Lori J. Costanzo, SBN 142633
Luiza V. Dias, SBN 320629
Frank Zeccola, SBN 308875
COSTANZO LAW FIRM, APC
111 West St. John Street, #700
San Jose, CA 95113
Phone: 408.993.8493
Fax: 408.993.8496
Email: lori@costanzo-law.com
luiza.dias@costanzo-law.com
frank.zeccola@costanzo-law.com

Attorneys for Plaintiffs Lori Mayo-Hicks and Magdelena Moya, the Class Members and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CRUZ

LORI MAYO-HICKS, an individual; and MAGDELENA MOYA, an individual, Plaintiffs, v. ALLEN PROPERTY GROUP, INC., a California Corporation; and DOES 1–50, inclusive, Defendants.	Case No.: 24CV00617 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND SETTLEMENT UNDER PRIVATE ATTORNEYS GENERAL ACT** **Hearing Date: July 22, 2025** **Time: 8:30 a.m.** **Department: 10** **Judge: Hon. Timothy Schmal** *Complaint filed: February 29, 2024* *Trial date: Not set*

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Lori Mayo-Hicks and Magdalena Moya ("Plaintiffs") seek preliminary approval of a proposed settlement of wage-and-hour claims on behalf of themselves and a putative class against Allen Property Group, Inc. ("Defendant" or "APG") (collectively, the "Parties") upon the terms and conditions set out in the Class & Paga Settlement Memorandum Of Understanding ("Settlement Agreement"), a copy of which is attached as Exhibit 1 to the Declaration of Frank Zeccola, Esq., submitted in support hereof. Defendant does not oppose this motion.

Plaintiffs request that the Court take the following actions in response to this Motion:

1. Preliminarily approve the settlement;
2. Preliminarily certify the class of approximately 271 non-exempt employees as defined in the Settlement Agreement ("Class");
3. Preliminarily appoint Frank Zeccola, Esq., of Costanzo Law Firm, APC, as Class Counsel ("Class Counsel");
4. Approve the notice of the Settlement (the "Class Notice") and direct that the Class Notice be mailed to the Class by a third-party Settlement Administrator ("Administrator");
5. Appoint Phoenix Settlement Administrators as the Administrator; and
6. Set a date for final settlement approval by this Court.

As shown below, all of the criteria for preliminary approval are satisfied. The Settlement Agreement resulted from discovery and investigation by both Parties into the strength of Plaintiffs' class claims and Defendant's defenses thereto. The terms of the Settlement Agreement are objectively fair, adequate, and reasonable to the Class and are the product of arm's-length negotiations. Defendant has agreed to pay Four Hundred Seventy-Five Thousand Dollars ($475,000.00) to settle this matter for all hourly non-exempt employees who have or continue to work for Defendant in California at any time from February 29, 2020, to December 31, 2024.

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II. CASE BACKGROUND

A. Factual Background and Summary of Plaintiffs' Allegations

1. The Parties

Plaintiffs Lori Mayo-Hicks and Magdalena Moya, individually and on behalf of all other similarly situated property workers, filed this wage-and-hour class action against their former employer, Allen Property Group, Inc. The Class, as demonstrated above, consists of all current and former non-exempt employees who have or continue to work for Defendant employer in California at any time from February 29, 2020, to December 31, 2024. (*See,* Declaration of Frank Zeccola, Esq., in Support of Preliminary Approval of Class Action Settlement ("Zeccola Decl."), at ¶ 8.)

2. Summary of Plaintiffs' Allegations

On February 29, 2024, Plaintiffs filed their Class Action Complaint for Damages (the "Complaint"). In the Complaint, Plaintiffs alleged the following causes of action against Defendant: (1) Failure to Compensate for All Hours Worked, (2) Failure to Pay All Minimum Wages, (3) Failure to Pay All Overtime Wages, (4) Failure to Provide Rest Periods and Pay Missed Rest Period Premiums, (5) Failure to Provide Meal Periods and Pay Missed Meal Period Premiums, (6) Failure to Maintain Accurate Employment Records, (7) Failure to Pay Wages Timely during Employment, (8) Failure to Pay All Wages Earned and Unpaid at Separation, (9) Failure to Furnish Accurate Itemized Wage Statements, (10) Unlawful Deductions and Failure to Reimburse Business Expenses, (11) Private Attorney General Act, (12) Unfair Business Practices; (13) Unlawful Retaliation, (14) Disability Discrimination, (15) Failure to Prevent Discrimination, Harassment, and Retaliation, and (16) Wrongful Termination.

Plaintiffs brought the first 12 aforementioned claims on behalf of the Class, which is defined as: All current and former non-exempt employees who have or continue to work for Defendant employer in California at any time from February 29, 2020, to December 31, 2024. Excluded from the Class are those individuals who would otherwise be a Class Member under the above definition but have: timely and properly excluded himself or herself from the Class by submitting a valid and timely request for exclusion. (Zeccola Decl., ¶ 9.) The remaining four causes of action, numbered 13

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to 16, were Plaintiff Mayo-Hicks and Plaintiff Mayo's individual claims that were settled separately and which will be dismissed.

3. Plaintiffs' Claims for Failure to Compensate for All Hours Worked/Overtime

Plaintiffs alleged that (1) Defendants were required to compensate Plaintiffs and Class Members for all hours worked pursuant to the Industrial Welfare Commission Orders, California Code of Regulations, Title 8, Chapter 5, Section 11070 and Labor Code sections 200-204, 225.5, 500, 510, 558 1197, 1198; (2) Plaintiffs and Class Members routinely performed work "off-the-clock"; (3) Defendants failed to track their hours worked and refused to compensate Plaintiff and Class Members for some and/or all of the wages (including overtime wages) earned, in violation of the applicable California Wage Order, Title 8 of the California Code of Regulations and the California Labor Code; (4) Thus, Defendants are liable for an additional violation to the extent Defendants are in fact secretly paying less than the designated wage scale; (5) At all relevant times, Defendants were aware of, and were under a duty to comply with the wage and overtime provisions of the California Labor Code, including, but not limited to California Labor Code sections 200-204, 216, 225.5, 500, 510, 558 1197, 1198; (6) Plaintiff and Class Members have been deprived of his/her/their rightfully earned compensation as a direct and proximate result of Defendants' failure and refusal to pay said compensation; (7) Under California employment laws and regulations, Plaintiff and Class Members are entitled to recover compensation for all hours worked, in addition to reasonable attorney's fees and costs of suit. (Zeccola Decl., ¶ 10.)

