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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

AFIYA PORTER, individually, MONICA G. FITZMAURICE, individually, and on behalf of other members of the general public similarly situated;

Plaintiffs,

vs.

TRIUMVIRATE ENVIRONMENTAL, INC. , a Massachusetts corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 24CV092940

NOTICE OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM IN SUPPORT THEREOF

Hearing Information:

Date:	January 29, 2026
Time:	9:00 AM
Dept.:	24
Judge:	Hon. Rebekah Evenson

[Filed concurrently with: (1) Declaration of Devin Rauchwerger; (2) Declaration of Brian St. John; (3) Declaration of Plaintiff Afiya Porter; (4) Declaration of Plaintiff Monica G. Fitzmaurice; (5) Declaration of Jodey Lawrence, and (6) [Proposed] Order]

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on January 29, 2026, at 9:00 AM, or as soon thereafter as this matter may be heard by the Court in Department 24 of the Alameda County Superior Court, located at 1225 Fallon Street, Oakland, CA 94612, Plaintiff Afiya Porter ("Plaintiff Porter") and Plaintiff Monica G. Fitzmaurice ("Plaintiff Fitzmaurice") (collectively "Plaintiffs") on behalf of themselves and a Settlement Class, will and hereby do move for an Order:

1) Preliminarily approving the proposed class action settlement and PAGA settlement in the above-captioned case;
2) Preliminarily certifying the Settlement Class;
3) Preliminarily approving the appointment of Plaintiffs as Class Representatives;
4) Preliminarily approving the appointment as Class Counsel of Lawyers for Justice, P.C. and Domb & Rauchwerger LLP;
5) Approving appointment of Phoenix Class Action Administration Solutions as the Settlement Administrator;
6) Approving and directing distribution of notice to the Settlement Class; and
7) Setting a final fairness and approval hearing that is approximately 150 days after the Court grants Preliminary Approval.

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

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The proposed settlement is fair, adequate, and reasonable and in the best interests of the settlement class as a whole, 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.

Date: January 6, 2026

Respectfully submitted,
DOMB & RAUCHWERGER LLP

By: ______________________

Zack I. Domb
Devin E. Rauchwerger
Eric Y. Hahn
Curtis P. Davis
Attorneys for Plaintiffs, Afiya Porter, Monica G. Fitzmaurice, and the Proposed Class

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I. **INTRODUCTION**

Plaintiffs Afiya Porter and Monica G. Fitzmaurice ("Plaintiffs"), and Defendant Triumvirate Environmental, Inc., ("Defendant") have reached a proposed class action and PAGA settlement. Plaintiffs and Defendant (collectively, the "Parties") submit the Joint Stipulation of Class Action and PAGA Settlement and Release (the "Settlement" or "Settlement Agreement") to the Court for its preliminary approval. The Settlement Agreement ("SA") is attached to the Declaration of Devin Rauchwerger ("Rauchwerger Decl.") ¶ 2 as **Exhibit 1**.[1]

The Settlement provides for a **non-reversionary** payment of $795,000.00 for which Defendant will be separately responsible for any employer payroll taxes. Approximately $415,250.00 will be available for disbursement to Settlement Class Members (the "Net Settlement Amount"), which does not include the separate PAGA Amount of $50,000.00 (including Individual PAGA Payments) that will be paid only to the PAGA Employees. There are believed to be approximately 214 Class Members as of May 1, 2025, and the average Individual Settlement Payment will be approximately $1,940.42 (not including the separate Individual PAGA Payments that will be paid only to the PAGA Employees).

The Settlement occurred as a result of extensive arm's length negotiations by experienced counsel after sufficient discovery and investigation into the facts with guidance of Sonya Goodwin, Esq., a highly experienced and well-respected class action mediator. As detailed below, the Settlement is fair, reasonable, and in the best interests of the Settlement Class.

II. **BACKGROUND AND PROCEDURAL HISTORY**

A. **The Pleadings & Nature of The Action**

Defendant Triumvirate Environmental, Inc. provides services such as waste management and disposal, Environmental Health and Safety (EHS) consulting services, lab and facility services. (Rauchwerger Decl. ¶ 3.)

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[1] For ease of reference and consistency, defined terms from the Settlement Agreement are utilized below.

On September 24, 2024, Plaintiff filed the above-entitled civil complaint alleging ten causes of action for: (1) Violation of Cal. Labor Code §§ 510, 1198 (Unpaid Overtime), (2) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums), (3) Violation of Cal. Labor Code § 226.7, (Unpaid Rest Period Premiums), (4) Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1 (Unpaid Minimum Wages), (5) Violation of Cal. Labor Code §§ 201, 202 (Final Wages Not Timely Paid), (6) Violation of Labor Code §§ 204 (Wages Not Timely Paid During Employment), (7) Violation of California Labor Code § 226(a) (Failure to Provide Accurate Itemized Wage Statements), (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records), (9) Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses), and (10) Violation of Cal. Business & Professions Code § 17200, et seq. (Rauchwerger Decl. ¶ 4.)

