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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSE VASQUEZ, as an individual and on behalf of all others similarly situated, Plaintiff, vs. SANTA CLARITA VALLEY COMMITTEE ON AGING CORPORATION, dba SCV SENIOR CENTER, a California nonprofit corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. 25STCV06096 [*Assigned for all purposes to the Hon. Laura A. Seigle, Dept. 17]* **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT** Date: April 13, 2026 Time: 9:00 a.m. Dept.: 17 Action Filed: March 4, 2025 Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April 13, 2026, at 9:00 a.m. in Department 17 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Jose Vasquez, as an individual and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement") in this lawsuit;
2. Pursuant to California Code of Civil Procedure § 382, and for settlement purposes only, provisional certification of the Settlement Class defined as follows:

> **Settlement Class** – all current and former non-exempt employees of Defendant Santa Clarita Valley Committee on Aging Corp., dba SCV Senior Center, who worked in California at any time between March 4, 2021 through February 13, 2026 (the "Class Period").

3. Preliminary appointment of Plaintiff Jose Vasquez as the Class Representative;
4. Preliminary appointment of Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, and Susan J. Perez of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement Agreement should be finally approved and to award amounts for the Class Representative Enhancement Payment, Settlement Administrator costs, payment to the California Labor and Workforce Development Agency for its 65% share of civil penalties under the Private Attorneys General Act, Labor Code section 2698 *et seq*., as well as attorneys' fees and costs to Class Counsel;
6. Appointment of Apex Class Action Administration as the third-party Settlement Administrator; and
7. Approval of the proposed Court Approved Notice of Class Action Settlement and PAGA Settlement and Hearing Date for Final Court Approval ("Class Notice") and entry of the proposed Order instructing the Class Notice to be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the declarations of Matthew K. Moen, Fletcher W. Schmidt, Paul K. Haines, Susan J. Perez, Plaintiff Jose Vasquez, Sean Hartranft of Apex Class Action Administration, Kevin MacDonald and Ransom Boynton on behalf of Defendant, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: March 2, 2026

Respectfully Submitted,
HAINES LAW GROUP, APC

By: ______________________________
Matthew K. Moen
Attorneys for Plaintiff

TABLE OF CONTENTS

TABLES OF AUTHORITIES

Federal Cases

State Cases

<u>State Statutes and Rules</u>

<u>Unpublished Cases</u>

Other Sources

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jose Vasquez ("Plaintiff") respectfully requests that this Court preliminarily approve this proposed Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement Agreement"),[1] entered into by Plaintiff and Defendant Santa Clarita Valley Committee on Aging Corp., dba SCV Senior Center ("Defendant") (collectively, the "Parties").[2] Plaintiff respectfully requests that this Court preliminarily approve this non-reversionary, $450,000.00 class action settlement on behalf of the following Settlement Class:

> All current and former non-exempt employees of Defendant who worked in California at any time between March 4, 2021 through February 13, 2026 (the "Class Period").[3]

Based upon the data received from Defendant, there are approximately 241 potential Class Members who worked approximately 26,850 aggregate workweeks during the Class Period. *See* Settlement § 8. This represents a fair and reasonable result for Class Members who will only release those claims that were actually asserted, or which could have been asserted based on the facts and claims alleged in the action that arose during the Class Period. After Court-approved deductions for the Class Representative Enhancement Payment, Settlement Administrator costs, the PAGA Settlement Amount, and attorneys' fees and costs to Class Counsel, the remaining

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[1] The Settlement Agreement is attached as Exhibit 1 to the Declaration of Matthew K. Moen ("Moen Decl."), filed concurrently herewith, and the proposed Court Approved Notice of Class Action Settlement and PAGA Settlement and Hearing Date for Final Court Approval ("Class Notice") is attached as Exhibit A to the Settlement Agreement. *See* Moen Decl., ¶ 9, Exhibit 1.

[2] Filed concurrently herewith are declarations from Plaintiff's counsel, Defendant's counsel, and Defendant's Chief Executive Officer, Kevin MacDonald, confirming that neither party is aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by this Settlement.

[3] The Settlement also includes a release of civil penalties under the Private Attorneys General Act, Labor Code section 2698 *et seq*. ("PAGA") on behalf of all current and former non-exempt employees of Defendant who worked in California at any time between March 4, 2024 through February 13, 2026 (the "PAGA Period"). *See* Settlement §§ 1.4, 1.31. These individuals are referred to herein as "Aggrieved Employees." *Id.*, § 1.4. The "Released PAGA Claims" includes all claims for civil penalties under PAGA that were alleged, or reasonably could have been alleged, based on the facts alleged in the operative First Amended Complaint in the action and Plaintiff's March 4, 2025 PAGA Notice Letter to the California Labor and Workforce Development Agency ("LWDA"), that accrued during the PAGA Period. *Id.*, § 1.39, 5.3; *see also* Moen Decl., Exhibit 2 (Plaintiff's PAGA Notice Letter).