4. Plaintiffs' Minimum Wage Allegations

At all times during the liability period, Plaintiffs alleged that they worked workweeks during which they were not paid or timely paid by Defendants at least minimum wage for all hours worked after deductions and when due as required by California law. (Zeccola Decl., ¶ 11.)

5. Plaintiffs' Meal and Rest Period Allegations

Plaintiffs alleged that (1) During the applicable statutory periods here, the Class Members were periodically denied legally compliant and timely off-duty meal periods of at least thirty minutes due to Defendants' unlawful meal period policy and practices. As a result of Defendants' uniform meal period policies and practices, the Class Members were often not permitted to take compliant

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first meal periods before the end of the fifth hour of work. The Class Members were also periodically not permitted to take second meal periods for shifts in excess of ten hours. Defendants thus violated Labor Code section 512 and the Applicable Wage Order by failing to advise, authorize, or permit the Class Members to receive thirty-minute, off-duty meal periods within the first five hours of their shifts. Accordingly, for each day that the Class Members did not receive compliant meal periods, they were and are entitled to receive meal period premiums pursuant to Labor Code section 226.7 and the Applicable Wage Order. Defendants, however, failed to pay the Class Members applicable meal period premiums for many workdays that the employees did not receive a compliant meal period. Thus, Defendants have violated Labor Code section 226.7 and the Applicable Wage Order. (2) Additionally, Defendants periodically did not permit the Class Members to take compliant duty-free rest breaks, free from Defendants' control as required by Labor Code section 226.7, the Applicable Wage Order, and applicable precedent. (See *Augustus v. ABM Security Services, Inc*. (2016) 2 Cal.5th 257, 269 [concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."].) At all relevant times, the Class Members were periodically not provided with legally compliant and timely rest periods of at least ten minutes for each four-hour work period, or major fraction thereof due to Defendants' unlawful rest period policies/practices. The Class Members were often expected and required to continue working through rest periods to meet the expectations Defendants and finish the workday. In some cases when the Class Members worked more than ten hours in a shift, Defendants failed to authorize and/or permit a third mandated rest period. As a result, the Class Members were periodically unable to take compliant rest periods. Plaintiffs are entitled to, on behalf of themselves and other non-exempt employees, rest period premiums and penalties. Plaintiffs and Class Members are entitled to recover such amounts pursuant to California Labor Code section 226.7(b), plus interest thereon, attorney's fees, and costs of suit. (Zeccola Decl., ¶ 12.)

6. Derivative Allegations

Plaintiffs alleged that, as a result of Defendant's alleged failure to pay all wages owed, failure to authorize and permit all meal and rest periods required by California law, and failure to pay minimum wages, (i) Defendants failed to provide Class Members with proper itemized wage statements, (ii) Defendants failed to pay all wages owing to Class Members upon termination, and (iii) Defendants engaged in unfair competition in violation Business and Professions Code section 17200 *et seq*. (Zeccola Decl., ¶ 13.) Plaintiffs further alleged that all of the above wage and hour violations constituted violations of California Labor law and entitled them to collect penalties associated with such violations under the Private Attorneys' General Act.

B. Procedural History

On February 29, 2024, Plaintiffs filed a class action in the Santa Cruz County Superior Court, bearing Case No. 24CV00617. From February 29, 2024, to February 21, 2025, Class Counsel conducted significant formal discovery and investigation into Plaintiffs' allegations. For example, the Parties engaged in extensive written discovery and completed depositions, including the depositions of both Plaintiffs and several of Defendants' witnesses.

After the Parties conducted sufficient discovery and investigation, the Parties exchanged additional informal mediation data to evaluate potential damages. APG provided data regarding the Class Members and Aggrieved Employees' pay, exact dates of employment, time records, personnel files extensive amounts of communications, data relating to employee reimbursements, applicable policies and procedures, sworn statements, personnel files, and more. Thousands of pages of documents were exchanged and analyzed by Class Counsel. (Zeccola Decl., ¶ 14.) On February 21, 2025, the Parties participated in private mediation before a retired judge, the Honorable Jamie Jacobs-May, a well-known and highly regarded wage-and-hour class mediator. After a long and intensive arm's-length mediation, the Parties, represented by counsel, agreed to a settlement of the Action. The Parties thereafter finalized the Settlement Agreement. A true and correct copy of the Settlement Agreement is attached as Exhibit 1 to the Zeccola Declaration submitted herewith. (Zeccola Decl., ¶ 15.)

III. KEY SETTLEMENT TERMS

A. Gross Settlement Amount

The Gross Settlement Amount that APG will pay in connection with the Settlement Agreement is which has been and/or will be paid in full satisfaction of all claims arising from the

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Action against the Defendant and Released Parties is Four Hundred Seventy-Five Thousand Dollars ($475,000.00). The Gross Settlement Amount includes Individual Settlement Payments to all Participating Class Members, including Plaintiffs, an Enhancement to Plaintiffs, Settlement Administrator Costs, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment as awarded by the Court. The Gross Settlement Amount is the maximum settlement amount to be paid in consideration of this settlement. No further settlement payment shall be required by Defendant. (Zeccola Decl., ¶ 16.)

