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9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN DIEGO**

12 JOHN JOHNSON, in his representative
capacity, on behalf of the State of California, the
13 general public and all aggrieved employees.

14 Plaintiff,

15 v.

16 GB AUTO SERVICE, INC, a Delaware
17 Corporation authorized to do business in
California; and DOES 1 through 50 inclusive.
18

19 Defendants.
20
21
22

Case No.: 37-2022-00041423-CU-OE-CTL

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

Date: October 3, 2025
Time: 9:10 a.m.
Dept: C-62
Judge: Hon. Judy Bae

[Filed concurrently herewith Notice of Motion;
Declarations of Vilmarie Cordero, John Johnson,
and Sean Hartranft; and [Proposed] Order]

Complaint Filed: October 14, 2022
Trial Date: None set

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I. INTRODUCTION

Plaintiff John Johnson (“Plaintiff”) seeks preliminary approval of a non-reversionary \$1,950,000.00 class and Private Attorneys General Act (“PAGA”) action settlement on behalf of himself and approximately 1,267 similarly situated non-exempt employees who worked for Defendant Sun Auto Tire & Service, formerly known as GB Auto Service, Inc., (“Defendant”) in California. Plaintiff and Defendant (collectively, the “Parties”) reached the settlement after extensive investigation, including a thorough analysis and review of Defendant’s employment policies, putative class members’ time and payroll records during the class period, in-depth interviews, and a full-day mediation before Tripper Ortman, an experienced mediator well-versed in wage and hour class actions.

Subject to Court-approval, and after deductions for a payment to the Labor Workforce and Development Agency (“LWDA”) pursuant to the PAGA, settlement administration expenses, the Class Representative Service Award to Plaintiff, and attorneys’ fees and costs to Class Counsel, the remaining amount will be distributed to Class Members as follows:

Gross Settlement Amount	\$1,950,000.00
PAGA Payment	\$50,000.00
Administration Expenses Payment	\$13,250.00
Class Representative Service Award	Up to \$10,000.00
Class Counsel’s Attorney’s Fees	Up to \$650,000.00
Class Counsel’s Expenses	*\$30,000.00 (*estimated)
Net Settlement Amount	At least \$1,196,750.00

The claims at issue were hotly contested, and Defendant vehemently denies Plaintiff suffered any of the alleged damages or is entitled to civil penalties. The Settlement, if approved, will provide for immediate payment of the settlement sum of \$1,950,000.00—a significant monetary benefit to the potential Class Members. This Court should approve the Parties’ Class and PAGA Settlement because it is fundamentally fair, adequate, and reasonable.

II. FACTUAL BACKGROUND

A. Procedural Background

Defendant provides automotive repair, maintenance, and tire services to its California customers. Plaintiff John Johnson was employed by Defendant from December 10, 2012, to February 1, 2022. Plaintiff provided written notice to the LWDA and Defendant of the Labor Code violations he alleges

1 against Defendant and the factual basis for such violations on August 9, 2022. (Declaration of Vilmarie
2 Cordero in Support of Plaintiff’s Unopposed Motion for Preliminary Approval [“Cordero Decl.”], ¶ 17;
3 Exhibit 4 to Cordero Decl.) Plaintiff filed his PAGA representative action against Defendant in San Diego
4 Superior Court on October 14, 2022. Cordero Decl. ¶ 18. The initial Complaint alleged the following
5 causes of action on behalf of Plaintiff and the members of the putative class: (1) Failure to Provide Meal
6 Periods and/or Timely Pay Premium Wages; (2) Failure to Provide Rest Periods and/or Timely Pay
7 Premium Wages; (3) Failure to Timely Pay All Wages Due and Owing Upon Separation of Employment
8 and/or Pay Waiting Time Penalties; (4) Failure to Reimburse for Necessary Business Expenses; (5) Failure
9 to Furnish Accurate Itemized Wage Statements; (6) Failure to Maintain Accurate Records; and (7)
10 Violation of California Business & Professions Code § 17200, *et seq.* *Id.* ¶ 29.

11 Thereafter, Plaintiff prepared and propounded a first set of discovery requests on Defendant on
12 December 5, 2022. *Id.* ¶ 19. After engaging in several meet and confer efforts, the Parties decided to
13 participate in mediation. *Id.* On September 7, 2024, the Parties participated in a full-day mediation with
14 Tripper Ortman. *Id.* ¶ 22. At the mediation, the Parties reached a verbal agreement for the resolution of
15 the Class and corresponding PAGA civil penalties claims alleged on behalf of all non-exempt employees
16 of Defendant. *Id.* ¶ 24. The Parties engaged in further negotiations regarding the language of the
17 Settlement after the Mediation. *Id.* ¶ 25. After meeting and conferring, the Parties finalized and fully
18 executed the Class and PAGA Representative Action Settlement and Release on April 30, 2025. *Id.* ¶ 26.

19 The Parties filed a Joint Stipulation permitting Plaintiff to file a First Amended Complaint to add
20 unpaid minimum, regular, and overtime wage claims on a class basis, which was approved by the Court
21 on May 8, 2025. *Id.* ¶ 27. Thereafter, and in accordance with California Labor Code section 2699(1)(2), a
22 copy of the notice and the Settlement, along with a copy of this Motion, was submitted to the LWDA on
23 May 21, 2025. *Id.* ¶ 28.

