ZACK I. DOMB, SBN 265185
E-Mail zack@dombrauchwerger.com
DEVIN RAUCHWERGER, SBN 274234
E-Mail devin@dombrauchwerger.com
ERIC Y. HAHN, SBN 311771
E-Mail eric@dombrauchwerger.com
DOMB & RAUCHWERGER LLP
1055 East Colorado Blvd., Fifth Floor
Pasadena, California 91106
Telephone: (213) 537-9225

JOANNA GHOSH, SBN 272479
E-Mail: joanna@calljustice.com
SELENA MATAVOSIAN, SBN 348044
E-Mail: selena@calljustice.com
LAWYERS *for* JUSTICE, PC
450 North Brand Blvd., Suite 900
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiffs
Eric Montano and Douglas Lukins and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

ERIC MONTANO, DOUGLAS LUKINS, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiffs,

vs.

PROJECTION PRESENTATION TECHNOLOGY, INC., a Virginia corporation; PROJECTION VIDEO SERVICES, INC., a California corporation, and DOES I through 100, inclusive,

Defendants.

Case No.: CGC-23-608843

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

Hearing Information:

Date: December 3, 2025
Time: 10:00 a.m.
Dept.: 304
Judge: Hon. Ethan P. Schulman

[Filed concurrently with: (1) Declaration of Devin Rauchwerger; (2) Declaration of Selena Matavosian; (3) Declaration of Plaintiff Eric Montano; (4) Declaration of Plaintiff Douglas Lukins; (5) Declaration of Jodey Lawrence, and (6) [Proposed] Order]

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on December 3, 2025, at 10:00 a.m., or as soon thereafter as this matter may be heard by the Court in Department 304 of the San Francisco County Superior Court, located at Civic Center Courthouse, 400 McAllister Street, San Francisco, CA 94102, Plaintiffs Eric Montano and Douglas Lukins, on behalf of themselves and a Settlement Class, will and hereby do move for an Order:

1) Preliminarily approving the proposed class action settlement and PAGA settlement in the above-captioned case;
2) Preliminarily certifying the Settlement Class;
3) Preliminarily approving the appointment of Plaintiffs as Class Representatives;
4) Preliminarily approving the appointment as Class Counsel of Lawyers for Justice, P.C. and Domb & Rauchwerger LLP;
5) Approving appointment of Phoenix Class Action Administration Solutions as the Settlement Administrator;
6) Approving and directing distribution of notice to the Settlement Class; and
7) Setting a final fairness and approval hearing that is approximately 150 days after the Court grants Preliminary Approval.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which permits settlement of a purported class action, allows the Court to preliminarily certify a class for settlement purposes.

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The proposed settlement is fair, adequate, and reasonable and in the best interests of the settlement class as a whole, 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.

Date: November 6, 2025

Respectfully submitted,
DOMB & RAUCHWERGER LLP

By: Devin Rauchwerger

Zack I. Domb
Devin E. Rauchwerger
Eric Y. Hahn
Attorneys for Plaintiffs, Eric Montano, Douglas Lukins, and the Proposed Class

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Treatises

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Eric Montano ("Plaintiff Montano") and Plaintiff Douglas Lukins ("Plaintiff Lukins") (collectively "Plaintiffs") and Defendant Projection Presentation Technology, Inc. and Defendant Projection Video Services, Inc. (collectively "Defendants") have reached a proposed class action settlement. Plaintiffs and Defendants (collectively, the "Parties") submit the Joint Stipulation of Class Action and PAGA Settlement and Release (the "Settlement" or "Settlement Agreement") to the Court for its preliminary approval. The Settlement Agreement ("SA") is attached to the Declaration of Devin Rauchwerger ("Rauchwerger Decl.") ¶ 2 as **Exhibit 1**.[1]

The Settlement provides for a **non-reversionary** payment of $500,000.00 for which Defendants will be separately responsible for any employer payroll taxes. Approximately $187,500.00 will be available for disbursement to participating Class Members (the "Net Settlement Amount"), which does not include the separate PAGA Payments of $75,000.00 (including Individual PAGA Payments) that will be paid only to the PAGA Members. There are believed to be approximately 1,900 Class Members, and the average Individual Settlement Payment will be approximately $98.68 (not including the separate Individual PAGA Payments that will be paid only to the PAGA Members).

The Settlement occurred as a result of extensive arm's length negotiations by experienced counsel after sufficient discovery and investigation into the facts with guidance of Katherine J. Edwards, a highly experienced and well-respected class action mediator. As detailed below, the Settlement is fair, reasonable, and in the best interests of the Settlement Class.

II. BACKGROUND AND PROCEDURAL HISTORY

A. The Pleadings & Nature of The Action

Defendants Projection Presentation Technology, Inc. and Projection Video Services, Inc. are event production companies, providing in-person, hybrid, and fully virtual event production design and services, including presentation management, staging, and sound and lighting

[1] For ease of reference and consistency, defined terms from the Settlement Agreement are utilized below.

services. (Rauchwerger Decl. ¶ 3.) Projection provides traveling event production services to clients at different temporary sites, such as hotels, as well as at four permanent convention center sites in California. (*Id*.)