The Gross Settlement will be distributed to (1) Participating Class Members (who do not timely opt-out of the Settlement), (2) Plaintiffs (the Enhancement payment), (3) Class Counsel (for fees and expenses), (4) the LWDA, and (5) the Claims Administrator, as approved by the Court, according to the following Payment Schedule:

Funding of the Gross Settlement Amount shall occur within 21 days after a signed order providing final approval of this Agreement has been filed, to be held in trust in a Qualified Settlement Fund by the Claims Administrator. This Agreement shall become effective on the day the Court files a signed order granting final approval of this Agreement unless there is a timely objection lodged that has not later been withdrawn, in which case the effective date will be either (a) the 60th calendar day after a signed order approving this Agreement has been filed provided no appellate proceeding having been filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the Agreement has been finally dismissed with no material change to the terms of this Agreement and there is no right to pursue further remedies or relief, whichever is later. The Gross Settlement Amount will include all payments to Class Members and/or Aggrieved Employees, payment to the LWDA for settling the PAGA claims, any Class Representative Enhancement Payments, attorneys' fees, costs, and Claims Administrator Costs. The employer share of any payroll taxes on any amounts attributed as wages under the Agreement will be paid in addition to the Gross Settlement Amount. (*See*, Zeccola Decl., Ex. "1" [Settlement Agreement] § 1.)

Defendant has represented that there are no more than 19,402 workweeks during the Class Period. In the event the number of workweeks during the Class Period is more than 21,343 (i.e., greater than 10% more than 19,402), then the Gross Settlement Amount shall be increased

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proportionally by the workweeks in excess of 19,402, multiplied by the workweek value. For example, if there were 10,000 workweeks represented to exist during the Class Period, but there are actually 15,000 workweeks in the Class Period, and the actual workweek value is $5.00 per workweek, Defendant would have to increase the Gross Settlement Amount by $20,000.00 (15,000 workweeks – 11,000 workweeks (10,000 workweeks plus the 10% buffer) = 4,000 workweeks x $5.00/workweek). (*See*, Zeccola Decl., Ex. "1" [Settlement Agreement] § 11.)

In the event 10% or more of the class members opt-out of the settlement, Defendant may, at their option, void the agreement. The parties agree, however, that neither party may opt-out or void the agreement if the Court reduces attorney fees or the requested Class Representative Enhancement Payments. (*See*, Zeccola Decl., Ex. "1" [Settlement Agreement] § 10.)

B. <u>Notice to the Class Members</u>

The Class Members will be provided notice of this Settlement in English and Spanish, which will include information regarding the nature of the Lawsuit, a summary of the substance of the settlement, the Class Member definition, the procedure for opting-out of or objecting to the Settlement, the date for the final approval hearing and the formula used for calculating Individual Settlement Payments. (Zeccola Decl., ¶ 17.)

C. **<u>Class Representatives Service Payment</u>**

Defendant does not oppose Class Counsel's request for Class Representative Enhancement Payment for Plaintiffs Magdalena Moya and Lori Mayo-Hicks not to exceed $15,000 each, which will be paid out of the Gross Settlement Amount, not in addition to the Gross Settlement Amount. For purposes of settling this matter only, Defendant agrees that Plaintiffs Magdalena Moya and Lori-Mayo Hicks should be deemed adequate to represent the class for the limited purposes of settlement only and that they constitute aggrieved employees sufficient to bring a PAGA claim on behalf of all other allegedly aggrieved employees. (*See*, Zeccola Decl., Ex. "1" [Settlement Agreement] § 5.)

D. **<u>Settlement Administrator's Fees</u>**

The Gross Settlement Amount is inclusive of the Settlement Administrator's fees and expenses. (*See*, Zeccola Decl., Ex. "1" [Settlement Agreement] § 4.)

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E. Payment to the LWDA

The parties agree that $27,750 of the Gross Settlement Amount (the "PAGA Payment") will be allocated towards resolving the asserted PAGA claims. 75% of the PAGA Payment will be paid to the LWDA and 25% will be paid to Aggrieved Employees on a pro rata basis as described below in Paragraph 8. Aggrieved Employees and the PAGA Claim Period shall include All hourly non-exempt employees who have or continue to work for Defendant in California at any time from February 8, 2023, up to December 31, 2024. (*See*, Zeccola Decl., Ex. "1" [Settlement Agreement] § 6.)

F. **Attorneys' Fees and Costs**

Defendant will not oppose Plaintiffs' Counsel's request for fees not to exceed $190,000 percent (40%) of the Gross Settlement Amount, and for costs not to exceed $8,690.00 (to be paid out of the Gross Settlement Amount). For purposes of settling this matter only, Defendant will agree that Costanzo Law Group, APC is adequate Class Counsel. (*See*, Zeccola Decl., Ex. "1" [Settlement Agreement] § 3.)

G. **Released Parties and Release of Claims**

Class Members, including Plaintiffs, will release all claims contained in the Complaint on a class or PAGA basis, specifically: 1. Failure to Compensate For All Hours Worked, 2. Failure to Pay All Minimum Wages, 3. Failure to Pay All Overtime Wages, 4. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums, 5. Failure to Provide Meal Periods And Pay Missed Meal Period Premiums, 6. Failure to Maintain Accurate Employment Records, 7. Failure to Pay Wages Timely During Employment, 8. Failure to Pay All Wages Earned an Unpaid at Separation, 9. Failure to Furnish Accurate Itemized Wage Statements, 10. Unlawful Deductions and Failure to Reimburse Business Expenses, 11. Private Attorney General Act, 12. Unfair Business Practices, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint (County of Santa Cruz Case No. 24CV00617), through the Class Period. Aggrieved Employees will release all Private Attorneys General Act claims for civil penalties contained in Plaintiffs' letter to the LWDA and/or operative Complaint, through the PAGA Claim Period. The Released Parties shall include Defendant, as well as Defendant's officers, shareholders,

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directors, agents, employees, attorneys, and insurers. (*See*, Zeccola Decl., Ex. "1" [Settlement Agreement] § 9.)

H. **Allocation of Class Member and Aggrieved Employee Payments**

A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Claims Administrator Costs, and the PAGA Payment. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. The payments to Class Members shall be allocated as 1/4 wages and 3/4 as penalties and interest. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their pay periods worked within the PAGA Claim Period by the total pay periods worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. These payments to Aggrieved Employees shall be allocated as 100% penalties; Aggrieved Employees will be responsible for paying any personal income taxes owed on the amounts they receive. Any uncashed checks shall be handled in accordance with Labor Code §384(b), with Casa of Santa Cruz County being designated as the *cy pres* beneficiary. (*See*, Zeccola Decl., Ex. "1" [Settlement Agreement] § 8.)