24 **B. Plaintiff’s Class and PAGA Causes of Action**

25 Plaintiff claims non-exempt employees who were paid on commission or piece-rate only were not
26 separately compensated for time spent on rest breaks. *Id.* ¶ 33. Moreover, Plaintiff alleges that he and
27 other employees that worked as Sales Associates, Mechanics, Auto Technicians, Service Advisors, Tire
28 Technicians, and Store Managers were required to perform several services on non-productive time and/or

1 off-the-clock where they received no commission pay or fallback pay. For example, Plaintiff alleges he
2 and other employees did not receive any commission or piece rate for installing tires, performing basic
3 alignments or warranty work, picking up tires and other parts for the store, picking up clients, cleaning
4 the store, making bank deposits every day at the end of the day, doing inventory and stocking, attending
5 trainings, and meetings. *Id.* ¶ 32.

6 Plaintiff alleges that he and other employees regularly worked through their meal and rest periods
7 because of insufficient staffing, demanding workloads, inflexible deadlines, and the expectation that they
8 complete detail-oriented work without any errors and without working overtime. *Id.* ¶ 35. Plaintiff also
9 alleges that Defendant failed to pay minimum and/or overtime wages to Plaintiff and Class Members for
10 the time they spent working during their meal breaks and/or when those breaks were interrupted. *Id.* ¶ 38.
11 Plaintiff further alleges that Defendant improperly calculated the regular rate of pay for purposes of paying
12 overtime wages. *Id.* ¶ 38. Additionally, Plaintiff alleges Defendant did not have any policy providing for
13 reimbursement of work-related expenses. *Id.* ¶ 39. Finally, Plaintiff contends that Defendant failed to
14 provide Plaintiff and other employees with accurate itemized wage statements, did not maintain accurate
15 records, and further failed to pay them all wages due and owing upon separation of employment within
16 the time frame specified by California law. *Id.* ¶ 40.

17 **C. Defendant Strongly Denies Plaintiff's Class and PAGA Claims**

18 Defendant denies liability or wrongdoing of any kind associated with the claims alleged in the
19 litigation, and further denies that this action is appropriate for class treatment for any purpose other than
20 settling this litigation. *Id.* ¶ 41. By way of summary, Defendant contends it enforced compliant meal and
21 rest period policies, processed meal period premiums in the event of a non-compliant time punches, and
22 maintained policies and practices requiring the entry of time for all hours worked and prohibiting off-the-
23 clock work. *Id.* ¶ 42. Defendant maintains that Plaintiff and other putative class members signed valid and
24 enforceable arbitration agreements, precluding them from participating in this class action, and requiring
25 them to arbitrate their claims on an individual basis. *Id.* ¶ 41.

26 **III. DISCOVERY COMPLETED PRIOR TO MEDIATION**

27 The Parties have spent significant time and effort exchanging informal discovery, contacting and
28 communicating with putative class members, and reviewing and exchanging information relating to all

existing causes of action and the related PAGA claims. *Id.* ¶ 51. The Parties engaged in voluminous informal discovery in this case, including the production of time and payroll records the non-exempt employees that worked for Defendant from 2018-2023, Defendant’s employee handbook, standalone policies and procedures, and various class data points. *Id.* ¶ 56. After undertaking a thorough review of these documents and interviewing putative class members, Class Counsel prepared a comprehensive mediation brief that outlined factual and legal issues relevant to the litigation, contained a detailed synthesis of Defendant’s timekeeping and payroll records, and presented a complete damages analysis of the potential liability Defendant faced if Plaintiff succeeded on all claims at trial. *Id.* ¶ 62.

The documents, information, and data obtained from Defendant, in addition to the information gleaned from interviews with putative class members, were more than sufficient for Class Counsel to analyze the Labor Code violations alleged in the operative Complaint and make an informed decision about the resolution of this case. *Id.* ¶ 64. During mediation, the Parties engaged in good-faith, non-collusive negotiations and discussed the realistic damages exposure to Defendant, the relative strengths and weaknesses of the claims, the risks and delays of further litigation, and the potential difficulty in maintaining class certification. *Id.* ¶ 23. Each party is represented by experienced class action attorneys well-versed in employment law, who determined that the \$1,950,000.00 settlement is a fair resolution of the class and PAGA claims in this action. *Id.*

IV. SETTLEMENT TERMS AND RELIEF OBTAINED

The general structure and terms of the settlement are straightforward: following preliminary approval, the class notice will be distributed to all current and former non-exempt employees of Defendant who worked in California during the Class Period. All employees who do not opt out of the settlement (“Participating Class Members”) will receive their individual settlement allocations following final approval. Cordero Decl. Ex. 1 [the “Settlement Agreement” or “SA”]. The basic terms of the Settlement Agreement are as follows:

A. Settlement Class

“Class Members” or the “Settlement Class” is defined as all current and former employees of Defendant who performed work as a non-exempt employee in California during the Class Period. SA. § 1.2.1. The Class Period is from October 14, 2020 through the earlier of: (a) the date the Court grants

preliminary approval, or (b) the Alternative End Date, which is the date upon which the total number of workweeks from October 14, 2020, forward equals 101,620 workweeks. SA § 1.9. If the Preliminary Approval Date is before the total number of workweeks from October 14, 2020 reaches 101,620 workweeks, the end of the Class Period will be the earlier date or the Preliminary Approval Date. However, if the Preliminary Approval Date is after the number of workweeks from October 14, 2020 have reached 101,620 workweeks, then Defendant may elect to do one of the following:

1. Elect to shorten the Class Period. Defendant may elect, as its sole discretion, to shorten the Class Period and PAGA Period to the date upon which the total number of workweeks from October 14, 2020, forward equals 101,620 workweeks, or the Alternate End Date, or

2. Elect the Preliminary Approval Date as the end of the Class Period. In this case the Gross Settlement Sum will increase proportionately to the increase in workweeks over the 101,620 workweeks and Defendant will have to pay an additional amount over the \$1,950,000.00 equal to the percentage of the increase above the 101,620 workweeks. For example, a 1% increase will equal a 1% increase of the Gross Settlement Amount or \$19,500.00.

The “Waiting Time Subclass” is defined as all members of the Settlement Class whose employment with Defendant ended at any time between October 14, 2020 and the end of the Class Period. SA. at ¶ 1.2.2. Waiting Time Subclass Members will be credited with six (6) additional compensable workweeks. SA. ¶ 4.3.3.

B. Settlement Amounts

1. Gross Settlement Amount. Defendant will pay a sum of \$1,950,000.00 to resolve all class and PAGA claims in this action. SA. § 4.1. This amount does not include Defendant’s share of all state and federal payroll taxes, which Defendant will pay separately and apart to the Settlement Administrator. *Id.* None of the Gross Settlement Amount will revert to Defendant. *Id.*

2. Net Settlement Amount. The term Net Settlement Amount means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Class Counsel’s Fees Payment, Class Counsel’s Litigation Cost Payment, Class Representative’s Service Payment, Administration Expenses Payment, and the PAGA Payment. SA. § 4.2. The remainder is to be paid to Class Members as Individual Class Payments. *Id.* The Net Settlement Amount is currently estimated to be

1 \$1,196,750.00. *Id.*

2 **3. Administration Costs.** The Parties selected Apex Class Action, LLC (“Apex”) to serve as
3 the Settlement Administrator after considering several different administration bids, in which Apex
4 provided the lowest bid. *Id.* ¶ 4.8. Apex is an experienced settlement administrator, and it provided a case
5 estimate of \$13,250.00. Declaration of Sean Hartranft (“Hartranft Decl.”) ¶¶ 2, 7.

6 **4. Class Representative Incentive Award.** Plaintiff will request, and Defendant will not
7 oppose, a Class Representative Service Award of \$10,000.00. Cordero Decl. ¶ 134; SA. § 4.6.

8 **5. Class Counsel’s Fees and Reimbursement Costs.** Class Counsel will seek an award of fees
9 and costs for the services rendered and yet to be rendered on behalf of the Class. Class Counsel will seek,
10 and Defendant will not oppose, an award of \$650,000.00 for attorneys’ fees (equal to one third of the
11 Gross Settlement Amount), and the reimbursement of up to \$30,000, but in the amount of reasonable costs
12 actually incurred in the litigation. Cordero Decl. ¶ 99; SA. §§ 4.4-4.5. Plaintiff estimates the actual
13 litigation costs not to exceed \$30,000.00 to date. Cordero Decl. ¶ 131.

14 **6. PAGA Allocation.** The Parties agreed to allocate the sum of \$50,000.00 to settle the claims
15 for civil penalties pursuant to PAGA. Cordero Decl. ¶ 96; SA § 4.7. Of this amount, 75% (\$37,500.00)
16 will be paid to the LWDA from the Gross Settlement Amount to cover the state of California’s share of
17 the total penalty amount, with the remaining 25% (\$12,500.00) made available for distribution to the
18 PAGA Group Members. *Id.*

19 **C. Calculation of Individual Class Payments to Class Members**

20 Class Members will be paid their Individual Class Payments from the Net Settlement Amount.
21 Defendant will provide to the Settlement Administrator the number of workweeks each Class Member
22 worked during the Class Period. Cordero Decl. ¶ 120; SA. § 8.1. Class Members shall be allocated a *pro*
23 *rata* portion of the Net Settlement Amount available for distribution based on their respective number of
24 workweeks in comparison to the total number of workweeks that all Class Members worked for
25 Defendant. *Id.* Waiting Time Penalty Subclass Members will be credited with six (6) additional
26 compensable workweeks. Cordero Decl. ¶ 88; SA. § 4.3.3. For purposes of this Motion, there are
27 approximately 101,620 workweeks worked by the Class Members. *Id.* ¶ 104.

28 ///

D. Taxation and Withholding

Individual Class Payments to Class Members are allocated for tax purposes as 10% wages, 45% interest, and 45% statutory penalties. Cordero Decl. ¶ 111; SA. § 4.3.4. The portion that is attributable to wages will be subject to normal tax withholding and shall be reported to the taxing authorities on an IRS Form W-2. *Id.*

E. Disposition of Unclaimed Funds

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). Cordero Decl. ¶ 114; SA. §§ 6.6., 11.4.