On June 3, 2025, Plaintiff Fitzmaurice submitted a letter to the Labor and Workforce Development Agency alleging various violations of the California Labor Code. (Rauchwerger Decl. ¶ 5.)

Lawyers for Justice filed a Notice of Association on July 7, 2025, associating in Domb & Rauchwerger LLP into the case in order to assist with the settlement agreement and process. (Rauchwerger Decl. ¶ 6.)

On September 23, 2025, Plaintiff Porter filed a First Amended Complaint, adding Plaintiff Fitzmaurice as an additional plaintiff and adding a cause of action for penalties under PAGA ("Operative Complaint"). (Rauchwerger Decl. ¶ 7.)

B. <u>Discovery Taken By The Parties</u>

Plaintiffs' Counsel propounded multiple sets of formal written discovery, however the Parties ultimately agreed to hold off on formal discovery pending mediation and instead exchanged information via informal discovery. (Declaration of Brian St. John "St. John Decl." ¶ 11.) The Parties also held numerous meetings and informal conferences prior to the mediation wherein they exchanged information, additional class data, and theories of the case, including a joint retention of a third-party data consultant. (*Id.*) Class Counsel analyzed a volume of information, documents, and data obtained from Plaintiffs, Defendant, and other sources. (*Id.*)

C. Mediation With Sonya Goodwin, Esq.

The Parties participated in a full-day mediation with Sonya Goodwin, Esq on May 1, 2025. (St. John Decl. ¶ 13.) The Parties agreed to use Ms. Goodwin based on her excellent skills and experience as a mediator in wage-and-hour class actions such as this one. (*Id.*) After contentious and lengthy negotiations, the Parties accepted a mediator's proposal of $795,000.00, which was ultimately memorialized in a Memorandum of Understanding, which became effective on June 5, 2025. (*Id.*) Lawyers for Justice, P.C., then asked Domb & Rauchwerger LLP if their offices would associate into the case in order to facilitate getting the Settlement finalized and approved. (Rauchwerger Decl. ¶ 8.) Thereafter, the Parties negotiated and executed the long-form Settlement Agreement. (*Id.*)

III. LEGAL ANALYSIS OF SETTLEMENT

A. Two-Step Settlement Process

Any settlement of class litigation must be reviewed and approved by the Court. (Cal. Rules of Court, rule 3.769; Fed. Rules Civ. Proc. 23(e).[2]) This is done in two steps: (1) a preliminary review by the trial court, and (2) a final review after notice has been distributed to the Settlement Class informing them of the terms of the settlement and allowing them to exclude themselves from and/or object to the settlement.

B. The Settlement Warrants Preliminary Approval Because It Is Fair And Reasonable.

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial Court. (*Wershba v. Apple Computer* (2009) 91 Cal.App.4th 224, 234-235; *Dunk v. Ford Motor Co.* (1966) 48 Cal.App.4th 1794.) Pursuant to California Rules of Court, rule 3.769(d), 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."

[2] The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, Plaintiffs cite Federal Rule 23 and federal case law in addition to California law.

(*Wershba v. Apple Computer, supra,* 91 Cal.App.4th at p. 240.) A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. No one factor should be determinative, but rather all factors should be considered. These criteria have been summarized as follows:

> "If the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement."
>
> Manual of Complex Litigation, Second § 30.44, at 229.

Moreover, a proposed settlement is presumptively fair and reasonable where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389 (citations omitted).) Here, as discussed above and further below, the Settlement meets all these criteria, including having been reached through an arms-length negotiation by way of a mediator's proposal, having a sufficient investigation conducted to determine the settlement is fair, and being agreed to by counsel who all have extensive experience with class actions. (Rauchwerger Decl. ¶¶ 26-27; St. John Decl. ¶¶ 2-7.) Furthermore, there is no reason to suspect that the amount of class members objecting will be high. (Rauchwerger Decl. ¶ 9.)

C. <u>Due To The Risks Of Continued Litigation, The Settlement Is Fair And In The Best Interests Of The Class.</u>

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel believe that the settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, adequate, and is in the best interest of the Class in light of all known risks, facts and circumstances. (Rauchwerger Decl. ¶ 10.) These risks include: the risk of significant delay in class members receiving any type of funds, particularly if the Defendant was to declare bankruptcy; risks associated with a contested class certification; the Defenses asserted by Defendant; the prospect of Defendant obtaining releases from putative class members; the potential for the Court to reduce PAGA penalties; and numerous potential appellate issues. (*Id.*)

Finally, the Settlement was reached after lengthy negotiations, exchange of documents and information, and with the assistance and supervision of Sonya Goodwin, Esq., who has mediated numerous wage-and-hour class actions, and clearly qualifies to oversee serious and informed negotiations conducted by the Parties. (See *Toure v. Amerigroup Corp.* (E.D. N.Y. 2012) 2012 WL 1432302, at *1 ("The assistance of an experienced mediator, Linda Singer, Esq., reinforces that the Settlement Agreement is non-collusive"); *Morales v. Stevco, Inc.* (E.D. Cal. 2011) 2011 WL 5511767, at *11 (concluding that the class action settlement was not collusive because "[t]he parties utilized an impartial mediator, and the matter was 'resolved by means of a mediator's proposal.'").)

