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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANGEL RODRIGUEZ, individually, and on behalf of other members of the general public similarly situated, Plaintiff, vs. AMERICAN TEXTILE MAINTENANCE, a California corporation; and DOES 1 through 25, inclusive, Defendants.	Case No. 22STCV17855 (Lead) (*Consolidated with Case No. 22STCV10611*) Honorable Elaine Lu Department 9 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**
LUCIO MENJIVAR, on behalf of himself and all other aggrieved employees. PLAINTIFF, vs. AMERICAN TEXTILE MAINTENANCE COMPANY, a California corporation d/b/a REUPUBLIC MASTER CHEFS TEXTILE RENTAL SERVICES, and DOES 1 through 10, inclusive, DEFENDANTS.	Date: September 3, 2024 Time: 10:00 a.m. Dept.: 9 *Menjivar* Action Filed: March 28, 2022 *Rodriguez* Action Filed May 31, 2022 *Rodriguez* FAC Filed: August 4, 2022 Trial Date: Not Set

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Attorneys for Plaintiff Lucio Menjivar

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on **September 3, 2024** at **10:00 a.m.** in **Department 9** of the above-captioned Court located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012, pursuant to California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiffs Angel Rodriguez ("Plaintiff Rodriguez") and Lucio Menjivar's ("Plaintiff Menjivar") (together, "Plaintiffs") will and hereby do move the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiffs and Defendant American Textile Maintenance Company doing business as Republic Master Chefs ("Defendant").

Plaintiffs requests that the Court enter an Order:

1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement ("Settlement" or "Settlement Agreement") attached as <u>Exhibit 2</u> to the Declaration of Jonathan M. Genish in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ("Genish Decl.");

2. Certifying the Class for Settlement purposes;

3. Appointing Plaintiff Rodriguez as the Class Representative;

4. Appointing Jonathan M. Genish, Miriam L. Schimmel, Joana Fang, and Alexandra Rose of Blackstone Law, APC and Rana Nader and Hengameh S. Safei of Proxy Law Firm LLP as Class Counsel;

5. Appointing Apex Class Action LLC as the Settlement Administrator;

5. Approving the proposed Notice of Class Action Settlement ("Class Notice"), attached as <u>Exhibit 1</u> to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement, to be mailed to the Class;

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

7. For each Class Member, directing Defendant to furnish their full name, last known mailing address, Social Security number, dates worked for Defendant during the Class Period, and such other information as is necessary for the Settlement Administrator to calculate Workweeks and PAGA Workweeks to the Settlement Administrator within ten (10) calendar days after entry of the order granting

preliminary approval of the Settlement;

8. Approving the proposed deadlines for the settlement administration process; and

9. Setting a Final Approval Hearing.

Pursuant to California Labor Code section 2699(1)(2) and concurrently with the filing of this Motion, a copy of the Settlement was submitted to the California Labor and Workforce Development Agency ("LWDA") via online submission through the LWDA's website. (Genish Decl., ¶ 50).

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of Jonathan M. Genish, Rana Nader, Plaintiff Rodriguez, Plaintiff Menjivar, and Sean Hartranft of Apex Class Action LLC, the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: May 20, 2024 **BLACKSTONE LAW, APC**

By: ______________________________
Jonathan M. Genish
Attorneys for Plaintiff Angel Rodriguez

Dated: May 20, 2024 **PROXY LAW FIRM LLP**

By: /s/ Rana Nader
Rana Nader
Attorneys for Plaintiff Lucio Menjivar

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Angel Rodriguez ("Plaintiff Rodriguez") and Lucio Menjivar ("Plaintiff Menjivar") (together, "Plaintiffs") seek preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement ("Settlement" or "Settlement Agreement") entered into between Plaintiffs and Defendant American Textile Maintenance Company doing business as Republic Master Chefs ("Defendant") (collectively, with Plaintiffs, the "Parties"). (Declaration of Jonathan M. Genish in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ["Genish Decl."], Exh. 2). The Settlement terms are outlined as follows:

- Class Size: Approximately 1,474 individuals as of June 23, 2024 (the 90th day after the last Plaintiff executed the Settlement Agreement).
- Gross Settlement Amount: One Million One Hundred Seventy-Five Thousand Dollars and Zero Cents ($1,175,000.00).
- Attorneys' Fees and Costs: Attorneys' fees of one-third (1/3) of the Gross Settlement Amount ($391,666.66 if the Gross Settlement Amount is $1,175,000.00) plus actual litigation costs and expenses not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00), to be paid from the Gross Settlement Amount.
- Enhancement Payments: Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) each (total, $15,000.00), to be paid from the Gross Settlement Amount.
- PAGA Amount: Fifty Thousand Dollars and Zero Cents ($50,000.00) from the Gross Settlement Amount, 75% of which will be paid to the Labor and Workforce Development Agency ("LWDA") and the remaining 25% to be paid to the PAGA Members.
- Settlement Administration Costs: Not to exceed Twenty-Five Thousand Dollars and Zero Cents ($25,000.00), to be paid from the Gross Settlement Amount.
- Estimated Net Settlement Amount: Six Hundred Sixty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Four Cents ($663,333.34) to be distributed to Settlement Class Members.