I. Certification for Settlement Purposes

Plaintiffs and Defendant agree that, for purposes of settlement only, certification of the class as defined herein is appropriate and meets the standards set forth in Federal Rule of Civil Procedure 23 and/or California Code of Civil Procedure section 382. (*See*, Zeccola Decl., Ex. "1" [Settlement Agreement] § 2.)

J. **Enforcement**

The parties agree that the Santa Cruz County Superior Court shall have continuing jurisdiction to enforce the terms of this Agreement pursuant to California Civil Procedure Code section 664.6. In the event that a motion to enforce this Agreement is required to be filed due to a party's failure to comply with the terms herein, the prevailing party shall be awarded reasonable attorney's and costs, which shall be in addition to any mounts to be paid under this settlement. (*See*, Zeccola Decl., Ex. "1" [Settlement Agreement] § 13.)

IV. THE CLASS ACTION SETTLEMENT PROCESS

A class action may not be dismissed, compromised, or settled without approval of the Court. *See* Civ. Code § 1781(f). Proper review and approval of a class action settlement requires three steps: (1) preliminary approval of the proposed settlement after submission of a written motion; (2) dissemination of mailed and/or published notice of the settlement to all class members; and (3) a formal fairness hearing, or final settlement approval hearing, at which class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented. *See* Rule of Court 3.769; Manual for Complex Litigation (4th ed. 2004), § 21.61. This procedure serves class members' procedural due process rights and the court's role as the guardian of class members' interests. *See* 4 Conte & Newberg, Newberg on Class Actions, §11.22 et seq. (4th Ed. 2002) ("4 Newberg").

At the preliminary approval stage, the court has broad powers to determine whether the proposed settlement is fair under the circumstances of the case. *See Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *Mallick v. Super. Ct.*, 89 Cal. App. 3d 434, 438 (1979). Preliminary approval is warranted if the settlement falls within "the range of reasonableness." *See North Cnty. Contractor's Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-1090 (1994); *see also,* 4 Newberg, § 11.25. A decision approving a class action settlement may be reversed only upon a strong showing of clear abuse of discretion. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir, 1998). Regarding preliminary approval, the Manual for Complex Litigation Second states at § 30.44 (1985):

> "A two-step process is followed when considering class settlements . . . if the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement."

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Thus, the preliminary approval of the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing." 4 Newberg, §11.26.

The procedures for submission of a proposed settlement for preliminary approval are discussed in 4 Newberg, §11.24 – 11.26. Newberg observes at § 11.24:

> "When the Parties to an action reach a monetary settlement, they will usually prepare and execute a joint stipulation of settlement, which is submitted to the court for preliminary approval. The stipulation should set forth the central terms of the agreement, including but not limited to, the amount of the settlement, form of payment, manner of determining the effective date of settlement, and any recapture clause."

The proposed Settlement here provides substantial monetary relief that is fair, reasonable, and adequate, and therefore is well-qualified for preliminary approval, as discussed below.

V. PRELIMINARY APPROVAL SHOULD BE GRANTED

The settlement of this case is fair, adequate, reasonable, and in the best interests of Class Members. Settlement was reached after a year of litigation, including the depositions of both Plaintiffs and several of Defendant's witnesses, extensive discovery, and thorough review of law surrounding Plaintiff's allegations and potential defenses to the claims in the Action. The settlement avoids significant risks and uncertainty associated with continued litigation of the case, and various defenses asserted by Defendants, and numerous potential appellate issues. The settlement provides great value to Class Members and is the result of extensive arm's-length negotiation—including an all-day mediation before a highly experienced retired Superior Court Judge—and the independent assessment of counsel. (Zeccola Decl., ¶ 18.)

A. The Presumption of Fairness

Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were

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conducted in good faith. *In re Microsoft I–V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7–Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000); Newberg, §11.51. Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *See Hammon v. Barry*, 752 F. Supp 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D. N.Y. 1979); *In re Armored Car Anti-Trust Litigation*, 472 F. Supp 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Savings & Loan Association*, 79 F.R.D. 571 (E.D. Pa. 1978).

B. <u>Evaluation of The Settlement Supports Preliminary Approval</u>

The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See*; *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also, Potter v. Pac. Coast Lumber Co.*, 37 Cal. 2d 592, 602 (1951); 4 Newberg § 11:41. For preliminary approval, the court makes an "initial evaluation" of the fairness of the proposed settlement on the basis of written submissions and informal presentation from the settling Parties. *See* Manual for Complex Litigation, § 21.632. To make the fairness determination, the court must consider several factors, including "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, [and] the experience and views of counsel […]." *Kullar v. Foot Locker Retail Inc.*, 168 Cal. App. 4th 116, 128 (2008) (quoting *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996)).

The California standard for approval of class settlements is similar to the federal standard: the settlement should be fair, reasonable, and adequate for class members overall. *See Dunk*, 48 Cal, App. 4th at 1801. A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act diligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Id*. at 1802.

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1. Settlement Reached After Extensive Investigation and Discovery

The extensive discovery and depositions conducted in this matter, as well as discussions between counsel, have been adequate to give the Plaintiffs and Class Counsel a sound understanding of the merits of their positions and to evaluate the worth of Class Members' claims. As described above, the Parties conducted extensive investigation and discovery into the facts and law during the prosecution of this action. The Parties propounded and responded to voluminous written discovery and completed multiple depositions. (Zeccola Decl., ¶ 19.)

Class Counsel interviewed potential witnesses to obtain feedback pertinent to the viability of proceeding on a class basis and as to the ultimate merits of the case. Class Counsel reviewed thousands of pages of documents produced by Defendants, including but not limited to APG's written policies relating to wage-and-hour issues, personnel files, timecards, wage statements, memoranda and correspondence relating to wage and hour issues, job descriptions, schedules, and related information. Counsel met and conferred and exchanged class-wide data prior to mediation to enable the Parties to conduct detailed damages assessments. (Zeccola Decl., ¶ 20.)

