Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Jeffrey D. Klein, Esq. (SBN 297296)
Paolo Policastro, Esq. (SBN 359731)
LAVI & EBRAHIMIAN, LLP
8889 W Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
Email: jlavi@lelawfirm.com
vgranberry@lelawfirm.com
jklein@lelawfirm.com
ppolicastro@lelawfirm.com

Attorneys for Plaintiff SIMON RIVERA,
on behalf of himself and others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

SIMON RIVERA, on behalf of himself and others similarly situated,

Plaintiff,

vs.

STEPAN COMPANY; and DOES 1 to 100, inclusive,

Defendants.

Case No.: 30-2025-01470277-CU-OE-CXC

CLASS AND PAGA ACTION

[*Assigned for All purposes to the Hon. Layne H. Melzer, Dept. CX102*]

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

[*Filed concurrently with the Declaration of Paolo Policastro in Support of Motion for Preliminary Approval; and the [Proposed] Order*]

Hearing Information:
Date: February 4, 2027
Time: 02:00 p.m.
Dept.: CX102

TO THE HONORABLE COURT, ALL PARTIES, AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on February 4, 2027, at 2:00 p.m., or as soon thereafter as the matter can be heard in Department CX102 of the Orange County Superior Court located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701. Plaintiff Simon Rivera ("Plaintiff") will move for an order granting preliminary approval of the proposed class action settlement on the terms and conditions set forth in the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement Agreement") between Plaintiff and Defendant Stepan Company ("Defendant"), a copy of which is attached to the Declaration of Paolo Policastro ("Policastro Dec.") as **Exhibit "1."** Plaintiff will further move that the Order specifically encompass the following:

1. Certify a class for settlement purposes only;

2. Appoint the Plaintiff as Class Representative for settlement purposes only;

3. Appoint Joseph Lavi, Esq., Vincent C. Granberry, Esq., Jeffrey D. Klein, Esq., and Paolo Policastro, Esq., of Lavi & Ebrahimian, LLP as Class Counsel;

4. Approve the Class Notice in the form attached as **Exhibit "2"** to the Declaration of Paolo Policastro;

5. Set a Final Approval and Settlement Fairness Hearing on a date that is approximately 150 days after the Court grants preliminary approval of the Settlement.

Notice to the LWDA: On October 2, 2026, Plaintiff's Counsel filed the Settlement Agreement and the moving papers with the LWDA. (Policastro Dec. ¶40, Ex. 4.)

Dated: October 2, 2026

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: */s/Paolo Policastro*
Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Jeffrey D. Klein, Esq.
Paolo Policastro, Esq.
Attorneys for Plaintiff SIMON RIVERA on behalf of himself and others similarly situated

TABLE OF CONTENTS

I. INTRODUCTION 1

II. SUMMARY OF LITIGATION 1

A. The Parties 1

B. The Complaint and Allegations 1

C. The Exchange of Detailed Informal Discovery and Legal Analysis By Parties' Counsel 2

III. THE SETTLEMENT 3

IV. ANALYSIS 7

A. Class Action Settlements Are Subject to Review and Approval Under the California Rules of Court 7

B. This Settlement Is Fair, Reasonable, And Adequate 7

1. The settlement is the result of serious, informed, and non-collusive negotiations 8

2. The extent of the information provided through formal and informal discovery and the stage of the proceedings support the settlement 9

3. Plaintiff's counsel are experienced in similar litigation 9

4. The settlement is fair and reasonable based on the strengths of Plaintiff's case and the risks and costs of further litigation 10

5. The proposed settlement is a reasonable compromise of claims 11

V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES 18

VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE APPROVED 20

VII. THE PROPOSED ATTORNEY FEES AND COSTS ARE REASONABLE 20

VIII. THE REQUESTED SERVICE AWARD IS REASONABLE 23

IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS 23

X. CONCLUSION 24

TABLE OF AUTHORITIES

Pages

Cases

In re Activision Sec. Litig.
(N.D. Cal 1989)] 723 F. Supp. 1373 21,22

Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.
(S.D. Cal. 2009) 2009 WL 2448430 16

Amaral v. Cintas Corp. No. 2
(2008) 163 Cal.App.4th 1157 16

Apple Computer, Inc. v. Superior Court
(2005) 126 Cal. App. 4th 1253 21

Atempa v. Pedrazzani
(2018) 27 Cal.App.5th 809 15

In re Beef Industry Antitrust Litigation
(5th Cir. 1979) 607 F.2d 167, 179 7

Boyd v. Bechtel Corp.
(N.D. Cal. 1979) 485 F. Supp. 610 9,10

Carrington v. Starbucks Corporation
(Cal. Ct. App. Nov. 27, 2018) No. D072392 15,16

Ceja-Corona v. CVS Pharm., Inc.
(E.D. Cal. 2015) U.S. Dist. LEXIS 5118, 2015 WL 222500 14

Chu v. Wells Fargo Invs., LLC
(N.D. Cal. 2011) U.S. Dist. LEXIS 15821, 2011 WL 672645 14

City & County of San Francisco v. Sweet
(1995) 12 Cal. 4th 105 21

Dunk v. Ford Motor Co.
(1996) 48 Cal.App.4th 1794 8

Ellis v. Naval Air Rework Facility
(N.D. Cal. 1980) 87 F.R.D. 15 10

Fisher Bros. v. Cambridge Lee Industries, Inc.
(E.D. Pa. 1985) 630 F.Supp. 482 10

Franco v. Ruiz Food Prods.
(E.D. Cal. 2012) U.S. Dist. LEXIS 169057, 2012 WL 5941801 14

Garcia v. Gordon Trucking, Inc.
(E.D. Cal. 2012) U.S. Dist. LEXIS 160052, 2012 WL 5364575 14

Global Minerals & Metals Corp. v. Superior Court
(2003) 113 Cal.App.4th 836 18

Hanlon v. Chrysler Corp.
(9th Cir. 1998) 150 F.3d 1011 8

Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n
(1981) 452 U.S. 905 7

Kullar v. Foot Locker Retail, Inc.
(2008) 168 Cal.App.4th 116 11

Lealao v. Beneficial California, Inc.
(2000) 82 Cal. App. 4th 19 21,22

Linney v. Cellular Alaska Partnership
(9th Cir. 1998) 151 F. 3d 1234 10

Mallick v. Superior Court
(1979) 89 Cal.App.3d 434 8

Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles
(2010) 186 Cal.App.4th 399 11

Nen Thio v. Genji, LLC
(N.D. Cal. 2014) 14 F.Supp.3d 1324 14

Nordstrom Com. Cases
(2010) 186 Cal.App.4th 576 14

In re Pacific Enters. Sec. Litig.
(9th Cir. 1995) 47 F.3d 373 22

Quinn v. State
(1975) 15 Cal. 3d 162 21

Rebney v. Wells Fargo Bank
(1990) 220 Cal.App. 3d 1117 10

Samantha B. v. Aurora Vista Del Mar, LLC
(2022) 77 Cal. App. 5th 85 13

7-Eleven Owners for Fair Franchising v. Southland Corp.
(2000) 85 Cal.App.4th 1135 18

Wershba v. Apple Computer, Inc.

(2001) 91 Cal.App.4th 224 7,8,10,11

Statutes and Rules

California Labor Code

201 2

202 2

203 2,17

226 2,17

226.7 2

California Rules of Court

Rule 3.769 4,7

Rule 3.769(d) 18

Rule 3.769(g) 7

Other

Newberg on Class Actions (4th Ed.)

§ 11:25 7

§ 14.6 22

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Simon Rivera ("Plaintiff") respectfully submits this memorandum of points and authorities in support of his motion for preliminary approval of the proposed class action settlement with Defendant Stepan Company ("Defendant") (Plaintiff and Defendant are collectively hereinafter referred to as "the Parties"). Plaintiff seeks entry of a proposed order granting preliminary approval of the class settlement which: (1) preliminarily approves the proposed settlement of the class and PAGA action; (2) approves the form and method for providing notice and directs that notice be given to members of the settlement class; (3) preliminarily certifies the settlement class for settlement purposes; and (4) schedules a final approval hearing date.

