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SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF SAN DIEGO

RAYNE DEALERSHIP WAGE AND HOUR CASES Colbourne v. Rayne Dealership Corporation Pulley v. Rayne Dealership Corporation	JCCP Case No.: JCCP5420 SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO NO. 25CU016047C SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO NO. 25CU025209C **PLAINTIFF COLBOURNE'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Judge: Hon. Katherine A. Bacal Dept: C-63 Date: September 11, 2026 Time: 1:30 p.m. [Decs. of Anthony Colbourne, Thomas D. Rutledge, Ian Pancer, and Joe Virgilio, [Proposed] Order, and Not. of Mot. filed concurrently herewith]

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiff Anthony Colbourne, on behalf of himself, the putative class, and the State of California as its designated proxy (collectively the "Plaintiffs") very respectfully requests court approval of a $1,200,000 non-reversionary class and PAGA Settlement[1] of this wage and hour Class and Private Attorney General Act (PAGA) action reached only after substantial investigation, analysis of a 25% random sample of Class Members' actual payroll and timekeeping records, review of Defendant's employment policies and other records, witness interviews, independent forensic analysis and extrapolation of the Class's potential damages and PAGA penalties, a full-day mediation before Jill Sperber, Esq., and approximately one additional month of mediator-assisted negotiations culminating in the Parties' acceptance of the mediator's proposal.

The Settlement provides substantial and immediate monetary relief to approximately 395 Class Members without requiring a claim form. After the proposed deductions, approximately $721,250 will remain for distribution, including approximately $695,000 to Settlement Class Members and $26,250 to Aggrieved Employees from the PAGA allocation. The average Class Member is estimated to receive approximately $1,759, with individual payments ranging from approximately $34.04 to $8,609.04 depending principally upon the employee's time worked during the Class Period. No portion of the Gross Settlement Fund will revert to Defendant.

Importantly, the Settlement is supported by a claim-by-claim damages analysis permitting the Court to independently evaluate the compromise under *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008). Based upon Plaintiffs' analysis of the records produced and the retained forensic accountant's analysis, Plaintiffs

[1] Unless otherwise defined herein, capitalized terms have the same meanings as those set forth in the Parties' Class Action Settlement Agreement ("Agreement," "Settlement," or "Settlement Agreement"), attached to the Declaration of Joseph Virgilio as Exhibit 1.

calculated maximum theoretical exposure of approximately $7,633,783, consisting of $5,531,783 in class damages and $2,102,000 in PAGA penalties. The $1.2 million Gross Settlement Amount therefore represents approximately 15.7% of Plaintiffs' combined maximum theoretical exposure before accounting for the substantial liability, certification, proof, penalty, appellate, and other litigation risks discussed below.

The PAGA component likewise reflects a reasoned assessment of the shorter PAGA limitations period, the number of potentially recoverable penalties, Defendant's defenses, and the Court's statutory discretion concerning civil penalties. The proposed PAGA allocation is therefore not arbitrary, but results from the same data-driven analysis underlying the Class settlement.

Although Plaintiff David Pulley has filed a later competing action asserting overlapping claims and has threatened to challenge this Settlement, the existence of competing litigation does not determine whether this Settlement should be approved. The relevant inquiry remains whether the Settlement is fair, reasonable, and adequate based upon the value of the claims being released and the risks of continued litigation. The developed evidentiary record submitted with this Motion permits the Court to make precisely that independent determination.

For these reasons, Plaintiffs respectfully request preliminary approval.

II. FACTUAL BACKGROUND.

Defendant Rayne Dealership Corporation is a water purification system distribution company that delivers and installs water softeners, purification, whole house conditioners, hybrid softener and conditioners, and drinking water systems to commercial and residential customers in California. *See* www.raynewater.com. From April 18, 2024, to June 11, 2024, Defendant employed Plaintiff Anthony Colbourne as a nonexempt route driver. First Am. Comp. (FAC), ¶¶ 15, 16; ROA #4.

