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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PAUL LOWE, an individual; on behalf of himself and all others similarly situated and the general public, Plaintiffs, v. RAPID RELIABLE TESTING, LLC, a Delaware limited liability company; RAPID RELIABLE TESTING CA, LLC, a California limited liability company; and DOES 1 to 100, inclusive, Defendants.	Case No. 23STCV07047 [Assigned for All Purposes to: The Hon. Theresa M. Traber, Dept. 1] **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: February 6, 2026 Time: 10:30 a.m. Dept: 1

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TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 6, 2026, at 10:30 a.m., or as soon thereafter as the matter may be heard in Department 1 of the above-entitled court, located at the Los Angeles Superior Court, 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Paul Lowe and Corielyn Marie Hall ("Plaintiffs") will hereby move the Court for an order granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. In this unopposed motion, Plaintiffs seeks the entry of an order to: (1) preliminarily approve the proposed settlement of this class action on behalf of all current and former non-exempt employees of Defendants Rapid Reliable Testing, LLC, Rapid Reliable Testing CA, LLC, Ambulnz, Inc., and DocGo Inc. (collectively "Defendant"), who worked from April 5, 2021 through April 5, 2025; (2) certify a class for settlement purposes only and appoint Bartz Law Group, APC, United Employees Law Group, PC, and Bibiyan Law Group, P.C. as class counsel for settlement purposes only (hereinafter "Class Counsel"); (3) approve the substance, form, and method to provide class-wide notice; (4) direct that notice of the proposed settlement be given to all Settlement Class Members; and (5) schedule a hearing at which time the following will be considered: (i) the request for final approval of the proposed settlement; (ii) the entry of the Final Judgment; and (iii) approval of Class Counsel's motion for attorneys' fees and costs, and Plaintiffs' enhancement awards.

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of Paul Lowe, Corielyn Marie Hall, Aaron Bartz, Walter Haines, David Bibiyan, and Jodey Lawrence, all documents and records on file in this action, and on such other further oral and documentary evidence as may be given at the hearing on this Motion.

Dated: August 28, 2025

BARTZ LAW GROUP, APC
BIBIYAN LAW GROUP, P.C.

//Aaron Bartz//
Aaron A. Bartz
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I. INTRODUCTION

This class action and PAGA settlement is sought on behalf of approximately 570 current and former non-exempt employees who worked in California for Defendant from April 5, 2021 through April 5, 2025.

The case arises out of Plaintiffs' allegations that Defendant violated California's wage and hour laws, including failing to pay all wages owed and overtime, failing to authorize and permit meal and rest periods, failing to properly maintain and submit wage statements, waiting time penalties, and failure to reimburse business expenses.

After engaging in extensive informal discovery, the parties have agreed to a non-reversionary, all-in common fund settlement of $220,000. The net amount to be paid to class members (after payment of class counsel fees and expenses, settlement administration costs, Private Attorneys General Act ("PAGA") penalties, and Plaintiff's enhancement award), is approximately $93,000. Each settlement class member's share of the settlement is based on each of their eligible number of workweeks, and shall receive, on average, approximately $163. So long as the class members do not opt out of the settlement, they will receive a settlement payment. For purposes of this settlement only, the parties agree that the proposed Settlement Class satisfies each of the requirements of Code of Civil Procedure section 382. The settlement is fair, reasonable, and confers a substantial monetary benefit to the entire class. Accordingly, Plaintiffs request that the court grant preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement") submitted herewith (see Bartz Decl., Exhibit A), conditionally certify the Settlement Class, approve the proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval.

II. PRE-TRIAL PROCEEDINGS AND SETTLEMENT

A. Informal Discovery

Plaintiff Paul Lowe ("Lowe") filed his Class Action and Private Attorneys General Act (PAGA) Complaint on March 30, 2023. (Declaration of Aaron Bartz ("Bartz Decl."), ¶ 5, and Ex. C). Plaintiff Corielyn Marie Hall ("Hall") filed her Class Action Complaint on December 14, 2023 and her PAGA Complaint on February 20, 2024. After Plaintiffs propounded initial discovery, the parties agreed to stay formal discovery in order to pursue the possibility of early resolution. As such, the parties thereafter engaged in informal discovery to evaluate the class and PAGA claims. (Bartz Decl., ¶ 6).

To that end, Defendant produced a sampling of time and payroll records, and Excel spreadsheets with thousands of lines of data for the class. (Bartz Decl., ¶ 7). Plaintiffs also hired experienced damages expert EconONE Research, Inc., to analyze the payroll and related wage data and to create a damages model for the various claims alleged in the case. Based upon the analysis of the time records and payroll data, EconONE and Class Counsel were able to calculate damages estimates on a class-wide basis. (Bartz Decl., ¶ 8).

The parties did not attend Mediation in this matter until they had sufficient data and documents to evaluate the claims in the case. On February 5, 2025, the parties attended a full-day Mediation before experienced wage and hour mediator, Gig Kyriacou, Esq. (Bartz Decl., ¶ 9). After an all-day mediation, the parties reached a settlement, memorialized in a Memorandum of Understanding on March 25, 2025. Thereafter, the parties entered into a fully executed long form Settlement Agreement in July 2025. (Bartz Decl., ¶ 9, Ex. A).

