

1 JOHN A. LOFTON, ESQ. (222259)
2 Aiman-Smith & Marcy, P.C.
3 7677 Oakport Street, Suite 1000
4 Oakland, CA 94621
5 Telephone: 510-779-2625
6 Email: jal@asmlawyers.com

7 Attorneys for Plaintiff Michael White

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF FRESNO**

10 **UNLIMITED JURISDICTION**

11 MICHAEL WHITE, an individual,

12 Plaintiff,

13 v.

14 COLTON'S SOCIAL HOUSE INC., a
15 California corporation; and DOES 1-25,
16 inclusive,

17 Defendants.

Case No. 23CECG02432

[Assigned for all purposes to Judge Lisa
Gamoian, Department 502]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: November 19, 2026

Time: 3:30 p.m.

Dept.: 502

Trial Date: Not Set

Complaint Filed: June 20, 2023

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2 **I. INTRODUCTION.**

3 Plaintiff Michael White (“Plaintiff” or “Class Representative”) brings this second motion
4 for preliminary approval to address this Court’s concerns as set forth in its February 4, 2026 Order.

5 Plaintiff seeks preliminary approval of the Amended Joint Stipulation of Class Action and
6 PAGA Settlement And Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered
7 into by and between Plaintiff, individually and on behalf of all others similarly situated and other
8 aggrieved employees, on the one hand, and Defendant Colton’s Social House Inc. (“Colton’s” or
9 “Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant
10 (collectively, the “Parties”) have agreed to settle the lawsuit for a maximum Class Settlement
11 Amount of \$385,000.¹

12 The Class Settlement Amount shall cover all payments associated with the Settlement,
13 including (a) the Net Settlement Amount to participating Class Members; (b) Plaintiff’s Counsel’s
14 attorneys’ fees, up to \$128,333; (c) Class Counsel’s and the Class Representative’s litigation costs,
15 as well as their normal and customary expenses, which shall not exceed \$11,000; (d) anticipated
16 Settlement Administration Costs, which is estimated to be approximately \$11,250; (e) the
17 enhancement payment to be made by Defendant to the Class Representative, which is a maximum
18 of \$10,000; and (f) the consideration to the State of California and Settlement Class Members for
19 the release of all Released Claims under the Labor Code Private Attorneys General Act of 2004,
20 codified at California Labor Code sections 2698 et seq. (“PAGA”), which is \$50,000 (75%, or
21 \$37,500, of which shall be sent to the California Labor Workforce Development Agency, with the
22 remaining 25% (or \$12,500) already included in the Net Settlement Amount for payments to
23 participating Class Members).

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25 Plaintiff also seeks to provisionally certify the following Class for settlement purposes
26 only, which Defendant does not oppose:

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¹ Settlement Agreement, attached as “Exhibit A” to Declaration of John A. Lofton (“Lofton Decl.”), §9.

1 All persons who worked for Defendant as non-exempt, hourly paid employees in
2 California from June 20, 2019 until November 1, 2024. (“Settlement Class” or
3 “Class Members”).²

4 The Class is estimated to consist of approximately 502 individuals. *See* Lofton Decl., ¶ 14.

5 Class Members who do not submit a timely and valid request to be excluded from the
6 Settlement will be sent a share of the Net Settlement Amount (“Individual Settlement Payment”)
7 calculated on a *pro rata* basis based upon the number of weeks each Settlement Class Member
8 was actively employed by Defendant in California as a non-exempt employee during the Class
9 Period (“Workweeks”).³

10 The Settlement resolves the Released Claims of Plaintiff and Class Members against the
11 Released Parties.⁴

12 Counsel for Plaintiff submits that the proposed settlement is fair, adequate, and reasonable
13 to all members of the class. As set forth below, the proposed settlement meets applicable criteria
14 for fairness under California law and was achieved through serious, informed, and non-collusive
15 negotiations.

16 **II. BACKGROUND AND TERMS OF THE SETTLEMENT.**

17 **A. Procedural and Factual Background.**

18 Plaintiff Michael White filed his initial Complaint against Defendant in Fresno County
19 Superior Court, *White v. Colton’s Social House Inc. et al.*, [Case No. 23CECG02432], on June 20,
20 2023, and his First Amended Complaint on October 30, 2024 (the “Complaint”).

21 Plaintiff asserted class action claims under the California Business and Professions Code
22 and the California Labor Code, alleging: (1) failure to pay wages owed on time and at termination;
23

24
25 ² Settlement Agreement, §5. California Courts scrutinize settlement classes less strictly than
26 litigation classes, given that there is no prospect of ongoing litigation to manage and the
27 absentees’ interests are protected by the court’s fairness review. (*Dunk v. Ford Motor Co.* (1996)
28 48 Cal.App.4th at p. 1807, fn.19.) Defendant has not waived its right to contest class certification
if this settlement is not approved.

³ Settlement Agreement, §29.

⁴ Settlement Agreement, §§23-24, 31-32.

1 (2) failure to pay at least minimum wage; (3) failure to provide rest periods; (4) improper tip
2 sharing; (5) failure to pay reporting time wages; (6) failure to pay split shift wages; (7) failure to
3 provide accurate wage statements; (8) failure to reimburse; and (9) unfair business practices. *See*
4 *id.* Plaintiff additionally asserted representative claims for civil penalties under the PAGA. *See*
5 *id.*

6 Plaintiff White was employed by Defendant as a non-exempt hourly employee from
7 approximately July 2022 through March 2023 in Clovis, California. *See id.*, ¶ 14. Defendant is a
8 Nevada corporation doing business in Fresno County, California, namely, by operating the
9 restaurant known as Colton’s Social House in Clovis, California. *See id.*, ¶¶ 11, 14.

10 The Complaint generally alleges violations of the California Labor Code and I.W.C. Wage
11 Orders. *See id.* Plaintiff contends that Defendant maintained a policy of requiring employees to
12 perform work before clocking in for their shifts and perform other work-related tasks off-the-
13 clock, failed to provide adequate rest periods, required employees to report to work without having
14 work available but not paying reporting time wages, required employees to share excessive
15 portions of their tips, required employees to purchase uniforms with their own money, and
16 committed other Labor Code violations. *See id.*, ¶¶ 14-25. Defendant denies all the claims and
17 contentions alleged in the Complaint.
18

19 After engaging in a detailed analysis of the claims and a full day of mediation with Hon.
20 Howard R. Broadman (Ret.) on April 29, 2024, the Parties concluded that further conduct of the
21 litigation would be protracted and expensive, that Defendant faced potential insolvency if the case
22 did not settle, and that it is desirable that the litigation be fully and finally settled in the manner
23 and upon the terms and conditions set forth in the Settlement Agreement. The Parties also
24 considered the uncertainty and risks inherent in any litigation, and particularly class and/or
25 representative litigation. *See* Lofton Decl., ¶ 9. The monetary and prospective relief offered to the
26 Class Members and the Private Attorneys General Act (“PAGA”) penalties obtained on behalf of
27 the State of California make this a fair and reasonable settlement that should be preliminarily
28 approved. *See id.*, ¶ 10.