On June 11, 2024, Plaintiff resigned from his employment with Defendant. Shortly after his termination, Plaintiff hired Plaintiffs' Counsel who obtained his and a coworker's personnel files and payroll records. Based on their examination of these records and Plaintiffs' Counsel investigation, it was apparent the Defendant had committed a number of Labor Code violations. (Virgilio Decl., ¶¶ 15-24.)

On January 8, 2025, Plaintiff Colbourne submitted a PAGA notice to the Labor and Workforce Development Agency (LWDA) pursuant to Labor Code § 2699.3. Plaintiff then waited the statutory 65-day exhaustion period. During that time, the LWDA did not provide notice of any intent to investigate or intervene. (Virgilio Decl., ¶¶ 25-27.)

On March 27, 2025, Plaintiff filed a PAGA-only complaint with the Superior Court of California for the County of San Diego alleging, among other things, that Defendant underpaid overtime, failed to pay minimum/regular/prevailing wages, failed to pay wages timely, committed violations of the meal and rest break laws, failed to provide accurate wage statements, failed to provide and maintain accurate records, violated sick pay laws, failed to reimburse expenses, and committed various violations of the Labor Code. On May 30, 2025, Defendant filed an answer. (Virgilio Decl., ¶¶ 28-29.)

Shortly after, Plaintiffs served Defendant with discovery. Plaintiffs also continued their case investigation by interviewing witnesses, gathering documents, and doing research. (Virgilio Decl., ¶¶ 30-31.)

On April 29, 2025, Defendant's former employee filed a class and PAGA action in the Superior Court of California for the County of San Diego. *Pulley v Rayne Dealership Corporation* (SDSC Case No.: 25CU025209C); ROA #3.

On May 7, 2025, Defendant's former employee filed a class and PAGA action in the Superior Court of California for the County of Santa Clara. *Salazar v Rayne Dealership Corporation* (SCSC Case No.: 25CV465402). ROA #5.

At the outset of this litigation, Defendant mounted a vigorous defense. During the summer of 2025, however, the Parties—through counsel—explored the possibility of settlement. To facilitate meaningful negotiations, the Parties agreed to put a hold on litigation and participate in private mediation, contingent upon Defendant's production of relevant representative action data, including the total number of alleged employees, number of alleged pay periods worked, a 25% random sampling of Class Member payroll records, and copies of applicable policy documents governing the employment of the Class Members. The parties agreed on a private mediator and set a mediation date for December 1, 2025. (Virgilio Decl., ¶¶ 37-42.)

On August 26, 2025, Defendant filed a Notice of Related Case naming the two cases mentioned above, *Pulley v Rayne Dealership Corporation* and *Salazar v Rayne Dealership Corporation.* (Virgilio Decl., ¶ 34.)

On August 26, 2025, the Parties filed a joint stipulation to allow a filing of a First Amended Complaint (FAC). ROA # 16. On September 29, 2025, Plaintiff filed the FAC, which alleges class and PAGA claims. (Virgilio Decl., ¶ 35.)

On October 23, 2025, the Plaintiff in the *Pulley* case filed a Notice of Submission of Petition for Coordination. ROA #1. On October 23, 2025, the Chief Justice of California and Chair to the Judicial Council issued an order assigning the Honorable Katherine A. Bacal in Department 63 of Superior Court of California for the County of San Diego to serve as the Coordination Motion Judge. ROA #7. On November 6, 2025, the Plaintiff in the *Pulley* case filed a Notice of Order Assigning Coordination Motion Judge. ROA #11.

Before mediation, Defendant provided Plaintiffs with a 25% random sampling of Class members' wage statements and time entry data, employee handbooks and policy documents governing the Defendant's employment practices, and other key information, including the total number of workweeks and Class size. (Virgilio Decl., ¶¶ 41, 43-44.)