On June 29, 2023, Plaintiff Montano submitted a letter to the Labor and Workforce Development Agency alleging various violations of the California Labor Code. (Declaration of Selena Matavosian "Matavosian Decl." ¶ 7.) On September 5, 2023, Plaintiff Montano filed the above-entitled civil complaint alleging ten causes of action for: (1) Violation of Cal. Labor Code §§ 510, 1198 (Unpaid Overtime), (2) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums), (3) Violation of Cal. Labor Code § 226.7, (Unpaid Rest Period Premiums), (4) Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1 (Unpaid Minimum Wages), (5) Violation of Cal. Labor Code §§ 201, 202 (Final Wages Not Timely Paid), (6) Violation of Labor Code §§ 204 (Wages Not Timely Paid During Employment), (7) Violation of California Labor Code § 226(a) (Failure to Provide Accurate Itemized Wage Statements), (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records), (9) Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses), and (10) Violation of Cal. Business & Professions Code § 17200, *et seq*. (*Id.*) The same day, Plaintiff Montano filed a separate Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code section 2698, et. Seq, alleging a single cause of action for civil penalties pursuant to the PAGA. (*Id.*)

On March 11, 2025, Plaintiff Montano sent an amended letter to the LWDA and Defendants, adding Plaintiff Lukins as an additional named Plaintiff as part of the PAGA claim. (Matavosian Decl. ¶ 7.)

Lawyers for Justice filed a Notice of Association on July 7, 2025, associating in Domb & Rauchwerger LLP into the case in order to assist with the settlement agreement and process. (Rauchwerger Decl. ¶ 4; Matavosian Decl. ¶ 8.)

On November 5, 2025, Plaintiff Montano filed a First Amended Complaint, adding Plaintiff Lukins as an additional plaintiff and adding a cause of action for penalties under PAGA

("Operative Complaint"). [2] (Matavosian Decl. ¶ 7.)

B. Discovery Taken By The Parties

Plaintiffs' Counsel propounded multiple sets of formal written discovery, however the Parties agreed to hold off on formal discovery pending mediation and instead obtain and exchange information via informal discovery. (Matavosian Decl. ¶ 10.) The Parties also held numerous meetings and informal conference prior to the mediation wherein they exchanged information, additional class data, and theories of the case. (*Id.*) Class Counsel analyzed a volume of information, documents, and data obtained from Plaintiffs, Defendants, and other sources. (Matavosian Decl. ¶ 11.)

C. Mediation With Katherine J. Edwards, Esq.

The Parties participated in a full-day mediation with Katherine J. Edwards, Esq. on October 15, 2024. (Matavosian Decl. ¶ 12.) The Parties agreed to use Ms. Edwards based on her excellent skills and experience as a mediator in wage-and-hour class actions such as this one. (*Id.*) After contentious and lengthy negotiations, the Parties accepted a mediator's proposal of $500,000.00, which was ultimately memorialized in an Memorandum of Understanding, which became effective on February 13, 2025. (*Id.*) Thereafter, the Parties negotiated and executed the long-form Settlement Agreement. (Rauchwerger Decl. ¶ 4.) Lawyers for Justice, P.C., asked Domb & Rauchwerger LLP if their offices would associate into the case in order to facilitate getting the Settlement finalized and approved. (*Id.*)

III. LEGAL ANALYSIS OF SETTLEMENT

A. Two-Step Settlement Process

Any settlement of class litigation must be reviewed and approved by the Court. (Cal. Rules of Court, rule 3.769; Fed. Rules Civ. Proc. 23(e).[3]) This is done in two steps: (1) a preliminary review by the trial court, and (2) a final review after notice has been distributed to

[2] Plaintiff Montano will ultimately dismiss the separately filed PAGA only action once the Parties obtain final approval and a judgment in the present matter.

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

the Settlement Class informing them of the terms of the settlement and allowing them to exclude themselves from and/or object to the settlement.

B. <u>The Settlement Warrants Preliminary Approval Because It Is Fair And Reasonable.</u>

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial Court. (*Wershba v. Apple Computer* (2009) 91 Cal.App.4th 224, 234-235; *Dunk v. Ford Motor Co.* (1966) 48 Cal.App.4th 1794.) Pursuant to California Rules of Court, rule 3.769(d), parties also may, at the preliminary approval stage, request that the Court provisionally approve certification of the class conditional upon final approval of the settlement. "[P]re-certification settlements are routinely approved if found to be fair and reasonable." (*Wershba v. Apple Computer, supra,* 91 Cal.App.4th at p. 240.) A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. No one factor should be determinative, but rather all factors should be considered. These criteria have been summarized as follows:

> "If the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement."
>
> Manual of Complex Litigation, Second § 30.44, at 229.

Moreover, a proposed settlement is presumptively fair and reasonable where: (1) the settlement is reached through arm's-length bargaining; (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. (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389 (citations omitted).) Here, as discussed above and further below, the Settlement meets all these criteria, including having been reached through an arms-length negotiation by way of a mediator's proposal, having a sufficient investigation conducted to determine the settlement is fair, and being agreed to by counsel who all have extensive experience with class actions. (Rauchwerger Decl. ¶¶ 27-29; Matavosian Decl. ¶¶ 2-6.)

Furthermore, there is no reason to suspect that the number of class members objecting will be high. (Rauchwerger Decl. ¶ 5.)

