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and all similarly situated employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

DANIEL ROSAS MOLINA, on behalf of himself and all similarly situated employees,

Plaintiff,

v.

DHT, INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No. 23CV002406

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: November 20, 2026
Time: 8:30 a.m.
Dept.: 14

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 20, 2026, at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Ian A. Rivamonte in Department 14 of the above-referenced Court, located at 1200 Aguajito Road, Monterey, California, Plaintiff Daniel Rosas Molina ("Plaintiff") will seek an Order:

(1) approving the Joint Stipulation and Settlement Agreement for Class Action and PAGA Claims ("Settlement," "Settlement Agreement," or "SAR") in this matter;

(2) conditionally certifying the following Class for settlement purposes only: All non-exempt, hourly employees who worked for Defendant in the State of California at any time from July 26, 2019, through June 30, 2026;

(3) appointing Plaintiff as Class Representative, and the law firm Fitzpatrick & Swanston as Class Counsel;

(4) preliminarily approving the Settlement Agreement and the total Gross Settlement Amount in the amount of One Hundred Thirty-Five Thousand Dollars and 00/100 Cents ($135,000.00);

(5) finding on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement, including the amount of Plaintiff's service award, attorneys' fees and costs, settlement administration costs, and the allocation of payments to Class Members that could ultimately be given final approval by this Court;

(6) approving the Notice Packet to be sent to Class Members;

(7) appointing Apex as the Settlement Administrator; and

(8) setting the matter for a Final Approval hearing.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify a class for settlement purposes.

The basis for this Motion, filed without any opposition from Defendant DHT Incorporated, is that the proposed settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of Class Members

to participate in, opt-out of, or object to the settlement.

This Motion will be based on the attached Memorandum of Points and Authorities, the Settlement Agreement and the proposed Notice Packet, and the supporting Declarations of Sean S. Kaneshiro and Plaintiff Daniel Rosas Molina, and upon the oral arguments of counsel (should there be any) and on the complete records and file herein.

Dated: October 28, 2026

FITZPATRICK & SWANSTON

By: /s/ Sean S. Kaneshiro

B. James Fitzpatrick
Sean S. Kaneshiro
Attorneys for Plaintiff,
DANIEL ROSAS MOLINA on behalf of himself and all similarly aggrieved employees

TABLE OF CONTENTS

Page

I. INTRODUCTION 7

II. PROCEDURAL HISTORY 8

III. DISCUSSION 10

A. Proposed Class Definition 12

B. Settlement Terms and Evaluation 12

1. Amount and Manner of Distribution of the Compensation to be Provided to Class Members Including the Amount, or an Estimate, of What Each Class Member Will Receive 22

2. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Class Members or Might Revert to the Defendant 23

3. Scope of the Release of Class Members' Claims 23

4. Tax Treatment of Settlement Amounts 24

5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations 25

C. Notice to Class Members 25

D. Typicality and Adequacy of Representation 26

1. Class Representative's Claims are Typical of the Class 26

2. Class Counsel Have Adequately Represented the Class and Have Experience with Wage and Hour Class Action 27

E. Costs and Fees 28

1. Attorneys' Fees and Costs 28

2. Proposed Payment to the Class Representative 29

3. Settlement Administration Costs 30

IV. NOTICE TO THE LWDA 30

V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL 31

TABLE OF AUTHORITIES

Page(s)

State Cases

Alvarado v. Dart Container Corp., 4 Cal. 5th 542, 573 (2018).....15

Amaral v. Cintas Corp. No. 2, 163 Cal.App.4th 1157, 1209 (2008) 18

Brinker Restaurant Corp. v. Superior Court, 53 Cal. 4th 1004, 1040 (2012) 15

Carrington v. Starbucks Corp., 30 Cal. App. 5th 504 (2018).....19

City and County of San Francisco v. Sweet, 12 Cal. 4th 105 (1995).....28

City of San Jose v. Superior Court, 12 Cal. 3d 447 (1974) 27

Cochran v. Schwan's Home Service, Inc., 228 Cal. App. 4th 1137, 1144 (2014).....16

Donohue v. AMN Services, LLC, 11 Cal. 5th 58, 74-78 (2021).....15

Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794 (1996) 11

Duran v. U.S. Bank Nat'l Ass'n, 59 Cal. 4th 1 (2014).....20

Naranjo v. Spectrum Security Services, Inc., 88 Cal. App. 5th 937 (2023).....16, 17

Richmond v. Dart Industries, Inc., 29 Cal. 3d 462 (1981).....27

Serrano v. Priest, 20 Cal. 3d 25 (1977) 28

Stephens v. Montgomery Ward & Co., 193 Cal. App. 3d 411 (1987) 27

Vasquez v. Superior Court, 4 Cal. 3d 800 (1971).....27

Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224 (2001).....11, 28

Federal Cases

Bernstein v. Virgin America, Inc., 3 F.4th 1127, 1144 (9th Cir. 2021).....18

Boeing Co. v. Van Gemert, 444 U.S. 472 (1980).....28

Hammon v. Barry, 752 F. Supp. 1087 (D.D.C. 1990) 13

Hanlon v. Chrysler Corp., 150 F.3d 1011 (1998).....26

Hernandez v. Towne Park, Ltd., 2012 WL 2373372, at *17 n.77 (C.D. Cal. 2012).....17

In re Armored Car Antitrust Litig., 472 F. Supp. 1357 (N.D. Ga. 1979) 13

In re Baldwin-United Corp., 105 F.R.D. 475 (S.D.N.Y. 1984).....11

In re Chicken Antitrust Litig., 560 F. Supp. 957 (N.D. Ga. 1980).....12

In re Mego Fin. Corp. Secs. Litig., 213 F.3d 454, 459 (9th Cir. 2000) 21

Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co., 834 F.2d 677 (7th Cir. 1987) 12

Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523 (C.D. Cal. 2004).....13

Priddy v. Edelman, 883 F.2d 438 (6th Cir. 1989).....12

Schiller v. David's Bridal, Inc., 2010 WL 2793650 (E.D. Cal. 2010).....17

Snow v. United Parcel Service, Inc., 2020 WL 1638250 (C.D. Cal. 2020).....17

Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n, 79 F.R.D. 571 (E.D. Pa. 1978).....13

