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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

GLEN FERRELL, individually, and on behalf of other similarly situated employees and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act,

Plaintiff,

vs.

BIONANO GENOMICS, INC.; and DOES 1 through 25, inclusive,

Defendants.

Case No. 25CU003686C

Honorable Mark T. Cumba
Department C-65

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

Date:	August 28, 2026
Time:	8:30 a.m.
Dept.:	C-65
Complaint Filed:	January 22, 2025
FAC Filed:	June 25, 2026
Trial Date:	Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on August 28, 2026 at 8:30 a.m. in Department C-65 of the above-captioned Court located at 330 West Broadway, San Diego, California 92101, pursuant to California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiff Glen Ferrell ("Plaintiff") will and hereby does move the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiff and Defendant Bionano Genomics, Inc. ("Defendant").

Plaintiff requests that the Court enter an Order:

1. Preliminarily approving the Class and Representative Action Settlement Agreement and Release ("Settlement" or "Settlement Agreement") attached as Exhibit 3 to the Declaration of Annabel Blanchard in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Blanchard Decl.");

2. Certifying the Class for Settlement purposes;

3. Appointing Plaintiff Glen Ferrell as the Class Representative for Settlement purposes;

4. Appointing Jonathan M. Genish, Barbara DuVan-Clarke, Danielle GruppChang, P.J. Van Ert, Melissa Rodriguez, and Annabel Blanchard of Blackstone Law, APC as Class Counsel for Settlement purposes;

5. Approving the proposed Notice of Class and Representative Action and Proposed Settlement ("Class Notice"), attached as Exhibit B to the Settlement Agreement, to be mailed to the Class;

6. Approving the opt-out and objection procedures provided in the Settlement Agreement and set forth in the Class Notice;

7. Approving the proposed deadlines for the settlement administration process as provided in the Settlement Agreement; and

8. Setting a Final Approval Hearing.

Pursuant to California Labor Code section 2699(s)(2), on July 24, 2026, a copy of the Settlement Agreement was submitted to the California Labor and Workforce Development Agency ("LWDA") via online submission through the LWDA's website. (Blanchard Decl., ¶ 47 and Exh. 4).

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declaration of Annabel Blanchard, the Declaration of Plaintiff Glen Ferrell, the Declaration of the Settlement Administrator (Kimberly Sutherland of Apex Class Action, LLC), the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: August 7, 2026

BLACKSTONE LAW, APC

By: A. Blanchard
Annabel Blanchard
Attorneys for Plaintiff Glen Ferrell

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Glen Ferrell ("Plaintiff") seeks preliminary approval of the Class and Representative Action Settlement Agreement and Release ("Settlement" or "Settlement Agreement") entered into between Plaintiff and Defendant Bionano Genomics, Inc. ("Defendant") (together, with Plaintiff, the "Parties"). (Declaration of Annabel Blanchard in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ["Blanchard Decl."], Exh. 3).

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a San Diego based company that develops and markets genome mapping and offers diagnostics and treatments for diseases. Plaintiff was employed by Defendant as an hourly-paid, non-exempt Logistics Clerk from approximately March 2021 to approximately January 2022. (Declaration of Plaintiff Ferrell in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement ["Ferrell Decl."], ¶ 2).

On January 22, 2025, Plaintiff filed a Class Action Complaint in the action entitled *Glen Ferrell v. Bionano Genomics, Inc.*, San Diego County Superior Court Case No. 25CU003686C ("Action"), thereby commencing a putative class action against Defendant. (Blanchard Decl., ¶ 10).

On April 22, 2025, Plaintiff propounded written formal discovery onto Defendant (specifically, Form Interrogatories – General (Set One), Form Interrogatories – Employment Law (Set One), Special Interrogatories (Set One), Requests for Admission (Set One), and Requests for Production of Documents (Set One)). On April 23, 2025, Plaintiff noticed the deposition of Defendant's Person Most Knowledgeable. (*Id*., ¶ 11).

On September 30, 2025, Plaintiff provided written notice to the LWDA by online submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specific provisions of the California Labor Code alleged to have been violated by Defendant ("PAGA Letter"). (Blanchard Decl., ¶ 12 and Exh. 2).