B. The Operative Settlement Terms and Plan of Allocation

The class members entitled to the settlement fund are all non-exempt current and former employees who worked in California for Defendant from April 5, 2021 through April 5, 2025. Based upon current estimates, there are approximately 570 class members. (Bartz Decl., ¶ 10).

The settlement fund is all in (except for the employer's share of payroll taxes, which Defendant shall pay in addition to the $220,000 settlement), there is no claim form requirement, and no residual will revert to Defendant. (Bartz Decl., ¶ 11). Class members will be paid as long as they do not opt out of the settlement. (*Ibid*.) If a Settlement Class Member opts out, their share of the Net Settlement Amount will be allocated to other members of the Settlement Class. (*Ibid*.) In the event a class member does not negotiate (cash) his or her settlement check, the settlement administrator shall distribute the unclaimed funds to the California State Controller's Unclaimed Property Fund. (*Ibid*.)

The payment to the Settlement Class Members will be characterized as eighty percent interest and penalties, and twenty percent wages. (Bartz Decl., ¶ 12). The class administrator will issue W-2 statements for the wage portion of the settlement, and a form 1099 for all amounts paid as penalties and interest. (*Ibid*.)

Based upon Class Counsel's independent analysis and investigation in this matter, the Settlement Class will be compensated based on each member's respective number of workweeks worked during the Class Period. (Bartz Decl., ¶ 13). Defendant estimates that the total number of workweeks will be no more than 11,900.[1] (*Ibid*.)

Based on the settlement terms, there will be an approximate net settlement fund of $93,000. (Bartz Decl., ¶ 14). In exchange for their payment, Class Members will release Defendant and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, and assigns from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Action and Plaintiffs' PAGA Notices, including claims under the California Labor Code, California Industrial Welfare Commission Wage Orders, regulations, and/or other provisions of law as set forth in more detail in Section 5.3 of the Agreement. The named Plaintiffs will, in addition to releasing claims alleged in the lawsuit, give a general release of all claims pursuant to Civil Code section 1542 as set forth in Section 5.1 and 5.2. (*Ibid*.)

The parties further agree to appoint an experienced claims administrator, Phoenix Class Action Administration Solutions, to prepare and send notice to the class, receive and process

[1] Paragraph 9 of the Settlement Agreement contains an escalator clause.

objections, and prepare and mail settlement checks to Settlement Class Members. (Bartz Decl., ¶ 15). The claims administrator will conduct skip-tracing for any Settlement Class Member whose addresses cannot be found. (*Ibid.*)

The all-in settlement fund will also include all of the attorneys' fees and costs allowed by this Court. (Bartz Decl., ¶ 16). The attorneys' fees shall not exceed thirty five percent of the $220,000 settlement fund, or $77,000. (*Ibid*.) Defendant will also pay class counsel's costs, not to exceed $15,000, as well as settlement administration costs not to exceed $10,000, out of the common fund. (*Ibid*.)

The PAGA allocation of the settlement is $10,000, of which $7,500 (75%) will be distributed to the Labor Workforce and Development Agency (LWDA), with the remaining portion - $2,500 (25%) - going to PAGA Members (all allegedly aggrieved persons who worked for Defendant at any time from March 30, 2022 through April 5, 2025). (Bartz Decl., ¶ 17).

The settlement also includes Plaintiffs' class representative enhancement awards. Based on Plaintiffs' work in connection with this case, including connecting Class Counsel with other witnesses, meeting and conferring with Class Counsel regarding legal strategies, and assisting with developing the claims and theories in this case, Plaintiffs seek a total of $15,000, with $7,500 being paid to Plaintiff Lowe and Plaintiff Hall, respectively. (Bartz Decl., ¶ 18).

In summary, the settlement fund is allocated as follows:

(1) Net settlement fund: $96,000;

(2) Attorney's fees and costs: $77,000 in attorneys' fees and up to $15,000 in costs;

(3) Settlement administrator expenses not to exceed $10,000;

(4) PAGA payment: $7,500 to the LWDA, and $2,500 for individual PAGA payments;

(5) Class representative enhancement of $15,000, with $7,500 paid to each Plaintiff, respectively.

(Bartz Decl., ¶ 19).

III. FACTUAL AND LEGAL BACKGROUND

A. Parties

Plaintiff Lowe is a former non-exempt employee working for Defendant as a case manager. Plaintiff Hill is a former non-exempt employee working for Defendant as a COVID technician. Defendants run medical testing facilities, including COVID-19 testing sites, own and operate a private ambulance company, and provide related mobile medical services in California.

