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[Additional Counsel Listed after Caption]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

ARMANDO MUNIZ, HARRY ROBERT CHILTON, MICHAEL ANTHONY FITCH, CESAR EDUARDO LICEA CASTRO, individually and on behalf of other persons similarly situated and similarly aggrieved employees, Plaintiffs, v. LOT LLC, dba LOT MANAGEMENT LLC (fka RED COW, INC.), an active California Limited Liability Company; HARVEY USA LLC dba HARVEY GENERAL CONTRACTORS (fka HARVEY, INC.), an active California Limited Liability Company; VIVO LLC dba VIVO dba VIVO LANDSCAPE dba VIVO LANDSCAPE SERVICES (fka VIVO GROUP, INC.), and active California Limited Liability Company; RCMS LLC dba RED COW MANAGEMENT SERVICES, an active California Limited Liability Company; and DOES 1 through 10, Defendants.	Case No.: 22STCV32901 CLASS AND REPRESENTATIVE ACTION [*Assigned to Hon. Laura A. Seigle in Dept. SS-17*] **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** [FILED CONCURRENTLY WITH THE COMPENDIUM OF DECLARATIONS BY: (1) HAIK HACOPIAN, (2) ZORIK MOORADIAN, (3) HARVEY C. BERGER, (4) SAMUEL DAGAN, (5) JAMES CLARK, (6) JOHN G. YSLAS, (7) ARMANDO MUNIZ, (8) ROBERT HARRY CHILTON, (9) MICHAEL ANTHONY FITCH, (10) CESAR EDUARDO LICEA CASTRO; AND [PROPOSED] ORDER] Date: February 19, 2025 Time: 9:00 a.m. Dept.: SS-17

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PLEASE TAKE NOTICE that, pursuant to Cal. Rules of Court, rule 3.769, on February 19, 2025 at 9:00 a.m. or as soon thereafter as the matter may be heard in Department SS-17 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Armando Muniz, Plaintiff Harry Robert Chilton, Plaintiff Michael Anthony Fitch, and Plaintiff Cesar Eduardo Licea Castro ("Plaintiffs"), individually and on behalf of a similarly-situated class of individuals, will and hereby do move this Court for an order:

1. Preliminarily approving the proposed class settlement of this lawsuit;

2. Provisionally certifying the Class, defined as follows:

> All current and former non-exempt employees employed by Defendants in California or continuing to be employed by Defendants in California between October 6, 2018 to July 1, 2024 (“Class Period”).

3. Preliminarily appointing Plaintiff Armando Muniz, Plaintiff Harry Robert Chilton, Plaintiff Michael Anthony Fitch, and Plaintiff Cesar Eduardo Licea Castro as Class Representatives;

4. Preliminarily appointing Mooradian Law, APC, Berger & Williams, LLP, The Law Offices of Samuel Dagan, Lavi & Ebrahiminan, LLP, and Wilshire Law Firm as Class Counsel;

5. Preliminarily approving the proposed settlement of Plaintiffs’ Private Attorneys General Act (“PAGA”) claims;

6. Appointing Phoenix Settlement Administrators as the third-party settlement administrator;

7. Scheduling a hearing to consider whether the class settlement should be finally approved, and whether to award amounts for Service Awards to the Class Representatives, attorneys' fees and costs to Class Counsel, and settlement administration costs; and

8. Approving the proposed Class Notice, and ordering that it shall be disseminated to the proposed Class as provided in the Class and Representative Action Settlement Agreement and Release.

This Motion is based on this Notice of Motion, the accompanying Memorandum of

Points and Authorities, the Declaration of Haik Hacopian, the Declaration of Zorik Mooradian, the Declaration of Harvey C. Berger, the Declaration of Samuel Dagan, the Declaration of James Clark, the Declaration of John G. Yslas, the Declaration of Armando Muniz, the Declaration of Robert Harry Chilton, the Declaration of Michael Anthony Fitch, the Declaration of Cesar Eduardo Licea Castro, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

The Class and Representative Action Settlement Agreement and Release is attached as **Exhibit "A"** to the Declaration of Haik Hacopian. The proposed Class Notice is attached as Exhibit "A" to the Class and Representative Action Settlement Agreement and Release. See Hacopian Decl. ¶10, Ex. A.

Dated: January 10, 2025

MOORADIAN LAW, APC
BERGER & WILLIAMS LLP
THE LAW OFFICES OF SAMUEL DAGAN
LAVI & EBRAHIMIAN, LLP
WILSHIRE LAW FIRM

By: */s/Haik Hacopian*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs, Armando Muniz, Harry Robert Chilton, Michael Anthony Fitch, and Cesar Eduardo Licea Castro ("Class Representatives" or "Plaintiffs") and Defendants Defendants Lot LLC dba Lot Management LLC (fka Red Cow, Inc.), Harvey USA LLC dba Harvey General Contractors (fka Harvey, Inc.), Vivo LLC dba Vivo dba Vivo Landscape dba Vivo Landscape Services (fka Vivo Group, Inc.), and RCMS LLC dba Red Cow Management Services ("Lot" or "Defendants") have reached a proposed class settlement with a non-reversionary Total Settlement Amount of $2,950,000 for a class of non-exempt employees who worked for Lot in California from October 6, 2018 through July 1, 2024 ("Class Period"). The Settlement anticipates coverage for a minimum of 88,181 workweeks and a maximum of 96,999, before a negotiated escalator or release shortening provision may be invoked. The class size as of April 3, 2024, the date of mediation, was 1,321. This settlement results in a fair, reasonable, and adequate recovery consisting of a gross workweek value of $19.51 (assuming 92,590 workweeks), and an average settlement payment in excess of $1,335.00 (assuming 1,350 class members).

This Settlement resolves this class action lawsuit, which incorporates other subsequently filed actions against Lot with overlapping claims, and settles the wage and hour claims for all Class Members who do not request exclusion. Payments will be made on an opt-out non-reversionary basis.