1 B. The Settlement Agreement.

2 Plaintiff's Counsel and counsel for Defendant, all of whom are experienced in this type of
3 case, attended a full day mediation session on April 29, 2024, with Howard R. Broadman (Ret.),
4 an experienced mediator knowledgeable of both wage and hour laws and class and representative
5 claims at issue in this litigation. *See id.*, ¶ 4. Before the mediation, the Parties exchanged
6 significant documents and information, including Defendant's policies, the number of non-exempt
7 Defendant employees, payroll and timekeeping records, and their total workweeks in the statutory
8 period, among other information. *See id.*, ¶ 5. After the mediation, the parties continued to
9 negotiate, and Defendant provided confirmatory discovery in the form of various financial records.
10 *See id.*, ¶ 8. In February 2025, the Parties agreed to the principal terms of the Settlement, and
11 signed a final, long-form Settlement Agreement. *See id.*, Exhibit A.
12

13 The terms of the Settlement are set forth in the Settlement Agreement, attached as Exhibit
14 A to the Lofton Decl. The terms of the Settlement Agreement were negotiated by the parties at
15 arm's length and the principal terms were the subject of ongoing mediation efforts by Judge
16 Broadman. *See id.*, ¶ 4. The settlement calls for a Maximum Settlement Amount of \$385,000.
17 *See id.*, Exhibit A (¶ 31). The monetary portion of the Settlement will be distributed, subject to
18 Court approval, in accordance with the proposed allocation plan. *See id.*

19 C. The Settlement Class.

20 The Settlement Class includes all persons who worked for Defendant as non-exempt,
21 hourly paid employees in California from June 20, 2019 through November 1, 2024. *See id.*,
22 Exhibit A (¶ 5). The Class is estimated to consist of approximately 502 individuals. *See id.*, ¶ 19.
23 The size of the Settlement Class was determined through Defendant's payroll records, which
24 identified each Settlement Class Members' name and dates of employment during the Class
25 Period. *See id.*

26 D. Reasonableness of Settlement.

27 A detailed analysis of the reasonableness of the settlement is set forth in Section III, below.
28 The general terms are restated here.

1 In reviewing the reasonableness of the settlement, the maximum exposure that Plaintiff
2 could possibly achieve at trial must be compared to the risks of litigation and the realistic range of
3 outcomes. Plaintiff believed that Defendant's maximum exposure could exceed \$2 million, but
4 that the realistic range of outcomes is significantly lower. *See id.*, ¶ 7. For a settlement to be fair
5 and reasonable, it need not result in a payment at or near the theoretical maximum – it need only
6 be “within the realistic range of outcomes” for the litigation. *Munoz v. BCI Coca-Cola Bottling*
7 *Co. of Los Angeles* (2010) 186 Cal.App.4th 399; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
8 Cal.App.4th 116. Factors to consider include the amount theoretically recoverable, the size of the
9 class, information relating to the estimated expenses, the scope of plaintiff's discovery and
10 investigation, the nature of the evidence upon which plaintiff relied and plaintiff's analysis of that
11 evidence, and the strength of Plaintiff's claims and Defendant's defenses. *See id.*

12
13 The Class Settlement Amount includes (a) the Net Settlement Amount payable to
14 Participating Class Members; (b) up to \$128,333 in attorneys' fees; (c) up to \$11,000 in litigation
15 costs and expenses; (d) approximately \$11,250 in Settlement Administration Costs; (e) a \$10,000
16 Class Representative Enhancement Payment to Plaintiff; and (f) the \$50,000 PAGA settlement, of
17 which 75%, or \$37,500, shall be sent to the California Labor Workforce Development Agency
18 (“LWDA”), with the remaining 25% (or \$12,500) to be included in the Net Settlement Amount
19 payable to Class Members. *See id.*, Exhibit A (¶¶ 2-28). If the Court approves the payments
20 sought from the Class Settlement Amount, the Settlement Class would be eligible to receive
21 monetary compensation of at least \$174,417. This is an average of approximately \$347.44 per
22 Class Member, with longer tenured Class Members receiving more, and shorter tenured Class
23 Members receiving less.

24 The parties engaged in substantial formal and informal discovery, with Defendant
25 producing tens of thousands of employee records in advance of the mediation, as well as
26 confirmatory discovery after the mediation consisting of financial records showing its potential
27 insolvency. *See Lofton Decl.*, ¶¶ 5, 8. Plaintiff's Counsel also interviewed multiple employees.
28 *See id.*, ¶ 6.

1 Defendant asserted a number of defenses, including that its policies were legal, and to the
2 extent that they were ambiguous in writing, they were lawfully implemented in practice.
3 Defendant pointed out that that while employers must “authorize and permit” timely rest periods,
4 but they are not obligated to force employees to take those rest periods or even to ensure that those
5 meal and rest periods are taken. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
6 1004. Defendant claims that it authorized and permitted timely rest periods, but that its employees
7 voluntarily forwent breaks, as is common in the restaurant industry. Defendant also produced
8 evidence – in the form of company policies, wage records showing reimbursements, and complete
9 tip sharing records – that it provided uniforms and shared tips appropriately. If Defendant
10 prevailed on these issues, the Settlement Class Members would be entitled to significantly less
11 relief.

12 Perhaps most significantly, Defendant’s business, a single-location restaurant, suffered
13 during the pandemic and has continued to struggle. *See id.*, ¶ 8. The risk of insolvency was
14 substantial, and Defendant credibly asserted that if the parties could not settle at a lower amount,
15 Defendant’s most reasonable and likely course of action would be to close the business and leave
16 nothing for Plaintiff and the Class Members. *See id.*

17 Taking the above factors into consideration, and if Plaintiff were to prevail at trial, Plaintiff
18 estimates that the likely value of the class claims to be in the range of \$300,000 - \$500,000 and the
19 likely value of the PAGA claims to be in the range of \$150,000 - \$225,000. *See id.*, ¶ 7.
20 Weighing these numbers against Defendant’s financial condition and the risk of insolvency, in
21 Plaintiff’s Counsel’s experience in both class action and individual wage and hour cases, viewed
22 in light of the risks of litigation, the \$385,000 settlement is reasonable and represents a favorable
23 outcome.

24
25 E. The Allocation Plan.

26 The Allocation Plan is based on payroll records provided in discovery and in the course of
27 settlement negotiations in this action by Defendant. These records include the dates worked by the
28 Class Members in California during the Class Period. These records have a high degree of

1 reliability because they were kept during the ordinary course of business and are required to be
2 maintained under California law. The Allocation Plan is designed to provide a fair and reasonable
3 claim amount to each class member: those who worked longer would have experienced more
4 alleged violations. Thus, an allocation by work week is reasonable in these circumstances.

5 Each Class Member will receive compensation in accordance with the formula set forth in
6 paragraph 37 of the Settlement Agreement. As Plaintiff and Defendant recognize that the
7 damages and penalty claims in these actions are difficult to determine with any certainty for any
8 given employee or time period, and are subject to myriad different methods of potential
9 calculation and formulas, the parties have agreed that, in general, Class Members will be paid
10 based on the number of weeks they worked during the Class Period, in proportion to the total
11 number of Workweeks for all Class Members, as reflected by Defendant's payroll data through
12 November 1, 2024. All Individual Settlement Payments will be deemed 25% as taxable wages,
13 for which an IRS Form W-2 will be issued, and 75% will be deemed non-wages, for which an IRS
14 Forms 1099-MISC will be issued.

15
16 F. PAGA Penalties.

17 Subject to review and approval by this Court as required by Labor Code section 2699(l),
18 the parties have agreed that Defendant shall pay from the Settlement the sum of \$50,000 (75%, or
19 \$37,500, of which shall be sent to the LWDA, with the remaining 25%, or \$12,500, to be
20 disbursed to Settlement Class Members). Plaintiff will serve a copy of the Settlement Agreement
21 and Motion for Preliminary Approval on the LWDA concurrently with filing the Motion with this
22 Court. *See* Lofton Decl., ¶ 12. The PAGA period here runs from March 7, 2022 through
23 November 1, 2024.

24 The PAGA allocation is fair and appropriate because (1) the class claims are larger than
25 the PAGA claims, holding more value and affecting a larger number of employees, and (2)
26 allocating more settlement funds to the class allows the Class Members to retain a greater share of
27 the settlement that must be shared with the LWDA. The legislature has expressed an intention for
28

1 more PAGA funds to go to employees as reflected in the new PAGA rules. See Labor Code
2 §2699(m).