B. Nature of Plaintiff's Claims

The operative Complaints alleges claims for 1) Failure to Pay All Wages; 2) Waiting Time Penalties; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Proper Rest Periods; 5) Failure to Properly Maintain and Submit Itemized Wage Statements; 6) Unfair Business Practices; 7) Failure to Reimburse Business Expenses; and 8) Violation of Labor Code § 2699 (PAGA). Plaintiff further alleges that he and the Class are entitled to damages, restitution, wages, attorneys' fees, and interest, among other remedies. (Bartz Decl., ¶ 20).

Pursuant to *Kullar v. Footlocker Retail Inc*., 168 Cal. App 4th 116, 118 and *Dunk v. Ford Motor Co*., (1996) 48 Cal.App.4th 1794, the following describes the settlement's reasonableness. Plaintiffs recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiffs have also taken into account the uncertainty and risk of denial of motion for class certification and the uncertain outcomes resulting from further litigation, and the difficulties and delays inherent in such litigation.

Plaintiffs have determined that the settlement is a fair, adequate and reasonable settlement and is in the best interests of the Class Members. Plaintiffs estimate that the reasonable exposure and the reasonable settlement value for each of the alleged claims are as follows:

CLAIM	TOTAL EXPOSURE	SETTLEMENT VALUE
Failure to Pay Wages	$296,900	$59,380
Meal	$235,000	$23,500
Rest	$808,423	$80,842
Waiting time	$3,200,000	$160,000
Paystub	$323,350	$32,335
Reimbursement	$137,845	$13,784
PAGA	$2,140,000	$107,000
TOTAL	**$7,141,518**	**$476,841**

(Bartz Decl., ¶ 20).

1. Overtime/Off-the-Clock Wage Violations

Labor Code § 510 provides that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Further, "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay . . ., [and] any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of an employee."

Labor Code § 1194 states any employee receiving less than the legal minimum wage is entitled to recover the unpaid balance of the full amount of this minimum wage, including interest thereon, reasonable attorney's fees, and costs of suit.

Plaintiffs contend that Defendant failed to pay all wages due in numerous respects. ***First,*** Plaintiffs and other class members had to work prior to their shifts to get the testing sites ready, change into their personal protective equipment (PPE) gear, and after their shifts receiving calls and text messages from managers regarding the following day's testing schedules. Off-the-clock time is compensable when an employer knows or should have known the employees are working off-the-clock time. *See Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 585 (2000). Plaintiffs contend that Defendants' managers knew about such off-the-clock time because they required Plaintiffs and others to show up before their scheduled shifts to get into their PPE gear and to get the sites ready for the day, and to receive and answer text messages and calls after their shifts to be ready for the following workday. ***Second***, while on "embark" projects wherein putative class members were staffed aboard cruise ships on excursions, Plaintiffs and putative class members were on call the entire time they were aboard the ship. Under California law, on call hours are considered compensable hours worked where employees remain under employer control. (*See generally, Mendiola v. CPS Sec. Sols., Inc.*, 340 P.3d 355 (2015)). An employee is under an employer's control when they are prevented from using the on-call time for their own purposes. (*Id.*) Factors considered in the on-call analysis include "(1) whether there was an on-premises living requirement; (2) whether there were excessive geographical restrictions on employee's movements; (3) whether the frequency of the calls was unduly restrictive; (4) whether a fixed time limit for response was unduly restrictive; (5) whether the on-call employee could easily trade on-call responsibilities; (6) whether use of a pager could ease restrictions; and (7) whether the employee had actually engaged in personal activities during call-in time." (*Id.* at 360.)

Here, putative class members were on call to help with medical emergencies, and therefore had to stay alert, near the medical offices aboard the ship, and capable of immediate response (in other words, "rapidly reliable"). These expectations precluded them from taking time to themselves while "off the clock" and getting much-needed rest. On-call employees were also precluded from engaging in personal activities that would impair their ability to administer a vaccine or render medical aid. Thus, employees were subject to a high level of employer control and all on-call hours were compensable (albeit uncompensated).

In addition to not paying employees for all hours worked, Plaintiffs contend that Defendant also fails to pay the full amount of overtime wages due because Defendant miscalculates the regular rate, by among other things, failing to properly include items of remuneration, including non-discretionary bonuses and other incentive compensation, when determining the employees' regular rate. Defendant is therefore in violation of Labor Code §§ 510 and 1194, and the relevant California Industrial Welfare Commission Orders.

Defendant contends that its payment policies were lawful, and that it paid for all time worked by Plaintiffs and the class members. Defendant also contends that it properly calculated Class Members' overtime at the regular rate of pay.

Plaintiffs and their expert analyzed payroll and time records for the class members and calculated that the total verdict value for this claim is approximately $296,900. Plaintiffs and their expert assumed 15 minutes per shift of unpaid hours, based on discussions with the Plaintiffs and other class members. Plaintiff's expert reviewed payroll records for the class, including pay period counts per year, and a weighted average rate of pay. Based on the defenses alleged, as well as the fact that failure to pay wage claims will rest on testimony from Plaintiffs and class members, and documented evidence of such violations is scant, Plaintiffs placed a reasonable settlement value of the overtime/minimum wage claim at 20 percent of the total verdict value, or **$59,380**. This valuation takes into consideration Class Counsel's analysis of the law, and defenses alleged and evidence produced by the Defendant. (Bartz Decl., ¶ 20.a).