Steinberg v. Carey, 470 F. Supp. 471 (S.D.N.Y. 1979).....13

Vincent v. Hughes Air West, Inc., 557 F. 2d 759 (9th Cir. 1997) 28

Statutes, Codes & Regulations

Civil Code § 1542 30

Code of Civil Procedure § 384.....23

Labor Code § 203.....16

Labor Code § 2699.....18

Labor Code § 2699(e)(2).....19

Labor Code § 2802.....16

Other Authorities

Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions (4th ed. 2002) 10, 11, 13

The *Manual for Complex Litigation, Third* § 30.41 10

I. INTRODUCTION

This is a wage and hour class and representative Private Attorneys General Act ("PAGA") action seeking statutory and civil penalties under the California Labor Code. Plaintiff alleges that Defendant failed to pay all minimum and overtime wages, failed to provide proper off-duty meal and rest periods or pay premiums in lieu thereof, failed to reimburse business expenses, failed to provide accurate itemized wage statements, failed to timely pay all wages upon separation of employment, and engaged in unfair business practices. Plaintiff brings class and PAGA claims based on these violations. The Parties have reached a proposed class and PAGA action settlement, the terms of which are reflected in the Parties' Joint Stipulation and Settlement Agreement for Class Action and PAGA Claims ("Settlement," "Settlement Agreement," or "SAR")[1].

Prior to the settlement of this action, the Parties thoroughly investigated the facts relating to the class and PAGA claims alleged in the lawsuit and engaged in a thorough study of legal principles applicable to the claims asserted against Defendant. Through the exchange of informal discovery, Defendant provided necessary data pertaining to the number of putative class members and number of workweeks at issue, a sample of time and pay records of the putative class members, as well as information pertaining to Defendant's payroll policies and practices. Thereafter, the Parties attended a full day of mediation with Hon. Paul Burdick, Ret. As a result, the Parties reached the current settlement of the class and PAGA claims. The following represents the key terms of the settlement:

- Gross Settlement Amount of $135,000.00, which will be paid by Defendant and distributed to the Class on a **non-reversionary** basis (*See* SAR ¶¶ 17, 55);
- Estimated Class of 114 individuals who collectively worked 6,706 workweeks (SAR ¶ 57);
- Class Members do **not** need to submit claim forms to participate in the settlement (*Id*. ¶ 62.a);
- Plaintiff's Service Award of up to $5,000.00 (SAR ¶ 61.a);
- Class Counsel's attorneys' fees of up to $44,995.50 (1/3 of the Gross

[1] The Settlement Agreement is attached to the Declaration of Sean S. Kaneshiro ("Kaneshiro Decl.") as **Exhibit A**.

Settlement Amount) (SAR ¶ 61.b);

- Actual litigation costs and expenses up to $10,000.00 (SAR ¶ 61.b);
- Settlement Administration Costs of up to $7,000.00 (SAR 61.d; Kaneshiro Decl., ¶ 32);
- PAGA penalties of $5,000.00, of which 75% or $3,750.00 will go to the LWDA, and 25% or $1,250.00 will be distributed to PAGA Members, defined as "all non-exempt, hourly employees who worked for Defendant in the State of California at any time from November 18, 2021, through June 30, 2026". (SAR ¶¶ 24, 27, 61.c);
- Net Settlement Amount of approximately $63,004.50;
- Raw average of approximately **$552.67** to each Participating Class Member ($63,004.50 ÷ 114 Class Members);
- Workweek Value is $9.40 ($63,004.50 ÷ 6,706 Workweeks).

The Parties believe that the settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, adequate, and reasonable in light of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiff and his counsel are confident that they could prevail on class certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific risks that a class might not be certified, that Plaintiff could fail to establish liability, and/or that Plaintiff would be unable to prove damages in the amounts sought. Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. PROCEDURAL HISTORY

Plaintiff Daniel Rosas Molina ("Plaintiff"), a former non-exempt employee of Defendant DHT Incorporated dba Midas Auto Care ("Defendant"), submitted notice to the California Labor and Workforce Development Agency ("LWDA") of alleged Labor Code violations by Defendant and of his intent to pursue representative claims on behalf of himself and other aggrieved employees. Kaneshiro Decl., ¶ 2. After expiration of the applicable notice period, on July 26, 2023, Plaintiff filed this action in the Superior Court of California, County of Monterey, individually and on behalf of similarly situated employees. The Complaint asserted individual, class, and representative claims arising from Defendant's alleged wage-and-hour practices. *Id*. ¶ 3.

On January 29, 2024, Plaintiff filed the operative First Amended Complaint ("FAC"),

further alleging that Defendant's policies and practices were applied on a broader basis to non-exempt employees. *Id*. ¶ 4. The FAC asserts eight causes of action for: (1) failure to provide meal periods or compensation in lieu thereof; (2) failure to provide rest periods or compensation in lieu thereof; (3) failure to pay hourly and overtime wages; (4) failure to comply with itemized wage statement requirements; (5) failure to pay all wages upon termination; (6) failure to indemnify necessary business expenses; (7) civil penalties pursuant to the Private Attorneys General Act ("PAGA"); and (8) unfair business practices.

Plaintiff alleges that Defendant maintained uniform wage-and-hour policies and practices affecting Plaintiff and other non-exempt employees, including failing to provide timely, duty-free meal and rest periods; failing to properly compensate employees for overtime and other wages by excluding non-discretionary bonuses and incentive compensation from the regular rate of pay; failing to reimburse necessary business expenses, including expenses associated with personal cellular phones and other work-related expenditures; issuing inaccurate wage statements; and failing to timely pay all wages due upon separation from employment. *Id*. ¶ 5. Plaintiff further alleges that these practices resulted in corresponding civil penalties under PAGA. Defendant filed its Answer to the FAC on April 24, 2025. Defendant disputes and denies Plaintiff's allegations and claims and denies liability for the alleged Labor Code violations. *Id*. ¶ 6.

In an effort to explore an early resolution of the action without the expense of formal litigation, the Parties agreed to engage in informal discovery. *Id*. ¶ 7. In connection with that process, Defendant produced a sampling of timekeeping and payroll records and related data for Plaintiff and 37 other putative class members who collectively worked 17,676 shifts, as well as relevant policy and personnel documents. Plaintiff and his counsel reviewed and analyzed the information produced by Defendant in preparation for mediation. *Id*. ¶ 8. According to the data produced, the putative class consists of approximately 114 employees who collectively worked approximately 6,706 workweeks. The PAGA group consists of approximately 54 aggrieved employees who collectively worked approximately 1,584 pay periods during the relevant period. Based on Defendant's production of records for a sample of

38 employees, representing approximately 33.3% of the putative class, Plaintiff and his counsel were able to evaluate the merits of the claims and Defendant's potential exposure.

