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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

GEROSKA GAY, PATRICIA YOUNG, PHILIP JACKSON, and VANESSA MARTINEZ, individually and on behalf of all others similarly situated, Plaintiffs, vs. PREMIUM RETAIL SERVICES, LLC, a Delaware limited liability company; PREMIUM RETAIL SERVICES, INC., a Delaware corporation; EZAT RAHIMI, an individual; and DOES 1 through 100, inclusive, Defendants.	Case No.: C23-2216 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT** **DATE:** **TIME:** **DEPT:** 39 Assigned to: Hon. Edward G. Weil Action Filed: September 5, 2023 Trial Date: Unassigned

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I. INTRODUCTION

Plaintiffs Geroska Gay, Patricia Young, Philip Jackson, and Vanessa Martinez on behalf of themselves and all others similarly situated (collectively, "Plaintiffs"), file this Unopposed Motion for Preliminary Approval of Class and Representative Action Settlement in this matter brought against Defendant Premium Retail Services, LLC ("Premium" or "Defendant"), (together, the "Parties").

This Action concerns the claims in Plaintiffs' Operative Complaint, alleging Premium's unlawful policy and practice of failing to reimburse for business expenses, and failing to pay all wages due to certain of its non-exempt, hourly workers, including overtime compensation, vacation pay, sick pay, commissions, missed meal and rest breaks and failing to pay related premium wages, inaccurate wage statements, and waiting time penalties, unlawful deductions, failure to keep payroll records, and associated penalties, based on alleged violations of California law. Through extensive informal discovery, intensive mediation, and months of continued arm's-length negotiations by the Parties with the assistance of a respected wage and hour mediator, the Parties have resolved the claims of all individuals employed by Defendant as non-exempt, hourly employees who fall under Defendant's Representative job classification in California at any time between June 13, 2022 and September 26, 2024 (the "Class" or "Settlement Class") for a total non-reversionary Gross Settlement Amount of Three Million Dollars and Zero Cents ($3,000,000.00). These terms are memorialized in the Class and Representative Action Settlement Agreement and Release ("Settlement"), which is attached hereto as Exhibit 1.

The proposed Settlement provides an excellent benefit to the Class and an efficient outcome in the face of expanding litigation. The proposed Settlement satisfies all the criteria for preliminary settlement approval under California law and falls well within the range of reasonableness. The Parties are resolving numerous claims that almost certainly never would have been prosecuted as individual actions, and in so doing provide substantial benefit to the Class. Accordingly, Plaintiffs request that the Court (1) grant preliminary approval of the proposed Settlement; (2) appoint Apex Class Action ("Apex") as Settlement Administrator for the proposed Settlement and approve the estimated costs of settlement administration (estimated not to exceed $30,900.00); (3) appoint Berger Montague PC, Bibiyan Law Group, and D.Law, Inc. as Class Counsel for the Settlement Class ("Class Counsel"); (4) appoint Plaintiffs Geroska Gay, Patricia Young, Philip Jackson, and Vanessa Martinez as Representatives of the Settlement Class; (5) provisionally certify the Settlement Class; (6) preliminarily approve Class Representative Service Payments of $10,000.00 each to Plaintiffs for their efforts on behalf of the Class; (7) preliminarily approve an award of $150,000.00 for penalties under California Private Attorneys General Act ("PAGA"), Labor Code § 2699 (including the Individual PAGA Payments to the Aggrieved Employees and the PAGA payment to the LWDA); (8) preliminarily approve an award of attorneys' fees to Class Counsel in the amount of one third (1/3) of the Gross Settlement Amount ($1,000,000.00), plus reimbursement of Class Counsel's out-of-pocket expenses, not to exceed $65,000.00; and (9) approve the proposed implementation schedule, as set forth in the Notice of Motion, for relevant dates and deadlines regarding the administration and approval of the Settlement, and set a date for the Final Approval Hearing.

II. <u>FACTUAL AND PROCEDURAL BACKGROUND</u>

A. The Original Pleadings

On June 28, 2023, Geroska Gay filed his Class Action Complaint in Contra Costa County Superior Court, Case No. C23-1599. Gay's Complaint alleged violations of the California Labor Code for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal-Period Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Labor Code § 226.7; (5) Failure to Pay Vacation Wages; (6) Failure to Comply with Labor Code § 245 *et seq*. and 246; (7) Reimbursement of Necessary Expenditures Under Labor Code § 2802; (8) Failure to Comply with Labor Code § 2751; (9) Violation of Labor Code § 226(a); (10) Violation of Labor Code § 221; (11) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5; (12) Penalties Pursuant to Labor Code § 203; and (13) Violation of Business & Professions Code § 17200 *et seq*. ("*Gay* Complaint".) Premium filed its Answer to the *Gay* Complaint in Contra Costa County Superior Court on July 31, 2023. On August 7, 2023, Premium removed the *Gay* Complaint to the U.S. District Court for the Northern District of California, Case No. 3:23-cv-03963. On December 1, 2023, the

Court denied Defendant's request for a stay pending resolution of mediation and issued a Case Management and Scheduling Order. On September 5, 2023, Gay filed a lawsuit in Contra Costa County Superior Court against Premium, Case No. C23-2216, seeking penalties under the Private Attorney General Act of 2004, Labor Code § 2698 *et seq*. ("*Gay* PAGA Action".) On January 10, 2024, Premium filed its Answer in the *Gay* PAGA Action.

On August 17, 2023, Patricia Young and Philip Jackson filed their Class and Representative Complaint in the Southern District of California, Case No. 3:23-CV-01515. The *Young* Complaint asserts class and representative action claims for: (1) Failure to Provide Regular Pay/Minimum Wages; (2) Failure to Provide Overtime Premium Pay; (3) Failure to Authorize, Permit and/or Make Available Meal and Rest Periods; (4) Failure to Maintain and Provide Accurate and Compliant Wage Records; (5) Failure to Reimburse Work Related Expenses; (6) Waiting Time Penalties; (7) Violation of California's Unfair Business Practices; and (8) Civil Penalties Under the Private Attorneys' General. ("*Young* Complaint".) Premium filed its Answer to the *Young* Complaint on October 27, 2023. On November 30, 2023, Plaintiffs filed a Joint Motion to Stay Action Pending Alternative Dispute Resolution Process. The Court granted the Parties' Motion on November 30, 2023.

