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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

ERIC WARD on behalf of himself, all
others similarly situated, and on behalf of
the general public,

Plaintiffs,

v.

LEARNING ARTS CORPORATION;
and DOES 1-100,

Defendants.

Case No. 34-2023-00334389-CU-OE-GDS
(Consolidated with Case No.
34-2023-00336386)

*[Assigned for All Purposes to the
Honorable Lauri A. Damrell; Dept. 22]*

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF ERIC WARD'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE,
SETTING OF FINAL APPROVAL
HEARING DATE**

Date: July 18, 2025
Time: 9:00 a.m.
Reservation No.: A-334389001

Complaint Filed: February 7, 2023
Trial Date: None Set

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I. INTRODUCTION

Plaintiff Eric Ward (“Plaintiff”), on behalf of himself and the approximately 2,998 member putative class, respectfully request that this Court preliminarily approve the Joint Stipulation of Class Action and PAGA Settlement Agreement and Release of Claims¹ (“Settlement Agreement”) entered into between Plaintiff and Defendant Learning Arts Corporation (“Defendant”) (Plaintiff and Defendant are collectively referred to as the “Parties”). The Parties’ Settlement Agreement seeks to resolve claims raised against Defendant in this matter in exchange for a non-reversionary \$850,000 Gross Settlement Amount (“GSA”). The proposed class is comprised of all persons who worked for Defendant as non-exempt, hourly paid employees in the State of California at any time from February 7, 2019 through December 31, 2024 (“Class Members”).²

It is requested that the Court grant preliminary approval, as, when analyzing the strengths and vulnerabilities of the class claims along-side Defendant’s potential liability exposure and financial condition, this proposed settlement of \$850,000 – which is estimated to pay class members an average settlement share of approximately \$145.23³ – is well within the range of reasonableness. Moreover, the proposed Agreement satisfies all of the criteria for preliminary approval under Rule 3.769 of the California Rules of Court.

As the following sections show, Class Counsel are convinced that the proposed settlement is in the best interests of the Class based on the negotiations, a detailed knowledge of the issues present in this action, and Defendant’s financial condition. The length and risks of trial and perils of litigation that affect the value of the claims were all carefully weighed. In addition, the defenses asserted by Defendant, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals, were also carefully considered by Class Counsel in arriving at the proposed settlement. Further, Defendant provided to Plaintiff numerous financial documents and Defendant’s financial condition was evaluated by a financial expert hired by Plaintiff. The Settlement Agreement was

¹ The Settlement Agreement is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as Exhibit 1. “Exhibit 1” herein refers to the Settlement Agreement.

² Exhibit 1 at Paragraph 5.

³ \$The Net Settlement Fund is approximately \$435,400. \$435,400 divided by 2,998 Class Members = \$145.23.

1 the product of two all-day mediations and was the product of non-collusive, arm's-length
2 negotiations by informed counsel and parties. The settlement is fair, reasonable, and adequate to
3 all. Accordingly, Plaintiff seeks: (1) preliminary approval of the terms of the Settlement
4 Agreement; (2) provisional certification of the Class; (3) appointment of Plaintiff as Class
5 Representative; (4) appointment of Mara Law Firm, PC as Class Counsel; (5) approval of the
6 Parties' proposed Notice of Class Action Settlement⁴ (referred to herein as the "Class Notice" or
7 "Notice") and method of notifying the Class about the settlement; and (6) set a hearing date for
8 final approval of December 12, 2025, or other available date for the Court.

9 **II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

10 Defendant Learning Arts Corporation ("Defendant") works with children within the autism
11 spectrum and their families. Defendant has multiple facilities throughout California. In order to
12 carry out its business, Defendant employs hourly non-exempt employees, like Plaintiff.

13 On February 7, 2023, Plaintiff filed a class action complaint against Defendant. Plaintiff's
14 complaint alleges that Defendant failed to pay all straight time and overtime wages, failed to
15 provide lawful meal and rest breaks, failed to adopt a compliant sick pay policy, failed to provide
16 accurate itemized wage statements, failed to pay all wages due at termination of employment, and
17 violated the Unfair Competition Law. (Mara Dec. ¶ 9). Defendant filed an answer to Plaintiff's
18 complaint on April 5, 2023.

19 On December 23, 2022, Plaintiff provided notice to the Labor and Workforce Development
20 Agency ("LWDA") in accordance with the Private Attorneys General Act of 2004 ("PAGA").
21 Thereafter, on March 18, 2023, Plaintiff filed a PAGA action alleging that Defendant violated the
22 PAGA by failing to pay all straight time and overtime wages, failing to provide lawful meal and
23 rest periods, failing to adopt a complaint sick pay policy, failing to provide accurate itemized wage
24 statements, and failing to pay all wages due at the termination of employment. (Mara Dec. ¶ 10).
25 Defendant filed an answer to Plaintiff's PAGA complaint on May 24, 2023.

26 On September 18, 2023, the Parties stipulated to consolidate the class and PAGA actions.
27 The Court granted this stipulation on September 29, 2023. (Mara Dec. ¶ 11).

28 ⁴ The Class Notice is attached to the Settlement Agreement as Exhibit A.

1 **a. Discovery and Investigation**

2 The Parties have engaged in significant discovery. The Parties engaged in informal
3 discovery prior to their first mediation. On April 26, 2023, Plaintiff provided Defendant with a list
4 of items he would need to prepare for mediation. Thereafter, the Parties met and conferred over
5 this informal discovery and Defendant informally produced extensive documents, including a
6 sampling of putative class members' time and wage records. Defendant also produced wage and
7 hour policies that covered putative class members' employment, Plaintiff's personnel file, and
8 documents Defendant provided to putative class members during the relevant time period. (Mara
9 Dec. ¶ 12).

10 After the Parties unsuccessful first mediation, the Parties engaged in formal discovery. On
11 January 23, 2024, Plaintiff propounded one set of special interrogatories and one set of requests
12 for production of documents on Defendant. Defendant responded to this discovery on February
13 23, 2024. Thereafter, the Parties extensively met and conferred over Defendant's discovery
14 responses, including over search terms and custodians for email searches. The discovery efforts
15 led to Defendant producing over 1,595,600 documents including policy documents, time sheets
16 for Plaintiff and putative class members, emails sent to putative class members by Defendant, and
17 Defendant's internal emails related to the claims alleged. (Mara Dec. ¶ 13).

18 In addition, the Parties finalized a *Belaire-West* notice to be sent to putative class members
19 on March 21, 2024. The Parties agreed upon ILYM Group, Inc. to send out the *Belaire-West* notice.
20 The notice was sent out on April 16, 2024. Class Members had until May 16, 2024, to opt out of
21 having their contact information disclosed. On May 23, 2024, Plaintiff was provided with the
22 contact information for putative class members that did not opt out. (Mara Dec. ¶ 14).

23 Further, the Parties engaged in deposition. On October 16, 2024, Defendant took Plaintiff's
24 deposition. On October 23, 2024, Plaintiff took the deposition of Defendant's Person Most
25 Qualified witness. (Mara Dec. ¶ 15).

26 **b. The Parties Attended Two Mediations**

27 The Parties attended a mediation with mediator Honorable Bonnie Sabraw (Ret.) on
28 January 12, 2024. This mediation was unsuccessful. (Mara Dec. ¶ 16).

1 The Parties attended a second private mediation with mediator Brandon McKelvey on
2 October 29, 2024. This mediation ended in Mr. McKelvey issuing a mediator’s proposal that was
3 ultimately accepted by the Parties. The Parties then met and conferred over all the terms of the
4 settlement and finalized their settlement in the Parties’ Settlement Agreement. The Parties seek
5 preliminary approval of the Settlement Agreement in the instant motion. (*See* Mara Dec. ¶ 17; *see*
6 *also* Exhibit 1 attached thereto).

7 **III. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR**
8 **PRELIMINARY APPROVAL**

9 **a. Class Action Settlements are Subject to Court Review and Approval Under**
10 **the California Rules of Court**

11 Rule 3.769 requires court approval for class action settlements.⁵ “Before final approval, the
12 court must conduct an inquiry into the fairness of the proposed settlement.” (California Rules of
13 Court, Rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary approval of
14 class settlements:

15 (a) A settlement or compromise of an entire class action, or a cause of action in
16 a class action, or as to a party, requires the approval of the court after
17 hearing.

18 . . .
19 (c) Any party to a settlement agreement may serve and file a written notice of
20 motion for preliminary approval of the settlement. The settlement
21 agreement and proposed notice to class members must be filed with the
22 motion, and the proposed order must be lodged with the motion.