D. <u>The *Kullar* Requirements</u>

In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Court of Appeals explained that, although "not exhaustive," a determination of whether a settlement is "fair, adequate and reasonable" should take into account the strength of a plaintiff's case, the risk, expense, complexity and the likely duration of further litigation. (*Id.* at 127-128.) Subsequently, in *Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, the Court of Appeals clarified:

> "[Appellant] misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the Plaintiffs class could recover if it prevailed on all its claims—a number which appears nowhere in the record of this case. But Kullar does not, as [Appellant] claims, require any such explicit statement of value; it requires a record, which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."

(*Id.* at 409 (quoting *Kullar*, 168 Cal.App.4th at 120))

Here, the potential damages for the causes of action asserted in the Action along with the relative risks, complexities, and expenses are detailed below. The key data points and associated documentation upon which Plaintiffs relied in analyzing the exposure are as follows:

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- Total Class Size: Approximately 214 individuals.
- Total number of estimated Workweeks for class between September 24, 2020 through May 1, 2025: 18,000.
- Total Former Employees within 3-year Statute of Limitations ("SOL"): approximately 109.
- Total number of employees within 1-year SOL: approximately 123.
- Total Aggrieved Employees: approximately 135.
- Total number of pay periods for PAGA members: approximately 5,852.
- Average Regular Rate: $29.07 per hour**.**

(Rauchwerger Decl. ¶ 11.)

1. <u>Failure to Pay Minimum and/or Overtime Wages</u>

Plaintiffs allege that Defendant's uniform policies and practices regularly required them to work off the clock, for which they were not paid. (Rauchwerger Decl. ¶ 12.) Plaintiffs allege that while Defendant's policies and practices required employees to perform work beyond their scheduled hours, Defendant prohibited employees from recording unauthorized overtime. (*Id.*) Plaintiffs also alleged that their time was rounded to the nearest quarter hour. (*Id.*) An analysis of the data revealed that 99.95% of shifts were recorded to the nearest quarter hour. (*Id.*)

To determine Defendant's reasonable exposure to the class for these off the clock allegations, Plaintiffs' counsel assumed that employees lost approximately 5 minutes per work shift due to Defendant's policy of rounding to the quarter hour and not permitting employees to record overtime. (Rauchwerger Decl. ¶ 13.) Based on the 18,000 workweeks, and using the average overtime rate of $43.61 per hour, this would mean that employees would have lost approximately $327,075. (*Id.*)

The risks related to proving these off-the-clock wage and overtime claims are significant, as it is impossible to discern from the records the exact amount of alleged off-the-clock work that each employee purportedly performed and what they are entitled to; these questions could be viewed as creating individualized issues inappropriate for class certification, particularly since Plaintiffs would bear the burden of establishing liability for alleged off-the-clock work.

(*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1051 [holding "that employees are clocked out creates a presumption they are doing no work, a presumption [plaintiff] and the putative class members have the burden to rebut. As all parties agree, liability is contingent on proof [the employer] knew or should have known off-the-clock work was occurring."]; Rauchwerger Decl. ¶ 14.)

2. <u>Failure to Provide Meal & Rest Periods</u>

Plaintiffs contend that they and the Class Members routinely did not receive lawful and compliant meal periods, nor were they paid meal period premiums when a meal period was missed, short or delayed. The premium owed for failing to provide a legally mandated meal or rest period, providing a short or interrupted meal or rest period, is payment of one hour of wages at the employee's regular rate of pay. The range of this claim depends on the number of meal periods that Class Members were denied as a result of Defendant's policies.

To determine Defendant's reasonable exposure for meal break violations, Plaintiffs' Counsel assumed two meal break violations per week. (Rauchwerger Decl. ¶ 15.) At the average hourly rate of $29.07 for the 18,000 workweeks, this would result in Defendant's reasonable exposure of $1,046,520. (*Id.*) Rest period premiums were calculated in the same fashion as meal periods. (Rauchwerger Decl. ¶ 16.) Estimating that each Class Member did not receive a compliant rest break at the same rate that they were denied meal periods, and that the hourly rate for each employee is $29.07, Defendant's reasonable exposure to the Class for missed rest breaks is $1,046,520. (*Id.*)

There are significant risks related to the meal break claim. In particular, most of the records (approximately 93%), showed compliant first meal breaks that were exactly 30 minutes in length, which means Plaintiffs would have needed to rely on testimony from employees to establish that the meal breaks were either inaccurately recorded or were interrupted. (Rauchwerger Decl. ¶ 17.)