On September 21, 2023, Vanessa Martinez filed her Class Action Complaint in the Santa Clara County Superior Court. The *Martinez* Complaint asserts class action claims for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to pay timely wages; (8) failure to indemnify; (9) violation of Labor Code § 227.3; and (9) unfair competition. ("*Martinez* Complaint".) Premium removed the *Martinez* Complaint to the U.S. District Court for the Northern District of California on November 22, 2023, Case No. 5:23-cv-06084. Premium filed its Answer to the *Martinez* Complaint on November 29, 2023, and an Amended Answer to the Complaint on November 30, 2023. On December 13, 2023, Premium filed a Joint Motion to Stay Action Pending Alternative Dispute Resolution Process in the *Martinez* action. The Court granted the Parties' Motion on December 20, 2023. On August 23, 2024, Martinez filed a lawsuit in Santa Clara County Superior Court, Case No. 24-CV-445918, seeking penalties under the Private Attorney General Act of 2004, Labor Code § 2698 *et seq*. ("*Martinez* PAGA Action".) On October 10, 2024, Premium filed its answer to the *Martinez* PAGA Action.

B. Pre-Mediation Efforts

Following the filing of the aforementioned Actions, the Parties subsequently agreed to engage in an alternative dispute resolution ("ADR") process. As part of their ADR efforts, the Parties engaged in extensive informal discovery, which built upon the discovery and motion practice conducted in a related litigation previously pending in the First Circuit and United States District Court for the District of Massachusetts. *See* Exhibit 2, Declaration of Alexandra K. Piazza ("Piazza Decl.") ¶ 20. Before the mediation and negotiations, Defendant produced voluminous electronic and hard copy data, including time data, pay data, GPS coordinates, class size and workweek information, and information regarding hourly rates. *Id.* ¶ 21. The Parties then each engaged their own independent outside economic experts and spent months analyzing the data production. *Id*. The discovery produced, and expert analysis, enabled Plaintiffs and Class Counsel to rigorously evaluate the strengths and risks of the case and perform a detailed analysis of the potential damages arising from the claims made in this case. *Id*.

C. Settlement

On September 26, 2024, the Parties participated in a full day Zoom mediation session with well-respected class action mediator Michael E. Dickstein, Esq. and thereafter engaged in protracted settlement negotiations facilitated by Mr. Dickstein. In preparation for the mediation, Plaintiffs performed extremely detailed damages analyses, which, due to the amount of data, took months to analyze with the assistance of Class Counsel's expert data analyst, and the Parties met and conferred on several occasions to make sure they were prepared to engage in good faith, arms' length settlement negotiations. *Id.* ¶ 26. The Parties fully executed the long-form settlement agreement on April 28, 2025.

To effectuate the Settlement, the Parties agreed that Plaintiffs would file a First Amended Class and Representative Action Complaint in this Action to add Plaintiffs Patricia Young, Philip Jackson, and Vanessa Martinez as named Class Representatives, and to add all claims and causes of actions from these individual actions. Agreement ¶ 2.20. Plaintiffs filed the Stipulation and Consolidated Complaint on May 15, 2025 and now seek approval of the underlying Settlement.

III. TERMS OF THE SETTLEMENT

A. Monetary Terms

The Settlement provides for a non-reversionary Gross Settlement Amount of $3,000,000.00. Agreement ¶ 1.22. Defendant has agreed to pay the employer's share of payroll taxes separately. *Id.* With the Motion for Final Approval, Class Counsel will seek fees of up to one-third (1/3) of the Gross Settlement Amount, or an estimate of $1,000,000.00, and actual costs not to exceed $65,000.00. *Id.* ¶ 3.2.2. The Settlement also sets aside up to $35,000.00 for the actual costs of settlement administration *Id*. ¶ 3.2.3; $10,000.00 each to Plaintiffs Gay, Young, Jackson, and Martinez for their service to the Class; and $150,000.00 for PAGA penalties. *Id.* ¶ 3.2.1.

Defendant will fund the Gross Settlement Amount within twenty (20) calendar days after the Effective Date. *Id.* ¶ 4.3. The payment will be used to pay 100% of the Settlement Payments to Participating Class Members, the Class Representatives' Service Payments, the PAGA Payment, the Settlement Administration Costs, and the Class Counsel Fees and Costs Payment. *Id.* ¶ 4.4. Settlement Class Members will not be required to submit a claim form to receive their Settlement Payments.

B. Individual Settlement Payments

After deducting the above-referenced amounts from the Gross Settlement Amount, the estimated Net Settlement Amount available to Participating Class Members totals approximately $1,710,000.00 (exclusive of the Individual PAGA Payments outlined below). The Net Settlement Amount is to be allocated among and paid to Participating Class Members (*i.e.*, those Class Members who do not opt out of the Settlement) proportionally: for each week during which the Participating Class Member worked at any time during the Class Period, they shall be eligible to receive a *pro rata* portion of the Net Settlement Amount based on the number of workweeks the individual worked. Each workweek will be equal to one (1) settlement share. *Id.* ¶¶ 1.42; 3.2.4.

One Hundred Fifty Thousand Dollars ($150,000.00) of the Gross Settlement Amount is proposed to be allocated to PAGA Penalties. Of this amount, 25% is allocated to be paid to the

Aggrieved Employees based on the number of PAGA Pay Periods worked during the PAGA Period ($37,500.00) and 75% to LWDA ($112,500.00) as the LWDA's share of the settlement of PAGA civil penalties paid under this Agreement. An Individual PAGA Payment will be paid as a *Pro Rata* Share of the Net Settlement Amount, calculated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($37,500.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. *Id.* ¶¶ 1.36; 3.2.7. The Net Settlement Amount of $1,710,000.00 and Individual PAGA Payments of $37,500.000 total $1,747,500.00 and would provide an average recovery of over $415.00 per Class Member, assuming 100% participation of the approximately 4,206 individuals in the Settlement. Piazza Decl. ¶ 31.

C. Applicable Releases

Upon the Effective Date and full funding of the Gross Settlement Amount, Named Plaintiffs shall release all claims outlined in Paragraph 6.1 of the Settlement Agreement[1]; Participating Class Members who are not also Aggrieved Employees shall release all claims outlined in Paragraph 6.2 of the Settlement Agreement[2]; and Participating Class Members who are also Aggrieved Employees

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[1] Named Plaintiffs released claims shall include "all claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether known or unknown, which exist or may exist on Plaintiffs' behalf as of the date of this Agreement, including, but not limited to, any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to, claims for violation of the Fair Labor Standards Act (FLSA), the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code §§17200 *et seq.*, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance."