The proposed settlement is memorialized in the "Class and Representative Action Settlement Agreement and Release" hereinafter referred to as "Settlement Agreement" or "S.A." A true and correct copy of which is attached to the accompanying Declaration of Haik Hacopian (hereinafter "Hacopian Decl.") as **Exhibit "A"**.

The Parties have conducted an investigation concerning the facts and law during the pendency of this action and which included production of class records and data, conferences, expert assessment, and a mediation session before an experienced mediator, Mr. Lou Marlin.

This proposed settlement is well within the range of what constitutes a fair, reasonable, and adequate settlement to all concerned especially in light of the legal and factual obstacles that Plaintiffs faced, the sharply contested issues involved, the risks and costs of further litigation, and the tangible monetary benefits to be received by Plaintiffs and the Class. The proposed notice procedure comports with Cal. Rules of Court, rule 3.769, and due process requirements. The notice program should be approved and a final fairness hearing set.

II. SUMMARY OF THE LITIGATION

A. Defendants, Class Members, and Plaintiffs

Lot is a commercial property services company based in San Diego. Lot's services provided include: day porter services, power washing & steam cleaning, parking lot sweeping, commercial window washing, commercial property engineering, commercial handyman, commercial property ADA compliance, commercial parking lot striping, commercial asphalt maintenance, and concrete & masonry maintenance. Hacopian Decl., ¶7.

Plaintiffs were employed by Lot in Los Angeles and San Diego Counties. Plaintiffs and class members serviced various types of commercial locations including shopping centers, banks, and parking facilities. Approximately 1,321 Class Members worked an estimated 88,181 workweeks through April 3, 2024, the date of mediation. There are at least 881 employees covered by PAGA and their 43,041 weekly pay periods through March 5, 2024. The average rate of pay is $16.86, and Plaintiffs count 369,223 total class shifts. Hacopian Decl., ¶8.

B. Plaintiffs' Lawsuits

On October 6, 2022, Plaintiff Muniz commenced this Action by filing a complaint alleging causes of action against Defendant Lot, LLC dba Lot Management for (1) Failure to Provide Meal Periods; (2) Failure to Provide Paid Rest Periods; (3) Failure to Pay Wages; (4) Failure to Timely Pay Wages at Termination/Separation; (5) Failure to Timely Pay Vacation Wages at Termination; (6) Failure to Provide Accurate Wage Statements; (7) Failure to Reimburse Business Expenses; and (8) Violation of Unfair Business Practices Act – Bus. & Prof. Code §§17200, et seq. On December 28, 2023, the First Amended Complaint was filed which added a cause of action for Failure to Pay for Reporting Time and a representative cause of action for PAGA penalties in accordance with the notice communicated to the Defendant Lot, LLC and the LWDA on October 13, 2022 (LWDA Case No. LWDA-CM-913668-22). Hacopian Decl., ¶¶10 & 15, **Exhibit "B"** (Oct. 13, 2022 PAGA Notice).

On January 23, 2023, Plaintiffs Michael Hudson and Robert Harry Chilton filed a representative PAGA complaint in San Diego County. S.A., ¶II(2). On June 1, 2023, Plaintiff Fitch filed a class action against Lot in San Diego County and then filed a PAGA action August 14, 2023. Declaration of James Clark (hereinafter "Clark Decl."), ¶¶2-3. On June 30, 2023, Plaintiff Castro filed a class action against Lot in San Diego County and filed a PAGA action on July 21, 2023. Declaration of John G. Yslas (hereinafter "Yslas Decl."), ¶¶2-3.

In March of 2024, prior to mediation, Plaintiffs and their counsel entered into a Joint Prosecution Agreement. Declaration of Harvey C. Berger (hereinafter "Berger Decl."), ¶14, Exh. "A".

On October 18, 2024, in accordance with the Parties' agreement to effectuate this comprehensive global settlement, the operative Second Amended Complaint was filed which added Plaintiffs Chilton, Fitch, and Castro as named class representatives and added Harvey USA LLC, Vivo LLC, and RCMS LLC, related Lot entities named in the other actions, as named defendants. Hacopian Decl., ¶10.

C. Discovery and Mediation

The Parties have conducted investigation of the operative facts and applicable law during the pendency of the case through informal discovery. Prior to mediation, Plaintiffs obtained a sample of timesheets and payroll data that covered 13.5% of class shifts, as well as exemplar wage statements and relevant employee handbooks. This production is underscored by Lot's representation that all class data was retained only in physical form and that it expended significant resources to convert the records to usable and producible electronic form. Plaintiffs were also provided with all pertinent class data points. Plaintiffs retained the assistance of an expert through whom potential class wide damages were assessed. Hacopian Decl. ¶11, Declaration of Harvey C. Berger (hereinafter "Berger Decl.") ¶7, Declaration of

Samuel Dagan (hereinafter "Dagan Decl.") ¶7, Clark Decl. ¶6, Yslas Decl. ¶6.

On April 3, 2024, Plaintiffs and Lot participated in a full-day mediation before Mr. Lou Marlin. The Parties were able to reach a resolution at the mediation and entered into a Memorandum of Understanding ("MOU"). The Parties ultimately entered into their Class and Representative Action Settlement Agreement and Release incorporating the MOU's terms, a true and correct copy of the final executed version of which is attached as **Exhibit "A"** to the Declaration of Haik Hacopian. Hacopian Decl. ¶12, Exh. A.

III. THE PROPOSED SETTLEMENT

A. The Essential Terms of the Settlement

If the Court approves this settlement, Defendants will pay the gross sum of $2,950,000 ("Total Settlement Amount" or "TSA") which will be used to fund this Settlement and make payments to Class Members, who will be paid on an all-in non-reversionary opt-out basis. The Total Settlement Amount excludes the employer share of taxes on the wage component of the Settlement which will be separately funded by Lot. In order to maximize recovery, the Parties agreed to a funding schedule whereby $1,000,000 of the TSA will be funded by April 30, 2025 and $1,950,000 of the TSA will be funded by October 31, 2025. Hacopian Decl. ¶13.

