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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MATTHEW CRUZ, as an individual and on behalf of all others similarly situated, Plaintiff, vs. CAT SPEC, LTD. L.P., a Texas limited partnership; STRONGHOLD, LTD. LIMITED PARTNERSHIP, a Texas limited partnership; and DOES 1 through 100, Defendants.	Case No. 23STCV06904 [*Assigned for all purposes to Hon. Lawrence P. Riff, Dept. SSC-7*] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: December 19, 2024 Time: 9:00 a.m. Dept.: SSC-7 Complaint Filed: March 29, 2023 Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on December 19, 2024 at 9:00 a.m., in Department SSC-7 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Matthew Cruz ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:

   All individuals whom Defendants employed as non-exempt employees and who worked in California from March 29, 2019 through date the Court preliminarily approves the Settlement.

3. Preliminary appointment of Plaintiff Matthew Cruz as Class Representative;
4. Preliminary appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit an enhancement award to Plaintiff, Settlement Administration costs, civil penalties payable to the California Labor Workforce Development Agency, and attorneys' fees and costs to Class Counsel;
6. Appointment of Phoenix Class Action Administration Solutions as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Notice of Class Action Settlement and Hearing Date for Final Court Approval which is attached to the Settlement as Exhibit A and an order that it be disseminated to the proposed Settlement Class Members as provided in the Settlement Agreement.

This Motion is based on this notice of motion, the memorandum of points and authorities, the declarations of Scott M. Lidman, Milan Moore, Paul K. Haines, Plaintiff Matthew Cruz, and Jodey Lawrence of Phoenix Class Action Administration Solutions, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: November 1, 2024

Respectfully submitted,
LIDMAN LAW, APC

By: ______________________
Scott M. Lidman
Attorney for Plaintiff
MATTHEW CRUZ

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MEMORANDUM OF POINTS AND AUTHORITIES[1]

I. INTRODUCTION

Plaintiff Matthew Cruz ("Plaintiff") brought this class and representative action against Defendant CAT SPEC LTD. L.P. ("CAT SPEC") and Defendant Stronghold, LTD Limited Partnership ("Stronghold") (hereinafter collectively referred to as "Defendants") alleging various wage and hour and related violations. Plaintiff's primary allegations are that Defendants: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to indemnify all necessary business expenditures; (7) failed to pay all wages owed upon termination; (8) engaged in unlawful business practices; and (9) are liable for civil penalties under the Private Attorneys General Act of 2004 ("PAGA").

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, class action settlement,[2] in which Defendants have agreed to pay a total settlement amount of Four Hundred Thirty Thousand Four Hundred Dollars and Zero Cents ($430,400.00) on behalf of the following Settlement Class:

> All individuals whom Defendants employed as non-exempt employees and who worked in California from March 29, 2019 through date the Court preliminarily approves the Settlement.

Significantly, Settlement Class Members do not need to file a claim to benefit from the Settlement because all Settlement Class Members will automatically receive a payment unless they affirmatively opt-out.

Thus, after deducting administration costs, Plaintiff's service award, attorneys' fees and costs, and payment of PAGA penalties to the California Labor and Workforce Development Agency ("LWDA"), the remaining Net Settlement Amount ("NSA") of approximately $227,933.33 will be paid

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[1] Given the multiplicity of issues addressed in this Motion, Plaintiff respectfully requests that the Court allow Plaintiff to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2), and that the Court consider the attached memorandum of points and authorities which is 22 pages in length.

[2] The Class Action and PAGA Settlement Agreement ("Settlement") is attached to the Declaration of Scott M. Lidman as Exhibit 2. The proposed Notice of Class Action Settlement and Hearing Date for Final Court Approval is attached to the Settlement as Exhibit A. All defined terms in this motion have the same definitions as used in the Settlement.

to all Settlement Class Members who do not timely opt out. There are approximately 600 Settlement Class members, rendering the average payment to participating Settlement Class members to be approximately $379.88 as a direct result of this litigation.