There are also risks as to the rest period claim because, *inter alia*, employers are not required to record rest periods and such rest periods are paid. Unlike meal periods, where there are often records showing whether an employee was subject to a violation, there is no such evidence to prove a missed rest period. Managing such claims at trial may be exceedingly difficult. Plaintiffs would again depend on sample witness testimony and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. (See *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 31 (explaining "[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling.").)

3. Failure to Reimburse Necessary Business Expenses

Plaintiffs contended that Defendant failed to reimburse Plaintiffs and other hourly paid employees for necessary business expenses such as a reasonable percentage of employees' cell phone bills for employees required to use their personal cell phones for work purposes. (Rauchwerger Decl. ¶ 18.) California Labor Code section 2802 requires employers indemnify their employees for all necessary expenditures made by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

For this claim, Plaintiffs assume employees are owed $5 per workweek for use of their cell phone for work related reasons, which equates to $90,000 for the class. (Rauchwerger Decl. ¶ 18.)

4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226 (a))

Plaintiffs contend that due to allegedly working off the clock and lack of premium pay for purportedly noncompliant meal/rest periods and/or accurate calculation and payment of wages, the Class Members' wage statements were not accurate. (See *Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal.5th 93, 117 (Because premium pay for missed meal and rest breaks under Lab. Code, § 226.7 compensated employees for the work performed during a break period and therefore constituted wages within the meaning of Lab. Code, §§ 200, subd. (a), 203, 226, penalties are available for an employer's alleged failure to timely pay or report such payments.).) Pursuant to Labor Code section 226(e), statutory damages are "fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000)." As proving actual damages for each employee on a class-wide basis is unlikely, this claim would likely be subject to a one-year statutory period.[3]

Plaintiffs contend that each paystub failed to include complete itemizations for monies owed, including overtime, the number of hours the Class Members worked and the appropriate hourly rates, and the meal and rest break premiums owed to the Class Members. (Rauchwerger Decl. ¶ 19.) There are approximately 123 class members that worked during the one-year statute of limitations. (*Id.*) If we assume that each employee received an average of $1,000 in penalties, that would equate to a total penalty amount of $123,000. (*Id.*)

Some hurdles to obtaining class certification would apply to this claim. Defendant contends that the wage statements were accurate in all material respects and that Labor Code section 226 requires "a knowing and intentional failure by an employer to comply with subdivision (a)." (*See* Lab. Code § 226(e); *see also* Lab. Code § 226(e)(3) (For purposes of this subdivision, a "knowing and intentional failure" does not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake.")) In this regard, Defendant contends that any failure to include information on wage statements was an inadvertent or isolated mistake, and Defendant had a reasonable, good faith belief that its employees were being provided wage statements in compliance with Labor Code section 226(a). (*Naranjo v. Spectrum Sec. Servs., Inc.* (2024) 15 Cal.5th 1056, 1065 ["We now conclude that if an employer reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law."].).

[3] "Courts that have recognized that two limitations periods apply to Section 226 have uniformly found that the $50 and $100 figures recoverable under Section 226(e)(1) are penalties, subject to a one-year limitation period." *Novoa v. Charter Communs., Ltd. Liab. Co.* (E.D. Cal. 2015) 100 F.Supp.3d 1013, 1025 (citing *Taylor v. W. Marine Prods.* (N.D. Cal. Sep. 19, 2014) No. C 13-04916 WHA, 2014 U.S. Dist. LEXIS 133728, at *7; *Sarkisov v. Stonemor Partners* (N.D. Cal. Apr. 3, 2014) *L.P.*, No. C 13-04834 WHA, 2014 U.S. Dist. LEXIS 47021, at *2; *Mouchati v. Bonnie Plants, Inc.* (C.D. Cal. Mar. 6, 2014) No. EDCV 14-00037-VAP (SPx), 2014 U.S. Dist. LEXIS 60855, at *8-9; *Singer v. Becton, Dickinson & Co., Med.-Safe Sys.* (S.D. Cal. July 23, 2008) No. 08cv821 IEG (BLM), 2008 U.S. Dist. LEXIS 56326, at *4-5e.

