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IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO, GORDON D. SCHABER SUPERIOR COURT

JERIME SAUNDERS, an individual, on behalf of all others similarly situated, Plaintiff, vs. PROGRESSIVE HOUSING, INC., a California corporation; CATHY LEMKE, an individual; FRED LEMKE, an individual; and DOES 1 through 20 inclusive, Defendants.	Case No. 34-2022-00331427 Assigned to Jill Talley in Dept. 23 **PLAINTIFF JERIME SAUNDERS'S NOTICE OF MOTION & MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION & PAGA SETTLEMENT; MEMORANDUM OF POINTS & AUTHORITIES** Date: April 25, 2025 Time: 9:00 AM Dept.: 23 Action Filed: December 13, 2022 Trial Date: **None**

TO THE COURT, ALL PARTIES, & ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 25, 2025, at 9:00 AM, or as soon after that as the Matter can be heard in Department 23 of the Sacramento County, Gordon D. Schaber Superior Court, located at 720 9th Street, Sacramento, CA 95814, Plaintiff JERIME SAUNDERS will and does move the Court for an order of preliminary approval of the proposed class action and PAGA settlement between Plaintiff and Defendants PROGRESSIVE HOUSING, INC., CATHY LEMKE, and FRED LEMKE (collectively "Defendants" or "Happy Daze RV"), hereinafter referred to together as the

Parties, in this Action.

This Motion is made pursuant to California Code of Civil Procedure section 382 and California Rule of Court 3.769. This Motion is based on this Notice, the accompanying memorandum of points and authorities, declarations filed in support thereof, the pleadings and other papers on file in this case, and such oral and documentary evidence as may be presented at the hearing on the Motion.

PIMENTEL LAW, P.C.

Dated: April 1, 2025

By: ______________________________
Gabriel J. Pimentel, Esq.
Jenna M. Koleson, Esq.
Attorney for Plaintiff

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MEMORANDUM OF POINTS & AUTHORITIES

Plaintiff Jerime Saunders respectfully requests this Court grant preliminary approval of the Proposed Settlement which would resolve this Class and Representative PAGA Action. If approved, the Proposed Settlement will provide monetary payments to individuals employed by Defendants Progressive Housing, Inc., Cathy Lemke, and Fred Lemke (collectively, "Defendants" or "Happy Daze RV") in California and classified as hourly-paid, non-exempt employees who worked for Defendants during the Class Period, December 13, 2018, through November 6, 2024. The Putative Class consists of a total of 463 Class Members who collectively worked a total of 24,176 Workweeks, and 359 Aggrieved Employees who worked a total of 7,661 PAGA Pay Periods.

The Proposed Settlement will resolve the individual, class, collective, and representative claims of Plaintiff and the participating Class Members against Defendants for violations of California's Labor Code and Business & Professions Code, including: (1) failure to pay minimum wage in violation of Labor Code §§ 1182.12, 1194, 1197, and 1198; (2) failure to pay overtime in violation of Labor Code §§ 510 and 1198; (3) failure to provide meal periods in violation of Labor Code §§ 226.7, 512(a), and 1198; (4) failure to indemnify for necessary expenditures in violation of Labor Code § 2802; (5) failure to furnish compliant wage statements and maintain accurate pay records in violation of Labor Code §§ 226, 1174(d), and 1198; (6) failure to timely pay wages in violation of Labor Code § 204; (7) willful failure to pay wages in violation of Labor Code §§ 201 – 203; (8) unfair competition in violation of California's Unfair Competition Law ("UCL"), Business & Professions Code §§ 17200, *et seq.*; (9) civil penalties pursuant to California's Private Attorneys General Act ("PAGA"), Labor Code §§ 2698, *et seq.*; (10) failure to pay sick time in violation of Labor Code § 246; and (11) failure to provide rest periods in violation of Labor Code §§ 226.7 and 1198.

In consideration, Defendants have agreed to pay a total of $450,000. This is not a claims-made or reversionary settlement, so Class Members are not required to opt-in, and no portion of the settlement will revert to Defendants.

I. SUMMARY OF THE LITIGATION

A. The Parties

Plaintiff Saunders worked as a service technician for Happy Daze RV, incorporated under

Progressive Housing, Inc., from January 3, 2022, to August 11, 2022, located at 1199 El Camino Ave, Sacramento, CA 95815. Declaration of Jerime Saunders ⁋ 4 ("Saunders Decl."). Happy Daze RV is a recreational vehicle dealership that has multiple locations and employs nearly 500 people. Mr. Saunders's job duties included pre-delivery inspections on new and used RVs before clients took possession. *Id*. Mr. Saunders worked Monday through Friday, from 8:00AM to 4:30PM and was paid $25 per hour. *Id*. Mr. Saunders alleges he spent roughly $4,000 on tools to perform his job duties at Happy Daze RV, which have gone unreimbursed. *Id*.

B. <u>Investigation & Discovery</u>

The central issues in this case are Defendants' lack of fully compliant written policies for the entirety of the class period; high frequency of non-compliant meal and rest periods in Defendants' timekeeping records; failure to accurately pay all required meal and rest period premiums; off-the-clock work; failure to reimburse for necessary business expenses; and derivative liability for waiting time penalties, failure to provide accurate paystubs, and unfair competition. Declaration of Jenna M. Koleson ⁋ 27 ("Koleson Decl."). In order to investigate the strengths and weaknesses of Plaintiff's claims, Class Counsel obtained time keeping records for a sample of the Class employed by Defendants between December 1, 2017, through April 15, 2023, and hired a forensic and financial consulting firm to evaluate the employee data. *Id*. ⁋ 7.

Independent of the expert analyses, Class Counsel conducted a thorough investigation into the merits of Plaintiff's claims and the applicable law. Through informal discovery, Class Counsel received written employment policies, Plaintiff's employment records, and a sample of wage and hour data for the Putative Class. *Id*. Class Counsel reviewed over 12,000 pages of discovery before conducting further investigation to evaluate the merits of Plaintiff's claims. *Id*. Such review and investigation allowed Class Counsel to determine the class size, hours worked, workweeks and pay periods, hourly rates, and total compensation of non-exempt employees in the Class. *Id*. Finally, Class Counsel obtained numerous recorded interviews under oath of individuals that worked in various departments at Happy Daze RV during the Class Period to corroborate Plaintiff's allegations. *Id*.

C. <u>Procedural History</u>

On December 12, 2022, Plaintiff filed his putative wage and hour class action on behalf of himself and others similarly situated. (Exhibit 1: Consolidated Pleadings). On August 25, 2022, Plaintiff sent a notice to Defendants as well as the California Labor & Workforce Development Agency ("LWDA") alleging similar wage and hour violations pursuant to the PAGA. (Exhibit 2: Consolidated PAGA Notices). On January 9, 2023, Plaintiff filed a First Amended Complaint ("FAC") against Defendants adding a cause of action under the PAGA. (Exhibit 1). Plaintiff additionally sent an Amended PAGA Notice to Defendants and the LWDA on November 2, 2022. (Exhibit 2). On July 3, 2024, Plaintiff's Second Amended Complaint ("SAC") was entered by the Court, and thereafter, on October 1, 2024, Plaintiff sent another amended PAGA Notice to Defendants and the LWDA. (Exhibit 2).

The Parties mediated this Action on May 10 and July 9, 2024, with Joann Rezzo, Esq. and were able to reach a proposed global settlement of all claims. Koleson Decl. ⁋ 9. The Parties memorialized the terms of their agreement on March 5, 2025. (Exhibit 3: Class Action & PAGA Settlement Agreement). Class Counsel thereafter submitted a copy of this Motion and the fully executed Class Action & PAGA Settlement Agreement to the LWDA via electronic submission on April 1, 2025. (Exhibit 4: Confirmation of LWDA Submission).

