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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ROBERT CELLA, Individually, and on behalf of other members of the general public similarly situated

Plaintiff

v.

GRIFFIS INVESTMENT COMPANY, INC., a Colorado Corporation; GRIFFIS GROUP RESIDENTIAL, LLC, a business entity unknown; GRIFFIS GROUP RESIDENTIAL PAYROLL, a business entity unknown; GRIFFIS RESIDENTIAL, a business entity unknown; and DOES 1-10, inclusive

Defendants

CASE NO. 24CU008274C

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE *UNOPPOSED* MOTION FOR PRELIMINARY APPROVAL OF GOOD FAITH DETERMINATION OF CLASS ACTION SETTLEMENT

Date: February 27, 2026
Time: 10:30 a.m.
Dept: C-64
Judge: Hon. Loren Freestone

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I. SUMMARY OF MOTION

This is a "Wage and Hour"Class Action and Private Attorney General ("PAGA") Representative claim. Plaintiff ROBERT CELLA, Individually, and on behalf of other members of the general public similarly situated brings Labor Code claims against Defendant GRIFFIS INVESTMENT COMPANY, INC., GRIFFIS GROUP RESIDENTIAL, LLC., GRIFFIS GROUP RESIDENTIAL PAYROLL and GRIFFIS RESIDENTIAL (hereinafter "Griffis" or "Defendants").

After continuous litigation, exchanges of informal discovery and one full day of Mediation, the parties agreed to the terms of a proposed class action settlement. The parties have drafted and executed a formal Joint Stipulation of Class and PAGA Action Settlement (the "Agreement,") lodged as **Exhibit A**[1] to the declaration of Ryan Kuhn. Briefly, the proposed terms of the settlement are as follows:

Approximate size of class:	**65 individuals**
Notice Period:	**30 days from Mailing of Notice**
Settlement Fund ("GSA"):	**$140,952.50**
Settlement administration:	**$6,550** (or less)
Class representative incentive:	**$10,000**
LWDA payment:	**$6,500** (65 % Share of $10,000 allocation)
Attorney's fees:	**$46,984.12**(1/3% of total)
Litigation costs:	**$12,500.00**

Estimated average payment (before taxes) to each Class Member based on the above figures will be **$898.74**. This estimate is an "average" only, and do not account for the fact that class members will receive more or less than an "average" share, as the amounts owed are calculated based on the number of workweeks each individual worked for Defendant during the class period.

Please Note: This is a **non reversionary** settlement. The entire Net Settlement Amount, after the awarded costs, taxes and fees are deducted, will be automatically disbursed to all Class Members who do not file a request to "opt-out" of participation in the lawsuit. (**Ex. A** at "Definitions" ¶1.l).

[1] This Memorandum incorporates by reference the definitions in the Agreement and the terms used herein are intended to have the same meaning as set forth in the Agreement.

The parties now move the Court for an order: **(1)** preliminarily approving the proposed class action settlement; **(2)** directing that Notice (defined below) of the proposed settlement be provided to Class Members; and **(3)** scheduling a hearing for final approval of the proposed settlement and entry of the parties' proposed Final Order Approving Class Action Settlement.

II. <u>FACTUAL AND PROCEDURAL HISTORY</u>

This matter involves wage and hour claims against a class of Griffis nonexempt employees.

1. The Operative Claims

On August 28, 2024, Plaintiff filed the Complaint in this matter. The Complaint alleged individual and class representative action claims, under the California Labor code involving, *inter alia*, (1) failure to pay minimum wages; (2) failure to pay overtime compensation; (3) failure to provide meal breaks; (4) failure to provide rest breaks; (5) failure to provide all gratuities owed; (6) failure to reimburse employees for business expenses; (7) failure to provide accurate itemized wage statements; and (8) failure to pay all wages to upon termination. (Kuhn Decl. ¶3, ROA #4).

<u>Please Note:</u> As part of this settlement, Plaintiff Cella will file First Amended Complaint (the "Operative Complaint"), adding PAGA claims based on the same violations alleged in the original complaint. The Parties shall agree upon the form of the Amended Complaint. (**Ex. A** at ¶13).

2. Settlement Efforts

On May 8, 2025, the parties attended a mediation before an experienced Wage and Hour class mediator, Christianna Kyriacou Mantas. (Kuhn decl. ¶5). Prior to, and during, the mediation, counsel for both parties agreed to the informal exchange of information pertinent to a class-wide settlement. Prior to mediation, Plaintiff prepared and provided a detailed mediation brief.(*Id*). The Parties ultimately accepted a mediator's proposal and agreed that all claims would be settled on a class basis for the maximum amount of **$140,952.50**, with no portion of the settlement reverting back to Defendant. (*Id*). On May 13, 2025, the parties agreed to a detailed mediator proposal on the key terms of the settlement. (Kuhn decl. ¶6). The parties agreed on all final terms of the settlement which was memorialized in the Agreement, which is attached to the declaration of Ryan T. Kuhn as **Exhibit A**. Plaintiff now seeks the Court's preliminary approval of the Agreement. (*Id*).