2. Settlement is the Result of Arm's-Length Negotiations and Mediation

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. "[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus there is a presumption here that the negotiations were conducted in good faith. 4 Newberg § 11.51.

As described above, the Parties mediated this matter over the course of full day with a well-respected mediator and retired Judge, the Honorable Jamie Jacobs-May. The mediation was an all day, arm's-length mediation which resulted with a settlement of the class and PAGA claims with the assistance of Judge Jacobs-May. After the mediation, the Parties memorialized their agreement in the Settlement Agreement. (Zeccola Decl., ¶ 21.)

3. There is Significant Risk and Uncertainty in Continued Litigation

Class Counsel believes that continued litigation would be protracted, expensive, uncertain, and contrary to the interests of Class Members. In light of these realities, settlement is the best way to resolve the disputes between them. Defendant claims that this matter would not have been certified, lacks merit, and should not be resolved in Plaintiffs' favor due to the following factors, among others:

- APG's minimum wage and other wage-and-hour policies and practices are lawful;
- APG's wage-and-hour practices were lawful; and
- Class certification would have been denied or, at a minimum, Plaintiffs would have not been able to certify a class of all employees due to the disparate nature of employee locations, different supervisors, and differing jobs at APG.
- Defendant's individual claims would have prevented them from being appointed as proper class representative.
- Any trial would necessarily need to analyze the individual circumstances of employees and, as such, trial would be unmanageable. (Zeccola Decl., ¶ 22.)Defendant's claims are described in detail below. (Zeccola Decl., ¶ 23.)

4. Defendant Claims that Their Policies and Practices are Lawful

Defendant denies each and all of the claims and contentions alleged by the Plaintiffs in the Action. Defendant alleges its policies and practices were lawful at all times relevant to this lawsuit. (Zeccola Decl., ¶ 24.)

APG further contends the compensation received by Plaintiffs for the work performed was always in excess of the required minimum wages and included any expenses which Plaintiffs would have incurred. APG contends its wage statements accurately set forth wages paid including any piece/rate units worked by employees, that all employee's were provided with compliant meal and rest periods, and APG's policy is that terminated Class Members are promptly paid. APG argues that derivative claims such as Plaintiffs' Unfair Competition claims fail for the same reasons set forth above. (Zeccola Decl., ¶ 25.)

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SAN JOSE, CA 95113

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5. Defendant Maintains Class Certification Should Not Be Granted

Defendant argues that Plaintiffs cannot point to a single unlawful policy that would be relevant to liability in this case and certainly no policy that could resolve any of Plaintiffs' allegations "in one stroke." Defendant contends that litigation would require an employee-by-employee assessment of whether each non-exempt worker ever was paid less than a minimum wage or not paid for all work from payments they received. Similarly, meal and rest periods require individual inquiry since the vast majority of employees were left to take meal and rest periods consistent with company policy. Defendant argues that Courts have proven reluctant, if not hostile, to efforts to try these types of cases on a representative basis. Further, Plaintiffs must prove that a class action would be a superior method to adjudicate the dispute. For these and other reasons, Defendant maintains that certification would most likely be denied. Additionally, Defendant raises significant concerns about whether Plaintiffs could have demonstrated that they were aggrieved employees under PAGA and whether Plaintiffs gave timely notice of those PAGA claims. (Zeccola Decl., ¶ 26.)

6. The Settlement Provides Substantial Value to Class Members

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100 percent of the damages sought to be fair and reasonable. *Wershba*, 91 Cal. App. 4th at 224 ("[c]ompromise is inherent and necessary in the settlement process . . . even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"). Settlement agreements are realistically assessed. *Stambaugh v. Superior Court*, 62 Cal. App. 3d 231, 236 (1976); *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989) ("The fact that a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement.")

In the experience of Class Counsel, the total settlement amount of $475,000.00 falls well within the acceptable and usual range of settlements of wage and hour disputes of this size, concerning these issues and involving these facts and the viability of various defenses by Defendant.

The estimated Net Settlement Fund is $213,810.00 (the total settlement amount minus attorney fees of $190,000.00, Costs of $8,690.00, Class Service Payments of $15,000, and Settlement Administrator's Costs of $8,750.00). If Plaintiffs and the Class were to prevail on all claims (with consideration of any offsets or affirmative defenses), Class Counsel estimates that class-wide damages would not exceed $4,287,150.60, excluding interest if every single employee experienced every single violation which Plaintiffs alleged on every single day that they worked for APG (consisting of $1,079,721.30 in meal period claims, $1,079,721.30 in rest period claims, $908,208.00 in waiting time penalties, $1,084,000.00 in wage statement penalties, and $135,500.00 in recordkeeping penalties). The calculations were based on data gathered by the Defendant regarding Plaintiffs and other Class Members. These materials revealed exactly the total number of workweeks worked by the class members, timecards evidencing potentially missed meal breaks, the average hourly rate paid to the class members, and how many times itemized wage statements were issued. (Zeccola Decl., ¶ 27.)

Moreover, the Settlement Agreement sets forth a detailed formula to calculate Class Members' portions of the common fund. Individual Settlement Payments will be paid from the Net Settlement Fund to Participating Class Members based on the number of Qualifying Weeks Worked or portion thereof during the Class Period credited to the Participating Class Member as a percentage of the total Qualifying Weeks Worked during the Class Period credited to all Participating Class Members. Individual Settlement Payments paid to Participating Class Members will not count as earnings or compensation for purposes of any benefits (e.g., 401(k) plans or retirement plans) sponsored by APG. (*See* (Zeccola Decl., Ex. "1" [Settlement Agreement] § 8.)