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As set forth herein, the Settlement is the product of informed discovery and arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiffs therefore respectfully request that the Court grant preliminary approval of the Settlement, conditionally certify the Class, approve the proposed Notice of Class Action Settlement ("Class Notice"), and set a hearing date for final settlement approval, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a linen and uniform service that delivers hospitality, healthcare, and retail linen and uniforms for over ninety (90) years. Plaintiff Rodriguez was employed by Defendant as an hourly-paid, non-exempt Factory Worker-Production Line from approximately December 1988 to approximately July 2021. (Declaration of Angel Rodriguez in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement ["Rodriguez Decl."], ¶ 2). Plaintiff Menjivar was employed by Defendant as an hourly-paid, non-exempt Factory Worker-Production Line from approximately March 2005 to approximately February 2021. (Declaration of Plaintiff Lucio Menjivar in Support of Notice of Motion and Motion for Preliminary Approval of Class Action and PAGA Settlement ["Menjivar Decl."], ¶ 3).

On January 18, 2022, Plaintiff Menjivar provided written notice to the LWDA by online submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendant ("Menjivar PAGA Letter"). (Genish Decl., ¶ 9; Declaration of Rana Nader in Support of Notice of Motion and Motion for Preliminary Approval of Class Action and PAGA Settlement ["Nader Decl."], ¶ 7 & Exh. 1).

On March 28, 2022, Plaintiff Menjivar filed a Complaint for Violation of the California Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq*. ("Menjivar Operative Complaint") in the action entitled *Lucio Menjivar v. American Textile Maintenance Company*, Los Angeles County Superior Court Case No. 22STCV10611 ("*Menjivar* Action"), which alleges civil penalties under PAGA for Defendant's alleged failure to pay minimum wages, failure to timely pay wages during employment, failure to pay all wages due upon separation of employment, and failure to furnish accurate itemized wage statements. (Genish Decl., ¶ 10; Nader Decl., ¶ 8).

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On May 31, 2022, Plaintiff Rodriguez provided written notice to the LWDA by online submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specific provisions of the California Labor Code alleged to have been violated by Defendant ("Rodriguez PAGA Letter"). (Genish Decl., ¶ 11 & Exh. 1).

On May 31, 2022, Plaintiff Rodriguez filed a Class Action Complaint for Damages in the action entitled *Angel Rodriguez v. American Textile Maintenance*, Los Angeles County Superior Court Case No. 22STCV17855 ("*Rodriguez* Action"), thereby commencing a putative class action against Defendant alleging eight (8) causes of action for Defendant's alleged failure to pay overtime wages, failure to pay minimum wages, failure to provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant rest periods and premiums payments in lieu thereof, failure to provide accurate wage statements, and failure to timely pay wages upon termination, and for violations of California Business & Professions Code Section 17200, *et seq*. based on the aforementioned California Labor Code violations. (*Id*., ¶ 12).

On August 4, 2022, Plaintiff Rodriguez filed a First Amended Class Action Complaint for Damages and Enforcement Action Under the Private Attorneys General Act, California Labor Code §§ 2698 Et Seq. ("Rodriguez Operative Complaint"), which added a cause of action under PAGA. (*Id*., ¶ 13).

On May 16, 2023, the Parties participated in a formal mediation conducted by Jill R. Sperber, Esq. ("Mediator"), a neutral and respected mediator with extensive experience in complex wage and hour matters, which did not result in a settlement at that time. (*Id*., ¶ 14). After continued negotiations, the Parties were able to reach an agreement to resolve this dispute on a class and representative basis. (Ibid). The Parties worked diligently to negotiate and memorialize the terms in a long form settlement agreement. (Ibid).

On April 2, 2024, the Parties executed the Settlement Agreement. (*Id*., ¶ 15 & Exh. 2).

On April 29, 2024, the Court entered a Minute Order, which related the *Rodriguez* Action and *Menjivar* Action (together, "Actions"). Also on April 29, 2024, pursuant to the Parties' joint stipulation, the Court entered an Order, which consolidated the Actions and deemed the *Rodriguez* Action the lead case. (*Id*., ¶ 16).

III. THE SETTLEMENT TERMS

A. Class Definition

For purposes of settlement only, the Parties have agreed that the Class shall be defined as: "all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period" ("Class" or "Class Member(s)"). (Genish Decl., ¶ 17; Settlement Agreement, ¶ 6.b). The Class Period is defined as the period from May 31, 2018 through the date that is ninety (90) calendar days after the date Plaintiffs execute the Settlement Agreement or the date on which the Court signs the order granting preliminary approval of the Settlement, whichever is earlier. (Genish Decl., ¶ 17; Settlement Agreement, ¶ 6.f). Based on information provided by Defendant, it is estimated that there are a total of one thousand four hundred and seventy-four (1,474) Class Members as of June 23, 2024 (the 90th day after the last Plaintiff executed the Settlement Agreement). (Genish Decl., ¶ 17).

