MELMED LAW GROUP P.C.
Kyle D. Smith (SBN 280489)
ks@melmedlaw.com
Talia Shapiro (SBN 365923)
ts@melmedlaw.com
1801 Century Park East, Suite 850
Los Angeles, California 90067
Phone: (310) 824-3828
Fax: (310) 862-6851

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

NILSON M. CHAVEZ, an individual, on behalf of himself, the State of California, as a private attorney general, and on behalf of all others similarly situated,

Plaintiff,

v.

RAO'S LOS ANGELES, LP, a California Limited Partnership; RAO'S RESTAURANT GROUP LA, LLC, a California Limited Liability Company; and DOES 1 TO 50,

Defendants.

Case Number: 25STCV15911

Plaintiff's Notice of Motion and Motion for Preliminary Approval of Class Action and PAGA Settlement

Complaint Filed:	May 30, 2025
Trial Date:	None Set
Hearing Date:	November 5, 2026
Hearing Time:	10:00 a.m.
Dept.:	7
Judge:	Hon. Samantha Jessner

<u>NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL</u>

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 5, 2026, at 10:00 a.m., or as soon thereafter as the matter may be heard, in Department 7 of the Los Angeles County Superior Court for the State of California, located at the Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, before the Honorable Samantha Jessner, Plaintiff Nilson M. Chavez ("Plaintiff"), on behalf of himself, the State of California, as a private attorney general, and on behalf of all others similarly situated, will and hereby does move this Court for entry of an order:

1. Preliminarily certifying the settlement class for purposes of settlement pursuant to California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769;

2. Preliminarily appointing Plaintiff as class representative for purposes of settlement;

3. Preliminarily appointing Kyle D. Smith and Talia Shapiro of Melmed Law Group P.C. as class counsel for purposes of settlement;

4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the parties' *Class Action and PAGA Settlement Agreement* (the "Settlement Agreement"), which is based on the Los Angeles Superior Court's *[Model] Class Action and PAGA Settlement Agreement* (LASC CIV 296), including payment by Defendants Rao's Los Angeles, LP and Rao's Restaurant Group LA, LLC ("Defendants") of the non-reversionary gross settlement amount of $112,000.00 ("Gross Settlement Amount");

5. Preliminarily approving payment of reasonable attorneys' fees from the Gross Settlement Amount in an amount not to exceed one-third of the Gross Settlement Amount (i.e., up to $37,333.33), plus necessary litigation costs not to exceed $25,000.00;

6. Preliminarily approving a class representative service payment in an amount of up to $7,500.00 for Nilson M. Chavez from the Gross Settlement Amount to compensate him for the responsibilities, time, effort, and risks involved in coming forward on behalf of the proposed class;

7. Preliminarily approving the settlement of Plaintiff's claims under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), including the allocation of $11,200.00 for PAGA penalties, of which 65% (i.e., $7,280.00) shall be paid to the California Labor and Workforce

Development Agency ("LWDA") from the Gross Settlement Amount, with the remaining 35% (i.e., $3,920.00) payable to the Aggrieved Employees;

8. Appointing Phoenix Settlement Administrators (the "Settlement Administrator") as the settlement administrator to handle the notice and administration process and preliminarily approving settlement administration costs estimated to be $6,250.00;

9. Approving the proposed class notice and ordering it be disseminated to the class members as provided in the Settlement Agreement;

10. Directing the Settlement Administrator to mail the class notice to the proposed class;

11. Approving the proposed deadlines for the notice and administration process as reflected in this motion and in the Settlement Agreement;

12. Setting a date for a final fairness hearing to determine, following dissemination of the proposed class notice packet, whether to grant final approval of the settlement; and

13. Granting Plaintiff leave to file the overlength brief included with this motion.

This motion is based on this Notice of Motion and Motion for Preliminary Approval of Class Action and PAGA Settlement; the Memorandum of Points and Authorities in support thereof; the declaration of Plaintiff's counsel Kyle D. Smith; the declaration of Plaintiff; the Settlement Agreement; the proposed class notice; the proposed order granting preliminary approval of the Settlement Agreement and setting a settlement fairness hearing; the other records, pleadings, and papers filed in this action; and upon such other evidence or argument as may be presented to the court at the hearing of this motion.

Dated: August 11, 2026

MELMED LAW GROUP P.C.

KYLE D. SMITH
Attorney for Plaintiff, the Putative Class, and the Aggrieved Employees

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I. INTRODUCTION

This motion seeks preliminary approval of a wage-and-hour class action settlement between Plaintiff Nilson M. Chavez ("Plaintiff") and Defendants Rao's Los Angeles, LP and Rao's Restaurant Group LA, LLC ("Defendants") (collectively, the "Parties") for the Gross Settlement Amount of $112,000.00. A true and correct copy of the *Class Action and PAGA Settlement Agreement* (the "Settlement Agreement"), which is based on the Los Angeles Superior Court's *[Model] Class Action and PAGA Settlement Agreement* (LASC CIV 296), is attached as **Exhibit 1** to the concurrently filed *Declaration of Kyle D. Smith in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement* ("Declaration of Kyle D. Smith" or "Smith Decl."). The Settlement Agreement, in its entirety, is incorporated herein by reference.

Under the Settlement Agreement, the Gross Settlement Amount is to be distributed to approximately 98 individuals defined as: *All current and former hourly-paid or non-exempt employees employed by Defendants during the Class Period.* These employees are referred to herein collectively as the "Class." These employees are referred to herein individually as the "Class Members," which is defined as: *a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee)*. The "Class Period" for these purposes is defined as the period from May 30, 2021, through March 9, 2026. (Settlement Agreement, at pp. 1, 2.)

Plaintiff also represents a group of approximately 38 aggrieved employees on behalf of the State of California as a private attorney general pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698 through 2699.6 ("PAGA"). The "Aggrieved Employees," for these purposes, are defined as: *all current and former hourly-paid or non-exempt employees employed by Defendants during the PAGA Period.* The "PAGA Period" for these purposes is defined as the period from May 30, 2024, through March 9, 2026. (Settlement Agreement, at pp. 1, 3.)

The Settlement Agreement is a non-reversionary settlement, meaning that none of the Gross Settlement Amount will revert to Defendants. (Settlement Agreement, at p. 6.) Class Members are not required to submit a claim form to receive their settlement share. (Settlement Agreement, at p. 6.) The applicable employer-side payroll taxes are to be paid by Defendants outside the Gross Settlement Amount. (Settlement Agreement, at p. 6.)

Gross Settlement Amount	**$112,000.00**
Attorneys' Fees	(up to $37,333.33)
Litigation Costs	(up to $25,000.00)
Settlement Administration Costs	(up to $6,250.00)
Service Award to Plaintiff	(up to $7,500.00)
PAGA Payment to LWDA	($7,280.00)
PAGA Payment to Aggrieved Employees	($3,920.00)
Net Settlement Amount	**$24,716.67**

Because the settlement is fair and reasonable, was negotiated at arm's length between counsel following extensive investigation and discovery, was reached after participation in a full-day mediation, it should be preliminarily approved. (Smith Decl., ¶ 7.)

