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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MORSE THOMPSON, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

RC USA HOLDINGS, LTD.; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 30-2023-01316096-CU-OE-CXC

[Hon. Melissa McCormick, Dept CX105]

CLASS ACTION

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

[Declaration of Kane Moon; Declaration of Morse Thompson; and [Proposed] Order filed concurrently herewith]

Hearing Date: September 4, 2025
Hearing Time: 2:00 p.m.
Hearing Place: Department CX105

Complaint Filed: March 29, 2023
FAC Filed: July 13, 2023
Trial Date: None Set

RESERVATION ID: 74579437

PLEASE TAKE NOTICE that on September 4, 2025, at 2:00 p.m., or as soon as the matter may be heard, before the Honorable Melissa McCormick in Department CX105 of Orange County Superior Court, located at 751 West Santa Ana Boulevard, Santa Ana, CA 92701, Plaintiff Morse Thompson ("Plaintiff") will and hereby does move for an order:

- Granting Preliminary Approval of the proposed Class Action and PAGA settlement described herein and as set forth in the Parties' Class Action and PAGA Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement"), attached as **Exhibit 1** to the declaration of Kane Moon, including, and not limited to, the means of allocation and distribution of funds, the allocations for payments under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and Administration Expenses Payment;
- Conditionally certifying the Class for settlement purposes only;
- Appointing Plaintiff as the Class Representative;
- Appointing Moon Law Group, PC as Class Counsel;
- Approving the Notice of Class Action Settlement ("Class Notice") attached as **Exhibit A** to the Agreement;
- Directing the mailing of the Class Notice with a postage-paid return envelope to the Class;
- Approving the proposed deadlines for the settlement administration process;
- Approving Apex Class Action, LLC as the Administrator; and
- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and Administration Expenses Payment, and approval of the allocation of the PAGA Payment.

This motion is based upon the following memorandum of points and authorities; Declaration of Kane Moon; and Declaration of Morse Thompson filed concurrently with this motion; pleadings and other records on file with the Court in this matter; and such documentary evidence and oral argument as may be presented at the hearing on this motion.

Dated: February 27, 2026 **MOON LAW GROUP, PC**

By: ______________________
Kane Moon
Attorneys for Plaintiff

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I. INTRODUCTION

This motion seeks preliminary approval of a $270,000.00 proposed wage-and-hour class action settlement by Plaintiff on behalf of himself and all persons who worked for Defendant RC USA Holdings, Inc. dba Deus Ex Supply Chain Inc. ("Defendant") in California as an hourly, non-exempt employee during the period from March 29, 2019 to June 14, 2025 ("Class Period"). At the time of this filing, the number of Class Members is estimated to be four hundred and thirteen (413). (Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Moon Decl."), ¶ 74.)

II. BACKGROUND

On March 29, 2023, Plaintiff, a former employee of Defendant, filed a wage-and-hour class action lawsuit in the Superior Court of California, County of Orange. (Moon Decl., ¶ 13.) The lawsuit alleged the following causes of action: (a) failure to pay minimum wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (b) failure to pay overtime compensation [Cal. Lab. Code §§ 1194 and 1198]; (c) failure to provide meal periods [Cal. Lab. Code §§ 226.7, 512]; (d) failure to authorize and permit rest breaks [Cal. Lab. Code §§ 226.7]; (e) failure to indemnify necessary business expenses [Cal. Lab. Code § 2802]; (f) failure to timely pay final wages at termination [Cal. Lab. Code §§ 201-203]; (g) failure to provide accurate itemized wage statements [Cal. Lab. Code § 226]; and (h) unfair business practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]. (*Id.*) On July 13, 2023, Plaintiff provided written notice to the LWDA and Defendant on his intent to pursue civil penalties under the Private Attorneys General Act ("PAGA") [Cal. Lab. Code § 2699, et seq.]. (*Id.*)

The Parties attended a full-day mediation with mediator Hon. Carl J. West (Ret.) on April 15, 2025. (Moon Decl., ¶ 14.) After exchanging data, the Parties negotiated and agreed to the basic terms of the settlement, which are now memorialized in the Class Action and PAGA Settlement Agreement and Class Notice. (*Id.*) On June 4, 2025, Class Counsel submitted the proposed Settlement to the LWDA. (*Id.* at ¶ 25, Exh. 2.)