D. Impact of the Settlement on Pending Litigation

On January 29, 2024, Defendants notified Plaintiff Saunders about a related case, *Robert Caron v. Progressive Housing, Inc.*, Case No. 23CV421898, filed in Santa Clara County Superior Court on August 23, 2023. Koleson Decl. ⁋ 12. Plaintiff Robert Caron's suit alleges causes of action for: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to pay all sick pay wages; (4) meal period violations; (5) rest period violations; (6) wage statement violations; (7) waiting time penalties; (8) failure to reimburse business expenses; and (9) unfair competition. *Id.*

On February 28, 2024, a Petition for Coordination and Stay, JCCP 5319, was filed with the Chair of the Judicial Council of California by Plaintiff Caron. *Id.* ⁋ 13. Thereafter, on March 7, 2024, Plaintiff Saunders submitted his Opposition to Plaintiff Caron's Petition for Coordination and Stay of Actions on the grounds that both coordination and stay were unnecessary because the Saunders Action was in the final stages of litigation and near settlement. *Id.* On April 23, 2024, the Judicial Council assigned the Honorable Stephen Acquisto, Judge of the Superior Court of California, County of Sacramento, to sit as coordination motion judge and determine whether coordination of the Saunders and Caron actions was appropriate. *Id*. On May 1, 2024, Judge Acquisto denied the Petition on the grounds that coordination would not serve the interests of judicial efficiency and could disrupt the potential resolution of the Saunders case. (Exhibit 5: Order Denying Coordination).

Neither the Class nor Plaintiff Caron would be disadvantaged by approval of the Proposed Settlement. Koleson Decl. ⁋ 14. Indeed, the Proposed Settlement is fair to the Class as expounded upon in greater detail below. Additionally, Plaintiff Caron may object to the Proposed Settlement and proceed with his claims individually as may any other Class Member. *Id*. Any settlement of this Action will not have a preclusive effect on Plaintiff Caron's individual claims because no findings of fact are made in class settlements. *Id*. Rather, the release here bars only subsequent suits by any class members who fail to exclude themselves from the Class, but it would not bar Plaintiff Caron's individual suit if he opts out of the settlement. *Id*. Further, Mr. Caron will receive a portion of this settlement as an aggrieved employee. *Id*.

II. SETTLEMENT TERMS & CONDITIONS

A. <u>The Key Financial Terms</u>

The "Gross Settlement Amount" of $450,000 is non-reversionary and inclusive of all payments, including the Individual Settlement Payments to Participating Class Members; Court-approved allocation of attorneys' fees and reimbursement of litigation costs to Class Counsel; Settlement Administration Costs; Plaintiff's Service Award; and the PAGA Payment. (Exhibit 3, ⁋ 1(L)). The Gross Settlement Amount expressly excludes Employer Taxes, which shall be paid by Defendants separate, apart, and in addition to the Gross Settlement Amount. (*Id*.). The Parties further agreed that if the total number of workweeks worked by Settlement Class members exceeds fifteen percent (15%) of the workweeks in the Class Period, the Gross Settlement Fund will increase proportionally by the workweeks worked in excess of 3,626. (*Id*. ⁋ 17).

"**Individual Settlement Payment**" means a payment to a Participating Class Member of his or her net share of the Net Settlement Amount. (*Id*. ⁋ 1(N)). "**Participating Class Members**" means all Settlement Class Members who do not submit a timely and valid Request for Exclusion. (*Id*. ⁋ 1(U)). Individual Settlement Payments will be calculated and distributed to Participating Class

Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class Members' respective number of Workweeks during the Class Period. (*Id.* ⁋ 10). Individual PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number of Workweeks during the PAGA Period. (Exhibit 3, ⁋ 10).

Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement Amount, which amounts to $157,500. (Exhibit 3, ⁋ 12). Class Counsel shall further apply for, and Defendants shall not oppose, an application or motion by Class Counsel for reimbursement of actual costs associated with Class Counsel's prosecution of this matter as set forth by declaration testimony in an amount up to $35,000. (*Id.*; Exhibit 7: Itemized Litigation Costs). Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion shall be a part of the Net Settlement Amount. (Exhibit 3, ⁋ 12).

The Settlement Administration Costs are estimated not to exceed $7,500, and the Settlement Administrator will be "ILYM Group, Inc." ("ILYM"). (Exhibit 3, ⁋ 8). If the actual amount of the Settlement Administration Costs is less than estimated by ILYM, the difference between $7,500 and the actual Settlement Administration Costs shall be a part of the Net Settlement Amount. (*Id.*). If the Settlement Administration Costs exceed $7,500, then such excess will be paid to ILYM solely from the Gross Settlement Amount, and Defendants will not be responsible for paying any additional funds in order to pay these additional costs. (*Id.*).

Plaintiff will request a Service Award of up to $10,000, which subject to Court approval, will be paid out of the Gross Settlement Amount to Plaintiff. (Exhibit 3, ⁋ 13). "**Plaintiff", "Named Plaintiff", or "Class Representative"** shall all refer to Plaintiff Jerime Saunders. (*Id.* ⁋ 1(W)).

The Parties have agreed that $25,000 shall be allocated toward PAGA penalties, of which $16,250 will be paid to the LWDA ("LWDA Payment"),[1] and $8,750 will be paid to Aggrieved

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[1] "**LWDA Payment"** means payment to the LWDA for its sixty-five percent (65%) share of the $25,000 allocated toward penalties under the PAGA, which is to be paid from the Gross Settlement Amount.

Employees on a *pro rata* basis based on the Workweeks worked for Defendants during the PAGA Period ("PAGA Payment").[2] (*Id*. ⁋ 15). "**Workweeks**" means the number of weeks that a Settlement Class Member was employed by and worked for the Defendants in a non-exempt, hourly position during the Class Period in California, based on dates of hire, re-hire, and termination. (*Id*. ⁋ 1(FF)).

"**Net Settlement Amount**" means the portion of the Gross Settlement Amount that is available for distribution to the Participating Class Members after deductions for the Court approved allocations of the Settlement Administration Costs, a Service Award to Plaintiff, an award of attorneys' fees to Class Counsel, reimbursement of litigation costs to Class Counsel, the LWDA Payment, and the PAGA Payment. Assuming the Proposed Settlement is approved as presently allocated, the Net Settlement Amount is $223,000,[3] and this sum shall be distributed to Class Members on a *pro rata* basis. (*Id*. ⁋ 1(Q)).

B. <u>The Class</u>

The "Settlement Class" consists of all current and former non-exempt, hourly-paid employees who worked in California for Defendants at any time during the Class Period. (Exhibit 3, ⁋ 1(EE)). "**Class Period**" means December 13, 2018, through November 6, 2024,[4] and "**PAGA Period**" means August 25, 2021, through November 6, 2024.[5] (*Id*. ⁋ 1(D)).

C. <u>Distribution of Payments</u>

Defendants shall, within fourteen (14) calendar days of the Final Approval Date, make payment of the Gross Settlement Amount and employer taxes to the Settlement Administrator pursuant to Internal Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account ("QSA") with an FDIC insured banking institution, for distribution in accordance with the

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[2] **"PAGA Payment"** means the remaining thirty-five percent (35%) portion of the $25,000 allocated toward penalties under the PAGA that will be paid to Aggrieved Employees on a *pro rata* basis, and which is to be paid from the Gross Settlement Fund.

[3] ($450,000 *Gross Settlement Amount* – $7,500 *Settlement Administration Costs* – $10,000 *Service Award* – $35,000 *Litigation Costs* – $25,000 *PAGA Allocation* – $148,500 *Attorney's Fees*). The Net Settlement Amount was increased since the signing of the Settlement Agreement because Class Counsel reconciled its Litigation Costs and found less that previously estimated.

[4] Per the Settlement Agreement, as 120 days have passed since the final mediation on July 9, 2024, and the Approval Date has not yet occurred, the Class and PAGA Periods ended on November 6, 2024.

[5] The PAGA Period begins one year prior to the date of Plaintiff's Notice, which was sent on August 25, 2022.

Proposed Settlement and this Court's orders. (*Id*. ⁋ 11(B)).

Within seven (7) calendar days after payment of the full Gross Settlement Amount and employer taxes by Defendants, the Settlement Administrator shall distribute Payments (as specified in the Agreement and approved by this Court) from the QSA for: (1) the Service Award to Plaintiff; (2) the Attorneys' Fees and Cost Award to Class Counsel; (3) the Settlement Administrator Costs; (4) the LWDA Payment; and (5) Individual PAGA Payments. The balance remaining shall constitute the Net Settlement Amount from which Individual Settlement Payments shall be made to Participating Class Members, less applicable taxes and withholdings. (*Id*. ⁋ 11(C)).