This settlement is an excellent result considering the number of Class Members affected. Because the Settlement is well within the zone of reasonableness, Plaintiff requests entry of an order: **(1)** preliminarily certifying the Settlement Class under California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769(c), for settlement purposes and preliminarily approving the settlement; **(2)** preliminarily appointing Plaintiff as class representative for purposes of settlement; **(3)** preliminarily appointing Plaintiff's counsel as class counsel for the purposes of settlement; **(4)** preliminarily approving the settlement as fair, adequate, and reasonable; **(5)** preliminarily approving the proposed deductions from the Gross Settlement Amount, including the proposed allocation of PAGA penalties, the attorneys' fees, litigation costs, service award to the named Plaintiff, and administration costs; **(6)** approving the proposed class notice as **Exhibit 2** to the concurrently filed Declaration of Kyle D. Smith ("Class Notice"), to be distributed to Class Members pursuant to the Settlement Agreement; **(7)** appointing Phoenix Settlement Administrators to administer the settlement

("Settlement Administrator") and directing the Settlement Administrator to distribute the Class Notice; and **(8)** scheduling a hearing for final approval after the completion of the settlement notice process.

II. BACKGROUND

A. THE PARTIES

Defendants Rao's Los Angeles, LP and Rao's Restaurant Group LA, LLC owned, operated, or otherwise managed Rao's Hollywood, an Italian restaurant in Hollywood, California, which employed non-exempt workers during the Class Period and PAGA Period. (Smith Decl., ¶ 19.)

Plaintiff Nilson M. Chavez worked as an hourly, non-exempt cook at Rao's in Los Angeles, California from approximately January 2019 through approximately April 25, 2025. His duties included preparing and cooking food and keeping the kitchen clean. Plaintiff alleged that Defendants' employees—including Plaintiff, the Class Members, and the Aggrieved Employees (collectively, the "Employees")—experienced various violations of California's wage-and-hour laws. (Smith Decl., ¶¶ 20–21.)

B. PROCEDURAL SUMMARY

On May 30, 2025, Plaintiff submitted a letter to the California Labor and Workforce Development Agency ("LWDA") to notify the LWDA, pursuant to PAGA, of Plaintiff's intent to seek civil penalties against Defendants for violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 246.5, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and others that may be applicable; and California Industrial Welfare Commission ("IWC") Wage Order 5-2001 (the "Applicable Wage Order"). (Cal. Code of Regs., tit. 8, § 11050; Smith Decl., ¶ 23.) The letter attached Plaintiff's original complaint, and incorporated the original complaint by reference, and thus sought penalties for claims identical to those alleged in the case. For the Court's reference, a copy of Plaintiff's letter to the LWDA is attached as **Exhibit 3** to the concurrently filed Declaration of Kyle D. Smith.

On May 30, 2025, Plaintiff commenced this action by filing a class action complaint alleging causes of action against Defendant Rao's Los Angeles, LP for **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order; **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Order; **(4)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order; **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; **(9)** failure to pay sick leave in violation of Labor Code sections 246 and 233; and **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210). (Smith Decl., ¶ 24.)

On August 4, 2025, Plaintiff filed a first amended complaint alleging causes of action against Defendant Rao's Los Angeles, LP for those described in the original Complaint and adding one cause of action for penalties based on the foregoing pursuant to PAGA. (Lab. Code, §§ 2698–2699.6.) (Smith Decl., ¶ 25.)

On September 3, 2025, Plaintiff filed a second amended complaint alleging causes of action for those described in the original first amended complaint, but adding Rao's Restaurant Group LA, LLC as an additional Defendant. The second amended complaint is the operative complaint in the action (the "Operative Complaint"). (Smith Decl., ¶ 26.) That same day, Plaintiff submitted a supplemental PAGA letter to the LWDA (LWDA Case No. LWDA-CM-1102069-25), providing notice that Plaintiff asserts all claims alleged in the original PAGA notice against Rao's Restaurant Group LA, LLC as well. (Smith Decl., ¶ 26.) A copy of the supplemental letter is attached as **Exhibit 4** to the concurrently filed Declaration of Kyle D. Smith.

Thereafter, the Parties agreed to attend a private mediation with Lisa Klerman. (Smith Decl., ¶ 27.) Prior to the mediation, Plaintiff's counsel conducted significant informal discovery. (Smith Decl., ¶ 27.) Discovery, investigation, and prosecution have included, among other things, numerous telephonic conferences with Plaintiff; inspection and analysis of hundreds of pages of documents, including Defendants' relevant policies and employee handbook, and other information produced by

Plaintiff and Defendants; analysis of work-related data from a sample of Class Members and Aggrieved Employees; an analysis of the legal positions taken by Defendants; investigation into the viability of class treatment of the claims asserted in the action; analysis of potential class-wide damages, including information sufficient to understand Defendants' potential defenses to Plaintiff's claims; research of the applicable law with respect to the claims asserted in the Operative Complaint and the potential defenses thereto; and assembling and analyzing of data for calculating damages. (Smith Decl., ¶ 27.)

Among other key pieces of information, Plaintiff's counsel requested in its informal discovery letter the wage statements and time records for a statistically significant sample size of Class Members during the Class Period. (Smith Decl., ¶ 28.) The Parties agreed on, and Defendants produced, a near-100% sampling of employees, which Plaintiff's counsel determined would provide a statistically significant sample size with a high-degree of confidence for Plaintiff's expert's statistical analysis. (Smith Decl., ¶ 28.) This sampling included payroll records and timesheets for the Class Members' shifts during the Class Period. (Smith Decl., ¶ 28.) From these records, Plaintiff's expert was able to carefully craft a damages model for each of the categories of alleged claims for which the data would reflect violations. (Smith Decl., ¶ 28.)

On February 12, 2026, the Parties participated in a full-day mediation with Lisa Klerman who is a full-time mediator with extensive experience in California wage and hour class action lawsuits. (Smith Decl., ¶ 29.) The mediation negotiations were contentious, but the Parties were eventually able to reach the broad terms of an agreement. After further negotiation, the Parties executed the longform Settlement Agreement now before the Court for approval. (Smith Decl., ¶¶ 29–30.) The Settlement Agreement generally follows the Los Angeles Superior Court's *[Model] Class Action and PAGA Settlement Agreement* (LASC CIV 296), with changes reflecting the specific terms of the Parties' agreement.

Plaintiff now seeks the Court's preliminary approval of the Settlement Agreement.

III. SUMMARY OF THE CLAIMS, DEFENSES, AND EXPOSURE

Plaintiff alleges several categories of wage and hour violations on behalf of the Employees. Most importantly, Plaintiff alleged that Defendants failed to pay employees for each minute worked, and failed to properly provide the Employees with meal periods and rest periods. From these violations, Plaintiff sought damages for derivative claims for waiting time penalties, inaccurate itemized wage statements, and PAGA penalties based on the foregoing. (Smith Decl., ¶ 31.)