This exchange of information allowed the Parties to shift focus from active litigation to mediation preparation. Plaintiffs' counsel hired Creal Consulting, Inc., an accounting firm specializing in the forensic examination of pay records in wage and hour class and PAGA litigation, to evaluate the Class data and pay records. Kylene

Foster of Creal Consulting, Inc., provided Plaintiffs' counsel with a breakdown of the total damages within the Class Period based on the data provided by Defendant. In addition, she provided the total penalties within the PAGA period based on the data provided by Defendant. She was further able to extrapolate the total damages and penalties with the Class and PAGA periods, respectively. (Virgilio Decl., ¶¶ 45-49.)

Through the foregoing process, the parties conducted a significant investigation of the facts and law. Such discovery and investigation includes: (1) the Plaintiffs' analysis of the sampling of Class and Aggrieved Employee payroll data the Defendant provided, including size and composition, applicable employment policies of the Defendant, and payroll and time records for approximately reasonable number of current and/or former employees statewide, involving a large number of pages of policies and documents, excel spreadsheets, electronic wage statements, and other records, (2) analysis of legal positions taken by the Defendant, (3) interviews of material witnesses and receipt and review of their personnel files and payroll records, (4) calculation and analysis of potential damages and penalties based on the data produced by Defendant, and (5) research and analysis of applicable law with respect to the claims alleged and potential defenses thereto. This information was critical for our analysis of liability and damages. Plaintiffs' counsel devoted a substantial amount of time in evaluating the data, interviewing witnesses, and preparing for mediation and, if unsuccessful, getting ready for trial. Before the mediation, the Parties submitted detailed briefs outlining our respective positions. (Virgilio Decl., ¶¶ 50-53.)

On December 1, 2025, the Parties participated in a full day of private mediation with Jill Sperber, Esq.; however, they were unable to reach a settlement. The Parties thereafter continued to negotiate for another month with their mediator. On January 7, 2026, the Parties accepted the mediator's proposal. (Virgilio Decl., ¶¶ 55-58.)

From January 7, 2026 to February 11, 2026, the Parties drafted the terms of the longform settlement. Attorneys' fees and a service payment for the named Plaintiff were not discussed until all other material terms had been agreed upon. On February

11, 2026, the Parties signed the Settlement Agreement. (Virgilio Decl., ¶¶ 59-61.)

On March 9, 2026, Plaintiffs' Counsel filed a copy of the Settlement Agreement with the LWDA in preparation for this Motion. On March 9, 2026, Plaintiffs' counsel filed a copy of Motion for Preliminary Approval moving papers in the Honorable Euketa Oliver's department, for a preliminary approval hearing to be heard on April 3, 2026. (Virgilio Decl., ¶ 62-63.)

On March 25, 2026, Plaintiff David Pulley, of the later filed case, filed an ex parte application for an order continuing the April 3, 2026 hearing to a date after the hearing on David Pulley's then pending motion to intervene. On April 3, 2026, Judge Oliver denied the ex parte motion for an order continuing to a date after the hearing, and continued the motion for preliminary approval to May 29, 2026, and advanced the Motion to Intervene to May 29, 2026. On May 26, 2026, this Court granted the petition for coordination of cases filed by David Pulley. ROA #23-27. On July 23, 2026 a status conference was held in the Honorable Judge Bacal's department and continued to August 4, 2026. On August 04, 2026, a status conference was held in the Honorable Judge Bacal's department. On August 4, 2026, Judge Bacal set a preliminary approval hearing to be heard September 11, 2026. (Virgilio Decl., ¶ 64-69.)

On August 17, 2026, Plaintiffs' counsel filed a copy of these moving papers with the LWDA. (Virgilio Decl., ¶ 70.)

III. <u>THE SETTLEMENT AGREEMENT.</u>

A. <u>Overview of The Settlement Terms.</u>

The Parties have agreed to a full and complete Settlement of this matter that provides relief for members of the proposed Settlement Class. The Settlement Class is defined as:

> "Settlement Class" and/or "Settlement Class Members" – means all those persons who are Class Members who have not properly and timely opted out of the Litigation. (Agreement, ¶

> 29 p. 6.)