This proposed Settlement is well-within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. <u>SUMMARY OF THE LITIGATION</u>

A. THE PARTIES

Defendants offer catalysts to refineries and petrochemical industries across the United States. *See* Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. Plaintiff was employed by Defendants as a non-exempt employee from approximately August 2022 to February 4, 2023. *See* Declaration of Matthew Cruz ("Cruz Decl."), ¶ 2. During his employment, Plaintiff held the position of Catalyst Tech and was responsible for reactor and tower maintenance for refineries at Defendants' customers' various locations. *Id*.

B. BRIEF PROCEDURAL HISTORY

On March 29, 2023, Plaintiff filed a putative class action complaint against Defendants in Los Angeles County Superior Court. Lidman Decl., ¶ 10. On March 29, 2023, Plaintiff submitted a letter to the California Labor & Workforce Development Agency ("LWDA") and Defendants advising of his intention of filing a PAGA claim based on the Labor Code violations alleged in his operative complaint. *Id*., **Exhibit 1**. On June 16, 2023, Plaintiff filed a First Amended Class Action and Representative Complaint. *Id*. The primary allegations are that Defendants: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to indemnify all necessary business expenditures; (7) failed to pay all wages owed upon termination; (8) engaged in unlawful business practices; and (9) are liable for civil penalties under the PAGA. *Id*.

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Plaintiff will serve the instant Motion and proposed Settlement Agreement on the LWDA on the same date he files this Motion and will submit a supplemental declaration to the Court evidencing the submission. Lidman Decl., ¶ 36.

III. ***DUNK/KULLAR*** **ANALYSIS**

Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g.*, *Hanlon*, *supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement agreement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

A. INVESTIGATION AND DISCOVERY

After agreeing to participate in private mediation, Defendants informally produced a sampling of timekeeping and payroll data for the putative class, as well as its wage and hour policies and other relevant documents and information relevant to the claims alleged. Lidman Decl., ¶ 11. After a detailed review of the sample of payroll and time records for the putative class and other documents and policies produced by Defendants, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id*. This informal discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendants' defenses thereto, if a settlement could not be reached. *Id*.

B. ARMS-LENGTH NEGOTIATIONS

On May 23, 2024, after extensive research and analysis, a full-day mediation was held with Katherine J. Edwards, a well-respected wage and hour class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id*.

Ultimately, the parties agreed in principle on a class-wide resolution. Lidman Decl., ¶ 12. In the months that followed, the parties finalized the terms of settlement and executed the Stipulation of Class Action and PAGA Settlement ("Settlement"). *Id*.

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C. THE EXPERIENCE AND VIEWS OF COUNSEL

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Lidman Decl., ¶¶ 2-8; Declaration of Milan Moore ("Moore Decl."), ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8. Class Counsel conducted an in-depth review of Defendants' policies and the sample of timekeeping and payroll records, and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. Lidman Decl., ¶ 11. The Settlement was also reached with the assistance of an experienced and respected wage and hour class action mediator. Lidman Decl., ¶ 12. This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF CLAIMS

The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in the face of disputed claims. Plaintiff's analysis of the maximum and realistic expected recoveries for each of the theories of liability pled is set forth below:

<u>Defendants Failed to Pay for All Hours Worked</u>: Plaintiff alleges that he and Settlement Class Members were not fully compensated for all of their time worked. Lidman Decl., ¶ 16. Specifically, Plaintiff alleges Defendants recorded their employees' scheduled hours and paid wages based thereon, not the actual start and stop work times. *Id*. Plaintiff also alleges that this time shaving and/or rounding practice utilized by Defendants was not-even handed over time and would almost exclusively round and shave in Defendants' favor such that the employees were routinely underpaid for their time worked. *Id*. Accordingly, Plaintiff's expert analyzed this rounding issue and found that it favored the employer overwhelmingly, and then calculated a total wage underpayment of approximately $2,578,496 (which was based on 17,216 workweeks and 2.5 hours of unpaid minimum wage per week). *Id*.