III. INVESTIGATION/ LITIGATION HISTORY

a. Discovery, Investigation, and the Parties' Staunchly Conflicting Positions

Plaintiff conducted significant investigation and discovery of the facts and law both before and after this case was filed. (Moon Decl., ¶ 16.) The Parties met and conferred and agreed to attend mediation. (*Id.*) The Parties agreed to engage in an informal exchange of information in advance of mediation. (*Id.*) Specifically, Defendant produced its handbooks, Plaintiff's personnel file, and a forty percent (40%) sampling of time and payroll records for the putative Class. (*Id.*) As part of Defendant's production, Plaintiff reviewed the time and payroll records and information relating to the size and scope of the Class, as well as data permitting Plaintiff to understand the number of Workweeks in the Class Periods. (*Id.*)

Based upon the information provided by Defendant, Plaintiff contends – and Defendant denies – that Defendant: (1) failed to pay employees for all hours worked; (2) failed to provide employees with legally mandated meal and rest breaks; (3) failed to reimburse employees for necessary business expenses; (4) is liable for waiting time penalties; and (5) issued noncompliant wage statements. (Moon Decl., ¶¶ 18-23.)

b. The Parties Were Able to Reach an Agreement on Settlement of the Action

i. The Parties Attended Mediation Which Led to the Settlement

The Parties attended mediation with the mediator Hon. Carl J. West (Ret.) on April 15, 2025. (Moon Decl., ¶ 24.) Through mediation, the Parties reached a settlement, the terms of which were memorialized in the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement," "Settlement," or "Agreement") the Parties now seek Preliminary Approval of. (*Id.*; Exh. 1.)

ii. The Settlement Was Reached as a Result of Arm's-Length Negotiations

The Settlement Agreement was reached because of arm's-length negotiations. (Moon Decl., ¶ 48.) Though cordial and professional, the settlement negotiations have always been adversarial and non-collusive in nature. (*Id.*) At mediation and throughout the negotiation process, both Parties' counsel conducted extensive arm's-length settlement negotiations until an agreement was reached. (*Id.*)

Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant. (Moon Decl., ¶ 49.) Plaintiff and Class Counsel also considered the uncertainty and risk of further litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Id.*) Based on the foregoing, Plaintiff and Class Counsel believe the Settlement Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members. (*Id.*)

iii. The Settlement Is the Result of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of the Parties' claims and defenses before reaching the Settlement and engaged in sufficient investigation, research, and discovery. (Moon Decl., ¶ 50.) The Settlement was only possible following significant investigation and evaluation of Defendant's relevant policies and procedures, as well as the data produced. (*Id.*) Furthermore, this case has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement's reasonableness, adequacy, and fairness. (*Id.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

c. Terms of the Proposed Settlement

i. Deductions from the Settlement

The Parties agreed (contingent upon the Court's approval) this action be settled and compromised for the maximum sum of $270,000.00 ("Gross Settlement Amount") which includes: (a) Class Counsel Fees Payment of $90,000.00 (1/3 of the Gross Settlement Amount); (b) Class Counsel Litigation Expenses Payment not to exceed $15,500.00 for reimbursement of litigation costs and expenses; (c) Class Representative Service Payment to Plaintiff not to exceed $7,500.00; (d) Administration Expenses Payment to Apex Class Action, LLC, the Administrator, not to exceed $8,500.00; (e) PAGA Penalties of $15,000.00, seventy-five percent (75%) of which ($11,250.00) will be paid to the LWDA and twenty-five percent (25%) of which ($3,750.00) shall be paid to Aggrieved Employees, on a pro rata basis; and (f) Defendant's share of applicable payroll taxes. (Moon Decl., ¶ 26.)