Class Members are defined as:

> "Class Member(s)" – means all nonexempt individuals the Defendant employed in California during the Class Period. (Agreement, ¶ 2 p. 3.)

The Class Period is defined as:

> "Class Period" – means the period commencing on March 27, 2021 through the date of the Order Granting Preliminary Approval, or the date as provided in Section IX paragraph 8(b). (Agreement, ¶ 6 p. 3.)

In consideration for the release of the Class Members' claims, Defendant will pay the gross sum of $1,200,000 into a Gross Settlement Fund for the benefit of the Class. Under no circumstances will any portion of this fund revert to the Defendant. The Gross Settlement Fund shall increase commensurately if the number of individuals exceeds the Defendant's estimates by ten percent or more. After Court-approved deductions for attorneys' fees, expenses, claims administration costs, the Class Representative service award, and payment to the LWDA, the remaining funds will be automatically distributed *pro rata* to all Class Members who do not timely and validly exclude themselves from the Class. Any monies remaining in the Net Settlement Fund shall be distributed to the Unclaimed Property Fund with the California State Controller's Office under the name of each individual Class Member who did not cash their check. (Agreement, ¶ 4(b) p. 13, ¶ 9.8 p. 23.)

B. <u>Fairness of Allocation to the Subclasses.</u>

The Settlement Agreement provides that 100% of the Net Settlement Proceeds, less the PAGA Payment to Aggrieved Employees, will be distributed to Settlement Class Members. For PAGA penalties, $75,000 of the Gross Settlement Fund has been designated as civil penalties, 35% of which ($26,250) shall be distributed to the

Aggrieved Employees as part of the Net Settlement Fund. (Agreement, ¶ IV(1)(a-b) p. 10-11.)

Plaintiffs' maximum theoretical PAGA calculation was $2,102,000. That figure assumes imposition of a $100 penalty for every identified pay period for every asserted predicate violation, without reduction for overlapping or derivative violations, lack of actual injury, Defendant's knowledge, or the Court's statutory discretion to reduce penalties. (Virgilio Decl., ¶¶ 80, 140–141.) Plaintiffs did not consider recovery of that theoretical maximum reasonably probable. The $75,000 PAGA allocation reflects those substantial risks, the shorter PAGA period, and the Court's discretion concerning civil penalties. (Virgilio Decl., ¶¶ 142-147.)

C. Selection of the Settlement Administrator.

The Parties have agreed to employ Phoenix Settlement Administrators (Phoenix) to handle the Settlement Administration. This was after obtaining several bids, of which Phoenix was the lowest. Phoenix is experienced, insured, and the lowest bidder. (Virgilio Decl., ¶¶ 168-172.)

D. Form of Notice.

Class Members will receive Notice of Class Action Settlement (the "Notice") attached as **Exhibit 1** of **Exhibit 1** to the Declaration of Joe Virgilio filed concurrently with these papers. Before mailing the Notice, the Settlement Administrator shall update all Class Member addresses using the National Change of Address System. The Notice informs Class Members of information about the Settlement, including the monetary terms, the nature of the claims and the release, and Class Members' right to object to or opt-out of the Settlement. The Notice will further inform Class Members how to obtain additional information about the Settlement. In the event a Notice is returned to the Settlement Administrator, the Settlement Administrator will attempt to locate another address for the Class Member. (Agreement, ¶¶ 9, 17.)

The proposed Notice satisfies Cal. Rules of Court, rule 3.766(d) because it "fairly apprise[s] the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1159 (2000). Plaintiffs very respectfully request that the Court approve the Notice.