III. SETTLEMENT TERMS

The Agreement includes the following key terms:

1. Contingent Nature of the Settlement

The parties entered into the Agreement exclusively for the purpose of resolving the action and facilitating the negotiated settlement. Should the Court, for any reason, not preliminarily and/or finally approve the Agreement, or if the Agreement is terminated for any reason, then the parties have agreed that the Agreement will be null and void and this action will revert to its status with respect to any and all matters as they existed prior to the parties signing the Agreement. (Kuhn Decl. ¶7).

2. Description of the Settlement Classes

Solely for the purposes of the Agreement, the parties have agreed that the term "Class Member" is defined as:

> All current and former hourly-paid or non-exempt employees of Defendant within the State of California at any time during the Class Period. (August 28, 2020 - July 13, 2025). (**Ex. A** at ¶¶d, f).

The parties agree that the Settlement Class consists of approximately sixty five (65) individuals, as determined by Defendant's employment records. (**Exhibit A** at "Definitions" ¶d).

3. Appointment of Settlement Administrator

The parties agreed to use ILYM Group, Inc. ("ILYM"), as the "Settlement Administrator" for purposes of providing the Notice to Settlement Class Members, issuing payments pursuant to the Agreement, and to administer the claims. (**Ex. A** at ¶ee). ILYM's sole business has been the administration of class action settlements and notices, and has extensive experience. (Kuhn Decl.¶ 8).

4. Scope of the Release

For purposes of the Agreement, Plaintiff, Class Members, PAGA Members, the State of California, and the LWDA release all claims that are either or both: **(1)** alleged in the First Amended Complaint; or **(2)** which relate to or arise out of the allegations and claims asserted in the First Amended Complaint and could have been alleged in the complaint relating in any way to violations of the wage and hour provisions of the California Labor Code or the California Wage Orders, or any other wage and hour provisions of California law. The release language is reflected in **Ex. A** at ¶41.

5. Cash Payment and Allocation

The Agreement provides for an automatic Individual Settlement Payment to the members of the Class. No claims need to be submitted to the TPA. Class Members will be entitled to an average share of approximately **$898.74**. (Kuhn Decl. ¶9). The actual share will depend on the amount of pay periods they were employed during the limitations period. (**Ex. B** at ¶8). The Settlement Payment will be allocated as follows: sixty five percent (65%) of the amount attributable to the class portion of the Settlement will be treated as interest and penalties and will be reported as 1099 miscellaneous income by the Administrator to federal and state tax authorities, and thirty five percent (35%) will be treated as wages and will be reported as W-2 income subject to withholdings, deductions, and contributions in relation to wage payments. (**Ex. B** at ¶10).

The Net Settlement Amount will be allocated to the Class Members as follows: Class Members who do not exclude themselves from the class portion of the Settlement will receive payment based on the proportional number of workweeks worked by each Class Member who does not exclude themself during the period of August 28, 2020, through July 13, 2025 (calculated as the number of workweeks worked by the Class Member divided by the total number of workweeks worked by all Class Members who do not exclude themselves). (**Ex. B** at ¶8). Of the PAGA Penalties, $3,500.00 will be paid to Class Members based on the proportional number of pay periods worked by each Class Member during the period of May 8, 2024, through July 13, 2025 (calculated as the number of pay periods worked by the Class Member divided by the total number of pay periods worked by all Class Members during that time period). (*Id.*)

6. Proposed Settlement and Notice Program

Subject to Court approval, the Parties agree that, within fourteen (14) days after the Court enters any Order granting preliminary approval of the Settlement, Defendant will provide to the Settlement Administrator the following information for each Settlement Class Member in a reasonable format requested by the Settlement Administrator: class member names and last known home addresses, telephone numbers, social security numbers, weeks worked with Defendant based on Defendant's records, and last known mailing addresses for each member of the Class. (*See* **Ex. A** at

¶17). The Settlement Administrator will perform address updates and verifications, as necessary, prior to the first mailing. Within 14 days of receipt of the Class List, the Settlement Administrator will mail the Class Notice ("Notice") to each Class Member, by first class mail. (*See* **Ex. A** at ¶¶19, 20). The Notice is attached to the declaration of Ryan Kuhn as **Exhibit B**. (Kuhn Decl. ¶10).

The Notice is designed to provide Class Members with detailed information about the lawsuit, the Agreement, their rights and the settlement benefits, and how to participate, exclude themselves, or object. (*See* **Ex. B**.) From the date the Notices are mailed, the Class Members will have thirty (30) calendar days to request to be excluded, or file objections. This deadline will be extended an additional fifteen (15) days if Notice is re-mailed. (**Ex. A**, at ¶z; **Ex. B**).

The Class Members will be given notice of the release, and information about the expected settlement amount based on the workweeks employed with Defendants during the Class Period. If they wish to receive a share of the Settlement, Class Members need not take any additional action. Class Members are also given instructions on how to exclude themselves, object to the Settlement, or appear at the final approval hearing to state objections. (**Ex. A**, at ¶20*; see also* **Ex. B**).