amount (the "Net Settlement Amount") shall be no less than approximately $205,010.00. This results in the highest possible Individual Class Payment of approximately $1,969.93 (in the event a Class Member performed work in every workweek during the Class Period) and average Individual Class Payments of approximately $850.66. *See* Moen Decl., ¶ 10. Further, an additional $17,500.00 will be paid to all approximately 142 Aggrieved Employees, resulting in additional average Individual PAGA Payments of approximately $123.24, with the highest possible Individual PAGA Payment of approximately $158.29. *Id*. Significantly, Class Members do not need to file a claim form in order to receive their share of the Settlement, and all Class Members who do not opt-out will automatically receive an Individual Class Payment.

This proposed Settlement is well within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, the monetary benefits to the Settlement Class, and Defendant's precarious financial condition.[4]

II. SUMMARY OF THE LITIGATION

Defendant operates a senior center and dining sites, and provides additional services for seniors with disabilities. *See* Moen Decl., ¶ 11. Defendant employed Plaintiff since November 2021 as a non-exempt "Home Delivered Meals Drive/Packer" out of Defendant's Lancaster, California location. *See* Declaration of Jose Vasquez ("Vasquez Decl."), ¶ 2. Plaintiff's job duties include packing and serving meals, loading delivery trucks with meals, driving to individual homes to deliver these meals, and performing wellness checks. *Id.* Like all Class Members, Plaintiff was subject to Defendant's wage and hour policies and practices. *See* Moen Decl., ¶ 11.

On March 4, 2025, Plaintiff filed the initial complaint in this action, alleging numerous wage and hour violations. *See* Moen Decl., ¶ 12. That same day, Plaintiff submitted a letter to the LWDA, notifying Defendant and the LWDA of Plaintiff's intent to seek civil penalties under PAGA. *Id.* On May 9, 2025, Plaintiff filed the operative First Amended Complaint ("FAC") in this action, adding a cause of action for civil penalties under the PAGA. *Id.*

In anticipation of mediation, Defendant provided Plaintiff with a 20% representative

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[4] A detailed explanation of Defendant's financial condition is contained in the Declaration of Kevin MacDonald, Defendant's Chief Executive Officer, filed concurrently with this motion.

sampling of the Class Members' timekeeping and payroll records spanning the relevant time period, as well as key data points and all relevant policy documents. *See* Moen Decl., ¶ 13. Plaintiff then conducted a comprehensive exposure analysis for the claims at issue. *Id*. On December 15, 2025, the Parties attended mediation with respected wage and hour mediator Steven G. Mehta, Esq. *Id*. During mediation, the Parties debated the legal bases for their claims and defenses, their respective data analyses, and their positions. *Id*. At the conclusion of mediation, Mr. Mehta made a mediator's proposal to fully resolve the claims in this action, which the parties ultimately accepted. *Id*. Over the following months, the Parties negotiated and executed the long-form Settlement Agreement that is now before this Court for preliminary approval. *Id*.

A. PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES

1. Meal Period Violations

Plaintiff asserts that Defendant failed to provide uninterrupted, 30-minute meal periods commencing before the end of the fifth hour of work. *See* Moen Decl., ¶ 14; *see also* Labor Code § 512(a); *Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1041 ("We conclude that, absent waiver, section 512 requires a first meal period no later than the end of an employee's fifth hour of work…"). Specifically, Plaintiff and the putative class members often missed their meal periods due to Defendant's strict delivery schedules that did not allow for compliant meal periods. Moen Decl., ¶ 14. Instead, Plaintiff alleges that Defendant required that Plaintiff and the putative class members clock out prior to the fifth hour of work so that their timekeeping records appeared to reflect a timely meal period, despite no such meal period actually being provided. *Id*. Moreover, Plaintiff alleges that Defendant required Plaintiff and the putative class members to carry their cellular phones at all times in order to respond to incoming calls during purported meal periods, thereby failing to relinquish all control over how the employees spend their meal. *Id*.

Defendant argues it maintained lawful meal period policies and practices throughout the relevant time period, and that it provided meal periods consistent with those policies. Moen Decl., ¶ 15. Specifically, Defendant emphasized that its time records show substantial compliance with timely meal periods and defends the accuracy of its timekeeping records. *See* Moen Decl., ¶ 15. Defendant further maintains it did not require Plaintiff and the putative class members to carry their cellular phones during their respective meal periods, thereby precluding liability. *Id*. Moreover, Defendant argues individualized inquiries will be required to determine why meal periods were late, short, or missed, thereby precluding class certification of this claim. *Id*.