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Defendants contend that it compensated Settlement Class Members for all of their time worked. Lidman Decl., ¶ 17. Defendants also contend that their rounding practices were lawful, and any unpaid time was *de minimis* (not near the 30 minutes per shift alleged by Plaintiff) and therefore non-compensable. *Id*. Defendants further assert that Plaintiff would be unable to certify a rounding class given the individualized inquiries that would be required, and also that Defendants' rounding mechanism was, according to them, allegedly facially neutral. *Id*. In light of these defenses, Plaintiff discounted the maximum exposure by 55% for the risk of non-certification, and an additional 85% to account for Defendants' defenses on the merits, to arrive at an estimated exposure of $174,048.48. *Id*.

<u>Defendants Failed to Provide All Legally Required Meal Periods</u>: Plaintiff alleges that he and Settlement Class Members were not provided with all legally-compliant first meal periods beginning before the end of the fifth hour of work. Lidman Decl., ¶ 18. Additionally, Defendants failed to meet their obligation of recording the actual start and stop time for meal periods and as such, there is a presumption that Plaintiff and Settlement Class members were not relieved of duty and no lawful meal period was provided. *Id*. Therefore, Plaintiff calculated Defendants' maximum exposure of the alleged meal period violations at approximately $2,940,613.00. *Id*.

Defendants counter that they have always provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of Defendants. Lidman Decl., ¶ 19. Defendants point out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, they are only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. *Id*.; *See Brinker*, *supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Finally, Defendants contend Plaintiff's meal period claim is not suited for class certification, since individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id*. Accordingly, Plaintiff discounted the maximum exposure by 65% for the risk of non-certification, and an additional 70% to account for Defendants' defenses on the merits to arrive at an estimated exposure of $308,764.37. *Id*.

Defendants Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that he and Settlement Class members were also not authorized and permitted to take all required rest periods due to Defendants' rest period policies and practices that fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 20. Specifically, Plaintiff alleges that due to work demands, he and Settlement Class members were not authorized and permitted to take duty-free net 10 minute rest periods. *Id*. Based on the records produced in connection with mediation, there were approximately 43,614 shifts over 3.5 hours worked during the relevant time period. *Id*. Accordingly, Plaintiff calculated Defendants' maximum exposure for rest period violations at $3,254,076.00. *Id*.

Defendants contend they have always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 21. Further, Defendants argue that Plaintiff's rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id*. Accordingly, Plaintiff discounted the maximum exposure by 65% for the risk of non-certification, and an additional 60% to account for Defendants' defenses on the merits to arrive at an estimated exposure of $455,570.64. *Id*.

Defendants Failed to Reimburse for Business Expenses: Plaintiff alleges that Defendants failed to reimburse him and Settlement Class Members for all necessary business expenses incurred. Lidman Decl., ¶ 22. Specifically, Defendants required Plaintiff and Settlement Class Members to use their personal cellular phones, computers, and/or tools for work-related purposes but did not reimburse the Settlement Class Members for such usage. *Id*. Despite knowing that Settlement Class Members had incurred necessary business expenses to communicate with team members through their own personal electronic devices with internet access, Defendants failed to reimburse putative class members in violation of Labor Code § 2802. *Id*. Therefore, Plaintiff calculated Defendants' maximum exposure for unreimbursed business expenses at approximately $129,120.00 ($7.50 x 17,216 workweeks). *Id*.

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Defendants contend that employees did not have to use their personal electronic devices to communicate with team members and would only do so at their own volition. Lidman Decl., ¶ 23. Defendants also argue that this claim is not suitable for class treatment because it would require individualized determinations as to whether each employee used a personal cellular phone and/or devices, how often, and how much of that use was a reasonable percentage of their individual monthly expenses. *Id*. As such, Plaintiff discounted the calculated exposure by 55% for a risk of non-certification and an additional 65% for a risk of being unsuccessful on the merits, to arrive at an estimated total of $20,336.40. *Id*.