Participating Class Members will receive an Individual Settlement Payment, and Aggrieved Employees will receive an Individual PAGA Payment.[6] Individual Settlement Payment and Individual PAGA Payment checks shall remain valid and negotiable for 180 calendar days after the date of their issuance. (*Id*. ⁋ 11(A)). Within seven (7) calendar days after expiration of the 180-day period, checks for such payments shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed, or abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). (*Id*.). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted to Boys and Girls Club of America, a nonprofit 501(c)3 corporation (EIN 13-5562976) and the *cy pres* recipient, for use in Sacramento County. (Exhibit 3, ⁋ 11(A)). The Settlement Administrator shall prepare a report regarding the distribution plan pursuant to Code of Civil Procedure section 384, and the report shall be presented to the Court by Class Counsel along with a proposed amended judgment that is consistent with the provisions of section 384. (*Id*.). Class Counsel does not have an interest in the *cy pres* recipient, including its governance. (*Id*.).

The estimated average amount that Class Members will receive as their share of the settlement distribution is $481.64 ($223,000 Net Settlement Amount / 463 Class Members). Koleson Decl. ⁋ 19. Defendants represented that there are no more than 24,176 Workweeks in the Class Period, so each Class Members will receive approximately $9.22 per workweek ($223,000 Net Settlement Amount /

[6] When a Participating Class Member is also an Aggrieved Employee, one check may be issued that aggregates both the Individual Settlement Payment and Individual PAGA Payment.

24,176 Workweeks). *Id*. The Settlement Administrator will determine the total number of Workweeks worked by each Settlement Class Member during the Class Period ("Class Member's Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class Members during the Class Period ("Class Workweeks"). (Exhibit 3, ⁋ 10). Additionally, the Settlement Administrator will determine the total number of Workweeks worked by each Aggrieved Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period ("PAGA Workweeks"). (*Id*.). Specific calculations of the Individual Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made by the Settlement Administrator as follows:

Class Member Individual Settlement Payment
(Class Member's Workweeks ÷ Class Workweeks) *× Net Settlement Amount*
Aggrieved Employee Individual PAGA Payment
(Aggrieved Employee's Workweeks ÷ PAGA Workweeks) *x $5,625.00 (PAGA Payment)*

D. The Release of Claims

Plaintiff and all Participating Class Members will release all claims against the Released Parties asserted in the Operative Complaint filed in the Action, or any and all claims that may be asserted against the Released Parties based on the factual allegations in the Operative Complaint for the duration of the Class Period, including: (1) all claims for failure to pay overtime wages; (2) all claims for failure to pay minimum wages; (3) all claims for failure to provide meal periods or compensation in lieu thereof; (4) all claims for failure to provide rest periods or compensation in lieu thereof; (5) all claims for failure to pay all wages due upon separation from employment; (6) all claims for failure to issue accurate and compliant wage statements; (7) all claims for failure to pay paid sick leave in accordance with California law; (8) all claims for failure to reimburse employees for business expenses; and (9) all claims asserted through California Business & Professions Code §§ 17200, *et* *seq*. arising out of the Labor Code violations referenced in the Complaint ("Class Released Claims"). (Exhibit 3, ⁋ 7(A)).

Aggrieved Employees release only claims asserted in the PAGA Notice, Amended PAGA Notice, and the Operative Complaint for PAGA civil penalties during the PAGA Period, including (1) failure to pay wages under Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and Cal. Code Regs. tit. 8, § 11010; (2) overtime pay violations under Labor Code §§ 510, 1194, 1198; (3) meal period violations under Labor Code §§ 226.7, 512, 1198; Wage Order Nos. 1–2001 to 16–2001, § 11; Wage Order No. 17-2001, § 9; 8 Cal. Code Regs. §§ 11010-11160, § 11; 8 Cal. Code Regs. § 11170, § 9; (4) failure to indemnify necessary business expenditures under Labor Code § 2802; (5) inaccurate wage statements and failure to keep employee records under Labor Code §§ 226, 558.1, 1174, 1174.5, 1198; (6) untimely wage payment under Labor Code §§ 204 and 210; (7) waiting time penalties under Labor Code §§ 201, 202, and 203; (8) unfair competition in violation of Business and Professions Code §§ 17200, *et seq.* and Labor Code § 1021.5; (9) paid sick leave violations under Labor Code §§ 246, 558, 1021.5, 1194.2, 1197.1, 1198, and 1199; and (10) rest period violations under Labor Code §§ 226.7 and 1198; 8 Cal. Code Regs. §§ 11010 – 11160; Wage Order Nos. 1–2001 to 16–2001, §§ 11–12. (Exhibit 3, ⁋ 7(B)). Settlement Class Members who worked during the PAGA Period as Aggrieved Employees that submit a valid Request for Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims. *See Amaro v. Anaheim Management*, 69 Cal. App. 5th 521, 541, fn. 5 (Cal. Ct. App. 2021).

Plaintiff Saunders will execute a broader release, including all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation arising out of, relating to, or in connection with any act or omission of the Released Parties through the date of full execution of this Agreement in connection with Plaintiff's employment with Defendants or the termination thereof, except for any and all other claims that may not be released as a matter of law through this Agreement. (Exhibit 3, ⁋ 7(C)).

E. <u>Summary of the PAGA Settlement</u>

Pursuant to Labor Code 2699(1)(2), a settlement of a civil action brought under the PAGA must be submitted to the LWDA and approved by the court. Where a settlement purports to resolve both class and PAGA claims, courts must examine the settlement as a whole and the amount allocated to PAGA, including the amount distributed to the LWDA. *O'Connor v. Uber Techs, Inc.*, 201 F. Supp. 3d 1110, 1134–35 (N.D. Cal. 2016) "[T]rial court[s] should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (Cal. Ct. App. 2021).

Here, the Proposed Settlement allocates $25,000 to PAGA penalties, in which $8,750 (or 35%) will be paid to Aggrieved Employees on a *pro rata* basis based on the weeks they actually worked during the PAGA Period, and $16,250 (or 65%) will be paid to the LWDA. (Exhibit 3, ⁋ 15). This sum was agreed upon by considering the maximum PAGA penalties at risk to Defendants (and the likelihood a court would not permit stacking and/or use its discretion to reduce the PAGA penalty award), and if any larger allocation were made to PAGA Penalties, Class Members would receive less compensation for their claims. Koleson Decl. ⁋ 24. Further, the thirty-five/sixty-five percent (35/65%) allocation of PAGA penalties reflects the legislature's intent of the 2024 PAGA Updates to allocate more of PAGA settlements to the aggrieved employees. *Id*. Out of the 463 Class Members, 359 are also Aggrieved Employees. Thus, the allocation towards PAGA penalties, or "non-class claims" is fair to those affected as 78% of Class Members are also receiving a PAGA Payment as an Aggrieved Employee. *See Moniz*, 72 Cal. App. 5th at 77.

If this case were successfully litigated, the underlying Labor Code violations would already provide their own statutory penalties or damages; PAGA would provide an additional potential layer of discretionary civil penalties on top of those amounts. When underlying Labor Code violations are proven, PAGA penalties are not guaranteed in any particular amount, rather they are discretionary. LAB. CODE § 2699(e)(2). Indeed, a class action settlement that allocated "$0" to PAGA has been judicially approved and upheld. *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (Cal. Ct. App. 2010). Notably, the amount of PAGA penalties provided in the Settlement represents a fair allocation, especially when compared to other judicially approved class action settlements. *See Davis v. Brown*

Shoe Co., Inc., 2015 WL 6697929 (E.D. Cal. 2015) (approving $1.5M wage-and-hour class action settlement with $5K allocated to PAGA); *Dearaujo v. Regis Corp.*, 2016 WL 3549473 at *3 (E.D. Cal. 2016) (approving $1.95 million class action settlement allocating $10,000 to PAGA); *Garcia v. Gordon Trucking, Inc* 2012 WL 5364575 at *7 (E.D. Cal. 2012) (approving $3.9 million class action settlement allocating $10,000 to PAGA).