23 Courts act within their discretion in approving settlements that are fair, not collusive, and take into
24 account “all the normal perils of litigation as well as the additional uncertainties inherent in
25 complex class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167, 179,
26 cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S.
27 905.

28 **b. The Settlement is Fair, Reasonable, and Adequate**

In deciding whether to approve a proposed class action settlement under Code of Civil
Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.”

⁵ The California Supreme Court also 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, therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is
2 **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-
3 length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court
4 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
5 objectors is small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As set forth herein, all of these
6 elements – with the exception of the percentage of objectors, which cannot be anticipated at this
7 stage of the litigation – bearing on the fairness of the proposed settlement are present here and the
8 Court’s grant of preliminary approval is therefore requested.

9 **i. The Settlement was Reached as a Result of Arm’s Length Negotiations**

10 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
11 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
12 nature. At the mediation and the following negotiations through the mediator, Counsel for the
13 Parties conducted extensive arm’s length settlement negotiations until the settlement was reached.
14 The terms of the settlement are memorialized in the Settlement Agreement which is attached to
15 the Declaration of David Mara, Esq. as Exhibit 1.

16 **ii. The Settlement is the Result of Thorough Investigation and Discovery**

17 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
18 before reaching the proposed settlement, and engaged in sufficient investigation, research and
19 discovery to support the settlement. The settlement was only possible following discovery and
20 evaluation of Defendant’s policies and procedures, as well as the data produced for the putative
21 class, which permitted Class Counsel to engage in a comprehensive analysis of liability and
22 potential damages. This litigation has reached the stage where “the Parties certainly have a clear
23 view of the strengths and weaknesses of their cases” sufficient to support the settlement. *Boyd v.*
24 *Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

25 **iii. Counsel for Both Parties are Experienced in Similar Litigation**

26 Both Plaintiff’s Counsel and Defendant’s Counsel are experienced in wage and hour
27 employment law and class actions. Plaintiff’s Counsel has significant experience in litigating
28 unpaid wages and unprovided meal and rest periods class actions. Plaintiff’s Counsel has

1 prosecuted numerous wage and hour class action cases on behalf of employees for California Labor
2 Code violations and thus are experienced and qualified to evaluate the class claims and to evaluate
3 settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. Mara
4 Dec. ¶¶ 2-8. Indeed, Mara Law Firm, PC was class counsel in *Hohnbaum et al. v. Brinker*
5 *Restaurant Corp et al.*, which is the subject case in the landmark decision of *Brinker Restaurant*
6 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Mara Dec. ¶ 4. This experience instructed
7 Plaintiff's Counsel on the risks and uncertainties of further litigation and guided their
8 determination to endorse the proposed settlement. Defendant's Counsel has experience
9 representing companies and regularly deals with wage and hour litigation matters. Accordingly,
10 both Parties' Counsel are experienced in wage and hour employment law and class actions.⁶

11 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

12 An understanding of the amount in controversy is an important factor into whether the
13 settlement "of the class members' claims is reasonable in light of the strengths and weaknesses of
14 the claims and the risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168
15 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
16 Cal.App.4th 399, 409. The most important factor in this regard is "the strength of the case for
17 plaintiffs on the merits, balanced against the amount offered in settlement." *Id.*

18 In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to
19 "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
20 that of the attorneys." *Kullar, supra*, 168 Cal.App.4th at 133. Finally, *Kullar* does not require an
21 explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its
22 claims, provided there is a record which allows "an understanding of the amount that is in
23 controversy and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409.
24 Put differently, "as the court does when it approves a settlement as in good faith under Code of
25 Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within the
26 'ballpark' of reasonableness." *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v.*

27 _____
28 ⁶ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class Notice has been
provided to the class and they have had an opportunity to respond. This information will be provided to the Court in
conjunction with the final approval motion.

1 *Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500. As set forth below, the Parties’
2 investigation and discovery revealed plenty of reasons to discount claims and agree to this
3 settlement.

4 **IV. THE PROPOSED SETTLEMENT MEETS THE COURT’S CHECKLIST FOR**
5 **APPROVAL OF CLASS ACTION AND PAGA SETTLEMENTS**

6 As outlined herein, the proposed settlement meets each of the criteria outlined in the
7 Court’s Checklist for Approval of Class Action and PAGA Settlements.

8 **a. Non-Reversionary Settlement Amount and Deductions from the Settlement**

9 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
10 action be settled and compromised for the non-reversionary total sum of \$850,000, which includes,
11 subject to Court approval: (a) attorneys’ fees not to exceed 33.3% of the GSA (\$283,050) to
12 compensate Class Counsel for work already performed and all work remaining to be performed in
13 documenting the settlement, administrating the settlement, and securing Court approval; (b)
14 litigation expenses not to exceed \$50,000;⁷ (c) an enhancement payment to the named class
15 representative, Eric Ward, in a sum not to exceed \$10,000 in consideration for agreeing to a general
16 release of his claims against Defendant which is broader than that of other class members, and in
17 recognition of his efforts in prosecuting this action; (d) claims administration fees and expenses to
18 ILYM Group, Inc. (hereinafter “ILYM”) estimated to be approximately \$21,550;⁸ and (e) PAGA
19 payment of \$50,000 allocated to Plaintiff’s PAGA claims. As such, the Net Settlement Fund is
20 estimated to be approximately \$435,400.

21 **b. Individual Settlement Payments and Tax Allocations**

22 **i. Individual Class Settlement Payments**

23 Subject to the terms and conditions of the settlement, the Settlement Administrator will
24 calculate and issue Individual Class Settlement Payments. To arrive at these payments, Defendant
25 will calculate the total number of Workweeks worked by each Class Member during the Class

26 ⁷ These will be tabulated and presented to the Court at final approval. Plaintiff will only seek the amount of actual
27 expenses incurred during the litigation of this case. Should the actual expenses exceed \$50,000, Plaintiff will only
28 seek reimbursement of costs up to \$50,000. Prior to filing this motion, Class Counsel had incurred \$37,616.27 in
litigation expenses, and estimates incurring approximately \$190.00 in future costs. *See* “Costs Summary” attached to
the Mara Dec. as Exhibit 2.

⁸ ILYM will present to the Court a declaration in conjunction with the final approval motion outlining the costs of the
settlement administration process.

1 Period and the aggregate total number of Workweeks worked by all Class Members during the
2 Class Period. To determine each Class Member's estimated "Individual Settlement Payment" from
3 the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net
4 Settlement Fund will be divided by the aggregate total number of Workweeks, resulting in the
5 "Workweek Value." Each Class Member's "Individual Settlement Payment" will be calculated by
6 multiplying each individual Class Member's total number of Workweeks by the Workweek Value.
7 The Individual Settlement Payment will be reduced by any required deductions for each
8 Participating Class Member as specifically set forth herein, including employee-side tax
9 withholdings or deductions. The entire Net Settlement Fund will be disbursed to all Class Members
10 who do not submit timely and valid Requests for Exclusion. If there are any valid and timely
11 Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual
12 Settlement Payment for each Participating Class Member according to the number of Workweeks
13 worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net
14 Settlement Fund. (Exhibit 1 at Paragraph 41(a)).

15 The Individual Class Settlement Shares will be divided into a "wage portion" to
16 compensate Participating Class Members for alleged unpaid wages and a "non-wage portion" to
17 compensate Participating Class Members for alleged interest and penalties. Participating Class
18 Members' individual settlement shares will be apportioned as 20% wages and 80% will be
19 allocated to penalties and interest. (Exhibit 1 at Paragraph 61). Defendant will be paying the
20 employer-side payroll taxes on the wages portion separately from the GSA. (See Exhibit 1 at
21 Paragraph 13).

22 **ii. Individual PAGA Settlement Payments**

23 The Settlement Agreement allocates \$50,000 in consideration for the settlement of
24 Plaintiff's PAGA claims, which is to be distributed separately from the Net Settlement Fund to
25 PAGA Members. PAGA Members are all persons who worked for Defendant as non-exempt,
26 hourly paid employees in the State of California at any time from December 23, 2021 through
27 December 31, 2024. (Exhibit 1 at Paragraph 17). Seventy-five percent (75%) of this amount, or
28 \$37,500, will be paid to the LWDA, while the remaining 25%, or \$12,500, will be distributed to

1 the PAGA Members. To arrive at PAGA Members' Individual PAGA Settlement Payments,
2 Defendant will calculate the total number of Pay Periods worked by each PAGA Member during
3 the PAGA Period and the aggregate total number of Pay Periods worked by all PAGA Members
4 during the PAGA Period. To determine each PAGA Member's estimated "Individual Settlement
5 Payment," the Settlement Administrator will use the following formula: The PAGA Fund will be
6 divided by the aggregate total number of Pay Periods, resulting in the "PAGA Pay Period Value."
7 Each PAGA Member's "Individual Settlement Payment" will be calculated by multiplying each
8 individual PAGA Member's total number of Pay Periods by the PAGA Pay Period Value. The
9 entire PAGA Fund will be disbursed to all PAGA Members. (Exhibit 1 at Paragraph 41(b)).