The principal terms of the class action settlement are summarized below:

• Total Settlement Amount. S.A. ¶¶I(34), III (9):	$2,950,000
• Minus Court-approved Attorneys' Fees (33 1/3%). S.A. ¶III(14):	($983,333.33)
• Minus Court-approved Cost Award. S.A. ¶III(14):	($50,000)
• Minus Court-approved Service Awards and general release by Plaintiffs. S.A. ¶III(13):	($40,000)
• Minus maximum settlement administration costs. S.A. ¶III(15):	($20,000)
• Minus 75% PAGA Payment to LWDA. S.A. ¶III(16):	($37,500)
• Minus 25% PAGA Share to Aggrieved Employees. S.A. ¶III(11):	($12,500)
Total Deductions from Total Settlement Amount:	($1,143,333.33)

Net Settlement Amount ("NSA"). S.A. ¶III(9): $1,806,666.67

The approximate estimated simple average class settlement payment, assuming maximum awards and participation by 1,350 individuals, calculates to $1,338.27 ($1,806,666.87 ÷ 1,350). Hacopian Decl. ¶12. There are presently no other claims or lawsuits that would be impacted by this settlement. Hacopian Decl. ¶15.

B. Class Members and PAGA Settlement Group Members

Class Members are defined as follows:

> All current and former non-exempt employees employed by Defendants in California or continuing to be employed by Defendants in California between October 6, 2018 to July 1, 2024 ("Class Period"). S.A. ¶¶I(4) & I(5).

PAGA Settlement Group Members are defined as follows:

> All Class Members employed by Defendants from September 21, 2021 to July 1, 2024 ("PAGA Period"). S.A. ¶I(22).

C. Settlement Payments to Class and PAGA Settlement Group Members

The Individual Settlement Payment is the amount paid from the Net Settlement Amount to a Participating Class Member. S.A. ¶(I)15. It shall be determined as follows: (i) using the Class Information, the Settlement Administrator will compute the total number of Eligible Workweeks of all Participating Class Members collectively during the Class Period; this sum shall be known as the Workweek Total; (ii) the Settlement Administrator will divide the Net Settlement Amount by the Workweek Total to determine the settlement value for each Eligible Workweek (the "Workweek Value"); and (iii)the Settlement Administrator will multiply the number of Eligible Workweeks of a Participating Class Member during the Class Period by the Workweek Value to determine that Participating Class Member's Individual Settlement Payment. S.A. ¶III(10)(a).

The Individual PAGA Payment is the pro rata share of the (25%) amount of the PAGA Payment allocated to the PAGA Settlement Group Members that each PAGA Settlement Group Member will receive. S.A. ¶(I)14. It will be calculated as follows: 25% of the PAGA Payment ($12,500) divided by the number of PAGA Settlement Group Members Pay Periods, then multiplied by the number of PAGA Settlement Group Member Pay Periods attributable to the specific PAGA Settlement Group Member. S.A. ¶III(11)(a).

D. Tax Allocations for Class and PAGA Payments

Individual Settlement Payments shall be allocated 10% as wages subject to tax withholding and reporting on W-2 Forms, 20% as reimbursement of business expenses, and 70% as penalties and liquidated damages. Individual PAGA Payments shall be treated 100% as non-wage payments for alleged penalties and shall not be subject to any withholdings or deductions. S.A. ¶III(4).

E. Opt-Outs, Objections, and Disputes

Not later than Sixty (60) days after the Settlement Administrator mails the Class Notice, Class Members may: (a) submit a Request for Exclusion; (b) file and serve objections to the Settlement; or (c) dispute the information contained in the Class Notice. S.A. ¶I(31).

Opt-Outs: A "Request for Exclusion" means a letter setting forth a Class Member's name, present address, and a statement electing to be excluded from the Settlement. However, any Class Members who timely and properly submit a Request for Exclusion will still receive an Individual PAGA Payment (to the extent they are a PAGA Settlement Group Member) and be bound by the terms of the PAGA Release if the Class Members are PAGA Settlement Group Members. S.A. ¶I(30). The Request for Exclusion must be in writing and: (1) contain the name and address of the Class Member requesting exclusion; (2) contain a statement expressing that the Class Member elects to be excluded from the Settlement; (3) be signed by the Class Member; and (4) be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address. The date of the postmark on the return mailing envelope on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. S.A. ¶III(7)(e).

Objections: The Class Notice shall state that Class Members who wish to object to the Settlement may do so in person at the Final Approval Hearing and/or in writing. Any written objection ("Notice of Objection") must be mailed to the Settlement Administrator by the Response Deadline. The date of mailing on the envelope shall be deemed the exclusive means for determining that a Notice of Objection was timely received. It must be signed by the Class Member and state: (1) the full name and address of the objecting Class Member; (2) the basis for the objection; and (3) whether the Class Member intends to appear at the Final Approval Hearing. Class Counsel will ensure that any Notice of Objection received by the Settlement Administrator by the Response Deadline is filed with the Court along with the Motion for Final Approval. Any of the Parties may file a response to any objection before the Final Approval Hearing. The Class Notice will also inform Class Members that if they first request exclusion from, and opt out of, the Class and then object, the objections would not be considered valid and that if the Class Members object and then request exclusion from, and opt out of the Class, the Class Members would be deemed to have waived their objection. S.A. ¶III(7)(f).

Disputes: Class Members who disagree with the number of Eligible Workweeks stated on their Class Notice may provide documentation and/or a written explanation to the Settlement Administrator to show contrary information. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine a Class Member's eligibility for, and the amounts of, any Individual Settlement Payment under the Settlement Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Payment will be binding upon the Class Members and the Parties. Defendants' records will be given a rebuttable presumption of accuracy. S.A. ¶III(7)(c).

F. Release

Effective on the date when Defendants fully fund the entire Total Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Settlement Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties. S.A. ¶5.

<u>Release as To All Participating Class Members</u>: As of the Effective Date, and subject to Defendants' full payment of all consideration due, the Participating Class Members, including Plaintiffs, shall be deemed to have fully released the Released Parties from the Released Claims. These releases will take effect whether or not a Participating Class Member

receives his or her Individual Settlement Payment or cashes and/or deposits any check for the Individual Settlement Payment. S.A. ¶III(1).