ii. Calculating Individual Settlement Payments

After all Court-approved deductions from the Gross Settlement Amount, it is estimated $133,500.00 ("Net Settlement Amount") will be available to be distributed to Class Members who do not submit a timely and valid Request for Exclusion ("Participating Class Members") – with an average gross Individual Class Payment estimated at $323.24. (Moon Decl., ¶ 27.) Each Individual Class Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Members. (*Id.*) Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). (*Id.*) The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. (*Id.*) The remaining eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). (*Id.*)

Furthermore, the Administrator shall pay each eligible Aggrieved Employee according to his or her proportional share, which will be based upon the total number of pay periods he or she was employed during the PAGA Period. (Moon Decl., ¶ 28.) The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (i.e., $3,750.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. (*Id.*) Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (*Id.*)

iii. Notice to the Class

Not later than fifteen (15) days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (Moon Decl., ¶ 29.) To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. (*Id.*) Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. (*Id.*) Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data. (*Id.*)

No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and PAGA Pay Periods in the Class Data. (Moon Decl., ¶ 30.)

Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice, with Spanish translation, substantially in the form attached to the Settlement Agreement as Exhibit A. (Moon Decl., ¶ 31.) The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. (*Id.*) Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. (*Id.*)

Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. (Moon Decl., ¶ 32.) If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. (*Id.*) The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. (*Id.*)

iv. Distribution of Funds

Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date. (Moon Decl., ¶ 42.)

Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. (Moon Decl., ¶ 43.) However, disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. (*Id.*)

The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. (Moon Decl., ¶ 44.) The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. (*Id.*) The Administrator will cancel all checks not cashed by the void date. (*Id.*) The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). (*Id.*) The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). (*Id.*) The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. (*Id.*) Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. (*Id.*)

v. Release of Claims

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows (Settlement Agreement, ¶ 5):

Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under Paragraph 5.2 of the Settlement Agreement ("Plaintiff's Release") (Settlement Agreement, ¶ 5.1.) Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. (*Id.*) Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. (*Id.*) For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code. (*Id.* at ¶ 5.1.1.)

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, during the Class Period based on the facts stated in the Operative Complaint and ascertained in the course of the Action. (Settlement Agreement, ¶ 5.2.) Except as set forth in Paragraph 5.3 of the Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (*Id.*)

All Aggrieved Employees are deemed to 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, during the PAGA Period based on the facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Action. (Settlement Agreement, ¶ 5.3.) The Aggrieved Employees will be bound by this release regardless of whether they are Participating or Non-Participating Class Members. (*Id.*)

With regards to class action releases, "'[A] court may release not only those claims alleged in the complaint and before the court, but also claims which 'could have been alleged by reason of or in connection with any matter or fact set forth or referred to in' the complaint.'" (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scope of the release in this case is acceptable because it is limited to the scope of the allegations ". . . that were alleged in the Complaint or reasonably could have been alleged based on the facts and legal theories contained in the operative Complaint." In other words, the released claims do not "'go beyond the scope of the allegations in the operative complaint . . . .'" (*Amaro v. Anaheim Arena Management, LLC supra* at 537.)

d. Counsel for Both Parties Are Experienced in Similar Litigation

Both Parties' counsel are experienced in wage-and-hour employment law and class actions. (Moon Decl., ¶¶ 4-11.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations and are experienced and qualified to evaluate the class claims, settlement versus trial on a fully informed basis, and viability of the defenses. (*Id.*) This experience instructed Class Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the Settlement.[1] (*Id.*)

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[1] The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice Packet has been provided to the Class, and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

California Rules of Court, rule 3.769 requires court approval for class action settlements.[2] "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a notice of motion for preliminary approval of class settlements:

> (a) A settlement or compromise of an entire class action, or a cause of action in a class action, or as to a party, requires the approval of the court after hearing. . . .
>
> (c) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

Courts have discretion to approve settlements that are fair, not collusive, and consider "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. *Sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

b. The Proposed Settlement Is a Reasonable Compromise of Claims

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

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[2] The California Supreme Court has also authorized California's trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

In weighing the strength of the plaintiff's case, *Kullar* instructs the court is not to "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys." (*Kullar v. Foot Locker Retail, Inc., supra,* 168 Cal.App.4th at p. 133.) Finally, *Kullar* does not require an explicit statement of the maximum amount the class could recover if the plaintiff prevailed on all his claims, provided there is a record that allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.) Put differently, "as the court does when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness." (*Kullar*, at p. 133.)

i. The Settlement Amount of $270,000.00 Is Fair and Reasonable

The Settlement was possible following significant investigation and evaluation of Defendant's relevant policies and procedures, as well as the data Defendant produced for the Class, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Moon Decl., ¶ 50.)