10 The Individual PAGA Settlement Shares will be apportioned as one hundred percent
11 (100%) penalties. (Exhibit 1 at Paragraph 62).

12 **c. The Settlement Class**

13 Class Members are defined as "[a]ll persons who worked for Defendant as non-exempt,
14 hourly paid employees in the State of California at any time from February 7, 2019 through
15 December 31, 2024." (Exhibit 1 at Paragraph 5). The Class Period is February 7, 2019 through
16 December 31, 2024. (Exhibit 1 at Paragraph 7). There are approximately 2,998 Class Members.
17 (Declaration of William Brandon ("Brandon Dec.") ¶ 2). Individual Settlement Payments will be
18 based on the number of workweeks worked by each Class Member. A Workweek is defined in the
19 Settlement Agreement as "the number of days of employment for each Class Member during the
20 Class Period, subtracting days on leave of absence (if any), dividing by seven (7), and rounding
21 up to the nearest whole number. All Class Members will be credited with at least one Workweek
22 during the Class Period." (Exhibit 1 at Paragraph 31). The Settlement encompasses approximately
23 130,778 workweeks. (See Exhibit 1 at Paragraph 51).

24 **d. The Class Should be Certified for Settlement Purposes**

25 The class certification requirements are met here. Under California law, a class action is
26 appropriate when the class is ascertainable and there is "a well defined community of interest in
27 the questions of law and fact involved affecting the parties to be represented." Cal. Civ. P. Code §
28 382. State law requirements under California Code of Civil Procedure section 382 for class

1 certification follow federal law according to Rule 23 of the Federal Rule of Civil Procedure:
2 numerosity, typicality of the class representatives' claims, adequacy of representation,
3 predominance of common issues, and superiority. Fed. R. Civ. P. 23(a); *see also Hanlon v.*
4 *Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted that while a court must
5 certify a class for settlement purposes if a class has not already been certified, "it is well established
6 that trial courts should use different standards to determine the propriety of a settlement class, as
7 opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for
8 settlement cases." *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836,
9 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19. Plaintiff contends,
10 and Defendant does not dispute for settlement purposes only, each of these elements is present.
11 *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38.

12 Plaintiff contends that the Class is ascertainable because all of the Class Members have
13 worked for Defendant and have been identified through Defendant's own records, such as
14 employee and payroll files. *See Rose v City of Hayward* (1981) 126 Cal.App.3d 926, 932 (finding
15 that "Class Members are 'ascertainable' where they may be readily identified without
16 unreasonable expense or time by reference to official records."); *Sevidal v. Target Corp.* (2010)
17 189 Cal.App.4th 905, 919 ("[c]lass members are 'ascertainable' where they may be readily
18 identified without unreasonable expense or time by reference to official [or business] records.").
19 Plaintiff contends that the class is sufficiently numerous as it is comprised of 2,998 Class Members.
20 The numerosity requirement is met if the class is so large that joinder of all members would be
21 impracticable. *Gay v. Waiters' & Dairy Lunchmen's Union* (N.D. Cal. 1980) 489 F. Supp. 282,
22 *aff'd* (9th Cir. 1982) 694 F.2d 531. Plaintiff contends that the commonality requirement is met
23 because there are questions of law and fact common to the Class. *Hanlon, supra*, 150 F.3d at 1019
24 ("The existence of shared legal issues with divergent factual predicates is sufficient, as it a common
25 core of salient facts coupled with disparate legal remedies within the class."). Plaintiff contends
26 that the typicality requirement is met as the claims of the named representative are typical of those
27 of the Class. *Hanlon, supra*, 150 F.3d at 1020; *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-
28 47. Plaintiff's and the Class's claims all arise from the same factual basis and are based on the

1 same legal theories. Plaintiff contends that the adequacy requirement is met as Plaintiff has no
2 interests adverse to the interests of the proposed Class Members and is committed to vigorously
3 prosecuting the case on behalf of the class. *Hanlon, supra*, 150 F.3d at 1020; *McGhee v. Bank of*
4 *America* (1976) 70 Cal.App.3d 442, 450-51. As such, Plaintiff believes that certification of the
5 Class for settlement purposes is appropriate here.

6 **e. Summary of the Claims Asserted and the Parties Divergent Positions**

7 **i. Meal Periods**

8 Plaintiff contends that Defendant does not provide employees with meal periods that
9 conform with California law. Employers have an obligation under California law to provide
10 employees with thirty (30) minute meal periods. Under California Labor Code § 512(a), “[a]n
11 employer may not employ an employee for a work period of more than five hours per day without
12 providing the employee with a meal period of not less than 30 minutes” Cal. Lab. Code §
13 512(a). An employer “satisfies this obligation [to provide meal periods] if it relieves its employees
14 of all duty, relinquishes control over their activities and permits them a reasonable opportunity to
15 take an uninterrupted 30-minute break, and does not impede or discourage them from doing so.”
16 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. Here, Plaintiff contends
17 that Defendant’s time records show non-compliant meal periods. (Mara Dec. ¶ 18).

18 In *Donohue v. AMN Services, LLC*, the California Supreme Court issued a decision,
19 wherein it ruled that time records showing late, short, or missed meal periods raises a rebuttable
20 presumption that the meal periods were not provided: “If time records show missed, short, or
21 delayed meal periods with no indication of proper compensation, then a rebuttable presumption
22 arises” that the meal periods were not provided in accordance with California law. *Donohue v.*
23 *AMN Services, LLC* (2021) 11 Cal.5th 58, 74. Plaintiff contends that, here, the time records show
24 non-compliant meal periods. In these shifts, under *Donohue*, Plaintiff contends that it is presumed
25 that meal period violations occurred. (Mara Dec. ¶ 19).

26 Defendant asserts that its meal period policy is lawful and that it provides employees with
27 meal periods in compliance with California law. Further, Defendant alleges that if litigation
28 continues it would be able to show that it advised employees of the right to take a meal period in

1 compliance with California law. Defendant contends that employees either took a lawful meal
2 period or knowingly and voluntarily decided to waive or skip the meal period or take a late or short
3 meal period. Defendant contends that this evidence would rebut the presumption under *Donohue*
4 *v. AMN Services, LLC*. Defendant also asserts that the evidence in this case shows that it paid meal
5 period premiums in shifts in which employees were not provided with compliant meal periods.
6 Thus, Defendant contends that to the extent an employee was not provided the opportunity to take
7 a legally compliant meal period, they were provided a meal premium. Defendant also contends
8 that it has waivers showing that employees waived their meal periods in these shifts. (Mara Dec.
9 ¶ 20).

10 In summary, Plaintiff contends that because Defendant's time records show non-compliant
11 meal periods, it is presumed that meal period violations occurred in these shifts. Defendant
12 counters that it would be able to rebut this presumption because its meal period policy is lawful.
13 Defendant also asserts that in rebutting the presumption, the Court or fact finder would have to ask
14 each employee why their time records show a non-compliant meal period. This could be due to
15 employees knowingly and voluntarily deciding to waive or skip the meal period or taking a late or
16 short meal period. To make this determination, Defendant contends the Court or fact finder would
17 have to ask each employee about each instance which would defeat certification as individual
18 issues would predominate. Plaintiff contends that this is not the case and that certification under
19 *Donohue* is proper. As such, disputes exist as to whether certification is proper and as to whether
20 Defendant can rebut the presumption under *Donohue*. (Mara Dec. ¶ 21).

21 **ii. Rest Breaks**

22 Plaintiff alleges that employees are not provided with lawful rest periods. Employers have
23 an obligation to provide employees with ten (10) minute rest periods. An employer's obligation to
24 provide its employees with rest periods arises under the Industrial Welfare Commission Wage
25 Orders. Wage Order 5-2001, Section 12(A) states, "[e]very employer shall authorize and permit
26 all employees to take rest periods, which insofar as practicable shall be in the middle of each work
27 period. The authorized rest period time shall be based on the total hours worked daily at the rate
28 of ten (10) minutes net rest time per four (4) hours or major fraction thereof." Here, Plaintiff alleges

1 that Defendant requires employees to remain on the premises during rest periods. (Mara Dec. ¶
2 22).

