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on behalf of himself and all others and similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LUCAS LEE, on behalf of himself and all others similarly situated, Plaintiffs, vs. GN TRANSPORTATION LLC, a Wisconsin corporation, Defendant.	Case No. 23STCV14934 Assigned For All Purposes To: Judge: Hon. William Highberger Dept.: 10 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** [Declarations of Anthony L. Draper, Lucas Lee, and Jodey Lawrence of Phoenix Class Action Administration, [Proposed] Order, concurrently filed herewith] Date: January 10, 2025 Time: 2:00p.m. Dept.: 10

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PLEASE TAKE NOTICE THAT on January 10, 2025 at 2:00p.m., in Department 10 of the above-entitled court located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, Lucas Lee ("Plaintiff") will and hereby does move the Court for an Order: (1) provisionally certifying the Class for Settlement purposes only; (2) provisionally approving James R. Hawkins, Isandra Fernandez, and Anthony Draper of James Hawkins APLC; counsel for Plaintiff as Class Counsel in this matter, (3) provisionally approving Plaintiff as the Class Representative; (4) approving Phoenix Class Action Administration Solutions as the Settlement Administrator; (5) preliminarily approving the Class Action and PAGA Settlement Agreement; (6) approving and directing distribution of the Notice of Class Action Settlement and Release; and (7) scheduling a Hearing Date for Final Approval.

This Motion is made pursuant to Rule 3.769 of the California *Rules of Court*, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify a class for settlement purposes. The basis for this Motion is that the proposed Settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to participate in, opt out of, or object to the Settlement.

This Motion will be based on the Memorandum of Points and Authorities included herein, the Declaration of Anthony L. Draper, the Joint Stipulation Re: Class Action Settlement attached to the Declaration of Anthony L. Draper as Exhibit 1, the Declaration of Lucas Lee, the Declaration of Jodey Lawrence of Phoenix Class Action Administration, and upon the oral arguments of counsel (should there be any) and upon the complete records and file herein.

Dated: December 13, 2024

JAMES R. HAWKINS, APLC

By:______________________
James R. Hawkins
Isandra Y. Fernandez
Anthony L. Draper
Attorneys for Plaintiff
LUCAS LEE

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On April 21, 2023, Plaintiff Lucas Lee filed a wage and hour class action on behalf of himself and all employees erroneously classified as salaried exempt who are currently employed, or were formerly employed in California by Defendant GN Transportation LLC, formerly known as GN Transportation Corporation and now CJ Logistics Transportation, LLC (hereinafter "Defendant" and/or "GN") (Plaintiff and Defendant hereinafter collectively referred to as "Parties").[1] That same day, Plaintiff also provided notice to the LWDA of his intent to bring Private Attorney General Act ("PAGA") claims against Defendant. Plaintiff's wage and hour class action was removed on June 14, 2023 pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. section 1332, 1453, 1711-15 ("CAFA"). On June 27, 2023, Plaintiff separately brought his PAGA claim in the present action. On August 8, 2024, Plaintiff filed an amended complaint in this action incorporating his wage and hour claims from his removed federal case and subsequently dismissed his federal class action.

After hard-fought negotiations facilitated by highly-regarded private mediator Lisa Klerman, the Parties ultimately agreed to resolve the putative class and PAGA representative actions for a total of Two Hundred and Seventy Five Thousand Dollars ($275,000) (hereinafter "Gross Settlement Amount" or "GSA"), which includes Individual Class Payments to Class Members, PAGA Payments to the LWDA, Individual PAGA Payments to PAGA Employees, the Class Counsel's attorney fees and costs, the Class Representative Service Payment, and the Settlement Administration Expenses.[2] **<u>This is a cash settlement.</u>** Every Class Member who does not opt out of the Settlement will automatically be mailed an Individual Class Settlement Amount. However, every Class Member who is also within the PAGA group will be mailed their respective Individual PAGA Payment associated with the PAGA penalty portion of the settlement amount regardless of opt-out status. Class Members do not have to file a claim to be mailed a payment.

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[1] CJ Logistics America, LLC is no longer a defendant in this action, as Plaintiff and the employees at issue were not employed by Defendant, not CJ Logistics America, LLC.

[2] Capitalized terms herein have the same meaning as those terms in the Joint Stipulation Re: Class Action Settlement attached as Exhibit 1 of the Declaration of Anthony L. Draper ("Draper Decl.")

As discussed more thoroughly below, the proposed Settlement satisfies all of the criteria for preliminary settlement approval under California law and falls well within the range of proper approval. The Settlement represents an excellent outcome for the settlement group, particularly in light of the substantial risks, challenges, and costs to both sides were the case to proceed to trial. As such, Plaintiff moves this Court to: (i) provisionally certify the proposed Class; (ii) provisionally approve James R. Hawkins, Isandra Fernandez, and Anthony Draper of James Hawkins APLC class counsel for Plaintiff and the Class in this matter; (iii) provisionally approve named Plaintiff Eloy Mondragon as the Class Representative; (iv) appoint Phoenix Class Action Administration Solutions, as the Settlement Administrator; (v) preliminarily grant approval of the Class & PAGA Settlement Agreement (hereinafter "Settlement Agreement"); (vi) direct distribution of the Class Notice and; (vii) schedule a final approval hearing on the terms and conditions set forth in the Settlement Agreement.

II. <u>FACTUAL BACKGROUND</u>

On April 21, 2023, Plaintiff Lucas Lee filed a wage and hour class action on behalf of himself and all employees erroneously classified as salaried exempt who are currently employed, or formerly employed by, Defendant GN Transportation LLC (hereinafter "Defendant" and/or "GN") (Plaintiff and Defendant hereinafter collectively referred to as "Parties"). That same day, Plaintiff also provided notice to the LWDA of his intent to bring PAGA claims against Defendant. Plaintiff's wage and hour class action was removed on June 14, 2023 pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. section 1332, 1453, 1711-15 ("CAFA"). On June 27, 2023, Plaintiff separately brought his PAGA claim in the present action. During discovery in the federal action, the Parties discovered that the putative class members were not employees of CJ Logistics America, LLC, and that the size of the putative class was therefore significantly smaller than the Parties initially believed, and Plaintiff was preparing to remand the federal action back to the California Superior Court, Los Angeles County when settlement discussions began. On August 8, 2024, Plaintiff filed an amended complaint in this action incorporating his wage and hour claims from his federal case and subsequently dismissed his federal class action. (Draper Decl. ¶ 2.).