The Notice program also has additional safeguards. For instance, for Notices returned as non-deliverable, the Class Administrator will perform a skip-trace and mail or re-mail Notice to an updated address (if any), upon receipt of the returned mail. (*See* **Ex. A** at ¶19). It is the intent of the parties that all reasonable means be used to locate Class Members.

The Notice will inform Class Members of the number of weeks worked during the Class Period (according to Defendant's records) and their estimated settlement amounts. Class members will have the opportunity to dispute the workweek calculation by submitting written documentation to the Claims Administrator. (*See* **Ex. A** at ¶¶20-21; **Ex. B** at ¶10).

PAGA Members do **<u>not</u>** require notice prior to a settlement nor may they opt out of the PAGA penalty portion of the settlement. *Robinson v. S. Ctys. Oil Co.*, (2020) 53 Cal. App. 5th 476, 482–83, review denied (Nov. 24, 2020). PAGA members are nonetheless informed of the Settlement and estimated payments. PAGA members can opt-out of the Class Settlement to retain all non-PAGA claims in their individual capacities. These rights are explained in the Class Notice. (**Ex. B** at ¶14).

7. Contingent Costs

Defendant agrees to pay Forty-Six Thousand Nine Hundred Eighty-Four Dollars and Twelve Cents (**$46,984.12**) in attorneys' fees, which is one-third (1/3%) of the total settlement, and up to Twelve Thousand Five Hundred ($12,500.00) in litigation costs. (*See* **Ex. A** at ¶31). For costs incurred in administrating the settlement, Defendant will pay no more than Six Thousand Five Hundred Fifty ($6,550.00). (*See* **Ex. A** at ¶8d; Kuhn Decl. ¶11).

Defendant also agrees to allocate Ten Thousand Dollars ($10,000.00) to Plaintiff's PAGA claims, with 65% of the amount, or $6,500.00, being paid to the LWDA, and 35%, or $3,500.00, being distributed amongst the class members. (*See* **Ex. A** at ¶¶u; 8.e; Kuhn Decl. ¶12).

Defendant also agrees to pay Plaintiff Robert Cella Ten Thousand Dollars ($10,000.00) as an enhancement award in consideration for his service as Class Representative. (*See* **Ex. A** at ¶¶g; 8.c). The enhancement awards were decided pursuant to good faith negotiations and is intended to recognize that it was the class representative who initiated the lawsuit, initiated the PAGA claims, provided critical documents and witnesses to his attorneys, and worked with his attorneys to propound and prepare written discovery, all in an effort to obtain moneys allegedly owed not only to himself, but to many other employees. (Kuhn Decl. ¶13).

IV. SUMMARY OF CLAIMS AND ESTIMATES OF POTENTIAL DAMAGES

Counsel hereby submits estimates and calculations for the total potential value of all claims so this Court may evaluate if the amount to be paid to the class ultimately could be determined to be fair and reasonable when balanced against the probable outcome of the future litigation. *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal. App. 4th 116, 133.

Concerning the strength of the plaintiff's case, the California Court of Appeal has said that the "merits of the underlying class claims are not a basis for upsetting the settlement of a class action; the operative word is 'settlement.'" *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1150 [citing, *inter alia, City of Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448,455 ("The fact that a proposed settlement may only amount to a fraction the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); see also *Linney v. Cellular Alaska P'ship.* (9th Cir. 1998) 151 F.3d 1234, 1242 ("This court has aptly held that 'it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements'"); *Officers for Justice v. Civil Servo Com.* (9th Cir. 1982) 688 F.2d 615, 625. ("The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.")

Each of the primary claims also had risks to obtaining both class certification and a finding of liability. If Defendants' asserted defenses were successful, the class would not receive anything. As is set forth below, Plaintiff submits that the most realistic "best case" scenario would be an average recovery per class member of approximately **$3,759.61** and a worst case scenario would be a recovery of $0, by way of denial of class certification or defense verdict. (Kuhn Decl. ¶14). Given the risks, the estimated **$898.74** average recovery secured via this settlement is a reasonable compromise and is in the best interests of the class given all the risks of continued litigation. (Kuhn Decl. ¶15).

A. FAILURE TO PAY ALL COMPENSATION CLAIMS

Plaintiff's unpaid wages claims were based on the allegation that employees were performing unpaid work (1) due to Griffis' failure to include the value of non-discretionary compensation, including bonuses, commissions and employee bonuses for purposes of calculating the regular rate of pay; (2) due to Griffis' use of an illegal "transactional transfer" system; and (3) due to the workload and customer needs often requiring employees to continue working during their "purported" Meal Periods and/or after clocking out. Plaintiff alleged this resulted in regular time and overtime pay being owed where Defendants were on notice of work being performed without pay. (Kuhn Decl. ¶24).

Defendants denied that any unpaid work occurred, and even if some did occur, Griffis claimed it was not on notice of these alleged Labor Code violations and had a strict written prohibition against off-the-clock work and a mandate that all time worked must be accurately recorded. Griffis asserted proof of these alleged violations would require individualized inquiries, which could make any PAGA claims unmanageable. (Kuhn Decl. ¶25).

Based on Class Counsels' analysis, this claim was worth as little as $0 (a defense verdict or denial of class certification) or as much as **$10,000.00**. (Kuhn Decl. ¶16).