3 In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme
4 Court ruled that the standards applicable to providing meal periods the Court articulated a few
5 years earlier in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, were equally
6 applicable to the rest period context. Citing *Brinker*, the *Augustus* Court ruled that, like meal
7 periods, “[d]uring required rest periods, employers must relieve their employees of all duties and
8 relinquish any control over how employees spend their break time.” *Augustus*, 2 Cal.5th at 260.
9 At a minimum, to relinquish employer control over how employees spend their break time, the
10 employee must be “free to leave the premises.” *Brinker*, 53 Cal.4th at 1036. As the *Augustus*
11 Court reasoned, the employee must be free to travel five minutes away from the work site so that
12 they can get back within the allotted ten-minute time frame of the break. *Augustus*, 2 Cal.5th at
13 270. Plaintiff contends that, here, Defendant does not permit employees to leave the premises
14 during rest periods. (Mara Dec. ¶ 23).

15 Defendant contends that it does not require employees to remain on the premises during rest
16 periods. Defendant argues that to resolve this claim, the factfinder would have to ask whether
17 employees thought they could leave the premises during rest breaks. In addition, Defendant
18 contends that employees did, in fact, leave the premises during rest periods. Defendant asserts that
19 should litigation continue, it would present declarations from employees stating that they were free
20 to leave the premises, and did leave the premises, during rest periods. (Mara Dec. ¶ 24).

21 Defendant also counters that even if it did tell employees they are to remain on the
22 premises, a point that Defendant does not concede, the practical limitations the ten (10) minutes
23 allotted for rest periods imposes on an employee’s movement are what prevent employees from
24 leaving the premises. In other words, the time limitation of only having ten (10) minutes for rest
25 periods prevents off-premises movement during rest periods, not expressly or impliedly telling
26 employees that rest periods are to be taken on the premises. Based on the practical limitations
27 associated with ten (10) minute rest periods, and not Defendant’s policies, Defendant contends its
28 policies are aligned with, and not antagonistic to *Augustus*. Defendant finds support for this in the

1 following language from *Augustus*:

2 Because rest periods are 10-minutes in length (Wage Order 4, subd. 12(A)), they
3 impose practical limitations on an employee's movement. That is, during a rest
4 period an employee generally can travel at most five minutes from a particular work
5 post before returning to make it back on time. Thus, one would expect that
employees will ordinarily have to remain on site or nearby.

6 *Augustus, supra*, 2 Cal.5th at 270. (Mara Dec. ¶ 25).

7 Defendant further asserts that employees are relieved of all work and employer control
8 during rest periods. And, to the extent there is any limitation placed on rest periods, it is something
9 that arises simply out of the fact that ten (10) minutes is a short amount of time. Therefore,
10 Defendant asserts that the limitations placed on employees, if any, are merely inherent to rest
11 periods and not an exertion of employer control. (Mara Dec. ¶ 26).

12 **iii. Wage Statements**

13 Plaintiff alleges that employees are not provided with accurate itemized wage statements.
14 Section 226(a) provides that employers must furnish an accurate itemized statement in writing
15 showing: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece
16 rate units earned and applicable piece rate if the employee is paid on a piece rate basis; (4) all
17 deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is
18 paid; (7) the name of the employee and only the last four digits of his or her social security number
19 or employee identification number other than a social security number; (8) the name and address
20 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
21 period and corresponding number of hours worked at each hourly rate by the employee. Plaintiff
22 alleges that Defendant fails to provide employees with accurate itemized wage statements because
23 Defendant's wage statements do not meet California Labor Code § 226(a)'s requirements because
24 they do not list the accurate name of the legal entity that is the employer on the detachable part of
25 the check. (Mara Dec. ¶ 27).

26 Defendant disputes this claim. Defendant contends California Labor Code § 226 does not
27 expressly require that a company's complete name or the name registered with the California
28

1 Secretary of State be included on wage statements and that the name it includes on wage statements
2 is sufficient to meet the requirements of California Labor Code § 226. (Mara Dec. ¶ 28).

3 Further, Defendant also asserts that any violation of California Labor Code § 226 was not
4 “knowing and intentional.” *See* Cal. Lab. Code § 226(e) (“An employee suffering injury as a result
5 of a **knowing and intentional** failure by an employer” may recover damages”) (emphasis added);
6 *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1195 (“Some statutory penalties are
7 imposed only if an employers’ violation was ‘willful’ or ‘knowing.’ . . . [S]ection 226, subdivision
8 (e) penalizes an employer’s ‘knowing and intentional’ failure to provide itemized wage statements
9 under section 226, subdivision (a)[.]”); *Naranjo v. Spectrum Security Services, Inc.* (2024) 15
10 Cal.5th 1056. Defendant maintains that it reasonably, and in good faith believes that it was
11 providing a complete and accurate wage statement in compliance with California law. Defendant
12 further contends that employees cannot show that they have suffered an injury because of any
13 potential violation of California Labor Code § 226. Defendant contends that employees knew to
14 talk to their manager or the Human Resources department if they had any questions or concerns
15 with their wage statements. As such, disputes exist as to whether Defendant’s wage statements
16 violated California Labor Code § 226(a)(8), whether any such violation was knowing and
17 intentional, and whether employees suffered an injury. (Mara Dec. ¶ 29).

18 **iv. Unpaid Wages**

19 Plaintiff contends that Defendant does not pay employees for all time worked. Employees
20 must be paid for all “hours worked,” as that phrase is defined in the Wage Order and interpreted
21 by California courts. Hours worked is defined in the Wage Order as “the time during which an
22 employee is subject to the control of an employer and includes all the time the employee is suffered
23 or permitted to work, whether or not required to do so.” Wage Order 5-2001, Subd. 2(K); *see also*
24 *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833. Under the control standard, “it is
25 only necessary that the worker be subject to the control of the employer in order to be entitled to
26 compensation.” *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 584. The *Morillion* Court
27 reasoned that an employee is under the employer’s control and entitled to compensation when the
28 employer “directs, commands or restrains’ an employee.” *Morillion*, 22 Cal. 4th at 583 (*quoting*

1 *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal. App. 4th 968, 975). Here, Plaintiff alleges that
2 Defendant requires employees to review and fill out numerous documents after they are hired and
3 prior to their orientation. Plaintiff asserts that employees are not paid for this time. (Mara Dec. ¶
4 30).

5 Defendant contends that employees are paid for all hours worked. Defendant contends that
6 any paperwork filled out by employees was filled out prior to the employee being hired. Defendant
7 asserts that the time employees spend completing pre-hire paperwork is not compensable. (Mara
8 Dec. ¶ 31).

9 **v. Waiting Time Penalties**

10 Plaintiff also pursued waiting time penalties. This claim is derivative of Plaintiff's unpaid
11 wages and meal and rest period claims. Should these claims fail, this claim would also fail. In
12 addition, Defendant contends that even if Plaintiff were successful in his unpaid wages and meal
13 and rest period claims, he would have to prove Defendant "willfully" failed to pay employees the
14 appropriate wages due upon separation of employment. "A willful failure to pay wages within the
15 meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to
16 an employee when those wages are due. However, a good faith dispute that any wages are due will
17 preclude imposition of waiting time penalties under Section 203." Cal. Code Regs. Tit. 8 § 13520.
18 "A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based
19 in law or fact, which would preclude any recovery on the part of the employee. The fact that a
20 defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist."
21 *Id.* Defendant contends that any failure to pay wages due or meal and rest period premiums at the
22 separation of employment was not willful. Defendant argues that it would not be liable for waiting
23 time penalties because a "good faith dispute" exists over the payment of those wages. *See* Cal.
24 Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.
25 (Mara Dec. ¶ 32).

26 **vi. PAGA**

27 Plaintiff also seeks PAGA penalties for the claims outlined above. PAGA allows the
28 private enforcement of certain California Labor Code sections relating to wage and hour violations.

1 The statute of limitations for PAGA violations goes back one year. Because Plaintiff's PAGA
2 claims are based on the same alleged unlawful conduct as his class claims, Plaintiff's PAGA claims
3 are subject to the same risks on the merits as Plaintiff's class claims. (Mara Dec. ¶ 33).