E. <u>Opt-Outs and Objections.</u>

The Notice will inform all Class Members of their right to opt-out of or object to the Settlement, as well as the associated procedures and deadlines. Class Members who opt-out must send the Settlement Administrator, in a timely manner, written notice indicating their desire to opt-out. The opt-out request must contain the person's name, address, telephone number, and last four digits of their social security number. To object, a Class Member must serve the Settlement Administrator with a timely written statement stating the reason for objecting within 45 calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline"). The objection must be in writing, including full name, last four digits of objector's Social Security Number, telephone number, current address, all objections and factual and legal bases for the objections, include all supporting papers, and be postmarked no later than the Response Deadline. The Settlement Administrator will serve copies of any objections on counsel, who shall file them with the Court. (Agreement, ¶ 4 p. 20.)

F. <u>Attorneys' Fees, Costs, and the Named Plaintiff's Service Award.</u>

The Settlement Agreement contemplates Plaintiffs' Counsel moving the Court for attorneys' fees in an amount not to exceed 33% of the Gross Settlement Fund and reasonable litigation costs. Plaintiffs' Counsel will also move the Court for a service award in the amount of $10,000 for the Named Plaintiff. These amounts along with settlement administration costs will be deducted from the Gross Settlement Fund before distribution to Class Members. (Agreement, ¶¶ 3(2)(b-e) p. 8-10.)

G. Estimated Allocation of The Gross Settlement Fund.

The Parties estimate the Gross Settlement Fund will be allocated as follows:

Gross Settlement	**$1,200,000**
Litigation Costs	($16,000)
Fees (33%)	($396,000)
Incentive Award to Named Plaintiff	($10,000)
Est. Claims Administrator Costs	($8,000)
LWDA	($48,750)
Net Settlement Amount	**$721,250**
Class Member Settlement Fund	$695,000
PAGA Member Settlement Fund	$26,250

(Virgilio Decl., ¶ 159.)

IV. STANDARD OF REVIEW.

"Public policy generally favors the compromise of complex class action litigation." *In re Cell Phone Termination Fee Cases,* 193 Cal. App. 4th 298 (2009). At the preliminary approval stage, the Court determines whether the proposed Settlement is within the range of reasonableness, and thus whether notice to the class of the settlement terms and conditions and the scheduling of a formal fairness hearing are worthwhile. *See* Cal. Rules of Court, rule 3.769(c); Newberg on Class Actions § 13:13 (5th ed.) ("[C]ourts will grant preliminary approval where the proposed settlement is neither illegal nor collusive and is within the range of possible approval."). In this context, courts generally do not address whether the settlement is ideal or the best outcome, but only whether the settlement is fair, adequate, free from collusion and consistent with plaintiff's fiduciary obligations to the class. *Kullar v. Foot Locker Retail, Inc.,* 168 Cal. App. 4th 116 (2008).

A. The Settlement Terms Are Fair, Reasonable, and Adequate.

"In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of Plaintiff's 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." *Wershba v. Apple Computers, Inc.,* 91 Cal. App. 4th 224, 233 (2001). A presumption of fairness exists where the settlement is reached through arms-length bargaining. *Dunk v. Ford Motor Co.,* 48 Cal. App. 4th 1794 (1996).

1. The Settlement Was Reached After Negotiations with Counsel.

The Settlement was reached only after extensive arm's-length settlement negotiations that took place over a period of months. During the Parties' settlement discussions, the Parties explored all aspects of this litigation, including Defendant's defenses to liability and class certification. Additionally, attorneys' fees and a service payment for the named Plaintiff were not discussed until all other material settlement terms had been agreed upon, eliminating the possibility of a trade-off between compensation for the Class and compensation for Plaintiffs' Counsel or the Plaintiffs. (Virgilio Decl., ¶¶ 55-60, 152.) This Settlement is, therefore, entitled to a presumption of fairness. *See Dunk,* 48 Cal. App. at 1802.

2. The Settlement Bears a Reasonable Relationship to Plaintiffs' Maximum Potential Recovery in Light of the Risks of Continued Litigation .