B. MEAL AND REST PERIOD CLAIMS

Plaintiff was able to identify hundreds of examples of “missing”, “short”, or “late” Meal Periods without the provision of a Meal Period Penalty Payment. However, Defendant argued that these records do not conclusively show whether (1) Griffis actually failed to provide the Meal Period, (2) there was a voluntary waiver, (3) employees forgot to clock out, or (4) employees voluntarily chose to skip or take them late even though they were provided. Additionally, in light of Defendant’s written Meal Period policy and the wide variations in alleged violations and departments, Defendants contended there was no uniform policy or practice, requiring individualized inquiries that would result in de-certification and make any PAGA claims unmanageable. (Kuhn Decl. ¶26).

Plaintiff also alleged the Griffis written policies improperly restricted class members from leaving the premises during Meal and Rest Periods. Griffis argued that witness testimony would demonstrate that - in practice - Griffis did not restrict its employees from "leave the premises" during Rest Periods. Griffis also contended individualized inquiries abound as to why individual employees may have failed to take appropriate Meal or Rest Periods. (Kuhn Decl. ¶27).

Plaintiff alleged that the Rest Period policy lacks the required statutory language. Plaintiff also alleged Griffis’s written policies improperly restricted class members from leaving the premises during their Rest Periods, among other deficiencies. Griffis pointed out that they provided for adequate breaks and argued that witness testimony would demonstrate that in practice, no restriction on rest breaks were ever enforced. Griffis also contended individualized inquiries will abound as to why individual employees may have failed to take appropriate Meal or Rest Periods. (Kuhn Decl. ¶28).

While there are time records to support the existence of meal period violations, there are no corresponding rest period records, making this aspect of the claim much harder to prove. Some Courts have been disinclined to accept survey evidence that may have been needed to help establish rest period violations. See e.g. *Duran v. U.S. Bank National Assn*. (2018) 19 Cal.App.5th 630.

Based on counsels’ analysis, this claim was worth as little as $0 (a defense verdict or denial of class certification) or as much as **$192,000.00**. (Kuhn Decl. ¶16).

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C. PLAINTIFF'S WAGE STATEMENT CLAIMS

As to the wage statement claims, Plaintiff acknowledges that these claims are largely derivative, in that both the gross and net wages could be found to be inaccurate, due to the above-referenced claims. Griffis argued that the failure to list gross and net wages are derivative of other claims that may ultimately fail and as a result there is no "knowing and intentional failure" to list information, which triggers liability under Labor Code §226(e). (Kuhn Decl. ¶29).

The California Supreme Court has recently held that the failure to pay meal and rest period premiums ***may*** give rise to a claim for inaccurate wage statements (or waiting time penalties). However, such derivative liability is not automatic and the Plaintiff still must show *a* "knowing and intentional" or "wilful" failure to comply with the Labor Code. See *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93,109. Griffis (as with the underlying Meal and Rest Period claims) maintained individualized inquires would abound as to why breaks were missed and whether Meal Period Premiums should have been paid in the first place, requiring individualized inquiries that would make any PAGA claims unmanageable. (Kuhn Decl. ¶ 30).

As is broken down further in the declaration of Ryan T. Kuhn, this claim was valued at as little as $0.00 and as much as **$500,000.00.** (Kuhn Decl. ¶16).

D. PLAINTIFF'S REIMBURSEMENT CLAIMS

Plaintiff contends that Griffis violated Labor Code section 2802 by failing to reimburse its employees for certain costs, including cellular phone costs. Griffis contends it would have reimbursed any business expenses, but was not aware of any expenses incurred by its employees. (Kuhn Decl. ¶30). As stated in the declaration of Ryan T. Kuhn, this claim was valued at as little as $0.00 and as much as **$24,000.00.** (Kuhn Decl. ¶16).

E. OTHER DERIVATIVE CLAIMS (PAGA, LABOR CODE SECTION 203)

The remaining claims are derivative in that PAGA and Labor Code § 203 penalties would only be permissible if the above claims are proven.

The parties agreed to allocate $10,000 to the PAGA claims, which is 7.09% of the total settlement. This PAGA allocation is in the range routinely approved by California Courts. *See*

Garcia v. Gordon Trucking, Inc. (E.D. Cal., Oct. 31, 2012, No. 1:10-CV-0324 AWI SKO) 2012 WL 5364575, at *7 (approving $10,000 PAGA penalty for a California class with a $3.7 million gross settlement payment); *Syed v. M-I, L.L.C.* (E.D. Cal., Feb. 22, 2017, No. 112CV01718DADMJS) 2017 WL 714367, at *13 (approving 2.53% of the estimated $3.95 million gross settlement amount allocated to the California class); *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869 (approving allocation of $20,000 to the PAGA claim (0.15% of its total value of $12,952,000) as reasonable in the context of the settlement as a whole); *In re Uber FCRA Litigation* (N.D. Cal., June 29, 2017, No. 14-CV-05200-EMC) 2017 WL 2806698 (approving a settlement agreement of $7.5 million, where the amount allocated to the PAGA claims was only $7,500 – .01% of the total settlement amount).