4 In addition, Defendant maintains that Plaintiff's PAGA claims face manageability
5 concerns consistent with the class certification challenges. Specifically, Defendant has due process
6 rights which would not permit Plaintiff to attempt to generalize violations from disparate anecdotal
7 evidence. *Duran v. U.S. Bank National Assn.*, 59 Cal.4th 1 (2014). (Mara Dec. ¶ 34).

8 In addition, the Court may reduce any PAGA penalties awarded under Section 2699,
9 subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to the
10 Aggrieved Employees – assuming liability is proven as to each of Plaintiff's claims – is higher in
11 this case where these same individuals may also be receiving money for the same unlawful conduct
12 under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No.
13 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 ("Because the PAGA penalties
14 sought are at least partially duplicative of penalties granted by the underlying Labor Code
15 violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has
16 discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code §
17 2699(e)(2), Plaintiff recognizes that the potential PAGA penalties are highly uncertain."). As such,
18 the Court will likely reduce any PAGA penalty amount awarded to the Aggrieved Employees.
19 (Mara Dec. ¶ 35).

20 **f. Released Claims**

21 In exchange for an Individual Class Settlement Payment, Participating Class Members will
22 agree to the following release: All claims, rights, demands, liabilities, and causes of action,
23 reasonably arising from, or reasonably related to, the same set of operative facts as those set forth
24 in the operative complaint during the Class Period, including: (a) all claims for unpaid overtime;
25 (b) all claims for meal and rest break violations; (c) all claims for unpaid straight time and
26 minimum wages; (d) all claims for failure to adopt a compliant sick pay/paid time off policy; (e)
27 all claims for the failure to timely pay wages upon termination based on the preceding claims; (f)
28 all claims for the failure to timely pay wages during employment based on the preceding claims;

(g) all claims for wage statement violations based on the preceding claims; and (h) all claims asserted through California Business & Professions Code §§ 17200, *et seq.* (Exhibit 1 at Paragraph 24). The Class Period is February 7, 2019 through December 31, 2024. (Exhibit 1 at Paragraph 7).

In addition, all PAGA Members will agree to the following release in exchange for an Individual PAGA Settlement Payment: All claims for civil penalties under California Labor Code §§ 2698, *et seq.*, that were brought or could reasonably have been brought based on the facts alleged in Plaintiff's LWDA letter during the PAGA Period. (Exhibit 1 at Paragraph 25). The PAGA Period is December 23, 2021 through December 31, 2024. (Exhibit 1 at Paragraph 18).

In addition, Plaintiff has agreed to a general release of his claims. (*See* Exhibit 1 at Paragraph 71).

The releases will be effective upon the Third Funding Date, which is the date when the settlement funds will be paid in full. (*See* Exhibit 1 at Paragraph 53 and 54). The Third Funding Date is no later than December 31, 2026. (*See* Exhibit 1 at Paragraph 33).

g. Exposure Analysis

Class Members worked approximately 473,235 shifts. Employees earned approximately \$19.62 per hour on average. (Mara Dec. ¶ 36).

Plaintiff alleges that Defendant failed to provide employees with meal periods in accordance with California law because Defendant's time records show unlawful meal periods. The sampling of records shows meal period violations in approximately 26% of shifts. If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and the Class Members would be entitled to the following potential damages: \$2,414,066 (473,235 shifts x 0.26 x \$19.62 = \$2,414,066). (Mara Dec. ¶ 37).

Defendant contends that this amount is too high as it has paid meal period premiums to employees and/or employees waived their meal periods in these shifts. Defendant asserts that no damages would be attributable to shifts in which a premium has already been paid and shifts in which a meal period waiver was signed. As such, Defendant contends that the potential damages would be reduced. Defendant also contends that that this amount should be zero because it would be able to rebut the presumption under *Donohue*, in part, by showing it has a lawful meal period

1 policy. Plaintiff had to take into consideration that Defendant may be able to rebut the presumption
2 and that his damages may be reduced based upon waivers and, thus, had to discount this claim.
3 (Mara Dec. ¶ 38).

4 In addition, Plaintiff alleges that Defendant failed to provide employees with rest periods
5 in accordance with California law. Plaintiff contends that employees are required to remain on the
6 premises during rest periods. If Plaintiff were to prevail on this claim for the entire class period,
7 Plaintiff and the Class Members would be entitled to the following potential damages: \$5,362,106
8 (273,298 shifts over 3.5 hours x \$19.62 = \$5,362,106). (Mara Dec. ¶ 39).

9 Defendant contends that this amount should be zero because it has a lawful rest period
10 policy and practice. Defendant disagrees and contends that it does not require employees to remain
11 on the premises during rest periods and that employees do, in fact, leave the premises during rest
12 periods. Accordingly, Defendant claims Plaintiff should take nothing on this claim and, if the
13 factfinder agreed, Plaintiff would take nothing. Although remaining confident in his position,
14 Plaintiff had no way of knowing how the factfinder would rule on this issue and a discount had to
15 be given to make settlement possible. (Mara Dec. ¶ 40).

16 Plaintiff alleges that Defendant failed to provide accurate itemized wage statements. The
17 statute of limitations for Plaintiff's wage statement claim is one year. Under California Labor Code
18 § 226(e)(1), the damages for breach of this section are fifty dollars (\$50) for the initial pay period
19 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
20 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000). If
21 Plaintiff were to prevail on this claim, the potential damages would be \$2,164,350 [(1,301 pay
22 periods x \$50 for an initial violation = \$65,050) + (20,993 pay periods x \$100 for a subsequent
23 violation = \$2,099,300)]. (Mara Dec. ¶ 41).

24 Defendant argues that California law does not expressly require that a company's complete
25 name or the name registered with the California Secretary of State be included on wage statements.
26 Defendant also asserts that any violation of California Labor Code § 226 was not "knowing and
27 intentional." Defendant further contends that employees cannot show that they have suffered an
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1 injury as a result of any potential violation of California Labor Code § 226. Plaintiff had to take
2 Defendant's arguments into consideration in evaluating this claim. (Mara Dec. ¶ 42).

3 Plaintiff alleges that Defendant failed to pay all wages owed to employees because Plaintiff
4 contends that Defendant failed to pay employees for paperwork filled out after being hired but
5 before their orientation. If Plaintiff were to prevail on this claim, Plaintiff and the Class Members
6 would be entitled to the following potential damages: \$110,185 (2,808 employees x 2 hours x
7 \$19.62 average hourly rate = \$110,185). (Mara Dec. ¶ 43).

8 Defendant contends that employees are paid for all hours worked. Defendant contends that
9 any paperwork filled out by employees was filled out prior to the employee being hired. Defendant
10 asserts that the time employees spend completing pre-hire paperwork is not compensable. Plaintiff
11 had to take Defendant's arguments into consideration. (Mara Dec. ¶ 44).

12 If Plaintiff were to prevail on his unpaid wages and meal and rest period claims, he and the
13 Class Members may also be entitled to waiting time penalties. Plaintiff calculates the potential
14 maximum exposure under his waiting time penalties cause of action as \$8,593,560 (1,825 former
15 employees x 30 days x 8 hours per shift x \$19.62 average hourly rate = \$8,593,560). (Mara Dec.
16 ¶ 45).

17 If Plaintiff's unpaid wages and meal period and rest period claims fail, these claims also
18 fail. There is also a possibility that the factfinder could find that these violations are not willful
19 and knowing and intentional. If this were to occur, Plaintiff and the Class would receive nothing
20 under these claims. In addition, a good faith dispute that any wages are due will preclude
21 imposition of waiting time penalties. Defendant argues that Plaintiff will not be able to show that
22 any violations were knowing and intentional and willful. Defendant also contends that there is a
23 good faith dispute about whether any wages are due. Defendant further argues that Plaintiff's
24 overtime, meal period, and rest period claims cannot form the basis of her wage statement claim.
25 Defendant relies on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for
26 the position that employees do not suffer injury under California Labor Code § 226(a) so long as
27 the wage statements correctly reflected the hours worked and the pay received even if the pay is
28 later determined to be inaccurate. Plaintiff had to take these arguments into consideration. (Mara

Dec. ¶ 46).