On September 10, 2025, the Parties participated in a formal mediation conducted by Allison Eckstrom ("Mediator"), a neutral and respected mediator with extensive experience in complex wage and hour matters, and with the assistance of the Mediator's evaluations, the Parties were able to reach an agreement to resolve this dispute on a class and representative basis. (*Id.*, ¶ 12). The Parties then worked diligently to negotiate and memorialize the terms in a long form settlement agreement. (Ibid).

On April 22, 2026, the Parties executed the Settlement Agreement. (*Id.*, ¶ 14 and Exh. 3).

On June 25, 2026, Plaintiff filed a First Amended Class and Representative Action Complaint ("Operative Complaint") in the Action. (*Id.*, ¶ 15). The Operative Complaint raises eleven (11) causes of action for alleged violations of the California Labor Code for failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant rest periods and premiums payments in lieu thereof, failure to timely pay wages during employment, failure to provide accurate wage statements, failure to timely pay wages upon termination, failure to reimburse necessary business expenses, and unlawful non-compete agreements and non-solicitation agreements, for violations of California Business & Professions Code Sections 17200, *et seq*. based on the aforementioned California Labor Code violations, and for civil penalties under PAGA based on the aforementioned California Labor Code violations. (Ibid).

III. THE SETTLEMENT TERMS

A. Class Definition

For purposes of settlement only, the Parties have agreed that the Class shall be defined as "all current and former non-exempt employees who worked for Defendant in California at any time [during the Class Period], who have not executed separation and general release agreements" ("Class" or Class Member(s)"). (Blanchard Decl., ¶ 16; Settlement Agreement, ¶ 1.1). The Class Period is defined as the period from January 22, 2021, through the date the Court enters the Preliminary Approval Order. (Blanchard Decl., ¶ 15; Settlement Agreement, ¶ 1.5). Based on information provided by Defendant, it is estimated that there are a total of sixty-nine (69) Class Members. (Blanchard Decl., ¶ 16).

B. Amount of Settlement

The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint for a non-reversionary Gross Settlement Amount of Two Hundred Ninety-Five Thousand Dollars and Zero Cents ($295,000.00), exclusive of employer-side payroll taxes. (Blanchard Decl., ¶ 17; Settlement Agreement, ¶ 1.13).

C. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. (Blanchard Decl., ¶ 17; Settlement Agreement, ¶ 1.13). The Gross Settlement Amount includes: (1) Class Counsel's fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount (i.e., $103,250 if the Gross Settlement Amount is $295,000.00); (2) Class Counsel's actual litigation costs and expenses, not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00); (3) Settlement Administration Costs, not to exceed Six Thousand Dollars and Zero Cents ($6,000.00); (4) Enhancement Payment in the amount of Ten Thousand Dollars and Zero Cents ($10,000.00); and (5) PAGA Penalty Amount of Twenty-Five Thousand Dollars and Zero Cents ($25,000.00). (Blanchard Decl., ¶ 17; Settlement Agreement, ¶¶ 1.13, 1.34, 2.2, 2.3, and 2.5). After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Fund that will be available for Class Members is currently estimated to be One Hundred Thirty Thousand Seven Hundred Fifty Dollars and Zero Cents ($130,750.00). (Blanchard Decl., ¶ 17). Additionally, 35% of the PAGA Penalty Amount ("PAGA Group Amount"), which is $8,750 out of $25,000, will be fully distributed to "all current and former non-exempt employees who worked for Defendant in California at any time [during the PAGA Period], who have not executed separation and general release agreements" ("PAGA Group" or "PAGA Group Member(s)"). The "PAGA Period" is defined as the time period between January 22, 2021 and the date the Court grants preliminary approval of the Settlement. (Blanchard Decl., ¶ 17; Settlement Agreement, ¶¶ 1.17, 1.22, 1.23 and 2.5).

The Net Settlement Amount will be distributed and paid to all Class Members who do not submit a valid and timely Request for Exclusion ("Settlement Class Member(s)") on a *pro rata* basis based on number of weeks worked by a Class Member for Defendant during the Class Period ("Workweek"). (Blanchard Decl., ¶ 18; Settlement Agreement, ¶¶ 1.35 and 1.39). The *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement ("Individual Class Payment") will be calculated by the Settlement Administrator, in accordance with the Settlement Agreement. (Blanchard Decl., ¶ 18; Settlement Agreement, ¶¶ 1.14 and 7.1).