5. <u>Failure to Timely Pay All Final Wages</u>

An employer who willfully fails to pay any wages due to a terminated employee at the time of their termination or within 72 hours for employees who quit, may be assessed a waiting time penalty pursuant to California Labor Code section 203. The waiting time penalty is an amount equal to the employee's daily rate of pay for each day the wages remain unpaid, up to a maximum of 30 calendar days. From the class list provided to Plaintiffs at mediation, there were approximately 109 separated employees during the three-year statutory period. (Rauchwerger Decl. ¶ 20.) Using the hourly rate of $29.07, the potential exposure for waiting time penalties is $760,471.20 ($29.07/hour x 8 hours/per x 30-day maximum x 109 separated employees). (*Id.*) However, to prevail under Section 203, Plaintiffs must establish not only the underlying violations addressed above and that the wages were paid late, but also that Defendant's failure to timely pay such wages was willful. (Lab. Code § 203(a).) A good faith belief in a legal defense precludes any finding of willfulness. (*Naranjo v. Spectrum Sec. Servs., Inc.* (2023) 88 Cal.App.5th 937, 944–948 [affirming the trial court's ruling that, although meal period premiums were owed to employees, a good faith dispute that such premiums were owed precluded imposing waiting time penalties], affirmed on other grounds in *Naranjo v. Spectrum Sec. Servs., Inc.* (2024) 15 Cal.5th 1056, 1065; *Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54.)

6. <u>Civil Penalties pursuant to the Private Attorney General Act of 2004 ("PAGA") (Lab. Code § 2698 *et seq.*)</u>

PAGA penalties for unpaid minimum wages and meal period violations are $100 per pay period for each initial violation and $200 per pay period for any subsequent violation. (Lab. Code § 2699(f)(2).) Courts have held that there is no "subsequent violation" until an employer has been notified by the Labor Commissioner or a court that its practices are in violation of the law. (*Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355–356; *Amaral v. Cintas* (2008)163 Cal.App.4th 1157). A Court also may award a lesser amount "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Lab. Code § 2699 (e)(2).) The statute of limitations under PAGA is one year.

There are approximately 5,852 pay periods worked by Aggrieved Employees during the PAGA period. (Rauchwerger Decl. ¶ 21.) Assuming that no penalty "stacking" will apply (i.e. the imposition of multiple penalties per pay period) and that the Court will use the violation rate of $100 per pay period, potential PAGA penalties equal $585,200. (*Id.*) Plaintiffs' PAGA claims are also predicated on the violations described above, and thus subject to the same disputes and defenses. (*Id.*) Additionally, PAGA states that a court has discretion to award a lesser amount than the maximum penalty. (Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 528-529 (affirming the trial court's PAGA penalty award of $5 per violation). These uncertainties increased the risks related to the PAGA cause of action.

Pursuant to California Labor Code section 2699(l), the Settlement Agreement, this motion, and all supporting papers have been provided to the Labor and Workforce Development Agency. (Rauchwerger Decl. ¶ 22, **Exhibit 2**.) The amount to be paid to the LWDA ($32,500.00 of the $50,000.00 total) comports with PAGA settlement amounts approved by other courts.[4]

7. Unfair Competition (Bus & Prof. Code § 17200 *et. seq.*)

Though Plaintiffs may assert a UCL claim for purported wage violations, remedies are still limited to restitution and injunctive relief. (See *Korea Supply v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1148-51; see also *Cortez v. Purolator Air Filtration Prod. Co.* (2000) 23 Cal.4th 163, 173.) In wage-and-hour class actions, a UCL claim typically has little to no independent value and is instead pled for the purposes of extending the statute of limitations on unpaid wage claims to four years. The unfair competition law's (UCL) four-year limitations period, rather than the shorter periods of limitation applicable to contractual or statutory wage

[4] *See Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of $7,500 to LWDA out of $6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of $7,500 to LWDA out of $1.25 million common fund settlement); *Hicks v. Toys 'R' Us–Delaware, Inc.* (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving $5,000 PAGA payment in a case involving $4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801 at *14 (approving PAGA penalties of $10,000 as part of $2.5 million settlement).

claims, governs a UCL action based on failure to pay wages because the UCL provides that "any" action on "any" UCL cause of action is subject to the four-year period of limitations. (*Cortez v. Purolator Air Filtration Prod. Co.* (2000) 23 Cal.4th 163, 178.)

8. <u>Total Damages.</u>

Based on the above estimates, the total amount of the possible damages that the class could be awarded at trial, including PAGA penalties, is approximately $3,411,086.20[5]. (Rauchwerger Decl. ¶ 23.)

IV. CLASS CERTIFICATION ANALYSIS

A. The Class Is Properly Certified For Settlement Purposes.

Plaintiffs seek certification of this action for settlement purposes under California Code of Civil Procedure section 382. The California Supreme Court has summarized that:

> "Code of Civil Procedure section 382 authorizes class actions when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court. The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. The "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."

(*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (internal citations omitted)).

While Defendant reserves all rights to dispute Plaintiffs' ability to satisfy any of these requirements, the Parties agree that for purposes of settlement, Defendant will not raise such a dispute. (Rauchwerger Decl. ¶ 24.) Therefore, the proposed Settlement Class should be certified for purposes of settlement.