After thorough investigation and evaluation of the facts and claims at issue, the Parties attended a full-day mediation with the Honorable Paul Burdick (Ret.). *Id*. ¶ 9. Following arm's-length negotiations facilitated by Judge Burdick, the Parties reached a settlement resolving the class and PAGA claims asserted in this Action. *Id*. ¶ 10. The Parties thereafter memorialized the terms of their settlement in the Joint Stipulation and Settlement Agreement for Class Action and PAGA Claims.

III. DISCUSSION

Any settlement of a class action lawsuit must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the class members for their comment or objections. The *Manual for Complex Litigation, Third* § 30.41 states:

> Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice…be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.

(Fed. Jud. Ctr., 3rd ed. 1995).

Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing." Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions (4th ed. 2002) § 11.26.

The procedures for the parties' submission of a proposed settlement for preliminary approval by the court also are discussed in *4 Newberg on Class Actions*:

> When the parties to an action reach a monetary settlement, they will usually prepare and execute a joint stipulation of settlement, which is submitted to the court for preliminary approval. The stipulation should set forth the central terms of the agreement, including but not limited to, the amount of settlement, form of payment, manner of determining the effective date of settlement and any recapture clause.

Id. § 11.24.

Here, the Parties have reached such an agreement and have submitted to this Court in connection with this Motion a copy of the Settlement Agreement fully setting forth the agreement reached among the Parties. The Settlement Agreement sets forth all terms of the agreement reached by the Parties, which include, among other things, the method for calculating the Class Members' Individual Settlement Payments.

The parties also may, at the preliminary approval stage, request that the court provisionally approve certification of the class – conditional upon final approval of the settlement. "[P]re-certification settlements are routinely approved if found to be fair and reasonable." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *accord Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was reached before any "adversary certification," the court was satisfied that it was "fair, adequate and reasonable"); *In re Baldwin-United Corp*., 105 F.R.D. 475, 478 (S.D.N.Y. 1984) ("many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals"). As further explained by Professor Newberg:

> The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal…may be set out in conditional orders granting tentative approval to the various items submitted to the court. Three basic rulings are often conditionally entered at this preliminary hearing. These conditional rulings may approve a temporary settlement class, the proposed settlement, and the class counsel's application for fees and expenses.

4 Newberg on Class Actions § 11.26.

In addition to such terms as class identification, settlement amount, and payment procedures, the Settlement Agreement reached among the Parties contains a provision

pursuant to which the Parties stipulate to the Court's provisional certification of the Settlement Class for the purposes of this settlement only. SAR ¶ 49. Defendant has reserved its right to contest class certification in the event that the settlement is not approved and litigation resumes. SAR ¶ 53.

A. Proposed Class Definition

The current settlement is being settled on behalf of "all non-exempt, hourly employees who worked for Defendant in the State of California" during the Class Period. SAR ¶ 3. The Class Period is defined as the time period beginning on July 26, 2019, and ending on June 30, 2026 ("Class Period"). SAR ¶ 8. Defendant estimates that there are approximately 114 individuals that comprise the Class. SAR ¶ 57.

Pursuant to the Settlement Agreement, the Net Settlement Amount will be apportioned among the Class Members on a *pro rata* basis, based on the number of Workweeks worked by each Class Member during the Class Period, as compared to the total number of Workweeks worked by all Class Members during the Class Period. SAR ¶ 62.b. Based on the data provided to Plaintiff, there are approximately 6,706 Workweeks worked in the Class Period by 114 Class Members. SAR ¶ 57. If at the time of Preliminary Approval, the actual number of workweeks worked by the entire Class during the Class Period ("Actual Workweeks") exceeds the Estimated Workweeks by 110% (i.e., 7,377 workweeks), then Defendant will increase the Gross Settlement Amount by one percent (1%) for every percentage increase above 10%. *Ibid*.

B. Settlement Terms and Evaluation

Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co*., 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig*., 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc*., 221 F.R.D. 523, 528 (C.D. Cal.

2004); *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig*., 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

While the recommendations of counsel proposing the settlement are not conclusive, the court can properly take them into account, particularly where, as here, they have been involved in informal discovery and negotiations for some period of time, appear to be competent, have experience with this type of litigation, and have exchanged substantial evidence from the opposing party. *See 4 Newberg on Class Actions*, *supra* § 11.47; *Nat'l Rural Telecomms. Coop*., 221 F.R.D. at p. 528 ("[s]o long as the integrity of the arm's length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement…[citations] and 'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation").

Here, both Plaintiff's and Defendant's counsel have a great deal of experience in wage and hour class action litigation. Plaintiff's counsel have been approved as class counsel in a number of wage and hour class actions and have extensive litigation experience. Kaneshiro Decl. ¶ 26. Each side has apprised the other of their respective factual contentions, legal theories, and defenses, resulting in negotiations taking place between the Parties. *Id*. ¶ 27.

Prior to the mediation, Plaintiff engaged in informal discovery. Plaintiff was provided with data pertaining to putative class members during the relevant class period, as well as a sample of time and payroll records. *Id*. ¶ 7. From this data, Plaintiff was able to investigate the claims asserted and conduct an exposure analysis that informed Plaintiff's position at the mediation. *Id*. ¶ 8. Based on the data provided by Defendant, Plaintiff estimated Defendant's potential exposure as follows:

- Meal Period Violations: $282,819.60 based on a 24% violation rate derived from Defendant's sample timekeeping records. Of 16,722 meal-period-eligible shifts in the sample, 4,120 reflected a missed or late meal period. Extending that violation rate to the putative Class resulted in approximately 12,040 estimated violations.
- Rest Period Violations: $291,017.61 based on a 24% violation rate reflected in the meal-period data. With 51,621 estimated rest-period-eligible shifts, this would result in approximately 12,389 estimated

violations to the putative Class.