[2] The release applicable to Participating Class Members who are not Aggrieved Employees shall include "all class claims, actions, demands, causes of action, suits, debts, obligations, damages, penalties, rights or liabilities, factual or legal theories, of any nature and description whatsoever, whether known or unknown, that were asserted in the Actions and the Operative Complaint, and any claims which reasonably flow from the facts alleged in the Actions and the Operative Complaint, including but not limited to Labor Code sections 200, 201, 201.3, 202, 203, 204, 204b, 204.1, 204.2, 205, 205.5, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 245 *et seq*., 246, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, *et seq*., 2751, 2800 and 2802, and the applicable IWC Wage Orders, and claims under Business and Professions Code sections 17200, *et seq.*, claims for attorneys' fees and costs, and unfair business practices. Released Claims include all claimed or unclaimed compensatory, consequential, incidental, liquidated, restitution, interest, costs and fees, injunctive or equitable relief, and any other remedies available at law or equity, allegedly owed or available to the Participating Class Members arising or reasonably flowing from the allegations

shall release all claims outlined in Paragraph 6.3 of the Settlement Agreement.[3] Importantly, Participating Class Members' Released Claims shall include a release of FLSA claims *only when* the Participating Class Member signs, cashes, or deposits a Settlement Award check. The Settlement Award check shall include the following language on the back of the check:

> By signing, cashing, or depositing this check, I affirm my release of Premium Retail Services, LLC, and all other Released Parties of all Participating Class Members' Released Claims, including claims under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, as defined in the Settlement Agreement approved by the Court.

Id. ¶ 6.2.

D. Notice to Class Members and Settlement Administration

The Parties selected Apex Class Action LLC ("Apex"), a national class action settlement administrator, as the Settlement Administrator, after a rigorous RFP process. *Id.* ¶ 8.1; Exhibit 3, Declaration of Sean Hartranft of Apex Class Action LLC ("Hartranft Decl.") Apex will satisfy due process requirements in notifying the Class Members of the settlement and distributing Settlement payments according to the Settlement. *Id*. ¶ 8.4. Notice of the proposed Settlement will also be provided to the LWDA upon the filing of this Motion.

The Agreement provides for a fair and practicable direct mail procedure for notifying Class Members of the terms of the Settlement Agreement and their respective rights and obligations under the Agreement. *Id.* ¶ 8.4.2. In order to provide the best notice practicable, prior to mailing the Settlement Notice, the Settlement Administrator will take reasonable efforts to identify current addresses and shall use the National Change of Address Database to update any addresses. *Id*. The Settlement Administrator will establish and maintain and use an internet website to post information

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contained in the Actions, against the Released Parties for the time period June 28, 2019 through September 26, 2024. […] The Released Class Claims do not extend to any claims or actions to enforce th[e] Agreement, or to any claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, claims while classified as exempt, and claims outside of the Class Release."

[3] The release applicable to Participating Class Members who are also Aggrieved Employees shall include the Class Release plus any and all civil penalties pursuant to PAGA, whether known or unknown, including any and "all claims, causes of action, and factual or legal theories that were alleged in the Action and Operative Complaint, or reasonably could have been alleged based on the facts and legal theories of the Action and Operative Complaint, including but not limited to the Released Class Claims during the PAGA Period."

of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Operative Complaint; the Settlement Agreement; Motion for Preliminary Approval; the Preliminary Approval Order; the Class Notice; the Motion for Final Approval, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments; the Final Approval Order, and the Judgment. The website shall also include a link for Participating Class Members to submit a change of address/contact information, request to receive Settlement Award payments electronically (*e.g.*, Venmo, ACH, Zelle, PayPal), submit disputes, and/or any additional information the Parties shall mutually agree is necessary to effectuate the Settlement. The Administrator will also maintain and monitor a toll-free telephone number to receive Class Member calls. *Id.* ¶ 8.8.1. The Settlement also provides for a detailed procedure to follow if the mail is returned as undeliverable, and the Settlement Notice will contain the estimated minimum settlement payment for each Class Member. *Id.* ¶¶ 8.4.1-3. Class Members shall have sixty (60) calendar days from the time the Notice is initially mailed by the Settlement Administrator to object to or opt-out of the Settlement ("Response Deadline"). *Id.* ¶ 1.47.

If the Settlement is finally approved, Apex will administer payments to the Participating Class Members, including calculation of payroll taxes and preparation of tax reporting documents. Hartranft Decl. ¶¶ 6–7 & Ex. B. At the conclusion of the 180-day check cashing period, uncashed checks attributable to Individual Settlement Payment checks and Individual PAGA Payment checks shall be transmitted to the Legal Aid Association of California,[4] a *cy pres* recipient agreed upon by the Parties and subject to the Court's approval. Agreement ¶ 4.4.3.

IV. <u>CLASS-ACTION SETTLEMENT APPROVAL PROCEDURE</u>

A class action may not be dismissed, compromised, or settled without the approval of the court.[5] California Rule of Court 3.769 describes three distinct steps for approval of class action settlements

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[4] "The Legal Aid Association of California (LAAC) is the statewide membership organization of legal services nonprofits. Over 100 nonprofit organizations around the state are members of LAAC. These nonprofit member organizations provide critical legal assistance to low-income Californians and ensure equal access to justice." *See* https://www.laaconline.org/about (last visited April 29, 2025).

[5] *See* California Civil Code § 1781(f); California Rule of Court 3.769; *see also* Fed. R. Civ. P. 23(e). The California Supreme Court has authorized and urged California's trial courts to use Federal Rule of Civil Procedure Rule 23 and

by California courts: (1) preliminary approval of the proposed settlement after submission of a written motion for preliminary approval, the proposed class action settlement, and the proposed Class Notice; (2) mailing of notice of the settlement to all affected Members of the Settlement Class; and (3) a final settlement approval hearing at which Members of the Settlement Class may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.[6]

With this Motion, the Parties request that the Court take the first step and grant preliminary approval. The Settlement proposed herein is based on arm's-length negotiations that were guided by Class Counsel's investigation and the evaluation of informal discovery. *See* Piazza Decl. ¶ 29. The negotiations included extensive communications between Class Counsel and counsel for Defendant and a mediation conference supervised by an experienced and respected mediator. *Id.* The proposed Settlement provides substantial benefits for the Settlement Class, and it satisfies all of the required due process protections. Thus, the proposed Settlement is fair, reasonable, and adequate, and Plaintiffs therefore request that this Court grant preliminary approval.