B. Amount of Settlement

The Parties have agreed to settle the class and PAGA claims at issue in the Actions for a non-reversionary Gross Settlement Amount of One Million One Hundred Seventy-Five Thousand Dollars and Zero Cents ($1,175,000.00), exclusive of employer-side payroll taxes. (Genish Decl., ¶ 18; Settlement Agreement, ¶ 6.p).

C. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. (Genish Decl., ¶ 18; Settlement Agreement, ¶ 6.p). The Gross Settlement Amount includes: (1) Class Counsel's fees in the amount of one-third (1/3) of the Gross Settlement Amount (i.e., $391,666.66 if the Gross Settlement Amount is $1,175,000.00); (2) Class Counsel's actual litigation costs and expenses, not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00); (3) Settlement Administration Costs, not to exceed Twenty-Five Thousand Dollars and Zero Cents ($25,000.00); (4) Enhancement Payments in the aggregate amount of Fifteen Thousand Dollars and Zero Cents ($15,000.00); and (5) PAGA Amount in the amount of Fifty Thousand Dollars and Zero Cents ($50,000.00). (Genish Decl., ¶ 18; Settlement Agreement, ¶¶ 6.p, 9, 10, 11, & 12). After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount that will be available for Class Members is currently estimated to be Six Hundred Sixty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Four Cents ($663,333.34). (Genish Decl., ¶ 18; Settlement Agreement, ¶ 6.u). Additionally, 25% of the PAGA Amount ("PAGA Member Amount"), which is $12,500.00 out of $50,000.00 will be fully distributed to: "all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period" ("PAGA Members"). (Genish Decl., ¶ 18; Settlement Agreement, ¶ 6.w, 6.x, 6.y, & 11). The "PAGA Period" is defined as the period from January 18, 2021 through the date that is ninety (90) calendar days after the date Plaintiffs execute the Settlement Agreement or the date on which the Court signs the order granting preliminary approval of the Settlement, whichever is earlier. (Genish Decl., ¶ 18; Settlement Agreement, ¶ 6.z).

If it is determined by the Settlement Administrator that the total number of Workweeks worked by the Class Members during the Class Period exceeds 110,000, then Defendant shall, at its option, either (a) increase the Gross Settlement Amount on a *pro rata* basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 110,000 Workweeks; or (b) cap the Class Period and PAGA Period to the date that 110,000 Workweeks is reached but not exceeded. (Genish Decl., ¶ 19; Settlement Agreement, ¶ 13).

The Net Settlement Amount will be distributed and paid to all Class Members who do not submit a timely and valid Request for Exclusion ("Settlement Class Members") on a *pro rata* basis based on the number of weeks each Class Member worked for Defendant as an hourly-paid and/or non-exempt employee in California during the Class Period ("Workweeks"). (Genish Decl., ¶ 20; Settlement Agreement, ¶¶ 6.ll & 6.mm). The *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement ("Individual Settlement Share") will be calculated by the Settlement Administrator, in accordance with the Settlement Agreement. (Genish Decl., ¶ 20; Settlement Agreement, ¶ 6.s).

The PAGA Member Amount will be distributed and paid to all PAGA Members on a *pro rata* basis based on the number of weeks each PAGA Employee worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA Period ("PAGA Workweeks"). (Genish Decl., ¶ 21; Settlement Agreement, ¶ 6.bb). The *pro rata* share of the PAGA Member Amount that a

PAGA Member may be eligible to receive under the PAGA Settlement ("Individual PAGA Payment") will be calculated by the Settlement Administrator, in accordance with the Settlement Agreement. (Genish Decl., ¶ 21; Settlement Agreement, ¶ 6.q).

Each Individual Settlement Share will be allocated as twenty percent (20%) wages and eighty percent (80%) penalties, interest, and non-wage damages. (Genish Decl., ¶ 22; Settlement Agreement, ¶ 16). The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Genish Decl., ¶ 22; Settlement Agreement, ¶ 16). The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their net payment of their Individual Settlement Share ("Individual Settlement Payment"). (Genish Decl., ¶ 22; Settlement Agreement, ¶¶ 6.r). The employer's share of taxes and contributions in connection with the wages portion of Individual Settlement Shares shall be paid by Defendant separately and in addition to the Gross Settlement Amount. (Genish Decl., ¶ 22; Settlement Agreement, ¶ 16). Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Genish Decl., ¶ 22; Settlement Agreement, ¶ 16).

The Net Settlement Amount will be fully distributed to Settlement Class Members and the PAGA Amount will be fully distributed to the LWDA and PAGA Members, in accordance with the Settlement Agreement. (Genish Decl., ¶ 23; Settlement Agreement, ¶¶ 14 & 15).

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. (Genish Decl., ¶ 24; Settlement Agreement, ¶ 34). Any funds associated with such canceled checks will be distributed by the Settlement Administrator to the State of California's Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Member. (Genish Decl., ¶ 24; Settlement Agreement, ¶ 34).

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D. Released Claims

Upon the Effective Date, Plaintiffs and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims. (Settlement Agreement, ¶ 35).