C. **<u>Due To The Risks Of Continued Litigation, The Settlement Is Fair And In The Best Interests Of The Class.</u>**

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel believe that the settlement with Defendants for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, adequate, and is in the best interest of the Class in light of all known risks, facts and circumstances. (Rauchwerger Decl. ¶ 6.) These risks include: the risk of significant delay in class members receiving any type of funds, particularly if the Defendants were to declare bankruptcy; risks associated with a contested class certification; the defenses asserted by Defendants, including the argument that the matters at issue will require individualized issues that make class certification inappropriate, that the proposed class consists of unionized employees, represented by different unions with different collective bargaining agreements, and non-unionized employees who work at varied events across different, non-uniform worksites, that Plaintiffs are not typical, that Defendants properly compensated all hourly employees for all hours worked, that the overtime claim is statutorily barred under Labor Code section 512 and pre-empted by section 301 of the Labor Management Relations Act (29 U.S.C. § 185), and that Defendants provided compliant meal and rest breaks and properly reimbursed employees for any business expenses; the potential for the Court to reduce PAGA penalties; the prospect of Defendant obtaining releases from putative class members; and numerous potential appellate issues. (*Id.*)

Finally, the Settlement was reached after lengthy negotiations, exchange of documents and information, and with the assistance and supervision of Katherine J. Edwards, Esq., who has mediated numerous wage-and-hour class actions, and clearly qualifies to oversee serious and informed negotiations conducted by the Parties. (See *Toure v. Amerigroup Corp.* (E.D. N.Y. 2012) 2012 WL 1432302, at *1 ("The assistance of an experienced mediator, Linda Singer, Esq., reinforces that the Settlement Agreement is non-collusive"); *Morales v. Stevco, Inc.* (E.D. Cal. 2011) 2011 WL 5511767, at *11 (concluding that the class action settlement was not collusive because "[t]he parties utilized an impartial mediator, and the matter was 'resolved by means of a mediator's proposal.'").)

D. The *Kullar* Requirements

In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Court of Appeals explained that, although "not exhaustive," a determination of whether a settlement is "fair, adequate and reasonable" should take into account the strength of a plaintiff's case, the risk, expense, complexity and the likely duration of further litigation. (*Id*. at 127-128.) Subsequently, in *Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, the Court of Appeals clarified:

> "[Appellant] misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the Plaintiffs class could recover if it prevailed on all its claims—a number which appears nowhere in the record of this case. But Kullar does not, as [Appellant] claims, require any such explicit statement of 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."

(*Id.* at 409 (quoting *Kullar*, 168 Cal.App.4th at 120))

Here, the potential damages for the causes of action asserted in the Action along with the relative risks, complexities, and expenses are detailed below. The key data points and associated documentation upon which Plaintiffs relied in analyzing the exposure are as follows:

- Total Class Size: Approximately 1,900 individuals.
- Total number of Workweeks for class between September 5, 2019 through May 15, 2025: 11,160 weeks.
- Total Former Employees within 3-year SOL: 611.
- Total number of employees within 1-year SOL: 1,201.
- Total PAGA Employees: 1,231.
- Total number of Pay Periods for PAGA members from June 29, 2022 through May 15, 2025: 5,301.
- Average Regular Rate: $43.46 per hour**.**

(Rauchwerger Decl. ¶ 7.)

1. Failure to Pay Minimum and/or Overtime Wages

Plaintiffs allege that Defendants' uniform policies and practices regularly required them to work off the clock, for which they were not paid. (Rauchwerger Decl. ¶ 8.) Plaintiffs allege that while Defendants' policies and practices required employees to perform work beyond their scheduled hours, Defendants prohibited employees from recording unauthorized overtime. (*Id.*)

To determine Defendants' reasonable exposure to the class for these off the clock allegations, Plaintiffs' counsel assumed that employees lost approximately 30 minutes per workweek due to Defendants' policy of not allowing employees to record unauthorized overtime. (Rauchwerger Decl. ¶ 9.) Based on the 11,160 workweeks, and using the average overtime rate of $65.19 per hour, this would mean that employees would have lost approximately $363,760.20. (*Id.*)

The risks related to proving these off-the-clock wage and overtime claims are significant, as it is impossible to discern from the records the exact amount of alleged off-the-clock work that each employee purportedly performed and what they are entitled to; these questions could be viewed as creating individualized issues inappropriate for class certification, particularly since Plaintiffs would bear the burden of establishing liability for alleged off-the-clock work. (Rauchwerger Decl. ¶ 10; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1051 [holding "that employees are clocked out creates a presumption they are doing no work, a presumption [plaintiff] and the putative class members have the burden to rebut. As all parties agree, liability is contingent on proof [the employer] knew or should have known off-the-clock work was occurring."].) Additionally, Defendants will argue that Plaintiffs' claim for unpaid overtime wages is statutorily barred under Labor Code section 512 and pre-empted by section 301 of the Labor Management Relations Act (29 U.S.C. § 185.) because the collective bargaining agreements at issue provide for "wages, hours of work, and working conditions" and "premium wage rates for all overtime hours worked." (Rauchwerger Decl. ¶ 10.)

2. Failure to Provide Meal Periods

Plaintiffs contend that they and the Class Members routinely did not receive lawful and compliant meal periods, nor were they paid meal period premiums when a meal period was missed, short or delayed. (Rauchwerger Decl. ¶ 11.) Furthermore, Plaintiffs contend that Defendants' written meal and rest break policies do not comply with all of the requirements under California law. (*Id.*) The premium owed for failing to provide a legally mandated meal or rest period, providing a short or interrupted meal or rest period, is payment of one hour of wages at the employee's regular rate of pay. The range of this claim depends on the number of meal periods that Class Members were denied as a result of Defendants' policies.