The First Amended Complaint is the operative complaint, which alleges California claims for (1) failure to pay lawful wages including overtime; (2) failure to provide lawful meal periods; (3) failure to reimburse necessary business expenses; (4) failure to timely pay wages during employment; (5) failure to timely pay wages at termination; (6) failure to provide accurate itemized wage statements; (7) unfair competition, and (8) a request for civil penalties pursuant to the PAGA. (Draper Decl. ¶ 3.).

Throughout this litigation, Defendant has denied Plaintiff's allegations, denies any failure to comply with the laws identified in the First Amended Complaint, denies any and all liability for the causes of action that are or reasonably could have been alleged based on the facts in the First Amended Complaint, and denies the case is manageable or amenable to class treatment and raised defenses to his claims, both individually and on a representative basis (Draper Decl. ¶ 4). Defendant maintains that its employment policies and practices meet the requirements of the Labor Code and applicable Wage Orders (*Id*.) To date, no class has been certified and the Court has not made any findings that Defendant engaged in any wrongdoing or in violation of any state law, rule or regulation, with respect to the issues presented in the litigation (Draper Decl. ¶ 5.)

Through formal and informal discovery, Plaintiff and Defendant have exchanged extensive documents and information related to the claims asserted (Draper Decl. ¶ 6.) Defendant has produced hundreds of pages of information, including handbooks and related policy materials, any existing time data, and wage reports of putative Class Members (*Id*.) Defendant also provided Plaintiff with comprehensive pay and attestation data for the putative group, wage statements, job titles and descriptions, and information regarding the number of exempt employees during the relevant time-period. Plaintiff also utilized an expert for a detailed review of the data provided and for damages models for the number of identified employees whom Plaintiff contends were misclassified (*Id*.).

On April 1, 2024, after conducting formal and informal discovery, exchanging relevant information, and engaging in numerous discussions regarding the claims alleged, the Parties participated in a full-day, hard fought and arms-length mediation before Lisa Klerman, Esq. and were able to reach a settlement soon after, with the assistance of the mediator and a mediator's proposal (Draper Decl. ¶ 7). Thereafter, the Parties exchanged multiple drafts of the proposed settlement agreement and class notice documents and engaged in numerous communications regarding the settlement terms (*Id*.) The final terms and provisions of the settlement agreement were approved and executed by all the Parties on or about August 15, 2024 (Draper Decl. ¶ 7; Exhibit A - Settlement Agreement).

Based on their own respective independent investigations and evaluations and after taking into account the sharply disputed factual and legal issues involved in this matter, the risks attending further prosecution in light of certification issues faced due to the *Brinker Rest. Corp. v. Super. Ct.*, (2012) 53 Cal. 4th 1004 ("*Brinker*") decision, the discovery and investigation conducted to date, Plaintiff and his counsel are of the opinion that settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and adequate and is in the best interests of the named Plaintiff and Class Members (Draper Decl. ¶ 8).

III. SUMMARY OF SETTLEMENT TERMS

A. Settlement Class

The "Class" includes the Class Representative and all putative class members covered by the First Amended Complaint, which is defined as follows: All current and former exempt employees who worked in California for Defendant at any time between April 21, 2019 and the date of preliminary approval. (Settlement Agreement, p.1, ¶ 1.5.)

B. Aggrieved Employees

Aggrieved Employees are Plaintiff and all current and former exempt employees employed in California at any time between April 21, 2022 and the date of preliminary approval (the "PAGA Period"). (Settlement Agreement, p. 4.)

C. Allocation of the Maximum Settlement Amount

1. The total maximum amount of settlement is Two Hundred and Seventy Five Thousand Dollars ($275,000) (Settlement Agreement, p. 2, ¶ 1.22.) This Settlement Amount is inclusive of all settlement payments to Participating Class Members and Aggrieved Employees, Class Counsel's Court-approved attorneys' fees and out-of-pocket litigation expenses, the Court-

approved Service Enhancement to the Class Representative, Settlement Administration Expenses, interest and the LWDA's share of PAGA penalties. (Settlement Agreement, pp. 5-6, ¶¶ 3.1-3.2.4)

2. Subject to Court approval, Class Counsel may seek approval from the Court of a maximum of Ninety Six Thousand Two Hundred Fifty Dollars and Zero Cents ($96,250.00) in attorneys' fees (35% of the Settlement Amount), and a maximum of Twenty Thousand Dollars ($20,000) in actual litigation costs, for serving as Class Counsel, neither of which Defendant will oppose (Settlement Agreement, pp. 5-6, ¶ 3.2.2.)

3. Subject to Court approval, Plaintiff may seek approval from the Court for a Class Representative Service Payment not to exceed Ten Thousand Dollars ($10,000) from the Settlement Amount for a general release of his claims and for serving as a Class Representative, which Defendant will not oppose. (Settlement Agreement, p. 5, ¶ 3.2.1.)

4. Subject to Court approval, reasonable Settlement Administration Expenses to be taken from the Settlement Amount which are estimated not to exceed Ten Thousand Dollars ($10,000). (Settlement Agreement, p. 6, ¶ 3.2.3.)

5. Subject to Court approval, Ten Thousand Dollars ($10,000) shall be allocated to PAGA penalties, from which Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) (75%) shall be payable to the LWDA, representing the LWDA's share of PAGA penalties ("PAGA Allocation") and Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00) (25%) to the PAGA Employees. (Settlement Agreement, p. 6, ¶ 3.2.4.)

6. "Individual Class Payment" means the amount allocated to each Class Member (Settlement Agreement, p. 6, ¶ 3.3.1 and shall be allocated as follows: 100% to non-wage compensation which shall be reported on an IRS 1099 without withholdings (Settlement Agreement, pp. 6-7, ¶ 3.2.2.) The Claims Administrator will calculate the Individual Class Settlement Amount for each Class Member based on each Participating Class Member's workweeks, and the amount to be paid to each PAGA Employee based on the PAGA Employee's PAGA Pay Periods as reflected in GN's internal records. The Individual Class Payments shall be calculated by dividing the Net Settlement Amount by the total number of workweeks worked by all Participating Class Members during the Class Period and multiplying the result by each

Participating Class Member's workweeks, provided that the Participating Class Member has not submitted a Request for Exclusion. (Settlement Agreement, p. 6, ¶¶ 3.3.1 and 3.3.3.) The Individual PAGA Payments will be calculated by dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($2,500) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (Settlement Agreement, p. 6, ¶ 3.2.4.1.)