III. PROVISIONAL CERTIFICATION IS APPROPRAITE FOR PURPOSES OF SETTLEMENT

Provisional certification is appropriate at the preliminary approval stage where, as here, the Court has not yet certified the class and the requirements for certification are met. *See* Cal. R. Ct. 3.769(d); CIV. PROC. CODE § 382. Two requirements must be met to sustain any class action: (1) there must be an ascertainable class; and (2) there must be a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1806 (Cal. Ct. App. 1996). At the certification stage, the question is whether the action is suitable for class-wide resolution, not whether the action is legally or factually meritorious. *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439–40 (Cal. 2000) Finally, Defendants agreed not to oppose class certification for purposes of this Settlement.

Absent class treatment, similarly situated individuals with small, yet meritorious claims would have no practical means of redress due to the time, effort, and expense required to prosecute individual actions. Koleson Decl. ⁋ 25. Here, a class action is the superior method of adjudication because it promotes judicial economy, avoids duplicative efforts, and reduces expense and risk for the Class. *Id*. Accordingly, and as the Proposed Settlement satisfies the requirements for class certification pursuant to Code of Civil Procedure section 382, Plaintiff requests that this Court provisionally certify the Settlement Class.

A. <u>The Class is Ascertainable & Sufficiently Numerous</u>

A class can be regarded as "ascertainable" when it is defined '"in terms of objective characteristics and common transactional facts' that make 'the ultimate identification of class members possible when that identification becomes necessary.'" *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (Cal. 2019). "No set number is required as a matter of law for the maintenance of a class action." *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (Cal. Ct. App. 1981)

The Putative Class consists of a total of 463 Class Members who collectively worked a total of 24,176 Workweeks, and 359 Aggrieved Employees who worked a total of 7,661 PAGA Pay Periods. (Exhibit 3, ⁋ 1(B); (EE)). Under *Rose*, this satisfies the numerosity requirement. The Class is also ascertainable as each Class Member can be identified by reference to Defendants' employment records. Additionally, Defendants will provide Class Members' full names, last known mailing addresses, social security numbers, job titles, and the number of workweeks employed during the Class and PAGA Period.

B. <u>There is a Well-Defined Community of Interest</u>

The "'community of interest' term embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Brinker Restaurant Corp. v. Superior Court of San Diego Cnty.*, 53 Cal. 4th 1004, 1021 (Cal. 2012)

1. Common Issues of Law & Fact Predominate

"The "ultimate question" the element of predominance presents is whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants."" *Id*. The central issues in this Action are lack of fully compliant written policies for the entirety of the class period; high frequency of non-compliant meal and rest periods in the records; failure to accurately pay all required meal and rest period premiums; off-the-clock work; failure to reimburse for necessary business expenses; and derivative liability for waiting time penalties, failure to provide accurate paystubs, and unfair competition. Plaintiff alleges that Defendants' policies and practices violate California's wage and hour laws, and because these policies applied uniformly to all employees, not just Plaintiff, common questions of law and fact are generated, making certification and liability relatively straightforward. *See Bradley v. Networkers Int'l, LLC*, 211 Cal. App. 4th 1129, 1150 (Cal. Ct. App. 2012) (lack of a meal/rest break policy and the uniform failure to authorize such breaks are matters of common proof); *Faulkinbury v. Boyd & Associates, Inc.*, 216 Cal. App. 4th 220, 237 (Cal. Ct. App. 2012) (finding that liability would arise upon a finding that its uniform rest break policy, or lack of policy, was unlawful); *ABM Industries Overtime Cases*, 19 Cal. App. 5th 277, 310 (Cal. Ct. App. 2017) (ABM's apparent uniform practice of providing premium pay to its employees was susceptible to class wide treatment). Class certification is therefore appropriate because a claim that a company's uniform policy violates the law "is by its nature a common question eminently suitable for class treatment." *Brinker*, 53 Cal. 4th at 1033; *Troester v. Starbucks Corp.*, 5 Cal. 5th 829, 847 (Cal. 2018); *Howell v. Advantage RN, LLC*, Case No.: 17-CV-0883 JLS (BLM) (S.D. Cal. July 17, 2018), at *4 (finding that a common question is whether bonuses must be included in the regular rate and whether defendant excluded them from the regular rate).

2. Plaintiff's Claims are Typical of the Class

"[I]t has never been the law in California that the class representative must have *identical* interests with the class members. The only requirements are that common questions of law and fact *predominate* and that the class representative be *similarly* situated." *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal. App. 3d 1341, 1347 (Cal. Ct. App. 1987) (emphasis in original). "A class action is not inappropriate simply because each member of the class may at some point be required to make an individual showing as to his or her eligibility for recovery or as to the amount of his or her damages." *Classen v. Weller*, 145 Cal. App. 3d 27, 46 (Cal. Ct. App. 1983). Here, Plaintiff's claims are typical of the Class because he was subjected to the same policies and practices applicable to all employees working for Happy Daze RV during the Class Period.

3. The Adequacy Requirement is Met

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Bank of America*, 60 Cal. App. 3d 442, 450 (Cal. Ct. App. 1976). Class Counsel have been licensed in California for many years and collectively have decades of experience in wage-and-hour litigation. Koleson Decl. ⁋ 51. Class Counsel have further served as counsel of record and been staffed on dozens of wage-and-hour class actions throughout California and have been approved as class counsel in numerous class actions. *Id*. Moreover, Class Counsel have participated in numerous wage-and-hour class action mediations and settlement processes. *Id*. In Class Counsel's view, the Settlement reached in this matter is fair and reasonable. *Nat'l Rural Telecomms.*

Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 528 (C.D. Cal. 2004) ("Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation").

Additionally, Plaintiff's claims are typical of the Class, so there are no apparent interests which would be antagonistic to those of the Class. Koleson Decl. ⁋ 27. Indeed, Plaintiff has worked closely with Class Counsel and assisted at every stage, provided relevant documents and information, remained actively involved throughout the litigation, and attended both mediation session. Saunders Decl. ⁋⁋ 5–13. Class Counsel thoroughly investigated the claims raised in this action, the underlying case law, Defendant's defenses, and meticulously reviewed the information and documents exchanged, formally and informally, prior to attending mediation. Koleson Decl. ⁋ 27. Thus, Plaintiff and Class Counsel have and will continue to adequately represent the interest of the Settlement Class.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

California courts favor settlement, particularly in class actions and other complex actions where substantial resources may be conserved by avoiding the time, costs, and rigors of protracted formal litigation. *7-Eleven*, 85 Cal. App. 4th 1135, 1151 (Cal. Ct. App. 2000). Courts additionally maintain broad discretion to approve proposed settlements. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234–35 (Cal. Ct. App. 2001), *abrogated on other grounds by Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260 (Cal. 2018). Court approval of a class action settlement is a two-step process, including a preliminary review by the court and a subsequent final review and approval by the court after notice has been distributed to the class members for their comment or objections. Cal. R. Ct. 3.769; *Dunk*, 48 Cal. App. 4th at 1806.

In granting preliminary approval of a class settlement, the court considers whether the agreement, "taken as a whole, is fair, reasonable and adequate to all concerned." *Wershba*, 91 Cal. App. 4th at 245 (internal citations omitted). At the preliminary approval stage, the court's review is "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." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *7-Eleven*, 85 Cal. App. 4th at 1146. Where a class action settlement is determined to be within the "range of reasonableness," the court should grant preliminary approval. *Hernandez v. Vitamin Shoppe Indus., Inc.*, 174 Cal. App. 4th 1441, 1446 (Cal. Ct. App. 2009).

Pursuant to Labor Code section 2699(s), a settlement of a civil action brought under the PAGA statute must be submitted to the LWDA and must be approved by the court. Where a settlement purports to resolve both class and PAGA claims, courts must examine the settlement as a whole and the amount allocated to PAGA, including the amount distributed to the LWDA. *O'Connor v. Uber Techs, Inc.*, 201 F. Supp. 3d 1110, 1134–35 (N.D. Cal. 2016). Accordingly, the PAGA settlement must be fair, adequate, and reasonable as well.

A. **<u>The Settlement is a Product of Arm's-Length & Informed Negotiations</u>**

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." *State of California v. Levi Strauss Co.*, 41 Cal. 3d 460, 482 (Cal. 1986).