2. Meal and Rest Period Claims

a. Meal period liability and damages

Plaintiffs contend that Defendant failed to provide Plaintiff and class members with a duty-free 30-minute meal period for every five hours of work as is required by Labor Code § 512 and the applicable IWC Wage Order(s) and in violation of *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). Failure to provide a meal in accordance with the applicable Wage Order(s) results in payment by the employer of one additional hour of pay at the employee's regular rate of pay for each workday that the rest or meal period is not provided. (Labor Code § 226.7.) Defendant also cannot create "incentives to forego, or otherwise encourage[] the skipping of legally protected breaks." *Brinker*, *supra*, 53 Cal.4th at 1040. Moreover, when time records show short, missed, and late meal periods, there is a presumption that an employer violated California's meal period requirements. *See Donohue v. AMN Services, LLC*, 11 Cal.5th 58, 78 (2021) ("If time records show noncompliant meal periods, then a rebuttable presumption of liability arises.").

Plaintiffs contend that Defendant's practice of administering its meal period policies is unlawful. ***First***, Defendant's time records show substantial violations in which Plaintiffs and other employees' meal periods were cut short, missed entirely, or taken late because Defendants severely understaffed their testing sites, which under *Donohue*, create a presumption that Defendants were not in compliance with the law. Plaintiffs' expert calculated a 32.8% violation rate across the class pay period.

Second, based on Plaintiffs' expert analysis, despite the presumed violation rate, there were less than $15,000 in meal period premiums paid during the class period. Plaintiffs contend that the dearth of meal period premiums paid to the putative class demonstrates that Defendants had a pattern and practice of neglecting to pay meal period premiums for meals which were late, short, interrupted, missed, or on-duty – which represents significant liability exposure for Defendants.

Notwithstanding the above, Defendant contends that Plaintiff and class members had the ability and in fact did take meal periods which is reflected in the time records. Defendants contend that, if Plaintiff and the class members failed to take their lunch breaks, it was their own choice, and therefore not actionable.

Class Counsel and their expert calculated the maximum verdict value of the meal break claim to be approximately $235,000. This calculation is based on a 32.8% violation rate for the class members, and average rate of pay based on the payroll data for the class. Based on discussions with Plaintiffs and interviews of other Class Members, and the defenses raised, Plaintiffs believe they had a ten percent probability of recovering all of these damages. Accordingly, Plaintiff contends the reasonable exposure of the meal break claim is approximately **$23,500**. (Bartz Decl., ¶ 20.b.i).

b. <u>Rest period liability and damages</u>

Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

During rest periods, "employees must not only be relieved of work duties, but also be freed from employer control over how they spend their time." *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257, 270 (2016). Further, when an employer adopts common policies that prevent employees from taking their rest breaks, it presents a common factual issue by which liability may follow. *See Jaimez v. Daiohs USA, Inc.*, 181 Cal.App.4th 1286, 1304 (2010). Indeed, "[t]he wage orders and governing statute do not countenance an employer's exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks." *Brinker, supra*, 53 Cal.4th at 1040.

Plaintiffs contend that Defendant did not authorize or permit Plaintiffs or the class members duty-free rest periods for several reasons. ***First***, rest periods were not allowed, and Defendants disciplined Plaintiffs when they attempted to take them. Defendants' record sampling reflected that only $3,400 was paid for rest period premium payments for rest period violations. The almost complete lack of premium pay "would require perfection or, more likely, a 'deep, system-wide error' in failing to pay such premiums." *In re Tea Station Inv*., 2021 Bankr. LEXIS 2985, at *22 (C.D. Cal. Oct. 26, 2021). In *Safeway v. Superior Court* (2015) 238 Cal. App. 4th 1138, 1153, the Court counseled against arguments that are based on human perfection.

Second, because of the short-staffing, Plaintiffs contend that their and other class members' rest periods were always interrupted with work inquiries and other duties, and employees were on-call while they worked, which is "irreconcilable with employees' retention of freedom to use rest periods for their own purposes. *See Augustus, supra,* 2 Cal.5th at 270.

Defendant again contends that Plaintiff and class members had the ability and in fact did take compliant rest breaks and that, if Plaintiff and the class members failed to take rest breaks, it was their own choice, and therefore not actionable.

Class Counsel and their expert assumed a 100% violation rate for all shifts by class members of 3.5 hours or more, based on discussions with Plaintiffs and other class members. Based on that assumption, Class Counsel calculated total violations across the class, multiplied by an average rate of pay for the class members. As such, Class Counsel calculated the maximum verdict value of the rest period claims to be approximately $808,423. Based on the defenses raised, the difficulty of proving rest period violations on a class wide basis, and the lack of objective evidence proving such violations, Plaintiffs believe they had a ten percent chance of recovering all of the rest period damages. As such, Plaintiffs believe the reasonable exposure of the rest break claim is approximately **$80,842**. (Bartz Decl., ¶ 20.b.ii).