Defendants have persistently denied all liability of any kind associated with the claims and allegations, and further denied that the Employees are entitled to any relief. Defendants also deny that these allegations are appropriate for class or representative treatment for any purpose other than the settlement. Defendants maintain, among other things, that they have complied with California laws in all respects. (Smith Decl., ¶ 32.) A summary of the legal and factual basis for each claim, the applicable defenses, and the potential damages are summarized in more detail below.

A. MINIMUM WAGE ALLEGATIONS

Labor Code section 1197 requires employees to be paid at least the minimum wage fixed by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section 1194 entitles "any employee receiving less than the legal minimum wage . . . to recover in a civil action the unpaid balance of the full amount of this minimum wage." (See also Lab. Code, §§ 1185 [giving the Applicable Wage Order the force of law], 1198 [same].) Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon. (See also Lab. Code, §§ 1197.1, 1199.) Liquidated damages under this provision, however, may not be applicable where the employer acted in good faith and "had reasonable grounds for believing that the act or omission was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the commission." (Lab. Code, § 1194.2, subd. (b).)

These minimum wage standards apply to each hour that employees work. Therefore, an employer's failure to pay for any particular time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

Here, Plaintiff alleged that the Employees were consistently required to work off the clock after clocking out. Specifically, Plaintiff alleged that, after clocking out on the restaurant's computer system, Employees were required to record their clock-in and clock-out times by hand and file the documentation in Defendants' binder, which was often difficult to locate. Plaintiff alleged that this off-the-clock time resulted in a minimum wage violation. (Smith Decl., ¶ 34.)

Defendants categorically denied that they underpaid regular or minimum wages to the Class Members. Defendants asserted that the Employees recorded all hours worked, without completing any additional off-the-clock work, and that their pay was based precisely on this recorded time. Defendants further argued that any off-the-clock work was *de minimis* such that it would be difficult or impossible to prove, both at trial and for the purposes of class certification. (Smith Decl., ¶ 35.) Defendants also advised that the restaurant would close in late February 2026, shortly after the mediation. (Smith Decl., ¶ 35.)

Based on the accounts of Plaintiff, Plaintiff argued that Class Members performed an average of 0.5 hours of off-the-clock work per workweek at an average base hourly rate of $18.46 across 7,762 workweeks, resulting in total estimated damages of $71,643.26. (Smith Decl., ¶ 36.) Plaintiff discounted this amount by 90% due to the very real risk that this Court would agree with Defendants' good-faith defense that their employees were properly instructed to clock in and out for all time worked. (Smith Decl., ¶ 36.) Plaintiff estimated Defendants' realistic exposure for this claim to be approximately **$7,164.33**. (Smith Decl., ¶ 36.)

B. OVERTIME ALLEGATIONS

Labor Code section 510 requires an employer to compensate an employee who works more than eight hours in one workday, 40 hours in a workweek, and for the first eight hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for the employee. It further obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than 12 hours in a day or more than eight hours on the seventh consecutive day of work. The "regular rate of pay" for these purposes is not the same as the employee's base hourly rate, but rather it must include "adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any nonhourly compensation the employee has earned." (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.)

Here, Plaintiff alleged that, as a result of the off-the-clock time described above, the Employees incurred unpaid overtime wages because their actual hours worked were not fully reflected on their time sheets. (Smith Decl., ¶ 37.) As with Plaintiff's minimum wage claims, Defendants categorically denied that Employees worked off-the-clock at any point and therefore argued that no unpaid overtime had accrued. (Smith Decl., ¶ 37.)

Based on the accounts of Plaintiff, Plaintiff argued that Class Members performed an average of 0.5 hours of off-the-clock work per workweek, an overtime premium of 0.5, at an average base hourly rate of $18.46 across 7,762 workweeks, resulting in total estimated damages of $35,821.63. (Smith Decl., ¶ 38.) Plaintiff discounted this amount by 90% due to the very real risk that this Court would agree with Defendants' good-faith defense that their employees were instructed to clock in and out for all time worked. (Smith Decl., ¶ 38.) Plaintiff estimated Defendants' realistic exposure for this claim to be approximately **$3,582.16**. (Smith Decl., ¶ 38.)

C. REST PERIOD ALLEGATIONS

Under Labor Code section 226.7 and the Applicable Wage Order, employers are required to provide their non-exempt employees with compensated, duty-free rest periods of not less than ten minutes for every major fraction of four hours worked. Likewise, Labor Code section 226.7 provides that "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission . . . ." (Lab. Code, § 226.7, subd. (b).)

Labor Code section 226.7 also provides that employers must pay their employees one additional hour of pay at the employee's regular rate for each workday that a "meal or rest or recovery period is not provided." (Lab. Code, § 226.7, subd. (c).) The "regular rate" for these purposes is synonymous with the "regular rate" in the overtime context, which means that it must include "adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any nonhourly compensation the employee has earned." (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 869; *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.)

Here, Plaintiff alleged that the Employees were not provided with rest periods. Plaintiff, for example, reported that he was never able to take rest periods. (Smith Decl., ¶ 39.) Defendants argued that they maintained a compliant rest period policy and that the Employees were provided with rest periods as required by law. Defendants further argued that they did not impede, discourage, or prohibit employees from taking meal or rest breaks. (Smith Decl., ¶ 39.)

In terms of Defendants' exposure for this claim, assuming a 100% violation rate, Plaintiff's expert determined that Defendants' maximum exposure for the rest period claim was approximately $571,463, excluding consideration of interest, attorneys' fees, or penalties. (Smith Decl., ¶ 40.) However, Plaintiff ascribed a 90% discount due to the risks that this Court would agree with Defendants' good-faith defenses, Defendants' argument that the Employees may have voluntarily waived their rest periods, and the individualized reasons for the failure to take rest breaks. (Smith Decl., ¶ 40.) Plaintiff estimated Defendants' realistic exposure for this claim to be approximately **$57,146.30**. (Smith Decl., ¶ 40.)

D. MEAL PERIOD ALLEGATIONS

Employers are required to provide their nonexempt employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of work. (Lab. Code, § 512, subd. (a).) Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a).) Labor Code section 226.7 provides that employers must pay their employees one additional hour of pay at the employee's regular rate for each workday that a "meal or rest or recovery period is not provided." (Lab. Code, § 226.7, subd. (c).) The "regular rate" for these purposes is synonymous with the "regular rate" in the overtime context, which means that it must include "adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any nonhourly compensation the employee has earned." (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 869; *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.)

Here, Plaintiff alleged that he and other Class Members never received any meal periods until approximately January 2025—resulting in both meal period violations and minimum wage violations, some of which would also have resulted in an overtime violation. Specifically, Plaintiff's expert estimated that for shifts greater than six hours, 92.2% had no recorded first meal break. Notably, in 2021, 2022, and 2023, the rate was effectively 100%. Additionally, for shifts greater than ten hours, 100% lacked a recorded second meal break across all years. Importantly, only beginning in 2025 do the records reflect any meaningful meal-break compliance. (Smith Decl., ¶ 41.)