To determine Defendants' reasonable exposure for meal break violations, Plaintiffs' Counsel used the meal break violation rate derived from the sample data, which was approximately 32%. (Rauchwerger Decl. ¶ 12.) It should be noted that this is likely significantly lower to the extent that Defendants had meal break waivers in place for employees who worked more than five but less than six hours without taking a meal period, or employees who worked more than ten but less than twelve hours without taking a second meal period. (*Id.*) During the putative class period, Defendants paid at least 2,552 hours of meal period penalties for a total of over $140,000. (*Id.*) However, using the 32% violation rate, and extrapolating this out to the data set, the expected number of violations of the entire class would be 11,160 workweeks x 5 shifts per week x 32% = 17,856 violations x $43.46 per violation = $776,021.76. (*Id.*)

The risks related to this claim are significant because the violation rate is likely significantly lower when taking into account meal break waivers and meal period penalties paid. (Rauchwerger Decl. ¶ 13.) In order to certify the meal break claim, Plaintiffs would need to rely on testimony from putative class members regarding how their meal breaks were either interrupted or were spent performing work activities. (*Id.*) However, such arguments could be viewed as creating individualized issues that may make class treatment inappropriate. (*Id.*)

3. <u>Rest Break Claim</u>

Plaintiffs also argued that they and other employees were not provided with all compliant rest breaks that employees were entitled to take. (Rauchwerger Decl. ¶ 14.)

Rest period premiums were calculated in the same fashion as meal periods. (Rauchwerger Decl. ¶ 14.) Estimating that each Class Member did not receive a compliant rest break at the same rate that they were denied meal periods, Defendants' exposure to the Class for missed rest breaks is $776,021.76. (*Id.*) However, there are unique risks to the unrecorded rest period claims because, *inter alia*, employers are not required to record rest periods and such rest periods are paid. (*Id.*) Thus, unlike meal periods, where there are often records showing whether an employee was subject to a violation, there is no such evidence to prove a missed rest period. (*Id.*) Managing such claims at trial may be exceedingly difficult. (*Id.*) Plaintiffs will depend on sample witness testimony and surveys to prove the claims. (*Id.*) While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. (*Id.*) (See *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 31 (explaining "[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling.").)

4. <u>Failure to Reimburse Necessary Business Expenses</u>

Plaintiffs contended that Defendants failed to reimburse Plaintiffs and other hourly paid employees for use of their personal cell phones for work purposes. (Rauchwerger Decl. ¶ 15.) California Labor Code section 2802 requires employers indemnify their employees for all necessary expenditures made by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

For this claim, Plaintiffs' counsel estimated an average of $5 per workweek in unreimbursed business expenses, which equates to $55,800. (*Id.*)

5. <u>Failure to Provide Accurate Written Wage Statements (Lab. Code § 226 (a))</u>

Plaintiffs contend that due to allegedly working off the clock and lack of premium pay for purportedly noncompliant meal/rest periods and/or accurate calculation and payment of wages, the Class Members' wage statements were not accurate. (See *Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal.5th 93, 117 (Because premium pay for missed meal and rest breaks under Lab. Code, § 226.7 compensated employees for the work performed during a break period and therefore constituted wages within the meaning of Lab. Code, §§ 200, subd. (a), 203, 226, penalties are available for an employer's alleged failure to timely pay or report such payments.).)

(Rauchwerger Decl. ¶ 17.) Pursuant to Labor Code section 226(e), statutory damages are "fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000)." As proving actual damages for each employee on a class-wide basis is unlikely, this claim would likely be subject to a one-year statutory period.[4]

The putative class consists of a large number of employees who worked very short periods of time for Defendants due to the nature of Defendants' event services business. (Rauchwerger Decl. ¶ 18.) As a result, very few employees would have worked enough pay periods to reach the $4,000 max penalty amount for wage statement violations, which means calculating penalties pursuant to the number of pay periods rather than the number of putative class members would lead to a more accurate penalty assessment. (*Id.*)

Plaintiffs contend that each paystub failed to include complete itemizations for monies owed, including overtime, the number of hours the Class Members worked and the appropriate hourly rates, and the meal and rest break premiums owed to the Class Members. (Rauchwerger Decl. ¶ 19.) There were approximately 1,201 class members that worked during the one-year statute of limitations for a total of 5,023 pay periods. (*Id.*) If we assume that the first pay period for each employee (e.g. 1,201 pay periods) are paid at the $50 rate, and the remaining 3,822 pay periods are paid at the $100 penalty rate, that would equate to a total penalty amount of $442,250. (*Id.*)

Given recent case law updates, there are certainly hurdles to obtaining class certification with respect to the Labor Code section 226 claim, particularly since the wage statement violations are purely derivative of the other claims. (Rauchwerger Decl. ¶ 19.) Defendants contend that the wage statements were accurate in all material respects and that Labor Code