F. Limited Scope of the Class Members' Release

Upon Defendant's funding of the Gross Settlement Amount and all employer payroll taxes, all Participating Class Members release the released parties from any and all claims and damages arising from any of the facts alleged in Plaintiff's operative Complaint during the Class Period for damages or that could have been raised in the operative Complaint (including any amended Complaint, filed as part of this Settlement) and ascertained in the course of the Action, including without limitation Defendant's alleged violation of the California Business and Professions Code section 17200, et seq. for, inter alia, failure to provide compliant meal periods and/or timely pay premiums; failure to provide rest periods and/or timely pay premiums; failure to timely pay all minimum, regular, and overtime wages; failure to provide separate rest period compensation for nonproductive work; failure to provide accurate itemized wage statements; failure to reimburse for business expenses; and failure to pay all wages due during and upon separation of employment. Cordero Decl. ¶ 108; SA. § 12.2.

G. The PAGA Release

Upon funding of the Gross Settlement Amount, all PAGA Employees will release the Released Parties of all claims and damages arising under Private Attorneys' General Act of 2004 ("PAGA") based on the facts alleged in the operative Complaint, which includes the Amended Complaint filed as part of this settlement, and the PAGA Notice and ascertained in the course of the Action. Cordero Decl. ¶ 109;

SA. § 12.1. The PAGA Release will release only these claims during the PAGA Period, regardless of the Aggrieved Employee's decision to participate in the Class Settlement. *Id.*

V. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

Settlement of a class action requires court approval to prevent fraud, collusion, or unfairness to the class. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-1801 (1996). The purpose of the court's preliminary evaluation of class action settlements is to determine whether the proposed settlement is within the range of reasonableness, and whether notice to the class of the settlement terms and conditions and the scheduling of a formal fairness hearing are worthwhile. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); see Alba Conte & Herbert Newberg, *Newberg on Class Actions* (4th ed. 2002) ("*Newberg*"), § 11.25.

A trial court must exercise its discretion through the application of several well-recognized factors when deciding whether a class action settlement is fair. The list of factors, which "is not exhaustive and should be tailored to each case," includes "the strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1801). The most important factor the trial court should consider at the preliminary approval stage is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 407-408 (2010); *Kullar*, 168 Cal. App. 4th at 130.

Here, the proposed Settlement meets all the criteria for preliminary approval because it is supported by experienced counsel, was reached after hard fought negotiations, extinguishes the risk of continued litigation, provides significant monetary recovery to Class Members, and provides a fair and adequate distribution of Settlement proceeds to Class Members. Cordero Decl. ¶¶ 23, 150.

A. The Settlement is the Result of Arms' Length Negotiations and Presumptively Fair

California courts recognize that a "presumption of fairness exists where (1) the settlement is reached through arm's-length bargaining; (2) sufficient investigation allows counsel and the court to act

intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*, 48 Cal. App. 4th at 1802. Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. William B. Rubenstein, et al., *Newberg on Class Actions* § 13:45 (5th ed. 2011-2017). Here, the Settlement is the result of extensive, non-collusive negotiations between the Parties, conducted at arm’s length, and informed by substantial factual and legal investigation. Cordero Decl. ¶ 23. The Parties participated in a full-day mediation with Tripper Ortman, a well-respected, neutral third-party mediator well-versed and experienced in wage and hour class actions, who helped the Parties reach the Settlement. *Id.* At all times, the Parties’ negotiations were hard-fought and conducted at arm’s length between attorneys with substantial wage and hour class action experience. *Id.*

In sum, the Settlement is presumptively fair and should be approved because it is the product of well-informed, arm’s-length negotiations between experienced attorneys.

B. The Proposed Settlement Was Reached After Substantial Investigation

A proposed settlement is fair and reasonable when there has been sufficient investigation and discovery to permit counsel and the court to act intelligently. *Dunk*, 48 Cal. App. 4th at 1802. Here, a lengthy and thorough investigation went into the merits of Plaintiff’s class action claims, and Class Counsel devoted a considerable amount of time and effort to the legal and factual investigation of Plaintiff’s claims. Cordero Decl. ¶¶ 50-64. The investigation undertaken allowed Class Counsel to assess the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses thereto, and to evaluate the benefits of the Settlement under the circumstances of this case. Thus, this factor also weighs in favor of preliminary approval of the Settlement.

C. Class Counsel is Highly Experienced and Supports Preliminary Approval

Plaintiff and the Class have been represented by well-qualified counsel who have several years of experience in wage and hour class action litigation. Cordero Decl. ¶¶ 6-13; Ex. 3. Class Counsel believes the Settlement is fair, adequate, and reasonable, and in the best interest of all Class Members. This factor also supports preliminary approval of the Settlement.

D. The Settlement Provides Substantial Monetary Relief to the Class

Courts must be provided with “basic information about the nature and magnitude of the claims in

question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” *Kullar*, 168 Cal. App. 4th at 133; *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 799 (2009). A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba*, 91 Cal. App. 4th at 246, 250. Here, the Gross Settlement Amount of \$1,950,000.00 is an excellent result providing substantial benefits to all Class Members.

1. The Amount of the Settlement is Fair and Reasonable Based on the Strength of Plaintiff’s Case and the Risk, Expense, and Likely Duration of Further Litigation

In reaching this Settlement, Class Counsel carefully considered the strength of the case versus the amount offered in settlement; the risk, expense, complexity, and likely duration of litigation and of maintaining class certification through trial; the present state of the law as it applies to wage and hour class actions; and the burdens of proof necessary to establish liability against Defendant. Cordero Decl. ¶ 23. Class Counsel analyzed the merits of the class claims, which presented significant hurdles and risks. *Id.* ¶ 51. Although Plaintiff maintains the claims are meritorious, Plaintiff acknowledges that Defendant possesses legitimate defenses to liability in the action. *Id.* ¶ 63.