Defendants contended that Plaintiff's account was incorrect and that Plaintiff and the Class Members were regularly provided compliant meal periods through "family meal hour," in which staff all ate a prepared meal together. Defendants argued that any breaks that appear noncompliant were voluntarily waived by Plaintiff and the Class Members, thereby relieving Defendants of any liability for late or missed meal or rest periods. Further, Defendants maintained that Plaintiff and the Class Members were fully and accurately compensated for all hours worked. (Smith Decl., ¶ 42.)

When extrapolated to the class, Plaintiff's expert calculates 29,529 unique meal break violations. After offsetting 72 paid meal premiums, net meal break premiums total a maximum exposure of approximately $537,858, excluding consideration of interest, attorneys' fees, or penalties. (Smith Decl., ¶ 43.) However, Plaintiff ascribed a 90% discount due to the risks that this Court would agree with Defendants' good-faith defenses, Defendants' argument that the Employees participated in "family meal hour." (Smith Decl., ¶ 43.) Plaintiff estimated Defendants' realistic exposure for this claim to be approximately **$53,785.80**. (Smith Decl., ¶ 43.)

E. DERIVATIVE UNTIMELY WAGES ALLEGATIONS

Labor Code section 204 expressly requires employers who pay employees on a weekly, biweekly, or semimonthly basis to pay all wages "not more than seven calendar days following the close of the payroll period." Labor Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a penalty of $100 for each initial violation, and $200 for each subsequent violation, plus 25% of the amount unlawfully withheld. (Lab. Code, § 210, subd. (a).) The penalty provided by Labor Code section 210 is "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article . . . ." (Lab. Code, § 210, subd. (a).)

Plaintiff alleged that, by virtue of the allegations that Defendants failed to properly pay the Employees their wages as described above, Defendants had likewise failed to regularly and consistently provide the Employees with wages earned within seven calendar days following the close of payroll in accordance with Labor Code § 204. (Smith Decl., ¶ 44.) As with Plaintiff's other claims, Defendants argued that the Employees were fully compensated and that such violations were rare and nominal in value, if they occurred at all.

Based on the informal discovery produced and the allegations in the case, Plaintiff estimates Defendants' alleged exposure for these claims to be approximately $264,200, derived as follows: 38 initial violations at $100.00 each ($3,800.00), plus 1,302 subsequent violations at $200.00 each ($260,400.00), across the 1,340 pay periods worked by the 38 Aggrieved Employees. (Lab. Code, § 210, subd. (a).) Because of Defendants' strong defenses and the high likelihood that a court would opt to impose base PAGA penalties in lieu of heightened penalties under section 210, Plaintiff ascribed a 95% discount and estimated Defendants' realistic exposure for this claim to be approximately **$13,210**. (Smith Decl., ¶ 45.)

F. DERIVATIVE WAITING TIME PENALTY ALLEGATIONS

Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty workdays. (See *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492–493.)

Plaintiff argued that Defendants' alleged failure to pay full wages, such as for off-the-clock work, overtime, and applicable meal and rest period premiums, as described above, resulted in a portion of the wages earned by the Employees not being paid at the time of termination or within 72 hours of their resignation. Defendants further failed to pay those sums for 30 days thereafter as required by the Labor Code. (Smith Decl., ¶ 46.)

The maximum value of the waiting time penalty claim was therefore derived from the following formula: 44 former employees × 30 days × 6.7 hours average per day × average rate of pay of $18.46 per hour (or $163,260.24). However, after ascribing a discount of 95% due to the very real risks that this Court would agree with Defendants' good-faith defenses and because the claim is derivative of the underlying claims, which may also fail to be certified or win on the merits, Plaintiff estimated Defendants' realistic exposure for this claim to be approximately **$8,163.01**. (Smith Decl., ¶ 47.)

G. DERIVATIVE WAGE STATEMENT ALLEGATIONS

Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement. Employers that knowingly and intentionally fail to provide their employees with accurate, itemized wage statements may be subject to penalties under Labor Code section 226, subdivision (e).

Plaintiff alleged that, by virtue of the allegations that Defendants failed to properly pay the Employees their wages as described above, Defendants had likewise failed to provide the Employees with compliant wage statements reflecting their gross wages earned and their net wages earned. (Smith Decl., ¶ 48.) As with Plaintiff's other claims, Defendants argued that the Employees were fully compensated and that such violations were rare and nominal in value, if they occurred at all. Defendants thus concluded that Plaintiff will not be able to establish a violation that impacts the wage statement for each Employee for every pay period to recover the applicable penalty. (Smith Decl., ¶ 48.)

Plaintiff determined that Defendants' maximum exposure for this claim was $132,100, derived as follows: 38 initial violations at $50.00 each ($1,900.00), plus 1,302 subsequent violations at $100.00 each ($130,200.00), across the same 1,340 pay periods. (Lab. Code, § 226, subd. (e)(1).) (Smith Decl., ¶ 49.) Plaintiff then ascribed a 95% discount based on the very real risks that: **(1)** this Court might find that Defendants' alleged wage statement errors were not made knowingly and intentionally such that the penalties would not be triggered, **(2)** this Court might find that Defendants' alleged wage statement errors caused little or no injury to the Class Members, or **(3)** that this Court might find that there were no errors made on the wage statements. (Smith Decl., ¶ 49.) Plaintiff calculated that Defendants' realistic exposure for this claim was **$6,605**. (Smith Decl., ¶ 49.)

H. PAGA ALLEGATIONS

Under Labor Code section 2699, subdivision (f)(2), employers that violate applicable provisions of the Labor Code are subject to a default civil penalty of $100.00 for each aggrieved employee per pay period. (Lab. Code, § 2699, subd. (f)(2)(A).) These penalties must be allocated sixty-five percent (65%) to the LWDA and thirty-five percent (35%) to the aggrieved employees. (Lab. Code, § 2699, subd. (m).)

Here, Plaintiff alleged that, because of the violations described above, Defendants were liable for these penalties for each applicable pay period during the applicable PAGA Period. In ascertaining Defendants' exposure for this claim, Plaintiff considered several important cases. First, courts to consider the issue have refused to "stack" PAGA penalties, severely limiting the recoverable PAGA penalties. (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming reduction of the civil penalty to $5 per violation]; accord *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809.) Plaintiff also considered that, given the nature of the allegations and Defendants' efforts at good-faith compliance with the Labor Code, there is a substantial likelihood that this Court would exercise the same discretion the Court of Appeal upheld in *Carrington* and significantly reduce any PAGA penalty award. (Smith Decl., ¶ 50; *Carrington v. Starbucks Corp.*, *supra*, 30 Cal.App.5th at p. 529.) Courts frequently use their discretion under Labor Code section 2699, subdivision (e)(2), to significantly reduce PAGA penalties where such penalties would be unjust, arbitrary and oppressive, or confiscatory.