3 This policy of allocating a greater share of the settlement value to class claims is reflected
4 in *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110 (2016), in which the court expounded:

5 This is not to suggest that the PAGA claim must comprise a disproportionate
6 amount of class settlements which include a PAGA claim, with the majority of
7 funds going to the State simply because the PAGA penalty has the potential to be
8 larger than the actual claims. Such a requirement would come at the expense of
9 the workers, who might otherwise benefit from a larger non-PAGA settlement.
10 Rather, in reviewing a settlement that includes both a Rule 23 class and a PAGA
11 claim, the Court must closely examine *both* aspects of the settlement. While a
12 proposed settlement must be viewed as a whole, *see In re Online DVD-Rental*
13 *Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015), the Court must evaluate the
14 adequacy of compensation to the class *as well as* the adequacy of the settlement in
15 view of the purposes and policies of PAGA. In doing so, the court may apply a
16 sliding scale. For example, if the settlement for the Rule 23 class is robust, the
17 purposes of PAGA may be concurrently fulfilled. By providing fair compensation
18 to the class members as employees and substantial monetary relief, a settlement
19 not only vindicates the rights of the class members as employees, but may have a
20 deterrent effect upon the defendant employer and other employers, an objective of
21 PAGA. Likewise, if the settlement resolves the important question of the status of
22 workers as employees entitled to the protection of the Labor Code or contained
23 substantial injunctive relief, this would support PAGA's interest in "augmenting
24 the state's enforcement capabilities, encouraging compliance with Labor Code
25 provisions, and deterring noncompliance." *Id.* at 1134-35.

26 The factors in *O'Connor* apply to the PAGA settlement allocation here. Namely, the
27 settlement as a whole acts as a deterrent on the Defendant and other employers, vindicates the
28 rights of Defendant's employees, and encourages compliance with the Labor Code – all primary
purposes of PAGA. *See id.* Moreover, the allocation favoring the class claims allows the class
members to be appropriately compensated for the harm they suffered, whereas allocating
additional funds to the PAGA claims would necessarily come at the expense of those employees.
See id.

26 Although the allocation favors the class claims for the reasons above, the PAGA claims
27 were fully investigated and litigated, and their value was incorporated into the overall settlement
28 value of \$385,000.

1 G. Scope of Release.

2 Settlement Class Members are releasing only those claims which were or could have been
3 brought in this action. The release is set forth at §§50 and 65 of the Settlement Agreement,
4 attached as Exhibit A to the Lofton Decl. Only the Class Representative will provide a general
5 release of all claims and a section 1542 waiver. *See* Lofton Decl., Exhibit A (§65).

6 H. Duties or Obligations of the Proposed Settlement Proposed on Class Members.

7 There are no affirmative duties or obligations that the proposed settlement places on Class
8 Members. As the Notice Plan calls for direct mailing of checks to all Class Members who do not
9 opt-out, who can be located after a thorough skip tracing process, there are no steps that Class
10 Members must make to receive payment under the Settlement.

11 I. Notice Plan and Direct Mailing of Claim Payments.

12 The Notice, attached as Exhibit D to the Lofton Decl., sets out the financial terms of the
13 settlement, specifying the amount of the maximum settlement, each proposed deduction (and that
14 these amounts are subject to court approval), the prospective relief, and the anticipated net fund.
15 The Notice also explains how individual awards will be calculated. Additionally, the Notice
16 provides contact information for Plaintiff’s Counsel and the Settlement Administrator to answer
17 questions. *See* Lofton Decl. ¶ 26, Exhibit D.

18 Defendant shall compile for the Settlement Administrator the (1) full name; (2) employee
19 number; (3) last known mailing address; (4) last known telephone number; (5) Social Security
20 number; (6) dates of employment in a non-exempt position with Defendant; (7) the respective
21 number of Workweeks that each Class Member worked during the Class Period; and any other
22 relevant information needed to calculate settlement payments (the “Class Data”) so that the
23 Settlement Administrator can state in the Notice each individual’s expected gross settlement
24 amount in the Notice, engage in the processing and mailing of each Notice, and carry out the
25 associated claims and payment process. *See id.*, Exhibit A (¶ 4).

26 By preliminarily approving the settlement, the Court will be deemed to have authorized
27 Defendant to provide the Settlement Administrator with the Class Data of each Class Member.
28

1 The number of qualifying Workweeks and the associated calculation of individual settlement
2 amounts will be determined by reference to Defendant's records, which shall be presumed to be
3 correct. Defendant shall provide the Class Data with respect to each Class Member to the
4 Settlement Administrator within twenty (20) calendar days after the Preliminary Approval Date.
5 *See id.*, Exhibit A (¶ 41).

6 Within ten (10) calendar days after receiving the Class Data from Defendant, the
7 Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class
8 U.S. Mail, using the most current, known mailing addresses identified in the Class Data. *See id.*,
9 Exhibit A (¶ 42).

10 Any Notice Packets returned to the Settlement Administrator as non-deliverable on or
11 before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the
12 forwarding address affixed thereto and the Settlement Administrator will indicate the date of such
13 re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement
14 Administrator will promptly attempt to determine the correct address using a skip-trace, or other
15 search using the name, address and/or Social Security number of the Class Member involved, and
16 will then perform a single re-mailing. Those Class Members who receive a re-mailed Notice
17 Packet, whether by skip-trace or by request, will have either (i) an additional fifteen (15) calendar
18 days or (ii) until the Response Deadline, whichever is later, to submit a Request for Exclusion or
19 an objection to the Settlement. *See id.*, Exhibit A (¶ 43).

21 The Notice Packet will provide key information about the Settlement as set forth in
22 paragraph 44 of the Settlement agreement, including each Class Member's estimated Individual
23 Settlement Payment and how it was calculated, an opportunity to automatically receive payment
24 under the Settlement, opt out of the Settlement, or object to the Settlement. *See id.*, Exhibit A (¶
25 44). Class Members will have an opportunity to dispute the Individual Settlement Payment
26 calculation. *See id.*, Exhibit A (¶ 45).

27 Defendant will deposit the Class Settlement Amount and the employer's share of payroll
28 taxes into a Qualified Settlement Account, to be established by the Settlement Administrator,

1 within ten (10) calendar days of the Effective Date. *See id.*, Exhibit A (¶ 31). Within twenty (20)
2 calendar days of the Effective Date, the Settlement Administrator will issue payments to: (i)
3 Participating Class Members; (ii) the Labor and Workforce Development Agency; (iii) Plaintiff;
4 and (iv) Class Counsel. The Settlement Administrator will also issue a payment to itself for
5 Court-approved services performed in connection with the Settlement. *See id.*, Exhibit A (¶ 53).

6 Funds represented by Individual Settlement Payment checks returned as undeliverable and
7 Individual Settlement Payment checks remaining un-cashed for more than one hundred and eighty (180)
8 calendar days after issuance will be tendered to the State Controller's Office, Unclaimed Property Division,
9 California Civil Code Section 1500, *et seq.* *See id.*, Exhibit A (¶ 54).

10 J. Process to Dispute Workweek Calculation.

11 Class Members will have an opportunity to dispute the information provided in their
12 Notice Packets. To the extent Class Members dispute their employment dates or the number of
13 Workweeks on record, Class Members may produce evidence to the Settlement Administrator
14 showing that such information is inaccurate. The Settlement Administrator will decide the
15 dispute. Defendant's records will be presumed correct, but the Settlement Administrator will
16 evaluate the evidence submitted by the Class Member and will make the final decision as to the
17 merits of the dispute. All disputes will be decided within ten (10) business days of the Response
18 Deadline. *See id.*, Exhibit A (¶ 45).