A. Preliminary Approval of the Settlement is Appropriate

The decision to approve or reject a proposed settlement is committed to a court's broad discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–35. To grant preliminary approval of a class action settlement, courts need find only that the settlement falls within the range of possible final approval, also described as "the range of reasonableness." *See, e.g., North County Contractor's Assn. v. Touchstone Ins. Servs.* (1994) 27 Cal.App.4th 1085, 1089–90; *see also Newberg on Class Actions* at § 11:25.

To make this determination, courts must consider several relevant factors, including "the strength of [the] plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent

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federal case law for guidance in considering class action issues. (*Green v. Obledo* (1981) 29 Cal.3d 126, 145–46.)

[6] This procedure is similar to the procedure and criteria for approval of class actions under federal law and is also endorsed by the nation's leading class action commentator, Professor Herbert Newberg. (*See Newberg on Class Actions*, § 11:24 (4th Ed. 2002); *Manual for Complex Litigation*, § 21:63 (4th Ed. 2006).)

of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba*, 91 Cal.App.4th at 245.

1. The terms of the proposed Settlement are fair, reasonable, and adequate.

Courts make an initial evaluation of the fairness, reasonableness, and adequacy of the proposed settlement based on information already known, supplemented as necessary by briefs, motions, or information presented by the settling parties. *See Manual for Complex Litigation* at § 21:632. Courts must ensure 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 presumption of fairness exists 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. *Dunk*, 48 Cal.App.4th at 1802. The first three of these conditions are satisfied here, and Plaintiffs expect that the fourth condition will also be satisfied. *See* Piazza Decl. ¶¶ 11–13, 20, 26, 29.

The estimated Net Settlement Amount of $1,710,000.00 and PAGA Amount of $150,000.00 (for a total of $1,860,000.00), derived from a Gross Settlement Amount of $3,000,000.00, will result in fair and just relief to all Settlement Class Members. *Id.* The Settlement Agreement provides that the settlement proceeds will be allocated amongst the Class Members in a manner that recognizes the amount of time that each individual Class Member worked for Defendant during the relevant time period, as each Class Member will be credited for the number of weeks that he or she worked for Defendant. This ensures that longer-tenured workers receive a greater recovery, which is fair, reasonable, and adequate.

Additionally, the allocation of $150,000.00 to PAGA penalties is fair and reasonable. This amount is the equivalent of 5.0% of the Gross Settlement Amount. Plaintiffs submit that the negotiated settlement in this matter is reasonable and in line with comparable settlements in other class actions in California.[7] Notably, courts have held that, where significant non-PAGA amounts are being paid to class members, only a small amount, or even no amount, may be allocated and distributed to the LWDA.[8] Courts have also employed a "sliding scale," under which a "robust" settlement of the Labor Code class claims may justify a "greater reduction in PAGA penalties."[9]

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[7] *See Mondrian v. Trius Trucking, Inc.* (E.D. Cal. Oct. 7, 2022, No. 119CV00884ADASKO) 2022 WL 6226843, at *8 (approving PAGA allocation of $10,000 out of $995,000 settlement (1 percent)); *Erami v. JPMorgan Chase Bank* (C.D. Cal. Dec. 3, 2018, No. CV157728 PSGPLAX) 2018 WL 11352374, at *6 (approving PAGA allocation of $100,000 out of $8,333,333 settlement (1.2 percent)); *Turner v. Motel 6 Operating L.P.* (C.D. Cal. Nov. 6, 2018, No. CV 17-2544 PSG (SSX)) 2018 WL 6977474, at *7 (approving PAGA allocation of $20,000 out of $1,364,752.09 settlement (1.4 percent)); *Dearaujo v. Regis Corp.* (E.D. Cal. July, 21, 2017, No. 2:14-CV-01408-KJM-DB) 2017 WL 3116626, at *3 (granting final approval of $1,950,000 gross settlement with $10,000 PAGA payment); *Ahmed v. Beverly Health and Rehabilitation Servs., Inc.* (E.D. Cal. Feb. 7, 2018, No. CV 2:16-1747 WBS KJN) 2018 WL 746393, at *10 (approving 1% of gross settlement as PAGA settlement); *Moore v. PetSmart, Inc.* (N.D. Cal. Aug. 4, 2015, No. 5:12-CV-03577-EJD) 2015 WL 5439000, *8 (approving total PAGA allocation that was 0.5% of $10,000,000 gross settlement); *Hicks v. Toys 'R' Us–Delaware, Inc.* (C.D. Cal. Sept. 2, 2014, No. CV13-1302-DSF JCGX) 2014 WL 4703915, at *1 (approving PAGA settlement of $5,000 or 0.12% of the total settlement amount); *Lusby v. Gamestop Inc.* (N.D. Cal. 2013) 297 F.R.D. 400, 407 (approving total PAGA allocation that was 0.67% of $750,000 gross settlement); *Franco v. Ruiz Food Prod., Inc.* (E.D. Cal. Nov. 27, 2012, No. 1:10-CV-02354-SKO), 2012 WL 5941801, at *14 (approving PAGA allocation of $10,000 out of $2,500,000 settlement (0.4 percent)); *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012, No. 1:10-CV-0324 AWI SKO) 2012 WL 5364575, at *7 ($3.9 million settlement allocating $10,000 to PAGA penalties)); *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011, No. C-05-4526-MHP) 2011 WL 672645, at *1 (approving PAGA allocation of $10,000 out of $6,900,000 gross settlement (0.14 percent)); *In re M.L. Stern Overtime Litig.* (S.D. Cal. Apr. 13, 2009, No. 07-CV-0118-BTM JMA) 2009 WL 995864, at *1 (approving PAGA settlement of 2 percent); *Hopson v. Hanesbrands Inc.* (N.D. Cal. Aug. 8, 2008, No. CV-08-0844 EDL) 2008 WL 3385452, at *1 (approving a PAGA settlement of 0.3 percent); *Van Kempen v. Matheson Tri-Gas, Inc*. (N.D. Cal. Aug. 25, 2017, No. 15-CV-00660-HSG) 2017 WL 3670787 (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent of total settlement); *Slavkov v. Fast Water Heater Partners I, LP* (N.D. Cal. July 25, 2017, No. 14-CV-04324-JST) 2017 WL 3834873 (finding a $7,500 PAGA payment reasonable when measured against the overall settlement of $345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).