Based on Class Counsel's analysis, the PAGA and Labor Code §203 claims were worth as little as $0 (a PAGA defense verdict or denial of certification of the §203 claim) or as much as $367,500 and $144,000 respectively. (Kuhn Decl. ¶16).

F. CASE LAW SUPPORTS A FURTHER REDUCTION ON ANY RECOVERY

Plaintiff concedes she would be highly unlikely to ever be awarded an amount approaching the maximum damages set forth above. To wit, the majority of the recovery would be "derivative" penalties under PAGA, Labor Code § 203 and Labor Code § 226. The Court would have great discretion to mitigate any penalties awarded. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (disapproved on other grounds).

In a recent trial involving Class Counsel, the Court found liability, but then significantly reduced the PAGA penalties, down to $5 a violation. See *Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504; See accord *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK(OPx), 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%, in part because employer was "not aware" of violations). And in *Carrington*, the Court also noted that other trial courts have declined to "stack" (impose multiple) penalties based on the same underlying Labor Code violation. See *Ruelas v. Costco Wholesale Corporation* (N.D. Cal. 2014) 67 F.Supp.3d 1137.

Class Counsel believes a mitigation of the damages and potential PAGA penalties is warranted here. As in the *Carrington* case, there was evidence that Griffis attempted to provide Meal and Rest Periods in practice, and the written policies contained no facially non-compliant terms.

Given this, it is likely that some of the violations by Griffis were not "willful." Finally, given the defenses raised by Defendant, there was a significant risk that many of the claims would not have been certified or, if they were, certification could not have been maintained through trial and appeal.

The Parties agree the failure to pay "ex employees" under § 203 is derivative of the other claims. As Griffis asserts a "good faith dispute" for withholding any unpaid wages, it would be difficult to establish any liability for a "willful" failure to pay wages owed.

Based on the above, it would be likely that PAGA penalties would be reduced to approximately $5 per violation and the Court would find no basis for imposing Labor Code §§ 203 or 226 penalties. (Kuhn decl. ¶22). If this occurred, the average class member's pre-tax share of a realistic best case recovery would be **$3,759.61**. (Kuhn decl. ¶23). Accordingly, Class Counsel submits the **$898.74** average recovery secured via this Settlement, is a reasonable compromise and is in the best interests of the Class given all the risks of continued litigation. (*Id.*).

V. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE

Under California law, a class action is appropriate when the class is ascertainable and there is “a well defined community of interest in the questions of law and fact involved affecting the parties to be represented.” Cal. Code Civ. Proc. § 382; *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 341. State law requirements under California Code of Civil Procedure § 382 for class certification mirror those of federal law under Rule 23 of the Federal Rules of Civil Procedure: numerosity, typicality of the class representatives’ claims, adequacy of representation, predominance of common issues, and superiority. See Fed. R. Civ. P. 23(a); see also *Hanlon v. Chrysler Corp.* (9^{th} Cir. 1998) 150 F.3d 1011, 1019. Thus, for settlement purposes, each of these elements must be present. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 237-38.

A. THE PROPOSED SETTLEMENT CLASS IS ASCERTAINABLE

The proposed class is ascertainable because all Class Members currently or formerly worked for Defendant as a nonexempt employee and will be identified through Defendant's employment records. See *Rose v. City of Hayward*, 126 Cal.App.3d 926 (1981) (finding that "Class Members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records"). Thus, the ascertainability requirement is met. (Kuhn Decl. ¶37).

B. THE PROPOSED SETTLEMENT CLASS IS SUFFICIENTLY NUMEROUS

The numerosity requirement is met if the class is so large that joinder of all members would be impracticable. *In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 318. Here, Defendant's records show that approximately **65 class members** worked for the company during the limitations period. (Kuhn Decl. ¶33). Thus, joinder of all members of the class would be impracticable.

C. THE COMMONALITY REQUIREMENT WAS MET

The commonality requirement is met if there are questions of law and fact common to the class. *See Hanlon*, *supra*, 150 F.3d at 1019. Here, for purposes of the Settlement, the parties agree the claims of Class Members all involve the same questions of law and fact. Namely, all class members were subject to the same employment policies and practices of Defendant. (Kuhn Decl. ¶ 34). The common question exists as to whether the policies and practices Class Members were subjected to are illegal. Therefore, the commonality requirement is satisfied. See *Hanlon*, *supra*, 150 F.3d at 1019-20.

D. THE TYPICALITY REQUIREMENT IS MET

The typicality requirement is met if the class representatives and class counsel have no interests adverse to the interests of the proposed Class Members and are committed to vigorously prosecuting the case on behalf of the class. See *Wehner v. Syntex Corp.,* 117 F.R.D. 641, 644 (N.D. Cal. 1987).

Here, there are no such adverse interests. Plaintiff has claims substantially the same as all the other Class Members. (Kuhn Decl. ¶35). Factual differences may exist between the class representatives and the Class Members so long as the claims arise from the same events or course of conduct and are based on the same legal theories. See *Hanlon,* 150 F.3d at 1020; see also 1 *Newberg* § 53.13 at 3-76-77 ("When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of varying fact patterns which under lie individual claims.")