Plaintiff also seeks PAGA penalties. PAGA allows the private enforcement of certain California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2) reads, in part, as follows:

[T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

The statute of limitations for PAGA violations go back one year. The potential damages under Plaintiff's PAGA claim is \$7,166,800.⁹ (Mara Dec. ¶ 47). As Plaintiff's PAGA claims are based on the same alleged unlawful conduct as his class claims, Plaintiff's PAGA claims are subject to the same risks on the merits as Plaintiff's class claims. In addition, the Court may reduce any PAGA penalties awarded under Section 2699, subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to Plaintiff and the PAGA Aggrieved Employees – assuming liability is proven as to each of Plaintiff's claims – is higher in this case where these same individuals may also be receiving money for the same unlawful conduct under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 (“Because the PAGA penalties sought are at least partially duplicative of penalties granted by the underlying Labor Code violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the potential PAGA penalties are highly uncertain.”). As such, the Court may reduce any PAGA penalty amount awarded to Plaintiff and the PAGA Members. (Mara Dec. ¶ 48).

Thus, not taking into account any of its defenses or arguments, Plaintiff estimated that if he were successful in his core claims, Defendant's total exposure would be approximately \$10,050,707 [\$5,362,106 (rest period exposure) + \$2,414,066 (meal period exposure) + \$2,164,350 (wage statement exposure) + \$110,185 (unpaid wages exposure) = \$10,050,707]. If the fact finder were to side with Defendant on these claims, Plaintiff and the Class Members would

⁹ (\$100 x 3 PAGA violations x 22,345 pay periods = \$6,703,500) + (\$100 x 1 PAGA violation for waiting time penalties x 1,825 pay periods = \$182,500) + (\$100 x 1 PAGA violation for unpaid wages x 2,808 = 280,800).

1 also not be entitled to any damages for waiting time penalties or PAGA penalties that are derivative
2 of and dependent on Plaintiff prevailing on his unpaid wages and meal and rest period claims. If
3 Plaintiff is successful in his unpaid wages and meal and rest period claims, and is able to prove
4 that Defendant's waiting time penalties violations were willful, he may also be entitled to damages
5 for waiting time penalties in the amount of \$8,593,560. Plaintiff and the Aggrieved Employees
6 may also be entitled to PAGA penalties in the amount of \$7,166,800, subject to Court reduction.
7 (Mara Dec. ¶ 49).

8 Based upon the risks just discussed, Plaintiff had to discount the maximum potential
9 exposure. Plaintiff also had to consider that, should the Court agree with his theories and grant
10 certification as to each of the claims, he may not be awarded the full exposure at trial. Plaintiff
11 also had to consider that the Court could agree with Defendant's arguments. Plaintiff also had to
12 consider that if his unpaid wages and meal and rest period claims fail, the derivative claims for
13 waiting time and PAGA penalties would also fail. All of these factors led Plaintiff to reduce the
14 realistic potential exposure in order to gain a definite monetary recovery for the class. (Mara Dec.
15 ¶ 50).

16 Further, Defendant's financial condition raises serious issues moving forward in litigation.
17 Defendant provided Plaintiff's counsel with numerous financial documents such as its tax returns
18 for 2021, 2022, and 2023; its profit and loss statements for 2021 through 2024; its cash flow
19 statements for 2021 through 2024; its W2 preview for 2024; its balance sheets for 2021, 2022,
20 2023; and its general ledgers for 2021 through 2024. In addition, the owners of Learning Arts,
21 William and Lara Brandon provided their personal tax returns. These documents were reviewed
22 and analyzed by a financial expert hired by Plaintiff. Based upon Plaintiff's financial expert's
23 review and analysis, Plaintiff believes that the settlement amount and funding terms reflect
24 Defendant's financial condition and ability to fund a settlement. As a result, there is a substantial
25 risk that Defendant may no longer be in business if it is forced to continue paying the costs and
26 fees to litigate this matter, let alone pay any judgement owed if Plaintiff were to prevail on the
27 merits of his claims. If this occurs, employees would not receive *any* compensation for the wage
28 and hour violations Plaintiff alleges against Defendant. (Mara Dec. ¶ 51).

1 In light of the risks Plaintiff's claims faced, Plaintiff and his Counsel believe that the
2 settlement amount of \$850,000 – with an average settlement share amount estimated at \$145.23 –
3 is a reasonable and fair settlement amount. (Mara Dec. ¶ 52).

4 A settlement is not judged **solely** against what might have been recovered, had the plaintiffs
5 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
6 and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250; *Rebney*
7 *v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139; “Compromise is inherent and necessary
8 in the settlement process...even if the relief afforded by the proposed settlement is substantially
9 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
10 settlement because the public interest may indeed be served by a voluntary settlement in which
11 each side gives ground in the interest of avoiding litigation.” *Wershba, supra*, at 250; *Officers for*
12 *Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 628 (“It is well-settled law that a cash
13 settlement amounting to only a fraction of the potential recovery does not...render the settlement
14 inadequate or unfair”).

15 **h. Payment Plan**

16 As just noted, the settlement is based in part upon Defendant's financial condition. In
17 addition, due to Defendant's financial condition, it must fund the settlement in three installments.
18 Defendant will make the initial settlement payment of \$250,000 no later than December 31, 2025
19 (the “Initial Funding Date”). Defendant will make an additional payment of \$350,000 no later than
20 July 1, 2026 (the “Second Funding Date”). Defendant will make a final payment of \$250,000 no
21 later than December 31, 2026 (the “Third Funding Date”). Defendant will pay the employer's share
22 of payroll taxes separately – once on December 31, 2025, once on July 1, 2026, and once on
23 December 31, 2026. (Exhibit 1 at Paragraph 33). Defendant is providing a declaration regarding
24 its financial situation, as was taken into account in settlement negotiations. (See Brandon Dec. ¶
25 4).

26 **i. Uncashed Checks**

27 Funds represented by Individual Settlement Payment checks returned as undeliverable and
28 Individual Settlement Payment checks remaining un-cashed for more than one hundred and eighty

1 (180) calendar days after issuance will be tendered to the California Controller's Unclaimed
2 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
3 the requirements of California Code of Civil Procedure Section 384, subd. (b). (Exhibit 1 at
4 Paragraph 59).

5 **j. Class Notice Process**

6 **i. Class Notice Administration**

7 **1. Settlement Administrator**

8 The settlement administrator selected by the Parties is ILYM Group, Inc. ("ILYM")
9 (Exhibit 1 at Paragraph 30). In selecting an administrator, Plaintiff requested quotes from two
10 administration companies, ILYM and APEX. The Parties believe that ILYM is the best
11 administrator for this case based on their prior experience using ILYM for the settlement
12 administration process in other cases.

13 The Parties believe that ILYM is the best administrator for this case based on their prior
14 experience using ILYM for the settlement administration process in other cases. In addition, ILYM
15 provided the lowest bid for the settlement administration process in this case, meaning that more
16 of the Net Settlement Fund will be available for Class Members. It should also be noted that ILYM
17 was previously retained in this case to mail the *Belaire-West* notice.

18 **2. Qualifications and Experience of Administrator**

19 ILYM's qualifications and experience are set forth in the declaration from ILYM filed
20 herewith. (See Declaration of Lisa Mullins on Behalf of ILYM Group, Inc.). ILYM's declaration
21 also includes evidence that it has procedures in place to protect the security of class data, and
22 sufficient insurance in the event of a data breach or mishandling of settlement funds.

23 **3. Anticipated Costs of Settlement Administration**

24 The anticipated costs of settlement administration are \$21,550.

25 **4. Class List**

26 Within twenty (20) calendar days of Preliminary Approval, Defendant will provide the
27 Class List to the Settlement Administrator and to Class Counsel. (Exhibit 1 at Paragraph 44). The
28 Class List is a complete list of all Class Members that Defendant will diligently and in good faith

1 compile from its records and provide to the Settlement Administrator and Class Counsel within
2 twenty (20) calendar days after Preliminary Approval of this Settlement. The Class List will be
3 formatted in Microsoft Office Excel and will include each Class Member's full name; most recent
4 mailing address and telephone number; email address (if known); Social Security number; dates
5 of employment; the respective number of Workweeks that each Class Member worked during the
6 Class Period and pay periods that each PAGA Member worked during the PAGA Period; and any
7 other relevant information needed to calculate settlement payments. (Exhibit 1 at Paragraph 4).

8 Prior to mailing, the Settlement Administrator will perform a search based on the National
9 Change of Address Database for information to update and correct for any known or identifiable
10 address changes. (Exhibit 1 at Paragraph 46).

11 Any Class Notices returned to the Settlement Administrator as non-deliverable on or before
12 the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
13 address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing
14 on the Class Notice. If no forwarding address is provided, the Settlement Administrator will
15 promptly attempt to determine the correct address using a skip-trace, or other search using the
16 name, address and/or Social Security number of the Class Member involved, and will then perform
17 a single re-mailing. Those Class Members who receive a re-mailed Class Notice, whether by skip-
18 trace or by request, will have an additional fifteen (15) calendar days to submit a Request for
19 Exclusion or an objection to the Settlement. (Exhibit 1 at Paragraph 46).