19 K. Processes to Object or Opt-Out.

20 Objections: To object to the Settlement Agreement, a Class Member must postmark a valid
21 Notice of Objection to the Settlement Administrator on or before the Response Deadline. The
22 Notice of Objection must be signed by the Class Member and contain all information required by
23 this Settlement Agreement. The postmark will be deemed the exclusive means for determining
24 that the Notice of Objection is timely. Class Members who fail to object in the manner specified
25 above will be deemed to have waived all objections to the Settlement and will be foreclosed from
26 making any objections, whether by appeal or otherwise, to the Settlement Agreement. Class
27 Members who postmark timely Notices of Objection will have a right to appear at the Final
28

1 Approval Hearing in order to have their objections heard by the Court. At no time will any of the
2 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written
3 objections to the Settlement Agreement or appeal from the Order and Judgment. Class Counsel
4 will not represent any Class Members with respect to any such objections to this Settlement. *See*
5 *id.*, Exhibit A (¶ 51).

6 Opportunity to Opt-Out: Any Class Member wishing to opt-out from the Settlement
7 Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement
8 Administrator within the Response Deadline. In the case of Requests for Exclusion that are
9 mailed to the Settlement Administrator, the postmark date will be the exclusive means to
10 determine whether a Request for Exclusion has been timely submitted. At no time shall any of the
11 Parties or their counsel seek to solicit or otherwise encourage members of the Class to submit
12 requests for exclusion from the Settlement. *See id.*, Exhibit A (¶¶ 47, 51).

13
14 L. Cost of Claims Administration.

15 Plaintiff's Counsel has obtained a quote of \$11,250 from Atticus Administration. to
16 administer the settlement, which will be paid to the Settlement Administrator after final approval
17 has been granted and the settlement amount is funded by Defendant. *See* Lofton Decl., ¶ 27,
18 Exhibit E; Declaration of Christopher Longley ("Longley Decl."), Exhibit 2. In Plaintiff's
19 Counsel's experience, the quote is competitive and cost-effective. *See id.*

20 M. Tax Consequences of Individual Settlement Payments.

21 All Individual Settlement Payments will be allocated as follows: (i) Twenty-Five Percent
22 (25%) of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-
23 2 will be issued; and (ii) Seventy-Five (75%) will be allocated as non-wages for which IRS Forms
24 1099-MISC will be issued. *See id.*, Exhibit A (¶ 56).

25 N. Attorney's Fees and Litigation Costs.

26 Plaintiff's Counsel will seek attorneys' fees for their work in prosecuting the action on
27 behalf of the class in the amount of \$128,333 (one-third of the Maximum Settlement Amount),
28 and reimbursed litigation costs not to exceed \$11,000. Plaintiff's current costs are \$10,671.10, the

majority of which was the cost of mediation. *See* Lofton Decl., ¶ 26. A complete costs detail will be provided along with the declaration of Plaintiff's Counsel in the motion for Final Approval. The amount of attorneys' fees and litigation costs being requested are set forth in the Class Notice. Any attorneys' fees not awarded by the Court will revert to the Net Settlement Amount. Defendant has agreed not to challenge Plaintiff's requests for attorneys' fees and reimbursed litigation costs, provided it is consistent with the settlement. An analysis of the fees requested and a lodestar check are set forth in Section IV.E. below.

III. ANALYSIS OF THE PROPOSED SETTLEMENT

In reviewing the reasonableness of the settlement, the maximum exposure that Plaintiff could possibly achieve at trial must be compared to the risks of litigation and the realistic range of outcomes. Plaintiff believes that Defendant's maximum exposure could exceed \$2 million, but that the realistic range of outcomes is significantly lower. *See id.*, ¶ 7.

In order to analyze the strength of Plaintiff's case, the parties engaged in discovery, with Defendant producing tens of thousands of employment records. In March 2024, the parties retained Atticus Administration to send *Belaire-West* notices to employees. *See id.*, ¶ 5. At the conclusion of the process, Defendant produced tens of thousands of pages of employee records for all 242 employees who did not opt out, which included:

- Wage records for 242 employees
- Clock-in and clock-out time records for 242 employees
- Weekly schedules for 2022-2024
- Tip sharing tracking for 2022-2024
- Employee handbooks and policy documents
- Correspondence regarding the above. *See id.*, ¶ 5.

Plaintiff and his counsel spent approximately 28 hours reviewing and analyzing the records and creating a detailed exposure/damages calculation. *See id.*, ¶ 20. Plaintiff's Counsel also spoke to several other employees who were referred by Plaintiff or who reached out to counsel upon receipt of the *Belaire-West* notice. *See id.*, ¶ 6. Based on those records and conversations,

Plaintiff estimated that Defendant had a *theoretical* maximum exposure in the range of \$2.7 Million, and a *likely* maximum exposure in the range of \$300,000 - \$500,000 for the class claims and \$150,000-\$225,000 for the PAGA claims. *See id.*, ¶ 7.

The maximum potential exposure was calculated as follows:

Class Claims		
Violation	Calculation	Maximum Exposure
Failure to Pay Wage Owed (Off-the-Clock Work)	Approximately 75,000 shifts worked x .2 hours off-the-clock per shift x \$15.50 average hourly wage per shift x 50% estimated violation rate	\$116,250
Failure to Provide Rest Periods	Approximately 75,000 shifts worked x \$15.50 average hourly wage per shift as penalty per violation x 20% estimated violation rate	\$232,500
Improper Tip Sharing	502 employees x estimated \$500 tips improperly withheld per employee x 33% estimated violation rate	\$82,830
Reporting Time Violations (On-Call Shifts)	Estimated 6,000 on-call shift scheduled x \$15.50 average hourly wage per shift as penalty per violation x 60% estimated violation rate	\$55,800
Failure to Reimburse (Phone)	Estimated 15,000 workweeks x .25 months/workweek x \$40/month reimbursement	\$150,000
Total		\$637,380

PAGA Claims		
Violation	Calculation	Maximum Exposure
Failure to Pay Wage Owed (Off-the-Clock Work)	10,000 pay periods x \$100 maximum penalty per pay period	\$1,000,000
Failure to Provide Rest Periods	10,000 pay periods x \$100 maximum penalty per pay period x 20% estimated violation rate	\$200,000
Improper Tip Sharing	10,000 pay periods x \$100 maximum penalty per pay period x 33% estimated violation rate	\$330,000
Reporting Time Violations (On-Call Shifts)	Estimated 4,000 on-call shifts scheduled x \$100 maximum penalty per pay period x 80% estimated violation rate	\$316,800
Failure to Reimburse (Phone)	10,000 pay periods x .25 months/pay period x \$100 maximum penalty per pay period	\$250,000
Total		\$2,096,800

Plaintiff considered possible reductions to the potential recovery for the class claims, including the defenses asserted by Defendant, below (and especially that Defendant might be able

1 to show rest breaks were voluntarily waived), the risk that he might be unable to prove all
2 violations to the extent alleged, the risk that the Court might apply a lower monthly
3 reimbursement amount for mobile phone usage, and the general risks inherent in all litigation.

4 For the PAGA claims, Courts have discretion to, and often do, consolidate claims and
5 reduce penalties in cases not involving malice or fraud, which do not appear to be present here.
6 *See Jennifer Kramer, et al., PAGA AT 20: WHAT HAPPENS WHEN CASES GO TO TRIAL?* (2024) 38
7 Cal. Labor & Emp. Law Rev. 4 (finding that trial courts reduce PAGA penalties in 55% of cases,
8 and the reduction in those cases averaged 77%). Additionally, Defendant's pay periods were a
9 single week, so any penalties were likely to be halved as reflected in the amended Labor Code
10 2699(o).