E. THE ADEQUACY REQUIREMENT IS MET

The adequacy of representation component of the community of interest requirement for class certification "comes into play when the party opposing certification brings forth evidence indicating widespread antagonism to the class suit." *Capitol People First v. Dep't of Develop. Servs.* (2007) 155 Cal. App. 4th 676, 696-97. The adequacy inquiry "serves to uncover conflicts of interest between named parties and the class they seek to represent." *Id*. To assure "adequate" representation, the "class representative's [...] claim must not be inconsistent with the claims of other members of the class." *Id*. Here, no such "inconsistencies" exist. Each Plaintiff will be compensated based on the same "pay period" formula as all other members of the Class. (Kuhn Decl. ¶ 35)

Additionally, any Class Member who wishes to "opt out" of the Settlement may do so and retain all of their individual rights. (Kuhn Decl. ¶ 36). There is therefore no conflict of interest between the Class Representative and the Class Members. (*Id*.) Thus, at least for settlement purposes, the adequacy prong is met. (*Id*.)

F. COMMON ISSUES PREDOMINATE AND CLASS-WIDE SETTLEMENT IS SUPERIOR TO OTHER AVAILABLE METHODS OF RESOLUTION

Class certification is authorized where common questions of law and fact predominate over individual questions, and where class-wide treatment of a dispute is superior to individual litigation. See *Richmond v. Dart Indus., Inc.,* 29 Cal.3d 462, 469 (1981).

The proposed class in this case is sufficiently cohesive because, for purposes of the Settlement only, the parties have stipulated that all class certification elements are met. (**Ex. A** at ¶15; Kuhn Decl. ¶39). All members of the Class worked under the same conditions and experienced the same policies and practices of Defendant. (See section IV, *supra*). Thus, the class is sufficiently cohesive.

Further, it is preferable to resolve all of the Class Members' claims by means of a class-wide settlement than to require each Class Member to litigate individual claims. (Kuhn Decl. ¶38).

VI. PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT IS PROPER

The trial court has broad discretion to determine whether a class action settlement is fair and reasonable. *In re Microsoft I-V* Cases (2006) 135 Cal.App.4th 706, 723. Fairness is presumed 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. *Chaves v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52; *Dunk v. Ford Motor Co.*(1996) 48 Cal.App.4th 1794, 1802. But, even where it appears the settlement is fair, the court must still determine on the record before it whether the settlement should be approved after considering "the strengths and weaknesses of the claims and risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129. The courts will consider: (i) the strength of the plaintiff's case; (ii) the risks, expense, complexity and likely duration of further litigation; (iii) the risk of maintaining class action status throughout the trial; (iv) the amount offered in settlement; (v) the extent of discovery completed; (vi) the stage of the proceedings; (vii) the experience and views of counsel; (viii) the presence of a governmental participant; and (ix) any reaction of putative class members to the proposed settlement. *Dunk*, 48 Cal.App.4th, at 1800-1801; *In re Microsoft I-V Cases*, 135 Cal.App.4th, at 723.

When evaluating these factors, the court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case," but nonetheless it "must eschew any rubber stamp approval in favor of an independent evaluation." *Kullar*, 168 Cal.App.4th, at 130. Ultimately, the court approves the proposed class action settlement when the settlement is fair and falls "within the range of reasonableness." *Hernandez v. Vitamin Shoppe Indus., Inc.* (2009) 174 Cal.App.4th 1441, 1446.

A. FAIRNESS OF THE SETTLEMENT

For preliminary approval purposes, a proposed class action settlement is *presumed* to be fair where, as here, (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; and (3) counsel is experienced in similar litigation. *Chaves*, *supra*, 162 Cal.App.4th at 52.

The proposed settlement in this action meets these criteria, and merits preliminary approval. As discussed above, the parties only entered into the Agreement after engaging in a full day of mediation with experienced an mediator who routinely handle "Wage and Hour" class action litigation, Christianna Kyriacou Mantas. (Kuhn Decl.¶¶4-6). The mediation was preceded by substantial discovery, investigation into the claims at issue, interviews of numerous Class Members, disclosure and review of documents detailing company-wide policies and practices, informal information exchanges for mediation purposes, and ongoing discussions about the merits between the parties' counsel during the span of the litigation. (Kuhn Decl.¶5). Thereafter, the parties memorialized the details of this settlement via the Agreement. (**Ex. A**).

In the settlement, both sides took into account the strengths and weaknesses of their opponent's positions as pointed out by Christianna Kyriacou Mantas, the data available to evaluate liability and damages, the lack of data or evidence on certain issues, and the substantial and evolving law applicable to the merits of the claims. The Agreement was only agreed to after extensive arms-length negotiations resulting in a unique compromise that permits all parties to move forward and bring this action to close. In spite of a mutual desire to resolve this action, the negotiations remained at all times adversarial. (Kuhn Decl. ¶ 40). As set forth below in section H, *infra.*, counsel for both parties have extensive experience in litigating wage and hour class action lawsuits. Based on this experience, counsel have determined that the settlement is fair, adequate, and reasonable. (Kuhn Decl. ¶46).