20 **5. Class Notice Mailing**

21 Within ten (10) calendar days after receiving the Class List from Defendant, the Settlement
22 Administrator will mail a Class Notice to all Class Members via regular First-Class U.S. Mail,
23 using the most current, known mailing addresses identified in the Class List. (Exhibit 1 at
24 Paragraph 45). In addition, Class Members will be emailed a Class Notice, to the extent that
25 Defendant has an email address on file for the Class Member. (See Exhibit 1 at Paragraph 47).

26 **6. Disbursement of Settlement Funds**

27 Defendant will make the initial settlement payment of \$250,000 no later than December
28 31, 2025 (the "Initial Funding Date"). Defendant will make an additional payment of \$350,000 no

1 later than July 1, 2026 (the “Second Funding Date”). Defendant will make a final payment of
2 \$250,000 no later than December 31, 2026 (the “Third Funding Date”). Defendant will pay the
3 employer’s share of payroll taxes separately – once on December 31, 2025, once on July 1, 2026,
4 and once on December 31, 2026. (Exhibit 1 at Paragraph 33).

5 Within ten (10) calendar days of receipt of the entirety of the settlement funds, the
6 Settlement Administrator will issue payments from the Gross Settlement Amount to Participating
7 Class Members for Individual Settlement Payments, to PAGA Members for Individual PAGA
8 Payments, to the Settlement Administrator for Court-approved services performed in connection
9 with the Settlement, to Class Counsel for Court-approved attorneys’ fees and litigation costs, and
10 to the LWDA for its portion of the PAGA Settlement Amount. (Exhibit 1 at Paragraph 57).

11 **7. Notice of Final Judgment**

12 A copy of the final judgment will be posted to the Settlement Administrator’s website for
13 a period of at least 60 days. (See Exhibit 1 at Paragraph 70).

14 **ii. Class Notice**

15 **1. Proposed Class Notice and Procedures for Notice**

16 The proposed Class Notice is attached to the Settlement Agreement as Exhibit A. All Class
17 Members will be mailed and emailed, to the extent Defendant has an email address on file for the
18 Class Member, a Class Notice. (Exhibit 1 at Paragraph 47). Class Notices will be mailed in English
19 only as all Class Members speak English. (Brandon Dec. ¶ 3).

20 The Class Notice complies with California Rule of Court 3.766(d) as it contains (1) a brief
21 explanation of the case, including the basic contentions or denials of the parties (see Exhibit A at
22 Section 2); (2) a statement that the court will exclude the member from the class if the member so
23 requests by a specified date (see Exhibit A at Sections 6 and 7); (3) a procedure for the member to
24 follow in requesting exclusion from the class (see Exhibit A at Section 7); (4) a statement that the
25 judgment, whether favorable or not, will bind all members who do not request exclusion (see
26 Exhibit A at Section 7); and (5) a statement that any member who does not request exclusion may,
27 if the member so desires, enter an appearance through counsel (see Exhibit A at Section 8).

28 In addition, the Class Notice specifies the amount that the Class Member will receive and

1 how that amount was calculated. (*See* Exhibit A at Page 1 and Section 10(D)). The Class Notice
2 also contains a separate breakdown for PAGA payments and explains that PAGA Members may
3 not opt out of the PAGA portion of the settlement. (*See* Exhibit A at Page 1, Section 6, Section 7,
4 Section 9, and Section 10(D)). Further, the Class Notice contains the terms of the release of claims.
5 (*See* Exhibit A at Section 9).

6 Moreover, each Class Notice will provide: (a) information regarding the nature of the
7 Actions; (b) a summary of the Settlement’s principal terms; (c) the Settlement Class and PAGA
8 Member definitions; (d) the total number of Workweeks each respective Class Member and PAGA
9 Member worked for Defendant during the Class Period and PAGA Period; (e) each Class
10 Member’s and PAGA Member’s estimated Individual Settlement Payment and the formula for
11 calculating Individual Settlement Payments; (f) the dates which comprise the Class Period and
12 PAGA Period; (g) instructions on how to submit Requests for Exclusion or Notices of Objection;
13 (h) the deadlines by which the Class Member must postmark or fax Request for Exclusions, or
14 postmark Notices of Objection to the Settlement; and (i) the claims to be released. (Exhibit 1 at
15 Paragraph 47).

16 **2. Time Limits and Procedures**

17 **a. Response Deadline**

18 After notices are mailed, Class Members will have sixty (60) days to respond to the
19 settlement (this is referred to as the “Response Deadline”). (Exhibit 1 at Paragraph 28). Class
20 Members may respond to the settlement by requesting to be excluded from it or objecting to it.
21 Class Members can also file a dispute as to the number of workweeks attributed to them.

22 **b. Objections**

23 To object to the Settlement Agreement, a Class Member may either postmark a valid Notice
24 of Objection to the Settlement Administrator on or before the Response Deadline, or appear in
25 person at the Final Approval Hearing. (Exhibit 1 at Paragraph 55). A Notice of Objection must
26 include: (a) the objector’s full name, signature, address, and telephone number, (b) a written
27 statement of all grounds for the objection accompanied by any legal support for such objection;
28 (c) copies of any papers, briefs, or other documents upon which the objection is based; and (d) a

1 statement whether the objector intends to appear at the final fairness hearing. (Exhibit 1 at
2 Paragraph 16).

3 **c. Requests for Exclusion**

4 To request exclusion from the settlement, a Class Member must submit a letter to the
5 Settlement Administrator indicating a request to be excluded from the Settlement Class. The
6 Request for Exclusion must: (a) set forth the name, address, telephone number and last four digits
7 of the Social Security Number of the Class Member requesting exclusion; (b) be signed by the
8 Class Member; (c) be returned to the Settlement Administrator; (d) clearly state that the Class
9 Member does not wish to be included in the Settlement; and (e) be faxed or postmarked on or
10 before the Response Deadline. (Exhibit 1 at Paragraph 27).

11 If a Class Member's Request for Exclusion is defective as to the requirements listed herein,
12 that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator
13 will mail the Class Member a cure letter within three (3) business days of receiving the defective
14 submission to advise the Class Member that his or her submission is defective and that the defect
15 must be cured to render the Request for Exclusion valid. The Class Member will have until (a) the
16 Response Deadline or (b) fifteen (15) calendar days from the date of the cure letter, whichever
17 date is later, to postmark or fax a revised Request for Exclusion. (Exhibit 1 at Paragraph 49).

18 **d. Workweek Disputes**

19 Class Members will have an opportunity to dispute the information provided in their Class
20 Notices. To the extent Class Members dispute their employment dates or the number of
21 Workweeks on record, Class Members may produce evidence to the Settlement Administrator
22 showing that such information is inaccurate. Defendant's records will be presumed correct, but the
23 Settlement Administrator shall contact the Parties regarding the dispute and the Parties will work
24 in good faith to resolve it. All disputes must be submitted by the Response Deadline, and will be
25 decided within ten (10) business days after the Response Deadline. (Exhibit 1 at Paragraph 48).

26 **e. Check Cashing Deadline**

27 Individual Settlement Payment checks will remain valid for 180 days after mailing. If any
28 checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement

1 Administrator will send a reminder postcard indicating that unless the check is redeemed or
2 deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offer
3 to replace the check if it was lost or misplaced. (Exhibit 1 at Paragraph 58).

4 **f. Rmailed Notices**

5 Those Class Members who receive a re-mailed Class Notice, whether by skip-trace or by
6 request, will have an additional fifteen (15) calendar days to submit a Request for Exclusion or an
7 objection to the Settlement. (Exhibit 1 at Paragraph 46).

8 **g. Responses Received**

9 Requests for exclusions, disputes, and/or objections will be received by the settlement
10 administrator. (See Exhibit 1 at Paragraph 28).