7. The portion of the Settlement Amount remaining after subtracting the Settlement Administration Expenses, Court-approved attorneys' fees and litigation costs, Court-approved Service Enhancement, and the portion of PAGA penalties payable to the LWDA, shall be designated the "Net Settlement Amount" or "NSA" (Settlement Agreement, p. 3, ¶ 1.28.)

8. Here, there are estimated to be 13 putative Class Members (and thus, the estimated average net recovery of Class Members will be approximately Ten Thousand Three Hundred Sixty Five Dollars ($10,365).[3] These average net recovery amounts are significantly more than other wage and hour class action settlements approved by California state and federal courts. *See, e.g.*, *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately $90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately $65); *Sorenson v. Defendants, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately $60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately $35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately $20); and *Jones v. Bath& Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately $50).

D. <u>Releases</u>

1) <u>Class Member Released Claims</u>

[3] This figure is calculated based on the NSA ($134,750) divided by the number of putative Class Members (13).

The claims released by the Participating Class Members shall be the following: 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 all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and ascertained in the course of the Action, including, *e.g.*, any failure to pay all wages due (including minimum wage, straight time, and overtime wages), failure to pay for all hours worked, failure to provide meal or rest periods, failure to timely pay wages and final wages, failure to maintain accurate records of hours worked and meal periods, failure to furnish accurate wage statements, and failure to provide expense reimbursements (including claims derivative and/or related to these claims). This Release shall include all claims and theories arising under the California Labor Code, the Fair Labor Standards Act, California wage orders, and applicable regulations, including California Labor Code sections 200, 201, 202, 203, 204, 210, 221, 225, 226, 226.2, 226.3, 226.7, 246, 510, 512, 551, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1199, 2800 and 2802, as well as claims under Business and Professions Code section 17200, *et seq.*, and/or California Labor Code section 2698, *et seq.* based on alleged violations of the above Labor Code provisions, as alleged in the Action. Except as set forth in Paragraph 5.3 of the Settlement 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. (Settlement Agreement, p. 9, ¶ 5.2.)

2) <u>PAGA-Released Claims</u>

All Aggrieved Employees (regardless of whether they are Participating Class Members) 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, based on the facts stated in the Operative Complaint during the PAGA Period, Plaintiff's PAGA Notice, and ascertained in the course of the Action, including, *e.g.*, any failure to pay all wages due (including minimum wage, straight time, and overtime wages), failure to pay for all hours worked, failure to provide meal or rest periods, failure to timely pay wages and final wages, failure to maintain accurate records of hours worked and meal periods, failure to furnish accurate wage statements, and failure to provide expense reimbursements (including claims derivative and/or related to these claims). (Settlement Agreement, p. 10, ¶ 5.3.)

3) <u>Class Representative Released Claims</u>

Plaintiff and each of his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorneys' fees, damages, actions or causes of action of whatever kind or nature, contingent or accrued, that occurred in connection with his employment with Defendant, 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 5.3, below, including under any legal theory that was alleged or that could have been alleged for any failure to pay all wages due (including minimum wage, straight time, and overtime wages), failure to pay for all hours worked, failure to provide meal or rest periods, failure to timely pay wages and final wages, failure to maintain accurate records of hours worked and meal periods, failure to furnish accurate wage statements, and failure to provide expense reimbursements (including claims derivative and/or related to these claims) ("Plaintiff's Release"). This Release shall include all claims and theories arising under the California Labor Code, the Fair Labor Standards Act, California wage orders, and applicable regulations, including California Labor Code sections 200, 201, 202, 203, 204, 210, 221, 225, 226, 226.2, 226.3, 226.7, 246, 510, 512, 551, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1199, 2800 and 2802, as well as claims under Business and Professions Code section 17200, et seq., and/or California Labor Code section 2698, et seq. based on alleged violations of the above Labor Code provisions, as alleged in the Action. 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, or workers' compensation benefits that arose at any time, or based on occurrences outside of his employment with Defendant. Plaintiff acknowledged that he may discover facts or law different from, or in addition to, the facts or law that he 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. (Settlement Agreement, pp. 8-9, ¶ 5.1.) 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, which reads:

> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

(Settlement Agreement, p. 9, ¶ 5.1.1.)

E. <u>Notice Procedure</u>

GN will provide the Settlement Administrator, in the form of Microsoft Excel spreadsheet: (a) the Class Member/PAGA Group Member's name; (b) the Class Member/PAGA Group Member's last known mailing address; (c) the Class Member/PAGA Group Member's social security number; (d) the number of workweeks and pay periods in which the Class Member/PAGA Group Member performed work for Defendant during the respective class and PAGA Periods according to the timekeeping data ("Class Data"). GN will provide the Class Data to the Settlement Administrator no later than twenty (20) calendar days after the Court grants Preliminary Approval of the settlement. (Settlement Agreement, p. 7, ¶ 4.2.)

Within twenty (20) calendar days from the date the Settlement Administrator receives the Class Data, the Settlement Administrator shall mail the Class Notice to the Class/PAGA Members described herein. (Settlement Agreement, p.11, ¶ 7.4.2.)

The Settlement Administrator shall mail the Class Notice to Class Members by First Class regular U.S.P.S. Mail. With respect to any returned envelopes, the Settlement Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS not later than 3 business days after receiving the returned Class Notice. 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. (Settlement Agreement, pp. 11-12, ¶ 7.4.3.)

Class Members shall have sixty (60) days from the date of mailing of the Class Notice to return a valid Request for Exclusion from the Settlement to the Settlement Administrator (the "Opt-Out Period"). (Settlement Agreement, p. 12, ¶ 7.5.1.) The deadline for written objections, challenges to workweeks and/or pay periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. (Settlement Agreement, p. 12, ¶ 7.4.4.) Class Members who do not submit a timely or valid Request for Exclusions shall be bound by the Settlement Agreement and its releases (Settlement Agreement, pp. 12-13, ¶¶ 7.5.2-4.)