Upon the Effective Date, Plaintiffs, the State of California with respect to all PAGA Members, and all PAGA Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims. (*Id*., ¶ 36).

"Released Class Claims" means any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action which were alleged or which could have been alleged based on the factual allegations in the Rodriguez Operative Complaint, arising during the Class Period, under any federal, state, or local law, and shall specifically include claims for Defendant's alleged failure to pay overtime wages; failure to pay minimum wages; failure to provide meal periods or compensation in lieu thereof; failure to provide rest periods or compensation in lieu thereof; failure to pay waiting time penalties upon termination; failure to provide accurate wage statements; violation of California Labor Code Sections 201, 202, 203, 226, 226(a), 226(c), 226.7, 226.7(b), 510, 512, 512(a), 1194, 1194.2, 1197, 1197.1, and 1198, and the applicable Industrial Welfare Commission Order; California Business and Professions Code sections 17200, *et seq*.; and any other claims, including claims for statutory penalties, pertaining to the Class Members. (*Id*., ¶ 6.ee).

"Released PAGA Claims" means any and all PAGA claims and/or causes of action which were alleged or could have been alleged based on the factual allegations in the PAGA Letters and Actions, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq*., including all claims for attorneys' fees and costs related thereto, for Defendant's alleged failure to pay overtime wages; failure to pay minimum wages; failure to provide meal periods or compensation in lieu thereof; failure to provide rest periods or compensation in lieu thereof; failure to pay waiting time penalties during employment and upon termination; failure to provide accurate wage statements; and failure to provide accurate payroll records; and civil penalties pursuant to California Labor Code Sections 210, 226, 226.3, 558, 1174.5, 1197.1, 2698, and 2699 in connection with violations of California Labor Code Sections 201, 202, 203, 204, 226, 226(a), 226.7, 226.7(b), 510, 512, 512(a), 558, 558.1, 1174, 1174(d), 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2802; and Industrial Welfare Commission Wage Order No. 6-2001. (*Id.*, ¶ 6.ff).

"Released Parties" means Defendant and its present and former officers, directors, members, owners, shareholders, assigns, subsidiaries, attorneys, insurers, successors, predecessors, and affiliates. (*Id.*, ¶ gg).

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The settlement of a class action requires court approval. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996). "In general, questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds).

The review and approval of a proposed class action settlement involves a two-step process. *See* Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of the settlement and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the range of a fair settlement to justify providing notice of the proposed settlement to class members. After notice is provided to the class, the Court must conduct a second inquiry into whether the proposed settlement is fair, reasonable, and adequate. *Id.*

The initial evaluation of the settlement at the preliminary approval step "is not a fairness hearing." *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed settlement is within the range of possible approval and, as a result, "whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing." 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. *See In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006).

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Preliminary approval does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to object or exclude themselves from the settlement. *See* Cal. Rules of Court, Rule 3.769(g). In considering a potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. *See Officers for Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982).

V. THE SETTLEMENT IS PRESUMED FAIR

A. The Settlement Was Reached as a Result of Arm's-Length Bargaining

California courts recognize that "a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining." *Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). Here, the Parties' settlement negotiations were at all times made at arm's-length and were adversarial. (Genish Decl., ¶ 25). The Settlement was reached after continued negotiations following a full day of mediation with a highly respected mediator with substantial experience mediating wage and hour cases and continued negotiations. (Ibid). At all times, Plaintiffs were willing and prepared to litigate this matter through class certification and trial if the Parties had been unable to reach a favorable resolution. (*Id*., ¶ 46).

B. Sufficient Investigation and Discovery by Experienced Class Counsel

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. Prior to mediation, Defendant produced a random 25% sampling of putative class members' time and pay data and records. (Genish Decl., ¶ 26). The random sampling was conducted by sorting putative class members' last names alphabetically, then selecting every third employee until the 25% sampling was met. (Ibid). Defendant also produced relevant wage and hour policies, and information regarding the total number of putative class members, the total number of current putative class members, and the average rate of pay of the putative class members. (Ibid).

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This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and weaknesses of the claims and the potential class-wide damages. (*Id.*, ¶ 27). Based on information exchanged, the Parties extensively briefed issues regarding class certification and liability and provided their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective positions. (*Id.*, ¶ 28). Additionally, settlement negotiations were conducted by highly capable and experienced counsel. (Genish Decl., ¶¶ 1-8; Nader Decl., ¶¶ 2-6). Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 246, 250. In evaluating the reasonableness of a settlement, a trial court must consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and 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." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008).

Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal and factual grounds for defending the Actions. Based upon Class Counsel's experience litigating similar complex matters, Plaintiffs reasonably expected a vigorous and lengthy defense to both class certification and the merits of the Actions absent a settlement.