11 **k. Attorneys' Fees and Costs Requested are Fair and Reasonable**

12 At Final Approval, Plaintiff's Counsel will apply for an award of attorneys' fees of up to
13 one-third of the GSA (\$283,050). California courts have recognized an appropriate method for
14 determining an award of attorneys' fees is based on a percentage of the total value of benefits to
15 Class Members by the settlement, also known as the "common fund" method. *Serrano v. Priest*
16 (1977) 20 Cal.3d 25, 34 (*Serrano III*) 34 ("when a number of persons are entitled in common to a
17 specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the
18 creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees
19 out of the fund."); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the
20 common fund obtained for the benefit of all parties, the trial court acts within its equitable power
21 to prevent the other parties' unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9
22 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorney's fees
23 more accurately reflects the results achieved for the putative class than the lodestar method and
24 "establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected
25 recovery; and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid*
26 *Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery
27 method is generally favored in common fund cases because it allows courts to award fees from the
28 fund 'in a manner that rewards counsel for success and penalizes it for failure.'").

1 The purpose of the common fund/percentage approach is to “spread litigation costs
2 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
3 burden alone.” *Vincent*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d 162,
4 167, the Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund
5 from which others derive benefits may require those passive beneficiaries to bear a fair share of
6 the litigation costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th
7 105, 110, the California Supreme Court recognized that the common fund doctrine has been
8 applied “consistently in California when an action brought by one party creates a fund in which
9 other persons are entitled to share.” The reasons for applying the common fund doctrine include:
10 “...fairness to the successful litigant, who might otherwise receive no benefit because his recovery
11 might be consumed by the expenses; correlative prevention of an unfair advantage to the others
12 who are entitled to share in the fund and who should bear their share of the burden of its recovery;
13 encouragement of the attorney for the successful litigant, who will be more willing to undertake
14 and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured
15 that he will be properly and directly compensated should his efforts be successful.” *Id.*

16 Indeed, the California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that
17 using the percentage method has many advantages:

18 The recognized advantages of the percentage method - including relative ease of
19 calculation, alignment of incentives between counsel and the class, a better
20 approximation of market conditions in a contingency case, and the encouragement
21 it provides counsel to seek an early settlement and avoid unnecessarily prolonging
22 the litigation—convince us the percentage method is a valuable tool that should
23 not be denied our trial courts.

24 *Id.* at 503 (internal citation omitted).¹⁰ Because there is a defined and traceable benefit to the
25 Class, the Court can base an award of attorneys’ fees using a ‘common fund’ approach.

26 **i. Requested Fee Is Within The Range Of Fees Approved In Comparable Cases**

27 Several studies of class action fee awards have found that the median common fund fee

28 ¹⁰ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . . they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee”).

award is approximately one-third of the total settlement fund.¹¹ The requested fee falls in the mid-range of percentage class fee awards, which generally range from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates Class Counsel for their efforts, as well as the result achieved for the benefit of the Class. Numerous state and federal courts in California routinely approve fee requests equal to or greater than 33% of the common fund. Indeed, courts have found that an award of 33% of the common fund represents the “benchmark” in California.¹² In short, Plaintiff Counsel’s fee request of one-third of the GSA is in line with awards in similar cases in California and nationwide and demonstrates that Plaintiff’s counsels’ fee request is consistent with market rates and is reasonable.¹³

I. Requested Enhancement Payment is Fair and Reasonable

At final approval, Class Counsel will seek approval of the Class Representative Enhancement Payment to the named Plaintiff in the sum of \$10,000. As will be detailed at final approval, the requested enhancement is reasonable in light of the broad general release Plaintiff is giving to Defendant in exchange for the \$10,000 payment and the work he performed in this case.

The general release being given by Plaintiff is far greater than the release proposed for Class Members. This payment not only compensates Plaintiff for the work he undertook in this case, but also for the claims and potential claims he may have against Defendant that he is releasing. For example, Plaintiff brought this class action lawsuit to seek recourse for other employees instead of filing an individual case on behalf of merely himself. Since the inception of this case, he has put the Class’s interests ahead of his own. This payment compensates Plaintiff for

¹¹ See, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have shown that “fee awards in class actions average around one-third of the recovery.”); Reagan W. Silber and Frank E. Goodrich, *Common Funds and Common Problems: Fee Objections and Class Counsel’s Response*, 17 Rev. Litig. 525, 546; T. Willging, L. Hooper and R. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules*, 90 (1996) (finding that attorneys’ fees in class litigation “were generally in the traditional range of approximately one-third of the total settlement”).

¹² *Smith v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) 10-CV-1116- IEG WMC, 2013 U.S. Dist. LEXIS 6049, *14 (“These percentages compare favorably with both California (33%) and federal (25%) benchmarks.”); *Dennis v. Kellogg Co.* (S.D. Cal. Nov. 14, 2013) 09-CV-1786-L WMC, 2013 U.S. Dist. LEXIS 163118, *22 (“This percentage compares favorably with both California (33%) and federal (25%) benchmarks and the requested fee compares well with a lodestar cross-check as well.”).

¹³ At Final Approval, Plaintiff’s Counsel will also show that the fee request is reasonable when calculated using the lodestar method.

1 the claims that he forwent bringing for the betterment of the Class Members.

2 Moreover, as representative for the absent class members, Plaintiff risked a potential
3 judgment taken against him for attorneys' fees and costs if this matter had not been successfully
4 concluded. Case law holds that a losing party is liable for the prevailing party's costs. *See Early v.*
5 *Superior Court*, 79 Cal.App.4th 1420, 1433 (2000). And in some wage and hour actions, such as
6 this case, pursuant to California Labor Code § 218.5, the prevailing party can be liable for
7 attorneys' fees as well. Though the fee agreement provides that Class Counsel would pay such
8 costs, Plaintiff would nevertheless have had a cost bill entered against him leaving him ultimately
9 liable for potentially hundreds of thousands of dollars in the unexpected possibility that Class
10 Counsel did not meet their obligation to cover those costs. Unfortunately, there have been
11 judgments like this entered against class representatives.¹⁴ The risk of payment of Defendant's
12 costs, alone, is a sufficient basis for an award of the requested service award. Few individuals are
13 willing to take this risk, and Plaintiff championed a cause on behalf of others with potentially huge
14 monetary risks.

15 Additionally, the modern-day work force is mobile, with employees holding several jobs
16 over the span of their career. It is also true that prospective employers in this computer, high-tech
17 age "Google" and/or do extensive background checks and have access to court databases to see if
18 applicants have ever filed a lawsuit or have ever been sued. Here, Plaintiff's conduct will not be
19 lost on a prospective employer who has to choose between an applicant who has never sued an
20 employer and one who has done so. The requested award far from compensates Plaintiff for
21 opportunities he may lose in the future because of the exercise of a Constitutional right to Petition
22 the Courts for redress of a grievance.

23 Courts routinely approve service payments, or incentive awards, to compensate named
24 plaintiffs for the services they provide and the risks they incur during class litigation. *See In re*
25 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers*

26 ¹⁴ *See, e.g. Koehl v. Verio, Inc.*, 142 Cal.App.4th 1313, 1328 (2006) (a wage and hour class action where Defendant
27 prevailed at trial, the named Plaintiffs were held liable, jointly and severally for the Defendant's attorneys' fees);
28 *Whiteway v. Fedex Kinkos Office & Print Services, Inc.*, No. 05-2320, 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. Dec.
17, 2007) (a wage and hour misclassification case lost on summary judgment, after the case was certified, the named
Plaintiff was assessed costs in the sum of \$56,788.).

1 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
2 representatives); Manual § 21.62 n.971 (noting that service payments are warranted). Based on the
3 foregoing, the \$10,000 payment to the named Class Representative is fair, appropriate and justified
4 as part of the overall settlement.

5 **m. Pending Litigation**

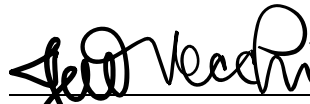
6 The Parties are unaware of any pending litigation that will be affected by this settlement.
7 (Mara Dec. ¶ 53; Brandon Dec. ¶ 5).

8 **V. CONCLUSION**

9 Plaintiff respectfully submits that the proposed settlement is in the best interests of the
10 Class and Class Members, as it is fair, adequate, and reasonable, and one that should ultimately be
11 granted final approval. Under the applicable class action criteria and guidelines, the proposed
12 settlement should be preliminarily approved by the Court, the class should be conditionally
13 certified for purposes of settlement only, and the Class Notice should be approved. Plaintiff also
14 respectfully requests the Court set a final approval hearing date of December 12, 2025, or other
15 available date for the Court.

16
17 Dated: June 25, 2025

MARA LAW FIRM, PC

18 
19 _____
20 David Mara, Esq.
21 Jill Vecchi, Esq.

22 Representing Plaintiff ERIC WARD,
23 on behalf of himself, all others similarly situated,
24 and on behalf of the general public
25
26
27
28