3. Waiting Time Penalty

The waiting time penalty claim is purely derivative. Class Counsel analyzed the data to find that there are approximately 396 former employees included in the putative class that would be eligible for the Labor Code §203 penalties. Class Counsel calculated the total verdict value at approximately $3,200,000. (Bartz Decl., ¶ 20.c). This amount was calculated by multiplying the average daily rate of pay during the statutory period by 30, which is the maximum number of days allowable as waiting time penalties under section 203, and then multiplying that by the total number of former employees. Plaintiffs further discounted the waiting time penalty claim based on risk and the fact that waiting time penalties are not awarded if a good faith dispute exists as to whether the wages were owing, including whether in fact non-California based employees would be entitled to waiting time penalties. Further, the class would have the burden of proving a "willful" withholding of wages. Plaintiffs considered that under Labor Code §203 there is only a penalty if "an employer willfully fails to pay" all wages due to an employee upon separation. Willfulness does not exist if there is a "good faith dispute," in fact or law that wages were due, even if the employer's reasoning ultimately proves incorrect. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1204; 8 Cal. Code Regs. § 13520 ("A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recover on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.")

Once Plaintiffs determined the maximum reasonable exposure of the claim, Plaintiffs placed a settlement value of **$160,000** or approximately ten percent of the reasonable exposure value, based upon the above discounts applied to the reasonable settlement value of the claim. (Bartz Decl., ¶ 20.c).

4. Paystub

As to the paystub penalty, which is derivative of the other claims identified above, Class Counsel arrived at a maximum reasonable exposure of this claim of approximately $323,350. This figure was arrived at by assuming that each wage statement that was provided to the class members violated LC §226, and multiplying the number of pay periods during the statutory period by $50 for initial violations, and $100 for subsequent violations.

Defendant argues that, even assuming there are any violations, which it denies, the derivative violations were minor and that the Defendant presented evidence of a good faith dispute as to any violation. *Hurst v. Buczek Enters., LLC* (N.D. Cal. 2012) 870 F.Supp.2d 810, 829 (no section 226 violation where the employer "makes a good faith claim" in its defense); *Harris v. Vector Mktg. Corp.* (2009) 656 F.Supp.2d 1128, 1146 (N.D. Cal. 2009) (the "employer did not knowingly and intentionally fail to provide itemized wage statements" where there was a "good faith dispute").

Based on the raised defenses, as well as the risk of certification and related risks of proving all violations, Plaintiffs have placed a reasonable settlement value of **$32,335** or ten percent of the reasonable exposure of the pay stub claim. (Bartz Decl., ¶ 20.d).

5. Reimbursement Claim

Labor Code section 2802 provides, in pertinent part: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. . .." The purpose of section 2802 is "to prevent employers from passing their operating expenses on to their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007).

Plaintiffs and the class members contend that they were required to use their own personal cell phones for their work, and therefore reimbursement was required. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 (2014) (finding that reimbursement for personal cell phone usage required when mandatory for performing one's job). Plaintiffs and putative class members often traveled internationally when on "embark" projects, i.e. when working aboard traveling cruise ships, performing COVID tests and providing vaccines. When traveling internationally, putative class members would pay astronomical fees when using their personal devices, particularly when making calls, sending texts, and data roaming. Defendants failed to furnish putative class members with an international phone plan or reimbursement for text, call, and data-roaming fees, even though putative class members were obligated to use their personal cell-phones to clock in and out, respond to Slack channel and iMessage correspondence, and check their daily schedules.

Additionally, class members were required to purchase PPE and other equipment for the testing facilities, but class members were not reimbursed for these reasonable and necessary business expenses.

Defendant contends that it paid for all reasonable and necessary expenses incurred by Plaintiffs and class members, and that the reimbursement claim has little to no value.

Based on testimony from Plaintiffs and the class members, Plaintiffs fairly allocate $50 per month for the reimbursement claim. As such, the value of this claim as calculated by Plaintiffs' expert is approximately $137,845.

Based on the Defendant's defenses, and issues in proving the reimbursement claim on a class-wide basis, Plaintiff alleges he had a ten percent chance of recovery here, and the realistic value of the reimbursement claim is therefore approximately **$13,784**. (Bartz Decl., ¶ 20.e).

6. PAGA

Plaintiffs contend that PAGA penalties are owed based on the numerous alleged Labor Code violations identified above. Once a PAGA violation is found, a court must award civil penalties. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1211-1213. Nevertheless, a court has discretion to reduce the award of civil penalties if it finds that "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code § 2699(e)(2).

Significantly, moreover, because it is an open question regarding the Defendant's liability, there is a very real possibility that a court would substantially reduce the penalties, even if they are proven. *See, e.g., Fleming v. Covidien, Inc.*, 2011 WL 7563047, *3-4 (C.D. Cal. 2011) (reducing penalties from $2.8 million to $500,000 based on wage statement violations because to assess full penalties would be unjust and arbitrary); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1134 (2012) (reduction of PAGA penalties by 30% affirmed on appeal).