Individual Settlement Payments for each Participating Class Member will be calculated by dividing the Net Settlement Amount by the number of Qualifying Weeks Worked to yield a "weekly settlement value"; and then multiplying the weekly settlement value by each individual Participating Class Member's number of Qualifying Weeks Worked. A portion of each Participating Class Member's Individual Settlement Payment will be subject to appropriate wage withholding as

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described below. The net amount paid to any Class Member shall be that Class Member's Settlement Share. (*Id.*)

Subject to approval by the Court, the allocation of the Individual Settlement Payment shall be as follows: Class payments shall be classified as 100 percent wages, and PAGA shall be 100 percent penalties. The Settlement Administrator will issue a form W-2 for amounts deemed "wages" and an IRS Form 1099 for the portions allocated to penalties and interest. Notwithstanding any amounts of withholding remitted by the Settlement Administrator, all Participating Class Members, Class Counsel, and Plaintiffs will be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on any payment received pursuant to this Agreement. Class Members who may have questions about their tax liability, if any, should consult independent tax counsel. Neither Class Counsel nor Defense Counsel will provide any tax advice to Class Members. (Zeccola Decl., ¶ 28.)

The formula used for determining each individual settlement award is a typical methodology used to compensate class members in settlements of wage and hour disputes and is appropriate in this case in order to fairly distribute the Settlement among Class Members. (Zeccola Decl., ¶ 29.)

7. Class Counsel Is Experienced and Recommends Settlement

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in litigation for some period of time, appear to be competent, have experience with this type of litigation, and have obtained substantial data from the opposing party. See Newberg, §11.47. Class Counsel has a combined 50-plus years of experience as trial attorneys in California. Mr. Zeccola has been practicing for almost ten years, with many years of experience litigating wage-and-hour class actions in California. Lori Costanzo, also of Costanzo Law Firm, has been in practice for almost 35 years. Luiza V. Dias, also of Costanzo Law Firm, has seven years of wage-and-hour class action experience. Given the circumstances of this case, Class Counsel recommends that the Court approve the settlement. (Zeccola Decl., ¶ 30.)

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The Parties were fully informed of the legal issues and potential damages as they entered settlement negotiations, as they had engaged in extensive investigation and discovery. In reaching settlement, counsel on both sides relied on substantial litigation experience in similar employment class actions and a thorough analysis of the legal and factual issues presented in this case. (Zeccola Decl., ¶ 31.) *See 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1152 (2000) (noting that recommendation of settlement from seasoned litigators favors preliminary approval). Courts should not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the case. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal 2004).

The discovery and investigation conducted in this matter, as well as discussions between counsel and with the mediator, have provided Plaintiffs and Class Counsel with a sound understanding of the merits of the case, including the potential value of claims. This Settlement was reached with the assistance of an experienced mediator and retired Judge after extensive arm's-length bargaining. The discovery conducted in this Action and the information exchanged through discovery and mediation are sufficient to reliably assess the merits of the Parties' respective positions and to compromise the issues on a fair and equitable basis. (Zeccola Decl., ¶ 32.)

Class Counsel believes that the claims, causes of action, allegations, and contentions asserted in this action have merit. However, Class Counsel recognizes and acknowledges the expense and delay of continued lengthy proceedings necessary to prosecute the case against Defendant through trial and appeals. Class Counsel has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and delays inherent in such litigation, such as the difficulty of obtaining/maintaining certification and prevailing on the merits at trial and potential appellate issues. Class Counsel is mindful of the potential problems of proof relating to, and possible defenses to, the claims alleged in the action. (Zeccola Decl., ¶ 33.)

Class Counsel believes that the Settlement confers substantial benefits upon the Class Members and that an independent review of the Settlement Agreement by the Court will confirm this

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conclusion. Class Counsel has determined that the Settlement is in the best interests of the Class Members/Aggrieved Employees. (Zeccola Decl., ¶ 34.)

C. <u>Proposed Payments to Plaintiffs Are Reasonable</u>

It is appropriate to provide a payment to each Plaintiff for serving as a Class Representative. *See, e.g., Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to Plaintiffs for their efforts in bringing class action). In making a service award, courts consider: "(1) the risk to the class representative in commencing the suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation, and; (5) the personal benefit or lack thereof enjoyed by the class representative as a result of the litigation." *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

Plaintiffs served effectively throughout the duration of their role as class representatives. Plaintiffs provided thousands of documents to Class Counsel. Plaintiffs participated in dozens of telephone conferences, in-person meetings, and video calls with Class Counsel throughout this case. Both Plaintiffs were deposed by Defendant. Both Plaintiffs attended the depositions of all Defendant's witnesses. Both Plaintiffs attended the mediation via video call. As a direct result of Plaintiffs' efforts, Class Members now stand to benefit. The Parties therefore agree that the proposed Enhancement to each Plaintiff of up to $15,000 is modest, fair, reasonable, and appropriate. (Zeccola Decl., ¶ 35.)

Plaintiffs estimate their time spent on this case as follows:

<u>Plaintiff Lori Mayo-Hicks</u>

- Meetings with attorneys (one time per month @ two hours per meeting for 12 months)

  = 24 hrs

- Mediation preparation (two meetings @ 3 hours)

  = 6 hrs

- Attend mediation 1

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= 9 hrs

- Post mediation meetings (three meetings at 4 hours)

= 12 hrs

- Meetings regarding Declaration (4 hours @ 2 Declaration)

= 8 hrs

- Preparation for Deposition

= 4 hrs

- Deposition

= 8 hrs

- Time compiling and reviewing documents

= 16 hrs

- **<u>Total Hours</u>**

= 87 hrs

<u>Plaintiff Magdalena Moya</u>

- Meetings with attorneys (one time per month @ two hours per meeting for 12 months)

= 24 hrs

- Mediation preparation (two meetings @ 3 hours)

= 6 hrs

- Attend mediation 1

= 9 hrs

- Post mediation meetings (three meetings at 4 hours)

= 12 hrs

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- Meetings regarding Declaration (4 hours @ 2 Declaration)

  = 8 hrs

- Preparation for Deposition

  = 4 hrs

- Deposition

  = 8 hrs

- Time compiling and reviewing documents

  = 14 hrs

  - **Total Hours**

    = 85 hrs

Total Hours by Both Plaintiffs = 174 Hours

D. Proposed Payments to Class Counsel for Fees and Costs Are Reasonable

Plaintiffs and Class Members in this action are entitled to recover reasonable attorneys' fees, expenses and costs. An attorneys' fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Cmty. for Indep. Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). California law provides that when a party is entitled to statutory fees, it must be compensated for all time reasonably spent seeking to accomplish the desired litigation result. *See, Serrano v. Unruh*, 32 Cal. 3d 621, 624 (1982).