> The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. . . . [A]n agreement reached under these circumstances presumably will be fair to all concerned, particularly when few of the affected class members express objections . . . .

Clark v. American Residential Services LLC, 175 Cal. App. 4th 785, 800 (Cal. Ct. App. 2009).

Here, the Proposed Settlement is the product of adversarial, arm's-length negotiations. Koleson Decl. ⁋ 29. Indeed, Class Counsel did not discuss settlement until after receipt of the information and documents necessary to make an informed evaluation of the strengths and weaknesses of the case. *Id*. The Proposed Settlement was reached following a two-part, full-day mediation with an experienced neutral. *Id*. At mediation, both sides were represented by legal counsel who vigorously defended their respective positions. *Id*. The mediation resulted in a mediator's proposal for a $450,000 global resolution which the Parties ultimately accepted. *Id*. After the successful mediation, for several months, the Parties negotiated the terms of their MOU, and then their formal long-form Settlement

Agreement. *Id*. While the Parties disagree over the scope of Defendants' exposure to the alleged claims as well as the merits of the claims themselves, the Parties agree that the Proposed Settlement is fair, reasonable, and adequate in light of all known facts, circumstances, and litigation risks. *Id*. Based on the foregoing, the Proposed Settlement was a product of an informed and adversarial arm's-length negotiation.

B. The Settlement is a Product of Informed Investigation & Discovery

"In the context of class action settlements, formal discovery is not a necessary ticket to the bargaining table where the parties had sufficient information to make an informed decision about settlement." *7-Eleven*, 85 Cal. App. 4th at 1150 (internal citations omitted). Here, Class Counsel conducted sufficient research, investigation, analysis, and discovery on the core issues in this case, which ultimately resulted in receipt of written employment policies, Plaintiffs' employment records, and a sample of wage and hour data for the putative class. Koleson Decl. ⁋ 7. Class Counsel then hired an expert to evaluate Defendant's time keeping records and conduct a damages analysis for the Class. *Id*. at ⁋ 7. Further, Class Counsel reviewed nearly 8,000 pages of discovery before conducting further investigation to evaluate the merits of Plaintiffs' claims. *Id*. Such review and investigation allowed Class Counsel to determine the class size, hours worked, workweeks and pay periods, hourly-rates, and total compensation of non-exempt employees in the Class. *Id*. The *Kullar* analysis detailed below is further evidence of Class Counsel's investigation on behalf of the Class.

C. Class Counsel is Sufficiently Experienced to Support Preliminary Approval

Throughout this litigation, Class Members have been represented by well-qualified counsel who have years of experience in wage and hour class action litigation. Koleson Decl. ⁋ 51; 54. Class Counsel relied on their extensive experience when negotiating the Proposed Settlement. *Id*. Class Counsel has litigated dozens of representative wage and hours cases, including class actions. *Id*. Further, Class Counsel are members of various consumer advocate organizations, including the Consumer Attorneys Association of Los Angeles ("CAALA") and California Employment Lawyers Association ("CELA"). *Id*. Class Counsel regularly attend conferences, seminars, and conventions offered by plaintiff's attorney organizations and stay informed on new developments in employment law through various law publications. *Id*. Class Counsel are sufficiently experienced, qualified and familiar with the applicable law to make an informed judgment on the fairness of the settlement. *Id*. As such, the Proposed Settlement is fair, adequate and reasonable, taking into account all relevant factors.

D. The Settlement Provides Fair, Reasonable, & Adequate Relief to the Class in Light of the Risk & Expense of Further Litigation

The Proposed Settlement provides fair, reasonable, and adequate relief to the Class in light of the risks associated with proving liability on each claim and the expense of continued litigation. With respect to the claims asserted on behalf of the Class, there are risks that support the reduced compromise amount. These risks include, but are not limited to (i) the risk that Plaintiff would be unable to establish liability for unpaid straight time or overtime wages; (ii) the risk that Defendant's meal and rest period policies might not ultimately support class certification or a class-wide liability finding; (iii) the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and practices could preclude class-wide awards of statutory penalties under Labor Code 203 and 226(e); (iv) the risk that individual differences between Class Members could be construed as pertaining to liability and not solely to damages; (v) the risk that any civil penalties awarded under the PAGA could be reduced by the Court in its discretion; (vi) the risk that class treatment could be deemed improper as to one or more claims—except for the purposes of settlement; and (vii) the risk that appellate litigation could ensue. Koleson Decl. ⁋ 29.

1. The Settlement is Within the Range of Reasonableness

The reasonableness is determined with an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 120 (Cal. Ct. App. 2008). Indeed, a settlement is fair if the "consideration being paid for the release of those claims represents a reasonable compromise." *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399, 408 (Cal. Ct. App. 2010) (internal citations omitted).

The court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case[.]" *Clark*, 175 Cal. App. 4th at 799

> Neither the trial court nor this court is to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. In

> other words, the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits.

7-Eleven, 85 Cal. App. 4th at 1145 (internal citations omitted). To emphasize, "the merits of the underlying class claims are not a basis for upsetting the settlement of a class action. [Rather, the] proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial." *Wershba*, 91 Cal. App. 4th at 246 (citing *7-Eleven*, 85 Cal. App. 4th at 150).

Finally, a settlement need not compensate for 100 percent of the damages sought in order to be fair and reasonable:

> Compromise is inherent and necessary in the settlement process. Thus, 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; *see also Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 1139 (Cal. Ct. App. 1990) (settlements found to be fair and reasonable even though monetary relief provided was 'relatively paltry'); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (settlement amounted to only 'a fraction of the potential recovery').

Although Plaintiff maintains that all claims are meritorious and believes he would have prevailed had he taken the issues to trial, Plaintiff acknowledges that Defendants possess legitimate defenses to liability, class certification, and manageability. Koleson Decl. ⁋ 30. Defendants have consistently denied all material allegations in this action, that they violated any applicable laws, that they are liable for damages, penalties, interest, restitution, attorney's fees, costs, or for any other remedy on account of the claims asserted in this action, and that class certification or representative treatment is appropriate as to any claim in the action. *Id*. Such considerations pose a substantial obstacle for Plaintiff to maintain his meal period, rest period, and unpaid wages claims, as well as establishing the full amount of Plaintiff's estimated damages and civil penalties for such claims at trial. *Id*. Additionally, continued litigation would very likely be extremely expensive, reducing and substantially delaying any recovery by Class Members. *Id*. In contrast, the Proposed Settlement will guarantee that Class Members will receive timely relief, substantial monetary recovery, and avoid the risk of an unfavorable judgment. *Id*.

(a) *Failure to Pay Minimum Wages:*

California law broadly defines "hours worked" as the "time during which an employee is subject to the control of the employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Indus. Welfare Comm'n Wage Order No. 4–2001, ⁋ 2(K). Moreover, there is no "de minimis" exception to California wage claims. *Troester v. Starbucks Corp.*, 5 Cal. 5th 829 (Cal. 2018). In this case, Plaintiff's failure to pay minimum wages claim is predicated on Defendant's alleged failure to pay Class Members for hours they spent working off-the-clock during meal breaks and after clocking out at the end of the day. Koleson Decl. ⁋ 31.

Without any discounts applied and assuming liability could be established, the estimated exposure on this claim is $849,665.52 in unpaid wages. *Id*. This was calculated assuming each Class Member worked an average of 1.5 hours off-the-clock per Workweek and the average hourly wage worked across the class as $23.43 per hour.[7] *Id*. The evidentiary support for this allegation is exclusively testimony from Class Members. *Id*.

In response, Defendants contend that (i) Defendants had no actual or constructive knowledge of alleged worked off-the-clock pre-shift, post-shift, during meal periods, or at any other time; (ii) employees are entrusted with clocking-in before completing any work, and likewise, clocking-out at the end of their shifts only once they've finished their job duties for the day, and Defendants' written policies state as much; (iii) Defendants maintained lawful time-keeping and meal period policies, employees were not required to interrupt their meal periods to attend to work, and if that purported circumstance ever arose, they could simply clock out early for a meal period (rather than work off-the-clock); and (iv) determining which employees allegedly worked off-the-clock, and under what circumstances the alleged off-the-clock work occurred, would devolve into a series of mini-trials that render this claim unsuitable for class treatment. *Id*. ⁋ 32.