Here, there were approximately 1,340 pay periods within the applicable PAGA Period. Applying PAGA's maximum penalties would yield a maximum exposure for Defendants of $134,000—assuming an initial $100 per pay period rate. (Smith Decl., ¶ 51.) However, considering Defendants' defenses to the PAGA claim and the very real risk of a court reducing the amount of awarded PAGA penalties (especially considering that the PAGA penalties themselves rival the amount of wages actually owed), Plaintiff conservatively calculated a settlement value of $10.00 per pay period—a 90% reduction from the $100.00 statutory default, and twice the $5.00 per-violation penalty upheld in *Carrington*—for a total realistic exposure of **$13,400**. (Smith Decl., ¶ 51.)

IV. SUMMARY OF THE PROPOSED SETTLEMENT

Under the terms of the Settlement Agreement, Defendants will be released of all claims asserted in the Complaint in exchange for Defendants' agreement to pay a non-reversionary settlement Gross Settlement Amount of $112,000.00. (See generally Settlement Agreement.)

A. REASONABLENESS OF THE GROSS SETTLEMENT AMOUNT

Plaintiff has applied appropriate discounts on the maximum settlement value as calculated above to come to Defendants' realistic exposure of $163,056.60. (Smith Decl., ¶ 52.) As explained above, the issues in this case were hotly contested—both legally and factually. (Smith Decl., ¶ 52.)

While Plaintiff continues to believe in the merits of the case, Defendants argued that they fully complied with California's wage and hour laws, and thus faced minimal exposure, if any. (*Ibid.*) Therefore, the Gross Settlement Amount of $112,000.00 is an excellent result and within the zone of reasonableness for all parties. (*Ibid.*) If preliminary approval is granted, Plaintiff will have recovered approximately 69% of the estimated settlement value for the Class Members in this case—a fair compromise of the claims, by any measure. (*Ibid.*)

The Gross Settlement Amount in the Settlement Agreement was reached only after the case was thoroughly investigated by Plaintiff's counsel. (Smith Decl., ¶ 53.) As explained above, Plaintiff reviewed, among other key pieces of information, the records of a near-100% sampling of randomly-selected employees, which Plaintiff's counsel determined would provide a statistically significant sample size with a high-degree of confidence for Plaintiff's expert's statistical analysis. (Smith Decl., ¶ 53.) This sampling included payroll records and timesheets for the Class Members' shifts during the Class Period. (Smith Decl., ¶ 53.) Plaintiff's counsel also conducted a detailed examination of Defendants' relevant policies to inform Plaintiff's counsel's analysis of Defendants' potential exposure. (Smith Decl., ¶ 54.) From these records, Plaintiff's expert was able to carefully craft a damages model for each of the categories of alleged claims for which the data would reflect violations. (Smith Decl., ¶ 54.) In total, Plaintiff's counsel and Plaintiff's expert reviewed hundreds of pages of documents prior to agreeing to settle the case. (Smith Decl., ¶ 54.)

These documents, along with the other investigation and discovery described above, were sufficient to allow counsel to act intelligently in reaching the Settlement Agreement and determining that the Gross Settlement Amount was adequate. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Indeed, after a thorough review of all available evidence in the case, Plaintiff's counsel have concluded that the Gross Settlement Amount represents an excellent result for the Class. (Smith Decl., ¶ 55.)

B. SETTLEMENT CONSIDERATION AND ALLOCATION

The Gross Settlement Amount includes: **(1)** the fees and expenses of the Settlement Administrator, currently estimated to not exceed $6,250.00; **(2)** Plaintiff's counsel's attorney fees not to exceed one-third of the Gross Settlement Amount, i.e., $37,333.33; **(3)** litigation expenses and costs not to exceed $25,000.00; **(4)** a service award to the named Plaintiff of up to $7,500.00; **(5)** payment to the LWDA of $7,280.00 for its 65% share of the PAGA penalties; and **(6)** Individual PAGA Payments to the Aggrieved Employees totaling $3,920.00 for their 35% share of the PAGA penalties. (Settlement Agreement, at pp. 3, 6–8.)

After all Court-approved deductions from the Gross Settlement Amount, the Net Settlement Amount, which consists of at least $24,716.67, will be distributed to all Class Members who do not request exclusion from the settlement. (Settlement Agreement, at p. 3.) The Aggrieved Employees will separately receive Individual PAGA Payments from the $3,920.00 employee share of the PAGA penalties, whether or not they participate in the class settlement. (Settlement Agreement, at pp. 8, 15.) Applicable employer-side payroll taxes will be paid by Defendants outside and separate from the Gross Settlement Amount. (Settlement Agreement, at p. 6.)

C. THE RELEASE

Under the Settlement Agreement, the "Released Claims" are divided into two categories: **(1)** the released claims for the purposes of the class action portion of the Settlement Agreement, and **(2)** the released claims for the purposes of the PAGA portion of the Settlement Agreement. (Settlement Agreement, at pp. 10–12.) The Released Claims for the purposes of the class action portion of the Settlement Agreement include, for the duration of the Class Period, all claims that were alleged, or that reasonably could have been alleged, based on the facts alleged in the Operative Complaint. (Settlement Agreement, at pp. 10, 11.) The Released Claims for the purposes of the PAGA portion of the Settlement Agreement include, for the duration of the PAGA Period, all claims for PAGA civil penalties that were alleged, or that reasonably could have been alleged, based on the facts stated in the Operative Complaint and in Plaintiff's PAGA notices to the LWDA. (Settlement Agreement, at pp. 11, 12.) True and correct copies of Plaintiff's PAGA letters to the LWDA in this case are attached as Exhibits 3 and 4 to the concurrently filed Declaration of Kyle D. Smith. (Smith Decl., ¶¶ 23, 26.) These releases will become effective on the date when Defendants fully fund the entire Gross Settlement Amount and pay all associated employer payroll taxes. (Settlement Agreement, at p. 10.)

D. SETTLEMENT ALLOCATION FORMULA

Individual payments to the Class Members from the class-portion of the settlement will be calculated and apportioned based on the number of workweeks worked by the participating Class Member during the Class Period (the "Individual Settlement Payments" or "Individual Class Payment"). (Settlement Agreement, at p. 7.) Specific calculations of Individual Settlement Payments will be determined by: **(a)** dividing the Net Settlement Amount by the total number of workweeks worked by all participating Class Members during the Class Period, and **(b)** multiplying the result by each participating Class Member's workweeks. (Settlement Agreement, at p. 7.) If there are any timely submitted requests for exclusion, the settlement administrator will proportionately increase the Individual Settlement Payments for each participating Class Member so that the amount actually distributed to participating Class Members equals 100% of the Net Settlement Amount. (Settlement Agreement, at pp. 7, 8.)

Individual payments to the Aggrieved Employees from the PAGA-portion of the settlement (i.e., the portion not being sent to the LWDA), will be calculated and apportioned based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period compared to the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. (Settlement Agreement, at p. 8.)