1. <u>The Proposed Class is Numerous and Ascertainable</u>

The class consists of approximately 214 members with specifically identifiable information. (Rauchwerger Decl. ¶ 25.) The requirement of Code of Civil Procedure section 382 that there be "many" parties to a class action suit is indefinite and has been construed

[5] This takes into account 35% of the total PAGA penalties that would be awarded to the PAGA members, since 65% of the fees go to the LWDA. (Rauchwerger Decl. ¶ 23.)

liberally. (*Renken v. Compton City School Dist.* (1962) 207 Cal.App.2d 106, 113.) No set number is required as a matter of law for the maintenance of a class action. (*Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030; See also *Bowles v. Superior Court* (1955) 44 Cal.2d 574 (class with 10 members sufficiently numerous); see also *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 (class of 48 members satisfies the numerosity requirement).) Class members are "ascertainable" where they may be readily identified without unreasonable expense or time by reference to official records. (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932.) Here, the class is sufficiently numerous and there is a common interest to many persons as this claim will confer significant benefits to those persons. (Rauchwerger Decl. ¶ 25.) Furthermore, it would be impracticable to bring all of them before the Court on an individual basis. (*Id.*) Moreover, the Class is readily ascertainable as Defendant is in possession of contact information for its current and former employees via regularly maintained employment records. (*Id.*)

2. <u>The Community of Interest Requirement Is Also Satisfied.</u>

"The '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." (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) Here, the common questions of law and fact clearly exist, as the underlying dispute involves Defendant's employment policies and practices which affected all the employees in the proposed Class. (Rauchwerger Decl. ¶ 25.) Plaintiffs are typical of the class they seek to represent because Plaintiffs worked for Defendant, contend that the alleged violations occurred as a result of a common policy affecting all the putative Class Members, and contend that they had a similar experience to each of the Class Members because they were all subjected to common policies and practices by Defendant. (Declaration of Afiya Porter "Porter Decl." ¶¶ 3-4; Declaration of Monica G. Fitzmaurice "Fitzmaurice Decl." ¶¶ 3-4.)

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B. Class Counsel Has Extensive Experience In Class Actions And Similar Cases.

Class Counsel has extensive experience in similar cases and believe that the proposed Settlement is adequate, reasonable, fair, and in the best interests of all class members. (Rauchwerger Decl. ¶¶ 26-27; St. John Decl. ¶¶ 2-7.)

C. The Class Representatives Are Adequate.

Plaintiffs Porter and Fitzmaurice are adequate Class Representatives who have similar, co-extensive interests with the proposed Class Members. (Rauchwerger Decl. ¶ 28.) Plaintiffs have remained intricately involved in this lawsuit and have understood their responsibilities with respect to the class. (Porter Decl. ¶ 5; Fitzmaurice Decl. ¶ 5.) Plaintiffs understood from the beginning that they had a duty to look out for the best interests of the Class, and they understood that by taking on this case, they were agreeing to take on significant responsibility, which could include having to be deposed and provide extensive information to respond to discovery requests, as well as potentially testifying at trial. (*Id.*) Plaintiffs have taken their responsibility as Class Representatives seriously and learned the laws as they relate to the payment of wages, requirements for meal and rest periods, and other issues related to this Action. (Porter Decl. ¶ 6; Fitzmaurice Decl. ¶ 6.) Moreover, Plaintiffs are unaware of any conflicts between their own interests and goals and the interests and goals of anyone else in the Class. (Porter Decl. ¶ 7; Fitzmaurice Decl. ¶ 7.)

D. The Proposed Enhancement Payments To Plaintiffs are Reasonable.

In connection with the final approval hearing, Class Counsel will request approval of the Class Representative Enhancement Payment of $7,500.00 to Plaintiff Porter and $5,000.00 to Plaintiff Fitzmaurice for their service as Class Representatives and in consideration for a general release of all claims against Defendant. This amount is based on the extent of Plaintiffs' assistance in this lawsuit, including providing relevant information and documents to Class Counsel, answering various questions and providing additional information throughout the entirety of the case, reviewing the complaint and reviewing the settlement agreement and having related discussions. (*See* e.g., Porter Decl. ¶¶ 4-6; Fitzmaurice Decl. ¶¶ 4-6.) This amount is also reasonable given that Plaintiffs are providing a general release of all known and unknown claims against Defendants. The requested incentive payment is well within the accepted range of awards for purposes of preliminary approval. (*See*, e.g. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393).

E. **Settlement Administration Costs are Reasonable.**

The parties have agreed upon Phoenix Class Action Administration Solutions based on Counsel's experience in working with Phoenix on prior cases and the excellent quality of service they provide. (Rauchwerger Decl. ¶ 29.) While Phoenix estimates that the cost of administration should not exceed $6,950, the parties are requesting costs up to $8,000 to factor in any increase in the amount of class members. Plaintiffs respectfully request that the Court approve the appointment of Phoenix Class Action Administration Solutions as the Settlement Administrator. (See, e.g., Declaration of Jodey Lawrence "Phoenix Decl." ¶¶ 5-21.)