The PAGA Group Amount will be distributed and paid to all PAGA Group Members on a *pro rata* basis based on the number of pay periods during which a PAGA Group Member worked at least one day for Defendant during the PAGA Period ("Pay Period"). (Blanchard Decl., ¶ 19; Settlement

Agreement, ¶¶ 1.24). The *pro rata* share of the PAGA Group Amount that a PAGA Group Member may be eligible to receive under the PAGA Settlement ("Individual PAGA Payment") will be calculated by the Settlement Administrator, in accordance with the Settlement Agreement. (Blanchard Decl., ¶ 19; Settlement Agreement, ¶¶ 1.15 and 7.2).

Each Settlement Class Member's Individual Class Payment will be allocated as ten percent (10%) wages (the "Wage Portion(s)") and ninety percent (90%) interest and penalties (the "Non-Wage Portion(s)"). (Blanchard Decl., ¶ 20; Settlement Agreement, ¶ 7.1(d)). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form and the Non-Wage Portions are not subject to wage withholdings and will be reported on an IRS 1099 Form by the Settlement Administrator. (Blanchard Decl., ¶ 20; Settlement Agreement, ¶ 7.1(d)). Settlement Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. (Blanchard Decl., ¶ 20; Settlement Agreement, ¶¶ 7.1(d)). Defendant will separately pay any applicable employer-side payroll taxes related to the Wage Portions of the Individual Settlement Amounts (Blanchard Decl., ¶ 20; Settlement Agreement, ¶¶ 7.1(d)). Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Blanchard Decl., ¶ 20).

The Settlement Agreement is a non-reversionary and non-claims made settlement. (Blanchard Decl., ¶ 21; Settlement Agreement, ¶¶ 1.13). The Net Settlement Fund will be fully distributed to Settlement Class Members and the PAGA Penalty Amount will be fully distributed to the LWDA and PAGA Group Members, in accordance with the Settlement Agreement. (Blanchard Decl., ¶ 21; Settlement Agreement, ¶¶ 7.1 and 7.2). No money will revert to Defendant. (Blanchard Decl., ¶ 21; Settlement Agreement, ¶ 1.13).

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for ninety (90) calendar days from the date the checks are issued, and thereafter, shall be canceled. (Blanchard Decl., ¶ 22; Settlement Agreement, ¶ 7.2). Any funds associated with such canceled checks will be distributed by the Settlement Administrator to the State of California's Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Group Member. (Blanchard Decl., ¶ 22; Settlement Agreement, ¶ 7.2).

D. Released Claims

Upon the Effective Date and full funding of the Gross Settlement Amount, all Releasing Parties shall waive and forfeit, and be deemed to have fully, finally and forever released and discharged all Released Class Claims[1] arising during the Class Period against all Released Parties[2]. (Settlement Agreement, ¶ 2.8).

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff and all PAGA Group Members shall, on behalf of themselves and on behalf of the LWDA, waive, release, and forever discharge all Released PAGA Claims[3] arising during the PAGA Period against all Released Parties. (*Id*., ¶ 2.9).

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The review and approval of a proposed class action settlement involves a two-step process. (*See* Cal. Rules of Court, Rule 3.769(c)). First, counsel submit the proposed terms of the settlement and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the range of a fair settlement to justify providing notice of the proposed settlement to class members. After notice is provided to the class, the Court must conduct a second inquiry into whether the proposed settlement is fair, reasonable, and adequate. (Ibid).

V. THE SETTLEMENT IS PRESUMED FAIR

A. The Settlement Was Reached as a Result of Arm's-Length Bargaining

California courts recognize that "a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining." (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties' settlement negotiations were at all times made at arm's-length and were adversarial. (Blanchard Decl., ¶ 23). The Settlement was reached following a full day of mediation with a highly respected mediator with substantial experience mediating wage and hour cases. (Ibid).

B. Sufficient Investigation and Discovery by Experienced Class Counsel

Courts typically assess the status of discovery in determining whether a class action settlement

[1] The Released Class Claims are defined in Paragraph 1.27 of the Settlement Agreement.
[2] The Released Parties are defined in Paragraph 1.29 of the Settlement Agreement
[3] The Released PAGA Claims are defined in Paragraph 1.28 of the Settlement Agreement

agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation, Defendant produced a twenty percent (20%) sampling of Class Members' time and pay records and Class Members' timekeeping data as well as Defendant's relevant wage and hour policies, and information regarding the total number of Class Members, the number of current versus former employees, the estimated workweeks worked by the Class Members, and the average rate of pay for the Class Members. (Blanchard Decl., ¶ 24).