Released Class Claims by Participating Class Members: All claims and/or causes of action arising from or related to this case under any federal, state or local law or administrative order that were or could have been pleaded during the Class Period based on the facts alleged in the operative class action complaint and amendments, and administrative claims, whether known or unknown, including the failure to pay wages, the failure to pay overtime compensation, the failure to provide meal periods, the failure to provide rest periods, the failure to maintain or provide accurate itemized statements, the failure to maintain records, and any other claims whatsoever that were or could have been alleged in this case based on the facts of the complaints, including all related claims for restitution and other equitable relief under Business and Professions Code section 17200, liquidated damages, waiting-time penalties, penalties under the Labor Code Private Attorneys General Act of 2004, including but not limited to California Business and Professions Code sections 17200, et seq., 17203; Labor Code sections 200, 201, 202, 203, 204, 206.5, 210, 218.5, 226-226.5, 226.7, 510, et seq., 512, 515, 558, 1194, 1197, 1197.1, 1198, 2698, et seq., and 2802; related IWC Wage Orders including Wage Order Nos. 5 and 7; Fair Labor Standards Act, 29 U.S.C. sections 201, et seq. Any release under the Fair Labor Standards Act shall become effective only upon negotiation of the settlement check by a Participating Class Member. ("Released Claims"). S.A. ¶I(28).

PAGA Release as to All Members of PAGA Settlement Group: As of the Effective Date, and subject to Defendants' full payment of all consideration due, all PAGA Settlement Group Members, including Plaintiffs and the State of California, shall be deemed to have fully released the Released Parties from any and all claims contemplated under the PAGA Release. These releases will take effect whether or not a PAGA Settlement Group Member receives his or her Individual PAGA Payment or cashes and/or deposits any check for the Individual PAGA Payment. S.A. ¶III(2).

Released PAGA Claims by the PAGA Settlement Group: "PAGA Release" shall mean any and all claims and/or causes of action for civil penalties and other relief available pursuant to PAGA against Released Parties that were or could have been pled based on any and all of the underlying allegations and/or the alleged Labor Code violations pled in the original and amended Complaints in the Lawsuits and/or the LWDA notice during the PAGA Period. Class Members who are PAGA Settlement Group Members and opt out of the Settlement will still be bound by the PAGA Release. S.A. ¶I(23).

Released Parties means Defendants and each of their respective parent companies, subsidiaries, affiliates, joint ventures, predecessors, successors, and related parties and all of their past and present directors, officers, shareholders, members, managers, joint employers, co-employers, integrated enterprises, representatives, employees, and their agents. S.A. ¶I(29).

Only Named Plaintiffs will be providing general releases and waivers of Civil Code §1542. S.A. ¶III(3).

G. Service Awards to Named Class Representatives

As part of the settlement, at the time of seeking final approval of the proposed class action settlement, Plaintiffs will separately apply for a Service Award in the amount of Ten Thousand Dollars ($10,000) each for their services to the Class and for a general release of all claims. S.A. ¶III(13). "[I]ncentive awards are fairly typical in class action cases … and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiffs' requested incentive payments are intended to recognize Plaintiffs' contributions on behalf of the Class and are fair in relation to the total settlement, their efforts, and standing alone. Hacopian Decl. ¶16. Plaintiffs have put a significant amount and time and effort participating in these matters and understand their role and obligations as class representatives. Declaration of Armando Muniz (hereinafter "Muniz Decl."), ¶¶3-7. Declaration of Robert Harry Chilton (hereinafter "Chilton Decl."), ¶¶9-14. Declaration of Michael Anthony Fitch (hereinafter "Fitch Decl."), ¶¶3-10. Declaration of Cesar Eduardo Licea Castro (hereinafter "Castro Decl."), ¶¶4-10.

H. Attorneys' Fees & Costs

Lot agrees not to oppose Plaintiffs' counsel's application for an attorneys' fees award of $983,333.33, which is one-third (33 1/3%) of the Total Settlement Amount of $2,950,000, and payment of documented litigation costs and expenses up to $50,000. S.A. ¶III(14). Plaintiffs will submit detailed support for their request for a fee award along with their motion for final approval of the settlement. For now, counsel submits that the requested fee is fair compensation for undertaking a complex, risky, expensive, and potentially time-consuming litigation involving this case on a purely contingent fee basis. Here, counsel has incurred substantial attorneys' fees independently conducting pre-filing investigations, analyzing the claims, litigating the cases, conducting legal research and analysis, reviewing significant documentary and electronic records produced by Defendants, performing data analysis of employee timekeeping data and payroll records, preparing for and attending a full-day mediation, negotiating the settlement, preparing and amending the long-form Class and Representative Action Settlement Agreement and Release, Class Notice, and preparing this Motion for Preliminary Approval, and otherwise aggressively pursuing the interests of the putative class. Hacopian Decl. ¶17, Berger Decl. ¶¶10-11, Dagan Decl. ¶¶10-11.

Both California and federal courts have recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (recognizing both the "percentage of recovery" and "lodestar/ multiplier" methods). Plaintiffs' counsel's request for fees of one-third (33 1/3%) of the Total Settlement Amount is within the range of reasonableness. Historically, courts have awarded percentage fees in the one-third range. *See*, *e.g.*, *Laffitte v. Robert Half Int'l, Inc.* (2014) 231 Cal.App.4th 860, 878 ("[S]tudies show that . . . fee awards in class actions average around one-third of the recovery."); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 n.11 (2008) (accord); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide conclude that a one-third fee is consistent with market rates).

In conclusion, counsel submits that its request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement as well as with reference to counsel's loadstar. In light of the risks and significant work undertaken by counsel, the results obtained for the class, and the efficiency with which the Parties collaborated to conduct the litigation, the fee and cost request is fair and reasonable. Hacopian Decl. ¶18.