1. Class Counsel's Analysis of the Maximum Available Liability and Damages

Class Counsel analyzed all available data and estimated Defendant's maximum potential exposure to be approximately $19,640,057, assuming the litigation was successful at trial on all claims at issue and every employee had a violation for each claim on every shift worked, and then reduced this exposure analysis based on the challenges facing the likelihood of obtaining class certification, prevailing at trial, and other attendant risks. (Genish Decl., ¶ 29). This amount is based off an estimated maximum liability for all claims at issue and the total aggregate workweeks during the relevant time period, less interest, and based on the analysis of the data which was extrapolated out for all class members across the entire putative class period, which included: $5,396,024 for meal period violations; $5,469,081 for rest period violations at a 100% violation rate; $780,655 for unpaid wages due to rounding; $1,768,984 in unpaid wages due to off-the-clock work; $56,777 in unpaid overtime due to the failure to compensate overtime at the regular rate of pay; $3,372,886 for waiting time penalties; and $2,795,650 in wage statement penalties. (Ibid). Plaintiff further estimated that Defendant faced an additional exposure of $2,839,000 in potential, non-stacked (i.e., one penalty, per employee, per pay period during the PAGA statutory period) PAGA penalties. (Ibid). Together with the PAGA penalties, Defendant's maximum potential exposure totaled $22,479,057 in damages. (Ibid).

2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments

While Plaintiffs believe that Defendant faced significant exposure, substantial barriers to a recovery existed. In addition to maintaining it complied with all relevant wage-and-hour laws throughout the relevant time period, Defendant contended that Plaintiff Rodriguez's claims are not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. (Genish Decl., ¶ 32; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011)). While Plaintiffs and Class Counsel disagree with Defendant's predictions, they also recognize that there is a significant risk that the Court may deny class certification. (Genish Decl., ¶ 32; *see also*, *Findings of the Study of California Class Action Litigation*, 2000-2006, available at http://www.courts.ca.gov/documents/class-action-lit-study.pdf (finding that only 21.4% of all class actions were certified either as part of a settlement or as part of a contested certification motion)).

More significantly, Defendant contends that the Class Members and PAGA Members who are drivers qualify as exempt under the Federal Motor Carrier's Safety Act ("FMCSA") and the California state law equivalent and are therefore not even subject to California's overtime or break laws. (Genish Decl., ¶ 33). In addition, Defendant contends that Class Members are subject to enforceable individual written arbitration agreements with Defendant that contain valid class action waivers which Defendant argues would have severely impacted the matter on certification issues, as well as ultimate potential liability for damages. (Ibid).

In addition to the issues pertaining to Defendant's employees who worked as drivers, Plaintiffs' meal period claims, which were based on Defendant's alleged failure to provide lawful meal periods, have been increasingly difficult to certify in recent years. (Genish Decl., ¶ 34; *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiffs' theory of liability for meal period violations was based on allegations that Defendant had failed to implement its policies and that its practices failed to allow putative class members to take meal breaks in the manner required under California law. (Genish Decl., ¶ 34; *See Bradley v. Networkers Int'l, LLC,* 211 Cal.App.4th 1129, 1150 (2012) (holding that "the lack of a meal/rest break policy and uniform failure to authorize such breaks are matters of common proof.")). For example, Plaintiffs contended that they and the other putative class members regularly suffered short, late, or missed meal periods due to heavy workloads and strict deadlines, such as being required to unload trucks as soon as the truck arrived. (Genish Decl., ¶ 34). Defendant contended first and foremost that its drivers were not even subject to California's meal break laws based on the FMCSA and that alone would severely reduce its liability on this claim. (Ibid). Defendant further contended that its policies and practices at all times during the putative class period were lawful. (Ibid). More specifically, Defendant asserted that its company-wide practice was to have each department take their meal breaks at the same time each day, and as such, the majority of employees received timely and complete meal breaks. (Ibid). Defendant further argued that the rate of purported meal period violations reflected in the data would require individualized inquiry and that such inquiry would prohibit a class from being certified. (Ibid). We also had to consider the risk that the Court would find validity in the individualized proof defense to certification of Plaintiffs' meal period claim. (Ibid).

Additionally, a large portion of Defendant's overall liability lies in Plaintiffs' rest period allegations. (Genish Decl., ¶ 35). As with the meal period allegations, Defendant contended that that its drivers were not even subject to California's rest break laws based on the FMCSA and that alone would severely reduce its liability on this claim. (Ibid). Defendant further contended it had a lawful written rest period policy, provided compliant rest breaks, and relieved putative class members of all duties as required under California law. (Ibid). Defendant also contended that, as with meal breaks, employees took rest breaks consistently and timely. (Ibid). Additionally, this claim was even more uncertain given the difficulties associated with proving the alleged rest period violations, as Defendant was not required to record these breaks. (Ibid). Given the lack of records demonstrating rest period violations, there were legitimate concerns Plaintiffs would not be able to certify these claims or prove substantial damages with requisite certainty, which made the estimated value of this claim subject to much challenge. (Ibid).