<u>Defendants Issued Inaccurate Itemized Wage Statements</u>: Plaintiff alleges that Defendants issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid minimum wages, overtime wages, and meal and rest period premium wages described above. Lidman Decl., ¶ 24. Plaintiff's data analysis reflected that there were approximately 7,092 wage statements issued during the relevant time period. *Id*. Therefore, Plaintiff calculated Defendants' maximum exposure for wage statement violations at approximately $686,150.00 ($50 for the first violation and $100 for each subsequent violation). *Id*.

Defendants argue that their alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 25. As such, Plaintiff discounted the calculated exposure by 65% for a risk of non-certification and an additional 80% for a risk of being unsuccessful on the merits, to arrive at an estimated total of $48,030.50. *Id*.

<u>Defendants Are Subject to Waiting Time Penalties</u>: Plaintiff alleges that as a result of failing to pay all wages and all meal and rest period premium at the end of employment, Defendants are liable for waiting time penalties under Labor Code § 203. Lidman Decl., ¶ 26. There are 140 former employees and as such, Plaintiff calculated Defendants' maximum exposure for waiting time penalties to be approximately $1,772,901.00. *Id*.

Defendants assert they have strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Lidman Decl., ¶

27; *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). As such, Plaintiff discounted the calculated exposure by 65% for a risk of non-certification and an additional 80% for a risk of being unsuccessful on the merits, to arrive at an estimated total of $124,103.07. *Id*.

<u>Defendants Are Liable for PAGA Civil Penalties</u>: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 28. Plaintiff calculated Defendants' maximum exposure at $2,664,800.00. *Id*.; *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision).

Defendants argue that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims will fail. Lidman Decl., ¶ 29; *see Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendants also maintain that, given their good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendants liable for any of Plaintiff's claims. Lidman Decl., ¶ 29; *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc*. (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiff discounted the maximum exposure figure by 65% for a risk of being unsuccessful on the merits, and an additional 75% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of $233,170.00. Lidman Decl., ¶ 29.

E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately $1,364,023.46. Lidman Decl., ¶ 30. The proposed settlement of $430,400.00 therefore represents approximately 31.5% of the

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reasonably forecasted recovery for the Settlement Class. *Id*. Preliminary approval is appropriate, as the settlement will provide tangible monetary relief to Settlement Class members and will still provide an average recovery to Settlement Class members of over $375.00.

The proposed settlement reflects approximately 31.5% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER LITIGATION

Although the parties engaged in informal discovery, the parties still had significant formal discovery to complete in litigation had the matter not settled. Lidman Decl., ¶ 35. Moreover, Plaintiff still had to file for class certification and faced the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id*. Even if the classes sought to be certified by Plaintiff were in fact certified, the parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id*. This Settlement avoids those risks and the accompanying expense. Thus, this factor supports preliminary approval.

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G. RISK OF MAINTAINING CLASS ACTION STATUS

Plaintiff had not yet filed his motion for class certification and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial.

IV. <u>CLASS CERTIFICATION FOR SETTLEMENT PURPOSES</u>

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322 requires trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable").

As further explained below, the Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the Settlement Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims are typical of the claims of absent Settlement Class members; and (4) Plaintiff and his counsel will fairly and adequately represent Settlement Class members' interest. *See* Cal. Civ. Proc. § 382.

A. NUMEROSITY IS SATISFIED.

Here, the proposed Settlement Class consists of approximately 600 members and is therefore sufficiently numerous as to make joinder impracticable. *See* Lidman Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous). Thus, numerosity is satisfied.

Further, a class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is defined as "all individuals whom Defendants employed as non-exempt employees and who worked in California at any time during the Class Period…'Class Period' means the period from March 29, 2019 through date the Court preliminarily approves the Settlement." Lidman Decl., ¶ 14.