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[4] "Courts that have recognized that two limitations periods apply to Section 226 have uniformly found that the $50 and $100 figures recoverable under Section 226(e)(1) are penalties, subject to a one-year limitation period." *Novoa v. Charter Communs., Ltd. Liab. Co.* (E.D. Cal. 2015) 100 F.Supp.3d 1013, 1025 (citing *Taylor v. W. Marine Prods.* (N.D. Cal. Sep. 19, 2014) No. C 13-04916 WHA, 2014 U.S. Dist. LEXIS 133728, at *7; *Sarkisov v. Stonemor Partners* (N.D. Cal. Apr. 3, 2014) *L.P.*, No. C 13-04834 WHA, 2014 U.S. Dist. LEXIS 47021, at *2; *Mouchati v. Bonnie Plants, Inc.* (C.D. Cal. Mar. 6, 2014) No. EDCV 14-00037-VAP (SPx), 2014 U.S. Dist. LEXIS 60855, at *8-9; *Singer v. Becton, Dickinson & Co., Med.-Safe Sys.* (S.D. Cal. July 23, 2008) No. 08cv821 IEG (BLM), 2008 U.S. Dist. LEXIS 56326, at *4-5e.

section 226 requires "a knowing and intentional failure by an employer to comply with subdivision (a)." (*See* Lab. Code § 226(e); *see also* Lab. Code § 226(e)(3) (For purposes of this subdivision, a "knowing and intentional failure" does not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake.")) In this regard, Defendants contend that any failure to include information on wage statements was an inadvertent or isolated mistake, and Defendants had a reasonable, good faith belief that their employees were being provided wage statements in compliance with Labor Code section 226(a). (*Naranjo v. Spectrum Sec. Servs., Inc.* (2024) 15 Cal.5th 1056, 1065 ["We now conclude that if an employer reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law."].).

6. <u>Failure to Timely Pay All Final Wages</u>

An employer who willfully fails to pay any wages due to a terminated employee at the time of their termination or within 72 hours for employees who quit, may be assessed a waiting time penalty pursuant to California Labor Code section 203. The waiting time penalty is an amount equal to the employee's daily rate of pay for each day the wages remain unpaid, up to a maximum of 30 calendar days. From the class list provided to Plaintiffs at mediation, there were 611 separated employees who worked during the three-year statute of limitations. (Rauchwerger Decl. ¶ 20.) Using the hourly rate of $43.46, the potential exposure for waiting time penalties is $6,372,974.40 ($43.46/hour x 8 hours/per x 30-day maximum x 611 separated employees). (*Id.*) However, to prevail under Section 203, Plaintiffs must establish not only the underlying violations addressed above and that the wages were paid late, but also that Defendants' failure to timely pay such wages was willful. (Lab. Code § 203(a).) A good faith belief in a legal defense precludes any finding of willfulness. (*Naranjo v. Spectrum Sec. Servs., Inc.* (2023) 88 Cal.App.5th 937, 944–948 [affirming the trial court's ruling that, although meal period premiums were owed to employees, a good faith dispute that such premiums were owed precluded imposing waiting time penalties], affirmed on other grounds in *Naranjo v. Spectrum Sec. Servs., Inc.* (2024) 15 Cal.5th 1056, 1065; *Gonzalez v. Downtown LA Motors* (2013) 215

Cal.App.4th 36, 54.)

7. <u>Civil Penalties Pursuant to the Private Attorney General Act of 2004 ("PAGA") (Lab. Code § 2698 *et seq*.)</u>

PAGA penalties for unpaid minimum wages and meal period violations are $100 per pay period for each initial violation and $200 per pay period for any subsequent violation. (Lab. Code § 2699(f)(2).) Courts have held that there is no "subsequent violation" until an employer has been notified by the Labor Commissioner or a court that its practices are in violation of the law. (*Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355–356; *Amaral v. Cintas* (2008)163 Cal.App.4th 1157). A Court also may award a lesser amount "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." (Lab. Code § 2699 (e)(2).) The statute of limitations under PAGA is one year.

There are 5,301 pay periods that were worked by approximately 1,231 PAGA employees in the PAGA period. (Rauchwerger Decl. ¶ 21.) Assuming that no penalty "stacking" will apply (i.e. the imposition of multiple penalties per pay period) and that the Court will use the violation rate of $100 per pay period, potential PAGA penalties equal $530,100. (*Id.*) Plaintiffs' PAGA claims are also predicated on the violations described above, and thus subject to the same disputes and defenses. (*Id.*) Additionally, PAGA states that a court has discretion to award a lesser amount than the maximum penalty. (Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 528-529 (affirming the trial court's PAGA penalty award of $5 per violation). These uncertainties increased the risks related to the PAGA cause of action.

Pursuant to California Labor Code section 2699(l), the Settlement Agreement and motion for preliminary approval have been provided to the Labor and Workforce Development Agency and a proof of service is attached as **<u>Exhibit 2</u>** to the Declaration of Devin Rauchwerger. (Rauchwerger Decl. ¶ 22.) The amount to be paid to the LWDA ($56,250.00 of the $75,000.00

total) comports with PAGA settlement amounts approved by other courts.[5]

8. Unfair Competition (Bus & Prof. Code § 17200 *et. seq.*)

Though Plaintiffs may assert a UCL claim for purported wage violations, remedies are still limited to restitution and injunctive relief. (See *Korea Supply v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1148-51; see also *Cortez v. Purolator Air Filtration Prod. Co.* (2000) 23 Cal.4th 163, 173.) In wage-and-hour class actions, a UCL claim typically has little to no independent value and is instead pled for the purposes of extending the statute of limitations on unpaid wage claims to four years. The unfair competition law's (UCL) four-year limitations period, rather than the shorter periods of limitation applicable to contractual or statutory wage claims, governs a UCL action based on failure to pay wages because the UCL provides that "any" action on "any" UCL cause of action is subject to the four-year period of limitations. (*Cortez v. Purolator Air Filtration Prod. Co.* (2000) 23 Cal.4th 163, 178.)