The Settlement is supported by a developed evidentiary record that permits the Court to independently evaluate both the potential value of the claims and the risks attendant to continued litigation. This is not a settlement based merely upon counsel's generalized assessment of the case.

Before mediation, Defendant produced a 25% random sample of Class Members' payroll and timekeeping records, applicable employment policies, Class size information, workweek data, and other information bearing directly upon liability and damages. Plaintiffs retained Creal Consulting, Inc., an accounting firm experienced in wage-and-hour litigation, to analyze the data. Creal calculated the potential damages and PAGA penalties reflected in the sample and extrapolated those results across the applicable Class and PAGA periods. (Virgilio Decl., ¶¶ 44-49.)

Based upon that analysis, Plaintiffs calculated the potential recovery for each principal theory of liability. The resulting potential exposure was then evaluated against the substantial litigation risks associated with each claim, including Defendant's factual and legal defenses, the risks of class certification and maintaining certification through trial, proof of the frequency of alleged violations, individualized issues asserted by Defendant, and the possibility that PAGA penalties would be substantially reduced. (Virgilio Decl., ¶¶ 50-53, 70-83.)

Thus, the $1.2 million non-reversionary settlement is not an arbitrary compromise. It represents approximately 15.7% of Plaintiffs' combined maximum theoretical exposure before accounting for the substantial liability, certification, proof, penalty, appellate, and other litigation risks. After the proposed deductions, approximately $721,250 will remain for distribution, including approximately $695,000 to Settlement Class Members and $26,250 to Aggrieved Employees as their statutory share of the PAGA allocation. No Class Member must submit a claim to receive payment, and no portion of the Gross Settlement Fund will revert to Defendant. (Virgilio Decl., ¶¶ 84-85, 160-161.)

On a net per-person basis and depending on their time employed by Defendant, the Settlement will provide Class Members with a recovery of roughly $34.04 per person on the low side to $8,609.04 on the high side if they were employed throughout the Class Period. This Class recovery is *well* within the range of reason. For a full discussion of Plaintiffs' Counsel's reasoning consistent with the *Kullar* analysis, please review Virgilio Decl., ¶¶ 71-167.

This record supplies precisely the information required by *Kullar*. The Court of Appeal explained that a settlement court must have sufficient information concerning "the amount that is in controversy and the realistic range of outcomes of the litigation" to independently evaluate the compromise. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 120 (2008). Here, the Court has the underlying sampling methodology, Plaintiffs' claim-by-claim calculation of maximum theoretical exposure, the assumptions underlying those calculations, and the principal factual, legal, certification, and proof risks that caused Plaintiffs' Counsel to conclude that recovery of the theoretical maximum was not realistically probable. The Court therefore has a developed evidentiary record from which it can independently evaluate whether the $1.2 million Settlement represents a reasonable compromise of the claims being released.

3. <u>The Risk of Litigation and Maintaining Class Status Support Settlement.</u>

The impressive nature of this recovery comes into even sharper focus when considering the risks of further litigation. Plaintiffs had yet to certify a class. Further, Plaintiffs believes Defendant carried a testimonial edge, given that the management would have in depth personal knowledge concerning potential witnesses, and the named Plaintiff had been employed a limited number of months. Moreover, Plaintiffs believe Defendant would have argued the meal and rest break claims would require too many individualized inquiries and that Plaintiffs' PAGA case was unmanageable, among many other defenses. Defendant likewise contested the viability of Plaintiffs' reimbursement claims related to cell phone usage, arguing its employees' work use of phones, if any, was substantially less than Class Members' personal usage and, therefore, Defendant maintains they are not liable for Class Members' personal use of their cell phones. These and many other defenses Defendant raised and continue to assert played a large part in the settlement amount. (Virgilio Decl. ¶¶ 71-167.)