Plaintiff's claims are predicated on Defendant's purported: (a) failure to pay minimum wages; (b) failure to pay overtime compensation; (c) failure to provide meal and rest breaks and pay applicable premium wages; (d) failure to indemnify necessary business expenses; (e) failure to timely pay final wages at termination; (f) failure to provide accurate itemized wage statements; (g) violation of Business & Professions Code sections 17200, et seq.; and (h) violation of PAGA. (Moon Decl., ¶ 51.)

Although Plaintiff believes the case is suitable for certification, uncertainties with respect to certification are always present. (Moon Decl., ¶ 53.) As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Id.*) Decisions following *Sav-On Drug Stores, Inc.*

have reached different conclusions concerning certification of wage-and-hour claims.[3] (*Id.*) This led Plaintiff to discount the calculations for potential damages.

ii. The PAGA Payment of $15,000.00 Is Reasonable

The provisions of the Labor Code potentially triggering PAGA penalties in this case include, but are not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1198, and 2802. (Moon Decl., ¶ 61.) Defendant asserted, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Id.*) Defendant also maintained, in addition to its strong arguments against the underlying claims, it had a strong argument it would be unjust to award maximum PAGA penalties given the law's unsettled state. (*Id.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendant argued stacking and limited to the initial violation, the PAGA penalties would be limited to **$500.00** (5 employees x $100 penalty for initial violation) on the low end and **$4,000.00** (5 employees x $100 penalty for initial violation x 8 theories of recovery) on the high end. (Moon Decl., ¶ 63.)

Plaintiff also recognized the risk any PAGA award could be significantly reduced. (Moon Decl., ¶ 64.) Many of the causes of action brought were duplicative of the statutory claims, such as violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802. (*Id.*) Thus, allocating $15,000.00 to PAGA penalties was reasonable.[4] (*Id.*) When PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result

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3 (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees], review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming decertification of class claiming misclassification]; *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson's Inc*. (2006) 141 Cal.App.4th 1422 [affirming denial of certification].)

4 (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of $5 per violation and a total PAGA penalty of $150,000 while the plaintiff requested a rate of $25 to $75 per violation and a total PAGA penalty of $70,000,000].)

of self-interest at the expense of other Class Members," such amounts are generally considered reasonable.[5] (*Id.*)

Considering Defendant's defenses, its supporting evidence, and its position the case is not suitable for class treatment, the Settlement of $270,000.00 is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the PAGA penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about $323,929.52 on the low end and $2,255,007.06 on the high end. (Moon Decl., ¶ 65.)

Category	**Potential Exposure**	**Certification Risk**	**Merits Risk**	**Realistic Exposure**
Overtime/Minimum Wage: Non-Discretionary Incentive Payments	$1,785.00	60%	50%	$357.00
Meal Break Premiums	$279,005.50	70%	60%	$33,480.66
Rest Break Premiums	$102,507.36	70%	60%	$12,300.88
Unreimbursed Business Expenses	$142,340.00	60%	60%	$22,774.40
Waiting Time Penalty	$1,419,619.20	60%	60%	$227,139.07
Wage Statement Penalty	$309,750.00	70%	70%	$27,877.50
MAXIMUM TOTAL EXPOSURE	$2,255,007.06			$323,929.52

Based on this analysis, the realistic recovery for this case is $323,929.52 on the low end and $2,255,007.06 on the high end. (Moon Decl., ¶ 72.) The Gross Settlement Amount of $270,000.00 is about twelve percent (12%) of the maximum potential exposure and about eighty-four percent (84%) of the maximum realistic exposure at trial. Thus, the Settlement is fair and

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[5] (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009 U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579, "[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims".)