B. COMMONALITY IS SATISFIED.

The focus in a certification dispute is not the merits, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 327.

Here, Settlement Class members' claims arise from Defendants' common, uniform policies and practices that applied to Settlement Class members during the class period. Lidman Decl., ¶ 15. Specifically, Plaintiff alleged that Defendants' common and uniform policies and practices resulted in the following violations: (1) failure to pay all overtime wages owed; (2) failure to pay all minimum wages owed; (3) failure to provide all legally required meal periods; (4) failure to authorize and permit all legally required rest periods; (5) failure to provide accurate, itemized wage statements; (6) failure to indemnify all necessary business expenditures; (7) failure to pay all wages owed upon termination; (8) engagement in unlawful business practices; and (9) liability for civil penalties under the PAGA. *Id*. As a result of the common and uniform policies and practices that applied to all Settlement Class members, their claims involve common questions of law and fact, including but not limited to:

1. Whether Defendants paid all overtime wages owed;
2. Whether Defendants paid all minimum wages owed;
3. Whether Defendants provided all legally compliant meal periods;
4. Whether Defendants authorized and permitted all legally required rest periods;
5. Whether Defendants failed to furnish accurate, itemized wage statements;
6. Whether Defendants reimbursed necessary business expenditures;
7. Whether Defendants failed to pay all wages owed upon termination; and
8. Whether Defendants' conduct constituted unlawful and/or unfair business practices.

These alleged practices result in common questions as to the affected Settlement Class members. *See e.g.*, *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

C. TYPICALITY IS SATISFIED.

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action).

Here, Plaintiff's claims are typical of those held by the members of the proposed Settlement Class. First, Plaintiff was employed by Defendants during the Class Period as a non-exempt employee and was subject to Defendants' wage and hour policies at issue in this case. Cruz Decl., ¶ 2. Second, Plaintiff was allegedly injured by the same challenged policies that allegedly injured the Settlement Class as a whole. For example, Plaintiff asserts that he was not paid all minimum and overtime wages, was not provided all meal periods, was not authorized and permitted all rest periods, received inaccurate itemized wage statements (similar to those received by the Settlement Class members), and was not reimbursed for necessary business expenses. Cruz Decl., ¶¶ 2-6. Given that Defendants' policies and practices applied to all non-exempt employees, Settlement Class members possess a similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, because Plaintiff's claims and those of the Settlement Class all arise from the same conduct, typicality is satisfied.

D. ADEQUACY IS SATISFIED.

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007) Cal.App.4th 676, 697.

Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class he seeks to represent. Lidman Decl., ¶ 34; Cruz Decl., ¶ 13. Indeed, Plaintiff's interests are aligned with those of the Settlement Class members, as they all seek monetary relief under the same facts and legal theories. Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. Lidman Decl., ¶ 34; *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Further, Class Counsel also have extensive experience in wage and hour class action litigation and have vigorously litigated this case. *See* Lidman Decl., ¶¶2-8; Moore Decl., ¶¶ 2-4; Haines Decl., ¶¶ 2-8.

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V. SETTLEMENT AGREEMENT

A. THE BASICS

1. Class Definition

The proposed Settlement Class is defined as "all individuals whom Defendants employed as non-exempt employees who worked in California at any time during the Class Period." Settlement, ¶ 1.5.

The proposed PAGA Aggrieved Employee group is defined as "all individuals whom Defendants employed as non-exempt employees and who worked in California at any time during the PAGA Period." Settlement, ¶ 1.4.

2. Class and Release Period

For purposes of this Settlement Agreement, the "Class Period" shall mean the time period of March 29, 2019 through date the Court preliminarily approves the Settlement. Lidman Decl., ¶ 14.

Additionally, for purposes of this Settlement Agreement, the "PAGA Period" and release under the PAGA shall mean the time period between March 29, 2022 through date the Court preliminarily approves the Settlement. *Id*.