As such, it is no certainty that the class would be awarded 1.5 hours of off-the-clock time per

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[7] ($23.43 Average Hourly Wage x 1.5 hours x 24,176 Workweeks)

workweek because the trier of fact could find that the class worked fewer hours off-the-clock per workweek, or no off-the-clock time for that matter. *Id.* ⁋ 33. Thus, the $849,665.52 maximum recovery under this claim is subject to reduction. Koleson Decl. ⁋ 33. Further, because Plaintiff carries the burden of proof on this claim, this is supported solely with witness testimony, and Defendants had facially compliant polices regarding meal periods and working off-the-clock, a more realistic estimate of the value of this claim is $212,416.38,[8] reflecting a 75% possibility of either a lower damages award or defense verdict on this claim. *Id.* In light of the expenses associated with continued litigation and deposing several employees to determine the average amount of time spent working off-the-clock, the Proposed Settlement is reasonable.

(b) <u>Failure to Pay Overtime Wages:</u>

Overtime pay is based on an employee's "regular rate" of pay. *Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th 542, 554 (Cal. 2018); LAB. CODE § 510. Similar to his failure to pay minimum wage claim, Plaintiff's overtime claim is largely based on Defendants' alleged failure to pay employees for work that was required but completed off-the-clock. Koleson Decl. ⁋ 34. Thus, the same analysis applicable, evidentiary concerns, and defense contentions associated with the minimum wage claim equally apply to Plaintiff's overtime claim. *Id.* Assuming each Class Member worked an average of 1 hour off-the-clock per workweek subject to the overtime rate, which would be $35.15 per hour based on the average hourly wage worked across the class, the maximum recovery would be $849,786.40 on this claim.[9] *Id.* Similar to the minimum wage claim, a more realistic estimate of the value of this claim is $212,446.60,[10] reflecting a 75% possibility of either a lower damages award or defense verdict on this claim. *Id.*

(c) <u>Failure to Provide Meal Periods:</u>

California law requires employers to provide employees with timely, duty-free, and uncontrolled 30-minute meal periods. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1040 (Cal. 2012); LAB. CODE § 512. During Plaintiff's employment, Defendants' policies and

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[8] (reduced by 75%)
[9] ($35.15 Average Hourly Overtime Rate x 1 hour x 24,176 Workweeks)
[10] (reduced by 75%)

practices made it difficult for employees to take compliant meal breaks. Koleson Decl. ⁋ 35. Plaintiff's main theories of meal and rest period liability were that Happy Daze RV runs continuous service operations at their dealerships, which made it difficult for employees to take meal and rest breaks if customers needed assistance, thereby resulting in employees experiencing a high volume of meal period interruptions. *Id*. In this ongoing and busy environment, Plaintiff contends that Happy Daze RV lacked adequate meal and rest period infrastructure. *Id*. There was no bell that sounded, or daily break schedule, or standardized relief crews. *Id*. Assuming Plaintiff could establish one meal period violation per Class Member per Workweek at trial, the estimated exposure on this claim is $566,443.68 in unpaid meal period premiums.[11] *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 863 (Cal. 2021 (meal period premiums must be paid at the regular rate).

In response, Defendants contended that (i) Defendants had compliant written policies on meal periods, employees were informed of the ability to take timely and duty-free meal periods, they did so, and they were not discouraged or prevented from doing so; (ii) Defendants utilized meal period waiver forms where appropriate; (iii) Defendants paid meal period premiums for meal period issues; and (iv) determining which employees allegedly experienced a true meal period violation versus which had a missed, short, or late meal period as a result of a voluntary waiver would require an individualized analysis that renders class action treatment inappropriate. *Lampe v. Queen of the Valley Med. Center*, 19 Cal. App. 5th 832, 848 (Cal. Ct. App. 2018) ("[t]he question of whether a missed meal break was due to the employer's failure to allow it or from the employee's voluntary choice not to take it requires an individualized inquiry"). Based on the strength of the defenses raised, and the possibility of a defense verdict of zero dollars on this claim, a more realistic estimate of the value of this claim is $141,610.92,[12] reflecting a 75% possibility of either a lower damages award or defense verdict on this claim. Koleson Decl. ⁋ 36.

(d) <u>Failure to Indemnify for Necessary Expenditures:</u>

Under California law, employers must reimburse employees for the expenses incurred in the

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[11] ($23.43 per violation x 1 violation per workweek x 24,176 Workweeks)
[12] (reduced by 75%)

discharge of their duties. LAB. CODE § 2802.

Plaintiff alleges that Defendants failed to reimburse service technician class members for necessary business expenses. Koleson Decl. ⁋ 37. These Class Members were required to supply their own tools, which were necessary to perform their job duties for Happy Daze RV but were not reimbursed for the purchase of those hand tools. *Id*. Plaintiff's individual claim for reimbursement of "hand tools and equipment" as defined by the California Department of Industrial Relations ("DLSE") Manual, totaled $4,000 of unreimbursed business expenses. *Id*. This figure further represents the approximate amount that Plaintiff contends would be necessary for any service technician to perform their job duties at Happy Daze RV. *Id*. Therefore, the maximum value of this claim would be $508,000 assuming all service technician class members spent $4,000 in necessary business expenditures.[13] *Id*.

In response, Defendants counter that (i) employees were not, in fact, required to provide their own work tools – Defendants furnished every work tool necessary, and if employees brought their own work tools, they did so for their own convenience, not because of any employer-mandated requirement; (ii) employees can raise expense requests internally and get reimbursed for properly-incurred expenses; (iii) even if a service technician purchased tools for the job, such expenses would be significantly less than $4,000 per Class Member; and (v) determining which employees are allegedly owed reimbursement would be an employee-by-employee inquiry that is not amenable to class action treatment. Koleson Decl. ⁋ 38.

As such, the amount the Class could reasonably expect to be awarded at trial on this claim would be zero if Defendant proved that it in fact did supply technicians with all necessary tools or reduced if it proved each Class Member spent less than $4,000 on their tools. *Id*. Thus, the amount recoverable under this claim could be subject to a significant reduction by the number of Class Members who were not eligible for any kind of business expenses, or less than the estimated $4,000 per technician amount. *Id*. Based on the strength of these defenses, a more realistic estimate of the value of this claim is $254,000,[14] reflecting a 50% possibility of either a lower damages award or

[13] ($4,000 x 127 Service Technician Class Members)
[14] (reduced by 50%)

defense verdict on this claim. *Id*.

(e) <u>Failure to Furnish Compliant Wage Statements & Maintain Accurate Pay Records:</u>

Under California law, when wages are paid to employees, employers must issue corresponding wage statements that accurately show certain statutorily-required items of information, including, among others, their total hours worked, their net and gross wages earned, and the name and address of the employer. LAB. CODE § 226(a). A "knowing and intentional" wage statement violation that causes "injury" leads to penalties under Labor Code § 226. LAB. CODE § 226(e)(1).

With respect to the derivative theory, which is Plaintiffs' main theory, Plaintiffs' claim under Labor Code section 226 is based on the assertion that Defendants committed other wage-and-hour violations (e.g., failure to pay for off-the-clock work and meal period premiums) which resulted in inaccurate wage statements. *See Naranjo v. Spectrum Security Services, Inc.*, 13 Cal. 5th 93, 101 (Cal. 2022). More specifically, Plaintiff contends that his timecards did not reflect the accurate number of hours he worked each pay period as a result of his off-the-clock work, missed meal and rest periods, and therefore his wage statements correspondingly reported less than the amount of wages that were actually due to him. Koleson Decl. ⁋ 40.

Defendants contend that (i) its wage statements were facially-compliant in all material respects and employees could determine the legally-required information without resorting to other sources; (ii) there was no "injury" or "knowing and intentional" violations within the meaning of Labor Code section 226; (iii) because Plaintiff's other alleged wage-and-hour claims lacked merit, Plaintiffs' derivative theory under Labor Code section 226 lacked merit; and (iv) this claim is not suitable for class action treatment because Plaintiff's derivative theory hinges on alleged underlying wage-and-hour violations, and the alleged underlying wage-and-hour violations are themselves not susceptible to class treatment. *Id*.