- Unpaid Wages: $167,788.76 for underpaid overtime, sick pay, and vacation wages resulting from Defendant's alleged failure to include non-discretionary bonuses in employees' regular rates of pay. Of the 37 employees for whom Defendant produced sample payroll data, 12 received bonuses, which represented approximately 20% of their total compensation. Plaintiff applied the resulting regular-rate adjustment to estimate class-wide underpayments.
- Unreimbursed Business Expenses: $33,530.00 based on an estimate of $10 per pay period for required personal cell phone use, work boot purchases, and gas and mileage, for the approximately 3,353 pay periods worked by putative Class Members.
- Waiting Time Penalties: $569,397.60 based on approximately 101 former employees, an average hourly rate of $23.49, and the maximum 30-day penalty provided by Labor Code section 203.
- Wage Statement Penalties: $329,600.00 based on approximately 114 Class Members and 3,353 pay periods, applying the statutory penalties and individual $4,000 cap where appropriate.
- PAGA Penalties: $158,400.00 based on approximately 1,584 pay periods worked by approximately 54 aggrieved employees during the relevant PAGA period and a $100 penalty per pay period.

Kaneshiro Decl., ¶¶ 16-17.

While the total theoretical exposure of Plaintiff's class and PAGA claims based on the above amounts to as high as approximately $1,832,553.97, this analysis does not take into account Defendant's arguments to liability and to class certification as further explained below.

On the merits, there are also significant risks presented if Plaintiff was to move forward with litigation. *Id*. ¶ 18. Defendant maintains that its written policies complied with California law, including policies requiring timely meal periods, authorizing rest periods, and prohibiting off-the-clock work. Defendant further contends that Plaintiff and other employees were paid pursuant to lawful compensation arrangements, including individualized bonus agreements, and that its records demonstrate compliance with its wage-and-hour obligations. If Defendant successfully established these positions, they would present substantial risks to Plaintiff's ability to establish liability and obtain class certification.

With respect to meal and rest period claims, Plaintiff contends that Defendant's

timekeeping records demonstrate a pattern of noncompliant breaks. *Id*. ¶ 19. Of the 16,722 meal-period-eligible shifts in Defendant's sample, approximately 24% reflected a missed or late meal period. Based on this sample, Plaintiff calculated Defendant's total potential exposure to the full Class at 12,040 violations for $282,819.60. Plaintiff applied the same violation rate to rest periods, which Defendant did not record, resulting in estimated exposure of $291,017.61. At mediation, Plaintiff contended that *Donohue v. AMN Services, LLC,* 11 Cal. 5th 58, 74-78 (2021) supported a rebuttable presumption of meal period violations based on Defendant's records. Defendant, however, maintained that it had lawful written policies requiring timely meal periods, authorizing rest periods, and prohibiting off-the-clock work. Defendant relied on *Brinker Restaurant Corp. v. Superior Court,* 53 Cal. 4th 1004, 1040 (2012), to argue that an employer need only provide employees the opportunity to take compliant breaks and is not required to police whether they do so. Defendant further contended that determining why individual employees missed or took late breaks would require individualized inquiries, creating a significant risk to both class certification and Plaintiff's ability to establish class-wide liability.

With respect to the unpaid wage claims, Plaintiff contends that Defendant failed to properly calculate employees' regular rates of pay by excluding non-discretionary bonuses and incentive compensation when calculating overtime, sick pay, and vacation wages. Kaneshiro Decl., ¶ 20. At mediation, Plaintiff relied on *Alvarado v. Dart Container Corp.,* 4 Cal. 5th 542, 573 (2018), for the principle that non-discretionary bonus compensation must be incorporated into the regular rate when calculating overtime compensation. Defendant's sample payroll records showed that 12 of the 37 sampled employees received bonuses, which represented approximately 20% of their total compensation. Extending these resulting underpayments to the Class, Plaintiff estimated potential exposure of $167,788.76 for underpaid overtime, sick pay, and vacation wages. Defendant disputes these claims, maintaining that employees were properly paid and that performance-based bonuses were limited to certain Service Advisors and managers and were governed by individualized agreements with differing bonus structures. Defendant therefore asserted that the claims present individualized issues

unsuitable for class treatment, and that only seventeen employees received these bonuses during the Class Period.

With respect to unreimbursed business expenses, Plaintiff contends that Defendant violated Labor Code § 2802 by failing to reimburse employees for necessary expenditures incurred for Defendant's benefit, including work-related use of personal cell phones, required non-slip work boots, and mileage or vehicle expenses incurred performing work-related errands between Defendant's locations. Kaneshiro Decl., ¶ 21. At mediation, Plaintiff relied on *Cochran v. Schwan's Home Service, Inc.,* 228 Cal. App. 4th 1137, 1144 (2014), which held that an employer must reimburse a reasonable portion of an employee's personal cell phone expenses when the phone is required for work. For mediation purposes, Plaintiff estimated these expenses at $10 per pay period, resulting in potential class-wide exposure of $33,530. Defendant disputed the claim, contending that employees were not required to use their personal cell phones because company phones were available at both locations and that Defendant supplied the tools and equipment necessary for employees to perform their duties.

With respect to waiting time penalties, Plaintiff contends that Defendant failed to pay all wages due to former employees upon separation, including unpaid meal and rest period premiums, regular-rate underpayments, and other compensation. Kaneshiro Decl., ¶ 22. Plaintiff relies on *Naranjo v. Spectrum Security Services, Inc*., 88 Cal. App. 5th 937 (2023), which holds that missed-break premium pay constitutes wages that may support waiting time penalties under Labor Code § 203 when the statutory requirements are satisfied. Based on Defendant's data identifying approximately 101 former employees, Plaintiff calculated potential exposure of $569,397.60, assuming the maximum 30-day penalty and an average hourly rate of $23.49. Defendant disputed this derivative claim based on its position that no underlying wages or premiums were owed and, therefore, no unpaid wages remained due at separation. Additionally, Plaintiff also faced a potential defense as to the willfulness required by section 203. *See, e.g. Naranjo, supra*, 88 Cal. App. 5th at pp. 945.

With respect to wage statement penalties, Plaintiff contends that Defendant's failure to pay and report meal and rest period premiums, regular-rate underpayments, and other

compensation resulted in inaccurate wage statements in violation of Labor Code section 226. Kaneshiro Decl., ¶ 23. Plaintiff relied on *Naranjo, supra,* 88 Cal. App. 5th at page 944, which recognizes that unpaid meal and rest period premiums constitute wages and that the failure to report such premiums may support wage statement liability. Based on approximately 114 Class Members and 3,353 pay periods, Plaintiff estimated potential statutory penalties of $329,600, applying the $50 initial and $100 subsequent-pay-period penalties and the $4,000 per-employee statutory cap. Defendant disputed the claim as derivative of the underlying wage-and-hour violations and maintains that no wages or premiums were improperly omitted. Moreover, section 226 penalties require a "knowing and intentional" violation. Defendant was thus entitled to a "good faith" defense on this claim. *See, e.g. Naranjo, supra*, 88 Cal. App. 5th at p. 948.