11 Defendant asserted a number of defenses, including that its policies were legal, and to the
12 extent that they were ambiguous in writing, they were lawfully implemented in practice.
13 Defendant pointed out that that while employers must "authorize and permit" timely rest periods,
14 but they are not obligated to force employees to take those rest periods or even to ensure that those
15 meal and rest periods are taken. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
16 1004. Defendant claims that it authorized and permitted timely rest periods, but that its employees
17 voluntarily forwent breaks. Defendant also produced evidence that it provided uniforms and
18 shared tips appropriately. If Defendant prevailed on these issues, the Settlement Class Members
19 would be entitled to significantly less relief.
20

21 Defendant asserted that its business, a single-location restaurant, suffered during the
22 pandemic and has continued to struggle. *See id.*, ¶ 8. Defendant presented compelling evidence
23 that it faced potential insolvency if the case did not settle, and explicitly threatened bankruptcy.
24 *See id.* Following the mediation, Defendant provided confirmatory discovery, including relevant
25 portions of past tax returns and income and expense reports that corroborated Defendant's claims.
26 *See id.* Defendant also provided a Notice of Intent to Levy by the IRS for significant unpaid taxes
27 and a Notice of Default from its landlord for failure to pay rent. *See id.*
28

1 Taking the above factors into consideration, and if Plaintiff were to prevail at trial, Plaintiff
2 estimates that the likely value of the class claims to be in the range of \$300,000 - \$500,000 and the
3 likely value of the PAGA claims to be in the range of \$150,000 - \$225,000. In Plaintiff's
4 Counsel's experience in both class action and individual wage and hour cases, viewed in light of
5 the risks of litigation and insolvency, the \$385,000 settlement is reasonable and represents a
6 favorable outcome.

7 **IV. LEGAL STANDARD FOR CERTIFICATION AND SETTLEMENT.**

8 A. The Standard for Preliminary Review of a Class Action Settlement.

9 The law favors settlement, particularly in class actions where substantial resources can be
10 conserved by avoiding the time, cost, and rigors of formal litigation. *See* H. Newberg & A. Conte,
11 Newberg on Class Actions (4th ed. 2002), §11.41 ["Newberg"]; *Class Plaintiffs v. City of Seattle*
12 (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d
13 943, 950; *Potter v. Pacific Coast Lumber Co.* (1951) 37 Cal.2d 592, 602. Nevertheless, to make
14 certain the rights of absent parties are not unjustly compromised, the settlement of a class action
15 requires court approval. *See* Cal. Rules of Court 3.769; *Dunk v. Ford Motor Co.* (1996) 48
16 Cal.App.4th 1794, 1801; *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 245. The
17 court's involvement is to protect against fraud or collusion and to ensure fairness to absent class
18 members. *See Dunk*, 48 Cal.App.4th at 1800-01; Newberg, *supra*, §11.22, *et seq.* Review is
19 accomplished through a two-step process, the overall purpose of which is to determine whether, in
20 light of the total circumstances of the action, the settlement is fair, reasonable, and adequate. *See*
21 *Dunk*, 48 Cal.App.4th at 1801; *Wershba*, 91 Cal.App.4th at 245.

22 The first step is the preliminary approval motion, through which the parties present the
23 settlement to the court for a determination that the agreement is sufficiently fair and reasonable to
24 merit class notice and further proceedings. *See* Cal. Rules of Court 3.769(c). The court at this
25 stage simply determines whether the proposed settlement is within "the range of reasonableness,"
26 and, thus, whether notice to the class of the settlement terms and conditions and the scheduling of
27 a formal fairness hearing is worthwhile. *See, e.g., Kullar v. Foot Locker Retail, Inc.* (2000) 168
28

1 Cal.App.4th 116, 133; *Wershba*, 91 Cal.App.4th at 234-35; Newberg, supra, at § 11.25. If the
2 court preliminarily approves the settlement, it orders that class notice be given in an appropriate
3 manner, establishes a schedule and procedures for requests for exclusion or the submission of
4 objections, and sets the matter for a final approval hearing. *Id.*

5 The second step is the final approval hearing, at which the court makes a final
6 determination whether the settlement is fair, reasonable, and adequate. *See, Dunk*, 48 Cal.App.4th
7 at 1801- 02; *Wershba*, 91 Cal.App.4th at 244-45. Typically, any motion for approval of the
8 payment of attorneys' fees, incentive awards, and litigation expenses contemplated by the
9 settlement is filed in the period following preliminary approval and is heard with the final
10 approval motion. *See, e.g., Dunk*, 48 Cal.App.4th at 1800; *Wershba*, 91 Cal.App.4th at 232.

11 B. The Court Should Grant Preliminary Approval of the Proposed Class.

12 The settlement here warrants preliminary approval as it is sufficiently fair and reasonable
13 to merit class notice and further proceedings under Cal. Rules of Court 3.769(c).

14 *i. Plaintiff Mediated the Settlements at Arm's Length.*

15 First, as set forth above, the proposed settlement was achieved through arm's length
16 negotiation between highly qualified counsel. *See* Lofton Decl., ¶ 4. The conduct of a formal
17 mediation process overseen by a well-respected neutral, Hon. Howard R. Broadman (Ret.) on
18 April 29, 2024, including the submission of detailed mediation briefs and continued negotiations
19 over several months culminating in the present Settlement, provides additional comfort that the
20 proposed settlement is a product of arm's length negotiation untainted by collusion. *See id.*

21 *ii. Plaintiff Developed a Well-Informed Understanding of the*
22 *Risks of Continued Litigation.*

23 Second, before agreeing to the Settlement, Plaintiff's Counsel developed extensive
24 information about the facts of the case through litigation and discovery to enable them to make an
25 informed, clear-eyed decision to recommend the proposed Settlements to the Court. *See id.*, ¶¶ 5-
26 8. The details of the documents reviewed and witnesses interviewed by Plaintiff's Counsel are set
27 forth in Section III above. Plaintiff and his counsel developed a detailed breakdown of the
28

1 Defendant's estimated exposure on each claim, analyzed the likelihood of success, and reviewed
2 Defendant's financial condition to factor in the risks of Defendant's insolvency. *See id.* Although
3 Plaintiff remains firmly convinced that he and the Settlement Class Members have meritorious
4 claims, Defendant asserted several formidable arguments and defenses. Plaintiff also faced a
5 number of other risks associated with continued litigation, including the potential denial of their
6 motion for class certification and the further motion practice relating to Defendant's defenses.

7 By virtue of the mutual exchange of information, Plaintiff and his counsel have discovered
8 the evidence needed to establish a *prima facie* case and the full range of contentions advanced by
9 Defendant. Defendant provided Plaintiff with extensive documents, including policies,
10 handbooks, and class data for calculating workweeks, pay periods, and hourly rates. *See id.*, ¶ 5.

11 Thus, Plaintiff's counsel has sufficient information to assess the strengths, weaknesses, and
12 likely expense of taking this case to trial, and they have analyzed far more information than
13 necessary to make an informed decision to settle the case. "[I]n the context of class action
14 settlements, 'formal discovery is not a necessary ticket to the bargaining table' where the parties
15 had sufficient information to make an informed decision about settlement...' [N]otwithstanding the
16 status of discovery, Plaintiff's negotiators had access to a plethora of information regarding the
17 facts of their case.'" *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1239-
18 1240 (internal citations omitted); *see also, In re Corrugated Container Antitrust Litigation*, 643
19 F.2d 195, 211 (5th Cir. 1981) ("It is true that very little formal discovery was conducted and that
20 there is no voluminous record in the case. However, the lack of such does not compel the
21 conclusion that insufficient discovery was conducted.") (emphasis omitted). Similarly, whereas
22 here, a "plethora of information regarding the facts of [the] case" was available, the settlement
23 should be preliminarily approved.

24
25 *iii. Counsel for Plaintiff in This Action Are Very Experienced in*
26 *Wage and Hour Class Actions.*

27 Attorneys at Aiman-Smith & Marcy, PC have represented employees in numerous PAGA
28 and class action cases asserting violations of California labor law, including published decisions.