[8] *See, e.g.*, *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (affirming a settlement allocating $0 of $6.4 million settlement to PAGA); *Smith v. Am. Greetings Corp.* (N.D. Cal. May 19, 2016, No. 14-CV-02577-JST) 2016 WL 2909429, at *11 (granting final approval of class action settlement allocating $37,500 of $4 million settlement to PAGA); *Willner v. Manpower Inc.* (N.D. Cal. June 22, 2015, No. 11-CV-02846-JST) 2015 WL 3863625, at *1 (granting final approval of a class settlement allocating $65,625 of $8.75 million settlement to PAGA); *Chu*, 2011 WL 672645, at *1 (approving $10,000 PAGA allocation in $6.9 million settlement).

[9] *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 972; *O'Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d 1110, 1134 ("if the settlement for the Rule 23 class is robust, the purposes of PAGA may be concurrently fulfilled"). Here, the PAGA allocation is justified because it maximizes payments to individual class members and furthers the public policies underlying PAGA by providing a robust remedy for alleged violations of the California Labor Code. *See Mejia v. Walgreen Co.* (E.D. Cal. Mar. 24, 2021, No. 2:19-CV-00218 WBS AC) 2021 WL 1122390, at *5. If a higher amount is allocated to PAGA, in this case, the higher allocation would reduce the amount that the Class Members would ultimately receive under the proposed settlement. Accordingly, the proposed allocation of $150,000 to PAGA, $112,500 of which is being paid to the LWDA, strikes a balance between the interest of all parties, including the LWDA and general public, by advancing the State's Labor Code enforcement interests while providing relief to the Settlement Class Members.

For all of these reasons, and as discussed herein, the settlement is fair, reasonable, and adequate and well within the range of reasonableness. Plaintiffs thus respectfully request that the Court approve the proposed LWDA payment.

2. The Settlement was reached after extensive investigation, discovery, and analysis of the class claims.

California courts recognize that "a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining." *Wershba*, 91 Cal.App.4th at 245. Preliminary approval is warranted where the Court is provided sufficient information regarding the discovery process and the facts developed (*see Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129–31), so that the Court may form "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 801.

The Settlement was agreed upon following an extensive review of the facts and law both in this case and the *Fraga* case. *Id.*; *Kullar*, 168 Cal.App.4th at 129–31. To facilitate settlement negotiations, Class Counsel investigated the applicable law and the facts in this case and extensively analyzed the potential damages that might be recovered following the exchange of documents and information with Defendant. Piazza Decl. ¶¶ 21–22. Defendant produced voluminous electronic and hard copy data, including time data, pay data, GPS coordinates, class size and workweek information, and information regarding hourly rates. *Id.* Plaintiffs used this information, along with extensive analysis by their outside expert, to perform a careful and detailed analysis of the potential damages arising from the claims made in this case.

3. Further litigating this action not only would delay recovery, but would be expensive, time-consuming, and would involve substantial risk.

Absent this settlement, litigating the class claims in this action would require substantial additional formal discovery including the depositions of Plaintiffs, fact witnesses, and experts, as well as the consideration, preparation, and presentation of voluminous documentary evidence and the preparation and analysis of expert reports. *Id.* ¶ 30.

In contrast, the Settlement will yield a prompt, certain, and substantial recovery for Class Members. *Id.* ¶ 31. Such a result will benefit the parties and the court system. *Id.* The proposed Settlement achieves a just and beneficial result. *Id*. Considering the challenges that Plaintiffs would likely face, discussed below, the proposed Settlement is extremely reasonable. *Id*.

4. Defendant would continue to contest liability on all issues.

The reasonableness of the Settlement is further underscored by the fact that Defendant has legal and factual grounds available to defend this action. *Id.* ¶ 32. Defendant denies any liability or wrongdoing of any kind associated with the claims asserted in the Action, disputes the damages and penalties claimed by Plaintiffs, and further contends that, for any purpose other than settlement, Plaintiffs' claims are not appropriate for class or representative treatment. *Id.* This Settlement is a compromise of disputed claims.

Defendant contends, among other things, that, at all times, they have complied with all applicable state, federal and local laws related to the Class Members' employment. These defenses must be accounted for in considering the reasonableness of the Settlement.

5. Additional risks Plaintiffs considered.

Plaintiffs would face other significant risks if the litigation were to proceed to trial, including defeating arbitration agreements that purport to require them to proceed individually in arbitration. If arbitration is not compelled, a Motion for Class Certification requiring investigation and outreach efforts by Class Counsel to obtain supporting evidence would be vigorously contested by Defendant. *Id.* ¶ 33. Plaintiffs would then need to establish class-wide liability and prove various issues regarding damages and penalties. *Id.* Such efforts would likely take many more months, if not years, and would necessitate expert witness testimony and significant additional litigation. *Id.*

Additionally, Plaintiffs' derivative claims regarding waiting time penalties, accurate records, and wage statements rise and fall with Plaintiffs' other wage payment claims. *Id.* ¶ 35. For example, Plaintiffs would recover nothing under Labor Code § 203 if they were unable to prove the underlying claims or defeat a "good faith" dispute defense. *See* Cal. Code Regs. tit. 8, § 13520. While Plaintiffs believe that they would prevail on these issues and others, Plaintiffs recognize the risk that a fact finder may find for Defendant on one or more of these issues and may find damages to be significantly less than what Plaintiffs claim. *Id.*

Defendant, represented by experienced employment lawyers, raised the above arguments, and more, in mediation and would have done so in litigation. *Id.* ¶ 34. Despite Plaintiffs' confidence in their ability to prove their claims on a class-wide basis, any one of the above defenses, if decided in favor of Defendant, could have reduced or even eliminated any potential damages award. *Id.*