With respect to PAGA, Plaintiff contends that the same Labor Code violations underlying the class claims—including meal and rest period violations, unreimbursed business expenses, wage statement violations, and derivative waiting time violations—support civil penalties on behalf of Plaintiff and other aggrieved employees. Kaneshiro Decl., ¶ 24. Plaintiff also recognized uncertainty concerning whether PAGA penalties could be "stacked" by imposing a separate penalty for each distinct Labor Code violation occurring during the same pay period. Federal courts applying California law have recognized that multiple PAGA penalties potentially may be assessed for separate Labor Code violations within the same pay period. *Hernandez v. Towne Park, Ltd.,* 2012 WL 2373372, at *17 n.77 (C.D. Cal. 2012) [recognizing federal decisions permitting PAGA penalties for separate types of Labor Code violations]; *Schiller v. David's Bridal, Inc.,* 2010 WL 2793650 (E.D. Cal. 2010) [recognizing the possibility of PAGA penalties for each separate cause of action]. Other courts have similarly recognized stacking as a potential measure of maximum PAGA exposure while acknowledging uncertainty concerning whether such penalties ultimately would be imposed. *See, e.g., Hamilton v. Juul Labs, Inc.,* 2021 WL 5331451, at *9 (N.D. Cal. 2021); *Snow v. United Parcel Service, Inc.,* 2020 WL 1638250 (C.D. Cal. 2020). In addition, although PAGA permits heightened penalties for subsequent violations, such penalties generally require prior

notice to the employer by a court or the Labor Commissioner that its conduct violates the Labor Code, and there is no indication Defendant received such notice here. *Bernstein v. Virgin America, Inc.,* 3 F.4th 1127, 1144 (9th Cir. 2021); *Amaral v. Cintas Corp. No. 2,* 163 Cal.App.4th 1157, 1209 (2008). In light of the uncertainty concerning stacking and heightened penalties, Plaintiff conservatively elected not to stack penalties for the multiple Labor Code violations alleged in this action and applied only initial $100 penalties. Accordingly, based on Defendant's data identifying approximately 54 aggrieved employees who worked 1,584 pay periods, Plaintiff applied only the single $100 penalty per pay period, resulting in estimated maximum PAGA exposure of $158,400.

Defendant disputed the underlying violations and further contended that even if violations were established, the Court has discretion under Labor Code § 2699 to substantially reduce PAGA penalties where the resulting award would be unjust, arbitrary, oppressive, or confiscatory. Kaneshiro Decl., ¶ 24. Defendant further asserted that its good-faith efforts to comply with California wage-and-hour law and its corrective measures after learning of potential compliance issues are grounds for reducing any penalty award. Accordingly, the PAGA claim presented risks to establishing the predicate Labor Code violations and to the amount of penalties the Court ultimately would impose.

Based on the foregoing, Plaintiff estimates Defendant's potential exposure to all claims as follows:

Claim	**Potential Exposure**
Meal Period Premiums	$282,819.60
Rest Period Premiums	$291,017.61
Underpaid Overtime, Sick Pay, and Vacation Wages	$167,788.76
Unreimbursed Business Expenses	$33,530.00
Waiting Time Penalties	$569,397.60
Wage Statement Penalties	$329,600.00
PAGA Penalties	$158,400.00
Total Estimated Exposure	**$1,832,553.97**

With respect to Plaintiff's class claims, exclusive of PAGA penalties, Plaintiff calculated Defendant's potential exposure at approximately $1,674,153.97 ($1,832,553.97 less $158,400.00 in estimated PAGA penalties). Although Plaintiff believes in the merits of the

alleged claims, he recognizes the substantial risks inherent in continued litigation and Defendant's asserted defenses. In particular, penalties, including waiting time and wage statement penalties, accounted for approximately $898,997.60 of the estimated class exposure, and Defendant's good-faith defenses, if successful, could prevent recovery of those damages. Defendant also asserted legal and factual defenses to the underlying wage-and-hour claims, including its facially compliant meal and rest period policies and its contention that bonuses were paid pursuant to individualized compensation arrangements. Plaintiff further faced risks in establishing that the violations reflected uniform practices rather than isolated errors or, with respect to meal and rest periods, individual employee choice. Taking these risks into account, the Parties negotiated a $130,000 settlement of the class claims, representing approximately 7.8% of Defendant's estimated maximum class-wide exposure.

With respect to Plaintiff's claim under the PAGA, Plaintiff estimated that Defendant could face civil penalties of at least $158,400.00 (based on 1,584 pay periods at issue during the PAGA Period). Kaneshiro Decl., ¶ 17. The $5,000 allocated to PAGA penalties thus represents approximately 3.16% of Defendant's total potential PAGA exposure. This settlement amount took into account the substantial uncertainty associated with any ultimate PAGA award, including the need to prove the underlying claims and the Court's discretion to reduce civil penalties. Labor Code § 2699(e)(2) authorizes the Court to reduce an award where, based on the facts and circumstances of the particular case, the otherwise applicable penalty would be "unjust, arbitrary and oppressive, or confiscatory." The exercise of that discretion can result in a substantial reduction even where a plaintiff successfully establishes the underlying violations. As shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), for example, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id*. at p. 517. Upon review, the Court of Appeal found such reduction to be proper. *Id*. at p. 539. Thus, even if Plaintiff ultimately prevailed, Defendant's correction of the challenged policies would support a finding that PAGA's purpose of promoting compliance with the Labor Code had been substantially

fulfilled. Under these circumstances, there remains a meaningful possibility that the Court would exercise its statutory discretion to reduce the penalties and award only a fraction of the maximum amount otherwise available.

The Parties recognize the risk, expense, and delay in continuing litigation with the class and PAGA claims, and believe the settlement to be fair, reasonable, and adequate. Kaneshiro Decl., ¶ 28. Although Plaintiff believes in the merits of his Class and PAGA claims and that the proposed Class can be certified, the Settlement appropriately accounts for the substantial risks identified above, including Defendant's defenses to the underlying claims, the possibility that Plaintiff would not prevail on one or more claims or theories of liability, the risks associated with class certification, the Court's discretion to substantially reduce PAGA penalties, and the delay and uncertainty associated with trial and potential appeals. *Id*. ¶ 29. The risks to class certification are compounded by the California Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained class certification and subsequently prevailed at trial after eight years of litigation, but the judgment and the certification ruling were reversed by the California Supreme Court after an additional five years of litigation. The case was remanded to superior court where class certification was denied and plaintiffs' subsequent appeal also was denied.