IV. PRELIMINARY APPROVAL IS WARRANTED

Rules of Court, rule 3.769 conditions the settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Fed. R. Civ. P. 23. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337 (2012) (stating that Rule 3.769 requires the trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). To be approved, a settlement must be "fair, reasonable and adequate to all concerned." *Reed*, 208 Cal.App.4th at 337. Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair, and is not the product of fraud or collusion between the negotiating parties. *See, e.g., Hanlon*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arms' length by experienced counsel. *See, e.g., Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. A trial court's decision to approve a class action settlement is within the sound discretion for the trial judge and may be reversed only if the trial court acted outside of its broad discretion. *See Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399, 407.

A. Standard for Preliminary Approval

To make a fairness determination, the Court should consider several factors, including: "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, [and] the experience and views of counsel." *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the Court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at 245. It should be noted that the reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiff might have received if he had succeeded at trial, *Sutter Health Unins. Pricing Cases* (2009) 171 Cal.App.4th 495, 511 (emphasizing that the court must be mindful that "[t]he … class case could have gone to an incredibly lengthy and expensive jury trial, and the class could have lost the case" and must account for that likelihood in discounting the value of the claims for settlement purposes [emphasis in original]). As discussed below, the proposed settlement is fair, adequate and reasonable in light of the overall balance of factors in this case.

B. The Strength of Plaintiffs' Case

1. Unpaid Wage Claims

Employee time was tracked through handwritten timesheets which employees completed and then photographed/scanned them and sent them to Lot after the close of weekly pay periods. The timesheets reviewed by Plaintiffs reveal entries at regular hour and half hour intervals. Plaintiffs contended that such was an unreliable timekeeping system and unrepresentative of actual work time as employees were pressured and coerced by managers to enter scheduled hours onto the time sheets. Notably, many timesheets simply show total shift hours. Plaintiffs note that they were often called to properties to respond to emergencies and were not compensated for that. As such, considering the varying nature of the work, it would be expected that the timesheets would have a higher than average degree of variance. Lot contended that employees had full leeway in tracking their time on the time sheets, that all entries needed to be consistent with time worked, and that employees were paid in accordance with the submitted time sheets. Hacopian Decl., ¶19.

Assuming a loss range of 5 minutes to 15 minutes per shift, at the base hourly rate of $16.86 across 369,223 shifts, damages for unpaid wages calculate to $518,758.26 to $1,556,274.95. This claim for unpaid wages, however, is extremely individualized and carries substantial certification risk. A determination of whether any particular timesheet is an accurate representation of time worked will depend on a specific shift, position, location, management, and other circumstances that will not translate to certification. Any assessment will rely on morass of individual inquiries that will require a determination as to whether Defendants caused any instance of work off-the-clock or whether such was due to employee choice. In light of this, Plaintiffs do not value an unpaid wage claim in excess of 25% of the assessed exposure, or a range from $129,689.57 to $389,068.74. Hacopian Decl., ¶20.

2. Meal Breaks and Rest Breaks

As with time recordation, Plaintiffs contended that meal breaks recorded on the timesheets were not accurate as supervisors expected for timesheets to reflect compliant meal breaks, even when meals were late or short. Also, Plaintiffs recall being routinely contacted by managers while on meal breaks. Lot's handbook provides for "a (1) hour unpaid lunch break for every six hours worked" (with the option to take a "thirty (30) minute lunch break") to "begin before the end of the 5th hour of consecutive work" and an additional lunch break for "employees working over ten (10) hours in one shift." Lot represented that employees were afforded great leeway in taking their meal breaks, that they started paying meal premiums in 2023 and their handbook makes reference to the off-duty nature of meal breaks. Hacopian Decl. ¶21.

Lot has represented that, based on their review, about 40% of meal eligible shifts show a facial violation of late, short, or no meal break. At a 40% violation rate across 250,370 meal eligible shifts, exposure calculates to $1,677,519.42. Of course, significant certification risk exists as individualized inquiry would be required to determine whether a facial meal violation on the time sheets was due to employee choice or coerced by Lot. In light of the challenges in crafting a certifiable theory and prevailing on the merits across an on-site workforce operating under varying circumstances, Plaintiffs do not value a meal break claim at more than $500,000. Hacopian Decl. ¶22.

As to rest breaks, Lot maintained a written policy to provide "a ten-minute rest period for every four hours worked." Plaintiffs contended that they never received them and to the extent any break was taken, it would be a meal break. No rest breaks were recorded on the timesheets. Lot's 2015 handbook provides for a "ten-minute paid rest period for every four hours worked" and the 2020 handbook introduced "major fraction thereof" modifier and off-duty nature. Lot pointed out that employees were made aware of rest break requirements and any instances of missed rest breaks were a result of employee volition. Moreover, that certification of such a claim is highly improbable due to the absence of written records (as rest breaks are not required to be recorded) and a morass of factual inquiry necessary to assess the reasons why any individual employee (or a specific group of employees) missed a rest break on specific instances. Although an assumed 85% violation rate across all 320,781 rest break eligible shifts will result in exposure of $4,597,115.04, Plaintiffs value a rest break claim at less than the meal break claim and not more than $400,000 for the class due to challenges inherent in the claim, both on certification and merits. Hacopian Decl. ¶23.

3. Failure to Reimburse Business Expenses

Employees used their personal cell phones to communicate with managers, transmit their time sheets. Employees also used their own tools and used their personal vehicles to travel between job sites when required. Lot maintained that it provided all necessary tools at its sites. The payroll records reflect "AUTO" and, more frequently, "CELL" reimbursements. Almost all of the AUTO payments are for $80.77. The most frequent CELL payments are for $3.46, $3.47, $5.76, $5.77, or $11.54. Given that cell phone use was required, one would expect a cell reimbursement on every pay stub, but the payroll data reflects cell reimbursement about 15% of the time. Although Lot has policies addressing reimbursement of certain types of expenses, there is no explanation as to how, what appear to be standardized reimbursement amounts, are determined. Hacopian Decl. ¶24.