Plaintiffs also faced challenges certifying and proving liability for their minimum wage and overtime claims. (*Id*., ¶ 36). These claims were largely based on unrecorded, off-the-clock work performed by the putative class members both before their shifts and during purported meal and rest periods as well as Defendant's rounding of time entries, resulting in unpaid wages. (Ibid). For example, Plaintiffs contended that Plaintiffs and the other putative class members were required to perform job duties such as unloading trucks once the linens and uniforms arrived for cleaning during purported meal and rest periods. (Ibid). Additionally, Plaintiffs contended that Plaintiffs and other putative class members were required to submit to a COVID-19 screening process prior to clocking in that routinely took up to five (5) minutes each day depending on the number of employees waiting in line. (Ibid). However, the individualized nature of why this work was performed and the individualized nature of damages presented substantial concerns regarding the manageability of the case and the risk the Court could find these issues prevented certification, and the estimated damages for this claim were based on an assumption that all putative class members worked off-the-clock for at least one hour per week. (Ibid). Additionally, Plaintiffs contended that Defendant failed to include non-discretionary bonuses in its regular rate calculations. (Ibid).

There are also substantial risks associated with Plaintiffs' waiting time penalties and wage statement claims. (*Id*., ¶ 37). First, these claims were derivative of Plaintiffs' claims for unpaid meal period premiums, unpaid rest period premiums, and unpaid wages, and if certification was denied on those underlying claims, these derivative claims for penalties would also likely fail. (Ibid). Further, even if Plaintiffs prevailed on their underlying claims, they would still be required to demonstrate that Defendant's violations of California Labor Code section 203 were *willful* violations. (Genish Decl., ¶ 37; *See, e.g*., *Choate v. Celite Corp*., 215 Cal App. 4th 1460, 1468 (2013) (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding of willfulness")). Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them rather than a pure calculation of damages after liability is proven.

(Genish Decl. ¶ 37; *Jaimez v. DAIOHS USA, Inc*., 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp*., 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which comprised a substantial portion of Defendant's estimated liability, were therefore uncertain. (Genish Decl., ¶ 37).

Class Counsel also recognized that, even if Plaintiffs prevailed at class certification, proving the amount of wages due to each Class Member would be an expensive, time-consuming, and extremely uncertain proposition. (*Id*., ¶ 38). In order to prove liability and damages, Class Counsel would need to request and analyze thousands of pages of documents, contact the Class Members, and obtain declarations at great expense. (Ibid). Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. (Ibid). On the other hand, Defendant would likely be able to obtain the cooperation of their employees. (Ibid). Moreover, even if Plaintiffs prevailed at class certification and trial, possible appeals would substantially delay any recovery by the Class. (Ibid).

Therefore, taking into account how each of the above risks potentially effected Plaintiffs' ability to first obtain class certification, and then prove the underlying violations, as well as the cost and delay in recovering the alleged potential damages, Class Counsel discounted Defendant's estimated liability by 80% to $4,495,812. (*Id*., ¶ 39). The merits-based risk factors further reduced Defendant's estimated liability by an additional 65%. (Ibid). This resulted in an adjusted estimated liability of $1,573,535. (Ibid). In light thereof, the settlement amount of $1,175,000 is a significant settlement. (Ibid).

Class Counsel also contemplated the risks of proceeding with the PAGA claim and potential liability Defendant could face from this claim as part of the global resolution. (*Id*., ¶ 40). Existing case law makes PAGA claims subject to the same defenses and risks as Plaintiffs' underlying wage claims. (Genish Decl., ¶ 40; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiff's other claims fail as a matter of law, so does her PAGA claim")). Moreover, although California case law clearly states that PAGA actions need not satisfy class action requirements, Class Counsel remained mindful of the fact that some courts have nevertheless held that PAGA claims must meet a threshold "manageability" requirement. (Genish Decl., ¶ 40; *See, e.g*., *Wesson v. Staples the Office Superstore, LLC*, 68 Cal.App.5th 746 (2021)). Class Counsel also anticipated that even if successful on the merits at trial, the imposition of cumulative civil penalties based on the alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory, and that Defendant would argue that it made a good faith attempt to comply with its legal obligations warranting a reduction in penalties. (Genish Decl., ¶ 40).[1] Class Counsel also anticipated Defendant would argue that it made a good faith attempt to comply with its legal obligations and that the violations per pay period were low, warranting an additional reduction in civil penalties. (Ibid). Finally, Class Counsel was also mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended to facilitate enforcement of California's labor laws by financing state activities and educating and deterring non-compliance. (Ibid).

Therefore, after considering this multitude of factors, Plaintiffs and Class Counsel concluded that it was in the best interest of the State of California and the PAGA Members to enter into the Settlement, and to allocate Fifty Thousand Dollars and Zero Cents ($50,000.00) of the Gross Settlement Amount towards the PAGA claim, which represents approximately 4.25% of the Gross Settlement Amount. (*Id*., ¶ 41). This percentage of the settlement is well within the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. (Ibid). Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as reasonable by courts. (Ibid). Moreover, the overall relief obtained by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California's labor laws, provide funds to the state, and deter future non-compliance by the employer. (Ibid).

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[1] See, e.g., *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) ("duplicative effect" of penalties is a factor in favor of "reducing ...the PAGA penalty"); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez v. McDonalds Restaurants of California, Inc.*, 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties arising out of the same conduct); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp*., 30 Cal.App.5th 504, 529 (2018) (approving reduction in penalties from $50 per pay period to $5 per pay period based on good faith attempts to comply with obligations and minimal violations).