E. SELECTION OF THE SETTLEMENT ADMINISTRATOR

Plaintiff, through counsel, has obtained bids from several settlement administration companies for the settlement administration of this case. Of those, Phoenix Settlement Administrators presented the lowest qualified bid. Accordingly, Plaintiff proposes to use Phoenix Settlement Administrators as the settlement administrator. (Smith Decl., ¶ 58; Settlement Agreement, at p. 13.) The settlement administrator will be responsible for processing the settlement payments and providing notice to the Class Members as outlined in the Settlement Agreement. (Settlement Agreement, at pp. 13, 14.)

F. NOTICE PROCEDURES

Within 21 days of the Court granting preliminary approval of the Settlement Agreement, Defendants shall provide the Settlement Administrator with an updated list of Class Members and Aggrieved Employees containing names, number of Class Period workweeks, number of PAGA Period pay periods, addresses, and social security numbers (the "Class Data"). (Settlement Agreement, at pp. 1, 2, 8.)

Within 14 days of receiving the Class Data, the Settlement Administrator shall send the Class Notice by bulk first class mail, forwarding requested, to the Class Members at the addresses identified through the process described above, in English with a Spanish translation. (Settlement Agreement, at p. 14.) Plaintiff proposes using a Class Notice substantially in the form attached as **Exhibit 2** to the concurrently filed Declaration of Kyle D. Smith ("Class Notice").

The Class Notice will inform Class Members that the location, date, and time of the final approval hearing may be changed. (Smith Decl., Exh. 2.) Additionally, the Class Notice will inform each Class Member of his or her estimated share of the settlement, as well as an easily understood statement alerting the Class Members that, unless they elect to opt out of the Settlement Agreement, the Class Member is releasing and waiving all "Released Claims" (as that term is defined in the Settlement Agreement and explained in the Class Notice). (Settlement Agreement, at pp. 10–12, 14; Smith Decl., Exh. 2.) The Class Notice will also inform the Class Members of their right to object to the Settlement Agreement. (Settlement Agreement, at p. 16.) Any Class Member who wishes to object to the Class Settlement may send a written objection to the Settlement Administrator by fax, email, or mail no later than 60 days following the date on which the Settlement Administrator first mails the Class Notice to the Class Members ("Response Deadline"). (Settlement Agreement, at p. 16.) Alternatively, Class Members may also object to the Settlement Agreement by appearing at the final approval hearing, either on their own or through an attorney. (Settlement Agreement, at p. 16.)

Class Members who do not timely request exclusion from the Settlement Agreement will be deemed to be a participating Class Member without having to submit a claim form or take any other action. (Settlement Agreement, at p. 15.) To request exclusion from the Settlement Agreement, the Class Member must send the Settlement Administrator a signed written request for exclusion from the Settlement Agreement ("Request for Exclusion"), faxed, emailed, or postmarked no later than the Response Deadline. (Settlement Agreement, at pp. 14, 15.)

Before mailing Class Notices, the Settlement Administrator will update Class Member addresses using the National Change of Address database. (Settlement Agreement, at pp. 2, 9, 14.) If any Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall re-mail the Class Notice to the forwarding address affixed thereto, if one is provided. (Settlement Agreement, at p. 14.) If no forwarding address is provided, the Settlement Administrator will conduct an address search and remail the Class Notice to the most current address of that Class Member. (Settlement Agreement, at p. 14.) Class Members to whom the Class Notice is re-mailed are given an extension of up to 14 calendar days for disputes, objections, or to request exclusion. (Settlement Agreement, at p. 14.)

G. TIMING OF SETTLEMENT DISBURSEMENTS

Defendants will deposit the Gross Settlement Amount in a lump sum payment, plus the employer-side payroll taxes, with the Settlement Administrator within 30 days of preliminary approval of the settlement. (Settlement Agreement, at p. 9.) At that time, the settlement will be fully funded. Plaintiff negotiated this early-funding structure, in light of the restaurant's closure, to secure the settlement funds for the Class. (Smith Decl., ¶ 56.) The Settlement Agreement further provides that disbursement of Plaintiff's counsel's attorneys' fees, the litigation costs, and Plaintiff's service award shall not precede disbursement of the Individual Settlement Payments and the Individual PAGA Payments. (Settlement Agreement, at p. 9.)

H. DISPOSITION OF UNCASHED SETTLEMENT CHECKS

Class Members will have 180 days to cash their settlement checks. (Settlement Agreement, at p. 9.) If a Class Member fails to cash his/her check by the deadline, then the Settlement Administrator shall distribute such funds to the California State Controller for deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. (Settlement Agreement, at pp. 9, 10.)

Because all funds and interest under the Settlement Agreement are to be completely distributed to the class participants, or to the Unclaimed Property Fund in the name of the individual whose check was uncashed, the Parties agree that this disposition results in no "unpaid residue" or "unclaimed or abandoned class member funds" under Code of Civil Procedure Section 384. (Settlement Agreement, at pp. 9, 10.)

I. TAX TREATMENT

The Settlement Agreement provides that 20% of each individual settlement payment from the class-portion of the Settlement Agreement shall constitute wages (for which each participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining 80% shall constitute penalties and interest (for which each participating Class Member will be issued an IRS Form 1099). (Settlement Agreement, at p. 7.)

With respect to the individual payments made under the PAGA-portion of the Settlement Agreement, all such payments shall be treated as payments owing for penalties and interest (for which each Aggrieved Employee will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at p. 8.)

Defendants will separately and additionally pay their share of employer payroll taxes on the sum allocated to wages. (Settlement Agreement, at p. 6.)

V. <u>THE CLASS SHOULD BE PRELIMINARILY CERTIFIED</u>

A. THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CONSIDERATION IS APPROPRIATE

California Rules of Court, rule 3.769, subdivision (d), provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19.) Since no trial is anticipated in a class-based settlement, the case management issues inherent in determining if the class should be certified need not be confronted, and the Court's fairness review of the settlement focuses on protecting the interests of the non-representative class members. (*Ibid.*; see also *Officers for Justice v. Civil Service Com'n of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625; *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620 [117 S.Ct. 2231, 2248] ["Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."].)

As discussed below, for settlement purposes only, the Parties ask this Court to conditionally certify the Class, as defined above, under section 382 of the Code of Civil Procedure.

B. THE PROPOSED CLASS IS NUMEROUS AND ASCERTAINABLE

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. (See Code Civ. Proc., § 382.) A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. (See *Medrazo v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 101.) Defendants have represented that the proposed Class consists of approximately 98 Class Members ascertained through Defendants' records. (Settlement Agreement, at pp. 8, 18; Smith Decl., ¶ 22.) As such, the numerosity requirement is met.