Specifically, Defendant contends that Plaintiff and other putative class members waived their right to participate in a class action pursuant to a valid and binding arbitration agreement, and that Plaintiff and other class members must arbitrate on an individual basis. *Id.* ¶ 41. Defendant further contends that it complied with all of its meal and rest period obligations under California law, that its written policies were lawful, and that employees were properly provided with the opportunity to take all meal and rest periods. *Id.* ¶ 42. Defendant denies that any putative class member was required to work during their meal breaks or rest breaks and that, if any class member did so, it was voluntary. *Id.* ¶ 43. Defendant further maintains that putative class members had autonomy in the execution of their duties and were not required to remain on duty during their meal or rest breaks. *Id.*

Defendant also maintains that it properly calculated and paid all minimum, regular, and overtime wages owed to putative class members, and further contends that its timekeeping practices did not deprive

1 Plaintiff or any putative class members of minimum, regular, or overtime wages. *Id.* ¶ 44. Defendant
2 contends that each putative class member was required to accurately record all of his or her hours worked
3 in Defendant’s timekeeping system for payment of wages, and that it had policies prohibiting off-the-
4 clock work. *Id.* ¶ 45. Defendant also maintains that any off-the-clock work performed by putative class
5 members was performed without Defendant’s permission or knowledge; if Defendant had known that
6 putative class members had performed work off-the-clock during their meal periods, they would have
7 provided class members compensation for their work. *Id.* ¶ 46. Defendant further contends that there are
8 no written policies requiring putative class members to work during their meal or rest periods. *Id.*
9 Defendant further alleges that Plaintiff will not be able to prove that Defendant knowingly and
10 intentionally furnished inaccurate wage statements. *Id.* ¶ 47. Likewise, Defendant alleges that Plaintiff
11 will not be able to prove that Defendant’s alleged failure to pay all final wages at the time of separation
12 was “willful,” precluding the imposition of waiting time penalties. *Id.* ¶ 48.

13 Thus, Plaintiff faces substantial obstacles in maintaining his class claims, as well as establishing
14 the full amount of Plaintiff’s estimated damages and civil penalties for his claims at trial. *Id.* ¶ 44. While
15 Plaintiff believes that the case possesses substantial merit, the litigation cannot legitimately be
16 characterized as being one without risk or one where Plaintiff would inevitably prevail at trial. *Id.* ¶ 79.
17 These risks are averted by the proposed Settlement.

18 Additionally, continued litigation would likely be extremely expensive and time consuming,
19 reducing and substantially delaying any recovery by the Class. *Id.* ¶ 81. Defendant had a pending motion
20 to compel arbitration, which would require the Parties to devote substantial time preparing for and
21 attending the hearing. *Id.* ¶ 76. Although the Parties have engaged in a significant amount of investigation,
22 the Parties are far from completing formal discovery. *Id.* ¶ 81. For example, the Parties have not completed
23 their written discovery, witnesses’ depositions, expert depositions, damages analysis for trial purposes,
24 among others. *Id.* Similarly, there would be a significant amount of motion practice should the Parties
25 proceed with litigation, including motions to compel discovery and a motion for class certification. *Id.* ¶
26 82. Even if Plaintiff was successful in certifying the class and proving the merits of the class action claims,
27 Defendant would likely submit an appeal. *Id.* ¶ 83. Thus, the Parties will likely have to engage in expensive
28 and protracted appellate practice. *Id.* This Settlement avoids all the risks and expenses associated with

1 further litigation, and instead provides for immediate and substantial monetary relief to the Class
2 Members. *Id.* The Settlement here commits Defendant to create a Gross Settlement Amount of
3 \$1,950,000.00 to compensate Class Members for their alleged damages, whereas continued litigation
4 would be costly and time consuming, and appeal from the class certification decision and appeal from any
5 judgment would likely occur, further drawing out the litigation.

6 **2. The Amount Offered in Settlement Given the Estimated Value of the Claims**
7 **Similarly Favors Preliminary Approval of the Settlement**

8 After reviewing the records and conducting interviews, Plaintiff calculated the maximum possible
9 exposure for all of the class claims alleged in this litigation, as well the PAGA claims, in approximately
10 \$27,242,749.00. However, Plaintiff recognizes the risks of possible adverse rulings on the potential
11 Motion to Compel arbitration. *Id.* ¶ 76. Plaintiff further recognizes the risks of adverse ruling on liability
12 and damages on the class and representative claims asserted. Plaintiff further anticipates that protracted
13 litigation would also involve numerous depositions, written discovery, law and motion practice, and trial,
14 all of which would involve significant additional time and expense for all involved.