IV. PRELIMINARY APPROVAL OF SETTLEMENT IS APPROPRIATE

The law favors settlement, particularly in class actions and other complex cases in which substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation. (*Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Potter v. Pacific Coast Lumber Company* (1951) 37 Cal. 2d. 592, 602-603; 4 NEWBERG § 11.41.) To grant preliminary approval of this class action settlement, the Court need find only that the settlement falls within the "range of reasonableness." (*North County Contractor's Ass. Inc. v. Touchstone Ins. Svcs.* (1994) 27 Cal. App. 4th 1085, 1089-1090.) In determining whether a class settlement is fair, adequate and reasonable, courts must consider the following relevant factors: the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount of offered settlement, the extent of discovery completed and the range of the proceedings, and the experience and views of counsel. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *Clark v. American Residential Services, LLC* (2009) 175 Cal. App. 4th 785, 799.) The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." (*Clark*, 175 Cal. App. 4th at 799; *Wershba*, 91 Cal. App. 4th at 245.)

Furthermore, courts must give "proper deference to the private consensual decision of the parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

A. <u>The Terms of the Proposed Settlement are Fair</u>

A preliminary review of the terms of the Settlement Agreement provides no reason to doubt its fairness. A presumption of fairness exists where: 1) the settlement is reached through arms-length negotiations; 2) investigation and discovery are 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 (*Dunk v. Ford Motor Co., supra,* at 1802.) The first three of these factors apply at the preliminary approval stage; the percentage of objectors is determinable only at the final approval stage.

1. <u>The Settlement was Reached Through Extensive Arm's Length Bargaining and Based on the Recommendation Proposed by the Mediator</u>

As already discussed herein, the Parties have conducted themselves in informed, good faith arm's-length negotiations after exchanging extensive information about the claims and defenses of this lawsuit and engaging in pre-mediation and post-mediation discussions aimed at settling their dispute. In attempts to settle this lawsuit, the Parties participated in a full day mediation with Lisa Klerman Esq, and were able to reach a settlement with the assistance of the mediator. (Draper Decl., ¶ 7.) In sum, armed with all of the relevant information and with the help of an experienced mediator, counsel for the parties participated in lengthy, serious and informed negotiations which have resulted in the proposed Settlement Agreement that is now placed before this Court.

2. <u>Investigation and Discovery Were Sufficient for the Parties to Evaluate the Risks Intelligently</u>

Plaintiff conducted significant investigation of the facts and law both before and after the Action was filed. Plaintiff's counsel reviewed voluminous supporting documents and data provided by Defendant through informal discovery and in exchanges of information in preparation for mediation (Draper Decl., ¶¶ 6,7). Plaintiff also undertook an extensive expert analysis of employee data for the class. (*Id.*)

3. <u>Plaintiff's Counsel is Experienced in Similar Litigation</u>

Moreover, counsel for Plaintiff has knowledge of the strengths and weaknesses of the claims against Defendant and the benefits of the proposed Settlement under the circumstances of the case. (Draper Decl. ¶ 9).

4. <u>The Settlement Provides For Reasonable Compensation To Class Members</u>

In seeking approval, a settling party must provide sufficient information to "enable the court to make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker Retail, Inc.,* 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id*. at 625. "Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the claims within a realistic range of outcomes, the settling Plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.

Settling parties are not, however, required to partake in a hypothetical accounting exercise: **"Kullar does not … require any such explicit statement of [maximum] value;** it requires a record which 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.* (2010) 186 Cal. App. 4th 399, 409-10 (citing *Kullar*, 168 Cal. App. 4th at 120) (emphasis added). Overall, "the most important factor" in determining "whether a settlement is fair and reasonable" is the "strength of the case for Plaintiff on the merits, balanced against the amount offered in the settlement." *Id*. at 409 n.6 (quoting *Kullar,* 168 Cal. App. 4th at 130). As discussed further below, the recovery of $275,000 for the Class and PAGA Employees is well within the range of reasonableness and undeniably fair, adequate and reasonable considering the risks and hurdles of continued litigation.

Plaintiff's counsel analyzed the potential liability in this matter based on documents and information produced by Defendant in informal discovery and in preparation for mediation, expert analysis of timekeeping records and payroll data, and took into account the nature of the claims and Defendant's defenses thereto (Draper Decl., ¶ 10).

The damages model used in calculating potential liability was largely based on the number of class members, the number of pay periods and workweeks, the average rate of pay and a pay information, wage statements, job descriptions and duties, and documents produced by Defendant in preparation for mediation. Based on the information provided by Defendant, the estimated number of work weeks is 2,182 during the Class Period. (Draper Decl., ¶ 11). Plaintiff's counsel estimated the maximum potential liability as follows:

a. <u>Alleged Failure to Pay Lawful Wages for All Hours Worked</u>

Plaintiff's claim for failure to pay all lawful wages owed is premised on allegations that, during the Class Period, Defendant failed to pay one-and-a-half times the regular rate when Plaintiff and Class Members worked more than eight hours in one day, and more than forty hours in one week due to their misclassification as exempt employees. Thus, Plaintiff alleged that he and Class Members were underpaid overtime compensation when required to work more than eight (8) hours in a day or more than forty (40) hours in a workweek and were not paid for all hours worked (Draper Decl., ¶ 12). Defendant disputes the allegations that it did not pay the correct overtime compensation to its non-exempt employees and disputes that any of its exempt employees were misclassified and thus owed any overtime. In analyzing the administrative exemption test, Lee and the putative class members were properly classified as exempt employees because they engaged in management like duties (i.e. making recommendations on hiring and firing drivers), acted in a supervisory capacity (i.e. assigning drivers and scheduling breaks), and they had substantial discretion on important matters. Further, all of the putative class members met the salary threshold required for the exemptions because their salaries were greater than twice the California state minimum wage. *See Perine v. ABF Freight Sys., Inc.*, 457 F. Supp. 2d 1004, 1015-16 (C.D. Cal. 2006). (*Id.*) Based on Plaintiff's expert's analysis, Plaintiff contends and believes that GN's alleged failure to pay all wages and underpayment of overtime, based on regular rate, was estimated to be $218,200 (*Id.*).

b. <u>Meal and Rest Period Claim</u>

During the Class Period, due to the alleged work load requirements and time constraints resulting from the demands of work shift, Plaintiff contends that he and Class Members were required to work in excess of five (5) hours without being provided an uninterrupted thirty (30) minute meal period by the end of the fifth hour. (Draper Decl., ¶ 13).