The Settlement is in the best interest of the Class Members, the PAGA Members, and the State of California and is within the accepted range of recoveries for this type of litigation given the inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further litigation. (*Id.*, ¶ 42).

VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

Code of Civil Procedure Section 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class action is superior to other methods. (*See Dunk*, 48 Cal.App.4th at 1806). Plaintiff Rodriguez contends that the *Rodriguez* Action, which is based upon Defendant's wage and hour policies and practices, satisfies the class certification requirements under California Code of Civil Procedure section 382. Defendant denies Plaintiffs' allegations, but for purposes of the Settlement only, Defendant has stipulated to certification of the Class.

A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is Impracticable

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. (*See Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983)). In this case, all three considerations strongly favor class certification. Here, the Class is defined as: "all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period." (Genish Decl., ¶ 17; Settlement Agreement, ¶ 6.b). This provides a clear and definite scope for the proposed class.

Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Courts have certified classes with as few as ten or twenty-eight class members. (*Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995); *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972)). Here, the estimated Class size of one thousand four hundred and seventy-four (1,474) individuals as of June 23, 2024 meets the numerosity requirement.

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Finally, the question of whether class members are easily identifiable turns on whether a plaintiff can establish "the existence of an ascertainable class." (*Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706 (1967)). The existence of an ascertainable class in this case can be established through Defendant's payroll records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and the Court to determine the parameters of the Class. (*See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d 605, 617 (1987)).

B. The Class Shares a Well-Defined Community of Interest

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. (*Dunk*, 48 Cal.App.4th at 1806). Here, all three requirements are easily satisfied.

The commonality criterion requires the existence of common question of law or fact and is generally established with the issues of predominance and typicality. (*See Daar*, 67 Cal.2d 695, 706). What is required is that a common question of fact or law exists which predominates over issues unique to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising from employment—is not a bar to class certification as long as they do not render class litigation unmanageable or predominate over the common issues. (*See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987)).

Here, Plaintiff Rodriguez's claims present common issues of law and fact that predominate and warrant class certification. Plaintiff Rodriguez alleges that Defendant denied compliant meal and rest periods to employees, required employees to perform work off-the-clock, and failed to fully compensate employees for all time actually worked. These policies and practices meant that Defendant allegedly failed to pay minimum and overtime wages, and other related claims. Plaintiff Rodriguez alleges that Defendant's policies and practices were uniform as to all Class Members. Thus, class treatment is appropriate.

To satisfy the typicality requirement, California law does not require that plaintiffs' claims be identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct. (*See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007)). The typicality requirement for a class representative refers to the nature of the claim or defense of the representative, and not to the specific facts from which it arose or the relief sought. (*See ibid*).

Here, Plaintiff Rodriguez alleges that his claims are similar to that of the other Class Members and that Plaintiff Rodriguez's claims arise out of the same alleged course of conduct giving rise to the claims of the other Class Members. Because Plaintiff Rodriguez's claims are based upon the same alleged conduct and business practices as those of Class Members, the typicality requirement has been satisfied.

Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations are satisfied. Class Counsel is well-regarded and is qualified and experienced in employment-related, class-action litigation. (Genish Decl., ¶¶ 1-8). Plaintiff Rodriguez will vigorously, adequately, and fairly represent the interests of the Class. Plaintiff Rodriguez has, at all times, throughout the course of the litigation considered the interests of the Class and understood that he must take steps to adequately represent the Class and their interests. (Rodriguez Decl., ¶ 10). Because Plaintiff Rodriguez's claims are typical of other Class Members and are not based on unique circumstances, there is no antagonism between the interests of Plaintiff Rodriguez and the Class.

C. A Class Action is Superior to a Multiplicity of Litigation

Under the circumstances, proceeding as a class action is a superior means of resolving this dispute, as the Class Members and the Court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will come forward to prove his or her separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior to individual litigation.

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VII. THE REQUESTED ENHANCEMENT PAYMENTS ARE REASONABLE

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010)). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representative, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. (S*ee In re Online DVD Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of $15,000 to be "fair and reasonable")).

Additionally, enhancement awards incentivize aggrieved employees to step into the shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in a representative capacity. (*See, e.g., Bell v. Farmers Ins. Exch*., 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing the action); *Clark v. Am. Residential Servs., LLC*, 175 Cal.App.4th 785, 804 (2009) ("an incentive award is appropriate 'if it is necessary to induce an individual to participate in the suit'")).

Plaintiffs initiated this litigation on behalf of their former co-workers who will now be entitled to receive payment from the Settlement. Plaintiffs invested substantial time and effort into litigation, including their own research, reviewing documents, and extensive discussions with Class Counsel. (Rodriguez Decl., ¶¶ 3-5). Further, the requested amounts for Plaintiffs are also reasonable given the average award and the benefit gained by other Class Members. For these reasons, Plaintiffs request that Enhancement Payments of Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) each (total, $15,000.00) to Plaintiffs be preliminarily approved by the Court. (Genish Decl., ¶ 43; Rodriguez Decl., ¶ 12; Menjivar Decl., ¶ 9.