In addition to Defendants' contentions, the *Maldonado* decision vitiates Plaintiff's wage statement claim. *Maldonado v. Epsilon Plastics, Inc.*, Cal. App. 5th 1308, 1344 (Cal. 2018). Indeed, the *Maldonado* court held that a plaintiff cannot maintain a derivative Labor Code section 226(a) claim based on the allegation that the wages listed on the wage statement were inaccurate. Thus, this claim would not have survived summary judgment or trial, and the actual value is zero.

Assuming this claim somehow survived, the Class would have been entitled to a $50 penalty for every pay period in which a Class Member was furnished an inaccurate wage statement up to the statutory maximum of $4,000 per member. Koleson Decl. ⁋ 42. Based on the employment data produced, the approximate amount of penalties recoverable by the class was $1,852,000. *Id*. Plaintiff arrived at this figure by multiplying the number of pay periods that the 463 Class Members worked by $50,[15] up to a maximum of $4,000 for each employee.[16] *Id*. But, in light of the *Maldonado* decision, the amount that the Class could reasonably expect to be awarded at trial on this claim is zero.

(f) *Willful Failure to Pay Wages:*

California employers must include all wages due to employees upon separation in their final paychecks. LAB. CODE §§ 201-202. A "willful" failure to include all wages due to an employee in their final paycheck creates waiting-time penalties under Labor Code section 203. LAB. CODE § 203 (imposing up to 30 days of waiting-time penalties on an employer who "willfully fails to pay . . . any wages" due to an employee who is discharged or quits).

Plaintiffs' claim for failure to pay all wages due upon separation from employment under Labor Code section 203 is derivative of Plaintiffs' other claims. That is, Plaintiffs' claim under Labor Code section 203 is based on the assertion that Defendants committed other wage-and-hour violations (e.g., failure to pay for off-the-clock work, failure to pay meal period premiums, etc.) which resulted in unpaid wages that were not tendered to separated employees in their final pay. Koleson Decl. ⁋ 43.

First, it is important to acknowledge the willfulness finding required for Labor Code sections 203 and 226 is challenging to establish. Further, Defendants counter Plaintiff's allegations, asserting (i) a good-faith dispute exists as to whether Defendants committed the alleged underlying wage-and-hour violations, and consequently Plaintiffs' claim for waiting-time penalties under Labor Code § 203 lacks merit (Cal. Code Regs., tit. 8, § 13520 ("a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203")); and (ii) because Plaintiffs' other claims would not be amenable to class action treatment, neither would Plaintiffs' derivative claim under

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[15] (24,176 Workweeks x $50 = $1,208,800)

[16] (463 Class Members x $4,000 = $1,852,000)

Labor Code section 203. Koleson Decl. ⁋ 44.

Were this claim successful at trial, the Class would have been entitled to penalties calculated at each employee's daily wages, up to a maximum of thirty (30) days. Here, because the average hourly wage of the Class Members was $23.43, and the 30-day maximum was reached as to each of the approximately 311 Class Members whose employment with Happy Daze RV terminated during the Class Period, $1,748,815.20 is the maximum value of this claim.[17] *Id*. However, because this claim is derivative of the failure to pay minimum and overtime wage claims, it must be discounted to the same extent as those underlying claims in light of the obstacles to recovery on those claims. *Id*. Thus, a more realistic estimate of the value of this claim is $437,203.80,[18] reflecting a 75% possibility of either a lower damages award or defense verdict on the underlying minimum wage and overtime claims. *Id*.

(g) *Failure to Pay Sick Time:*

Sick leave must be paid to non-exempt employees at their regular rate. LAB. CODE § 246(l)(2). Plaintiff alleges that Defendants failed to pay Class Members for all accrued sick leave pursuant to Labor Code sections 246, 558, 1194.2, 1197.1, 1198, and 1199, which entitle non-exempt employees to sick time paid at the regular rate of pay. Assuming Defendants failed to pay each Class Members for one day of accrued sick leave (eight (8) hours of sick time), the exposure of this claim would be $86,784.72 if proven at trial.[19] Koleson Decl. ⁋ 45.

(h) *Failure to Provide Rest Periods:*

California law requires employers to provide employees with timely, duty-free, and uncontrolled 10-minute rest breaks. *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269 (Cal. 2016); LAB. CODE § 226.7. An employee's ten (10) minutes of rest begins the moment they can reach an appropriate area of rest and be free from employer control. *Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 112 (Cal. Ct. App. 2017) (a rest period "begins when the employee reaches an area away from the work station that is appropriate for rest"). Similar to his failure to provide meal periods claim, Plaintiff's rest period claim is largely based on Defendants' alleged lack of rest period

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[17] (($23.43 x 8 hours x 30 days) x 311 Class Members)
[18] (reduced by 75%)
[19] (($23.43 x 8 hours) x 463 Class Members)

infrastructure and prioritization of customer service over employee rest time. Thus, the same analysis applicable, evidentiary concerns, and defense contentions associated with the meal period claim equally apply to Plaintiff's rest period claim.

Using the average hourly rate of $23.43 as a basis for calculating the damages for Defendants' alleged failure to provide rest periods, assuming 2 rest period violations occurred during each pay period, and multiplying it by approximately 24,176 Workweeks, the maximum value is $1,132,887.36 for this class claim.[20] Koleson Decl. ⁋ 46. But in light of the conflicting evidence regarding whether employees were permitted to take rest periods and difficulties associated with proving it on a class wide basis, the amount that the Class could reasonably expect to be awarded at trial is $283,221.84, which reflects the 25% chance that Class Members would have been successful on their rest period claim at trial. *Id*. This figure could be reduced further if the trier of fact were to accept Defendants' position that many, if not all, of the non-exempt employees controlled their own break times.

(i) <u>Unfair Competition:</u>

UCL claims are derivative of other violations of law. Here, Plaintiff's UCL claim sought repayment of all unpaid minimum, overtime, and sick wages as well as reimbursement of all necessary business expenditures incurred by Class Members based on Defendant's alleged failure to pay wages and reimburse expenses on behalf of the lass. *Id*. This was duplicative of the relief sought by Plaintiff's underlying minimum wage, overtime, and tool reimbursement claims, as it sought compensation for the same harm. *Id*. Assuming Plaintiffs had prevailed on those claims, none of the damages pled in the UCL claim would have been recoverable as a matter of law because this claim seeks double recovery. *Id*. Indeed, compensatory damages are intended to make the injured person whole, not to reward or enrich over and above their loss. "The compensatory damage principle dictates no double recovery, for by definition, double recovery is antithetical to compensatory damages." *Fuller v. Capitol Sky Park*, 46 Cal. App. 3d 727, 732 (Cal. Ct. App. 1975); *see also California v. IntelliGender, LLC*, 771 F.3d 1169 (9th Cir. 2014) (Plaintiff was precluded from recovering r and injunctive relief under UCL claim because it was duplicative of relief sought for similar claim). Because it would violate the

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[20] ($23.43 per violation x 2 violations per workweek x 24,176 Workweeks)

compensatory damage principle to allow double recovery of unpaid wages and unreimbursed expenses, the amount that the Class could reasonably expect to be awarded at trial on its UCL claim is zero. Koleson Decl. ⁋ 47.

(j) Civil Penalties Pursuant to the PAGA:

Labor Code section 2699.3(c) authorizes an aggrieved employee to bring a representative action for the collection of civil penalties on behalf of themselves and other employees against an employer who has committed Labor Code violations against them. "The civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation." LAB. CODE § 2699(f)(2). The statute of limitations for collecting civil penalties is twelve months. CIV. PROC. CODE § 340(a).

Plaintiff is entitled to recover a civil penalty of $100 for every pay period in which the following alleged Labor Code violations were committed against the 359 Aggrieved Employees: failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize rest periods, failure to pay sick time, and failure to reimburse business expenditures. Koleson Decl. ⁋ 48. Assuming each Aggrieved Employee experienced the six (6) alleged Labor Code violations all 7,661 PAGA Pay Periods, $4,596,600 is the maximum amount of civil penalties recoverable. *Id*.