2. <u>Rest Period Violations</u>

Plaintiff asserts that Defendant failed to authorize and permit all lawful rest periods under California law. *See* Moen Decl., ¶ 16. Specifically, Plaintiff alleges Defendant required Plaintiff and other non-exempt employees to forego rest periods to stay within Defendant's rigid delivery timeframe. *Id*. Moreover, Defendant's unlawful rest period policy/practice fails to authorize and permit "duty free" rest periods since Plaintiff and the putative class members were required to carry and be responsive to their cellular phones during their rest periods. *Id*.; *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 ("[O]ne cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to particular…communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minute rest periods.").

In response, Defendant argues that it maintains a lawful rest period policy/practice that authorizes and permits the Class Members to take all lawful rest periods to which they are entitled. Moen Decl., ¶ 17. Defendant asserts that employees are free to take rest periods at the time of their choosing, as such this claim will fail on the merits. *Id*. As with meal periods, Defendant maintains that it did not require Plaintiff and the putative class members to carry their cellular phones during rest periods. *Id*. Moreover, Defendant argues that this claim is not amenable to class treatment, as individual inquiries would be required to determine whether the employee was authorized to take lawful rest periods on each particular shift and whether the employee was required to carry his/her cellular phone during rest periods, resulting in an unmanageable series of mini-trials. *Id*. This manageability concern is especially present as rest periods are not recorded. *Id*.

3. <u>Failure to Reimburse</u>

Plaintiff alleges that Defendant failed to reimburse the putative class members for all necessary business expenses incurred. *See* Moen Decl., ¶ 18; *see also* Labor Code § 2802.

Specifically, Plaintiff asserts that Defendant required employees to use their personal cellular phones to communicate with supervisors during their workday for necessary, work-related, purposes and to use the cellular phone application "Zippy" to clock in and out for their shifts. *Id*.. Defendant, however, did not reimburse employees for a reasonable portion of their monthly cellular phone bills. *Id*.; *see also Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Ca.App.4th 1137, 1144 ("If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802.").

Defendant argues that it maintains a policy to reimburse all reasonable and necessary business expenditures and that, to the extent that any expenses were not reimbursed, they were not reasonably incurred. *See* Moen Decl., ¶ 19. Defendant further asserts that any use of the Class Members' personal phones was individualized and the result of employee choice, not Defendant's policies. *Id*. Specifically, Defendant maintains that Class Members had the option to clock in and out at a computer and, for a portion of the relevant time period, Defendant maintained handwritten timecards. *Id*. As such, Defendant asserts that if the Class Members used their personal cellular phones to clock in and out of their respective shifts, this practice was out of personal preference and not mandatory. *Id*. Defendant also maintains that this claim would require an unmanageable series of mini-trials to determine which employees were actually required to use their cellular phone for business purposes and in which pay periods such expenses were allegedly incurred. *Id*.

4. <u>Off-the-Clock Wage Violations</u>

Plaintiff asserts that Defendant failed to maintain accurate records of the hours actually worked by Class Members, including the time Plaintiff and the putative class members spent performing mandatory work duties while clocked out for purported meal periods. Moen Decl., ¶ 20. Despite Defendant requiring Plaintiff and other non-exempt employees to perform work while off-the-clock during purported meal periods, Plaintiff and other non-exempt employees were not paid all minimum wages owed for this time. *Id*.

In response, Defendant maintains its timekeeping policies/practices properly compensates Class Members for all hours worked. *See* Moen Decl., ¶ 21. Further, Defendant asserts that this claim is not suitable for class treatment, as it requires individualized inquiries into exactly how much time each employee purportedly spent while off-the-clock on any given day, which is difficult as off-the-clock time is inherently not recorded, resulting in an unmanageable series of mini-trials. *Id*.

5. Wage Statement and PAGA Penalties

As a result of these alleged substantive violations, Plaintiff contends that Defendant is liable for derivate wage statement violations and civil penalties under the PAGA. Moen Decl., ¶ 22. Defendant argues that the alleged wage statement violations were not "knowing and intentional," and that Plaintiff cannot show that he "suffer[ed] injury," as required by Labor Code § 226(e) for imposition of penalties. *Id.*; *see Amaral v. Cintas Corp.* (2008) 163 Cal. App. 4th 1157, 1201. Defendant also maintains that, given its good-faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's underlying claims. *See* Moen Decl., ¶ 22.

B. DISCOVERY AND MEDIATION

In connection with mediation, Defendant provided Plaintiff with payroll and timekeeping records for an approximately 20% random and representative sampling of the Class Members spanning the putative class period, along with key data points and policy documents. *See* Moen Decl., ¶ 23. Plaintiff then conducted an analysis of this data and created a comprehensive damages model to calculate the exposure that Defendant faced on each claim. *Id*.