B. RELEASE OF CLAIMS

1. Scope

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Defendants and their respective former, current and future parent companies, subsidiaries, affiliates, shareholders, managers, members, agents, principals, heirs, representative (including, without limitation, any investment bankers, accountants, auditors, consultants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns ("Released Parties") from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the operative First Amended Complaint and/or ascertained in the course of the Action and which occurred during the Class Period. The claims released include, without limitation, (1) failure to pay overtime wages; (2) failure to pay all minimum wages; (3) failure to provide meal periods or provide premium wages in lieu thereof; (4) failure to provide rest periods or provide premium wages in lieu thereof; failure to provide accurate, itemized wage statements' (6) failure to timely pay all wages upon separation of employment; (7) failure to reimburse necessary business expenses; and (8) unfair business practices in violation of or liability under California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 516, 558, 1194, 1197, 1198, 2802 and the relevant Wage Orders issued by the Industrial Welfare Commission, and any all related claims for attorneys' fees and costs. Settlement, ¶ 5.2.

Further, all Aggrieved Employees release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the operative First Amended Complaint and/or the PAGA Notice and/or ascertained in the course of the Action and which occurred during the PAGA Period. The claims released include, without limitation: (1) failure to pay overtime wages; (2) failure to pay all minimum wages; (3) failure to provide meal periods or provide premium wages in lieu thereof; (4) failure to provide rest periods or provide premium wages in lieu thereof; (5) failure to provide accurate, itemized wage statements; (6) failure to timely way all wages upon separation of employment; and (7) failure to reimburse necessary business expenses, and the relevant Wage Orders issued by the Industrial Welfare Commission, and any and all related claims for attorneys' fees and costs. *See* Settlement, ¶ 5.3.

2. <u>Release Effective Date</u>

The releases described above will be effective only on the date that Defendants fully fund the entire Gross Settlement Amount and fully fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments. Settlement, ¶ 5.

C. MONETARY TERMS OF SETTLEMENT

1. <u>Gross Settlement Amount and Timing of Payment</u>

If the Court approves this Settlement, Defendants will pay a Gross Settlement Amount ("GSA") of $430,400.00.[3] Lidman Decl., ¶¶ 13, Exh. 2 (Settlement, ¶ 3.1). Significantly, this Settlement is **<u>non-</u>**

[3] As of May 23, 2024, Defendants' estimate of the number of Compensable Weeks during the Class Period is seventeen thousand two hundred sixteen (17,216). If the actual number of Compensable Weeks during the Class Period is more than ten percent (10%) greater than this estimate (i.e., if the actual Compensable Weeks during the Class Period is greater than eighteen thousand nine hundred thirty-eight (18,938)), then the Total Settlement Amount as defined in Paragraph 19 above shall be increased on a proportional basis for Compensable Weeks in excess of seventeen thousand two hundred sixteen (17,216). *See* Settlement ¶ 8.

reversionary, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id*. Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. Settlement, ¶ 7.5.3.

Within thirty (30) days of the Effective Date, Defendant will transmit the Gross Settlement Amount to the Settlement Administrator. Settlement, ¶ 4.3. The Effective Date means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; or (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. Settlement, ¶ 1.18.

2. Deductions from Settlement Amount

The monetary terms of the Settlement are summarized below:

Settlement Amount ("SA"):	**$430,400.00**
Minus Court-approved attorneys' fees (1/3 of the SA):	$143,466.67
Minus Court-approved, verified costs (up to $25,000.00):	$25,000.00
Minus Court-approved Class Representative Service Award:	$7,500.00
Minus Settlement Administration Costs:	$11,500.00
Minus PAGA payment to the LWDA:	$15,000.00
Net Settlement Amount ("NSA"):	**$227,933.33**

After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the Settlement requires Defendants to pay a Net Settlement Amount ("NSA") of at least $227,933.33 to all Settlement Class members who do not timely opt out. Lidman Decl*.*, ¶ 13, Exh. 1. Thus, the average individual payment is $379.88, as a direct result of this litigation (assuming all Settlement Class members worked the same length of time). *Id*.