As consideration for this Settlement, Defendant shall pay a sum equal to Two Hundred and Fifty Thousand Dollars and Zero Cents ($250,000) (the "Gross Settlement Amount") to fund the non-reversionary, no claims made settlement of this class action. (§1.17 and 3.2.1 of the Stipulation of Settlement ("Settlement" or "Settlement Agreement"), a copy of which is attached as **Exhibit "1"** to Declaration of Paolo Policastro ("Policastro Dec.") filed herewith.) The Gross Settlement Amount is inclusive of Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fee Payment, Class Counsel Litigation Expense Payment, Class Representative Service Payment, and the Settlement Administration Costs. (*Id.*)

It is estimated that the average payment to the Class Members is approximately Three Thousand Three Hundred Seventy-Six Dollars and Nineteen Cents ($3,376.19), with the estimated highest possible share of Six Thousand Three Hundred Three Dollars and Thirty-Five Cents ($6,303.35), and the lowest possible share estimated at Twenty-Three Dollars and Sixty-Three Cents ($23.63).

II. SUMMARY OF LITIGATION

A. The Parties

The named Plaintiff worked as a non-exempt hourly-paid employee for Defendant and seeks to represent approximately 35 current and former hourly-paid, non-exempt employees employed by Defendant in California during the Class Period, and who have not previously released all known and unknown claims against Defendant (hereinafter "Class" or "Class Members"). (Policastro Dec. ¶3.)

B. The Complaint and Allegations

This is a proposed employee wage and hour class action case. On March 24, 2025, Plaintiff commenced this class action by filing a complaint against Defendant for alleged violations of the California Labor Code in the Orange County Superior Court against Defendant (the "Action"). Plaintiff alleged the following: (1) Failure to Pay Wages For All Hours Worked At Minimum Wage in Violation of Labor Code Sections 1194 and 1197, (2) Failure to Authorize or Permit Meal Periods In Violation of Labor Code Sections 512 and 226.7, (3) Failure to Authorize or Permit Rest Periods in Violation of Labor Code Section 226.7, (4) Failure to Indemnify Employees for Employment-Related Losses/Expenditures in Violation of Labor Code Section 2802, (5) Failure to Provide Complete and Accurate Wage Statements in Violation of Labor Code Section 226, (6) Failure to Timely Pay All Earned Wages and Final Paychecks Due at Time of Separation of Employment in Violation of Labor Code Sections 201, 202, and 203, and (7) Unfair Business Practices, in Violation of Business and Professions Code Sections 17200, et *seq.* Defendant has denied all claims in the Class Action. (Policastro Dec. ¶4.)

On March 24, 2025, Plaintiff also submitted a notice to the LWDA informing it of his intention to bring a claim for civil penalties pursuant to PAGA. (Policastro Dec. ¶5.)

On June 2, 2025, Plaintiff filed an action in the Orange County Superior Court under the Private Attorneys General Act of 2004 (PAGA) against the same Defendant seeking civil penalties for alleged violations by Defendant (the "PAGA Action"). (Policastro Dec. ¶6.)

On January 13, 2026, after extensive informal discovery and data exchange, the Parties attended a mediation session with David Phillips, Esq., a well-respected mediator experienced in mediating wage and hour class and representative actions. Shortly thereafter, the Parties reached an agreement which was later memorialized in a Memorandum of Understanding. (Policastro Dec. ¶7.)

On August 3, 2026, Plaintiff filed a First Amended Complaint in the Action ("Operative Complaint") which added the claim from the PAGA Action to the instant Action. (Policastro Dec. ¶8.)

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C. The Exchange of Detailed Informal Discovery and Legal Analysis by the Parties' Counsel

As a critical part of settlement negotiations, the Parties engaged in extensive informal discovery exchange where Plaintiff's counsel and the expert of Plaintiff's counsel reviewed and analyzed the following: (1) time records; (2) pay records; (3) information relating to the size and scope of the class; (4) data permitting Plaintiff to fully understand the nature and scope of the allegations in the Complaint. (Policastro Dec. ¶9.)

Plaintiff believes that his case is suitable for class certification in that he believes there were company-wide policies that affected Defendant's employees, which could be established using representative testimony from class members, as well as the practices brought forth in discovery. While Plaintiff asserts that this is a case for certification, Plaintiff also realizes that there is always a significant risk associated with class certification, and Defendant's compelling defenses to this case, which are discussed more fully below. (Policastro Dec. ¶10.)

The Settlement was reached as a result of arm's-length negotiations facilitated by a highly regarded and experienced wage and hour mediator, David Phillips, Esq., and analysis by Plaintiff's counsel. The Settlement negotiations have been, at all times, adversarial and non-collusive in nature. While Plaintiff believes in the merits of his case, he also recognizes the inherent risks of litigation and understands the benefit of the Class receiving settlement funds immediately as opposed to risking an unfavorable decision on class certification, summary judgment, at trial and/or the damages awarded, and/or on an appeal that can take several more years to litigate. (Policastro Dec. ¶11.)

Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged. (Settlement, §2.1.5) Defendant contends that it complied in good faith with wage and hour laws and has dealt legally and fairly with Plaintiff and putative class members.

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III. THE SETTLEMENT

The settlement contemplates (i) entry of an Order preliminarily approving the settlement and approving certification of a provisional settlement class, contingent upon final approval of the settlement; and (ii) entry of an Order granting final approval of the settlement and judgment.

Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the Action by agreement upon the terms and conditions and for the consideration set forth in the Settlement, a copy of which is attached to the Declaration of Paolo Policastro as **Exhibit "1**." A summary of the key terms of the Settlement is as follows:

1. "Class Members," "Settlement Class Members," or "Settlement Class" means and refers to all current and former non-exempt employees employed by Defendant in California during the Class Period. (Settlement, §1.5)

2. "Class Period" means the time period from March 24, 2021, through May 4, 2026, subject to section 3.2.2 below. (Settlement, §1.6)

3. "Aggrieved Employee" or "PAGA Members" means and refers to all current and former non-exempt employees employed by Defendant in California during the PAGA Period. (Settlement, §1.2)

4. "PAGA Period" means the period from March 29, 2024, through May 4, 2026. (Settlement, §1.27)

5. "Gross Settlement Amount" shall mean the amount that Defendant will pay in settlement of this matter, subject to section 3.2.2 below. The Gross Settlement Amount includes all awards of attorneys' fees and costs to Class Counsel, Settlement Administration Costs, the Class Representative Service Payment, the PAGA Settlement Payment (paid to the PAGA Members and the LWDA), and payments to the Participating Class Members. (Settlement, §1.17)

6. **CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**. Defendant identified approximately 35 Class Members and 5,000 total Workweeks during the Class Period, and 29 Aggrieved Employees who worked 976 PAGA Pay Periods during the PAGA Period. In the event that the actual number of workweeks in the Class Period exceeds 5,000 by more than 10% (i.e., more than 5500 total workweeks), then at Defendant's option in its sole discretion, either (a) the Gross Settlement Amount shall increase by the same number of percentage points above 10% the actual number of workweeks exceeds the 5,500 estimate (e.g., if the actual workweeks during the Class Period are

11% greater than the estimated number of workweeks, then the Gross Settlement Amount increases by 1%); or (b) the Class Period shall end one day before the ten percent (10%) cushion is exhausted, provided it cannot be earlier than the mediation date. If the escalator provision is triggered and elected, the Parties agree that the portion of the Gross Settlement Amount allocated to attorneys' fees will increase proportionally such that the total amount of attorneys' fees remains one-third of the Gross Settlement Amount after the upward adjustment required by this provision is implemented. (Settlement, §3.2.2)

7. Gross Settlement Amount: Defendant shall pay a non-reversionary amount not to exceed Two Hundred and Fifty Thousand Dollars and Zero Cents ($250,000) as the Gross Settlement Amount to resolve the Action on a class and representative basis, subject to section 3.2.2. The Gross Settlement Amount shall be used to pay, as approved by the Court, Class Counsel's attorneys' fees and costs, Class Representative Service Payment, Settlement Administration Costs; the PAGA Payment to the LWDA and the PAGA Members, and the Individual Class Payments to the Participating Class Members. Notwithstanding the foregoing, in addition to the Gross Settlement Amount, Defendant will pay the employer's portion of payroll taxes, including FICA and FUTA, on the portion of each Individual Class Payment allocated as unpaid wages. (Settlement, §3.2.1)