9. Total Damages.

Based on the above estimates, the total amount of possible damages that the class could be awarded at trial, including PAGA penalties, is approximately $8,919,353.12[6]. (Rauchwerger Decl. ¶ 23.)

IV. CLASS CERTIFICATION ANALYSIS

A. The Class Is Properly Certified For Settlement Purposes.

Plaintiffs seek certification of this action for settlement purposes under California Code of Civil Procedure section 382. The California Supreme Court has summarized that:

> "Code of Civil Procedure section 382 authorizes class actions when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court. The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. The "community of interest" requirement embodies three factors: (1)

[5] *See Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of $7,500 to LWDA out of $6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of $7,500 to LWDA out of $1.25 million common fund settlement); *Hicks v. Toys 'R' Us–Delaware, Inc.* (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving $5,000 PAGA payment in a case involving $4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801 at *14 (approving PAGA penalties of $10,000 as part of $2.5 million settlement).

[6] This takes into account 25% of the total PAGA penalties that would be awarded to the PAGA members, since 75% of the fees go to the LWDA. (Rauchwerger Decl. ¶ 23.)

> predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class Representatives who can adequately represent the class."

(*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (internal citations omitted)).

While Defendants reserve all rights to dispute Plaintiffs' ability to satisfy any of the requirements for class certification, the Parties agree that for purposes of settlement, Defendants will not raise such a dispute. (Rauchwerger Decl. ¶ 24.) Therefore, the proposed Settlement Class should be certified for purposes of settlement.

1. <u>The Proposed Class is Numerous and Ascertainable</u>

The class consists of approximately 1,900 members with specifically identifiable information. (Rauchwerger Decl. ¶ 25.) The requirement of Code of Civil Procedure section 382 that there be "many" parties to a class action suit is indefinite and has been construed liberally. (*Renken v. Compton City School Dist.* (1962) 207 Cal.App.2d 106, 113.) No set number is required as a matter of law for the maintenance of a class action. (*Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030; See also *Bowles v. Superior Court* (1955) 44 Cal.2d 574 (class with 10 members sufficiently numerous); see also *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 (class of 48 members satisfies the numerosity requirement).) Class members are "ascertainable" where they may be readily identified without unreasonable expense or time by reference to official records. (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932.) Here, the class is sufficiently numerous and there is a common interest to many persons as this claim will confer significant benefits to those persons. (Rauchwerger Decl. ¶ 25.) Furthermore, it would be impracticable to bring all of them before the Court on an individual basis. (*Id.*) Moreover, the Class is readily ascertainable as Defendants are in possession of contact information for its current and former employees via regularly maintained employment records. (*Id.*)

2. <u>The Community of Interest Requirement Is Also Satisfied.</u>

"The 'community of interest' requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) Here, the common questions of law and fact clearly exist, as the underlying dispute involves Defendants' employment policies and practices which affected all the employees in the proposed Class. (Rauchwerger Decl. ¶ 26.) Plaintiffs are typical of the class they seek to represent because Plaintiffs worked for Defendants, contend that the alleged violations occurred as a result of a common policy affecting all the putative Class Members, and contend that they had a similar experience to each of the Class Members because they were all subjected to common policies and practices by Defendants. (Declaration of Eric Montano "Montano Decl." ¶¶ 3-4; Declaration of Douglas Lukins "Lukins Decl." ¶¶ 3-4.)

B. Class Counsel Has Extensive Experience In Class Actions And Similar Cases.

Class Counsel have extensive experience in similar cases and believe that the proposed Settlement is adequate, reasonable, fair, and in the best interests of all class members. (Rauchwerger Decl. ¶¶ 27-29; Matavosian Decl. ¶ 2-6.)

C. The Class Representatives Are Adequate.

Plaintiffs Montano and Lukins are adequate Class Representatives who have similar, co-extensive interests with the proposed Class Members. (Rauchwerger Decl. ¶ 30.) Plaintiffs have remained intricately involved in this lawsuit and have understood their responsibilities with respect to the class. (Montano Decl. ¶ 5; Lukins Decl. ¶ 5.) Plaintiffs understood from the beginning that they had a duty to look out for the best interests of the Class, and they understood that by taking on this case, they were agreeing to take on significant responsibility, which could include having to be deposed and provide extensive information to respond to discovery requests, as well as potentially testifying at trial. (*Id.*) Plaintiffs have taken their responsibility as Class Representatives seriously and learned the laws as they relate to the payment of wages, requirements for meal and rest periods, and other issues related to this Action. (Montano Decl. ¶ 6; Lukins Decl. ¶ 6.) Moreover, Plaintiffs are unaware of any conflicts between their own interests and goals and the interests and goals of anyone else in the Class. (Montano Decl. ¶ 7; Lukins Decl. ¶ 7.)