Based on a review of all the information and their experience in class action litigation, Class Counsel believes this settlement to be fair, adequate, and reasonable. Kaneshiro Decl., ¶ 30. In addition, Plaintiff's counsel was retained based upon a contingency fee arrangement wherein Plaintiff's counsel agreed to advance all costs and receive no fee unless a recovery was accomplished. *Id*. ¶ 31. Specifically, had Plaintiff failed to prevail in this case, counsel for Plaintiff would have spent a significant amount of time, money and other resources without any benefit or return. Had Plaintiff failed to prevail in the present case, Defendant would have been able to seek costs in connection with their defense of the case. Thus, the settlement for each Settlement Class Member is fair, reasonable, and adequate, given the inherent risks of litigation, the costs of pursuing such an action, and benefit to the Class. The settlement is the result of extensive arm's length negotiations between the Parties and their counsel and was

facilitated by an experienced and neutral mediator.

Numerous courts have held that gross settlements approximating between only 8 and 25% of the defendant's potential exposure are fair and reasonable. *See*, *e.g.*, *In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment"; noting that whether the settlement is fair and adequate depends on the "the difficulties in proving the case"); *Bellinghausen v. Tractor Supply Co*., No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc*., U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which obtained only 9.1% of projected damages, given the risks of continued litigation); *Villegas v. J.P. Morgan Chase & Co*., No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable).

Here, Plaintiff calculated Defendant's combined potential exposure on the class and PAGA claims at approximately $1,832,553.97. Against that potential exposure, the $135,000 non-reversionary Gross Settlement Amount represents approximately 7.4% of Plaintiff's estimated maximum recovery. As discussed above, however, Plaintiff's maximum exposure calculation assumes that he would successfully establish the underlying violations, obtain and maintain class certification, overcome Defendant's defenses, recover substantial waiting time and wage statement penalties, and obtain PAGA penalties without a significant discretionary reduction. The Settlement eliminates these uncertainties and provides Class Members with an immediate monetary recovery without the expense, delay, and risk of continued litigation, trial, and potential appeals. Accordingly, considering the strength of Plaintiff's claims together with the substantial litigation risks, the informed and arm's-length negotiations of experienced

counsel, and the assistance of an experienced neutral mediator, the $135,000 Gross Settlement Amount is fair, reasonable, and within the range of possible approval.

Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class Action Settlement ("Notice Packet") attached to the Settlement Agreement at Exhibit A, should any Class Member wish to pursue his or her own case for the claims being released herein, each Class Member has the right to submit a Request for Exclusion (*i.e.*, opt-out) from the settlement, with the exception of the PAGA claims. *See* Notice Packet. Moreover, as set forth in the Notice Packet, Class Members are advised of their right to object to any of the terms contained in the Settlement Agreement and attend the final approval hearing.

1. Amount and Manner of Distribution of the Compensation to be Provided to Class Members Including the Amount, or an Estimate, of What Each Class Member Will Receive

The Settlement Agreement provides for $135,000.00 as the Gross Settlement Amount. SAR ¶¶ 17, 55. The Net Settlement Amount, calculated after deduction of Class Counsel's attorneys' fees of up to $44,995.50, reimbursement of actual litigation costs and expenses of up to $10,000.00, a Class Representative Service Award to Plaintiff of up to $5,000.00, $5,000.00 in PAGA penalties, and Settlement Administration Costs of up to $7,000.00, is estimated to be approximately $63,004.50. SAR ¶ 61.a-d; Kaneshiro Decl., ¶ 12. Participating Class Members are not required to submit claim forms and will receive a *pro rata* share of the Net Settlement Amount based on the number of Workweeks they worked during the Class Period. *See* SAR ¶ 62.a; Kaneshiro Decl., ¶ 12.

Based on an estimated Class of 114 individuals, on a raw average, each Participating Class Member may recover approximately $552.67 ($63,004.50 ÷ 114 Class Members). Based on approximately 6,706 Workweeks, the estimated value of the Net Settlement Amount is approximately $9.40 per Workweek. The amount actually paid to each Participating Class Member will increase or decrease depending on the number of qualifying Workweeks credited to that individual during the Class Period. Kaneshiro Decl., ¶ 13.

Additionally, the Settlement allocates $5,000.00 to PAGA penalties, of which 75%, or $3,750.00, will be paid to the LWDA, and 25%, or $1,250.00, will be distributed to PAGA

Members on a *pro rata* basis based on the number of pay periods worked during the PAGA Period. *See* SAR ¶ 61.c; Kaneshiro Decl., ¶¶ 14–15. Based on the data provided by Defendant prior to mediation, there are an estimated 54 PAGA Members. Accordingly, on a raw average basis, each PAGA Member is estimated to receive approximately $23.15 ($1,250.00 ÷ 54 PAGA Members), with the actual payment varying according to the number of pay periods worked during the PAGA Period. Kaneshiro Decl., ¶ 15.

Finally, pursuant to the Settlement Agreement, funds from settlement checks that remain uncashed after the applicable check-cashing period will be distributed to the designated *cy pres* beneficiary, Rancho Cielo. *See* SAR ¶ 65. Code of Civil Procedure § 384 requires that any unpaid residue or unclaimed funds from a class action settlement be distributed to nonprofit organizations or foundations that will benefit the class or similarly situated persons. Rancho Cielo is a Monterey County nonprofit organization that provides vocational education and job training to local residents, including hands-on training in automotive repair and related trades. Kaneshiro Decl., ¶ 37. As Defendant operates in the automotive care industry, Rancho Cielo therefore qualifies as a nonprofit organization that benefits persons similarly situated to the Class Members. Plaintiff's counsel has no conflict of interest with Rancho Cielo. *Id*. ¶ 38.

2. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Class Members or Might Revert to the Defendant

None of the settlement funds will revert to Defendant. SAR ¶ 55.