This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and weaknesses of the claims and the potential class-wide damages. (*Id.*, ¶ 25). Based on information exchanged, the Parties extensively briefed issues regarding class certification and liability and provided their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective positions. (*Id.*, ¶ 26). At all times, Plaintiff was willing and prepared to litigate this matter through class certification and trial if the Parties had been unable to reach a favorable resolution. (Ibid). Additionally, settlement negotiations were conducted by highly capable and experienced counsel. (Blanchard Decl., ¶¶ 1-8). Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. (*Wershba*, 91 Cal.App.4th at 246, 250).

Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal and factual grounds for defending the Action. Based upon Class Counsel's experience litigating similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification and the merits of the Action absent a settlement.

1. Class Counsel's Analysis of the Maximum Available Liability and Damages

Class Counsel analyzed all available data and estimated Defendant's maximum potential exposure to be approximately $1,083,035, assuming the litigation was successful at trial on all claims at issue and every employee had a violation for each claim on every shift worked. (Blanchard Decl., ¶ 27). This maximum potential analysis was then reduced based on the challenges facing the likelihood of obtaining class certification, prevailing at trial, and other attendant risks. (Ibid). This estimate is based off an estimated maximum liability for all claims at issue and the total aggregate workweeks during the relevant time period, less interest, and based on the analysis of the data which was extrapolated out for all Class Members across the entire Class Period, which included: $99,517 for meal period violations; $479,719 for rest period violations at a 100% violation rate; $108,713 for unpaid off-the-clock work for 1 hour per workweek of off-the-clock work; $369 for unpaid overtime wages at the required regular rate of pay; $28,350 for unreimbursed business expenses; $329,467 for waiting time penalties; and $36,900 for wage statement penalties. (Blanchard Decl., ¶27). Plaintiff further estimated that Defendant faced an additional exposure of $39,300 in potential, non-stacked (i.e., one penalty, per employee, per pay period during the PAGA Period) PAGA penalties. (Ibid). Together with the PAGA penalties, Defendant's maximum potential exposure totaled $1,122,335 in damages. (Ibid).

2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments

While Plaintiff believes that Defendant faced significant exposure, substantial barriers to a recovery existed. Defendant contended that Plaintiff's claims are untimely and not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. (Blanchard Decl., ¶ 30; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011)). While Plaintiff and Class Counsel disagree with Defendant's predictions, they also recognize that there is a significant risk that the Court may deny class certification. (Blanchard Decl., ¶ 30).

For example, Plaintiff's meal period claims, which were based on Defendant's alleged failure to provide lawful meal periods, have been increasingly difficult to certify in recent years. (Blanchard Decl., ¶ 31; *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiff's theory of liability for meal period violations was based on allegations that Defendant had failed to implement its policies and that its practices failed to allow Class Members to take meal breaks in the manner required under California law. (Blanchard Decl., ¶ 31; *See Bradley v. Networkers Int'l, LLC,* 211 Cal.App.4th 1129, 1150 (2012) (holding that "the lack of a meal/rest break policy and the uniform failure to authorize such breaks are matters of common proof.")). Defendant contended that its policies and practices at all times during the Class Period were lawful. (Blanchard Decl., ¶ 31). Defendant further argued that the rate of purported meal period violations reflected in the data would require individualized inquiry and that such inquiry would prohibit a class from being certified. (Ibid). Class Counsel also had to consider the risk that the Court would find validity in an individualized proof defense to certification of Plaintiff's meal period claim. (Ibid).

Additionally, a large portion of Defendant's overall liability lies in Plaintiff's rest period allegations. (Blanchard Decl., ¶ 32). As with the meal period allegations, Defendant contended that it had a lawful written rest period policy, provided compliant rest breaks, and relieved Class Members of all duties as required under California law. (Ibid). Additionally, this claim was even more uncertain given the difficulties associated with proving the alleged rest period violations, as Defendant was not required to record these breaks. (Ibid). Given the lack of records demonstrating rest period violations, there were legitimate concerns Plaintiff would not be able to certify these claims or prove substantial damages with requisite certainty, which made the estimated value of this claim subject to much challenge. (Ibid).