6. Class Counsel are experienced class action litigators.

Class Counsel are experienced and respected class action litigators. *See* Piazza Decl. ¶¶ 5–12; Exhibit 4, Declaration of David D. Bibiyan ("Bibiyan Decl.") ¶¶ 2–9; Exhibit 5, Declaration of Roman Shkodnik ("Shkodnik Decl.") ¶¶ 2–12. Based on Class Counsel's knowledge and expertise in this area of law, Class Counsel believes this Settlement will provide a substantial benefit to the Class Members. Piazza Decl. ¶¶ 14, 29, 36; Bibiyan Decl. ¶¶ 14–15; Shkodnik Decl. ¶ 14. Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiffs have taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in litigation. Piazza Decl. ¶¶ 36–37; Bibiyan Decl. ¶ 11; Shkodnik Decl. ¶ 15. Plaintiffs and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Actions, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing damages for the Settlement Class Members. Piazza Decl. ¶ 37; Bibiyan Decl. ¶ 13; Shkodnik Decl. ¶ 15. Plaintiffs and Class Counsel have considered Defendant's agreement to enter into a settlement that confers substantial relief upon the members of the Settlement Class. Based on the foregoing, Class Counsel have concluded that settlement for the consideration and on the terms set forth in this Settlement Agreement, is fair, reasonable, and adequate and is in the best interest of the putative class in light of all known facts and circumstances, including the risk of delay, defenses asserted by Defendant, numerous potential appellate issues, and other risks inherent in litigation. Piazza Decl. ¶ 37; Bibiyan Decl. ¶¶ 13–15; Shkodnik Decl. ¶ 15.

7. The proposed Settlement is well within the range of reasonableness.

This is a recovery that easily falls within the range of reasonableness. *Kullar*, 168 Cal.App.4th at 133 (citing *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499–500) ("[T]he court must at least satisfy itself that the class settlement is within the "ballpark" of reasonableness.")). In *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409, the court clarified that a *Kullar* showing does not require the parties to submit the outer reaches of maximum possible recovery without taking into account the actual risks of certification, decertification, dispositive motions, and trial, so long as there is a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409. The gross recovery here of $3,000,000.00 falls within the range of reasonableness, when considering the issues and risks related to liability and class certification, and also considering the case law regarding fair, reasonable, and adequate settlements.[10] "Even a fractional recovery of the possible maximum recovery amount may be fair and adequate in light of the uncertainties of trial and difficulties in proving the case." *Milian v. Cascade Water Servs., Inc.* (E.D. Cal. 2015) 310 F.R.D. 593, 611.[11]

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[10] *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139 ("Compromise is inherent and necessary in the settlement process ... even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest in avoiding litigation."); *Officers for Justice v. Civil Service Comm'n of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 628 ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery [does] not … render the settlement inadequate or unfair.").

[11] *See also In Re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 ("'It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.'") (citation omitted); *Ramirez v. Merrill Gardens, LLC* (E.D. Cal. Jan. 10, 2024, No. 1:22-CV-00542-SAB) 2024 WL 115216, at *18 (same, approving 7.9% of the total exposure and noting that it "is not, on its face, outside the bounds or range of reasonableness, and is higher than the valuation approved in other class actions, or in line with many approved settlements."); *Perez v. CVS Health Corp.* (E.D. Cal. June 11, 2021, No. 1:19-CV-00449) 2021 WL 2402950, at *6 (finding "2.5 percent recovery rate to be reasonable even though it is at the low end of the range of percentage recoveries"); *Balderas v. Massage Envy Franchising, LLC* (N.D. Cal. July 21, 2014, No. 12-CV-06327) 2014 WL 3610945, at *5 (finding approximately 8% recovery rate within range of possible approval based on risks and expense of continued litigation); *Ma v. Covidien Holding, Inc.* (C.D. Cal. Jan. 31, 2014, No. 12-CV-02161) 2014 WL 360196, at *5 (granting preliminary approval of wage and hour settlement for 9.1% as within "range of reasonableness"); *Thomas v. Cognizant Tech. Sols. U.S. Corp.* (C.D. Cal. June 24, 2013, No. 11-CV-1123) 2013 WL 12371622, at *6 (granting final approval in wage and hour action where settlement encompassed between 4.4% and 5% of the maximum estimated liability figure).

As set out above, Class Counsel diligently and effectively investigated Plaintiffs' claims and assessed Defendant's arguments involving discovery, class certification, and trial, including extensively analyzing the data exchanged in connection with the structured ADR process. Based on this evaluation, Class Counsel was able to act intelligently and effectively in negotiating the proposed settlement.

Claims Related to Off the Clock Claims: Through their outside expert, Class Counsel performed a detailed exposure modeling for Plaintiffs and the Class Members using the various data points that were exchanged in connection with the ADR process. This model analyzed time records, GPS coordinates, and pay data that Defendant provided, taking into account the number of workweeks at issue, and making various assumptions about the range of unpaid off-the-clock hours that were alleged to have been worked based on extensive interviews of Plaintiffs and a review of the records, as well as taking into account the frequency with which such work would cause unpaid daily and/or weekly overtime to accrue based on the expected travel time and off the clock work. Piazza Decl. ¶¶ 21–22.

Plaintiffs calculated a potential range for settlement of the overtime claims of $0 (if Defendant won on its argument that all due overtime was paid) to an estimated maximum unliquidated amount of approximately $2,541,717.92, assuming an average hourly rate of $17.01 and on average forty-five (45) minutes of overtime worked in seventy-five (75%) percent of the approximately 175,753 workweeks between June 28, 2019 and September 26, 2024. *Id.* ¶ 23. In evaluating the potential recovery, Plaintiffs also considered the risk that the Court might order individual arbitration; might not certify a class; the variation in the amount of off-the-clock time worked by Class Members; the potential off-sets to which Defendant may be entitled, and other significant risks set out in Section IV(A)(5).

Claims related to Meal and Rest Breaks: The claim for unlawful meal and rest break deductions is based on allegations that the Class Members were prohibited from taking uninterrupted meal and rest breaks, and that Defendant failed to pay Class Members premium pay for their hours worked. Plaintiffs assume that these meal and rest period violations occurred in approximately 50% of shifts worked.

Plaintiffs calculated a potential range for settlement of the meal and rest break claims of $0 (if Defendant won on its argument that there were no meal and rest break violations) to an estimated maximum range of approximately $11,252,887.57, assuming a maximum of 656,528 shifts between June 28, 2019 and September 26, 2024. Piazza Decl. ¶ 24. Plaintiffs also considered the risk that the Court might credit Defendant's arguments that there were lawful meal and rest period policies in effect, and that Defendant actually overpaid the Class Members by crediting them with at least one (1) hour of work for each project, even if the Class Member actually worked much less than that. Finally, Plaintiffs considered the other significant risks set out in Section IV(A)(5).