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3. Class Representative Service Award

"[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94.

Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of $7,500.00 for his services to the Settlement Class. Lidman Decl., ¶ 33, Exh. 1 (Settlement, ¶ 3.2.1); Cruz Decl., ¶¶ 3-11. As will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Lidman Decl., ¶ 33; Cruz Decl., ¶¶ 3-11; Settlement ¶ 5.1.1.

4. Attorneys' Fees and Costs

California courts recognize an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of one-third of the GSA is well within the range of reasonableness, and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

Here, Class Counsel will apply for an attorneys' fees award of one-third of the GSA, which is currently estimated to be $143,466.67, and up to $25,000.00 in verified costs reimbursement. *See* Settlement, ¶ 3.2.2; Lidman Decl., ¶ 31. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id*. Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman

Decl., ¶ 32. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing approximately hundreds of pages of Defendants' documents and policies, analyzing Settlement Class members' timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. Lidman Decl., ¶ 31. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the final approval papers, and attending the Final Approval hearing. *Id*.

Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement in light of the substantial risks, significant work undertaken, the extremely positive results obtained for the class, and the efficiency with which the Parties conducted the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar analysis.

5. Payroll Taxes

The Settlement provides that Defendants shall separately pay any and all employer payroll taxes owed. Settlement ¶ 3.1.

6. Payment Formula

According to Defendants, there are approximately 600 total Settlement Class members. Lidman Decl., ¶ 14. The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: An individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. Settlement ¶ 3.2.4.

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25 percent share of PAGA Penalties ($5,000) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Settlement ¶ 3.2.7.1.

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7. Tax Allocation

For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows:

Of the Individual Class Payments:

a. Thirty-Three percent (33%) of each Participating Class member's Individual Class Payment will be allocated to settlement of wage claims. This is subject to tax withholding and will be reported on an IRS W-2 Form.

b. Sixty-Seven percent (67%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties. This is not subject to wage withholdings and will be reported on IRS 1099 Forms.

Settlement, ¶ 3.2.5. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. *Id*.

Of the Individual PAGA Payments: The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. Settlement, ¶ 3.2.7.2.

8. PAGA Penalty

The parties have agreed to a PAGA award of $20,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or $15,000.00. Settlement ¶ 3.2.7. This $20,000.00 represents roughly 4.65% of the $430,400.00 Total Settlement Amount and is above the zero to two percent range for PAGA claims approved by Courts. *See, e.g., In re M.L. Stern Overtime Litig*., No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or $20,000); *Hopson v. Hanesbrands, Inc*., No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or $1,500); *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under which no money was allocated to the PAGA claims).

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VI. NOTICE ADMINISTRATION

A. SETTLEMENT ADMINISTRATOR

Phoenix Settlement Administrator's ("PSA") fees and expenses are estimated not to exceed $11,500.00. *See* Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed concurrently herewith ("Lawrence Decl."). This request is reasonable in light of the proposed class size of approximately 600 Settlement Class members and the costs and expenses associated with administering the notices and distributing the awards. Additionally, PSA will translate the Notice and mail the Notice in both English and Spanish to Settlement Class members. Lawrence Decl., ¶ 16.

B. QUALIFICATIONS AND EXPERIENCE OF ADMINISTRATOR

PSA has extensive experience administering class action matters. Lawrence Decl., ¶ 5. PSA has administered complex wage and hour, labor and employment, consumer/product liability, TCPA, FLSA, FACTA, ERISA and PAGA class action matters, through final approval and distribution. PSA has developed a system of quality assurance measures, to ensure the highest quality service is provided in our cases and to class members. *Id*.

C. CLASS LIST FROM DEFENDANT

Within 20 calendar days after entry of an order preliminarily approving this Agreement, Defendants will provide the Settlement Administrator with each Settlement Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods. Settlement, ¶ 1.8.