Class Counsel and their expert calculated the reasonable PAGA penalties to be valued at $2,140,000 which includes the stacking of penalties for numerous violations, as set forth above. Based on the uncertainty of recovery on Plaintiff's claims, Plaintiff believes the PAGA claim's reasonable value is five percent of the total value, or approximately **$107,000**. (Bartz Decl., ¶ 20.f).

7. <u>Total Damage Exposure</u>[2]

Plaintiffs believe that the $220,000 settlement achieved in this case is a good result for the class members. Based upon a reasonable exposure value of $476,841, the settlement represents approximately 46% of that total value. Given the many defenses raised, the uncertainty of the certifiability of any class, and the risks of going to trial, Class Counsel believe this settlement is a good result for all of the class members. (Bartz Decl., ¶ 20.g).

IV. CONDITIONAL CERTIFICATION OF THE CLASS

A. Class Certification Is Appropriate in this Case

The proposed settlement seeks conditional certification of the Class. The Class is defined as follows:

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[2] The Unfair Competition claim is subsumed into the *Kullar* analysis above. The Unfair Competition claim is based upon the wage and hour violations, and adds an extra year of damages, and is included within the above analysis.

All non-exempt current and former employees who worked in California for Defendant during the Class Period (April 5, 2021 through April 5, 2025). (Bartz Decl., ¶ 21).

The certification of the Class is essential to the settlement. California public policy favors the use of the class action device. *Richmond v. Dart Industries* (1981) 29 Cal.3d 462, 469. CCP §382 authorizes class action suits in California when "the question is one of the common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the courts, one or more may sue or defend for the benefit of all." To obtain certification, a party must establish the existence of both an ascertainable class and a well-defined community of interest among class members. *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435. The "community of interest" requirement depends on three factors: (1) whether common issues of law or fact predominate; (2) whether the class representative has claims that are typical of the class; and (3) whether the class representative will adequately represent the class. *Richmond*, *supra*, 29 Cal.3d at 470. Because the policy of favoring use of class actions is so strong, any doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to later modification. *Richmond*, *supra*, 29 Cal.3d at 473-75. Except in extraordinary circumstances not present here, the trial court does not weigh the merits of the claims in ruling on a motion for class certification. *Linder*, *supra*, 23 Cal.4th at 443. The seminal California Supreme Court decision of *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 has reemphasized the procedural nature of the certification motion.

B. The Proposed Class Is Ascertainable and Numerous

For a class to exist, the class description must be sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member of the proposed Class by reference to objective criteria. The class definition, as set forth in the parties' Settlement Agreement and reiterated above, is sufficiently specific to enable potential Class Members, and the court, to readily determine the parameters of the class. (*See Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 617.)

Here, there are approximately 570 Class Members, all of whom have been identified by

Defendant's employment and payroll records (*See* Bartz Decl., ¶¶ 10, 21). This is sufficient to satisfy numerosity requirements. As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members, but not satisfied when membership dips below 21. *See Ansari v. New York Univ.*, 179 F.R.D. 112, 114 (S.D.N.Y. 1998) (citing a thorough review of cases in 5 MOORE'S FEDERAL PRACTICE §23.22[3][a] (Matthew Bender 3d ed. 1999)). The Ninth Circuit has not offered a precise numerical standard; other District Courts have, however, enacted presumptions that the numerosity requirement is satisfied by a showing of 25-30 members. *See, e.g., In re Kirschner Med. Corp. Sec. Litig.*, 139 F.R.D. 74, 78 (D. Md. 1991); *EEOC v. Printing Indus., Inc.*, 92 F.R.D. 51, 53 (D.D.C. 1981), *Slaven v. BP America, Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000).

C. <u>Common Issues of Law or Fact Predominate</u>

Common questions of law and fact predominate here for purposes of settlement, as the main issues involve the legality of Defendant's policies regarding the failure to pay all wages, failure to provide all legally compliant off duty and uninterrupted meal periods, the failure to provide all legally compliant off duty and uninterrupted paid rest periods, failure to timely furnish accurate itemized wage statements, and failure to timely pay all former employees all wages owed, and failure to reimburse for business expenses. (*See* Bartz Decl., ¶ 23). Whether each member of the Class might be required to ultimately justify an individual claim does not preclude maintenance of a class action (*see, e.g., Collins v. Rocha* (1972) 7 Cal.3d 232, 238). Plaintiff contends that these are all pay policy questions that are uniform and can be proven by common objective evidence. The evidence to support these claims consists of pay policies, payroll records, time records and pay stubs given to all Class Members. (*See* Bartz Decl., ¶¶ 7, 24). In assessing whether common issues predominate over individual issues, it is not necessary that the Class Members' claims or their circumstances be identical. *L.A. Fire & Police Protective League* (1972) 23 Cal.App.3d 67, 74 (in an overtime action, the fact that there were 19 different subgroups of employees did not preclude finding that common issues predominated.) California law specifically authorizes class actions when a defendant's corporate policies result in injury to a group of plaintiffs. In *Stephens v. Montgomery Ward & Co., Inc.* (1987) 193 Cal.App.3d 411, 421, the court held that testimony from the class representative, coupled with proof of company-wide policies and practices, was sufficient to prove that common issues affecting the class of employees as a whole predominated over individual issues. See *Sav-On*, *supra*, 34 Cal.4th 319.