1 *See id.*, ¶ 13, Exhibit B. Plaintiff’s attorneys are well qualified to conduct the proposed litigation
2 and to assess its settlement value. *See id.*

3 C. The Proposed Settlement Classes Meet All Requirements for Certification.

4 California public policy favors the use of the class action device. *See, e.g., Sav-On Drug*
5 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 339-40; *Linder v. Thrifty Oil* (2000) 23
6 Cal.4th 429, 435. Code of Civil Procedure section 382 authorizes class treatment in any case
7 “when the question is one of a common or general interest, of many persons, or when the parties
8 are numerous, and it is impracticable to bring them all before the court.” Courts interpret this
9 language as establishing two requirements for class certification: (1) there must be an
10 ascertainable class; and (2) there must be a well-defined community of interest among the class
11 members. *See, Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470; *Linder*, 23 Cal.4th at
12 435 (“To obtain certification, a party must establish the existence of both an ascertainable class
13 and a well-defined community of interest among the class members.”)

14
15 In determining whether to certify a class for settlement purposes, the Court evaluates the
16 claims alleged in the complaint without regard to the likelihood that Plaintiff would ultimately
17 prevail on those claims. *See, Linder*, 23 Cal.4th at 439-440 (the question of class certification is
18 essentially a procedural one that does not ask whether an action is legally or factually meritorious).
19 Thus, any proof problems associated with Plaintiff’s claims stemming from the risks and obstacles
20 enumerated above are irrelevant to the Court’s decision on whether to certify the settlement class.
21 As shown below, Plaintiff’s claims readily satisfy all prerequisites to class certification.

22 *i. The Class is Ascertainable and Numerous.*

23 There are approximately 502 Class Members during the Class Period. *See* Lofton Decl.,
24 Exhibit A (¶ 27). Every Class Member can be identified via Defendant’s payroll records. *See id.*
25 Accordingly, the proposed Settlement Class is readily ascertainable and numerous. *See, Marler v.*
26 *E.M. Johansing, LLC* (2011) 199 Cal.App.4th 1450, 1459; *Rose v. City of Hayward* (1981) 126
27 Cal.App.3d 926, 934.
28

1 ii. *There Is a Well-Defined Community of Interest.*

2 All three factors considered in the “community of interest” analysis support certification of
3 the proposed Settlement Class. *See, Mass. Mut. Life Ins. Co. v. Superior Court* (2002) 97
4 Cal.App.4th 1282, 1287 (“community of interest” involves three factors (1) predominant common
5 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
6 (3) class representatives who can adequately represent the class. A class resolution must in
7 addition be the superior means of adjudicating this controversy. *See id.*

8 (1) *The Settlement Class Satisfies the Commonality Element.*

9 “[T]o determine whether common questions of fact predominate the trial court must
10 examine the issues framed by the pleadings and the law applicable to the causes of action alleged.”
11 *Knapp v. AT&T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.

12 Here, Plaintiff contends that there are common questions of law and fact, which include
13 but are not limited to: whether the Defendant’s rest period policy complies with the Labor Code;
14 and whether Defendant required employees to perform work before clocking in, required
15 employees to share tips excessively, required employees to pay for their uniforms without
16 reimbursement, and required employees to report to work without having work available but not
17 paying reporting time wages. These common issues satisfy C.C.P. §382 requirements.

18 (2) *The Settlement Class Satisfies the Typicality Element.*

19 “Typicality” requires only that the claims of the representative plaintiffs be similar, not
20 identical, to the claims of other class members. *See Fireside Bank v. Superior Court* (2007) 40
21 Cal.4th 1069, 1090; *Daniels v. Centennial Group, Inc.* (1993) 16 Cal.App.4th 467, 473; *B.W.I.*
22 *Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347. Representative
23 plaintiffs’ claims are typical if they were subjected to the same alleged wrong as other class
24 members. *See Fireside Bank*, 40 Cal.4th at 1090.

25 Plaintiff contends that typicality is met here as the claims of the Settlement Class are based
26 on the same legal and factual claims as those of Plaintiff. For instance, during the time that
27 Plaintiff White worked as a non-exempt employee, he alleges that like all Class Members, he was
28

1 required to perform work before clocking in and other work off-the-clock, he was required to
2 share an excessive amount of his tips, he was required to pay for uniforms without reimbursement,
3 and he was not provided adequate rest periods. These legal claims are reasonably co-extensive
4 with those of the other Class Members. Accordingly, typicality is satisfied here.

5 (3) *Plaintiff and His Counsel Satisfy the Adequacy Element.*

6 The final factor under the “community of interest” analysis is adequacy of representation.
7 *See Sav-On*, 34 Cal.4th at 326; *Richmond*, 29 Cal.3d at 470. There are two prerequisites to
8 adequacy. First, the named plaintiff must be represented by counsel qualified to conduct the
9 pending litigation; second, the plaintiff’s interests cannot be “antagonistic” to those of the class.
10 *See Richmond*, 29 Cal.3d at 475; *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.
11 Both conditions are readily satisfied here.

12 First, Plaintiff’s Counsel are indisputably “qualified, experienced and generally able to
13 conduct the proposed litigation.” *Miller v. Woods* (1983) 148 Cal.App.3d 862, 874. Plaintiff’s
14 Counsel are fully capable of litigating the representative claims through trial and appeal. *See*
15 *Lofton Decl.*, ¶ 13, Exhibit B. Second, Plaintiff contends his interests in this litigation are co-
16 extensive with the interests of the Settlement Class he seeks to represent which Plaintiff contends
17 has been injured in the same manner and by the same alleged practices or course of conduct as the
18 other Settlement Class Members. *See id.*, ¶ 22.

19 Plaintiff has only three relatively minor claims that are not included in the class claims –
20 for unlawful retaliation, unpaid sick leave, and failure to provide employment records. *See* First
21 Amended Complaint. These claims have been settled separately, and any similar claims by Class
22 Members are not released by this settlement.

23 (4) *The Settlement Class Satisfies the Superiority Requirement.*

24 The final requirement for class certification under California law is a showing of
25 “superiority.” *See Sav-On*, 34 Cal.4th at 332. As with predominance, superiority contemplates a
26 comparative analysis: a weighing of “the costs and benefits of adjudicating plaintiff’s claims in a
27 class action and the costs and benefits of proceeding by numerous separate actions.” *Id.* at 339, fn.
28

1 10. In assessing this balance, the Court should consider whether Class Members will realistically
2 obtain relief in the absence of a class action, whether a class action will provide benefits to the
3 justice system and the parties, and whether a class action will serve a deterrent function. *See id.* at
4 339-40; *see also, Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 745. The benefits and
5 burden comparison “lies between the costs and benefits of adjudicating plaintiff’s claims in a class
6 action and the costs and benefits of proceeding by numerous separate actions.” *See id.* at 339, fn.
7 10.

8 Here, Plaintiff contends that the costs and benefits of a class action far outweigh individual
9 proceedings. Individual actions for each of the approximately 502 Class Members (with repetitive
10 discovery and separate expert testimony in each case) would be unnecessarily costly to Settlement
11 Class Members, inefficient for the court, and likely to produce inconsistent rulings.

12 D. The Amount of Recovery Supports Preliminary Approval of the Settlement.

13 The Settlement is well within the realm of the “range of reasonableness” test applicable to
14 preliminary approval of proposed class settlements. *See Kullar*, 168 Cal. App.4th 116, 133 (“court
15 must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness”).
16 Given the strength of Plaintiff’s case, Defendant’s arguments and defenses, and the risk, expense,
17 complexity and duration of further litigation, the proposed settlement is fair.

18 Even setting aside the risks and uncertainty of certification and going to trial, the fact that
19 the maximum possible damages is higher than the agreed to amount is not a basis to decline
20 approval. “The fact that a proposed settlement may only amount to a fraction of the potential
21 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
22 should be disapproved.” *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455.
23 Courts have aptly held that “‘it is the very uncertainty of outcome in litigation and avoidance of
24 wasteful and expensive litigation that induce consensual settlements. The proposed settlement is
25 not to be judged against a hypothetical or speculative measure of what might have been achieved
26 by the negotiators.’” *Linney*, 151 F.3d at 1242. Here, the Class Settlement Amount of \$385,000 is
27
28

1 eminently fair and reasonable comparing the maximum recovery with the costs and risks of further
2 litigation, including the potential insolvency of Defendant.