Defendant disputes the allegations that it misclassified any exempt employees and thus they have no entitlement to meal and rest period premiums. Further, Defendant disputes that any allegedly misclassified employees would have been unable to take an uninterrupted, thirty-minute meal break before the fifth hour of their shift. (*Id.*). Defendant gave Lee and the putative class members significant discretion over how they organized and scheduled their day. They were encouraged to take meal and rest breaks whenever needed or desired, and had full opportunity to do so. If they declined to take such breaks, that was a voluntary decision that created no liability to Defendant. And, in fact, the evidence did show that Lee often went to lunch and took breaks. Under California law, an employer need not require or monitor that hourly employees take meal or rest breaks. Rather, employees need only have the opportunity to take those breaks. If employees voluntarily elect not to take breaks, that creates no employer liability. *See Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1034 (2012) (rule for meal periods); *see also Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 265 (2016) (same rule for rest periods). (*Id.*).

Defendant also disputes the propriety of certification on this claim as well, under the holding in *Brinker* and other state and federal decisions. *See also Lampe v. Queen of the Valley*

Medical Center, 19 Cal. App. 5th 832 (2018) (affirming denial of class certification because the "question of whether a missed meal break was due to the employer's failure to allow it or from the employee's voluntary choice not to take it requires an individualized inquiry. . . . The expert's analysis does not change the nature of the claims."). (*Id.*).

Based upon Plaintiff's review of the documents and information provided in anticipation of mediation and the analysis provided by the expert, Plaintiff contends and believes that the estimated maximum potential of the meal break claim was $80,734. This was calculated by multiplying the total number of workweeks (2,182) by an estimate average regular rate of pay ($37) which equals $80,734. However, taking into consideration the nature of the claim, Defendant's defenses (as described above) and issues faced due to *Brinker,* for purposes of settlement, the meal break claim was valued by Plaintiff between $40,367 (50%) and $8,073.40 (10%) (*Id.*).

c. <u>Alleged Failure to Provide Accurate Itemized Wage Statements</u>

Under Lab. Code § 226(e), an employee suffering "injury as a result of a knowing and intentional failure by an employer" to provide accurate wage statements is entitled to $50 for the initial violation and $100 for each subsequent violation up to $4,000. For example, Plaintiff alleges Defendant issued wage statements to Plaintiff and Class Members that provided payment of overtime wages without indicating the applicable hourly rate or hours worked. (Draper Decl. ¶ 14).

Per information provided by Defendant, Plaintiff believes there were approximately 13 Class Members working during the relevant time period for this claim. Thus, if a calculation is performed using the maximum exposure permitted per Class Member under Labor Code section 226, Plaintiff contends and believes that this amounts to a maximum exposure for Defendant of $52,000 based on 13 Class Members x $4,000. However, some of the Class Members working during the relevant time period may have worked for only one pay period during the relevant time period and some may have worked for tens of pay periods. (*Id.*).

Defendant denies that it provided inaccurate wage statements, and instead contends that applicable hourly rates and hours worked were correctly stated on its wage statements. Moreover, so long as the wage statements accurately show the amount Defendant actually paid, employees may not sue on derivative claims that the wage should have reflected additional payments that the employer owed but did not make. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1337 (2018). Further, Defendant argues that, even assuming *arguendo* that any wage statements were in fact inaccurate, Defendant did not "knowingly and intentionally" fail to provide accurate statements and Defendant reasonably and in good faith believed it did not owe any additional wages to the class members. Also, Plaintiff and the class did not suffer any "injury" from such inaccurate wage statements. For purposes of settlement negotiations, Plaintiff valued said claim between an estimated maximum of $52,000 (100%) and $10,400 (20%) (*Id.*).

d. Alleged Failure to Timely Pay Wages

This claim is derivative of the other claims asserted. Pursuant to Labor Code sections 201, 202, 203, 204, and 210, each employee in the relevant statutory period (i.e., three years before the filing of the initial Complaint) is entitled to 30 days' worth of wages as a waiting time penalty for not being paid all wages during employment and upon the separation of employment. Plaintiff alleges that penalties are owed under Labor Code section 203 due to, at a minimum, Defendant's alleged failure to pay wages for all hours worked and failure to pay premium wages. With respect to Lab. Code § 203 claim, there were an estimated total of 9 former Class Members to whom this claim applied. Plaintiff contends and believes that the estimated maximum potential liability was determined to be $99,900 using the formula (# of terminated/former employees) x (30 x estimated average hourly rate x estimated average number of hours worked per day). (9) x (30 x $37 x 10) (Draper Decl., ¶ 15).

For its part, Defendant strongly disputes that there is any evidence that it failed to pay wages that were due. Defendant further argues that Plaintiff would be unable to show willfulness, as required for penalties to issue, because there is a good-faith dispute whether any additional wages are owed given the putative class members were properly classified. *See Takacs v. A.G. Edwards and Sons, Inc.*, 444 F. Supp. 2d 1100, 1126 (S.D. Cal. 2006). Thus, waiting time penalties for the alleged failure to timely wages during employment and at separation cannot be awarded. Further, Defendant employs a robust policy in which it provides final pay on or before the last day of work, and includes penalty payments in the final check if it expects that a terminated employee might be paid after their final day. Moreover, Defendant contends that none of the former employees were misclassified and therefore they were not owed any of the wages allegedly unpaid. (*Id.*)

For purposes of settlement negotiations, Plaintiff valued said claim between $79,920 (80%) and $9,990. (10%) (*Id.*)

e. Failure to Reimburse Business Expenses

The business expense reimbursement claim is based on allegations that Plaintiff and class members were required to utilize their personal cell phones and were not reimbursed by Defendant. (Draper Decl., ¶ 16).