The average monthly cell phone bill is $141 per month, per an online search. Assuming two individuals are on a plan and half of half is attributable to a class member's work-related use per month, that comes to $35.25 per month. At an average 4.33 workweeks per month, that reimbursement should be around $8.14 per workweek. At $8.14 across 88,181 workweeks, exposure comes to $717,793.34 for unreimbursed cell phone expenses. Factoring in certification risk and credit to Lot for amounts paid, Plaintiffs do not value potential exposure at more than 40% of assessed exposure, or $287,117.34. As to mileage reimbursement, assuming 10 miles per workweek at an average IRS rate of $0.595/mi, exposure comes to $524,676.95. No records exist for when employees made trips to other job locations and Plaintiffs would encounter issues with proving the amount of mileage incurred by employees and potential factual variations, including the claim likely being skewed toward certain groups of employees and managers more than others, which would pose challenges for certification and liability. As such, Plaintiffs do not value a claim for vehicle mileage at more than 50% of the assessed exposure, or $262,338.48. Hacopian Decl. ¶25.

4. Waiting Time Penalties

A claim for waiting time penalties would be derivative of the claims for unpaid wages and meal and rest premiums but the weaknesses described there would directly impact the viability of this claim. *See Naranjo v. Spectrum Sec. Srvcs.* (2022) 13 Cal.5th 93. At 930 former employees, the maximum waiting time penalties would potentially calculate to $3,653,899.20. Further, there are class certification variables as to when and how final pay was made available by Lot and when payments were picked up/delivered to employees. In light of the foregoing, Plaintiffs do not believe the value of a waiting time claim exceeds 20% of the assessed maximum, or $730,779.84. Hacopian Decl. ¶26.

5. Wage Statement Penalties

The exemplar regular wage statements are facially compliant with the requirements of Labor Code Section 226. As with waiting time penalties, this claim would be derivative of unpaid wage, meal, and rest break violations. *See Naranjo*, *supra*. Although maximum exposure calculates to $3,653,900.20 for the 873 employees during the wage statement penalty period for 42,160 pay periods from October 6, 2021 to March 15, 2024, value may be assessed at not more than the 10% of the maximum exposure, or $365,390.02, due to this claim's reliance on the underlying claims and subject to weaknesses described therein as well as due to the recent California Supreme Court's decision in *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, whereby a good faith defense was extended to civil penalty claims for wage statement violations. Hacopian Decl. ¶27.

6. PAGA Claims

There are 43,041 PAGA Pay Periods. Assuming Plaintiffs are to identify a predicate violation for every pay period across all the claims and a $100 penalty for each and every pay period, would result in $4,304,100 in maximum penalties. Applying an 80% reduction to this amount, as consistent with reported cases, results in a potential exposure of $860,820. *See e.g.*, *Fleming v. Covidien* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047 at *4 (reduction of PAGA civil penalties for wage statement violations from $2,800,000 to $500,000, because employees suffered no injury, defendants were not aware that their wage statements violated the law, and that they took prompt steps to correct violations.) The intention of PAGA penalties is not to serve a punitive or compensatory purpose but to sufficiently act as a deterrent to future Labor Code violations. Moreover, a court may readily conclude that a lower penalty assessment, or a nominal one, will suffice as these defendants are smaller employers. Plaintiffs do not believe that any high six figure PAGA penalty recovery is very realistic in this case. In light of the foregoing, and also because of potential defenses to the substantive claims that would bear on PAGA liability and coverage, the Parties' $50,000 allocation for release of the PAGA claims reflects a very fair compromise and is extremely reasonable. Hacopian Decl. ¶28.

C. Risks and Uncertainty

Although Plaintiffs steadfastly maintain that their claims are meritorious, they acknowledge that their position includes real risks and uncertainty. In deciding whether to approve the settlement, the Court must balance the risk factors against an "understanding of the amount in controversy and the realistic range of outcomes of the litigation." *Kullar*, 168 Cal.App.4th at 130, 133; *Munoz*, 186 Cal.App.4th at 408-09. In this case, the settlement is fair and adequate when compared to the total potential exposure and the risks inherent in Plaintiffs' claims. Hacopian Decl. ¶29.

As courts have observed, "simply because a settlement may amount to only a fraction of the potential recovery does not in itself render it unfair or inadequate. Compromise is the very nature of settlement." *Boyd v. Bechtel Corp.* (C.D. Cal. 1979) 485 F. Supp. 610, 618. In this case, Plaintiffs consider the settlement to be significantly more than a "fraction," particularly considering the various potential complications, dangers and pitfalls that proceeding would entail. Hacopian Decl. ¶29.

In addition to considering the value of immediate payment for Settlement Class Members, Plaintiffs' counsel discounted the value of the class claims based on a variety of factors, including the California Supreme Court's decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Lot argued that it sufficiently provided breaks without "policing" them. Moreover, Plaintiffs' theory of liability for rest break violations was weaker since employers have no obligation to record rest breaks (as rest breaks are paid breaks). The relative lack of written proof, except for potential testimony from Class Members, diminished the prospect of certifying the claim. Thus, a significant discount on those claims was warranted. Hacopian Decl. ¶¶21-23.

The potential penalties were deemed to be substantial claims. In response, Lot raised the good-faith dispute defense to the waiting time penalty claims, thereby precluding their imposition[1]. As also noted, such a defense is now available for wage statement claims. Success on the penalty claims would require proving that the Defendant's conduct was "willful." As

[1] *See, e.g.*, Cal. Code Regs. § 13520 (a good-faith dispute exists to a claim for waiting time penalties "when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.").

to PAGA claims, there existed a high likelihood of a nominal award on account of Lot being a smaller employer. Hacopian Decl. ¶¶26-28.

In short, Plaintiffs' ability to prevail on certification and merits was far from certain. There is the risk that prolonged litigation would likely have produced a worse result for Class Members. Thus, this factor supports preliminary approval.

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

This factor also weighs in favor of settlement approval. The parties had engaged in significant review and assessment of the asserted claims. Lot could have moved for summary adjudication on all or some of the claims. Moreover, preparation for class certification and trial remained for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiffs and/or summary judgment ruling. As a result, the parties would incur considerably more attorneys' fees and costs through trial. This settlement avoids those risks and the accompanying expense. Hacopian Decl. ¶30. Hence, an additional support for a preliminary approval.