8. Class Representative Service Payment: The Class Representative Service Payment, which is in addition to the Class Representative's Individual Class Payment from the Net Settlement Amount and Individual PAGA Payment, will, subject to Court approval, be paid out of the Gross Settlement Amount and will not exceed $7,500 for his service and assistance to the Class. Defendant will not oppose Plaintiff's request for a service award up to $7,500.00. Any amount of the Class Representative Service Payment that is not awarded by the Court shall be added to the Net Settlement Amount. (Settlement, §3.3.1)

9. Attorneys' Fees and Costs: Class Counsel may apply to the Court for an award of reasonable attorneys' fees not to exceed one third of the Gross Settlement Amount, $83,333.33 and will seek an award of costs for reimbursement of Class Counsel's reasonable out-of-pocket costs incurred in the Action not to exceed $20,000.00, to be paid out of the Gross Settlement Amount. Defendant reserves the right to challenge Class Counsel's request for fees and costs if the requests exceed the parameters established by this Stipulation. The Settlement Administrator shall issue IRS Forms 1099 to Class Counsel for the payments made pursuant to this section. Class Counsel shall be solely and legally responsible for paying any and all applicable taxes on the fees and costs award. Any amount of Class Counsel's requested fees and costs that is not awarded by the Court shall be added to the Net Settlement Amount. Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the Settlement Class, Settlement Class Members, or Plaintiff, may recover or seek to recover any amounts for fees, costs, or disbursements from the Defendant or the Released Parties except as expressly provided herein. (Settlement, §3.3.2.)

10-. "Settlement Administrator" means Phoenix Class Action Administration Solutions

("Phoenix"), who shall be responsible for the administration of the Settlement, distribution of any amounts owed under this Settlement, and matters necessarily related thereto, pursuant to the terms of this Settlement, and subject to appointment by the Court. (Settlement, §1.36.)

11. Settlement Administrator Costs: The Settlement Administration Costs incurred by the Settlement Administrator as a result of the procedures and processes expressly required by this Stipulation shall be paid out of the Gross Settlement Amount and are estimated not to exceed $6,000.00. Under no circumstances will Defendant be required to contribute additional funds, above and in addition to the Gross Settlement Amount, to cover any unexpected. (Settlement, §3.3.3)

12. PAGA Payment: A total amount of $15,000 from the Gross Settlement Amount will be allocated as the PAGA Payment to be paid as penalties under PAGA. Sixty-five percent (65%) of this amount ($9,750) will be the LWDA PAGA Payment to be paid to the LWDA, and the remaining thirty-five percent (35%) of this amount ($5,250) shall be distributed to the PAGA Members as Individual PAGA Payments. Any portion of the PAGA Payment not approved by the Court shall be added to the Net Settlement Amount, and any additional amount ordered by the Court shall be paid from the Gross Settlement Amount. The 35% of the PAGA Payment is to be distributed to the PAGA Members as Individual PAGA Payments and shall be distributed based on a pro rata share based on the number of Eligible Pay Periods each PAGA Member worked during the PAGA Period. (Settlement, §3.3.5.)

13. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel's attorneys' fees and costs, Class Representative Service Payment, and Settlement Administration Costs. The remainder is to be paid to Participating Class Members as Individual Class Payments. Fees and amounts not approved by the Court will become part of the Net Settlement Amount and will not affect settlement approval. (Settlement, §1.22.)

14. Individual Class Payments to Participating Class Members: Each Participating Class Member will be entitled to receive an Individual Class Payment, which will be paid out of the Net Settlement Amount. The amount of each Individual Class Payment will be calculated on a pro rata basis, based on the Eligible Workweeks each Participating Class Member worked during the Class Period. There is no need for a Participating Class Member to submit a claim form in order to be eligible for and to receive an Individual Class Payment. To determine each Settlement Class Member's estimated "Individual Class Payment," the Settlement Administrator will use the following formula: Number of Eligible Workweeks attributed to a Class Member divided by total number of Settlement Class Member Eligible Workweeks, and the result multiplied by the estimated Net Settlement Amount. The Parties recognize that the Individual Class Payments to be paid to Participating Class Members reflect settlement of a dispute over claimed wages, interest, penalties, and other alleged damages. (Settlement, §3.3.4.)

15. Tax Treatment of Individual Class Payments: All Individual Class Payments to Participating Class Members shall be allocated as follows for tax purposes: 20% of each Individual Class Payment reflects compromise of claims for alleged unpaid wages; 80% of each Individual Class Payment reflects compromise of a claim for interest, penalties and expense reimbursements. The portion of the Individual Class Payment attributable to unpaid wages will be subject to regular and/or applicable payroll and income tax withholdings (for the employee portion only), and will be reported on an IRS Form W-2. The Settlement Administrator shall make appropriate tax withholdings from the portion of each Individual Class Payment designated as unpaid wages, and shall pay the employer portion of payroll taxes with funds separate from the Gross Settlement Amount to be furnished by Defendant. Participating Class Members will be responsible for paying all other taxes due on their Individual Class Payments. Other than as set forth above, the Settlement Administrator will not make any deductions, withholdings, or additional payments, including without limitation, medical or other insurance payments or premiums, employee 401(k) contributions or matching employer contributions, wage garnishments to the extent permitted by law, or charity withholdings, from or with respect to the Individual Class Payments, and entry of the Order of Final Approval by the Court shall be deemed authority not to make any such deductions, withholdings, or additional payments. (Settlement §3.4.1)

16. After one hundred and eighty (180) calendar days of issuance, funds from undeposited Individual Class Payment and Individual PAGA Payment checks will be held by the Settlement Administrator. Even if a Participating Class Member or PAGA Member does not cash or deposit his or her settlement payment check(s) within one-hundred eighty (180) calendar days of issuance, the Stipulation of Settlement, including its release, will be binding on that Participating Class Member or PAGA Member. After 180 days, any uncashed checks for the PAGA Settlement shall be tendered to the State Controller's Office, Unclaimed Property Division in the name of the recipient. (Settlement, §4.10)

17. "Released Class Claims" means all claims that were alleged in the Operative Complaint, or that reasonably could have been alleged based upon the facts and claims stated in the Operative Complaint, including claims for: (1) failure to pay wages for all hours worked at minimum wage in violation of Labor Code Sections 1194 and 1197, (2) failure to pay overtime wages and/or failure to pay overtime wages at the proper overtime rate of pay in violation of Labor Code Sections 510 and 1194, (3) failure to authorize or permit meal periods in violation of Labor Code Sections 512 and 226.7, (4) failure to authorize or permit rest periods in violation of Labor Code Section 226.7, (5) failure to pay wages for accrued paid sick days at the regular rate of pay in violation of Labor Code Section 246; (6) failure to indemnify employees for employment-related losses and expenditures in violation of Labor Code Section 2802, (7) secret payment of lower wages in violation of Labor Code Section 223, (8) failure to provide complete and accurate wage statements in violation of Labor Code Section 226, (9) failure to timely pay earned wages during employment in violation of Labor Code Section 204, (10) failure to timely pay all earned wages and final paychecks due at the time of separation of employment in violation of Labor Code Sections 201, 202, and 203, (11) unfair business practices in violation of Business and Professional Code Sections 17200, et seq, and (12) any claims under and/or predicated on violations of

California Labor Code §§ 1194, 1197, 512, 226.7, 2802, 226, 201, 202, and 203, 204, 223, 225.5, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 1197, 1198, 2802, the applicable Wage Orders, the Fair Labor Standards Act, the Fair Labor Standards Act, and Business and Professions Code Sections 172900, et seq. The time period governing the Released Class Claims shall be the Class Period. (Settlement §1.31)

18. Participating Class Member Release. Upon the Effective Date occurring and Defendant fully funding the Gross Settlement Amount and separate amount of payroll taxes described herein, the Participating Class Members will fully release and discharge the Released Parties of the Released Class Claims. Class Members (other than Plaintiff) shall not waive section 1542 of the California Civil Code. Plaintiff agrees not to take any action to encourage any Class Members to opt out of and/or object to the settlement. Except as set forth in Section 3.6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (Settlement, §3.6.2)