Plaintiff calculated a maximum potential liability at $1,300 assuming an estimated average $100 in unreimbursed expenses per Class Member. However, this claim would be difficult to certify given the predominance of the individualized inquiry as to whether and to what extent each class member was required to utilize their personal cell phones as well as the defenses raised. As such, for purposes of settlement, this claim was valued at $0. (*Id*.)

Defendant disputes that the putative class members were not reimbursed for business expenses. (*Id*.) Defendant requested its employees to submit paperwork to receive a phone stipend every pay period and the majority of the class members did submit and receive the stipend. Furthermore, Defendant offered phones, WiFi, and computers at the office; thus, there would have been very little reason for employees to use their personal phones at work.

f. Bus. & Prof. Code § 17200 Claim

The only remedies available under the unfair competition law ("UCL") Business and Professions Code Section § 17200 *et seq*. are restitution and injunction, as opposed to damages *Clark v. Superior Court* (2010) 50 Cal. 4th 605, 610. The UCL provides that "[t]he court may make such orders or judgments . . . as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition." (Bus. & Prof. Code, § 17203.) Restitution under the UCL includes "earned wages." *Cortez v. Purolator Air Filtration Prods. Co*. (2000) 23 Cal. 4th 163, 177-78.

Restitution under the UCL is not available for all violations of the Labor Code. See *Pineda v. Bank of Am., N.A.*, (2010) 50 Cal. 4th 1389, 1401-02. In *Pineda*, the California Supreme Court held Labor Code § 203 is "not designed to compensate employees for work performed [but] it is intended to encourage employers to pay final wages on time, and to punish employers who fail to do so." (*Id*.) Like Labor Code section 203, section 226 for wage statement violations is also intended to "punish" the employer and is not an action brought to recover wages. *See Gomez v. Jacobo Farm Labor Contractor, Inc.* (2019) 334 FRD. 234, 267-268.

Here, Plaintiff's UCL claim is solely premised on the failure to pay lawful wages and premium wages claims discussed above. Class Counsel assigned a zero-dollar value to the UCL claim because it does not provide any additional value in this Action other than to increase the statute of limitations to four years for the underlying claims. Those claims are valued and analyzed above based on the four-year statute of limitations provided by the UCL. However, the UCL claim in and of itself does not provide any additional damages. Therefore, there is no additional or separate monetary value that this statute provides based on the facts of this Action (Draper Decl., ¶ 17).

Defendant disputes the UCL claim because Plaintiff cannot establish that he lacks an adequate remedy at law; thus, necessitating equitable restitution for a past harm. *See Sonner v. Premier Nutrition Corp*., 971 F.3d 834, 844 (9th Cir. 2020). Further, because Lee bases his Section 17200 claim on the same causes of action discussed above, his Section 17200 claim will fail when the foregoing claims fail. *See Cal. Consumer Health Care Council v. Kaiser Found. Health Plan, Inc.*, 142 Cal. App. 4th 21, 27 (2006) (claims brought under Section 17200 "borrow[] violations of other laws and treat[] them as unlawful practices that the unfair competition law makes independently actionable" (internal quotations omitted).

h. Lab. Code § 2699 *et seq.* (PAGA Claim)

Plaintiff's claims under PAGA are primarily predicated on or derivative of the other claims asserted. Plaintiff's estimated maximum PAGA penalty was calculated as $109,100. This figure attributes a $100 penalty to each of the estimated 1,091 pay periods in scope during the PAGA period. The figure also assumes that there is a 100% violation rate during the PAGA period, such that every single pay period in question involved at least one Labor Code violation, despite disputes regarding Defendant's liability (Draper Decl., ¶ 18). However, PAGA claims under the facts and circumstance of this case may result in no award or at best a very minimal award by the trial court. *See* specifically §2699(e)(2) which states in its pertinent part:

> "… a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

For instance, in *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of 82.2%, because the court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code violations are established. *See Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5 7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40 43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a Plaintiff cannot recover on behalf of individuals whom the Plaintiff has not proven suffered a violation of the Labor Code by the defendant.") Here, Plaintiff would need to prove that each PAGA Employee suffered all violations for each pay period the employee worked. As discussed herein, the nature of the PAGA based claims (i.e. meal period, wage statement, failure to pay all wages owed, and to timely pay wages) and Defendant's asserted defenses thereto present a risk that some or all of the PAGA penalties sought may not be awarded. Given the nature of these claims, as analyzed above, Class Counsel believes it to be likely that if there would be any award it would be a minimal amount. Therefore, the amount of $10,000 (which has been reserved for the PAGA claim) is both fair and reasonable (Draper Decl., ¶ 18).

Defendant denies that a violation for each pay period can be established, and contends that Plaintiff's PAGA claim was untimely and his PAGA notice was defective. Defendant states that because the PAGA Action heavily relies on the same allegations made in the Class Action, they are subject to the same defenses, and, thus, for the same reason Defendant believes there will be no damages collectible in the class action, no PAGA penalties would be awarded, either. Further, if any damages were collectible as PAGA penalties then they would be nominal in that they would be limited to the initial $100 penalty under Labor Code Section 26999 since the $200 penalty is limited to subsequent violations after a court informs the employer of the violation. *See Bernstein v. Virgin Am.*, 3 F. 4th 1127, 1144 (9th Cir. 2021) ("'Until the employer has been notified that it is violating a Labor Code provision . . . the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties.'"). Defendant also asserts that individualized issues predominate the PAGA claims, making the claims unmanageable for trial. Defendant further contends that it has demonstrated good faith and robust efforts to comply with the California Labor Code, and thus a Court would use its discretion to not award and/or substantially reduce any PAGA penalties that Plaintiff was able to establish.

g. <u>Summary</u>

Through his counsel, Plaintiff took into consideration the significant risks that class certification could be denied on the central claim, or that a merits decision on the central claim would not favor the Class. Plaintiff has considered the expense and length of continued proceedings necessary to continue the Action against Defendant through trial and any possible appeals. Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, Defendant's defenses thereto, and the difficulties in establishing Plaintiff's damages (Draper Decl., ¶ 19).

The proposed Settlement requires Defendant to pay each Class Member who does not opt out a portion of the Settlement Amount as specifically set forth in the Settlement Agreement (Draper Decl., ¶ 20). The amount to be paid to the Class is undoubtedly fair, adequate and reasonable especially in light of the significant risk to Plaintiff and Class Members in continuing with the litigation and not prevailing on class certification or at trial (*Id*.)