B. STRENGTH OF PLAINTIFF'S CASE

The most important factor courts consider when evaluating the fairness of the class action settlement is the strength of the plaintiffs' case balanced against the amount offered in settlement. *Kullar*, 168 Cal.App.4th, at 130.

All of Plaintiff's claims – individual, PAGA, and class claims – presented hurdles including potential de-certification, in addition to a substantial risk of a defense verdict by way of summary judgment motion or at trial. (Kuhn Decl. ¶¶ 42-43). The exchange of mediation briefs, the assistance of an experienced "Wage and Hour" mediator, and the parties' ongoing negotiations all helped the parties realize the strengths and weaknesses of their case, as well as the risks and expenses of continuing litigation.

Additionally, as trial approaches, each party's monetary risk increases significantly as substantial additional attorney hours and expert witness hours would have to be devoted to this case by each party. Each party bears a real risk at trial, and considering the balance of the strengths of

Plaintiff's claims versus the risks inherent in trial and the consideration given to settle now, the settlement reflects a fair and adequate resolution to this action.

C. THE RISK, EXPENSE, COMPLEXITY, AND DURATION OF FURTHER LITIGATION

Plaintiff's Counsel's effectiveness in prosecuting this case has translated into tangible monetary and non-monetary benefits for the Settlement Class Members in the following respects: **(1)** a guaranteed favorable result; **(2)** guaranteed monetary recovery over a reasonably short period of time, as opposed to possibly waiting additional years for a potentially worse result; and **(3)** significant savings in attorneys' fees and costs, which would have increased had the case progressed through trial and possible appeals. (Kuhn Decl. ¶41).

Without entering into the Agreement, there existed a significant chance that Defendant would prevail on the merits of some or all claims and that Class Members would receive nothing. Through the Agreement, participating Class Members receive guaranteed cash, and this action has also been the catalyst for programmatic relief. (Kuhn Decl. ¶42).

If the litigation were to proceed in lieu of settlement, additional and substantial attorneys fees and costs, expert witnesses fees would quickly accumulate. Given the numerous claims being litigated, the parties may be required to hire multiple experts each (as many as 8 total). This would result in not only the production of eight expert reports, but eight depositions as well. And, based on previous discussions between counsel regarding the remaining claims (including the PAGA claims), the parties anticipated at least one motion to compel, a motion for class certification and two dueling motions for summary judgment / adjudication (one from each side). (Kuhn decl. ¶43).

Importantly, even after engaging in all of the potential continued and protracted litigation set forth above, the putative class would continue to have no guarantee of success on any of the claims advanced in this case. Thus, the parties and their counsel believe in good faith that the proposed resolution is a fair, reasonable, and adequate compromise. (Kuhn Decl. ¶44).

D. THE RISK OF MAINTAINING CLASS ACTION STATUS THROUGH THE TRIAL

At the time of the settlement, a Motion for Class Certification had not been filed. (Kuhn Decl. ¶50). As the Court never ruled on the Motion, neither side had a decided advantage in the litigation.

Even if Plaintiff did obtain class certification of the claims, each claim is subject to substantial risk of a Defense verdict at trial. (*Id.*)

Regarding the representative (PAGA) claims, there is also a substantial risk that, at trial, Plaintiff will either fail to obtain a favorable judgment on some of these claims, or that a favorable award on one or more PAGA claims may be greatly reduced, as these claims are subject to mitigation by the Court. *See Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135.

E. THE AMOUNT OFFERED IN THE SETTLEMENT

After deduction from the total "Settlement Amount" of the projected costs for Settlement Administration costs, proposed class representative service award, potential attorney fees and costs, and the PAGA payment, the "Net Settlement Amount ("NSA") will be distributed to all Class Members who do not file a request for exclusion. Class Members will receive their share of the NSA based on the total amount of time they worked during the Class and PAGA Period. (**Ex.A**, ¶9).

Based on the current proposed figures, each Class Member will receive an average of **$898.74**, although the actual amount will vary based on the amount of pay periods at issue. The Class Notice will list each individual class member's actual expected share. (See **Ex. B**). In addition, Class Members who worked during the PAGA Period will receive a *pro rata* share of the **$3,500.00** allocated as PAGA penalties to aggrieved employees, whether or not they opt out of the class settlement, based on the number of Qualifying Pay Periods worked by each aggrieved employee during the PAGA Period. Plaintiff's counsel maintains this recovery was significant in light of the circumstances of the case. (Kuhn Decl. ¶23).

F. THE EXTENT OF DISCOVERY COMPLETED

Plaintiffs propounded one set of separate written discovery devices on Defendant, including requests for admission, special interrogatories, requests for production of documents, and general and employment form interrogatories. (Kuhn Decl. ¶ 4). Through these requests, Plaintiff sought, among other information and documents, the identities of putative class members, Defendants' compensation policies, meal and rest period policies, employee handbooks, wage statements, time records, job descriptions, and reimbursement policies. (*Id.*)

Defendant provided detailed substantive responses detailing all relevant employment policies, in addition to producing hundreds of pages of responsive documents. The document production also included a large sampling of other putative class members time and wage records. (Kuhn Decl. ¶¶4-5).