3. Scope of the Release of Class Members' Claims

As a condition of participating in this class action settlement, Class Members who do not submit a valid and timely Request for Exclusion ("Participating Class Members") will release the Released Parties from all claims pleaded in the Action, or that could have been alleged based on the same or similar facts and primary rights asserted in the Action, arising during the Class Period, including:

> (i) Failure to Provide Meal Periods or Compensation in Lieu Thereof (California Labor Code §§ 226.7 and 1198; and the Wage Order); (ii) Failure to Provide Rest Periods or Compensation in Lieu Thereof (California Labor Code §§ 226.7 and 1198; and the Wage Order); (iii) Failure to Pay Hourly and Overtime Wages (California Labor Code §§ 1194 and 1198; and the Wage Order); (iv) Failure to

> Comply with Itemized Employee Wage Statement Requirements (California Labor Code §§ 226, 1174, and 1175; and the Wage Order); (v) Failure to Pay All Wages Upon Termination (California Labor Code §§ 201, 202, and 203; and the Wage Order); (vi) Violation of Labor Code § 2802; (vii) California Labor Code Private Attorneys General Act of 2004 (California Labor Code § 2698); and (viii) Unfair Business Practices (California Business and Professions Code §§ 17200 *et seq.* and Common Law). ("Released Class Claims"). *See* SAR ¶¶ 74, 77.

The release does not extend to claims that cannot lawfully be released, including claims for workers' compensation and unemployment benefits. SAR ¶ 77. The "Released Parties" are defined by the Settlement Agreement to include "(i) Defendant; (ii) Defendant's respective past, present and future heirs, executors, administrators, parents, subsidiaries and affiliates, successors and assigns; and (iii) the past, present and future shareholders, managers, officers, partners, members, agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing." *See* SAR ¶ 33.

In addition, regardless of their decision to participate in the class portion of the settlement, PAGA Members will release the Released Parties from any and all claims for civil penalties for violations of the PAGA, that could have been sought by the Labor Commissioner identified in the PAGA Letters and those predicated on the facts and/or claims alleged in the PAGA Letters sent to the LWDA by Plaintiffs that arose at any time during the PAGA Period ("Released PAGA Claims"). *See* SAR ¶ 78.

Given that the releases above are tailored to only claims pled or that could arise out of the facts alleged in the Action and Plaintiff's respective PAGA letters, that accrued during limited periods of time, the releases are appropriately tailored.

4. Tax Treatment of Settlement Amounts

The Parties have agreed that the settlement payments ("Individual Settlement Payments") to Participating Class Members from the Net Settlement Amount shall be allocated as follows: 10% wages, for which an IRS Form W-2 will issue and from which payroll taxes will be deducted, and 90% penalties and interest, for which an IRS Form 1099 will issue. SAR ¶ 62.c. Defendant will be liable for employer-side payroll taxes. SAR ¶ 56.

The Individual Settlement Payments to PAGA Members from the PAGA Penalties

Fund will be deemed one hundred percent (100%) penalties and be accompanied by an IRS Form 1099. SAR ¶ 63.b.

5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations

As stated above, Class Members do not need to do anything should they wish to receive their share of the settlement funds. In other words, because this is not a claims-made settlement, Class Members will not be required to make a submission to participate in the settlement. Thus, this substantially decreases the burden each Class Member must bear in order to receive their Individual Settlement Payment. If a Class Member does not wish to take part in this settlement and be bound by the Released Class Claims, the Class Member must submit a Request for Exclusion. SAR ¶ 74. If twenty percent (20%) or more of the Class submit a timely and valid Request for Exclusion, Defendant will have the right, but not the obligation, to revoke and void this Settlement at their discretion. SAR ¶ 76.

C. Notice to Class Members

Should the Court grant the instant Motion, Defendant will provide the Settlement Administrator with a list containing each Class Member's full name, most recent mailing address and telephone number, Social Security number, dates of employment, respective number of Workweeks worked during the Class Period and PAGA Period, and any other relevant information needed to calculate settlement payments ("Class List"). SAR ¶ 68. Defendant shall provide this information within twenty-one (15) calendar days of preliminary approval of this settlement. *Ibid*. Upon receipt of the information and prior to mailing the Notice Packet, the Settlement Administrator shall perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. SAR ¶ 70. Within ten (10) calendar days of receipt of the Class List, the Settlement Administrator shall mail the Notice Packet to all Class Members in English and Spanish. *Ibid*. Any notices returned to the Settlement Administrator as non-deliverable on or before the opt-out deadline shall be sent promptly via regular first-class U.S. mail to the forwarding address affixed thereto. SAR ¶ 71. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine the correct address

using a skip trace or other search and perform a re-mailing. *Ibid*.

The Parties have agreed to the language of the Notice Packet. The Notice Packet describes the terms of the settlement and advises Class Members of their opportunity to opt out of the settlement, object to the settlement, and/or dispute the number of Workweeks credited to them. Notice Packet; SAR ¶¶ 62-63, 74-75. Class Members will have forty-five (45) calendar days from the initial mailing of the Notice Packet by the Settlement Administrator to opt out of the settlement, object to the settlement, and/or submit a dispute regarding the number of Workweeks. SAR ¶ 74. Class Members who receive a re-mailed Notice Packet will have an additional fourteen (14) calendar days to respond to the Notice Packet. SAR ¶ 71. Class Members can submit objections to the settlement in writing to the Settlement Administrator.

For disputes regarding the calculation of number of Workweeks or PAGA Pay Periods, Class Members may produce evidence to the Settlement Administrator. SAR ¶¶ 62.a, 63. Any disputes will be resolved by the Settlement Administrator, with Defendant's records presumptively controlling unless the Class Member provides documentation or other evidence supporting additional Workweeks. The Settlement Administrator's determination will be final and binding. The Notice Packet provides for instructions to Class Members on how to submit a Workweek dispute.

If Class Members need further information about the settlement and/or the lawsuit, Class Counsel's contact information and the Settlement Administrator's contact information are provided in the Notice Packet. *See* Notice Packet. The Class Notice will be provided to Class Members in English and Spanish. SAR ¶ 70.

D. Typicality and Adequacy of Representation

1. Class Representative's Claims are Typical of the Class

The commonality requirement is met when there are questions of law and fact common to the class. *See Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1019 (1998) ("The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within the class"). Commonality requires

only that some common legal or factual questions exist; the Plaintiff need not show that all issues in the litigation are identical. *See Richmond v. Dart Industries, Inc*., 29 Cal. 3d 462, 473 (1981). Defendant's conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer's conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the Defendant's policies and practices satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co*., 193 Cal. App. 3d 411, 421 (1987).