For all the foregoing reasons, the proposed Settlement Agreement is fair, adequate and reasonable, and is in the best interests of the Class Members.

B. <u>The Plaintiff's Class Representative Enhancement Payment and Class Counsel Attorneys' Fees Are Reasonable and Should be Awarded</u>

The Settlement Agreement provides for an award to be paid to the Class Representative. The primary purpose is to provide Plaintiff an enhancement payment, taking into consideration the risks, time, effort and expenses incurred by their coming forward to provide invaluable information and negotiate and litigate this matter on behalf of all Class Members (Draper Decl., ¶ 21). Plaintiff actively participated in this litigation by providing significant supporting documents and information and assisting counsel in developing information necessary to litigate and settle this case which has resulted in a favorable settlement for the putative Class Members (*Id*.) Thus, the payment to the Class Representative of $10,000 represents a small portion of the aggregate settlement amount and should be awarded.[4]

Further, as will be discussed in more detail in Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement, class counsel fees in the amount of $96,250 is reasonable within California's standard benchmark and well within the range customarily approved by the California courts in comparable class actions.

V. <u>PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE</u>

In addition to such terms as class definition, settlement amounts and payment procedures, the Settlement Agreement reached between the Parties contains a provision by which the Parties stipulate to the Court's provisional certification of the Class, but do so for the purposes of this settlement only. Plaintiff now request that this Court to provisionally certify the Class.

It is well established that trial courts should use a lower standard for determining the propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th at 1794, 1807, fn. 19.) Under California law, a class action is appropriate when the Class is ascertainable and there is a "well defined community of interest in

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[4] Plaintiff will provide a declaration in support of the Class Representative Enhancement in advance of the Final Approval Hearing.

the questions of law and fact affecting the parties to be represented." (Code Civ. Proc., §382; *Dunk*, 48 Cal. App. 4th at 1806.) State law requirements under *California Code of Civil Procedure* section 382 for class certification largely mirrors *Federal Rules of Civil Procedure* Rule 23 – namely, numerosity and typicality of the class representative's claims, adequacy of representation, predominance of common issues and superiority. As discussed below, although Defendant adamantly disputed and continues to dispute Plaintiff's ability to certify a litigation class, Plaintiff contends that all of the requirements of certification for settlement purposes are met for the proposed settlement Class.

A. The Proposed Class is Ascertainable

Here, Plaintiff contends that the proposed class is ascertainable because all of the Class Members are/were employed by Defendant and received their compensation from Defendant. Plaintiff contends that the Class Members have been identified through Defendant's employee and personnel files. (*See Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 ["Class Members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records"].)

B. Numerosity of the Class is Sufficient

If the class is sufficiently large that joinder of all members is impractical or that individual joinder is impractical, the numerosity requirement is met. (*Hebberd v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030.) "[N]o set number is required as a matter of law for the maintenance of a class action." (*Rose*, *supra*, 126 Cal. App. 3d at 934; *see, e.g., Dale Electronics, Inc. v. R.C.L. Electronics, Inc.* (D.C.N.H. 1971) 53 F.R.D. 531, 534, 536 (13 members).) Here, the proposed settlement class consists of approximately 13 members, consisting of Plaintiff and current and former employees of Defendant. Defendant is not disputing numerosity for purposes of settlement. It would be expensive, time-consuming, and duplicative to proceed with 13 different individual lawsuits based on the same claims. Therefore, joinder of individual claims would be impractical and the numerosity requirement is met.

C. There are Common Questions of Law and Fact to the Class

Commonality is met if there are common questions of fact and law to the class. (*Hanlon v. Chrysler Corp.*, 150 F.3d at 1019 ["The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class"].) Here, Plaintiff alleges that the proposed Class Members' claims all stem from the same alleged conduct. Specifically, Plaintiff alleges that Defendant violated California wage and hour law (1) failure to pay lawful wages including overtime; (2) failure to provide meal and rest periods; (3) failure to reimburse necessary business expenses; (4) failure to timely pay wages during employment; (5) failure to timely pay wages at termination; and (6) failure to provide accurate wage statements. Plaintiff seeks recovery of all alleged wages, premium wages, penalties, and interest pursuant to the California Labor Code, the California Industrial Welfare Commission ("IWC") Wage Orders, Bus. & Prof. Code § 17200 *et seq*., and PAGA. Although Defendant disagrees with these contentions for purposes of certifying a litigation class, for purposes of a settlement class, Plaintiff contends that these circumstances create questions of law and fact common to all proposed Class Members.

D. The Typicality Requirement is Met

The typicality requirement is met if the claims of the named Class Representative(s) are typical of those of the class, though "they need not be substantially identical." (*Hanlon*, 150 F.3d at 1020.) Factual differences may exist between the Class and the Class Representative(s) so long as the claims arise from the same events or course of conduct and are based on the same legal theories (*Id*.) Here, Plaintiff contends that the claims of the Class Representative are typical of the other Class Members because he believes that they arise from the same factual basis and are based on the same legal theories as those applicable to all Class Members. (*Wherner v. Syntex* (N.D. Cal. 1987) 117 F.R.D. 641, 644.) Thus, for purposes of a settlement class, Plaintiff submits that the typicality requirement is met.

E. The Adequacy Requirement is Met

If the named representative and his counsel have no interests adverse to the interest of the proposed Class Members and are committed to vigorously prosecuting the case on behalf of the class, then the adequacy requirement is met. (*McGhee v. Bank of America* (1976) 60 Cal. App. 3d 442,450.) Here, under the proposed settlement, the Class Representative will receive a reasonable award for his time and efforts assisting counsel with factual issues surrounding the case and risk incurred in bringing this action on behalf of the Class Members. Other than this specific payment, all Class Members will receive a percentage of the Net Settlement Amount based on his or her respective number of covered work weeks. Therefore, no "settlement allocation" questions are raised. (*Hanlon*, 150 F.3d at 1020.)

Any Class Member who wishes to opt-out of the settlement shall have sixty (60) days from the date of mailing of the Settlement Documents to return a valid Request for Exclusion from the Settlement to the Settlement Administrator (Settlement Agreement, p. 12, ¶ 7.4.4.) As a result, there is no conflict of interest between the Class Representative and the Class Members. Additionally, the Class Representative and his counsel have been committed to prosecuting this action on behalf of the Class.