C. MEMBERS OF THE PROPOSED CLASS SHARE A WELL-DEFINED COMMUNITY OF INTEREST

1. Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. (See *Arenas v. El Torito Restaurants, Inc.* (2010) 183 Cal.App.4th 723, 732 [citing *Washington Mutual Bank, FA v. Superior Court* (2001) 24 Cal.4th 906, 913].) The commonality element is satisfied here because common legal and factual questions exist, such as **(a)** whether individuals working for Defendants were subject to unlawful wage-and-hour policies and/or practices under the California Labor Code; **(b)** whether these violations triggered derivative claims for penalties; and **(c)** whether Defendants' violations were knowing or willful.

2. Typicality

Typicality focuses on: **(1)** whether other members of the proposed class have the same or similar injury to the named plaintiff(s), **(2)** whether the action is based on conduct which is not unique to the named plaintiff(s), and **(3)** whether other class members have been injured by the same course of conduct. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502; *Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375.) Here, Plaintiff's claims are typical of the Class Members because he was subject to Defendants' policies and practices described above in Plaintiff's analysis of the claims and defenses, which were consistently applied class-wide to all Employees. (Declaration of Nilson M. Chavez in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Nilson M. Chavez Decl."), ¶ 4.)

3. Adequacy of Representation

A proposed class representative must establish that they will adequately represent the proposed class. (See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.) Plaintiff is adequate as a class representative because he is a member of the Class, experienced the same wage and hour practices as the rest of the Class, is committed to representing the interests of the Class, has no interests that are adverse to members of the Class, and understands and accepts his duty to represent the best interests of the Class. Plaintiff is committed to the Class and is adequate to represent the interests of the Class in this litigation. (Nilson M. Chavez Decl., ¶ 5.)

Plaintiff also provided counsel with information that was crucial to initiating the action and preparing the mediation brief, discussed settlement strategy with counsel, and provided valuable information about the Class Members and their experiences working for Defendants. (Smith Decl., ¶ 71; Nilson M. Chavez Decl., ¶¶ 6–8.)

Adequacy may be established by the fact that counsel are experienced practitioners. (See *Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162.) Plaintiff is represented by counsel experienced in the litigation of wage and hour class actions, who have no interests adverse to Plaintiff or the Class, who vigorously prosecuted this action, and who have the financial resources to handle this case. (Smith Decl., ¶¶ 8, 66.)

4. Superiority

Certification of the Class for settlement purposes is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. Class certification is also superior to litigation of numerous individual claims because most of the claims are too small to litigate individually.

5. Predominance

The common issues here, concerning the uniform deficiencies to Defendants' wage-and-hour policies and practices raise predominating factual and legal issues supporting certification of a settlement class.

VI. <u>PRELIMINARY APPROVAL SHOULD BE GRANTED</u>

A. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, AND NON-COLLUSIVE NEGOTIATIONS

The Settlement Agreement was negotiated at arm's length between counsel using a professional and well-respected third-party neutral. (Smith Decl., ¶ 59.) Counsel for both parties were thoroughly familiar with the complex legal and factual questions at issue in this litigation. (Smith Decl., ¶ 59.) The Settlement Agreement is a product of intensive negotiations, supported by investigation and direct exchanges of information through informal discovery, during the course of settlement negotiations, including a full-day mediation. (Smith Decl., ¶ 59.)

Although Plaintiff and his counsel believed the class claims had merit and there was a possibility of certifying the class and claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. (Smith Decl., ¶ 60.) The resulting Settlement Agreement was based on calculations, risk assessment, and non-collusive negotiation. (Smith Decl., ¶ 60.) It takes the risks identified above and others into account in arriving at the non-reversionary Gross Settlement Amount. (Smith Decl., ¶ 60.)

B. THE DISCOVERY AND INVESTIGATIONS WERE EXTENSIVE

Counsel for the Parties spent months prior to the mediation developing the factual record for this case, engaging in informal discovery and exchanges of documents and information, and drafting detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and weaknesses of their respective positions at the mediation and during subsequent settlement negotiations. (Smith Decl., ¶ 61.) The Parties and their counsel attended a full-day mediation session before an experienced and well-respected mediator, which resulted in the resolution of the case on a class and representative basis. (Smith Decl., ¶ 61.) Lisa Klerman is a nationally recognized mediator of complex class actions and employment matters.

In addition, the Parties are represented by skilled and experienced counsel with extensive backgrounds in complex litigation and experience litigating similar wage and hour class actions. (Smith Decl., ¶ 62.) The Settlement Agreement was reached after extensive investigation and research, calculations and risk evaluation, substantial exchanges of documents, and Plaintiff's counsel's thorough factual investigation, which were sufficient to evaluate Defendants' defenses. (Smith Decl., ¶ 62.) The Settlement Agreement came only after the case was thoroughly investigated by Plaintiff's counsel. (*Ibid*.) Plaintiff's counsel all agree that this settlement is fair, adequate, and reasonable, and in the best interests of Class Members. (Smith Decl., ¶ 62.)

C. THE RISKS INHERENT IN CONTINUED LITIGATION ARE GREAT

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court should also consider "[t]he strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, [and] the risk of maintaining class action status." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) As described above, Defendants had strong defenses to Plaintiff's claims, which create a real possibility that the claims might not be certified or might fail on the merits. (Smith Decl., ¶ 63.) Proceeding with litigation would impose a significant risk of no recovery as well as ongoing, substantial additional expenditures of time and resources. If settlement were not achieved, continued litigation of the claims would take a substantial amount of time and possibly confer no benefit on Class Members. By contrast, the settlement will yield a prompt, certain, and substantial recovery for the Class Members, which also benefits the Parties and the Court. In considering these risks, the choice was overwhelmingly in favor of settlement. (Smith Decl., ¶ 64.)

D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS

The Settlement Agreement represents a fair compromise given the risks and uncertainties presented by continued litigation. Defendants asserted and would have continued to assert legal and factual grounds to defend against this action, including factual and legal defenses on the merits. Moreover, continued litigation would be costly, time-consuming, and uncertain. In contrast, the

Settlement Agreement ensures timely relief and substantial recovery of Defendants' realistic exposure. (Smith Decl., ¶ 65.)

E. PLAINTIFF'S COUNSEL ARE EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION

Plaintiff's counsel are experienced in wage-and-hour class actions. (Smith Decl., ¶ 66.) Numerous state and federal courts have certified Mr. Smith as adequate and competent class counsel in wage and hour class actions. (Smith Decl., ¶ 66.) Mr. Smith devotes the vast majority of his law practice to plaintiff-side class and representative employment-law cases. (Smith Decl., ¶ 66.)

The Parties' counsel agree that this settlement is fair, adequate, and reasonable in light of the nature of the claims, realistic risk-adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation. (Smith Decl., ¶ 67.) Given the risks inherent in litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of Class Members and should be preliminarily approved. (Smith Decl., ¶ 67.) The Settlement Agreement is also consistent with other settlements that received approval of the Courts. (Smith Decl., ¶ 67.)