V. **THE PROPOSED SETTLEMENT**

A. **The Settlement Class & Released Claims**

Class & Class Size: The "Class," or "Class Members" is defined as: "all current and former non-exempt, hourly-paid employees who were employed by Defendant in California at any time during the Class Period. Defendant represents that the number of Class Members is approximately two hundred fourteen (214) individuals, as of May 1, 2025." (SA § 8(e).) The "Class Period" means "the time period from September 24, 2020 through September 3, 2025, or, if applicable, the Alternate Class Period End Date." (SA § 8(g).) Class Members who do not submit a valid and timely request for exclusion from the Class Settlement are referred to as the "Settlement Class Members." (SA § 8(nn).)

Release: The scope of the release for Settlement Class Members is limited only to those claims that were brought or could have been brought by Plaintiffs in this action based on the facts alleged in the Complaint filed in this action. (SA §§ 8(gg), 33(a).) The named Plaintiffs have agreed to a broader release, which only applies to the named Plaintiffs. (SA § 35.) Plaintiffs and the State of California with respect to all PAGA employees shall be deemed to have released all PAGA claims, which include all PAGA penalties arising from the California Labor Code or wage orders alleged, or that could have been alleged based on the facts contained in: 1) any of the complaints in the Action, or 2) Plaintiff Fitzmaurice's PAGA notice. (SA §§ 8(hh), 34.)

B. The Settlement Payment

Defendant will, through the Settlement Administrator, create a ***non-reversionary*** settlement fund in the amount of Seven Hundred and Ninety-Five Thousand Dollars and Zero Cents ($795,000.00) ("Total Settlement Amount"). (SA § 8(oo).) The Escalator Clause provides if, as of the date of preliminary approval, the verified count of the number of Workweeks increases by more than 10% for the period of September 24, 2020 through September 3, 2025, at Defendant's option either: (a) the Total Settlement Amount will be increased on a pro rata basis equal to the percentage increase in the number of Workweeks above 19,800 Workweeks, or, (b) the Class Period will end as of the date the ten precent (10%) threshold was reached and such date shall be referred to as the "Alternate Class Period End Date." (SA § 40.) In the event that Defendant chooses to end the Class Period on the Alternative Class Period End Date, then, the PAGA Period will also end on the Alternate Class Period End (and such date shall be referred to as the "Alternate PAGA Period End Date"). (*Id.*)

C. Notice To The Class Members

Attached to the Declaration of Devin Rauchwerger as **Exhibit 3** is the [Proposed] Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval. (Rauchwerger Decl. ¶ 32.) The Request for Exclusion and Objection forms are attached to the Rauchwerger Decl. ¶¶ 33-34 as **Exhibit 4 and 5**, respectively.) To protect the rights of absent class members, the court must provide class members with the best class action settlement notice practicable. (See Cal. Rules of Court, rule 3.769(f); *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12.) The primary purpose of class notice is to provide affected parties with due process rights reasonably calculated to apprise interested parties of the pendency of the action affecting their interests and an opportunity to present their objections. (See *Ryan v. Cal. Interscholastic Fed'n – San Diego Section* (2001) 94 Cal.App. 1048, 1072.) The proposed Notice of Class Action Settlement and Hearing Date for Final Court Approval satisfies these requirements. The proposed Class notice ensures the Settlement Class is alerted to the terms of the Settlement and allows them to protect their rights. The proposed notice plan, calling for first-class mailed notice to all members of the Settlement Class, is consistent with noticed approved by State and Federal Courts and constitutes the best notice practicable. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 966; *Cooper v. Am. Sav. & Loan Ass'n.* (1976) 55 Cal.App.3d 274, 285.)

D. Settlement Payment Distribution Plan

All expenses associated with the Settlement are to be paid from the Settlement's Total Settlement Amount (SA § 13.), including up to $278,250.00 to Class Counsel for attorneys' fees (35% of the Total Settlement Amount), and reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement of the Action, supported by declaration, in an amount not to exceed $31,000.00, to Class Counsel for reimbursement of actual litigation expenses incurred (*Id.*); Settlement Administration expenses up to $8,000.00 to be paid to the qualified Settlement Administrator to administer the notice and process payments (SA § 15.); Class Representative Enhancement Payments of $7,500.00 to Plaintiff Porter and $5,000.00 to Plaintiff Fitzmaurice for their service as Class Representatives and in consideration for a general release of all claims against Defendant (SA § 14.); and a PAGA Amount of $50,000.00. (SA § 16.) Pursuant to California Labor Code section 2699(i), and subject to approval by the Court under California Labor Code section 2699(l), $32,500.00 or 65% of the PAGA Amount will be paid to the California Labor and Workforce Development Agency, in resolution of the PAGA claims for the Aggrieved Employees. The remaining $17,500.00 of the PAGA Amount will be paid to the Aggrieved Employees through Individual PAGA Payments. (*Id.*)

1. Calculating Settlement Class Members' Individual Settlement Payments

All Settlement Class Members will receive an Individual Settlement Payment. After deducting the amount of the fees award, the costs award, the enhancement payments to Plaintiffs, the Settlement Administrator expenses that are all finally approved by the Court, and the PAGA penalty amounts, the remaining "Net Settlement Amount" will be distributed to the Settlement Class Members through "Individual Settlement Payments." (SA §§ 8(t), (v).)