Plaintiff also faced challenges certifying and proving liability for his minimum wage and overtime claims. (*Id.*, ¶ 33). These claims were largely based on unrecorded, off-the-clock work Plaintiff alleges was performed by the Class Members both before and after their shifts and during purported meal periods. (Ibid). However, the individualized nature of why this work was performed and the individualized nature of damages presented substantial concerns regarding the manageability of the case and the risk the Court could find these issues prevented certification, and the estimated damages for this claim were based on an assumption that all Class Members worked off the clock for at least one hour per week. (Ibid).

Plaintiff also contended that Defendant failed to reimburse Plaintiff and the other Class Members for necessary business-related expenses, such as the usage of personal cell phones for work-related purposes. (*Id.*, ¶ 34). Defendant contended that it had a policy and practice of reimbursing employees for necessary business-related expenses. (Ibid). Defendant further contended that, with respect to the alleged expenses for which Plaintiff and the other Class Members never requested reimbursement from Defendant, it did not know and had no reason to know that alleged business-related expenses had been incurred. (Ibid). Defendant further contended that the reason why a Class Member undertook certain expenses, while not others, and failed to receive reimbursement for certain expenses while not others, would raise individual issues that could not be certified. (Ibid).

There are also substantial risks associated with Plaintiff's waiting time penalties and wage statement claims. (*Id*., ¶ 35). First, these claims were derivative of Plaintiff's claims for unpaid meal period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages, and if certification was denied on those underlying claims, these derivative claims for penalties would also likely fail. (Blanchard Decl., ¶ 35). Further, even if Plaintiff prevailed on his underlying claims, he would still be required to demonstrate that Defendant's violations of California Labor Code Section 203 were *willful* violations. (Blanchard Decl., ¶ 35; *See, e.g*., *Choate v. Celite Corp*., 215 Cal App. 4th 1460, 1468 (2013) (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding of willfulness")). Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them rather than a pure calculation of damages after liability is proven. (Blanchard Decl. ¶ 35; *Compare Jaimez v. DAIOHS USA, Inc*., 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp*., 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which comprised a substantial portion of Defendant's estimated liability, were therefore uncertain. (Blanchard Decl., ¶ 35).

Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the amount of wages due to Class Members would be an expensive, time-consuming, and uncertain proposition. (*Id*., ¶ 36). In order to prove liability and damages, Class Counsel will need to request and analyze thousands of pages of documents, obtain the Class Members' contact information, contact them, and obtain their declarations at great expense. (Ibid). Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. (Ibid). On the other hand, Defendant would likely be able to obtain the cooperation of its employees. (Ibid). Moreover, even if Plaintiff prevailed at class certification and trial, possible appeals would substantially delay any recovery by the Class. (Ibid).

Class Counsel also contemplated the risks of proceeding with the PAGA claims and potential liability Defendant could face from these claims as part of the global resolution. (*Id*., ¶ 37). Existing case law makes PAGA claims subject to the same defenses and risks as Plaintiff's underlying wage claims. (Blanchard Decl., ¶ 37; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiff's other claims fail as a matter of law, so does her PAGA claim")). Class Counsel also anticipated that even if successful on the merits at trial, the imposition of cumulative civil penalties based on the alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory, and that Defendant would argue that it made a good faith attempt to comply with its legal obligations warranting a reduction in penalties. (Blanchard Decl., ¶ 37).[4] Class Counsel also anticipated Defendant would argue that the violations per pay period were low, warranting an additional reduction in civil penalties. (Ibid). Finally, Class Counsel was also mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended to facilitate enforcement of California's labor laws by financing state activities and educating and deterring non-compliance. (Ibid).

Accordingly, after considering this multitude of factors, Plaintiff and Class Counsel concluded that it was in the best interest of the State of California and the PAGA Group Members to enter into the Settlement, and to allocate Twenty-Five Thousand Dollars and Zero Cents ($25,000.00) of the Gross Settlement Amount towards the PAGA claims, which represents approximately 8.47% of the Gross Settlement Amount. (*Id*., ¶ 38). This percentage of the settlement is well within the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. (Ibid). Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as reasonable by courts. (Ibid). Moreover, the overall relief obtained by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California's labor laws, provide funds to the state, and deter future non-compliance by the employer. (Ibid).

Therefore, taking into account how each of the above risks potentially effected Plaintiff's ability to first obtain class certification, and then prove the underlying violations, the Court's broad discretion in civil penalties, plus the cost and delay in recovering the alleged potential damages, Class Counsel discounted Defendant's estimated liability based on the challenges facing his ability to succeed on class certification by 50% to $561,167.50. (*Id.*, ¶ 39). The merits-based risk factors further reduced Defendant's estimated liability by an additional 50%. (Blanchard Decl., ¶ 39). This resulted in an adjusted estimated liability of $280,583.75. (Ibid). In light thereof, the settlement amount of $295,000 is a significant settlement. (Ibid).