Claims Related to PAGA Penalties and other Derivative Claims: Plaintiffs' claims for civil penalties under PAGA, as well as derivative claims regarding waiting time penalties, accurate records, and wage statements, all were predicated on proof of an underlying violation(s) of the California Labor Code. Thus, the existence of these claims was tied to the risks of failing to prove California Labor Code violations for off-the-clock time and meal and rest breaks. Plaintiffs' damages analysis included potential for these penalties and derivative claims, which, given the penalties associated with these claims, was significant; however, Plaintiffs acknowledge that the total potential exposure associated with these derivative claims does not necessarily represent the realistic value of those claims for the reasons already stated. Plaintiffs also considered that courts have the discretion to reduce PAGA penalties. Piazza Decl. ¶ 25.[12]

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[12] *See, e.g.*, *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517 ("Rather than imposing the full penalty, . . . which the court noted in this instance would be unjust, arbitrary, and oppressive, the court imposed a penalty of only $5 per violation."); *Barsegian v. Gilead Sciences, Inc.* (Super. Ct. L.A. County July 8, 2020, No. BC714686) (approving PAGA penalties of $3.87 per pay period, in a case involving claims of daily unpaid "on-call" time and meal and rest period violations); *Heredia v. Eddie Bauer LLC* (N.D. Cal. Apr. 17, 2020, No. 5:16-cv-06236-BLF) (approving PAGA penalties of $18.83 per pay period, in case alleging employees were forced to work off the clock for a few minutes each day); *Kaanaana v. Barrett Bus. Servs., Inc.* (2018) 29 Cal.App.5th 778, 788, *review granted on other grounds* (noting that the trial court "exercised its discretion to reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were deprived of 13 percent of the 30-minute meal period"); *Penaloza v. PPG Industries Inc.* (Super. Ct. L.A. County May 20, 2013, No. BC471369) 2013 WL 2917624, at *2 (approving PAGA penalties averaging $7.49 per aggrieved employee); *Cabrera v. Advantage Sale & Marketing, LLC* (Super. Ct. L.A. County Mar. 12, 2013, No. BC485259) 2013 WL 1182822 (approving PAGA penalties averaging $3.33 per person).

Under these circumstances, considering the risk of proceeding through litigation and trial, and given that the settlement will provide every Settlement Class Member automatically with a check for alleged unpaid wages without the need to go through a lengthy trial process, the proposed settlement falls within the range of reasonableness and supports this Court granting preliminary approval. *Id.*

B. The Class Representatives' Service Payments Are Reasonable And Should Be Preliminarily Approved.

Courts award service payments to advance public policy by encouraging individuals to come forward and perform their civic duty in protecting the rights of the class, as well as to compensate class representatives for their time, effort, inconvenience, and for any expense or risk incurred. *In Re California Indirect Purchases* (Super. Ct. Alameda County Oct. 22, 1998, No. 960886) 1998 WL 1031494, *11; *Munoz*, 186 Cal.App.4th at 412.

The payments to Plaintiffs Gay, Young, Jackson, and Martinez in the amount of $10,000.00 each are reasonable in light of the efforts they made and the risks they took in filing and prosecuting the Actions to obtain this $3,000,000.00 Settlement. Piazza Decl. ¶ 43. Plaintiffs have committed their time to this case and assumed significant risk to obtain the result. *Id.* ¶ 42. Throughout the litigation, Plaintiffs worked with Class Counsel and assisted in the development of the case. *Id*. They produced documents, which Class Counsel relied upon in mediation, answered Class Counsel's questions in developing its position for mediation, took part in the Settlement decision, agreed to a broader release, and always remained apprised of the case during the Actions. *Id.* As a result of Plaintiffs' efforts and their willingness to step forward, the Class Members will receive significant recoveries if the Settlement is approved. *Id*.

C. The Proposed Payment of Attorneys' Fees and Costs Is Reasonable And Should Be Preliminarily Approved.

Plaintiffs seek reasonable attorneys' fees and cost from the $3,000,000.00 Gross Settlement Amount. *Id.* ¶ 45. Under the terms of the Settlement, Class Counsel may seek an award of up to one-third (1/3) of the Gross Settlement Amount, or $1,000,000.00. Agreement ¶ 3.2.2. The requested fee is well within the range customarily approved by California and federal courts in comparable class actions and is less than requested fee percentages recently approved by numerous courts. *See, e.g., Meyers v. Raley's* (Super. Ct. Yolo County May 19, 2022, No. CV-2011-2668) (approving 40% of Gross Settlement Amount).[13]

In this case, there was no guarantee of compensation or reimbursement. Class Counsel undertook all the risks of this litigation on a completely contingent basis. The inherent risk of proving liability and damages on a class-wide basis and Defendant's representation by skillful counsel confront Class Counsel with the prospect of recovering nothing or close to nothing for their commitment to and investment in the case. Nevertheless, Class Counsel committed themselves to developing and pressing Plaintiffs' claims to enforce the employees' rights and maximize the Class recovery.[14] Class Counsel will continue to spend time and resources in preparation and attendance at the preliminary and final approval hearings, further correspondence with Class Members, and Settlement administration and oversight. The requested fee is reasonable and does not otherwise impact the fairness and reasonableness of this matter for preliminary approval.

Furthermore, reasonable litigation expenses are ordinarily included in an award of attorneys' fees pursuant to California wage and hour law. Class Counsel's combined litigation costs to date total $60,604.28. Piazza Decl. ¶ 47. All of the expenses were reasonable, were necessary to the prosecution of this action, and are customarily billed to fee-paying clients. *Id.* Class Counsel also requests reimbursement for these expenses, to be capped at $65,000.00. *Id.* Any unrealized costs will be put into the Net Settlement Amount prior to distribution.

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[13] *See also, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11 (recognizing one-third as the average fee award in class actions); *Laffitte v. Robert Half Int'l Inc.* (2014) 231 Cal.App.4th 860, 878, *as modified* (Nov. 21, 2014) ("…the trial court's use of a percentage of 33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits."); *Ochoa v. Haralambos Beverage Co*. (Super. Ct. L.A. County Feb. 1, 2007, No. BC319588) (approving 33.3% fee award with no mention of lodestar crosscheck); *Big Lots Overtime Cases* (Super. Ct. San Bernardino County Feb. 4, 2004, JCC No. 4283) (approving award of attorneys' fees of 33% of the recovery); *Ojito v. Robertson's Ready Mix Concrete, Inc.* (Super. Ct. Riverside County Jan. 16, 2007, No. RIC420994) (approving 30% fee award with no mention of lodestar crosscheck).