Individual Settlement Payments will be paid from the Net Settlement Amount and will be apportioned by dividing the estimated Net Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek Value," and then multiplying each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share. (SA § 17(a).) The estimated Net Settlement Amount will be approximately $415,250.00 (not including the $50,000.00 PAGA Amount).[6] (Rauchwerger Decl. ¶ 30.) Based on the number of class members, the average Individual Settlement Payment is approximately $1,940.42. (*Id.*)

The Parties agree that the formula for allocating the Individual Settlement Payments to Settlement Class Members is reasonable and that the payments provided herein are designed to provide a fair settlement to such persons, in light of the uncertainties regarding the calculation of alleged wages, penalties, interest, and expense reimbursement to each Settlement Class Member. (Rauchwerger Decl. ¶ 31.)

The Individual Settlement Shares will be allocated as follows: twenty percent (20%) wages and eighty percent (80%) penalties, interest, and non-wage damages. (SA § 28.) The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages will be reported on an IRS Form-1099 by the Settlement Administrator. (*Id.*) The employer share of payroll taxes that become due shall be paid separate and apart from the Total Settlement Amount by Defendant. (SA § 8(oo); 12.)

2. Calculating PAGA Employees' Individual PAGA Payments

Individual PAGA Payments will be calculated and apportioned from the PAGA Employee Amount of $17,500.00. (SA § 18.) The Settlement Administrator will divide the PAGA Employee Amount, i.e., 35% of the PAGA Amount, by the total number of PAGA Pay Periods of all PAGA Employees during the PAGA Period to yield the "PAGA Pay Period

[6] The estimated Net Settlement Amount of $415,250.00 is calculated by taking the $795,000.00 Total Settlement Amount and subtracting: the requested attorneys' fees of 35% of the Total Settlement Amount ($278,250.00), reimbursement of litigation costs (in the maximum amount of $31,000.00), Class Representative Enhancement Payments of $12,500.00 to named Plaintiffs, Settlement Administrator costs of up to $8,000.00, and PAGA penalties of $50,000.00. (Rauchwerger Decl. ¶ 30.)

Value," and multiply each PAGA Employee's individual PAGA Pay Periods by the PAGA Pay Period Value to yield his or her Individual PAGA Payment. (*Id.*)

3. Distributions To Settlement Class

Within no later than thirty-seven (37) days after the Effective Date, the Settlement Administrator will mail checks for all (a) Individual Settlement Payments to Settlement Class Members; (b) Individual PAGA Payments to PAGA Employees; (c) LWDA Payment to the LWDA; (d) Enhancement Payment to Plaintiffs; (e) Attorneys' Fees and Costs to Class Counsel; and (f) Settlement Administration Costs to itself (the Settlement Administrator). (SA § 12.) The Parties agreed that all funds remaining in connection with, and after the cancelation of checks issued to Settlement Class Members and PAGA Employees, shall be paid to Bay Area Legal Aid ("Proposed *Cy Pres* Recipient"). (SA § 23(c).) The Proposed *Cy Pres* Recipient is a non-profit organization whose mission is to work to address the causes and consequences of poverty through free, high quality legal assistance and advocacy. (*Id.*) The Parties and their counsel do not have any interests in the Proposed *Cy Pres* Recipient or involvement within the governance or work of the Proposed *Cy Pres* Recipient. (*Id.*) Should the Court reject Bay Area Legal Aid as a viable *cy pres* recipient, the Parties agree to select and propose an alternate *cy pres* recipient ("Alternate *Cy Pres* Recipient") that is an entity that the Parties and their counsel do not have any interest in and with respect to which they do not have any involvement in the entity's governance or work. (*Id.*) Payment to the *Cy Pres* Recipient or Alternative *Cy Pres* Recipient shall be made after the Court enters an order approving the Parties' stipulation to amend the judgment, which Parties shall prepare and file in accordance with California Code of Civil Procedure section 384.5, et seq. (*Id.*)

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VI. CONCLUSION

For the foregoing reasons, the Parties respectfully submit that the Settlement's terms are fair, adequate, and reasonable and that it is in the best interest of the Class Members. Under the applicable class action criteria and guidelines, this Class should be conditionally certified, the Settlement should be preliminarily approved, the Class should be notified regarding the Settlement, and the Court should schedule a final approval hearing for 150 days after the Court grants Preliminary Approval.

Dated: January 6, 2026

Respectfully submitted,
DOMB & RAUCHWERGER LLP

By: ______________________
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