3 E. Plaintiff's Counsel's Fees and Costs are Fair and Reasonable.

4 In considering the overall fairness of the Settlement, the Court may look to the
5 reasonableness of the attorneys' fees and costs allocated in the Settlement Agreement. Plaintiff's
6 Counsel's litigation costs were all reasonable and necessary expenses incurred in litigating and
7 resolving this action. A copy of the itemized list of out-of-pocket costs, in the amount of
8 \$10,671.10 is attached to the Declaration of John A. Lofton as Exhibit C. The vast majority of the
9 costs are allocable to the mediation fee of Judge Broadman (\$7,500.00). *See* Lofton Decl., ¶ 21,
10 Exhibit C.

11 Plaintiff also seeks one-third of the Maximum Settlement Amount, or \$128,333.00, in
12 attorney's fees. For the purposes of a lodestar cross-check, Plaintiff's Counsel has spent over 110
13 hours working on this matter for a total of \$96,250.00. *See id.*, ¶ 20.

14 Plaintiff's Counsel expects to spend another 20+ hours prosecuting this case through
15 preliminary and final approval, handling all objections and opt-outs, supervising the settlement
16 process and mailing of checks, answering many employee questions, and handling the final
17 compliance hearing, incurring approximately another \$17,500.00 for a total of approximately
18 \$113,760.00. *See id.* The \$128,333.00 requested compares favorably with the actual work that
19 was and will be performed by Plaintiff's Counsel.

20 The attorneys' fees sought will compensate Plaintiff's Counsel for work performed in
21 recovering a significant benefit for the Class Members and the LWDA. Courts have long
22 recognized the "common fund" or "common benefit" doctrine, under which attorneys who create a
23 common fund or benefit for a group of persons may be awarded their fees and costs to be paid out
24 of the fund. *See Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480, 504 (2016); *See also, Serrano*
25 *v. Priest* ("Serrano III"), 20 Cal.3d 25, 34 (1977); *Glendale City Employees' Assoc. v. City of*
26 *Glendale*, 15 Cal.3d 328, 341, fn. 19 (1975); *In re Consumer Privacy Cases*, 175 Cal.App.4th 545,
27 557 (2009); *In re Sumitomo Copper Litig.*, 74 F.Supp.2d 393, 396-398 (S.D.N.Y. 1999)
28 (describing the overwhelming weight of federal authority in favor of the percentage fee method);

1 *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-392 (1970) (United States Supreme Court
2 endorsing the common fund approach to class actions.)

3 The California Practice Guide: Civil Trials and Evidence (The Rutter Group) at §7.172.3
4 explains the common fund doctrine as follows:

5 Where the lawsuit results in the recovery of a fund or property benefiting others as
6 well as plaintiff (*e.g.*, a class action), the court has inherent equitable power to order
7 plaintiff's attorney fees paid out of the common fund or property [citations]. Such
8 fee spreading assures that all of those benefited by the litigation pay their fair share
9 of obtaining the recovery.

10 Numerous appellate courts have similarly endorsed the "percentage fee" method for determining
11 reasonable attorney's fees in common benefit cases.⁵

12 In the *Laffitte* decision, the California Supreme Court held that, "when class action
13 litigation establishes a monetary recovery fund for the benefit of the class members, and the trial
14 court in its equitable powers awards class counsel a fee out of that fund, the court may determine
15 the amount of a reasonable fee by choosing an appropriate percentage of the fund created."
16 *Laffitte, supra*, 1 Cal.5th at 503. The California Supreme Court also noted that the percentage of
17 the fund method "more accurately reflects the results achieved" than the lodestar method, serves
18 as a "better approximation of market conditions in a contingency case," and encourages "counsel
19 to seek an early settlement and avoid unnecessarily prolonging the litigation." *Id.* at 503-504.

20 Courts have recognized that a one-third fee is appropriate in common fund cases. *See, e.g.*,
21 *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn.11 (2008) ("Empirical studies show that,
22 regardless of whether the percentage method or the lodestar method is used, fee awards in class
23 actions average around one-third of the total recovery.")

24 ⁵ *See, e.g., Knoff v. City and County of San Francisco*, 1 Cal.App.3d 184, 203-204 (1969)
25 (court upheld a "contingent percentage" award of attorneys' fees in a representative action as the
26 proper exercise of the court's equitable powers); *Rider v. County of San Diego*, 11 Cal.App.4th
27 1410, 1423 (1992) (attorneys' fees and expenses properly awarded from common benefit
28 composed of illegally imposed sales and use tax); *Bank of America v. Cory*, 164 Cal.App.3d 66,
89-92 (1985) (fees awarded from common benefit created by action compelling state to claim
dormant bank accounts); *Parker v. Los Angeles*, 44 Cal.App.3d 556, 567-568 (1974) (court upheld
fee award equal to one-third of the damages to owners of residential property in an inverse
condemnation action.)

1 The attorney's fees requested here are in line with other fee awards in California wage and
2 hour cases. For example, in *Smiles v. Walgreens Co.*, Alameda Superior Court Case Number
3 RG17862495, Judge Seligman awarded attorney's fees of 35% of the \$15,000,000 settlement in a
4 PAGA case, plus costs; in *Pearce v. Linens 'N Things, Inc.*, Orange County Superior Court Case
5 No. 00CC04830, Judge McDonald awarded attorney's fees equal to 33 1/3% of the settlement
6 fund, plus costs; in *Albrecht v. Rite Aid Corp.*, San Diego Superior Court Case No. 729129, Judge
7 Haden awarded attorney's fees equal to 35% of the settlement fund, plus costs; in *Crandall v. U-*
8 *Haul International*, L.A. Superior Court Case No. BC 178775, Judge Czuleger awarded plaintiffs'
9 counsel attorney's fees equal to 40% of the settlement fund; in *Graubard v. Goodyear Tire Rubber*
10 *Company*, LA Superior Court Case No. BC 230520, Judge Mohr awarded attorney's fees equal to
11 32.1% of the settlement fund, plus costs. These cases illustrate that California courts recognize
12 that a one-third fee is appropriate in a wage and hour common fund case.

13 Given the results achieved under the circumstances of this litigation, the requested fee
14 award is reasonable and on par with the fees actually incurred by Plaintiff's Counsel. As
15 discussed in *In re Sumitomo Copper Litigation*, *supra*, 74 F.Supp.2d at 396:

16 No one expects a lawyer whose compensation is contingent on the success of his
17 services to charge, when successful, as little as he would charge a client who in
18 advance of the litigation has agreed to pay for his services, regardless of success.
19 Nor, particularly in complicated cases producing large recoveries, is it just to make
20 a fee depend solely on the reasonable amount of time expended.

21 In that vein, this Court should consider the contingent nature of this case, the uncertainty of
22 the outcome, the quality of the counsel, and the preclusion from other employment.

23 *i. The Contingent Nature*

24 From the outset of the case to the present, prosecution of this action has involved
25 significant financial risk for Plaintiff's Counsel. Plaintiff's Counsel undertook this matter solely
26 on a contingent basis, with no guarantee of recovery. Plaintiff's Counsel have placed their own
27 resources at risk to prosecute this action with no guarantee of success. *See*, Lofton Decl., ¶ 16. If
28 Defendant prevailed on any one of the affirmative defenses raised, it could substantially reduce, if
not wholly defeat, recovery. *See id.*, ¶ 17. Despite such challenges, Plaintiff's Counsel was able

1 to secure a favorable settlement resolving the class and PAGA claims on behalf of Plaintiff, the
2 Class Members, and the LWDA. *See id.*

3 ii. *The Experience, Reputation, and Ability of Counsel, and the Skill Displayed*
4 *in Litigation*

5 Plaintiff's Counsel, both Mr. Lofton and his firm Aiman-Smith & Marcy, P.C., have
6 substantial experience in complex and representative action litigation, including many wage and
7 hour cases. *See* Lofton Decl., ¶¶ 13-14.