19. "Released PAGA Claims" means the PAGA claims alleged in the Operative Complaint, or that reasonably could have been alleged based on the facts and claims stated in the Operative Complaint and in the relevant LWDA notice letters, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay wages for all hours worked at minimum wage in violation of Labor Code Sections 1194 and 1197, (2) failure to pay overtime wages and/or failure to pay overtime wages at the proper overtime rate of pay in violation of Labor Code Sections 510 and 1194, (3) failure to authorize or permit meal periods in violation of Labor Code Sections 512 and 226.7, (4) failure to authorize or permit rest periods in violation of Labor Code Section 226.7, (5) failure to pay wages for accrued paid sick days at the regular rate of pay in violation of Labor Code Section 246; (6) failure to indemnify employees for employment-related losses and expenditures in violation of Labor Code Section 2802, (7) secret payment of lower wages in violation of Labor Code Section 223, (8) failure to provide complete and accurate wage statements in violation of Labor Code Section 226; (9) failure to timely pay earned wages during employment in violation of Labor Code Section 204, (10) failure to timely pay all earned wages and final paychecks due at the time of separation of employment in violation of Labor Code Sections 201, 202, and 203, (11) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the facts or claims alleged in the LWDA notice letters and Operative Complaint, and (12) any claims under and/or predicated on violations of California Labor Code §§ 1194, 1197, 512, 226.7, 2802, 226, 201, 202, and 203, 204, 223, 225.5, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 1197, 1198, 2698, et seq., 2802, and the applicable Wage Orders including, but not limited to, the applicable Wage Orders, the Fair Labor Standards Act, or Business and Professions Code Sections 172900, et seq. The time period governing the PAGA Released Claims shall be the PAGA Period. The PAGA Released Claims do not release any Aggrieved Employees' claims for wages or statutory penalties. (Settlement, §1.32)

20. PAGA Member Release: Upon the Effective Date occurring and Defendant fully

funding the Gross Settlement Amount and separate amount of payroll taxes described herein, Plaintiff – in his individual capacity and on behalf of the State of California and the LWDA – shall completely release and discharge the Released Parties of the Released PAGA Claims. Aggrieved Employees may not opt-out of the PAGA portion of the settlement and Released PAGA Claims. (Settlement, §3.6.3)

21. "Class Representative's Released Claims" means any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against the Released Parties, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law or contract, whether known or unknown, and whether anticipated or unanticipated, including all unknown claims covered by California Civil Code Section 1542, by the Class Representative, arising at any time up to and including the date on which the Court enters the Order of Final Approval, for any type of relief, including without limitation claims for wages, premium and other forms of pay, unpaid/unreimbursed costs, penalties (including waiting time penalties), general damages, compensatory damages, liquidated damages, punitive damages, interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief. The Class Representative's Released Claims also include, but are not limited to, the Released Claims as well as any other claims under any provision of the Fair Labor Standards Act ("FLSA"), the California Labor Code, any applicable California Industrial Welfare Commission Wage Orders, any city or county Living Wage Ordinances, and claims under state or federal discrimination statutes, including, without limitation, the California Government Code; the Unruh Civil Rights Act, California Civil Code; the California Constitution; the California Business and Professions Code, including but not limited to Sections 17200 et seq.; the United States Constitution; the Age Discrimination in Employment Act ("ADEA") and the Older Workers Benefit Protection Act; the Uniformed Services Employment and Reemployment Rights Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq.; the Civil Rights Act of 1991; the Family and Medical Leave Act, to the extent not prohibited by law; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.; the Equal Pay Act; the Fair Credit Reporting Act; the Employee Retirement Income Security Act of 1974; the Worker Adjustment and Retraining Notification Act; the Sarbanes-Oxley Act of 2002; the California Family Rights Act; and all of their implementing regulations and interpretive guidelines; any and all claims for monetary recovery and personal or individual relief, except as prohibited by law; and any premiums, penalties, interest, punitive damages, costs, attorneys' fees, injunctive relief, declaratory relief, or accounting based on any of the foregoing claims. For the avoidance of doubt, this is a complete and general release to the maximum extent by law. Notwithstanding the foregoing, the release of the Class Representative's Released Claims do not include any claim or right that is not waivable as a matter of law. (Settlement, § 1.8)

22. Class Representative's Release: Upon Final Approval and effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, the Class Representative shall be deemed to have fully, finally, and forever released the

Released Parties from all Class Representative's Released Claims through the Final Approval Date. The Class Representative may hereafter discover claims or facts in addition to, or different from, those which he now knows or believes to exist, but Class Representative expressly agrees to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Stipulation. The Class Representative shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits he may otherwise have had relating to the Class Representative's Released Claims pursuant to Section 1542 of the California Civil Code, which provides as follows:

> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Notwithstanding the foregoing, Class Representative does not waive or release any claim which cannot be waived or released by private agreement or law. Further, nothing in this Stipulation shall prevent Class Representative from filing a charge or complaint with, or from participating in, an investigation or proceeding conducted by the SEC, OSHA, EEOC, DFEH, NLRB or any other federal, state or local agency charged with the enforcement of any employment or other applicable laws. Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. (Settlement, §3.6.1)

23. "Response Deadline" means sixty (60) days after the Settlement Administrator mails the Notice of Settlement to Settlement Class Members. It shall be the last date on which Settlement Class Members may: (a) postmark any Opt-Out Request from the class portion of the Settlement, (b) postmark any written objection to the Settlement, and (c) postmark any Eligible Workweek or Eligible Pay Period Dispute. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator will have an additional 14 calendar days beyond the Response Deadline. (Settlement, §1.34)

24. Opt-Out Requests: Settlement Class Members, except for the Class Representative, will have until the Response Deadline within which to opt out of the class portion of this Settlement; however, exercising this option has no effect on the PAGA portion of this settlement, PAGA Members will be mailed an Individual PAGA Payment and be bound by the release of the Released PAGA Claims regardless of whether they opt out of the class settlement. Settlement Class Members who want to opt out must timely submit a signed and dated written request to be excluded from the class portion of the Settlement to the Settlement Administrator ("Opt-Out Request"). The Opt-Out Request must be postmarked on or before the Response Deadline, include the case name and number, the Settlement Class Member's name, address, and last four of their

social security number, must be signed by the Settlement Class Member, and must reasonably communicate the Settlement Class Member's election to be excluded from the class Settlement. (Settlement, §4.3.1)

25. Participating Class Members, except for the Class Representative, may object to the Settlement in person at the Final Approval Hearing and/or in writing. Participating Class Members, except for the Class Representative, will have until the Response Deadline to file a written objection to the Court. Only Settlement Class Members who have not filed an Opt-Out Request (i.e., Participating Class Members) may object to the Settlement. The written objection should be mailed or filed with the Court, include the case number and name of this case, should state the Participating Class Member's name and address and describe the reason(s) why the Participating Class Member objects to the Settlement and include or attach any documents upon which the objection is based. The Parties and their counsel agree that they will not solicit, encourage, counsel or advise any individual to object to the Settlement. (Settlement, §4.4)

26. Funding of Gross Settlement Amount: Within fourteen (14) calendar days after the Effective Date or within seven (7) days of the Settlement Administrator providing all information necessary for Defendant to transfer funds to the Qualified Settlement Fund, whichever is later, Defendant shall pay the Gross Settlement Amount into the Qualified Settlement Fund set up, held, and controlled by the Settlement Administrator. Defendant will fund the amount necessary to pay Defendant's share of payroll taxes by transmitting the funds no later than fourteen (14) calendar days after the later of the (i) Effective Date and (ii) the date the Settlement Administrator provides Defendant will the wiring instructions and amount of employer payroll taxes due for the Individual Settlement Payments attributable to unpaid wages. (Settlement, §4.9)

IV. ANALYSIS

A. Class Action Settlements Are Subject to Review and Approval Under the California Rules of Court

Rule 3.769 of the California Rules of Court requires court approval for class action settlements. "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. Rules of Court, rule 3.769(g).) Courts act within their discretion in approving settlements which are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

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B. This Settlement Is Fair, Reasonable, And Adequate

The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the *range of reasonableness* and, therefore, whether notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4th Ed.) §11:25.) Courts have broad powers to determine whether a proposed settlement is fair under the circumstances of the case. (*Wershba*, *supra,* 91 Cal.App.4th at 234-35; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) In evaluating preliminary approval, courts must consider several relevant factors, including "the strength of the Plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel...." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." (*Wershba, supra,* 91 Cal.App.4th at 245.) Furthermore, courts must give "proper deference to the private consensual decision of the parties" because "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

A proposed class action settlement is presumed fair under the following circumstances: (1) the parties reached settlement after arm's-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation, and (4) the percentage of objections is small. (*Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at 1802.) The Declaration of Class Counsel Paolo Policastro demonstrates that the proposed settlement was the product of serious, informed, and non-collusive negotiations and demonstrates counsel's extensive experience in both employment law as well as class action litigation.