4. <u>The Discovery Obtained and Stage of Proceedings Supports Settlement.</u>

Plaintiffs actively litigated this action. Among other things, Plaintiffs obtained access to the Class List and conducted a time-consuming survey of the Class. Leading up to the mediation, the Parties exchanged documents and 25% of the Class Members' payroll information Plaintiffs needed to measure damages and assess liability. The parties went into the settlement conference with a good understanding of the critical issues and the relevant evidence. (Virgilio Decl., ¶¶ 71-167.) This factor also supports approval of the Settlement.

5. The Views and Experience of Counsel Support Settlement.

The Parties are represented by attorneys who have significant experience in class action litigation and settlements. It is the view of Plaintiffs' Counsel that the Settlement is fair, adequate, and reasonable. (Rutledge Decl., ¶¶ 3-25; Pancer Decl. ¶¶ 3-9, Virgilio Decl., ¶¶ 186-194.) Courts typically defer to the judgment of Class Counsel. *See Kullar*, *supra,* 168 Cal. App. 4th 116, 129 (2008) ("The court . . . should give considerable weight to the competency and integrity of counsel . . . in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct.").

6. The Existence of a Later-Filed Competing Action Does Not Diminish the Fairness of the Settlement.

Plaintiff Colbourne recognizes that David Pulley has filed a competing action asserting overlapping claims and has challenged the proposed Settlement. That circumstance warrants careful judicial scrutiny, but it does not alter the governing question: whether the Settlement is fair, reasonable, and adequate to the Class based upon the value and litigation risks of the claims being released.

The Settlement was not reached merely because competing litigation existed. Before agreeing to resolve the case, Plaintiffs obtained and analyzed a 25% random sample of Class Members' payroll and timekeeping records, employment policies, Class size and workweek information, interviewed witnesses, reviewed personnel and payroll records, retained an independent forensic accounting firm to calculate and extrapolate potential damages and penalties, and evaluated Defendant's defenses to liability and certification. (Virgilio Decl., ¶¶ 40-53.) The Parties then participated in a full-day mediation before Jill Sperber, Esq., continued negotiating for approximately another month, and ultimately accepted the mediator's proposal on January 7, 2026. (Id., ¶¶ 55-61.)

The Settlement therefore should be evaluated upon its own evidentiary record—not by which competing plaintiff prefers to prosecute the claims. The relevant question is whether the consideration obtained for the Class and the State reasonably reflects the claims' potential value discounted by the risks, expense, delay, and uncertainty of continued litigation. As demonstrated by the claim-by-claim analysis submitted with this Motion, it does.

B. Certification of the Settlement Class Is Appropriate.

Plaintiffs request the Court to certify the Class solely for settlement purposes under Code Civ. P. § 382, which authorizes a class action where "[t]he question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." To obtain certification, a party must "establish the existence of both an ascertainable class and a well-defined community of interest among the class members." *Lockheed Martin Corp. v. Superior Court,* 29 Cal. 4th 1096, 1103-1104 (2003). "The community of interest requirement 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." *Richmond v. Dart Indus., Inc.,* 29 Cal. 3d 462, 470 (1981).

1. The Proposed Class Is Ascertainable and Numerous.

"No set number is required as a matter of law for the maintenance of a class action" and classes of as few as 28 members have been certified. *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981). In this matter, there are 395 Class Members; numerosity is therefore satisfied. (Agreement, ¶ 3.) "Class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records." *Aguiar v. Cintas Corp. No.2*, 144 Cal. App. 4th

121, 146 (2006). Here, Class Members are easily identifiable from Defendant's employment records.