D. The Proposed Enhancement Payments To Plaintiffs are Reasonable.

In connection with the final approval hearing, Class Counsel will request approval of the Enhancement Payments of $7,500.00 to each Plaintiff for their service as Class Representatives and in consideration for a general release of all claims against Defendants. This amount is based on the extent of Plaintiffs' assistance in this lawsuit, including providing relevant information and documents to Class Counsel, answering various questions and providing additional information throughout the entirety of the case, reviewing the complaint and reviewing the settlement agreement and having related discussions. (*See* e.g., Montano Decl. ¶¶ 4-6; Lukins Decl. ¶¶ 4-6.) This amount is also reasonable given that Plaintiffs are providing a general release of all known and unknown claims against Defendants. The requested incentive payment is well within the accepted range of awards for purposes of preliminary approval. (*See*, e.g. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393).

E. Settlement Administration Costs are Reasonable.

The parties agreed upon Phoenix Class Action Administration Solutions ("Phoenix") based on their reputation and the quality of the administration work they have performed in other cases. (Rauchwerger Decl. ¶ 31.) Phoenix works in the settlement administration business, and costs of administration should not exceed $17,500.00. See, e.g., Phoenix Class Action Administration Solutions Decl. ¶¶ 5-15.) Phoenix is highly qualified to administer the settlement and has significant experience with class administration. (*Id*.) Plaintiffs respectfully request that the Court approve the appointment of Phoenix Class Action Administration Solutions as the Settlement Administrator. (Rauchwerger Decl. ¶ 31.)

V. THE PROPOSED SETTLEMENT

A. The Settlement Class & Released Claims

Class & Class Size: The "Class Members" or "Class" is defined as: "all current and former non-exempt, hourly-paid employees who were employed by Defendants in California at any time during the Class Period". (SA § 9(d).) The "Class Period" means "the time period from September 5, 2019 through May 15, 2025, or, if applicable, the Alternate Class Period End Date or Alternate PAGA Period End Date, pursuant to Paragraph 42." (SA § 9(f).) Class

Members who do not submit a timely and valid Request for Exclusion from the Class Settlement are referred to as the "Settlement Class Members" or "Settlement Class." (SA § 9(mm).)

<u>Release</u>: The scope of the release for participating Class Members is limited only to claims that were asserted or could have been asserted against the Released Parties based on, arising out of, or relating to the facts or allegations set forth in any of the complaints filed in the Litigation, including, but not limited to the Operative Complaint. (SA §§ 9(ff), 35(a).) The named Plaintiffs have agreed to a broader release, which only applies to the named Plaintiffs. (SA § 35(c).) Plaintiffs and the State of California with respect to all PAGA employees, and the PAGA Employees, shall be deemed to have released all PAGA claims, which include all PAGA penalties that were alleged in the Amended PAGA Notice and Operative Complaint in the Class Action or that reasonably could have been alleged based on the factual allegations in the Amended PAGA Notice and Operative Complaint in the Class Action, arising during the PAGA Period. (SA §§ 9(gg) and 35(b).)

B. <u>The Settlement Payment</u>

Defendants will, through the Settlement Administrator, create a ***<u>non-reversionary</u>*** settlement fund in the amount of Five Hundred Thousand Dollars and Zero Cents ($500,000.00) ("Gross Settlement Amount"). (SA § 9(p).) The Individual Settlement Payment will be allocated as follows: twenty percent (20%) wages and eighty percent (80%) penalties, interest, and non-wage damages. (SA § 21(c).) The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages will be reported on an IRS Form-1099 by the Settlement Administrator. (*Id.*) The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payments. (*Id.*) Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099 (if applicable) by the Settlement Administrator. (*Id.*) The employer share of payroll taxes that become due shall be paid separate and apart from the Gross Settlement Amount by Defendants. (SA § 16.) The Escalator Clause provides if the total number of Workweeks exceed 11,160 by more than 10% during the Class Period, at Defendants' option either: (a) the Gross Settlement Amount will be increased on a *pro rata* basis equal to the percentage increase in the number of Workweeks above 12,276 Workweeks, or, (b) the Class Period will end as of the date the ten precent (10%) threshold was reached and such date shall be referred to as the "Alternate Class Period End Date." (SA § 42.)

C. Settlement Payment Distribution Plan

All expenses associated with the Settlement are to be paid from the Settlement's Gross Settlement Amount (SA § 17.), including up to $175,000.00 to Class Counsel for attorneys' fees (35% of the Gross Settlement Amount), and reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement of the Action, supported by declaration, in an amount not to exceed $30,000.00, to Class Counsel for reimbursement of actual litigation expenses incurred (SA § 17.); Settlement Administration expenses up to $17,500.00 to be paid to the qualified Settlement Administrator Phoenix Class Action Administration Solutions to administer the notice and process payments (SA § 19.); Enhancement Payments of $7,500.00 to each Plaintiff for their service as Class Representatives and in consideration for a general release of all claims against Defendants (SA § 18.); and a PAGA Amount of $75,000.00. (SA § 20.) Pursuant to California Labor Code section 2699(i), and subject to approval by the Court under California Labor Code section 2699(l), $56,250.00 or 75% of the PAGA Settlement amount will be paid to the California Labor and Workforce Development Agency, in resolution of the PAGA claims for the PAGA Employees. The remaining $18,750.00 of the PAGA Settlement amount will be paid to the PAGA Employees through Individual PAGA Payments. (SA §§ 9(q), 21(b).)