On December 15, 2025, the Parties participated in a mediation with Steven G. Mehta, Esq., a highly respected wage and hour class action mediator. *See* Moen Decl., ¶ 24. During mediation, the Parties exchanged divergent views on Defendant's liability and exposure valuations, their legal positions, and the likelihood of certification of Plaintiff's claims. *Id*. At the conclusion of mediation, Mr. Mehta made a mediator's proposal that the Parties ultimately accepted. *Id*. Over the following months, the Parties negotiated and executed the Settlement now before the Court for preliminary approval. *Id.*[5]

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[5] Plaintiff provided the LWDA with the Settlement Agreement along with all moving papers associated with this Motion. *See* Moen Decl., ¶ 25; Exhibit 3 (LWDA Submission Confirmation); Proof of Service.

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves this settlement, Defendant will pay a Gross Settlement Amount ("GSA") of $450,000.00. *See* Settlement §§ 1.22, 3.1. This Settlement is non-reversionary and Class Members will automatically receive their Individual Class Payment unless they affirmatively opt-out of the Settlement. *Id.*, §§ 3.1, 7.5.1. Due to Defendant's financial hardship, Defendant will fund the GSA by January 15, 2027. *Id.*, § 4.2. In the event Plaintiff obtains final approval of this Settlement before January 15, 2027, the funds will be distributed on January 15, 2027. *Id.* In the event Plaintiff obtains final approval after January 15, 2027, the Settlement Administrator will maintain the GSA funds in a Qualified Settlement Fund until this Court enters a judgment and order granting final approval of the settlement. *Id.* The monetary terms of the Settlement are further broken down as follows:

Gross Settlement Amount:	**$450,000.00**
Minus attorneys' fees (35%):	$157,500.00
Minus attorneys' costs (up to):	$20,000.00
Minus Class Representative Enhancement Payment:	$10,000.00
Minus LWDA PAGA Payment:	$32,500.00
Minus Aggrieved Employee PAGA Payment:	$17,500.00
Minus Settlement Administrator costs:	$7,490.00
Net Settlement Amount:	**$205,010.00**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for court-approved attorneys' fees and costs, the Class Representative Enhancement Payment, costs of settlement administration, the LWDA's 65% share of PAGA penalties, and the Aggrieved Employees' share of PAGA penalties, the remaining Net Settlement Amount of approximately $205,010.00 will be distributed to the Class Members. *See* Settlement § 3.2. Class Member payments will be calculated by dividing the Net Settlement Amount by the total number of workweeks worked by all Class Members during the Class Period, then multiplying the result by each Class Member's workweeks. *Id.*, § 3.2.4. Further, 35% of the PAGA Penalties will be paid to all Aggrieved Employees, regardless of their election to opt-out from participating in the class action portion of the Settlement, based on their proportionate number of pay periods worked during the PAGA Period. *Id.*, §§ 3.2.4.2, 3.2.5.1. Twenty percent (20%) of each Individual Class Payment will be classified as wages and eighty percent (80%) will be classified as interest and penalties. *Id*., § 3.2.4.1. 100% of the Individual PAGA Payments to the Aggrieved Employees will be classified as penalties. *Id*. Further, Defendant will pay the employer's share of payroll taxes separate and apart from, and in addition to, the GSA. *Id*.

Defendant's records indicate that there are approximately 241 Class Members who worked during the Class Period. *See* Settlement § 8. Based on the allocations of the Net Settlement Amount, participating employees will receive average payments of approximately $850.66. Moen Decl., ¶ 26. Class Members will have 60 calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement § 7.5.1. Those individuals who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant as detailed in the Settlement. *Id.*, § 5.2. Class Members will have 180 days from the date the Individual Class Payments and Individual PAGA Payments are mailed to cash their checks. *Id*., § 4.3.1. In the event that there are any uncashed checks remaining after 180 days, any remaining funds will be transferred to the California State Controller's Unclaimed Property Fund in the name of the Class Member to whom the check was issued. *Id*., § 4.3.3.

2. <u>Attorneys' Fees, Costs, and Plaintiff's Enhancement Payment</u>

At the time of seeking final settlement approval, Plaintiff will apply for an enhancement payment in the amount of $10,000.00 for his service to the Settlement Class and his general release of all claims (known or unknown) against Defendant. *See* Settlement §§ 3.2.1, 5.1-5.1.1. Plaintiff's requested enhancement payment is intended to recognize the significant time and effort that he expended on behalf of the Settlement Class, including searching for relevant documents for use in the lawsuit, providing factual information and relevant documents to his attorneys, holding various phone calls with his attorneys to discuss the claims in the lawsuit and Defendant's practices, discussing the status of the case and general case strategy with his attorneys on multiple occasions, providing valuable input and documents to assist his attorneys in preparing for mediation, making himself available the day of mediation, reviewing and providing input regarding the Settlement in this case, and otherwise assisting his attorneys in moving the case towards resolution, the significant risks Plaintiff undertook by serving as the named plaintiff, and the fact that he agreed to a general release of all claims subject to a waiver of Civil Code section 1542. *See* Vasquez Decl., ¶¶ 4-5; Moen Decl., ¶ 27; Settlement §§ 3.2.1, 5.1-5.1.1.