D. Plaintiffs' Claims Are Typical of the Class Claims

Typicality simply means that the representative's claims be similar to those of Class Members. The interests of the class representative need not be identical to those of other Class Members; the class representative must simply be similarly situated. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347; *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46. Here, the class representatives worked for Defendant in California as an hourly, non-exempt employees who worked during the Class Period and worked pursuant to Defendant's uniform pay, meal, and rest policies applicable to all hourly employees working within California (*See* Bartz Decl., ¶¶ 10, 25).

E. Adequacy of Representation

Adequacy of representation depends on whether Plaintiff class representatives and Plaintiffs' attorneys are qualified to conduct the proposed litigation and whether the representative Plaintiffs' interests are antagonistic to those of the Class. In this case, the representative Plaintiffs have the same injuries and damages similar to those of the Class they seek to represent, they have agreed to act as class representatives and in the best interests of the class, and Plaintiffs have no claims that are antagonistic to the Class. (*See* Declaration of Paul Lowe ("Lowe Decl."), ¶¶ 3, 9; Declaration of Corielyn Marie Hall ("Hall Decl."), ¶¶ 18-19, 22-24). Plaintiffs' counsel are also very experienced and qualified, and have been approved to act as class counsel in numerous class and representative actions. (*See* Bartz Decl., ¶¶ 26-28; Declaration of Walter Haines ("Haines Decl."), ¶¶ 3-6, Bibiyan Decl., ¶¶ 9-12).

V. THE CLASS ACTION SETTLEMENT MEETS THE REQUIREMENTS FOR PRELIMINARY APPROVAL

When a proposed class action settlement is reached, the settlement must be submitted to the court for approval. H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at § 11.41, p. 11-87. Review of a proposed class action settlement involves two hearings. First, the settlement must be preliminarily approved by the court. Second, a final settlement approval hearing is set, where evidence and argument are submitted concerning the fairness, adequacy, and reasonableness of the settlement, and class members may be heard regarding the settlement. *See* Manual for Complex Litigation, Fourth §§ 21.632-21.633 (2004).

The question presented on a motion for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval." *Manual for Complex Litigation*, Fourth, § 21.632 at 321; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982). Preliminary approval is merely the prerequisite to giving notice so that "the proposed settlement...may be submitted to members of the prospective Class for their acceptance or rejection." *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.* 323 F.Supp. 364, 372 (E.D. Pa. 1970). The court must determine whether the settlement is fair, adequate, and reasonable. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) *citing Officers for Justice v. Civil Service Com'n, etc.*, 688 F.2d 615, 625 (9th Cir. 1982) and Fed. Rules Civ. Proc., Rule 23(e). There is an initial presumption of fairness when a proposed settlement, which was negotiated at arm's length by counsel for the Class, is presented for court approval. *Newberg, supra*, §11.41, p. 11-88. However, the ultimate question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the settlement is given to the class members and a final settlement hearing is held by the court.

A. <u>The Role Of The Court In Preliminary Approval Of A Class Action Settlement</u>

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-235 (2001); *Dunk*, 48 Cal. App. 4th at 1801. Preliminary approval does not require the trial court to answer the ultimate question of whether a proposed settlement is fair, reasonable and adequate. That determination is made only after notice of the settlement has been given to the class members and after they have been given an opportunity to voice their views of the settlement or to be excluded from the settlement. *See, e.g.*, J. Moore, Moore's Federal Practice §§ 23.80-23.85 (2003). With regard to class action settlements, the opinions of counsel should be given considerable weight both because of counsel's familiarity with this litigation and previous experience with cases such as these. *See Officers for Justice, supra*, 688 F.2d at 625.

B. Factors To Consider In Granting Preliminary Approval

A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. No one factor should be determinative, but rather all factors should be considered. These criteria have been summarized as follows:

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

Manual of Complex Litigation, Second §30.44, at 229 (1985). This settlement meets all of these criteria.

1. The settlement is the product of serious, informed, and non-collusive negotiations

This settlement is the result of arms-length and hard-fought negotiations. Defendant has denied and continues to deny all of the claims and contentions alleged in this case and argues that California law does not apply to the facts of this case. Nonetheless, Defendant has agreed to settle this case in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to avoid the expense, inconvenience, and burden of further legal proceedings, and the uncertainties of trial and appeals.

Plaintiffs and Class Counsel recognize the expense of continuing to litigate and trying this case against Defendant through possible appeals which could take several years. Class Counsel are also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the case. Based upon their evaluation, Plaintiffs and Class Counsel have determined that the settlement set forth in the Settlement Agreement is in the best interest of the Class Members.

Here, the litigation has been adversarial and displayed capable and experienced advocacy on both sides. "There is likewise every reason to conclude that settlement negotiations were vigorously conducted at arm's length and without any suggestion of undue influence." *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. AZ 1989).