1. The Settlement is the result of serious, informed, and non-collusive negotiations.

The Settlement was reached as a result of arm's-length negotiations facilitated by a highly regarded and experienced wage and hour mediator, David Phillips, Esq., and analysis by Plaintiff's counsel. (Policastro Dec. ¶¶9-19.) While Plaintiff believes in the merits of his case, he also recognizes the inherent risks of litigation and understands the benefit of the Class receiving settlement funds immediately as opposed to risking an unfavorable decision on class certification, summary judgment, at trial and/or the damages awarded, and/or on an appeal that can take several more years to litigate. (*Id.*)

2. The extent of the information provided through formal and informal discovery and the stage of the proceedings support the Settlement.

As described herein, the Parties investigated and evaluated the factual strengths and weaknesses of this case before reaching the proposed Settlement and engaged in sufficient investigation and discovery, as referenced above, to support the Settlement. (*Id.*) Accordingly, the proposed Settlement was reached following probative factual evaluation of Defendant's relevant policies and procedures and review, compilation, and analysis by Plaintiff's counsel and the expert of Plaintiff's counsel's expert regarding the following: (1) the total number of current and former putative class members and aggrieved employees who worked during the relevant time periods; (2) the total number of workweeks at issue during the relevant time periods; (3) the total number of pay periods at issue during the relevant time periods; (4) the average hourly rate for the putative class members; and (5) other relevant information, including Defendant's policies and collective bargaining agreements and Plaintiff's personnel file, wage statements, and time records. Further, the Plaintiff's counsel had multiple discussions, calls, and emails with the Defendant's counsel about the disputed factual and legal issues involved in this case, the risks attending further prosecution, including risks related to a contested motion for class certification, and the substantial benefits to be received pursuant to a compromise and settlement of the case as set forth in the Agreement. As such, settlement on the terms agreed to is in the best interest of Plaintiff and the settlement class. (*Id.*)

Thus, the Settlement came only after the case was fully investigated by counsel, as set forth

above. This litigation, therefore, has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

3. Plaintiff's counsel are experienced in similar litigation.

Experienced counsel, operating at arm's-length, have weighed the strengths of the case and examined all of the issues and risks of litigation and endorse the proposed settlement. The view of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp., supra,* 485 F.Supp. at 617.)

Both Plaintiff's and Defendant's counsel are experienced in employment, wage and hour and class action matters. Lavi & Ebrahimian LLP is a well-regarded firm that handles almost exclusively employment matters. Joseph Lavi, of Lavi & Ebrahimian, LLP, has been approved as class counsel in numerous actions and has been named a Southern California Super Lawyer in the area of Plaintiff's employment litigation - class action from 2011-2022. (*Id*.) Defendant's counsel, Max Fischer and Sheryl Horwitz of Morgan, Lewis & Bockius LLP, are also extremely well-regarded and respected as employment defense counsel. Counsel on both sides share the view – endorsed by an experienced wage and hour class action mediator – that this is a fair and reasonable settlement in light of the complexities of the case, the state of the law, and uncertainties of class certification and litigation, and the benefit the settlement confers on the class. (Policastro Dec. ¶¶9-19.) Given the risks inherent in litigation, in class certification proceedings, and in the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of the class. (*Id.*)

4. The Settlement is fair and reasonable based on the strengths of Plaintiff's case and the risks and costs of further litigation

Plaintiff and his counsel have concluded it was reasonable to enter into the proposed Settlement. Defendant has vigorously contested and continues to contest liability for the claims asserted in the action. Although Defendant believes that class certification would be unlikely on such claims, it nevertheless agreed to attempt resolution of the case through extensive informal discovery

and mediation to avoid the expense, distraction, and uncertainty of protracted litigation.

There are significant legal uncertainties associated with cases such as this, as they can be factually complex and require protracted litigation to resolve. A settlement is not judged solely against what might have been recovered had plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, "[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." (*Wershba*, 91 Cal.App.4th at 250.)

5. The Proposed Settlement is a Reasonable Compromise of Claims

To evaluate a settlement, the trial court must receive "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) However, the record need not contain an explicit statement of the maximum theoretical recovery:

> "Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims—a number which appears nowhere in the record of this case. But *Kullar* does not, as Greenwell claims, require any such explicit statement of value; it requires a record which allows "an understanding of the amount that is in controversy and the realistic ranges of outcomes of the litigation."

(*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

Based on the information informally produced by Defendant regarding the Class Period, Defendant employed approximately 35 current and former non-exempt employees over the course of approximately 5,000 workweeks who received an average rate of pay of $39.14/hour. (Policastro Dec. ¶12.) Based on Class Counsel's and Plaintiff's expert witness's analysis of the data, the maximum exposure for Plaintiff's claims were as follows:

With regard to Plaintiff's Unpaid Wages, Plaintiff alleged that Defendant failed to pay Plaintiff and similarly situated employees all wages at the applicable minimum wage for all hours worked due to Defendant's policies, practices, and/or procedures including: (a) Requiring Plaintiff and similarly situated employees to don personal protective equipment ("PPE") prior to clocking in for the start of their shift and doff their PPE after clocking out for the end of their shift without being paid for that time and during meal breaks; (b)Requiring Plaintiff and similarly situated employees to keep their employer-issued walkie-talkies on their person and to always monitor them during their shift resulting in Plaintiff and similarly situated employees remaining on duty, including during their off-the-clock meal breaks; and (c) Requiring Plaintiff and similarly situated employees to work on restricted on-call/standby time while being required to respond to calls within 30 minutes, without Plaintiff and similarly situated employees being paid for that time on standby unless actually called in to work and not able to exchange duties with similarly situated employees because standby shifts were rotational.. To the extent that the foregoing unpaid time resulted from employees being subject to the control of Defendant when they worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven days in a workweek, the employees should have been paid overtime wages. Therefore, Plaintiff estimated there were approximately $244,527.15 in damages for unpaid minimum wages and overtime wages [Calculated as follows: 5,000 workweeks x 0.16666 hours off unpaid x $39.14 average hourly rate x 5 days x 1.5 overtime = $244,527.15]. (Policastro Dec. ¶13.)

With regard to Plaintiff's Meal Break Claim, Plaintiff alleged that Defendant employed policies, practices, and/or procedures that resulted in their failure to authorize or permit meal periods to Plaintiff and similarly situated employees of no less than thirty (30) minutes for each five-hour period of work as required by law. Such policies, practices, and/or procedures included, but were not limited to: (a) Discouraging off-premises meal breaks by requiring Plaintiff and similarly situated employees to don personal protective equipment ("PPE") and doff their PPE during meal breaks if they left Defendant' premises during their meal breaks; (b) Requiring Plaintiff and similarly situated employees to keep their employer-issued walkie-talkies on their person and to always monitor them during their shift resulting in Plaintiff and similarly situated employees remaining on duty during

their off-the-clock meal breaks; and (c) Failing to provide Plaintiff and similarly situated employees timely, uninterrupted, duty-free meal breaks of at least 30 minutes for every five hours worked during on-call hours worked. The expert retained by Plaintiff estimated 22,101 unique meal break violations. Therefore, Plaintiff estimated there was a maximum of approximately $865,033.14 in damages for meal break violations. [Calculated as follows: 22,101 unique meal break violations x $39.14 average hourly rate = $865,033.14]. (Policastro Dec. ¶14.)