15 The \$1,950,000.00 Settlement is an excellent result considering all these risks of prevailing at trial
16 given the relative strength of Defendant's defenses, and risks presented given the uncertainty of the law.
17 Here, the possibility of recovering \$15-20 million dollars on behalf of the Class is remote, particularly in
18 light of Defendant's facially valid policies, the existence of arbitration agreements, the difficulty in
19 certifying and proving off-the-clock work, and the existence of potential variations among Class Members,
20 which will reduce the overall value of the class claims that do get certified. *Id.* ¶ 75. Moreover, the
21 reasonableness of the proposed Settlement is underscored by the fact that Defendant has potentially viable
22 grounds for not only challenging liability and Plaintiff's right to assert claims on behalf of the Class, but
23 also disputing Plaintiff's estimate of the potential value of each class claim and potential penalties. For
24 example, Defendant argues they possess legitimate defenses to the imposition of Waiting Time Penalties
25 and Wage Statement Penalties because they maintained facially valid policies. *Id.* ¶ 76. If the Settlement
26 is not approved, the Parties will engage in vigorous and expensive litigation that could take years to
27 conclude.

28 By contrast, the \$1,950,000.00 Settlement provides immediate and adequate monetary relief to the

Class and Aggrieved Employees. Plaintiff estimates the net value per workweek to the putative class members at \$11.78 per workweek—calculated by dividing the net estimated settlement amount \$1,196,750.00 by the 101,620 estimated workweeks. This represents a significant monetary recovery for the Class. Plaintiff estimates the average Individual Class Payment at approximately \$944.55 for each Class Member if all estimated 1,267 Class Members participate. *Id.* ¶ 105. This will provide a fair and reasonable recovery to the entire Class without further delay. While the amount paid to Class Members represents a discount on Plaintiff’s estimate of the overall exposure to Defendant, this reduction in the amount of recovery represents an extremely reasonable compromise considering the substantial risks Plaintiff would face in the litigation. *Id.* ¶ 80.

3. The Settlement Has No Obvious Deficiencies and Does Not Grant Improper Preferential Treatment to Part of the Class or the Class Representative

The Settlement provides the fairest way to distribute the Settlement proceeds to Class Members. *Id.* ¶ 106. Each one of the Class Members shall be entitled to receive a pro-rata portion of the Net Settlement Amount available for distribution based upon his or her respective number of workweeks worked during the Class Period. *Id.* ¶ 101. Class Members who worked more workweeks during the Class Period, and thus presumably experienced more violations, will be entitled to a larger portion of the Net Settlement Amount compared to those who worked less. *Id.* ¶ 103. Thus, all Class Members are treated equitably and fairly. *Id.*

E. The Penalties Allocated to PAGA Are Reasonable

In connection with the Settlement, PAGA Employees will release their PAGA claims as follows: “Upon funding of the GSA, all PAGA Employees will release the Released Parties of all claims and damages arising under Private Attorneys’ General Act of 2004 (“PAGA”) based on the facts alleged in the operative Complaint, which includes the Amended Complaint filed as part of this settlement, and the PAGA Notice and ascertained in the course of the Action.” (SA. § 12.1.)

Where settlements negotiate a good faith amount for PAGA penalties and “there is no indication that this amount was the result of self-interest at the expense of other” class members, such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve amounts for PAGA penalties in the range of

1 zero to two percent of the total maximum amount of the settlement. *See McKenzie v. Fed. Express Corp.*,
2 No. CV 10-02420 GAF (PLAx), 2012 WL 12882124 at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that
3 courts approve PAGA settlements in the range of zero to two percent of the total Settlement); *Calhoun, et*
4 *al., v. Celadon Trucking Services, Inc.*, No. 5:16-cv-01351-PSG-FFM, 2017 WL11631978, at *9 (C.D.
5 Cal. Nov. 13, 2017) (approving \$14,500 payment to LWDA from \$950,000.00 settlement); *Garcia v.*
6 *Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012)
7 (approving \$10,000 payment to the LWDA from \$3.9 million settlement); *Chu v. Wells Fargo Invs. LLC*,
8 Nos. C 05-4526 MHP, C 06-7924 MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving
9 \$7,500 payment to LWDA from \$6.9 million common fund settlement); see also *Nordstrom Comm'n*
10 *Cases*, 186 Cal. App. 4th 576, 589 (2010) (holding trial court properly approved settlement that allocated
11 nothing to PAGA claims).

12 Here, the Parties negotiated a good faith PAGA settlement amount of \$50,000.00, 75% of which
13 (\$37,500.00) will be paid to the LWDA, with the remaining 25% (\$12,500.00) to be distributed to
14 Aggrieved Employees. SA. §§ 4.7, 4.7.1-7.7.4. The \$50,000.00 allocated to the PAGA Payment equates
15 to approximately 5% of the Gross Settlement Amount, which is in line with amounts that are routinely
16 approved by courts in this state. The settlement of the claim for penalties under PAGA is reasonable
17 because it was negotiated in good faith and was not the result of self-interest at the expense of any Class
18 Member. Cordero Decl. ¶ 96. Had a higher amount been allocated to the PAGA claim, the burden to pay
19 civil penalties would have effectively shifted to the Aggrieved Employees as it would reduce the amount
20 that they ultimately receive under the Settlement. Cordero Decl. ¶ 97. Although this burden shifting may
21 achieve the enforcement objective of the PAGA statute, it would do so at the expense of the very
22 employees the statute was designed to protect. The Settlement has been submitted to the LWDA as
23 required under Labor Code section 2699(l)(2). Cordero Decl. ¶ 28, Ex. 2.

24 Accordingly, the proposed \$50,000.00 allocation to the PAGA Payment strikes a balance between
25 the interest of all parties, including the LWDA and the general public, by penalizing the employer and
26 providing relief to the Aggrieved Employees. As such, Plaintiff respectfully requests that the Court
27 approve the allocation of \$50,000.00 to the PAGA Payment.