F. <u>Common Issues Predominate and Class-wide Settlement is Superior to Other Available Methods of Resolution</u>

Class certification is authorized where common questions of law and fact predominate over individual questions and where class-wide treatment of a dispute is superior to individual litigation. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469.) The test is whether the proposed class is sufficiently cohesive to warrant adjudication by representation. (*Hanlon, supra*, at p. 1022.) Plaintiff contends that the proposed Class in this case is sufficiently cohesive since all Class Members share a "common nucleus of facts and potential legal remedies." Specifically, Plaintiff contends that the Class Members and the Class Representative seek compensation for alleged unpaid wages, premium wages for failure to provide compliant meal and rest breaks, as well as penalties and interest for the allegations described herein; common questions about compensation or lack thereof for worked performed by Class Members predominate over individual questions, and the Class Members' potential legal remedies are identical (*Id.*) Although Defendant disagrees with Plaintiff's contentions, it has agreed the Class may be certified for settlement purposes only.

Additionally, particularly in the settlement context, class resolution is superior to other methods for the fair and efficient adjudication of the controversy. (*Hanlon*, 150 F. 3d at p. 1023; *Dunk, supra*, 45 Cal. App. 4th at p. 1087.) The superiority requirement involves a "comparative evaluation of alternative mechanisms of dispute resolution." (*Hanlon, supra*, at p. 1023.) Here, the alternative methods of resolution are numerous individual claims. The class action device can thus conserve judicial resources by avoiding the waste and delay of repetitive proceedings and prevent inconsistent adjudication of similar issues and claims. (*Sav-On Drug Stores, Inc. v Superior Court* (2004) 34 Cal. 4th 319, 340; *Bell v Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 741.) Moreover, the claims of each individual are not high-value. A class suit is appropriate when the injury is of insufficient size to warrant individual action. (*See Aguiar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121, 132-133.) Therefore, settlement on a class-wide basis is superior.

VI. THE PROPOSED CLASS NOTICE IS APPROPRIATE

The Class Notice is attached as Exhibit A to the Settlement Agreement. The Class Notice provides the requisite, pertinent information to Class Members and the options available to them. Should any Class Members wish to exclude themselves from the Settlement, they can send a timely and valid Request for Exclusion to the Settlement Administrator. Should a Class Member wish to object to the Settlement, they can object as described in the Notice. If a Class Member does nothing in response to the Notice, the Class Member will be mailed an individual settlement payment.

A. The Class Notice Satisfies Due Process

California statutory and case law vests the Court with broad authority to fashion an appropriate notice process. (Cal. Rules of Court 3.760 *et seq*.) A proposed method of notice of a proposed settlement is fair, adequate and reasonable if it has "a reasonable chance of reaching a substantial percentage of the Class Members. (*Cartt v. Superior Court* (1975) 50 Cal. App. 3d 960, 974.) The Class Notice plan described herein entails mailing the Class Notice to all known and reasonably ascertainable Class Members based on Defendant's records and provides for a reasonable chance of reaching a significant percentage of Class Members. (*See* Settlement

Agreement, pp.16, 17 ¶¶ 59-60.) Further, such individual notice by first class mail is routinely approved as consistent with due process. (*See, e.g.*, MANUAL at §§21.311, 21.312; Wright & Miller, Fed. Practice & Procedure §1797.6 ["Of course, notice by mail to all of the identified Class Members . . . will suffice."] (citing cases).) The Class Notice is consistent with the class certification notices approved by numerous state and federal courts and is the best notice practicable under circumstances of this case.

B. <u>The Proposed Class Notice is Accurate and Informative</u>

Not only is the manner of the proposed notice proper, so too is the content of the said notice. The proposed notice provides information on the meaning and the nature of the proposed settlement, the terms and provisions of the settlement, the relief the settlement will provide the Class Members, the application of Plaintiff's counsel for reimbursement of costs and attorneys' fees from the settlement amount, the date, the time and place of the Final Fairness and Approval Hearing, and the procedure and deadlines for opting out of the Settlement or for submitting comments and objections. (Cal. Rule of Court 3.769(f).)

The Class Notice also fulfills the requirement of neutrality in class notices. (2 NEWBERG §8.39.) It summarizes the proceedings to date and the terms and conditions of the settlement in an informative and coherent manner, in compliance with the MANUAL'S statement, "the notice should be accurate, objective, and understandable to class members….." (MANUAL at §30.21.) The Class Notice clearly states the settlement does not constitute an admission of liability by Defendant and recognizes the Court has not ruled on the merits. It also states the final settlement approval decision has yet to be made. Accordingly, the Notice complies with the standards of fairness, completeness and neutrality required of a settlement class notice disseminated under the authority of the Court.

Moreover, the Class Notice comports with CA Rules of Court, Rule 3.766(d). As per Rule 3.766, the contents of the Class Notice providing for an opt out procedure for the Class Members must include the following:

(1) A brief explanation of the case, including the basic contentions or denials of the Parties;

(2) A statement that the Court will exclude the member from the class if the member so requests by a specified date;

(3) A procedure for the member to follow in requesting exclusion from the class;

(4) A statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and

(5) A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel.

The Class Notice contains the information required under Rule 3.766(d). (See Ex. A attached to the Settlement Agreement.)

VII. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court enter the [Proposed] Order Granting Preliminary Approval submitted concurrently herewith, and thus:

1. Grant preliminary approval of the Settlement Agreement, and certify the Settlement Class for the purposes of settlement only;

2. Confirm named Plaintiff Lucas Lee as the Class Representative;

3. Confirm attorneys James R. Hawkins, Isandra Fernandez, and Anthony Draper of James Hawkins APLC as Class Counsel;

4. Approve and appoint Phoenix Class Action Administration Solutions as the Settlement Administrator;

5. Enter an Order granting preliminary approval of the proposed settlement and the Notice, and;

7. Schedule the Final Approval Hearing Date on _______, 202__.

Respectfully submitted,

Dated: December 13, 2024 **JAMES HAWKINS, APLC**

____
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Anthony L. Draper, Esq.
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LUCAS LEE