With regard to Plaintiff's Rest Break Claim, Plaintiff alleged that Defendant employed policies, practices, and/or procedures that resulted in their failure to authorize or permit all legally required and compliant rest periods to Plaintiff and similarly situated employees. Such policies, practices, and/or procedures included, but were not limited to: (a) Requiring Plaintiff and similarly situated employees to travel to a designated area away from their workstations during their rest periods and Defendant did not elongate or otherwise extend Plaintiff's or similarly situated employees' rest period times to account for travel time between their workstations and the designated break area resulting in rest periods less than a net 10-minutes; (b) Failing to provide Plaintiffs and similarly situated employees with net ten (10) minute rest breaks for every four (4) hours worked or major fraction thereof during on-call hours worked. The expert retained by Plaintiff estimated a total of 24,517 rest break violations. Therefore, Plaintiff estimated there was a maximum of approximately $479,797.69 in damages for meal break violations. [Calculated as follows: 24,517 rest break violations x $39.14 average hourly rate = $959,595.38]. However, since rest breaks are not recorded in timesheets, extensive individualized inquiries and discovery would be required to both obtain class certification and prevail on the merits. As a consequence of the additional risk arising from the difficulty in obtaining class certification and prevailing on the merits of this claim, Plaintiff applied a 50% discount to the estimated maximum value representing a realistically discounted exposure of $479,797.69. (Policastro Dec. ¶15.)

With regard to Plaintiff's Wage Statement claim, the maximum that Plaintiff could recover amounted to approximately $56,000.00 [35 employees X $4,000 maximum penalty = $140,000.00]. However, because of the difficulty of proving the nature of such violations, as well as Defendant's possible good faith defenses, Plaintiff applied a 60% reduction for the potential maximum damages,

resulting in the maximum potential recovery to be estimated as $56,000.00. (Policastro Dec. ¶16.)

With regard to Plaintiff's Waiting Time penalties claim, the maximum that Plaintiff could recover amounted to approximately $52,604.16 [14 former employees X 8 hours per workday X $39.14/hour average rate of pay X 30 days = $131,610.40]. However, because of the difficulty of proving the nature of such violations, as well as Defendant's possible good faith defenses, Plaintiff applied a 60% reduction for the potential maximum damages, resulting in the maximum potential recovery to be estimated as $52,604.16. (Policastro Dec. ¶ 17.)

With regard to Plaintiffs' Unreimbursed Business Expenses, Plaintiffs contend that Defendant employed policies, practices, and/or procedures requiring Plaintiff and similarly situated employees to use or purchase their own tools and/or resources in order to work for Defendants, including but not limited to Defendant calling on-call employees on personal phones while they were working on-call for work-related purposes - without reimbursing Plaintiff and similarly situated employees for such use. Given the foregoing, the maximum that Plaintiffs could recover amounted to approximately $25,000.00 [Calculated as follows: 5,000 workweeks x $5 = $25,000.00.] (Policastro Dec. ¶18.)

As such, Plaintiff's maximum potential recovery in this matter, excluding PAGA penalties, would amount to approximately $1,722,962.00. The settlement reached in this matter was $250,000.00 or approximately 14.5% of exposure. (Policastro Dec. ¶19.)

Regarding the PAGA penalty exposure analysis, according to the data informally produced by Defendant in this case, during the relevant PAGA period (from March 29, 2024, through May 4, 2026), there are approximately 976 pay periods for approximately 29 aggrieved employees. (Policastro Dec. ¶20.)

As an initial matter, where the penalties are governed by the 2024 amendment to PAGA, Plaintiffs do not use the highest penalties available under these amendments to estimate the maximum potential exposure of Defendant. These heightened penalties are only available where "(i) Within the five years preceding the alleged violation, the agency or any court issued a finding or determination to the employer that its policy or practice giving rise to the violation was unlawful" or "(ii) The court determines that the employer's conduct giving rise to the violation was malicious, fraudulent, or

oppressive." Cal. Lab. Code §2699(2)(f). This mirrors the general requirement under California Law that recovery of punitive, exemplary, or heightened damages for civil claims require a showing that Defendant acted with malice, fraud or oppression. Civ. Code § 3294(c); See, e.g. Samantha B. v. Aurora Vista Del Mar, LLC (Cal. App. 2d Dist. Apr. 5, 2022), 77 Cal. App. 5th 85, 85; Silberg v. Cal. Life Ins. Co. (1974) 11 Cal.3d 452, 462 ("In order to justify an award of exemplary damages, the defendant must be guilty of oppression, fraud or malice")."Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. Civ. Code § 3294(c)(2) "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. Civ. Code § 3294(c)(1).). Under the facts of this case, and the heightened burden of proving malice or oppression, Plaintiffs proceeded in evaluating Defendant's maximum exposure using the standard penalties available of $100 per Pay Period. [See Labor Code §2699(f)(2)(A)]. (Policastro Dec. ¶21)

Additionally, in wage and hour class action cases that settle, which are the overwhelming majority of such cases, very little of the total settlement is paid to PAGA penalties in order to maximize payments to class members. *See, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (no abuse of discretion to approve class action settlement allocating $0 to PAGA claims); *Ceja-Corona v. CVS Pharm., Inc*., 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 (E.D. Cal. Jan. 14, 2015) (preliminarily approving $10,000 in PAGA penalties out of a total settlement amount of $900,000), report and recommendation adopted, 2015 U.S. Dist. LEXIS 25730, 2015 WL 925598 (E.D. Cal. Mar. 3, 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (preliminarily approving $10,000 in PAGA penalties out of a total settlement amount of $1,250,000); *Franco v. Ruiz Food Prods*., 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 (E.D. Cal. Nov. 27, 2012) (granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $2,500,000); *Garcia v. Gordon Trucking, Inc*., 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012) (granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $3,700,000); *Chu v. Wells Fargo Invs., LLC*, 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1 al. Feb. 16, 2011) (granting final approval of $10,000 in PAGA penalties out

of a total settlement amount of $6,900,000). In these settlements, the parties generally maximize statutory penalties and minimize PAGA penalties. *See, e.g., Franco*, 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *2, *14 (approving a $10,000 PAGA award out of a total settlement amount of $2,500,000). (Policastro Dec. ¶22.)

Plaintiff recognizes that PAGA claims generally settle for a mere fraction of multiple "stacked" PAGA penalties as is described above. Here, since the claims for minimum wages, overtime wages, meal periods, rest periods, wage statements, and waiting time penalties are all premised at least partially on the same factual basis (i.e., as Plaintiff contends, that Defendant required employees to don personal protective equipment ("PPE") prior to clocking in and doff their PPE after clocking out for the end of their shift and during meal breaks; required employees to keep their employer-issued walkie-talkies on their person and to always monitor them during their shift resulting in Plaintiff and similarly situated employees remaining on duty, including during their off-the-clock meal breaks; and requiring employees to work on restricted on-call/standby time while being required to respond to calls within 30 minute, and requiring employees to travel to a designated area away from their workstations during their rest periods) stacking these penalties could arguably be overly punitive. Instead, seeking only penalties for minimum wages to account for the off-the-clock work, with the meal and rest period violations, results in far more reasonable and less punitive penalties that eliminate the "stacked" penalties for each Labor Code section violated as a result of the same conduct. As a result, Defendant could argue Plaintiff and the aggrieved employees may only be able to recover penalties under minimum wage claim, overtime wage, and meal and rest period violations. Thus, if Defendant is correct on the "stacking" issue, the maximum theoretical penalties would be substantially less under Defendant's view of the law. (Policastro Dec. ¶23.)

Second, Plaintiff's calculation also assumes that Plaintiff's PAGA claims could be tried in a manageable manner that comports with due process, which Defendant vigorously disputes. (Policastro Dec. ¶24.)

Third, the Court has discretion under PAGA to reduce the amount of any penalties awarded for equitable reasons. (Policastro Dec. ¶25.)

