.

VI. THE PROPOSED CLASS NOTICE IS APPROPRIATE

A. The Class Notice Satisfies Due Process

California statutory and case law vests the Court with broad discretion in fashioning an appropriate notice program. *See* C.C. Section 1781; *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). The notice plan here entails mailing the Class Notice to all known and reasonably ascertainable Class Members based on records maintained by Defendant.[4] Defendant has agreed to provide the last known address for all Class Members to the Settlement Administrator. The Settlement Administrator shall have the responsibility of mailing the notice to all ascertainable parties. For notices returned undeliverable, it is agreed that the Settlement Administrator shall send an additional notice to any new address identified. Such notice more than satisfies due process. *Id*. at 962. Since the addresses of each of the Class Members are available from Defendant's records, the parties believe it would not be cost effective to employ other methods of notice, such as notice by publication.

B. The Proposed Class Notice is Accurate and Informative

A court order preliminarily approving a class settlement must contain the notice to be given to the class. Cal. R. Ct. 3.769 (e). According to California Rule of Court 3.766(d), the notice must

[4] The Class Notice will be distributed in English based on Defendant's representation that there are no Spanish-only speakers in the Class. (Agnew Decl. ¶ 3.)

include the following: (1) a brief explanation of the case, including the basic contentions or denials of the parties; (2) a statement that the court will exclude the member from the class if the member so requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel.

The court has broad discretion in deciding whether to approve the proposed class notice. *Wershba*, 91 Cal.App.4th at 252. According to the California Rules of Court 3.766(d), the notice must include the following: The proposed Class Notice provides information on the meaning and nature of the proposed settlement Class; the terms and provision of the settlement; the relief the settlement will provide settlement Class Members; how Class Members will receive their portion of the settlement proceeds; the application by Plaintiffs' counsel for reimbursement of costs and attorney's fees; the date, time and place of the final settlement approval hearing; and the procedure and deadlines for opting out of the settlement or for submitting comments and objections. The Class Notice further fulfills the requirement of neutrality in class notices. It summarizes the proceedings to date, and the terms and conditions of the settlement, in an informative and coherent manner. The Class Notice clearly states that the settlement does not constitute an admission of liability by Defendant and recognizes that the Court has not ruled on the merits of the action. It also states that the final settlement approval decision has yet to be made. Accordingly, the Class Notice complies with the standards of fairness, completeness and neutrality required of a settlement class notice designated under authority of the Court.

VII. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

The last step in the Settlement approval process is the formal hearing, at which the court may hear all evidence and arguments necessary to evaluate the proposed Settlement. At that hearing, proponents of the Settlement may explain and describe its terms and conditions and offer arguments in support of the Settlement approval; Participating Class Members, or their counsel, may be heard in support of or in opposition to the Settlement Agreement.

VIII. CONCLUSION

For reasons set forth herein, Plaintiffs respectfully request that the Court grant this unopposed motion for preliminary approval of the proposed Class and Representative Action Settlement.

DATED: July 1, 2024

OTKUPMAN LAW FIRM, A LAW CORPORATION

By: ______________________

Roman Otkupman
Nidah Farishta
Attorneys for Named Plaintiffs,
MICHAEL FORD and ANTHONY WILLIAMS