Class Counsel will also apply for an attorneys' fee award of $157,500.00 (35% of the GSA), and up to $20,000.00 in verified costs. Moen Decl., ¶ 28; Settlement, § 3.2.2. Plaintiff submits that the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research and analysis, reviewing documents and data produced by Defendant, building a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing this motion for preliminary approval, and otherwise litigating the case. Moen Decl., ¶ 28. Class Counsel will also expend future attorney time attending the hearing on this Motion, overseeing the Notice process, drafting the final approval motion, and attending the final approval hearing, among other tasks. *Id*. Class Counsel will seek an award of attorneys' fees when seeking final approval.

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions the settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* 150 F.3d 1011, 1026 (9th Cir. 1998) (stating that Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litigation* 516 F.3d 1095, 1101 (9th Cir. 2008) . The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product of fraud or collusion between the negotiating parties. *See e.g.*, *Hanlon*, *supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arm's length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

1. Standard for Preliminary Approval

To make a fairness determination, the Court should consider several factors, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [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 factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th at 245. As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

a. The Strength of Plaintiff's Case

Class Counsel carefully vetted the claims at issue, reviewed extensive timekeeping and payroll records as well as relevant policy documents, and conducted a detailed analysis of that data to create a comprehensive damages model for Defendant's liability. Moen Decl., ¶¶ 13-23, 29. Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with class certification and trial. As explained in detail in Section II.B., *supra*, Defendant presented numerous defenses to Plaintiff's claims, both on the merits and with respect to class certification. Although Plaintiff was prepared to litigate his claims through class certification and trial, it was unlikely that further litigation would result in a substantially more beneficial result for the Settlement Class, especially considering Defendant's precarious financial condition. Thus, this factor supports preliminary approval of the Settlement.

b. Risk, Expense, Complexity, and Duration of Further Litigation

Although this Settlement was reached after a significant informal exchange of timekeeping and payroll records and other relevant information for mediation purposes, the Parties had not yet engaged in formal discovery at the time the Parties reached the Settlement.

Moen Decl., ¶ 30. Absent settlement, the Parties would need to spend substantial time and resources to complete formal written and deposition discovery and prepare the case for class certification, summary judgment or adjudication, and trial. *Id*. Moreover, Plaintiff had not yet filed for class certification, and thus, absent settlement, the Parties would face the prospect of appeals in the wake of a disputed class certification ruling and/or an adverse summary judgment ruling. *Id*. Even if Plaintiff succeeded in certifying one or more classes, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id*. This Settlement avoids these considerable costs, risks, and the accompanying burden of continued litigation on the Court.

c. <u>Risk of Maintaining Class Action Status</u>

Prior to reaching the Settlement, Plaintiff had not yet filed his motion for class certification. Moen Decl., ¶ 31. Considering Defendant's arguments against certification, there was a legitimate risk that the Court may deny certification of one or more claims, preventing the matter from continuing on a class-wide basis. *Id*. Had the Court certified any claims, Plaintiff anticipated that Defendant would seek decertification. *Id*. There was also a risk that Defendant would engage in a *Pick-up-Stix* campaign that could affect Plaintiff's ability to maintain the numerosity required to proceed as a class action. *Id*.; *see Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796. Therefore, absent the Settlement, there was a serious risk that Plaintiff would be unable to move forward on a class-wide basis. Moen Decl., ¶ 31. Thus, this factor supports preliminary approval of the Settlement.

d. <u>Amount Offered in Settlement Given Realistic Value of Claims</u>

This proposed Settlement provides a fair and reasonable monetary recovery for the Settlement Class in the face of disputed claims. After analyzing the data provided by Defendant prior to mediation, Plaintiff prepared a class-wide exposure analysis and forecasted the Class Members' expected recovery for each claim as follows:

<u>Meal Period Violations</u>: **$71,620**

Plaintiff's data analysis determined that Class Members worked an aggregate total of 8,745 shifts over five hours in which a facial meal period violation occurred, whether late, short, or missed. *See* Moen Decl., ¶ 32. Accordingly, Plaintiff calculated Defendant's potential exposure for meal periods at $183,641 (8,745 violations x $20.99 average meal premium). *Id.*

However, Defendant argues it maintains a legally-compliant written meal period policy and that it has always provided meal periods consistent with that policy. Moen Decl., ¶ 33. Defendant also contends that individualized inquiries will be required to determine why meal periods are late, short, or missed, and whether there was a valid waiver or employee choice, thereby precluding certification. *Id*. Given these defenses, Plaintiff discounted Defendant's maximum exposure by 35% for the risk of non-certification and 40% for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of $71,620. *Id*.