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VIII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." (*Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 41 (2000)). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. (*Id*. at 47). In cases where class members present claims against a common fund and the defendant agrees to a percentage of the fund as part of the settlement, use of the percentage method is appropriate. (*Id.* at 32).

Here, the requested attorneys' fees of one-third (1/3) the Gross Settlement Amount (i.e., $391,666.66 if the Gross Settlement Amount is $1,175,000.00) is disclosed to Class Members in the proposed Class Notice. (Settlement Agreement, Exh. A). The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel's request for the reimbursement of litigation costs and expenses not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00). (Genish Decl., ¶¶ 44 & 46; Nader Decl., ¶ 13). The Attorneys' Fees and Costs that are not ultimately approved by the Court shall instead be included in the Net Settlement Amount to be distributed to Settlement Class Members. (Settlement Agreement, ¶ 9).

IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS

The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members. (*Id*., Exh. A). The Class Notice will include information regarding the nature of the Actions, a summary of the terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the Class Settlement and to dispute Workweeks and/or PAGA Workweeks, and the date of the Final Approval Hearing. (Ibid). The Class Notice will list each Class Member's total Workweeks and their estimated Individual Settlement Share and each PAGA Member's total PAGA Workweeks and their estimated Individual PAGA Payment. (Ibid).

Within ten (10) calendar days after entry of the preliminary approval order, Defendant will provide a list in a formatted readable Microsoft Office Excel spreadsheet to the Settlement Administrator containing the following information for each Class Member: full name; last known mailing address;

Social Security number; dates worked for Defendant during the Class Period; and such other information as is necessary for the Settlement Administrator to calculate Workweeks and PAGA Workweeks (collectively referred to as the "Class List"). (*Id.*, ¶¶ 6.d & 23). Within seven (7) calendar days after receiving the Class List from Defendant, the Settlement Administrator will perform a search based on the National Change of Address Database or other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice in English and Spanish to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator. (*Id.*, ¶ 24.a). The Parties have agreed to use Apex Class Action LLC as the Settlement Administrator. (Genish Decl., ¶ 48; Settlement Agreement, ¶ 6.jj).

In determining whether to approve a settlement of a class action, a trial court has virtually complete discretion as to the manner of giving notice to class members, and review on appeal is governed by the abuse of discretion standard. (*See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380 (2010)). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which would result in a higher likelihood of actual notice. (Genish Decl., ¶ 49). The original source of the mailing addresses is from Class Members, who provided the information to Defendant. (Ibid).

Class Members will have forty-five (45) calendar days after the initial mailing of the Class Notice by the Settlement Administrator to submit a Request for Exclusion, Notice of Objection, and/or Workweeks Dispute ("Response Deadline"). (Settlement Agreement, ¶ 6.ii).

Any Class Notice returned to the Settlement Administrator as undeliverable on or before the Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice. (*Id.*, ¶ 24.b). If no forwarding address is provided, the Settlement Administrator will, within five (5) calendar days of receipt of the returned mail, 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, and perform a single re-mailing. (Ibid). In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended fifteen (15) calendar days from the original Response Deadline. (*Id.*, ¶ 6.jj).

Class Members will have an opportunity to dispute the number of Workweeks and/or PAGA Workweeks to which they have been credited, as reflected in their respective Class Notices, by submitting a timely and valid letter ("Workweeks Dispute") to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. (*Id*., ¶¶ 6.nn and 25). A Workweeks Dispute must: (a) contain the case name and number of the *Rodriguez* Action; (b) contain the Class Member's full name, signature, address, telephone number, and the last four (4) digits of the Class Member's Social Security number; (c) clearly state that the Class Member disputes the number of Workweeks and/or PAGA Workweeks credited to the Class Member and what the Class Member contends is the correct number; and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id*., ¶ 6.nn).

Any Class Member wishing to be excluded from the Class Settlement must submit a timely and valid letter ("Request for Exclusion") to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. (*Id*., ¶¶ 6.hh & 26). A Request for Exclusion must: (a) contain the case name and number of the *Rodriguez* Action; (b) contain the Class Member's full name, signature, address, telephone number, and last four (4) digits of the Class Member's Social Security number; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id*., ¶ 6.hh). Notwithstanding the above, all PAGA Members will be bound to the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion. (*Id*., ¶ 26).

To object to the Class Settlement, Settlement Class Members must submit a timely and complete written objection ("Notice of Objection") to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. (*Id*., ¶¶ 6.v & 27). A Notice of Objection must: (a) contain the case name and number of the *Rodriguez* Action; (b) contain the objector's full name, signature, address, telephone number, and the last four (4) digits of the objector's Social Security number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the

Response Deadline. (*Id*., 6.v). Settlement Class Members, individually or through counsel, may also present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a Notice of Objection. (*Id*., ¶ 27).

X. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

Respectfully submitted,

Dated: May 20, 2024

BLACKSTONE LAW, APC

By: ______________________________
Jonathan M. Genish
Attorneys for Plaintiff Angel Rodriguez

Dated: May 20, 2024

PROXY LAW FIRM LLP

By: /s/ Rana Nader
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