Finally, Defendant would argue that PAGA penalties would be limited in any event. As discussed in detail above, Defendant denies any liability. Moreover, Defendant would argue that even if Plaintiff prevailed, the recoverable penalties under PAGA are minimal. Indeed, courts that have considered the issue have refused to "stack" PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty reduction to $5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809. Moreover, Defendant would argue that Plaintiff is not entitled to recover PAGA penalties at the subsequent violation rate of $200 per pay period. California's appellate courts have held that "[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware [of the violation]" and therefore, until a Court or the Commissioner issues a finding of a violation, the initial $100 violation rate applies for each pay period in which the alleged violation occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc*. (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at *9 ("[u]nder California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"). Thus, Defendant would argue that even if the Plaintiff was able to establish any violation of the Labor Code, the PAGA penalties assessed for these violations will be computed at the $100 rate, as opposed to the $100 per pay period rate at maximum, and there is a likelihood that a further reduction of the penalty to $5 per pay period as approved in *Carrington* would apply given Defendant's compliance with the Labor Code as discussed above. (Policastro Dec. ¶26.)

In sum, the settlement in the instant case provides for a gross settlement amount of $250,000, with a PAGA allocation of $15,000.00, with 65% ($9,750) payable to the LWDA and 35% ($5,250) distributed to the Aggrieved Employees, and falls squarely within the range of reasonableness for PAGA allocations outlined in the case law above. (Policastro Dec. ¶27.)

Defendant maintains significant defenses to the above claims as follows: With respect to Plaintiff's claims for unpaid minimum wages, Defendant argued that employees were compensated

for the time spent donning and doffing the PPE and travelling from location to location and therefore no minimum wage violation occurred. Regarding Plaintiff's overtime claims for failure to calculate the regular rate of pay, Defendant argued that it properly paid all overtime wages owed at the proper rate. Regarding meal periods, Defendant argued that it provided 30-minute uninterrupted, off-duty meal periods, while also compensating employees for time spent on off-duty meal periods (and counting that time towards overtime hours worked), thus employees' time spent traveling to other physically nearby locations for meals was treated as compensable time and also did not negate the duty-free nature of their breaks. Defendant further argued that many employees entered into on-duty meal period agreements and/or meal period waivers, and Defendant provided meal periods consistent with those agreements and waivers per the applicable law. Defendant also contends it had compliant meal period policies that were issued to all Class Members. With respect to Plaintiff's rest period claim, Defendant contends that it provided compliant written rest period policies, and therefore Plaintiff and the Class were on notice of their right to take rest periods and, in fact, they took their rest periods. With respect to Plaintiff's expense reimbursement claims, Defendant argues that it provided employee with tools to do the job (including work phones that obviated the need to use personal cell phones) and compensated employees for all expenses Defendant knew or should have known about (including via a stipend for known expenses, like work shoes and eye protectants). With respect to Plaintiff's wage statement claim, Defendant contends any alleged wage statement violations could not be shown to be "knowing and intentional" given their good-faith defenses, and that Plaintiff cannot show that she or other employees "suffer[ed] injury," as required by Labor Code § 226(e). Defendant also argued that wage statements always accurately reflected hours worked and amounts paid to employees. With respect to Plaintiff's final pay claims, Defendant argued that they fail along with the underlying Labor Code claims and, regardless, there is no evidence that any failure to provide final pay (if any) was "willful." In summary, Defendant argued and continues to argue that no violations occurred, that Class Members suffered no "injury," =that any alleged violations were not "knowing and intentional" or "willful." Based on the foregoing, Defendant concluded, Plaintiff and Class Members were paid out upon separation of employment for all wages owed, and that Defendant

believed, in good faith, that it was properly paying all wages to separating employees. In other words, Defendant concluded, Plaintiff would not be able to establish the willful elements of their Labor Code sections 226 or 203 claims. Moreover, Defendant submits that Plaintiff's claims are noncertifiable because of the individual inquiries that would be required regarding his claims. For these reasons, Defendant concluded, Plaintiff would not likely prevail on his claims, including his derivative UCL and PAGA claims. (Policastro Dec. ¶28.)

If Plaintiff continued litigating this matter, the class members could potentially receive **nothing** if the court agreed with Defendant's position, or if Defendant was able to defeat certification based on the individual inquiries that would be required regarding Plaintiff's off-the-clock claims, meal and rest claims, and other claims. Furthermore, even if the Court agreed with Plaintiff, Plaintiff still had to prove Defendant faced exposure under Plaintiff's derivative claims and acted intentionally and *willfully* in order to receive the additional penalties under Labor Code Sections 203, 204, and 226. As such, Plaintiff's decision to settle this matter was in the best interest of the Class Members. (Policastro Dec. ¶29.)

This is a fair and reasonable result. Other substantial benefits also include that it is a non-reversionary, non-claims-made settlement, which distributes the Net Settlement Amount on a pro rata basis based on the number of Workweeks each Participating Class Member worked for Defendant during the Class Period. (Settlement, §3.3.4.) The 35% portion of the PAGA Settlement Amount allocated to Aggrieved Employees will be distributed to each Aggrieved Employee who worked during the PAGA Period based on their individual number of PAGA Period Pay Periods during the PAGA Period. (Settlement, §3.3.5.) Settlement Class Members will have one hundred eighty (180) days to cash their checks. Any funds not distributed after the expiration of the Individual Class Payment checks shall escheat to the California Controller's Unclaimed Property Fund in the name of the Class Member. (Settlement, § 4.10.) (Policastro Dec. ¶30.)

The Gross Settlement Amount is reasonable in light of the risks involved in this case—including the prospect of a potential adverse summary judgment ruling, class certification issues as well as the uncertainty of class certification, defenses to the case, potential appeal, the elements of willfulness and/or injury required for certain penalties.

Plaintiff's Counsel is convinced that the proposed Settlement is in the best interest of the class based on the negotiations and a detailed knowledge of the issues present in this action. The affirmative defenses asserted by Defendant, the prospect of a potential adverse summary judgment ruling, preemption issues, class certification issues as well as the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals were also carefully considered by Class Counsel in agreeing to the proposed Settlement. In light of the above, the proposed Settlement is well within the "ballpark" of reasonableness and should be granted preliminary approval.

V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES

The court may make an order approving certification of a provisional settlement class after the preliminary settlement hearing. (California Rules of Court, Rule 3.769(d).) For settlement purposes, courts use a less stringent standard for certification of classes. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) "The reason for this is that no trial is anticipated in a settlement class case, so the case management issues inherent in the ascertainable class determination need not be confronted." (*Id.;* see also *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming certification of class action for settlement purposes only].) Accordingly, this Court has discretion to certify Plaintiff's class for settlement purposes only.

The requirements under California Code of Civil Procedure Section 382 are all met for the purposes of certifying this case for settlement purposes:

- Numerosity: Plaintiff contends the settlement class consists of approximately 35 Class Members. Thus, the requirement of numerosity is easily met because joinder of 35 individual plaintiffs into a single case is otherwise impracticable in light of the circumstances of this case.
- Typicality: Plaintiff contends the claims of the class representative are typical of the claims of the class members as a whole. The named Plaintiff alleges that he suffered the same alleged violations (e.g. failure to pay minimum and overtime wages, failure to pay meal and rest period premium wages for non-compliant meal and rest periods, failure to pay wages for accrued paid sick

days at the regular rate of pay, failure to reimburse necessary business expenditures, secret payment of lower wages, failure to pay timely wages during employment, failure to provide complete and accurate wage statements, and failure to pay all wages due upon separation of employment) as the class as a whole did and, thus, Plaintiff alleges that the claims of the named Plaintiff fairly represent the claims of the class as a whole.

- Ascertainability: Plaintiff contends that the proposed "Class" is easily ascertainable based on Defendant's own payroll records.