<u>Rest Period Violations</u>: **$225,120**

Plaintiff's data analysis determined that non-exempt employees worked an aggregate total of 67,032 shifts in excess of 3.5 hours during the Class Period. *See* Moen Decl., ¶ 34. Plaintiff asserted that Class Members were not authorized and permitted to take a lawful rest period on every shift in excess of 3.5 hours. *Id.* Plaintiff therefore calculated Defendant's potential exposure for rest periods at $1,407,001 (67,032 shifts x $20.99 average premium). *Id.*

However, Defendant argues it maintains a facially compliant written rest period policy, and that it has always authorized and permitted rest periods in compliance with that policy. Moen Decl., ¶ 35. Defendant also argues the rest period claim is not amenable to class treatment, as individual inquiries would be required to determine whether the employee was authorized and permitted to take lawful rest periods on each particular shift, resulting in an unmanageable series of mini-trials, particularly since rest periods are not recorded. *Id.* Based on these defenses, Plaintiff discounted Defendant's maximum exposure by 60% for risk of non-certification and 60% for risk of being unsuccessful on the merits, to arrive at an estimated exposure of $225,120. *Id*.

<u>Unreimbursed Business Expenses</u>: **$35,403**

Based on Plaintiff's counsel's research of JD Power and Consumer Reports' analyses of average cellular phone plan costs amongst the leading cellular phone carriers in America, Plaintiff alleges that the Class Members are owed approximately $15 each month as a reasonable portion of their cell phone bills covering work related communications. Moen Decl., ¶ 36. Further, Plaintiff's data analysis determined that putative class members worked an aggregate total of 6,602 months during the class period. *Id*. Therefore, Plaintiff calculated Defendant's potential exposure on this claim at $99,030 ($15 reimbursement x 6,602 aggregate work-months). *Id*.

Defendant, however, maintains employees were never required to use their own cellular phone for work purposes. Moen Decl., ¶ 37. Defendant also asserts that this claim is not certifiable, particularly because it would require a series of mini-trials to determine which employees were required to use their cellular phone for business purposes and in which pay periods such expenses were allegedly incurred. *Id*. Given these potential defenses, Plaintiff discounted Defendant's maximum exposure by 35% for the risk of non-certification and 45% for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of $35,403. *Id*.

<u>Off-the-Clock Violations</u>: **$83,065**

Plaintiff's data analysis determined that Class Members worked an aggregate total of 24,454 workweeks during the putative Class Period. Moen Decl., ¶ 38. Plaintiff estimates that employees spend approximately 1 hour per week performing off-the-clock work during their purported meal periods. *Id*. Plaintiff therefore calculated Defendant's potential exposure for off-the-clock violations at $377,570 (1 hour x 24,454 work weeks x $15.44 weighted average minimum wage). *Id*.

Defendant maintains its timekeeping policies/practices comply with California law, and that it properly compensates Class Members for all hours worked. Moen Decl., ¶ 39. Further, Defendant asserts that this claim is not suitable for class treatment, as it requires individualized inquiries into whether any employee was required to perform any work while off-the-clock, and exactly how much time each employee purportedly spent while off-the-clock on any given day, which is difficult as off-the-clock time is inherently not recorded, resulting in an unmanageable series of mini-trials. *Id*. Given these defenses, Plaintiff discounted Defendant's maximum exposure by 60% for the risk of non-certification and 45% for the risk of being unsuccessful on the merits, to arrive at an exposure of $83,065. *Id*.

<u>Wage Statement Violations</u>: **$29,820**

According to Plaintiff's data analysis, approximately 142 employees received a total of 12,227 wage statements during the 1-year time period associated with wage statement penalties. Moen Decl., ¶ 40. However, since Labor Code section 226(e)(1) limits wage statement penalties to $4,000 per individual, Plaintiff calculated Defendant's maximum wage statement exposure at $568,000. *Id.*

However, Defendant raised numerous defenses, including that the alleged violations, if any, were not "knowing and intentional," and that Plaintiff could not show that the Class Members "suffer[ed] injury" as a result of any alleged violations. Moen Decl., ¶ 41. Defendant further argued that Plaintiff's underlying claims would fail, and, therefore, his derivative wage statement claim would also fail. *Id.*; *see also Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065 (holding that a reasonable, good faith belief that employer was in compliance with wage and hour laws precludes imposition of wage statement penalties). Therefore, Plaintiff discounted the maximum exposure by 35% for the risk of non-certification of the underlying claims and 80% for a risk of being unsuccessful on the merits, including failing to prove the violations were "knowing and intentional," that the Class Members "suffer[ed] injury," or that the Court would find that Defendant had a reasonable, good faith belief of its compliance with wage and hour laws precluding the imposition of wage statement penalties, for a reasonable recovery of $73,840. Moen Decl., ¶ 41.