28 ///

F. The Service Award to Plaintiff Falls Well Within the Range of Reasonableness

Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during the course of the class litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (upholding “service payments” to plaintiffs for their efforts in bringing class case). Courts frequently approve awards of \$10,000 or more. *In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1393-1395 (2010) (upholding \$10,000 service awards). The factors courts use in determining the amount of a class representative service award include: (1) a comparison between the service awards and the range of monetary recovery available to the class; (2) time and effort put into the litigation; (3) whether the litigation will further the public policy underlying the statutory scheme; and (4) risks of retaliation. *See Clark*, 175 Cal. App. 4th at 804-807. Here, all four factors support the approval of the \$10,000.00 service award to Plaintiff.

Plaintiff assisted and consulted with class counsel during the litigation, provided relevant information, identified witnesses, and attended an all-day mediation, among other things. Cordero Decl. ¶ 135; Declaration of John Johnson (“Johnson Decl.”), ¶¶ 18-25. As Plaintiff explains in his declaration, Plaintiff effectively and fairly, represented the Class Members, and did not place his interests above those of any member of the putative Class. Johnson Decl. ¶ 29. Plaintiff faced real risks by bringing the class litigation, including payment of fees and costs to Defendant in the event Defendant prevailed. Johnson Decl. ¶ 33. Moreover, the estimated average payment to the class members exceeds \$900 for each Class Member. Cordero Decl. ¶ 105. Accordingly, the \$10,000.00 Service Payment for Plaintiff is reasonable, appropriate, and justified.

G. The Work Performed by Class Counsel Supports the Fees and Costs Requested

Class Counsel has performed a significant amount of work in this class action, including conducting extensive research, investigation, and analysis of each potential cause of action, and anticipates in engaging in additional work if this Court approves the Settlement. Cordero Decl. ¶ 126. Class Counsel’s work resulted in the Settlement which provides significant benefits to Class Members.

The California Supreme Court has unanimously held “that 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.” *Laffitte v. Robert Half International, Inc.*, 1 Cal. 5th 480, 503 (2016). Courts have awarded common fund fees calculated using a percentage-of-fund method that is not dependent on counsel’s lodestar amount. *Pearl, California Attorney Fee Awards* (CEB 3d ed. 2010) § 5.19 (citing *In re Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009); *Bell*, 115 Cal. App. 4th at 726; *Apple Computer, Inc. v. Superior Court*, 126 Cal. App. 4th 1253, 1270 (2005).) This common fund approach is especially suitable where, as here, a settlement fund is readily available. *See Dunk*, 48 Cal. App. 4th at 1808-09.

Here, the proposed Settlement provides that Class Counsel may seek attorney’s fees of \$650,000.00 (or one-third of the Gross Settlement Amount), in addition to reimbursement for the actual litigation costs, in an amount not to exceed \$30,000.00. Cordero Decl. ¶¶ 125, 131; SA §§ 4.4-4.5. As demonstrated in the Declaration of Vilmarie Cordero filed concurrently herewith, Class Counsel has already performed a significant amount of work litigating this action, including performing extensive legal and factual research, which Class Counsel measured against the relative strength of the claims in order to better identify an appropriate range of settlement figures. Cordero Decl. ¶¶ 126. Class Counsel’s request for attorneys’ fees and costs will be explained further in the attorneys’ fees motion that will be filed along with the final approval motion. Accordingly, for purposes of this Motion, and as will be explained in detail in the fee application, the requested fee amount falls well within the range of reasonableness. *See e.g., Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 297 (N.D. Cal. 1995) (noting class counsel fee awards of 30-50% are more typical where the common fund is less than \$10 million).

VI. THE NOTICE PLAN SATISFIES DUE PROCESS

California Rules of Court, Rule 3.769(f) requires that class members be provided with notice of the final approval hearing, as well as an explanation of the proposed settlement and objection procedures. Procedural due process does not guarantee any particular procedure but requires notice reasonably calculated to apprise interested parties of the pendency of the action affecting their interests and an opportunity to present their objections. *Ryan v. Cal. Interscholastic Fed’n – San Diego Section*, 94 Cal. App. 4th 1048, 1072 (2001). Notice that meets this standard and is neutrally worded satisfies due process. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985).

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A. The Notice is Accurate and Informative

Here, the proposed Class Notice provides all the information a reasonable person would need to make a fully informed decision about the Settlement. Cordero Decl. ¶¶ 116-124, Ex. 1-A. The Class Notice summarizes the litigation, including the contentions and denials of the Parties, and the proceedings to date, and explains the terms and conditions of the Settlement in plain language in an informative and coherent manner. *Id.* It also fully informs Class Members of their rights and options as Class Members (i.e., to object, to Request Exclusion or opt out, and/or do nothing to receive their share of the Settlement), as well as explains the consequences of exercising any of these options. *Id.* The Class Notice makes clear that each Class Member will receive an Individual Class Payment and will release the Released Claims unless they submit a Request for Exclusion within the Response Deadline. *Id.* The Notice clearly explains the process for submitting a Request for Exclusion and objecting to the Settlement. *Id.* The Notice also notifies the Class Members of their reported workweeks and the estimated Individual Class Amount they will receive if the Settlement is finally approved. *Id.* The Notice explains the process to dispute the number of workweeks reported by Defendant and how to contact the Settlement Administrator in the event they want more information or to dispute the number of workweeks reported. *Id.* The Notice also informs the Class Members that they can obtain a copy of the Settlement Agreement free of charge through the Settlement Administrator's website. *Id.*