1. Calculating Participating Class Members' Individual Settlement Payments

All participating Class Members will receive an Individual Settlement Payment. After deducting the amount of the Court-approved Enhancement Payments, Settlement Administration Costs, PAGA Amount, and Attorneys' Fees and Costs, the remaining "Net Settlement Amount" will be distributed to the participating Class Members through "Individual

Settlement Payments." (SA §§ 9(r), 9(v), 21(a).)

Individual Settlement Share Payments will be paid from the Net Settlement Amount and will be apportioned by dividing the estimated Net Settlement Amount by the Workweeks of all Class Members during the Class Period to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks during the Class Period by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share. (SA § 21(a)(i).) The estimated Net Settlement Amount will be approximately $187,500 (not including the $75,000 PAGA Amount).[7] (Rauchwerger Decl. ¶ 32.) Based on the number of class members, the average Individual Settlement Payment is approximately $98.68. (*Id.*)

The Parties agree that the formula for allocating the Individual Settlement Payments to participating Class Members is reasonable and that the payments provided herein are designed to provide a fair settlement to such persons, in light of the uncertainties regarding the calculation of alleged wages, penalties, interest, and expense reimbursement to each Settlement Class Member. (Rauchwerger Decl. ¶ 32.)

2. <u>Calculating PAGA Members' Individual PAGA Payments</u>

Individual PAGA Payments will be calculated and apportioned from the PAGA Employee Amount of $18,750.00. The Settlement Administrator will divide the PAGA Employee Amount, i.e., 25% of the PAGA Amount, by the total number of Workweeks of all PAGA Employees during the PAGA Period to yield the "PAGA Workweek Value," and multiply each PAGA Employee's individual Workweeks by the PAGA Workweek Value to yield his or her Individual PAGA Payment. (SA § 21(b).)

3. <u>Distributions To Settlement Class</u>

Within thirty-seven (37) days after the Effective Date, the Settlement Administrator will mail checks for all (a) Individual Settlement Payments to Settlement Class Members; (b)

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[7] The estimated Net Settlement Amount of $187,500 (which does NOT include the $75,000 allocated to the PAGA Amount, including Individual PAGA Payments) by taking the $500,000 Gross Settlement Amount and subtracting: the requested attorneys' fees of 35% of the Gross Settlement Amount ($175,000), reimbursement of litigation costs (in the maximum amount of $30,000), a Enhancement Payments of $7,500 to each of the named Plaintiffs, Settlement Administrator costs of up to $17,500, and PAGA penalties of $75,000. (Rauchwerger Decl. ¶ 32.)

Individual PAGA Payments to PAGA Employees; (c) LWDA Payment to the LWDA; (d) Enhancement Payments to Plaintiffs; (e) Attorneys' Fees and Costs to Class Counsel; and (f) Settlement Administration Costs to itself (the Settlement Administrator). (SA § 16.) The Parties agreed that all funds remaining in the Qualified Settlement Fund in connection with canceled checks shall be transmitted to the California State Controller's Unclaimed Property Fund to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., in the names of and for the benefit of those Settlement Class Members who did not cash, deposit, or otherwise negotiate their checks, until such time that they claim their property. (SA § 25(e).)

D. Notice To The Class Members

Attached to the Declaration of Devin Rauchwerger as **Exhibit 3** is the [Proposed] Notice of Class Action Settlement and Hearing Date for Final Court Approval. (Rauchwerger Decl. ¶ 34; the Request for Exclusion and Objection forms are attached to the Rauchwerger Decl. ¶¶ 35-36 as **Exhibit 4 and 5**, respectively.) To protect the rights of absent class members, the court must provide class members with the best class action settlement notice practicable. (See Cal. Rules of Court, rule 3.769(f); *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12.) The primary purpose of class notice is to provide affected parties with due process rights reasonably calculated to apprise interested parties of the pendency of the action affecting their interests and an opportunity to present their objections. (See *Ryan v. Cal. Interscholastic Fed'n – San Diego Section* (2001) 94 Cal.App. 1048, 1072.) The proposed Notice of Class Action Settlement and Hearing Date for Final Court Approval satisfies these requirements. The proposed Class notices ensure the Settlement Class is alerted to the terms of the Settlement and allows them to protect their rights. The proposed notice plan, calling for first-class mailed notice to all members of the Settlement Class, is consistent with noticed approved by State and Federal Courts and constitutes the best notice practicable. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 966; *Cooper v. Am. Sav. & Loan Ass'n.* (1976) 55 Cal.App.3d 274, 285.)

VI. CONCLUSION

For the foregoing reasons, the Parties respectfully submit that the Settlement's terms are fair, adequate, and reasonable and that it is in the best interest of the Class Members. Under the applicable class action criteria and guidelines, this Class should be conditionally certified, the Settlement should be preliminarily approved, the Class should be notified regarding the Settlement, and the Court should schedule a final approval hearing for 150 days after the Court grants Preliminary Approval.

Dated: November 6, 2025

Respectfully submitted,
DOMB & RAUCHWERGER LLP

By: Devin Rauchwerger
Zack I. Domb
Devin E. Rauchwerger
Eric Y. Hahn
Attorneys for Plaintiffs, Eric Montano and Douglas Lukins and the Proposed Class