Alternatively, under the equitable "common fund" doctrine, attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs out of the fund. "[W]hen a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund." *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977); *see also, Melendres v. City of Los Angeles*, 45 Cal. App. 3d 267, 273-77 (1975) (trial court's "broad discretion" in awarding common fund fees is well established). In a common-fund case, the

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traditional method for calculating the amount of attorneys' fees is to award a percentage of the total fund. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984); *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990).

Defendant has agreed not to object to any application or motion by Class Counsel for attorneys' fees associated with Class Counsel's prosecution of this matter not to exceed the amount of $190,000.00 (or, alternately stated, forty percent of the Gross Settlement Amount of $475,000.00). This is well within the range of reasonableness required for preliminary approval. Thirty percent to 50 percent of the common fund is commonly awarded as attorneys' fees in cases where the fund is relatively small. *See* Newberg on Class Actions § 14.6 (4th Ed. 2002); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 297-98 (N.D. Cal. 1995) (observing that 30-50 percent was typically awarded in smaller settlement funds of under $10 million while 13-20 percent was typically awarded in larger settlement funds of $51-$75 million); *see also* (Zeccola Decl., ¶ 36.)

Class Counsel incurred significant costs in connection with the prosecution of this litigation, presently estimated to be approximately $8,690. Class Counsel is entitled to reimbursement of all reasonable out-of-pocket expenses and costs in prosecution of the claims and in obtaining a settlement. *See, Vincent v. Hughes Air West*, 557 F.2d 759, 769 (9th Cir. 1977). *See also, Serrano III*, 20 Cal. 3d at 35 (citing *Alyeska Pipeline Co. v. Wilderness Society*, 421 U.S. 240, 257 (1995)). Defendant has agreed that Class Counsel shall be entitled to apply to the Court for reimbursement of costs not to exceed $8,690, as supported by declaration. (Zeccola Decl., ¶ 37.)

The amount of attorneys' fees and costs requested is well within the range of what is reasonable and customary in both wage and hour settlements and class action settlements in general. Unless otherwise ordered by the Court, Plaintiffs will file a motion for an award of such attorneys' fees and costs to be heard contemporaneously with the final approval hearing. (Zeccola Decl., ¶ 38.)

VI. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE

The Parties agree to provisional class certification for settlement purposes only. Provisional class certification is appropriate at the preliminary approval stage. 4 Newberg § 11.22 (*see also,* (Zeccola Decl., ¶ 39.) The practical purpose of provisional class certification is to facilitate distribution to the class of notice of the terms of the settlement and the date and time of the final approval hearing. Manual § 30.41. The general provisions governing class action litigation and management in California are found in Code of Civil Procedure section 382 as well as in case law that has examined the application of the class action statute. Provisional class certification is appropriate for the reasons set forth below.

<u>A. The Class Is Sufficiently Numerous and Ascertainable</u>

APG has identified approximately 271 Class Members from its records. Joinder of all Class Members would be impracticable. *Lindner vs. Thrifty Oil*, 23 Cal.4th 429, 435 (2000) (Zeccola Decl., ¶ 40.)

B. <u>The Community of Interest Requirement Is Met</u>

The second requirement for class certification is that there is a well-defined community of interest in the questions of law and fact involved in the case. *Linder, Id,* 23 Cal.4th at p. 435. This examination turns on three factors, including whether a common question of law or fact exists among all the class members, whether the class representatives present claims that are typical of the class, and whether these representatives will adequately represent all members of the class as a whole. *Lockheed Martin Corp. v. Superior Court*, 29 Cal.4th 1096, 1104 (2003).

1. Common Questions of Fact and Law Predominate this Action

Plaintiffs allege that APG has a common practice of failure to pay all hours worked, including minimum wages, overtime, off-the-clock work, and meal and rest period premiums due to understaffing and related practices previously discussed. Common questions at issue in this case include, *inter alia*: (i) whether or not APG unlawfully failed to pay Class Members for all hours worked, including overtime; (ii) whether or not APG provided proper meal and rest breaks; (iii) whether or not APG failed to provide complete and accurate wage statements; (iv) whether or not APG paid final wages on time; and (v) whether or not APG paid wages owed each pay period. Moreover, Plaintiffs contend that the laws that are implicated do not vary from Class Member to Class Member. Thus, Plaintiffs contend that common questions of fact and law exist. (Zeccola Decl., ¶ 41.)

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2. Plaintiffs Present Claims that are Typical of the Class

Plaintiffs and Class Members were subject to the same corporate policies, procedures and practices of APG. The test is "whether other [class] members have the same or similar injury, whether the action is based on conduct which is not unique to the Plaintiffs and whether other class members have been injured by the same course of conduct." *Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). There are no policies, procedures, or practices complained of that apply exclusively to Plaintiffs. Similarly, Plaintiffs contend that there are no policies, procedures or practices complained of that apply to some Class Members and not others. Based on Plaintiffs' investigation and discovery, Plaintiffs contend that they and Class Members were subject to a set of universal employment policies. As such, Plaintiffs contend claims are typical of Class Members' claims and the typicality requirement of certification is met. (Zeccola Decl., ¶ 42.)

3. Plaintiffs Adequately Represented the Interests of the Class

Plaintiffs have protected the interests of Class Members by actively facilitating prosecution of this action on behalf of all Class Members. As discussed above, Plaintiffs have retained Costanzo Law Firm, a Plaintiffs' employment firm with extensive experience as lead and co-counsel in numerous wage and hour class actions. Plaintiffs assisted Class Counsel throughout the case by, *inter alia*, reviewing documents, and attending mediation. Plaintiffs suffered retaliation and constructive termination for representing the Class. Adequacy is satisfied. (Zeccola Decl., ¶ 43.)