reasonable. (*Id.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re Tableware Antitrust Litig*. (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.) "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, "[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators".) Nevertheless, this settlement is in line with the realistic exposure had Plaintiff prevailed at trial and provides a significant recovery for the Class Members.

d. Conditional Certification of the Class Is Appropriate

Code of Civil Procedure section 382 "authorizes class actions 'when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.'" (*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 326.) California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." (*Id.*)

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. (Moon Decl., ¶ 73.) Plaintiff contends as a former non-exempt employee of Defendant, his claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Id.*) Also, Plaintiff asserts the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, so a class action is superior to other available means for the fair and efficient adjudication. (*Id.*)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914.) "A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." (*Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

The data provided by Defendant in advance of the mediation indicates that there are approximately four hundred and thirteen (413) Class Members. (Moon Decl., ¶ 74.) Thus, the Class is sufficiently numerous. (*Id.*) Thus, the Class is sufficiently numerous. (*Id.*; see *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of "as many as 190 current and former employees" is sufficiently numerous].)

ii. The Class Members Share a Well-defined Community of Interest

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 326.) "[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims*." (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original).) Rather, courts focus on the defendant's internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate." (*Id.*) The application of each of these factors is discussed below.

1. Common Issues Predominate

The "common issues" requirement "involves analysis of whether the proponent's 'theory of recovery' is likely to prove compatible with class treatment." (*Capitol People First v. Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690 (emphasis added).) In other words, courts determine whether the elements necessary to establish liability are susceptible to common proof, even if the class members must individually prove their damages. (*Brinker Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are regularly granted class certification when the plaintiff can present evidence of common policies. (See, e.g., *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS [court certified class of dancers on state law claims].)

Plaintiff asserts common issues of fact and law predominate as to each of the claims alleged. (Moon Decl., ¶ 75.) Plaintiff contends all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Id.*)

2. Plaintiff's Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff is a former non-exempt employee of Defendant and alleges he and the Class Members were employed by Defendant and injured by Defendant's common policies and practices related to the claims described above. (Moon Decl., ¶ 76.) Plaintiff seeks relief for these claims and derivative claims on behalf of the Class. (*Id.*) Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Id.*)

3. Plaintiff Is Adequate to Represent the Class

Plaintiff has proven to be an adequate Class Representative. (Moon Decl., ¶ 77.) Plaintiff conducted himself diligently and responsibly in representing the Class in this litigation, understands his fiduciary obligations, and actively participated in the prosecution of this case. (*Id.*) Plaintiff spent considerable time in meetings and conferences with Class Counsel to provide them with a complete understanding of his work environment and requirements. (*Id.*; Declaration of Morse Thompson ("Thompson Decl.").) Plaintiff has no interest adverse to the interests of the other Class Members. (*Id.*)

4. Class Action Is Superior for the Fair and Efficient Adjudication of this Controversy

A class action is superior to other available means for the fair and efficient adjudication of this controversy. Plaintiff contends the joinder of all Class Members is impractical and that class treatment will permit many similarly situated persons to prosecute their common claims for settlement purposes simultaneously in a single forum without the duplication of effort and expense that numerous individual actions would necessitate. Because several Class Members are also current employees, Plaintiff believes fear of retaliation further supports the superiority of class-wide relief as this fear often discourages current employees from seeking legal redress.

e. The Settlement Is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find a proposed settlement is "fair, adequate and reasonable." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action settlement is presumed fair under the following circumstances: (1) the parties reached settlement after arm's-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Id.* at p. 1802.) All these elements are present here.

f. Notice to Class Members Complies with California Rules of Court, Rule 3.769(f)

California Rules of Court, rule 3.769(f), provides:

> If the court has certified the action as a class action, notice of the final approval hearing must be given to class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

The Class Notice meets all these requirements. The Class Notice advises the Class Members of their right to participate in the Settlement, how and when to object to or request exclusion from the Settlement, and the date, time, and location of the Final Approval hearing. (See Moon Decl., Exhibit A to Exhibit 1.)

V. CONCLUSION

Plaintiff submits the Settlement is in the Class's best interests. Under the applicable class action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class should be conditionally certified for settlement purposes, and the Class Notice should be approved.

Dated: February 27, 2026

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