Class Counsel therefore submits that the Settlement is in the best interest of the Class Members, the PAGA Group Members, and the State of California and is within the accepted range of recoveries for this type of litigation given the inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further litigation. (*Id.*, ¶ 40).

VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

Code of Civil Procedure Section 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class action is superior to other methods. (*See Dunk*, 48 Cal.App.4th at 1806).

A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is Impracticable

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. (*See Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983)). In this case, all three considerations strongly favor class certification. Here, the Class is defined as "all current and former non-exempt employees who worked for Defendant in California at any time [during the Class Period], who have not executed separation and general release agreements." (Blanchard Decl., ¶ 16; Settlement Agreement, ¶ 1.1). This provides a clear and definite scope for the proposed class.

Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Courts have certified classes with as few as ten or twenty-eight class members. (*Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995); *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972)). Here, the estimated Class size of sixty-nine (69) individuals meets the numerosity requirement.

The existence of an ascertainable class in this case can be established through Defendant's payroll records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and the Court to determine the parameters of the Class. (*See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d 605, 617 (1987)).

B. The Class Shares a Well-Defined Community of Interest

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. (*Dunk*, 48 Cal.App.4th at 1806). Here, all three requirements are easily satisfied.

Here, Plaintiff's claims present common issues of law and fact that predominate and warrant class certification. Plaintiff alleges that Defendant denied compliant meal and rest periods to employees, required employees to perform work off the clock, and failed to fully compensate employees for all time actually worked. These policies and practices meant that Defendant allegedly failed to pay minimum and overtime wages, and other related claims. Plaintiff alleges that Defendant's policies and practices were uniform as to all Class Members. Thus, class treatment is appropriate.

The test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct. (*See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007)).

Here, Plaintiff alleges that his claims are similar to those of the other Class Members and that Plaintiff's claims arise out of the same alleged course of conduct giving rise to the claims of the other Class Members.

Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." (*McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976)). Class Counsel is well-regarded and is qualified and experienced in employment-related, class-action litigation. (Blanchard Decl., ¶¶ 1-8). Plaintiff has, at all times, throughout the course of the litigation considered the interests of the Class and understood that he must take steps to adequately represent the Class and their interests.

(Ferrell Decl., ¶ 10). Because Plaintiff's claims are typical of other Class Members and are not based on unique circumstances, there is no antagonism between the interests of Plaintiff and the Class.

C. A Class Action is Superior to a Multiplicity of Litigation

Under the circumstances, proceeding as a class action is a superior means of resolving this dispute, as the Class Members and the Court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged violations. Further, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results.

VII. THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010)). Plaintiff invested substantial time and effort into litigation, including his own research, reviewing documents, and extensive discussions with Class Counsel. (Ferrell Decl., ¶¶ 3-5). Further, the requested amount for Plaintiff is also reasonable given the average award and the benefit gained by other Class Members. For these reasons, Plaintiff requests that an Enhancement Payment of Ten Thousand Dollars ($10,000.00) be preliminarily approved by the Court. (Blanchard Decl., ¶ 41; Ferrell Decl., ¶ 12).

VIII. THE REQUESTED CLASS COUNSEL AWARD IS REASONABLE

Here, the requested attorneys' fees of thirty-five percent (35%) of the Gross Settlement Amount (i.e., $103,250 if the Gross Settlement Amount is $295,000) is disclosed to Class Members in the proposed Class Notice. (Settlement Agreement, Exh. B). The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel's request for the reimbursement of litigation costs and expenses not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00). (Blanchard Decl., ¶¶ 42).

IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS

The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members. (Settlement Agreement, Exh. B). The Class Notice will include information regarding the nature of the

Action, a summary of the terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the Class Settlement and to dispute Workweeks and/or Pay Periods, and the date of the Final Approval Hearing. (Ibid). The Class Notice will list each Class Member's total Workweeks and their estimated Individual Class Payment and each PAGA Group Member's total Pay Periods and their estimated Individual PAGA Payment. (Ibid).

X. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

Respectfully submitted,

Dated: August 7, 2026

BLACKSTONE LAW, APC

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