<u>PAGA Penalties</u>: **$90,966**

Plaintiff alleges that PAGA civil penalties would be recoverable for each pay period in which they could prove an underlying Labor Code violation. Moen Decl., ¶ 42. According to Plaintiff's data analysis, the Class Members worked a combined total of 15,161 pay periods during the PAGA liability period in which at least one of Plaintiff's alleged Labor Code violations occurred. *Id.* Plaintiff therefore calculated Defendant's maximum PAGA exposure at $1,516,100 (15,161 pay periods at $100 per violation). *Id.*; *see also Amaral, supra,* 163 Cal.App.4th at 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derived from the underlying wage and hour violations discussed above, which Defendant disputes. *See e.g.*, *Green v. Lawrence Service Co.* (C.D. Cal.

2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Plaintiff also recognizes that the Court has discretion to reduce any award of PAGA penalties where it views them as duplicative. *See Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 529 (affirming reduction of PAGA penalties to $5 per initial violation); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047 at *4 (reducing PAGA penalties from $2.8 million to $500,000). Plaintiff discounted the maximum figure by 40% for the risk of losing on the merits of all underlying claims, and an additional 90% to account for the likelihood of this Court reducing PAGA penalties awarded, to arrive at an estimated exposure of $90,966. Moen Decl., ¶ 42.

Using these estimated figures, Plaintiff determined that the reasonable potential recovery for the Class Members is approximately $580,015. Moen Decl., ¶ 43. Thus, the GSA of $450,000.00 represents approximately 77.58% of Plaintiff's projected reasonable class-wide recovery, while avoiding the further expense and risk of proceeding towards class certification and trial. *Id*. This outcome is exceptionally fair and reasonable given Defendant's precarious financial condition and falls well within the range that courts routinely deem fair, adequate, and reasonable in class action settlements. *Id*.; *see also, e.g.*, *Altamirano v. Shaw Industries, Inc*, (N.D. Cal. 2015) 2015 WL 4512372, at *9 ("Although 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval...."); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement of "roughly one-sixth of the potential recovery"). The decision to settle this matter was also informed by Plaintiff's review of Defendant's financial condition which suggests that even if Plaintiff was to prevail at trial and obtain a significant judgment, he would face significant difficulties in collecting on the judgment. Moen Decl., ¶ 43; *see also* Declaration of Kevin MacDonald. Preliminary approval is appropriate since the Settlement will provide tangible monetary relief to Class Members without the uncertainty, delay, and expense of further litigation.

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e. **<u>The Experience and Views of Counsel</u>**

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995) . Here, Plaintiff is represented by competent and experienced counsel who possess extensive experience litigating wage and hour class actions from both the plaintiff and defense side, and have been appointed as class counsel in numerous cases alleging similar claims. *See* Moen Decl., ¶¶ 2-7; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-14; Declaration of Fletcher W. Schmidt ("Schmidt Decl."), ¶¶ 2-9; Declaration of Susan J. Perez ("Perez Decl."), ¶¶ 2-5. Class Counsel conducted an extensive review of Defendant's records produced for mediation as well as relevant policies in effect during the Class Period, and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. Moen Decl., ¶¶ 2-7, 13-23, 44. The Settlement was also reached with the input and assistance of Steven G. Mehta, Esq., a highly experienced and respected wage and hour class action mediator, whose mediator's proposal the Parties ultimately accepted. *Id*. This factor strongly supports preliminary approval. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

2. **<u>The Preliminary Approval Standard is Met</u>**

At this stage, the Court can grant preliminary approval of the Settlement and direct that the Class Notice be given if the proposed Settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and (3) has no obvious deficiencies. *See* Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 *Newberg on Class Actions* § 11:24-25 (4th Ed. 2013).

a. **<u>The Settlement is Within the Range of Possible Approval</u>**

The proposed Settlement reflects a fair and reasonable recovery for the Settlement Class members in light of the significant risks of litigation. The proposed Settlement will provide fair and reasonable compensation for contested claims, and the estimated average payment of $850.66

greatly exceeds the average payment achieved in other wage and hour class action settlements.[6] Plaintiff submits the proposed Settlement is within the range of possible approval, such that notice should be provided to the Class Members. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

b. <u>The Settlement Resulted from Serious, Informed, and Non-Collusive Negotiations</u>

This proposed Settlement is entitled to an initial presumption of fairness (*see Kullar*, *supra*, 168 Cal.App.4th at 130) as it is the result of the exchange of substantial information, including all relevant policies, and a representative sample of employee timekeeping and payroll data; arm's length negotiations by counsel; mediation before an experienced wage and hour class action mediator; and additional months of negotiating until the terms of the long-form Settlement Agreement were agreed upon and finalized. *See* Moen Decl., ¶¶ 13, 23, 45. Thus, this factor supports preliminary approval.

c. <u>The Settlement is Devoid of Obvious Deficiencies</u>

The Settlement provides fair and reasonable monetary relief to Class Members. Further, the amounts for Plaintiff's Class Representative Enhancement Payment, administration costs, attorneys' fees and costs to Class Counsel, and the LWDA's share of PAGA penalties are reasonable and appropriate. Since the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

B. <u>The Court Should Certify the Settlement Class for Settlement Purposes</u>

The proposed Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the individuals in the Settlement Class are so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this

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[6] *See e.g.*, *Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately $105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct. Jan. 2, 2009) (average net recovery of approximately $90); and *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. June 11, 2012) (average recovery of approximately 198.70).

litigation; (3) Plaintiff's claims are typical of the claims of the absent Class Members; and (4) Plaintiff and his counsel will fairly and adequately represent the interests of the absent Class Members. *See* Cal. Code Civ. Proc. § 382.