D. CLASS LIST UPDATED PRIOR TO INITIAL MAILING

Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address (NCOA) Database to update Class Member addresses. Settlement, ¶ 7.4.2.

E. DEADLINE FOR INITIAL ISSUANCE OF NOTICE TO CLASS MEMBERS

Within 14 calendar days from receipt of the Class Data, the Settlement Administrator shall mail a Notice to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search. Settlement, ¶ 7.4.2.

F. NOTICE COMPLIES WITH CAL. RULES OF COURT, RULE 3.766(D)

The content of the proposed Notice satisfies California Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims, basic contentions and denials of the parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class member, provides them the opportunity to contest their total workweeks included in the notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Lidman Decl., Exh. 1 (Settlement, Exh. A). The proposed Notice will also notify Settlement Class members of the final approval hearing date and provides Settlement Class members the contact information for Class Counsel, and advises Settlement Class members that they may enter an appearance through counsel if they wish to. Settlement, Exh. A. This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

G. PROCESSING OF PAYMENTS

Within 14 days of Defendants fully funding the Gross Settlement Amount, the Settlement Administrator will mail Individual Settlement Payments, less applicable taxes and withholdings, to participating Settlement Class members. Settlement, ¶ 4.4.

H. UNDELIVERABLE NOTICE PACKETS

Any Notices returned to the Settlement Administrator as undelivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. Settlement, ¶ 7.4.3. If no forwarding address is provided, the Settlement Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. *Id*. If a Settlement Class member's Notice is returned to the Settlement Administrator more than once before the Response Deadline, the Settlement Administrator is not required to continue to make reasonable efforts to obtain an updated mailing address. *Id*.

I. NOTICE OF ANY CHANGE OF LOCATION OR DATE OF HEARING AND FINAL JUDGMENT

Any changes to date, time, or location of the Final Approval Hearing will be posted on an internet website maintained by the Settlement Administrator. Settlement, ¶ 7.9. Notice of the Court's final judgment will also be posted on the Settlement Administrator's website. *Id*.

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VII. RESPONSES TO NOTICE

A. REQUESTS FOR EXCLUSION

The Request for Exclusion must 1) include the Class Member's name, address and email address or telephone number; and (2) reasonably communicate the Class Member's election to be excluded from the Settlement. Settlement, ¶ 7.5.1.

The Parties agree there is no statutory or other right for any Settlement Class member to opt out or otherwise exclude himself or herself from the PAGA portion of the Settlement. A Settlement Class member who submits a valid and timely Request for Exclusion shall still receive his or her proportionate share of the PAGA Amount. Settlement, ¶7.5.4.

B. RE-MAILED NOTICES

The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose Notice is re-mailed. Settlement, ¶ 7.4.4. Notices that are re-mailed shall inform the recipient of this adjusted deadline. *Id.*

C. OBJECTION PROCEDURES

Participating Class Members must send any objection in writing to the Administrator via fax, email, or mail and must do so not later than 60 days after the mailing of the Notice. Settlement, ¶ 7.7.2. In the alternative, Participating Class Members may appear in Court to present verbal objections at the Final Approval Hearing. *Id*.

VIII. DISTRIBUTION OF UNCASHED FUNDS

The Settlement provides that Settlement Class members with 180 days from the date the Settlement Administrator mails the checks and any funds remaining after 180 days shall be transmitted by the Settlement Administrator to the California State Controller's Office under the unclaimed property laws in the names and corresponding amounts associated with each Participating Class Member. Settlement ¶ 4.4.3. As all settlement funds will be distributed to the Settlement Class members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

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IX. CONCLUSION

This Court should set a hearing for final approval of the Settlement on a date appropriately scheduled to follow the deadline by which Settlement Class members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

Therefore, for the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

Dated: November 1, 2024

LIDMAN LAW, APC

By: ______________________
Scott M. Lidman
Attorney for Plaintiff
MATTHEW CRUZ