Plaintiff alleges that Defendant violated the Labor Code by failing to pay all minimum and overtime wages owed for all hours worked, failing to provide off-duty meal and rest breaks or pay meal and rest period premiums, failing to timely pay all wages when due and upon separation of employment, failing to reimburse business expenses, failing to provide accurate itemized wage statements, and engaging in unfair business practices. Declaration of Plaintiff Daniel Rosas Molina ("Pltf Decl.") ¶¶ 3-7. As a result, Plaintiff alleges that he is owed unpaid wages and penalties for the above violations.

In other words, Plaintiff contends that he was subjected to the same policy and practice as other Class Members and that his claims are typical to those of the Settlement Class.

Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such issues been raised or presented. *Id*. ¶ 8. Plaintiff has taken all necessary steps to represent the interests of the Settlement Class, and by providing information and documents to Plaintiff's counsel. *Id*. ¶ 9. For such reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

2. Class Counsel Have Adequately Represented the Class and Have Experience with Wage and Hour Class Action

From the inception of the case, Class Counsel have zealously represented the interests of the Class. Class Counsel have engaged in significant investigation and meet and confer discussions with Defendant's counsel to obtain informal data and documents and to discuss the merits of the claims on behalf of the Class. Kaneshiro Decl., ¶ 25. The settlement was obtained for the benefit of the Class, as opposed to the individual Class Representative.

Kaneshiro Decl., ¶ 25; Pltf Decl., ¶¶ 8, 10.

E. Costs and Fees

1. Attorneys' Fees and Costs

California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc*., 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc*., 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

The common fund doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits, she may require the passive beneficiaries to compensate those who created the fund. Both California state and federal courts have embraced this doctrine. *Serrano v. Priest*, 20 Cal. 3d at p. 35; *Vincent*, 557 F.2d at p. 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." The reasons for applying the common fund doctrine include:

> Fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful.

Ibid.

Indeed, in 2016, the California Supreme Court has also now held that the award of attorneys' fees in common fund wage and hour class action settlements should start with the

percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created").

The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund. *Id.* at p. 506. This was based on a lodestar amount that required a multiplier of 2.13. *Id*. at p. 487. As the Court held, only when the multiplier is "extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id*. at p. 505.

The Parties have agreed to a payment of a maximum of $44,995.50, or one-third of the Gross Settlement Amount for payment to Class Counsel as attorneys' fees. SAR ¶ 61.b. Further, the parties have agreed to reimbursement of Class Counsel's litigation expenses up to $10,000.00 for reimbursement of actual litigation costs, subject to Court approval. *Ibid*.

Class Counsel have, at their own risk, expended costs to prosecute the Action, including filing the instant Action, effecting service of process, participating in mediation, and paying other litigation-related costs.

Based on the foregoing, the Court should preliminarily approve the attorney's fees and costs as requested by the Parties, subject to lodestar cross-check and review of the reimbursements sought.

2. Proposed Payment to the Class Representative

Class Representative Daniel Rosas Molina requests an enhancement of $5,000.00. Pltf Decl., ¶ 12; SAR ¶ 61.a. The Class Representative met and conferred with Class Counsel on a number of occasions to discuss the case, provided documents and information to Class Counsel, and reviewed the Stipulation of Settlement. Pltf Decl., ¶ 9. In addition to the invaluable services that he provided, Plaintiff also took a significant risk, both professionally and monetarily, in acting as the Class Representative and seeking benefits on behalf of the Settlement Class. Because the claims alleged by the Class Representative involved the

payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant, had he not prevailed in this action. *Id*. ¶ 11.

Furthermore, Plaintiff believes that future employers are much less likely to hire individuals who have filed suit against their employer, particularly cases of this nature, so that Plaintiff may face prejudice in the future from other potential employers. *Id*. ¶ 10. Plaintiff took this risk upon himself and the whole Settlement Class benefited from these risks taken by Plaintiff. Settlement Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a public lawsuit.

In addition, Plaintiff agreed to provide a broader release of claims and waiver of the protections of Civil Code § 1542, which is something that was not required of Class Members. SAR ¶ 79.

For these reasons, the Court should preliminarily approve Plaintiff's enhancement payment.

3. Settlement Administration Costs

The Parties agreed to settlement administration costs of up to $7,000. SAR ¶¶ 61.d Plaintiff solicited competing bids from Phoenix Settlement Administration, which quoted $7,000, and Apex Class Action, which quoted $5,790. Kaneshiro Decl., ¶ 32. The Parties agreed to select Apex Class Action as the administrator, which submitted the lower bid. Based on 114 Class Members, the proposed administration costs amount to approximately $50.79 per Class Member ($5,790). Although this per-member cost is somewhat higher than average, administration costs are generally greater on a per-member basis in smaller class settlements. Given the relatively small class size, the bid is lower than the maximum agreed upon, and the fact that Apex submitted the lowest of the competing bids, the Parties believe the proposed administration costs are reasonable.

IV. NOTICE TO THE LWDA

Concurrently with the filing of this motion, Plaintiff submitted the Settlement Agreement and supporting documents to the LWDA. Kaneshiro Decl., ¶ 36; Ex. B.

V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL

Here, the proposed settlement is fair, adequate, and reasonable. It will result in substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arm's length negotiations conducted by counsel for the respective parties who are experienced in wage and hour class action litigation.

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the proposed Notice Packet, and set a date for a final approval hearing.

Dated: October 28, 2026

FITZPATRICK & SWANSTON

By: /s/ Sean S. Kaneshiro

B. James Fitzpatrick
Sean S. Kaneshiro
Attorneys for Plaintiff,
DANIEL ROSAS MOLINA on behalf of himself and all similarly aggrieved employees

PROOF OF SERVICE

I am employed in the County of Monterey, State of California. I am over the age of 18 and not a party to the within action; my business address is FITZPATRICK & SWANSTON, 555 S. Main Street, Salinas, California 93901.

On the date written below, I served the foregoing document(s), described as **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties in this action as indicated below and by the following means:

Kenneth H. Moreno
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Attorneys for Defendants, DHT INCORPORATED

xx **(BY ELECTRONIC SERVICE)** Pursuant to CCP § 1010.6 and Cal. Rules of Court, Rule 2.251, I caused the document(s) to be served, addressed to the person(s) at the e-mail address(es) listed above. I did not receive within a reasonable time after e-service, any electronic message or other indication that e-service was unsuccessful.

_____ **(BY PERSONAL SERVICE)** I caused such document(s) to be delivered by hand to the office(s) of the addressee(s) during business hours.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 28, 2026, at Salinas, California.

Josie Favila