C. <u>Class Settlement Is Superior</u>

In addition to the requirements stated in the Code of Civil Procedure section 386, courts have held that a "class action also must be the superior means of resolving the litigation, for both the Parties and the court." *Aguiar v. Cintas Corporation No. 2*, 144 Cal.App.4th 121, 132-33 (2006). In this case, approximately 271 Class Members are resolving their claims in one forum, at one time, without the expense or possibility of inconsistent results of adjudication of 271 separate actions in multiple tribunals. The denial of class-wide resolution would result in an unjust advantage to Defendant, who would not have to account to Class Members for the violations of law alleged herein unless each

Class Member pursued an individual claim of his or her own. For these reasons, class settlement is the superior form of resolving Class Members' claims. (Zeccola Decl., ¶ 44.)

VII. THE PROPOSED CLASS NOTICE IS APPROPRIATE

A. The Notice of Settlement Satisfies Due Process

In order to protect the rights of absent class members, the court must provide the best notice practicable of a potential class action settlement. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-175 (1974). The primary purpose of procedural due process is to provide affected class members with the right to be heard at a meaningful time and in a meaningful manner. It does not guarantee any particular procedure, but rather requires only notice reasonably calculated to apprise interested parties of the action affecting their interests and an opportunity to present their objections. *See Ryan v. California Interscholastic Federation - San Diego Section*, 94 Cal. App. 4th 1048, 1072 (2001).

Using Class Member contact information provided by APG, as well as standard follow-up address search and re-mailing methods, the Administrator will mail the notice of Settlement, employing the best practicable means to disseminate notice of the settlement terms and the date and time of final approval hearing to all Class Members. The proposed notice of Settlement meets this standard. See Rule of Court 3.769(f); *Philips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) ("best practicable" notice provides a description of the litigation and explanation of the right to opt out or object); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested Parties of the pendency of the action and afford them an opportunity to present their objections"). (Zeccola Decl., ¶ 45.)

B. The Class Notice Is Accurate and Informative

Each Class Member will be fully advised of the Settlement. The Class Members will be provided notice of this Settlement in English and Spanish (the Class Notice), which will include information regarding the nature of the Lawsuit, a summary of the substance of the settlement, the Class Member definition, the procedure for requesting exclusion from or objecting to the Settlement

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the date for the final approval hearing and the formula used for calculating Individual Settlement Payments. (*See* (Zeccola Decl., Ex "1" [Settlement Agreement], § 12; Ex. "A" [Class Notice]). In addition, once the settlement is approved notice of final judgment will be posted on the claim's administrator's website. (Zeccola Decl., ¶ 46.) A copy of the Class Notice is attached to the Settlement Agreement as Exhibit A.

The Class Notice will provide that any Class Member who wishes to be excluded from (opt-out of) to the Settlement must submit a signed written Request for Exclusion, which must be mailed to the Settlement Administrator on or before the Objection/Exclusion Deadline Date, which is defined as 45 days after the date the Notice Packet (comprised of the Notice of Class Action and Notice of Estimated Individual Settlement Payment) is first mailed by the Settlement Administrator (or 60 days if the Notice Packet is re-mailed). (Zeccola Decl., ¶ 48.)

The Request for Exclusion must do all of the following: (1) include a written statement requesting exclusion from the Settlement as further detailed in the Class Notice; (2) reference the name, current address and telephone number of the person requesting exclusion; (3) be signed by the person requesting exclusion or by his or her authorized representative; and (4) include the last four (4) digits of his or her social security number. (Zeccola Decl., ¶ 49.)

All Class Members may appear at the Final Fairness and Approval Hearing, either in person or through a lawyer retained at their own expense. (Zeccola Decl., ¶ 50.)

The Class Notice further informs Class Members of their rights to challenge the number of Qualifying Weeks listed on the Notice by sending written notice of their dispute to the Settlement Administrator. *See* Cal. Rules of Court 3.769(f). (Zeccola Decl., ¶ 51.)

The Class Notice clearly states that the Settlement does not constitute an admission of liability by Defendant and recognizes that the Court has not ruled on the merits of the action. Lastly, it states that the final settlement approval decision has yet to be made. Accordingly, the Class Notice complies with the standards of fairness, completeness, and neutrality required of a settlement notice disseminated under authority of the Court. 4 Newberg §§ 8:21, 8:39; Manual for Complex Litigation, § 21.312. (Zeccola Decl., ¶ 52.)

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Based on the foregoing, the proposed notice and notice plan meet the constitutional standards for notice and due process and should be approved.

VIII. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

The last step in the settlement approval process is the formal final approval hearing, at which the Court may hear any further evidence and argument necessary to evaluate the proposed Settlement. *See* Cal. Rules of Court 3.769(b). Given the timeframes provided for in the Settlement Agreement, a final approval hearing should be scheduled to take place no sooner than seventy-five (75) days after the Order granting preliminary approval, to provide adequate time for APG to provide the Administrator with the necessary information, to allow the Administrator time to prepare the notices for mailing, to provide Class Members with time to review the notices, submit exclusion requests and/or file objections to the proposed settlement, and to provide Defendants with the opportunity to rescind/void the Settlement in the event certain conditions are met. Plaintiffs therefore request that the Court set a final approval hearing no sooner than seventy-five (75) days after the Order granting preliminary approval, or as soon thereafter as the Court is available to hear the motion, at which time Plaintiffs request that the Court also consider Plaintiffs' request for enhancement payments and attorneys' fees and costs.

IX. CONCLUSION

The arm's-length settlement of this matter avoids significant litigation risk and produces a common fund of $475,000.00. Detailed investigation and discovery by the Parties and significant efforts put forth toward reaching a settlement shows the class settlement proposed here is fair, adequate, and reasonable to all parties involved, including the Class Members. The notice provides Class Members with the information they need to evaluate the settlement themselves and opt-out or object. Finally, the attorneys' fees and costs, and Plaintiffs' enhancement payments are reasonable and customary for wage and hour class actions of this type. For these and all the reasons discussed herein, Plaintiffs respectfully requests that the Court grant preliminary approval and set a final approval hearing.

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SAN JOSE, CA 95113

Dated: June 27, 2025

Respectfully submitted,

COSTANZO LAW FIRM, APC

By:______________________________________

Frank Zeccola
Lori J. Costanzo
Luiza V. Dias
Attorneys for Plaintiffs, Class Members and Aggrieved Employees

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