Plaintiff's counsel has also interviewed several Class Members in the course of investigating and litigating this matter. (Kuhn Decl. ¶49). Counsel has also reviewed hundreds of pages of documents produced by Defendant, Plaintiff, and Class Members. (*Id.*)

This information, along with documents and information obtained through formal discovery and from Class Members, allowed Plaintiff's counsel to prepare a detailed Mediation Brief. (*Id.*) The Brief was provided to opposing counsel and contained a breakdown of potential damages based on all of the information obtained. (*Id.*) Thus, sufficient discovery, both formal and informal, has been conducted to allow the parties to participate in an informed, arms-length negotiation process.

G. THE STAGE OF THE PROCEEDINGS

Plaintiffs had already obtained the majority of written discovery and the parties were familiar with Plaintiffs' central allegations and Defendant's defenses thereto. The next phase of this litigation would have been to complete a motion for class certification, conduct class discovery, prepare expert reports and then prepare for Trial.

H. THE EXPERIENCE AND VIEWS OF COUNSEL

Class Counsel has considerable experience in wage and hour and class action litigation. William Sullivan has over 30 years of experience, 29 years of which has been devoted to both prosecuting and defending class action litigation. Mr. Yaeckel has over 14 years of experience in "class litigation." Mr. Kuhn has over 6 years of experience in class action litigation. (Kuhn Decl. ¶45).

Plaintiff's counsel considers the Agreement to represent a fair, adequate and reasonable settlement that is well within the accepted range of recoveries for similar cases. Counsel further believes the Agreement is in the best interests of the Settlement Class Members. (Kuhn Decl. ¶46).

I. PRESENCE OF A GOVERNMENTAL ACTOR

Although the State is not directly involved in this action, Plaintiff "stands in the shoes" of the Labor and Workforce Development Agency ("LWDA") by bringing his PAGA action. Consideration has been made to compensate to Labor Workforce Development Agency ("LWDA") in the amount of $10,000.00, even though the LWDA declined to prosecute the claims itself. (*See* **Ex. A**, at ¶8e). To confirm, 65% of the total allocation of $10,000 amount, or **$6,500.00**, is being paid to the LWDA, and 35%, or **$3,500.00**, being distributed amongst the class members. (*Id*). Counsel for the parties believe this is a fair, reasonable, and adequate allocation. (Kuhn Decl. ¶47).

J. REACTION OF THE CLASS MEMBERS TO THE PROPOSED SETTLEMENT

Prior to preliminary approval, what can be said of the reaction the class members is limited. However, Plaintiff's counsel has spoken to some Class Members since the parties reached a proposed settlement agreement, and <u>all</u> were in favor of the settlement. (Kuhn Decl.¶ 48). As explained in the Agreement, the Settlement Claims Administrator will send a Notice to the Settlement Class Members. (*See* **Ex. A** at ¶¶16-20). The negotiated Notice form is attached to the declaration of Ryan T. Kuhn as **Ex. B**. (Kuhn Decl.¶10).

The proposed Notice Packet advises the Class Members of their anticipated recovery under the Agreement, how they can object, how they can exclude themselves, the amount of fees and costs sought by Class Counsel, the amount of enhancement payment sought on behalf of the class representative, and the date of the final approval hearing. (*See* **Ex. B**). Thus, the proposed Notice complies with the notice requirements set forth in CRC Rule 3.766(d) and Rule 3.769(f).

VII. <u>PROPOSED TIMELINE OF EVENTS AND FINAL APPROVAL</u>

Assuming the Settlement merits Preliminary Approval from the Court, Plaintiffs request that the Court set a Final Approval Hearing in accordance with the chronology of events set forth below:

1. Within 14 calendar days of the Court's Preliminary Approval: Griffis will provide to the Administrator Class Members' names, last known addresses, social security numbers, and the and the total number of workweeks each Class Member was employed during the class period;
2. Within 14 calendar days of receipt of the Class member data from Defendants, the Administrator will mail the Notice to Class Members;
3. 30 calendar days after Administrator has mailed the Notice to Class Members: Deadline for Class Members to postmark and submit all Requests for Exclusions, or to file written objections to the settlement with the Court;

4. Approximately 30 days after the conclusion of the Notice and Claims Period, and at least 16 Court days before the hearing, Plaintiff will file an *Unopposed* Motion for Final Approval; and

5. Consistent with the above, Plaintiff requests a final approval hearing that is approximately **88 days** (May 26, 2026, or the first available Court date thereafter) after the date the Court enters an Order granting preliminary approval of the Settlement.

6. Within the Final Approval Motion Plaintiff will also request approval of (1) Plaintiff's Requested Attorneys Fees and (2) Class Representative Awards, to be heard concurrently with the Final Approval Motion.

VIII. CONCLUSION

Based on the foregoing, Plaintiffs respectfully requests that the Court issue an Order: (1) Preliminarily approving the settlement as set forth in the Agreement; (2) Approving the proposed Class Notice; and (3) Providing the parties with a Final Approval Hearing date consistent with the proposed time line of events.

Dated: August 14, 2025

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