8 The quality of opposing counsel is also important to evaluating the quality of the work
9 done by Plaintiff's Counsel. Here, Defendant was represented by William Woolman of Sagaser,
10 Watkins & Wieland, P.C., experienced employment litigators. *See id.*, ¶ 18. Thus, the complexity
11 and potential duration of the case, and that in the face of experienced and resourceful opposition,
12 weigh in favor of awarding the requested attorney's fees.

13 iii. *The Results Achieved*

14 The results achieved by the Settlement support Plaintiff's Counsel's request for attorney's
15 fees. As noted, the Settlement will result in payment of approximately \$174,417.00 to Class
16 Members, \$12,500 to PAGA aggrieved employees, and approximately \$37,500.00 to the LWDA.
17 *See id.*, Exhibit A (Settlement Agreement, ¶ 35).

18 The efficiency with which this litigation was conducted and resolved should be rewarded.
19 The Parties were able to minimize use of the Court's resources, avoid any motion practice, and
20 avoid trial. The Class and the LWDA will directly benefit from the prompt and fair resolution of
21 their claims. They will be receiving a significant award in a short period of time as opposed to
22 waiting years to recover some undetermined amount if they succeeded at trial, which is an
23 uncertainty in itself.

24 iv. *Preclusion of Other Employment*

25 As California law recognizes, Plaintiff's Counsel's commitment to this litigation should
26 not be assessed in a vacuum. *See, Serrano, supra*, 20 Cal.3d at 49. A relevant factor in
27 determining attorney's fees is whether the litigation required Plaintiff's Counsel to forego other
28 employment. *See id.* Additional work was available that Plaintiff's Counsel had to forgo to
devote the time necessary to pursue this litigation. *See* Lofton Decl. ¶ 19. Specifically, Plaintiff's

1 Counsel undertakes marketing efforts that generate a steady stream of leads and potential cases,
2 and the firm is only able to take on a portion of those cases and forego the remainder, so it is
3 essential that Plaintiff's Counsel receive its fair compensation for the cases it does accept. *See id.*

4 Accordingly, attorney's fees in the amount of \$128,333, which is one-third of the
5 Maximum Settlement Amount is fair and reasonable under the circumstances, and under
6 California precedent, along with \$10,671.10 in litigation costs.

7 F. Plaintiff's Request for an Incentive Award is Fair and Reasonable

8 Plaintiff requests that the Court award him an Enhancement Payment in the amount of
9 \$10,000.00, in consideration of Plaintiff's efforts herein. The Settlement Administrator will pay
10 the PAGA representative Enhancement Payment approved by the Court of up to \$10,000.00 out of
11 the Maximum Settlement Amount. This amount is fair, equitable, and necessary in this case to
12 provide an appropriate incentive for the lead plaintiff. *See, e.g., Cellphone Fee Termination Cases*
13 *(2010) 186 Cal.App.4th 1380, 1394, 1395.* The use of incentive payments to lead plaintiffs in
14 class actions has long been approved by California courts. *See, Clark v. American Residential*
15 *Serv. LLC (2009) 175 Cal.App.4th 785, 803* (reiterating the rule that "An incentive award is
16 appropriate if it is necessary to induce an individual to participate in the suit.")
17

18 In this case, Plaintiff contributed significantly to the settlement of this case by bringing the
19 case and actively assisting in its prosecution. Specifically, Plaintiff (1) met and communicated
20 with Plaintiff's counsel on numerous occasions; (2) detailed his experiences with Defendant and
21 produced copies of wage records, policies, checks, and other documents; (3) identified pertinent
22 witnesses and contact information for Plaintiff's Counsel; (4) assisted in preparing the PAGA
23 claim notice, complaint, and amended complaint, reviewing them all; (5) provided material
24 support in the preparation and review of formal and informal discovery, helping Plaintiff's counsel
25 understand what to ask for; (6) helped review the employment records, wage and time records, tip
26 sharing data, employee handbooks and other policies and documents provided by Defendant; (7)
27 reviewed the mediation documents and participated in the full day mediation; (8) reviewed the
28 terms of and signed the Settlement Agreement; and (9) assisted in the preparation of this motion.

1 See Declaration of Michael White, ¶ 2.

2 Plaintiff also undertook significant risk in the potential liability for Defendant's costs if
3 Defendant prevailed, but chose to face that risk in order to challenge Defendant's employment
4 policies for the benefit of all employees. *See id.*, ¶ 3. Finally, Plaintiff's name will forever be a
5 part of the public record of him suing his employer, easily located in a background check by any
6 future employer – a significant sacrifice in this digital age. *See id.*, ¶ 4.

7 Given the amount of the settlement (\$385,000) and the relatively large recovery per Class
8 Member (approx. \$347.44 each), an Enhancement Payment of \$10,000 is fair and reasonable. An
9 award of \$10,000 falls well below the average enhancement award according to one study. *See*
10 Theodore Eisenberg & Geoffrey P. Miller, INCENTIVE AWARDS TO CLASS ACTION PLAINTIFFS: AN
11 EMPIRICAL STUDY (2006) 53 UCLA L. Rev. 1303, 1308 (concluding the average award per class
12 representative was \$15,992).

13 The amount of the proposed incentive compensation will be in the Class Notice and any
14 objections raised will be addressed at the Final Approval hearing.

15
16 G. Settlement Administration and Costs

17 The Settlement Administrator will pay out of the Gross Settlement Amount to itself its
18 reasonable fees and expenses, not to exceed \$11,250.00, after such payment has been approved by
19 the Court. Atticus Administration has submitted a quote for its costs for administration at
20 \$11,250.00. *See* Lofton Decl., ¶ 27, Exhibit E; Longley Decl., ¶ 10, Exhibit 2. Atticus
21 Administration is a well-known and respected Settlement Administrator with extensive experience
22 administering class and PAGA settlements. *See* Longley Decl., ¶¶ 1-9. Atticus Administration
23 has confirmed that it will duly carry out the obligations of the Settlement Agreement in this case.
24 *See id.* Plaintiff's Counsel has used Atticus Administration in other matters, and knows its rates
25 to be fair and competitive. *See* Lofton Decl., ¶ 27. Plaintiff requests that Atticus Administration
26 be approved as Settlement Administrator by the Court.

1 H. Final Settlement Fairness Hearing.

2 The last step in the approval process is the Final Settlement Approval Hearing, in which
3 the Court may hear objections to the settlement, if any, may receive the opinions and statements of
4 counsel in support of the settlement, and may inquire of Plaintiff's Counsel regarding specific
5 provisions of the settlement, including the contemplated method of allocation of the settlement
6 fund. *See Manual for Complex Litigation 4th*, § 21.63. If final settlement is approved by the
7 Court, the settlement will become binding on all members of the Settlement Class who have not
8 excluded themselves by the opt-out deadline. The Court would retain jurisdiction over the matter,
9 including any opt-outs, the administration and distribution of funds, and implementation of the
10 equitable aspects of the settlement.

11 At the Final Approval Hearing, counsel will provide the Court with information regarding
12 opt-outs or objections, if any, and regarding attorney's fees and litigation costs, declaration from
13 the Class Representative supporting the incentive payment, and a report from the Settlement
14 Administrator regarding the Notice Plan, skip tracing efforts, and plans for distribution.

15
16 **IV. CONCLUSION.**

17 For the foregoing reasons, Plaintiff and Plaintiff's Counsel respectfully request that this
18 Court grant preliminary approval to the settlement, certify the Settlement Class, order that the
19 proposed form of Notice be disseminated as set forth in the Notice Plan, and set a date for the
20 Final Settlement Approval Hearing.

21
22 DATED: June 19, 2026

AIMAN-SMITH & MARCY, P.C.

23
24 

25 _____
26 John A. Lofton, Esq.
27 Attorney for Plaintiff Michael White
28