2. The settlement has no "obvious deficiencies" and falls within the range for approval

The proposed settlement herein also has "no obvious deficiencies" and is well within the range of permissible compromise. This settlement, which represents approximately 43% of the reasonable settlement exposure faced by Defendant, is entitled to preliminary approval. *See, e.g., Glass v. UBS Fin. Servs.*, 2007 WL 221862, *4 (N.D. Cal. January 26, 2007) (approving settlement of unpaid overtime wages where the settlement amount constituted approximately 25 to 35% of the estimated actual loss to the class). Each Settlement Class Member will receive the same opportunity to participate in and receive payment. Clearly, the goal of this litigation, to seek redress for the Class, has been met.

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Com.*, 150 F.3D 1011, 1026 (9th Cir. 1998). Here, Defendant has maintained that its wage and hour policies comply with California law and believes it would be successful if it continued to litigate this action. Notwithstanding the risk of continuing to litigate this case, after vigorous, arms-length negotiations, the parties reached a proposed settlement of $220,000, where each member of the Class will receive payment unless the class member opts out of the settlement.

3. No preferential treatment is given to the class representatives or other members of the class

All of the class members will share in the settlement according to the number of workweeks worked during their employment with Defendant. The compensation formula is objective, justified, and reasonable in this case, and does not improperly grant preferential treatment to any class member.

4. **The parties engaged in adequate discovery prior to settlement**

The agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. Class Counsel obtained substantial informal discovery from Defendant, including personnel and pay data for Plaintiffs, and Excel spreadsheets and payroll records for a statistically meaningful sampling of the class.

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and numerous issues raised on appeal and potential appeals down the road. Defendant and its counsel also agree that the settlement is fair and in the best interest of the Settlement Class Members. There can be no doubt that counsel for both parties possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation.

5. **The class representatives' service payments are reasonable**

The Plaintiff class representatives have spent numerous hours working with Class Counsel to uncover the alleged wage violations to achieve the result herein. But for the class representatives, this settlement would not have been reached. The proposed class representative service award payments for Plaintiffs are intended to recognize their initiative, risk, and efforts on behalf of the Settlement Class. Courts routinely approve class representative service payments, also known as incentive awards, to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1393 (2010); *see also Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for efforts in bringing the case); Manual for Complex Litigation, Fourth, § 21.62, fn. 971 (noting that such awards "may sometimes be warranted for time spent meeting with Class Members, monitoring cases, or responding to discovery").

6. <u>Plaintiffs' counsel's attorney's fees and costs are reasonable</u>

California courts have recognized that an appropriate method for determining an award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

Class Counsel has extensive experience in employment litigation and have successfully handled wage and hour class actions. (Bartz Decl., ¶¶ 26-28; Haines Decl., ¶¶ 3-6, Bibiyan Decl., ¶¶ 9-14). Class Counsel seeks up to 35% of the Settlement Amount for attorney's fees, and Class Counsel will submit detailed billing with the final approval motion.

Moreover, Class Counsel seeks costs not to exceed $15,000, plus class administrator expenses not to exceed $10,000, which Defendant has agreed to pay out of the settlement amount. All such costs, as well as the class administrator's expenses to oversee the class notice procedure and remit the settlement fund to the class, are reasonably necessary in prosecuting this action.

VI. <u>THE PROPOSED CLASS NOTICE IS FAIR AND APPROPRIATE</u>

The method and content of a Class Notice to class members should be designed to fairly apprise them of the terms of the proposed settlement and options available to them. *See Philadelphia Housing Authority v. American Radiators& Standard Sanitary Corp.*, 323 F. Supp. 364, 378 (E.D. Pa. 1970). An appropriate notice is one which has a reasonable chance of reaching a substantial percentage of the class members. *See Cartt v. Superior Court*, 50 Cal. App. 3d 960, 974 (1975).

The proposed Notice of Class Settlement is fair and reasonable in this case. It describes the nature of the lawsuit, the Settlement Class, the settlement amount, the proposed plan of allocation of the settlement amount, and the attorneys' fees that Class Counsel may receive. The proposed notice also describes the Settlement Agreement in sufficient detail to allow the Settlement Class Members to make an informed choice to accept or reject it. The proposed Notice also contains information on opting out of the Class, objecting to the settlement, and sets forth the final approval hearing date and time.

Moreover, the parties propose that the Class Notice be mailed by the Settlement Administrator to all Class members at the last known address maintained by Defendant, and updated by the Settlement Administrator, if necessary, after accessing the National Change of Address database. In the event the Class Notice is returned as undeliverable, the Settlement Administrator will perform a skip-trace procedure, and if such procedure reveals a new address, the Settlement Administrator will re-mail the Notice within five business days.

In summary, the proposed notice here describes the proposed settlement with enough specificity to permit class members to make an informed decision whether to participate in the settlement.

VII. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court preliminarily approve the Settlement, approve the Class Notice, and set the date and time for the Final Approval Hearing.

Dated: August 28, 2025

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