B. The Notice Plan Provides the Best Notice Practicable

There is no statutory or due process requirement that all class members receive actual notice. As the Court of Appeals has explained, "[t]he 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, 973-974 (1975). Here, the proposed notice plan is consistent with class notices approved by state and federal courts, and, under the circumstances here, is the best notice practicable and is the method most likely to give actual notice to the greatest number of Class Members. Defendant's records should provide the best-known address available for the majority of the Class, but the Settlement Administrator will nevertheless attempt to locate the best possible mailing addresses prior to the mailing by conducting a National Change of Address search, as well as an in-depth skip trace. Cordero Decl. ¶ 120. Moreover, the Settlement Administrator will perform a second in-depth search if any Class Notice is returned as

undeliverable without a forwarding address. *Id.*

VII. THE PROPOSED CLASS SHOULD BE CONDITIONALLY CERTIFIED FOR SETTLEMENT PURPOSES

Courts have generally found that class action suits are appropriate “when the question is one of a common or general interest . . . or when the parties are numerous, and it is impracticable to bring them all before the court.” Code Civ. Proc. § 382; *see Richmond v. Dart Indus., Inc.*, 29 Cal. 3d 462, 469-475 (1981). 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. *Newberg on Class Actions* §§ 13:16-13:18 (5th ed. 2011-2017). To certify a settlement class, two requirements must be met: (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 involving the parties represented. *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809-811 (1971).

A. There is an Ascertainable and Sufficiently Numerous Class

Here, the Class (defined as all current and former non-exempt employees of Defendant who worked in California during the Class Period who do not opt out of the Settlement) is clearly ascertainable because Class Members are easily identifiable from Defendant’s own records. Cordero Decl. ¶ 142. There is a class size of approximately 1,267 Class Members, easily meeting the numerosity requirement. *Id.* ¶ 144.

B. There is a Well-Defined Community of Interest

The community of interest requirement involves 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. *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000).

The predominance element tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. *See, e.g., Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605 (1987). Here, common issues of fact and law predominate as to each of the claims alleged by Plaintiff on behalf of the Class because this action concerns Plaintiff’s allegations that Defendant’s common policies and practices failed to provide Class Members with compliant meal and rest periods, failed to pay Class

1 Members for all hours worked, failed to provide accurate wage statements, failed to reimburse business
2 expenditures, and failed to timely pay Class Members all wages owed upon separation of their
3 employment. Each class claim is united in its proof. Common issues predominate because the challenged
4 practices apply uniformly to all Class Members and the resolution of these over-arching questions will
5 determine liability for the Class as a whole. Cordero Decl. ¶ 145.

6 Moreover, Plaintiff's claims are typical of the Class because Plaintiff, like all Class Members, was
7 subject to the same allegedly non-compliant policies and procedures that were applicable to the entire
8 Class throughout the Class Period. Cordero Decl. ¶ 145; Johnson Decl. ¶ 11. Further, Plaintiff worked a
9 similar number of hours and shifts to those worked by the other Class Members. Johnson Decl. ¶¶ 3-4. As
10 such, Plaintiff and Class Members sustained the same or similar damages resulting from Defendant's
11 alleged violations of California wage-and-hour laws. *Id.* Because each Class Member would be required
12 to demonstrate the same elements in order to recover on their claims against Defendant, Class Members'
13 interests are sufficiently aligned with Plaintiff's so as to meet the typicality requirement. Cordero Decl. ¶
14 147.

15 The adequacy of representation requirement is met by fulfilling two conditions: first, a named
16 plaintiff must be represented by counsel qualified to conduct the pending litigation; second, a named
17 plaintiff's interests cannot be antagonistic to those of the class. *Classen v. Weller*, 145 Cal. App. 3d 27,
18 46-47 (1983). Here, both adequacy requirements are met. Plaintiff has no conflicts of interest with the
19 Class. Cordero Decl. ¶ 147; Johnson Decl. ¶ 19. Plaintiff worked toward a positive resolution of this case,
20 demonstrating his interest in prosecuting this action and dedication to obtaining the best possible recovery
21 for the Class, and was involved during the litigation and settlement process. Cordero Decl. ¶ 147; Johnson
22 Decl. ¶ 17. In addition, because Plaintiff's interests are co-extensive with those of the Class and Plaintiff
23 seeks relief identical to that of every other Class Member, Plaintiff can and will pursue the interests of all
24 Class Members adequately. Cordero Decl. ¶ 147. Furthermore, Plaintiff retained counsel with significant
25 wage and hour class action experience, who have worked diligently to obtain the Settlement on behalf of
26 the Class. *Id.* Over the course of this litigation, Plaintiff and Class Counsel have adequately represented
27 the interests of the Class and will continue to do so.

28 ///

1 **VIII. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests the Court grant preliminary approval of
3 the Class and PAGA Action Settlement.

4
5 Respectfully submitted,

6 Dated: May 21, 2025

GRAHAMHOLLIS APC

7
8 By: Vilmarie Cordero
9 Hali M. Anderson
10 Vilmarie Cordero
11 Attorneys for Plaintiff John Johnson and All
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