1. <u>The Proposed Class is Ascertainable and Numerous</u>

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement Class is defined as all current and former non-exempt employees of Defendant who worked in California at any time during the Class Period. *See* Settlement, § 1.5, 1.13. Class Members can be easily identified using Defendant's employment and payroll records. Moen Decl., ¶ 46. According to Defendant's records, the Settlement Class consists of approximately 241 individuals, rendering it impracticable to gather all the Settlement Class members and bring them before the Court. *See id*.; Settlement, § 8. Thus, the numerosity requirement is satisfied.

2. <u>Common Issues of Law and Fact Predominate</u>

The focus in a certification dispute is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiff's claims are predicated on uniform company policies, principally revolving around Defendant's overtime and minimum wage policies and practices, meal and rest period policies and practices, and reimbursement policies and practices. These types of claims are commonly held to be proper for class certification. *See, e.g., Brinker, supra*, 53 Cal.4th at 1032-34 ("The theory of liability—that Brinker has a uniform policy, and that that policy…allegedly violates the law—is by its nature a common question eminently suited for class treatment.").

3. <u>Plaintiff's Claims Are Typical</u>

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347. Here, Plaintiff's claims are typical of those of the Class Members. Like other Class Members, Plaintiff was employed by Defendant in California during the Class Period, was impacted by the same challenged policies that allegedly injured the Class Members as a whole, and were subject to the same defenses forwarded by Defendant as to the Class Members. *See* Vasquez Decl., ¶¶ 2-5.

4. Plaintiff and Class Counsel are Adequate to Represent the Class

The adequacy of representation requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capitol People First v. Department of Developmental Services* (2007)155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiff and the Class Members they seek to represent, and Plaintiff possesses claims that are in line with those of the Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding adequacy where there was no indication that Plaintiffs' counsel were not qualified and the named Plaintiffs had no interests antagonistic to those of the proposed class). Class Counsel also has extensive experience in wage and hour class action litigation. *See* Moen Decl., ¶¶ 2-7; Haines Decl., ¶¶ 2-14; Schmidt Decl., ¶¶ 2-9; Perez Decl., ¶¶ 2-5.

C. The Court Should Order Distribution Of The Proposed Class Notice

This Court should order distribution of the proposed Class Notice to the Class Members in English and Spanish by first class mail, postage prepaid, using the last known mailing address information provided by Defendant. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 173 (1974). Here, Plaintiff proposes that the settlement be administered by Apex Class Action Administration ("Apex"), an experienced class action settlement administrator. *See generally* Declaration of Sean Hartranft.[7] Class Members' addresses will be ascertainable through Defendant's personnel and payroll records, and Defendant will provide all Class Members' names, last known mailing addresses, phone numbers, Social Security numbers, and workweek data to Apex within ten (10) business days after preliminary approval. *See* Settlement §§ 1.9, 4.1.

[7] Filed concurrently herewith are declarations from Plaintiff's counsel, Defendant's counsel, and Defendant's Chief Executive Officer, Kevin MacDonald, confirming that neither party has any interest or involvement with Apex.

Prior to mailing the Class Notice, Apex will search for updated addresses using the National Change of Address database. *Id.*, §§ 1.11, 7.4.2. To the extent that any notices are returned, Apex will search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. *Id.*, § 7.4.3. The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises putative Class Members of the nature of the claims, basic contentions and denials of the parties, the key terms of the Settlement, the uniform 60-day deadline to opt-out or object to the Settlement and the procedure by which to do so, explains the recovery formula and expected recovery amount for each Class Member, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Settlement Agreement, Exhibit A (Class Notice). The proposed Class Notice will also notify Class Members of the final approval hearing date and provide the Settlement Class contact information for Class Counsel and advise Class Members that they may enter an appearance through counsel if they wish to. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Class Members.[8]

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, this Court should set a hearing for final approval of the Settlement on a date appropriately scheduled to follow the deadline by which Class Members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the proposed order submitted concurrently herewith.

Dated: March 2, 2026

HAINES LAW GROUP, APC

By: Matthew K. Moen

Matthew K. Moen
Attorneys for Plaintiff

[8] The Parties propose posting the final judgment on the Settlement Administrator's website. The URL will be included with Class Member's Individual Class Payments.