E. Risk of Maintaining Class Action Status

To the extent any claims were certified, Defendants would certainly seek to decertify them. Absent settlement, there was a risk that there would never be a certified class. Hacopian Decl. ¶31. Thus, this factor, too, supports preliminary approval of the settlement.

F. Amount Offered in Settlement Given Realistic Value of Claims

This proposed settlement provides a fair and reasonable monetary recovery for the Class in the face of disputed claims and significant hurdles. Hacopian Decl. ¶29. Courts recognize that the reasonableness of a settlement is not dependent upon it approaching the potential recovery plaintiffs might receive if successful at trial. *See In re Omnivision Tech., Inc.* (N.D. Cal. Jan. 9, 2008) 2008 WL 123936; *see also Nat'l Rural Telecomm. Coop. v. Directv, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery"); *Officers for Justice v. Civil Serv. Comm* (9th Cir. 1982) 688 F. 2d 615, 628 (it is "the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness"). The $2,950,000 Total Settlement Amount captures the entirety of the $2,675,285.25 to $2,934,664.42 assessed case value on viable class claims, which is extremely favorable given the significant risk factors described above. Hacopian Decl. ¶29.

G. Discovery Completed and the Status of Proceedings

The lawsuit involved informal discovery which included the production of significant payroll and timekeeping records, policies, and information regarding the size and makeup of the putative class. It was only after the completion of this process that the parties participated in mediation and thereafter reached the proposed settlement. Hacopian Decl. ¶¶11 & 12. Here is an additional factor germane to the preliminary approval.

H. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented by competent and experienced counsel who pressed Plaintiff's claims forward against a reputable employment defense firm. Class Counsel possesses extensive experience litigating wage and hour class actions from the plaintiff side and has been appointed as class counsel in numerous cases alleging similar claims. Hacopian Decl. ¶¶2-3, Declaration of Zorik Mooradian (hereinafter "Mooradian Decl.") ¶¶2-5, Berger Decl. ¶¶2-5, Dagan Decl. ¶¶2-5, Clark Decl. ¶10, Yslas Decl. ¶¶11-20. Class Counsel conducted review and analysis of Defendants' practices and timekeeping and payroll records and drew on its extensive experience in similar cases to effectively assess the strengths and weaknesses of Plaintiffs' claims. The settlement was also reached with the input and assistance of an experienced and respected neutral mediator. Hacopian Decl. ¶¶11 & 12, Berger Decl. ¶¶6-8, Dagan Decl. ¶¶6-8, Clark Decl. ¶¶5-7, Yslas Decl. ¶¶5-8. This factor strongly supports preliminary approval. *See, Kullar, supra*, 168 Cal.App.4th at 130 ("The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct.").

V. THE PRELIMINARY APPROVAL STANDARD HAS BEEN MET

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

The proposed settlement reflects a substantial portion of the estimated recovery that the Class could reasonably expect in light of the potential litigation risks. As well, the proposed settlement is for a sizable sum in light of the strong defenses and provides for significant individual recovery. In accordance, the proposed settlement is within the range of possible approval for communication of a notice in conformity and consideration thereof by the Class. The Court will have the opportunity to again assess the reasonableness of the settlement after the Class has had the opportunity to opt-out or object. Hacopian Decl. ¶32.

A. The Settlement Resulted From Serious, Informed, and Non-Collusive Negotiations

This proposed class-wide settlement is the result of arm's-length negotiations by counsel, punctuated by a full-day mediation session before an experienced mediator and is, therefore, entitled to an initial presumption of fairness. *See Kullar,* 168 Cal.App.4th at 130. Plaintiffs reviewed data for the class and conducted analysis of the data and records to arrive at the estimated damage figures. Hacopian Decl. ¶¶10-12, 19-29, Berger Decl. ¶¶7-8, Dagan Decl. ¶¶7-8, Clark Decl. ¶¶6-7, Yslas Decl. ¶¶6-8.

The parties reached an agreement to mediate before Mr. Lou Marlin, a respected neutral mediator and were able to agree to a resolution at mediation. They then finalized the Class and Representative Action Settlement Agreement and Release. Hacopian Decl. ¶12. Therefore, this factor also supports preliminary approval.

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B. Provisional Class Certification is Appropriate Here

"Litigation by class action has long been recognized as a superior method of resolving wage and hour claims in California." *Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 367. Class certification is appropriate when there exists "an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to alternatives." *Brinker,* 53 Cal.4th 1004 at 1021. As the Supreme Court has noted, "[c]laims alleging a uniform policy consistently applied to a group of employees in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." *Id.* at 1033. This is exactly such a case.

1. The Proposed Class Is Ascertainable and Numerous

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Class is defined by reference to two objective characteristics: (1) individuals who worked as non-exempt employees for Lot in California, and (2) were employed by Lot at some time during the Class Period. Therefore, Class Members can be identified from Defendants' personnel and other employment records. As to numerosity, the Class consists of at least 1,321 individuals, making it highly impracticable to bring all class members before the Court. Hacopian Decl. ¶8.