- Adequacy: Plaintiff contends that he has proven to be an adequate class representative. Plaintiff contends that he has conducted himself diligently and responsibly in representing the class in this litigation; he understands his fiduciary obligations, and he has actively participated in the prosecution of this case. (Policastro Dec. ¶36); See concurrently filed Declaration of Simon Rivera. Plaintiff produced informal discovery discussed during conversations with opposing counsel or raised in pleadings filed in this matter. The named Plaintiff provided Class Counsel with factual information needed to prepare the complaints. He collected relevant documents and produced those documents to Class Counsel. He continued to be engaged in continued settlement negotiations that were ultimately required to reach a settlement in this case. (*Id.*) Further, Plaintiff contends that he does not have any interest that is adverse to the interests of the other class members. (*Id*.) Moreover, Plaintiff contends that the proposed class counsel is adequate to represent the class for settlement purposes and has been appointed as class counsel before by this Court as well as both State and Federal Courts. (Policastro Dec. ¶31.)

- Commonality: Plaintiff contends that many common issues of law and fact unite the class. Those common questions of law and fact include, but are not limited to:

1) Whether Defendant failed to pay minimum and overtime wages;
2) Whether Defendant failed to pay overtime wages;
3) Whether Defendant failed to provide the Class Members with meal and rest periods and premium wages for missed meal and rest periods;
4) Whether Defendant failed to pay sick wages at the regular rate of pay;
5) Whether Defendant failed to indemnify employees for employment-related expenses;
6) Whether Defendant secretly paid lower wages;

7) Whether Defendant failed to provide the Class Members complete and accurate wage statements;

8) Whether Class Members are entitled to waiting time penalties for Defendant's failure to pay all wages upon separation of employment; and

9) Whether Defendant violated Business and Professions Code section 17200.

- Superiority: Plaintiff contends that a class action is superior to other available means for the fair and efficient adjudication of this controversy. Joinder of all members of the proposed class is impractical. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously for settlement purposes without the unnecessary duplication of effort and expense that numerous individual actions would engender.

VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE APPROVED

The proposed Class Notice and the related documents in the form attached to the Declaration of Paolo Policastro **Exhibit 2,** and exhibits thereto, should be approved for dissemination to the Class Members. This document informs the Class of the terms of the Settlement, of their right to receive their proportional share of the Settlement and the manner in which to do so, of their right to request exclusion or to comment upon or object to the Settlement, and of their right to appear in person or by counsel at the final approval hearing and to be heard regarding approval of the Settlement. Adequate periods of time are provided by each of these procedures. Furthermore, the date and time of the Final Approval hearing will be inserted in the Notice, which will identify the information upon which the Class Member's share will be calculated as well as the estimated amount he or she can expect to receive if he or she chooses to participate in the settlement.

VII. THE PROPOSED ATTORNEY FEES AND COSTS ARE REASONABLE

Class Counsel seeks attorneys' fees and costs award of one-third (33.33%) of the Settlement Amount, which is Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents ($83,333.33), and Class Counsel's costs not to exceed Twenty Thousand Dollars ($20,000), for the time spent litigating this matter as well as expenses incurred in the prosecution of the action thus far. Defendant will not object to an award of attorneys' fees and costs in these amounts. The requested fee falls well within the historical range of attorneys' fee awards under the common fund theory, which is generally from 20% to 50%. The requested fee is a fair compensation for undertaking

complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits achieved by Plaintiff's counsel for the Class Members. Plaintiff's counsel diligently litigated and investigated this case.

California courts have recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. (*City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15 Cal. 3d 162, 168; *see also Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253, 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26.) The basis of the common fund is fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful. (*City & County of San Francisco v. Sweet*, *supra,* 12 Cal. 4th at 111.) In *Quinn*, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Quinn v. State, supra,* 15 Cal. 3d at 167.) Similarly, in *Sweet*, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*City & County of San Francisco v. Sweet, supra,* 12 Cal. 4th at 110.)

Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. (*Lealao*, *supra,* 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D. Cal 1989)] 723 F. Supp. 1373, 1375].) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79.) The Ninth

Circuit now routinely uses the percentage of the common fund approach to determine the award of attorney's fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 [approving attorney's fee of 33.33 %].)

Plaintiff's counsel's request for fees equal to one-third (33.33 %) of the Gross Settlement Amount is within the range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig.*, *supra,* 723 F. Supp. at 1378.) According to Professor Newberg: "No general rule can be articulated on what is a reasonable percentage of a common fund…Usually 50 per cent of the fund is the upper limit on a reasonable fee award from a common fund, in order to assure that fees do not consume a disproportionate part of the recovery obtained for the class, though somewhat larger percentages are not unprecedented." (Newberg, *supra*, §14.6.)

Class Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with this class action on a pure contingency basis. The factual and legal issues posed in this case were highly disputed, and there were also risks as to whether or not a class would be certified, leaving a large number of putative class members unlikely to receive any recovery.

Based on Class Counsel's past experience in class action wage and hour litigation, it is safe to state that Class Counsel is very likely to be called upon, after the Class Notice has been sent, to expend substantial amounts of additional time to help Class Members understand the terms of the proposed Settlement. It is also likely that, even after final approval of the Settlement has been granted, Class Counsel will be called upon to expend additional amounts of time in the presentation and resolution of contests and questions relating to Class Members' allocation under the terms of the proposed Settlement, as to the amounts of individual claims and perhaps other individual issues.

The Court should preliminarily approve the requested attorney's fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case, and the great risk undertaken by Class Counsel. The requested attorney's fees and costs will not be opposed by Defendant and are well within established guidelines. The Class Members will also be notified of the requested amount and have an opportunity to object to the requested fees.

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VIII. THE REQUESTED SERVICE AWARD IS REASONABLE

The named Plaintiff is entitled to a Class Representative Service Payment for his service as class representative and the risks associated with his role as Class Representative and named Plaintiff in this action. Plaintiff understood and continues to understand his role as Class Representative; he has protected the interests of Class Members during the pendency of this matter and will continue to do so. (Policastro Dec. ¶36.) Plaintiff has spent hours in meetings and conferences with counsel to get a better understanding of his work environment (*Id*.) Even after mediation, he continued to be engaged with counsel for the months of the continued negotiations that it took to ultimately finalize a settlement, as well as understanding and discussing the settlement agreement with the attorneys. (*Id*.) Further, Plaintiff does not have any interest that is adverse to the interests of the other class members. (*Id*.) Defendant will not oppose the application for an enhancement of $7,500.00 to Plaintiff as the Class Representative from the Gross Settlement Amount for his services to the Class in this action. Class Counsel can attest that Plaintiff devoted a proportionate amount of time and work assisting counsel in the case, communicating with counsel frequently, and providing documents and information regarding his employer and employment, which led to an increase in the value and the ultimate success of the Settlement. (*Id*.)

IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

The Parties propose the following schedule for the fairness hearing and final proceedings:

1. No later than twenty-one (21) calendar days after the Preliminary Approval Date, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator shall maintain the Class Data, and all data contained within the Class Data, as private and confidential and shall not disclose such data to any persons or entities, unless otherwise required by law. (Settlement, § 4.2.1)

2. Within fourteen (14) calendar days of the receipt of the Class Data, the Settlement Administrator will send via United States first class mail the Notice of Settlement to the Settlement Class Members. (Settlement, § 4.2.2)

3. If a Class Member wishes to submit a Request for Exclusion or Objection they may do so within Sixty (60) days from the date the Class Notice is mailed to them ("Response Deadline"). (Settlement, § 4.3.1) (Settlement, § 1.34)

4. Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement

that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd (s), a Proposed Final Approval Order, and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff will provide the motion for final approval to Defendant for its review and approval at least seven (7) days before filing. The Parties will jointly draft the Order of Final Approval.

5. The Final Fairness and Approval Hearing date will be determined by the Court. The parties request that the Final Fairness and Approval Hearing be set approximately one hundred fifty (150) days following the Court's granting of preliminary approval of the proposed Class Action Settlement.

X. CONCLUSION

The proposed class action settlement is fair, adequate, and reasonable. It will result in fair and immediate payment to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arm's length negotiations conducted by counsel for the respective parties who are experienced in wage and hour class action litigation. For the foregoing reasons, the parties respectfully request that the Court grant preliminary approval of the proposed Settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice of Settlement and set a date for a final approval hearing.

Dated: October 2, 2026

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: */s/Paolo Policastro*
Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Jeffrey D. Klein, Esq.
Paolo Policastro, Esq.
Attorneys for Plaintiff SIMON RIVERA, on behalf of himself and others similarly situated