However, the Labor Code also provides,

> In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

LAB. CODE § 2699(e)(2). Essentially, because the actual amount of PAGA penalties is discretionary in nature, an economic valuation of PAGA claims results in merely a ballpark figure. *Abelar v. American Residential Services, L.L.C.*, 2019 WL 6054607 at *4 (C.D. Cal. 2019) (noting that because California courts frequently approved reductions in PAGA penalties, this makes an exposure estimate "not a concrete one"). Further, considering the weight of the evidence, clarity of applicable law, and relative strengths and weaknesses of the claims and defenses discussed above, Defendants would likely have been found liable for committing some Labor Code violations, but it is likely that the Court would exercise its discretion to lower the amount of penalties and refuse to allow "stacking" of multiple violations during each pay period. Koleson Decl. ⁋ 48. If the Court were to refuse to stack PAGA penalties for the six causes of action pled, the maximum amount of PAGA penalties recoverable in this case would have been $766,100 prior to any discretionary reductions. *Id*.

For all these reasons, the amount offered for settlement is eminently reasonable and best serves the interests of the Class.

2. The Scope of Released Claims Is Appropriately Limited

The released claims share a reasonable nexus with the alleged violations in both substance and time. Here, the Class Members' release covers only claims that were pled, or that could have been pled, and excludes unrelated claims such as wrongful termination, harassment, and workers' compensation, and the Class Representative will execute a broader individual general release of all claims. (Exhibit 3, ⁋ 7).

3. The Settlement Provides for Reasonable Attorneys' Fees & Costs

"One 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." *Serrano v. Priest*, 20 Cal.3d 25, 35 (Cal. 1977). "Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." *Wershba*, 91 Cal. App. 4th at 254.

> When class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Laffitte., 1 Cal. 5th at 503.

Under the percentage method, California courts routinely award attorneys' fees in the amount of thirty-five percent (35%) of the common fund. *See Watson v. Tennant Company*, 2020 WL 5502318 at * 7 (E.D. Cal. 2020) ("courts usually award attorneys' fees in the 30-40% range in wage and hour class actions that result in recovery of a common fun[d] under $10 million"); *Pena v. Taylor Farms Pacific, Inc.*, 2021 WL 916257 at *5 (E.D. Cal. 2021) (awarding attorneys' fees in the amount of 35% of the common fund in a wage-and-hour class action settlement); *Mar v. Betts Company*, 2020 WL 6269151 (E.D. Cal. 2020) (approving attorneys' fees in the amount of 35% of the common fund in a wage-and-hour class action); *Chavez v. Netflix*, 162 Cal. App. 4th 43, 66, n.11 (Cal. Ct. App. 2008) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery").

A "reasonable fee" should also mimic the market:

> [T]he amount of attorney fees typically negotiated in comparable litigation should be considered in the assessment of a reasonable fee in representative actions in which a fee agreement is impossible. Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior.

Lealao v. Beneficial California, Inc., 82 Cal. App. 4th 19, 47 (Cal. Ct. App. 2000).

Defendants have agreed not to oppose any request up to $157,500, which is thirty-five percent (35%) of the Gross Settlement Amount, as Class Counsel's Fee Payment. (Exhibit 3, ⁋ 12). Thus, at the Final Fairness Hearing, Class Counsel will thus request attorney's fees for thirty-five percent (35%) of the Gross Settlement Amount ($157,500) plus up to $43,000 to cover Class Counsel's Litigation Expenses Payment. Koleson Decl. ⁋ 49. Here, the "percentage-of-the-fund" approach is the superior method of compensating counsel for the monetary benefit conferred on the Class because it most accurately reflects the results achieved in this action. *Id*. The thirty-five percent (35%) requested fee is reasonable because it is within the range that is typically negotiated for wage litigation in the marketplace. If a smaller percentage is awarded, the class would reap a windfall because they would receive a substantial monetary benefit without ever having to invest the time and energy of pursuing suit individually at a below-market rate.

4. Plaintiff Seeks a Reasonable Service Award

"Since without a named plaintiff there can be no class action, such compensation may be necessary to induce him to participate in the suit[.]" *Clark*, 175 Cal. App. 4th at 804. "[I]t is established that named plaintiffs are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz*, 186 Cal. App. 4th at 412. For purposes of preliminary approval, the requested $10,000 for Plaintiff Jerime Saunders is fair in light of Plaintiffs' personal investment of time, risk he undertook in this litigation for the benefit of the class, and personal sacrifice of executing a broader release than the Class. Saunders Decl. ¶¶ 5–13.

By being the named representative, Plaintiff Saunders put his name forward on public record at the risk of present or potential employers choosing not to hire him. *Id*. Plaintiff also ran the risk of being liable for Defendants' attorneys' fees and costs as a result of the fee shifting provisions within the Labor Code. *See e.g.*, LAB. CODE §§ 218.5, 226. Plaintiff spent a significant time reviewing documents, communicating with Class Counsel, assisting with the preparation of the LWDA letters, complaints, and other pleadings, responding to discovery, and attending depositions. Saunders Decl. ¶¶ 5–13. Thus, the $10,000 service award sought by Plaintiff is reasonable.

V. THE PROPOSED NOTICE TO CLASS MEMBERS IS ADEQUATE & INFORMATIVE

California Rule of Court 3.769 requires class representatives to notify class members of a pending settlement on the merits and provide them with the opportunity to object at the final settlement fairness hearing. Additionally, Rule 3.771(b) requires that notice of a pending judgment be provided to class members, and Rule 3.769(f) provides that notice of the final approval hearing must be given to the class members in the manner specified by the court. "The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." *Hernandez*, 4 Cal.5th at 267.

> [T]he [n]otice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members. The purpose of a class notice in the context of a settlement is to give class members sufficient information to decide whether they

> should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. As a general rule, class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members. Here again the trial court has broad discretion. The court has virtually complete discretion regarding notice to class members.

Wershba, 91 Cal. App. 4th at 251–52 (citing *Trotsky v. Los Angeles Fed. Sav. Loan Assn*, 48 Cal. App. 3d 134, 151–52 (Cal. Ct. App. 1975)) (internal quotations and citations omitted). "The notice given should have a reasonable chance of reaching a substantial percentage of the class members[.]" *Cartt v Superior Court*, 50 Cal. App. 3d 960, 974 (Cal. Ct. App. 1975).

A. Class Notice Administration

The Parties selected ILYM to administer the Settlement, which includes, but is not limited to translating the Class Notice to Spanish, distributing and responding to inquiries about the Class Notice, and calculating all amounts to be paid from the Gross Settlement Amount. (Exhibit 3, ⁋ 8). ILYM will be paid for the actual Settlement Administration Costs from the Net Settlement Amount, which is estimated to be $7,250 currently.

B. Notice to the Class

The Agreement outlines all of the information which the Class Notice will set forth. (Exhibit 3, ⁋ 9(A); Exhibit A: Proposed Notice of Class Action & PAGA Settlement). Within fourteen (14) calendar days after the Preliminary Approval Date, Defendants' counsel shall provide the Settlement Administrator with information with respect to each Settlement Class Member, including: name; last known addresses, telephone numbers, and Social Security Numbers currently in Defendants' possession, custody, or control; and the dates of employment for each Settlement Class Member ("Class List"). (*Id.*). The Settlement Administrator shall perform an address search using the United States Postal Service National Change of Address ("NCOA") database and update the addresses contained on the Class List with the newly found addresses, if any. (*Id.*). Within seven (7) calendar days, or soon thereafter, of receiving the Class List from Defendants, the Settlement Administrator shall mail the Class Notice in English and Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most current mailing address information available. (*Id.*).

If a Class Notice from the initial notice mailing is returned as undeliverable, the Settlement

Administrator will attempt to obtain a current address for the Settlement Class Member to whom the returned Class Notice had been mailed, within five (5) calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator is successful in obtaining a new address, it will promptly re-mail the Class Notice to the Settlement Class Member. Further, any Class Notices that are returned to the Settlement Administrator with a forwarding address before the Response Deadline shall be promptly re-mailed to the forwarding address affixed thereto. (*Id*.).

VI. CONCLUSION

Based on the foregoing, the Parties respectfully request that the Court grant preliminary approval of the Proposed Settlement.

PIMENTEL LAW, P.C.

Dated: April 1, 2025

By: ______________________
Jenna M. Koleson, Esq.
Attorney for Plaintiff