Experienced counsel, operating at arm's length, have weighed the strengths and risks of the case, and endorse the proposed settlement. (Smith Decl., ¶ 68.) The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, aff'd (9th Cir. 1981) 661 F.2d 939 ["[T]he fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight."]; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 [court must take into account the experience and view of counsel].)

F. THE CLASS NOTICE PLAN CONFORMS TO ALL APPLICABLE STATUTES AND RULES

The proposed Class Notice should be approved, as it fully informs the Class Members of the nature of the lawsuit and each Class Member's rights under the terms of the Settlement Agreement and applicable law. (Smith Decl., Exh. 2.) The way the Class Notice is to be disseminated, as outlined above, will ensure that all of the Class Members will be properly notified of the proposed settlement.

Of particular note, the Class Notice and the notice plan outlined in the Settlement Agreement closely track this Court's Model Agreement. (Settlement Agreement, at p. 1, fn. 1.) This Court can therefore proceed with confidence knowing that the Parties have followed this Court's pre-approved notice plan.

The Court has wide discretion in approving the means of providing notice, so long as the class representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of class members." (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 860, quotation marks omitted.) Here, the Parties' notice plan is that notice of the Settlement Agreement will be disseminated directly to the class members by first class mail by the settlement administrator within 14 days of the date on which the Settlement Administrator receives the Class Data from Defendants. (Settlement Agreement, at p. 14.)

The notice plan and the Class Notice satisfy the requirements of rule 3.766 of the California Rules of Court and afford the Class Members with all due process protections required by the United States Constitution. Moreover, the contents of the Class Notice are in compliance with rule 3.766, subdivision (d), of the California Rules of Court, because the Class Notice includes, among other things: **(1)** a detailed explanation of the case, including the basic contentions or denials of the parties; **(2)** a statement that the court will exclude the member from the class if the member so requests by a specified date; **(3)** a procedure for the member to follow in requesting exclusion from the class; **(4)** a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and **(5)** a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. (Smith Decl., Exh. 2.) The 60-day deadline for Class Members to exclude themselves or challenge the number of workweeks worked during the Class Period is reasonable, as it provides Class Members with sufficient time to do so and, if they so choose, to seek independent legal advice in the interim. (Settlement Agreement, at pp. 14–16.) The Settlement Administrator will also maintain a settlement website posting the operative settlement documents and the date, time, and location of the final approval hearing, together with a toll-free telephone number and an email address for Class Member inquiries. (Settlement Agreement, at pp. 16, 17.)

VII. THE ATTORNEYS' FEE ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS FAIR

In addition, at the time of final approval, Plaintiff's counsel will request attorneys' fees of up to one-third of the Gross Settlement Amount (i.e., $37,333.33), plus reimbursement of litigation expenses and costs of up to $25,000.00. (Settlement Agreement, at pp. 6–7.) As the California Supreme Court has made clear, one-third of the common fund is a reasonable percentage for a trial court to award as attorneys' fees in a class action where a common fund was generated as a result of the case. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [finding no abuse of discretion where trial court approved a fee request of one-third of the common fund].) The California Supreme Court further clarified that trial courts "have discretion to conduct a lodestar cross check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross check and use other means to evaluate the reasonableness of a requested percentage fee." (*Ibid.*)

The requested fee of one-third of the Gross Settlement Amount is also consistent with awards obtained in similar wage and hour class action cases approved by various courts in California. (See *Stuart v. RadioShack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645 [approving fee award of one-third of the total maximum settlement amount of $4.5 million and noting that the fee award of one-third of the total settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL 2196104, at * 8 [approving fee award of 33.33% of the common fund]; *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841, at *4 [awarding fees of one-third of common fund in a wage and hour class action, noting: "[f]ee awards in class actions average around one-third of the recovery."]; *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW) 2008 WL 5478576, at *8 [approving attorneys' fees of one-third of common fund].)

As part of the final approval motion, Plaintiff's counsel will request approval of the attorneys' fees and costs described in this motion and in the Settlement Agreement, which will be heard at the final approval hearing. Accordingly, the Court need not decide the fees and costs at this time, but only authorize the Class Notice to inform class members that counsel will seek fees and costs up to one third of the Gross Settlement Amount in fees, plus actual litigation costs.

VIII. THE CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND APPROPRIATE

Plaintiff will request payment of a service award from the Gross Settlement Amount of up to $7,500.00 in addition to whatever payment he is otherwise entitled to receive as a Class Member. (Smith Decl., ¶ 70; Settlement Agreement, at p. 6.) The proposed service award is reasonable compensation given the time and effort that Plaintiff devoted to this case, the valuable assistance he provided to counsel, and the fact that he entered into a general release of claims that is broader than the release of the Class. (Smith Decl., ¶ 70; Settlement Agreement, at p. 10; Nilson M. Chavez Decl., ¶¶ 6–10.) Plaintiff provided invaluable assistance to Plaintiff's counsel and the Class Members in this case, including providing factual background for mediation and the operative complaint, reviewing the relevant documents, participating in phone calls with Plaintiff's counsel, gathering highly relevant documents, and reviewing the settlement documents. (Smith Decl., ¶ 71.) Plaintiff agreed to participate in this case with no guarantee of personal benefit. (*Ibid.*) Further, Plaintiff agreed to undertake the financial risk of serving as a class representative and exposed himself to the risk of negative publicity by anyone who opposed this case. (*Ibid.*)

Moreover, the requested service award for Plaintiff falls within the range of service payments typically awarded to class representatives in similar class actions. (See, e.g., *Bond v. Ferguson Enterprises, Inc.* (E.D. Cal., June 30, 2011, No. 1:09-cv-01662-OWW-MJS) 2011 WL 2648879 [approving **$11,250.00** service award to each of the two Class Representative in a meal break class action]; *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving service awards in the amount of **$10,000.00** each from a $300,000.00 settlement fund in a wage/hour class action]; *West v. Circle K Stores, Inc.* (E.D. Cal., Oct. 19, 2006, No. CIV-S-04-0438-WBS-GGH) 2006 U.S. Dist. LEXIS 76558, at p. *28 ["the court finds Plaintiff's enhancement payments of **$15,000.00** each to be reasonable."], emphasis added; *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal., Apr. 22, 2010, No. CV-08-1365-CW (EMC)) 2010 WL 1687832, at p. *17, fn. 8 ["Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of **$20,000** or more where, as here, the class representative has demonstrated a strong commitment to the class"], emphasis added.)

IX. <u>SUBMISSION TO THE LWDA</u>

The Settlement Agreement and this motion are concurrently being submitted to the LWDA in accordance with Labor Code section 2699, subdivision (s)(2). (Smith Decl., ¶ 72.) The proof of electronic submission is attached as **Exhibit 5** to the Declaration of Kyle D. Smith.

X. <u>CONCLUSION</u>

For these reasons, Plaintiff's motion for preliminary approval of the Parties' class action settlement should be granted.

Dated: August 11, 2026

MELMED LAW GROUP P.C.

KYLE D. SMITH
Attorney for Plaintiff, the Putative Class, and the Aggrieved Employees