2. The Community of Interest Requirements for Class Treatment are Met

"[T]he community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Brinker*, 53 Cal.4th at 1021.

a. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. "Common questions of law and fact are required in order to assure the interests of the litigants and the Court are furthered by permitting the suit to proceed as a class action rather than in a multiplicity of separate suits." *Cohen v. DIRECTV, Inc.* (2009) 178 Cal.App.4th 966, 975. Where the defendant systematically engages in policies and practices that allegedly violate the Labor Code and subject all of its employees to the same unlawful conduct, common questions of law and fact will predominate over individualized issues. *See, e.g, Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1538 (holding that a class of limousine drivers challenging their compensation plan was proper for class treatment). Here, the predominance factor is met because each claim challenges an alleged common policy or practice that Plaintiffs contend are illegal. Plaintiffs' claims under the Labor Code are predicated on: a failure to pay for all hours worked; meal, rest period policies and practices; and expense reimbursement issues. These sorts of claims are commonly held to be proper for class certification. *See, e.g., Williams v. Superior Court* (2013) 221 Cal.App.4th 1353, 1371 (certifying class based on uncompensated work time).

b. The Claims of Named Plaintiffs are Typical

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.WI. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action). Here, the claims of Plaintiffs are typical of those held by the members of the proposed Class. First, Plaintiffs were employed by Lot during the proposed Class Period and were subject to their wage and hour practices. Second, Plaintiffs claims they were injured by the same challenged practices they claim injured the Class as a whole. Therefore, Plaintiffs have suffered the same alleged injuries as the other members of the Class and satisfies the typicality requirement.

c. Plaintiff & Class Counsel Will Fairly & Adequately Represent the Class

The adequacy of representation requirement examines conflicts of interest between named parties and the class they seek to represent. *See Capital People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 697. A party's claim of representative status will only be defeated by a conflict that "goes to the very subject matter of the litigation." *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Here, Plaintiffs and their counsel will adequately represent the class as there are no conflicts between the named Plaintiffs and the Class they seeks to represent, and Plaintiffs have claims that are in line with those of the class. Hacopian Decl. ¶5, Mooradian Decl. ¶7, Muniz Decl. ¶¶3-7, Chilton Decl. ¶¶9-14, Fitch Decl. ¶¶3-10, Castro Decl. ¶¶4-8, . Plaintiffs' counsel also has extensive experience in wage and hour class action litigation. Hacopian Decl. ¶¶2-6, Mooradian Decl. ¶¶2-5, Berger Decl. ¶¶2-5, Dagan Decl. ¶¶2-5, Clark Decl. ¶10, Yslas Decl. ¶¶11-20. For these reasons, the Court should provisionally certify the proposed Class.

3. Class-Wide Settlement is Superior to Other Available Methods of Resolution

Here, the alternative method of resolution would be multiple individual lawsuits, challenging the same alleged wage and hour policies and practices of Lot, and each seeking a small amount of damages. Such duplicative litigation would be extremely inefficient and costly for the courts and wasteful for judicial forums that would otherwise devote resources to other matters. Hacopian Decl. ¶33. In light of these concerns, a class action is the superior method of resolving these wage and hour claims. *Martinez*, 231 Cal.App.4th at 367 ("Litigation by class action has long been recognized as a superior method of resolving wage and hour claims in California.")

VI. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE

This Court should order distribution to the Class Members of the proposed Class Notice in both English and Spanish by first-class mail. S.A. ¶¶I(18) & III(7)(a). This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. As a general rule, class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members. *Wershba*, 911 Cal.4th at 252. The proposed Class Notice is attached as Exhibit A to the Class and Representative Action Settlement Agreement and Release. S.A. ¶I(18), Exh. A.

Here, the Parties propose that the settlement be administered by Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator"), an experienced class action settlement administrator. S.A. ¶I(32). The Settlement Administrator's duties are detailed in the Class and Representative Action Settlement Agreement and Release. S.A. ¶III(7). Class Members' addresses are ascertainable through Defendants' personnel and payroll records. To the extent that the addresses of former employees have changed, Phoenix will run all the addresses provided through the United States Postal Service Notice of Change Of Address database (which provides updated addresses for any individual who has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address) and perform skip traces to obtain current address information. The Settlement Agreement allocates a maximum of $20,000 for administration expenses, which is appropriate in light of the number of class members and the size of the settlement and the extent of work to be performed in administrating the settlement of the class. S.A. ¶III(15). Plaintiff has secured a bid from Phoenix to administer the settlement for $14,000. Hacopian Decl., ¶34, **Exhibit "C"**.

The content of the proposed Class Notice satisfies Cal. Rules of Court, rule 3.769(d) because it advises class members of the nature of the claims, basic contentions and denials of the parties and the key terms of the settlement, the deadline to opt-out, or object to the settlement and the procedure by which to do so, explains the recovery formula and expected recovery amount for each class member, and advises them that they will be bound by the terms of the settlement if they do not request exclusion. S.A. ¶I(18), Exh. A. The proposed Class Notice will also notify Class Members of the final approval hearing date and provides the contact information for Class Counsel, and advises Class Members that they may enter an appearance through counsel if they wish to. This manner of giving notice satisfies Cal. Rules of Court, rule 3.769(e) as the most reliable and cost-effective method of reaching Class Members.

VII. THE PAGA ALLOCATION AND PAYMENTS SHOULD BE APPROVED

The Settlement allocates $50,000 for resolution of Plaintiff's PAGA claim with $37,500 (75%) payable to the LWDA and $12,500 (25%) payable to aggrieved employees. S.A. ¶¶III(11) & III(16). PAGA Settlement Group Members are all Class Members employed by Defendants from September 21, 2021 to July 1, 2024 ("PAGA Period"). S.A. ¶I(22). Plaintiff' Muniz's PAGA notice was communicated to the LWDA and Lot on October 13, 2022 and was assigned case number LWDA-CM-913668-22. Hacopian Decl., ¶15, Exh. "B". To the extent an aggrieved employee is also a Settlement Class Member, they will receive their Individual PAGA Settlement Payment even if they submit an exclusion request. As required, this Motion and all supporting papers will be concurrently submitted to the LWDA.

VIII. THE COURT SHOULD SET A FINAL APPROVAL HEARING

The Parties request that this Court set a hearing for final approval of the settlement on a date appropriately scheduled to follow the deadline by which Class Members must file objections to the settlement or opt-out. *See* Cal. Rule of Court, rule 3.769. The parties propose that the final papers in support of the settlement be filed and served no later than 14 days prior to the hearing on final approval, and that the hearing on final approval of the settlement be set 120 days after the date of the preliminary approval hearing, to allow a reasonable period for notice and administration, and an opportunity to object to the settlement, without excessive delay to the Class as to the receipt of their settlement shares.

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IX. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement, provisionally certify the Settlement Class, and enter the Proposed Order submitted concurrently herewith.

Dated: January 10, 2025

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