2. <u>The Community of Interest Requirements Are Met.</u>

a. <u>Common Questions Predominate.</u>

"The ultimate question the element of predominance presents is whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1023 (2012). Here, Plaintiffs contend there are class-wide issues that predominate over any individual concerns. Whether Defendant violated the Labor Code in the manner alleged in the FAC. Plaintiffs contend the Defendant followed the same procedures with respect to all Class Members. Plaintiffs maintain that whether Defendant's misconduct was unlawful can be determined on a class-wide basis.

b. <u>The Named Plaintiff's Claims Are Typical.</u>

Typicality requires the plaintiff's interests in the action be significantly similar to those of other class members. *See Richmond*, *supra*, 29 Cal. 3d at 470. A representative plaintiff's claims are typical if they (1) arise from the same event that gives rise to the claims of other class members, and (2) are based on the same legal theories. *Miller v. Woods*, 148 Cal. App. 4th 867, 872-73 (1983). When the same underlying conduct affects the named plaintiffs and the putative class, the typicality requirement is met irrespective of varying fact patterns that may underlie individual claims. *Daniels v. Centennial Grp., Inc.*, 16 Cal. App. 4th 467, 473 (1993).

In this case, Named Plaintiff has the same claims as the Class Members: the violation of the Labor Code based upon the same allegedly non-compliant meal and rest break policy, unpaid wages, wage statement violations, and unreimbursed business expenses. (Colbourne Dec., ¶¶ 4-11.) Claims of this sort are routinely found to be typical. *See Richmond*, *supra*, 29 Cal. 3d at 470.

c. The Class Is Adequately Represented by Plaintiff and Counsel.

"Adequacy of representation depends on whether the Plaintiff's attorney is qualified to conduct the proposed litigation and the Plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Bank of Am.,* 60 Cal. App. 3d 445, 450 (1976). Plaintiff has been actively engaged in litigation. Plaintiff provided counsel with relevant documents, stayed abreast of developments and settlement negotiations, and evaluated the Settlement Agreement. Plaintiff Colbourne put the interests of the Class first in making decisions related to litigation and settlement. Plaintiff does not have any conflicts of interest with the putative class. Messrs. (Colbourne Dec., ¶¶ 1-54.)

Rutledge and Pancer have extensive class action experience representing consumers and employees in a myriad of class and PAGA litigation. Mr. Virgilio has experience in a multitude of individual employment actions and experience in class and PAGA litigation (Rutledge Decl., ¶¶ 3-25; Pancer Decl., ¶¶ 3-9; Virgilio Decl. ¶¶186-194.)

d. Class Action Is the Superior Vehicle for Adjudication.

A class action is superior where individual claims are too small to warrant separate actions, and where duplicative or repetitious litigation is avoided through the use of the class device. *Aguiar v. Cintas Corp. No.2*, 144 Cal. App. 4th 121, 146 (2006). In a matter such as this, where the claims of all Class Members are identical and are based on the same common core of facts, but involve a modest amount of damages, it is clear that adjudicating this matter as a class action will achieve economies of time, effort, and expense, and promote uniformity of results.

V. CONCLUSION.

For the foregoing reasons, Plaintiffs very respectfully requests that the Court: (l) preliminarily approve the proposed Settlement, (2) certify the Class for settlement purposes only, (3) appoint Plaintiff as Class Representative, (4) appoint Plaintiffs'

Counsel as Class Counsel, (5) direct notice to be distributed to the Class, and (6) schedule a final approval hearing.

Respectfully submitted,

Dated: August 17, 2026

PANCER LAW CORPORATION

By: /s/ *Joe Virgilio*
Joe Virgilio, Esq.
Attorneys for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, Joe Virgilio, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 4603 Mission Blvd., Ste 220, San Diego, CA 92109.

On August 17, 2026, I served the foregoing document(s) described as:

PLAINTIFF COLBOURNE'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows: **See Attached List.**

☐ **(BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence was deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in San Diego, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☒ **(BY E-MAIL via E-file)** I am readily familiar with the business practice for collection and processing of correspondence for emailing with the Court authorized third-party vendor. This correspondence was sent via email to the above recipients directly and via a third-party vendor pursuant to the vendor's policies and practices.

☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

☐ (BY FACSIMILE) I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed August 17, 2026, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

<u>/s/Joe Virgilio</u>
Joe Virgilio

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