[14] *See* Posner, Economic Analysis of the Law, 534, 567 (4th ed. 1992) ("A contingent fee must be higher than a fee for the same legal services paid as they are performed… because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans").

V. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS FOR SETTLEMENT PURPOSES.

"[I]t is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Glob. Mins. & Metals Corp. v. Superior Ct*. (2003) 113 Cal.App.4th 836, 859. This Court should certify the proposed Settlement Class pursuant to California Code of Civil Procedure § 382 for settlement purposes. California has a strong public policy in favor of broad enforcement of wage and hour laws for the benefit of workers and in favor of using the class action device. *Sav-On Drug Stores, Inc. v. Superior Ct.* (2004) 34 Cal.4th 319, 340. 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. *Id.* at 326 (citation omitted). 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. *Id.*

The benefits and efficiencies of this proposed Settlement, when compared to continued litigation of this case on either a class basis or through multiple individual suits, justifies certification of the proposed Settlement Class. Piazza Decl. ¶ 39. The Settlement specifically proposes a Class defined as all individuals employed by Defendant as non-exempt, hourly employees who fall under Defendant's Representative job classification in California at any time between June 13, 2022 and September 26, 2024, and includes the Aggrieved Employees, who are defined as individuals employed by Defendant as non-exempt, hourly employees who fall under Defendant's Representative job classification in California at any time between June 13, 2022 and September 26, 2024 and who had at least one PAGA Pay Period. Applying the standards outlined herein, the Court should certify the proposed Settlement Class.[15]

[15] Defendant does not oppose certification for settlement purposes only. *See* Agreement ¶ 10.1.

A. Ascertainability and numerosity are satisfied for settlement purposes.

In determining whether a class is "ascertainable," courts "examine the class definition, the size of the class and the means of identifying class members." (*Reyes v. San Diego County Bd. of Supervisors* (1987) 196 Cal.App.3d 1263, 1274–75.) Plaintiffs defined the Settlement Class according to objective criteria. The Class Members are easily identifiable and can be easily located. Plaintiffs satisfy the numerosity element as well with approximately 4,206 Class Members. (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934; *Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

B. Common questions predominate in this action for settlement purposes.

"[T]he focus in a certification dispute is on what type of questions – common or individual – are likely to arise in the action[.]" (*Sav-On*, 34 Cal.4th at 327.) The California Supreme Court has expressly held that predominance does not require that all questions of law and fact be uniform for all members of the class. (*Id.* at 338.) Here, Defendant's class-wide policies and procedures raise common issues of law and fact that are applicable to the claims of Plaintiffs and Class Members for settlement purposes. Where, as in this case, uniform policies and procedures apply on a class-wide basis, "the legal question to be resolved is not an individual one. To the contrary, the common legal question remains the overall impact of [Defendant's] policies on its [employees] . . . . ." (*Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1299.) Plaintiffs allege that Defendant has uniform timekeeping, payroll, compensation, meal and rest period, and overtime policies and practices applicable to all W-2 hourly non-exempt employees in California in the Representative job role.

Common factual issues that apply to the Class Members, such as Defendant's alleged failures to pay for all hours worked, schedules that prevented Class Members from receiving uninterrupted meal and rest breaks, Class Members required usage of Defendant's timekeeping system, and Defendant's alleged requirement that Class Members be on-duty during breaks would provide key evidence of unpaid wages, and denied meal and rest breaks. Piazza Decl. ¶ 38. These standardized policies and procedures are dictated by Defendant and apply to all of the Class Members.

C. Typicality is satisfied for settlement purposes.

Plaintiffs also must establish that they are typical members of the Class they seek to represent. *Chern v. Bank of America* (1976) 15 Cal.3d 866, 874. A representative plaintiff's claims are "typical" if they arise from the same event, practice, or course of conduct that gives rise to the claims of the other class members and if their claims are based on the same legal theory. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46–47. The typicality requirement is not onerous and does not require the claims to be identical. *Id.*

Here, the Plaintiffs, like other Class Members, were subject to the policies and practices that form the basis of the claims asserted in this case. Piazza Decl. ¶ 40. Plaintiffs claim they were denied meal and rest breaks and compensation for all hours worked. *Id.* Like Plaintiffs, the Class Members were subjected to the same allegedly illegal policies and practices to which Plaintiffs were subjected and the Class claims are based on the same legal theory as Plaintiffs' individual claims. *Id.* Accordingly, the Plaintiffs are members of the Class they seek to represent, and their claims are "typical" of those asserted by other Class Members. *Id.*

D. Adequacy is satisfied for settlement purposes.

A plaintiff is an adequate class representative if their claims are not inconsistent with or antagonistic to the claims of the class members. *See Johnson v. GlaxoSmithKline, Inc.* (2008) 166 Cal.App.4th 1497, 1509. In the instant case, there is no conflict between Plaintiffs and the proposed Class. Plaintiffs' claims are in line with those of the Class, and Plaintiffs have prosecuted this case with the interests of the Class in mind. Furthermore, Plaintiffs have selected counsel with extensive experience in class action and employment litigation, including wage and hour class actions, and who do not have any conflict with the Class. For the foregoing reasons, Plaintiffs are adequate class representatives, and Berger Montague PC, Bibiyan Law Group P.C., and D. Law, Inc. are appropriate Class Counsel.

VI. <u>THE PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS</u>

"Adequate notice is critical to court approval of a class settlement under Rule 23(e)." *Hanlon*, 150 F.3d at 1025. A class action settlement notice "is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Churchill Village LLC v. General Electric* (9th Cir. 2004) 361 F.3d 566, 575.

Here, all Class Members will be identified, and the Class Notice will be mailed directly to each individual at their last known address provided by Defendant. Prior to the mailing, Apex will check the addresses provided by Defendant through the National Change of Address System. If a Notice is returned as undeliverable, Apex will perform a skip trace and resend the notice.

The proposed Class Notice is clear and straightforward, and provides information on the case, the meaning and nature of the proposed Settlement, its terms and provisions, the rights of the Class Members to participate, opt out, and object, the monetary awards that the Settlement will provide to Participating Individuals, the Class release, the date, time, and location of the Final Approval hearing, and the identity and contact information for Class Counsel. The proposed Class Notice also fulfills the requirement of neutrality in class notices. *See Newberg on Class Actions* at §§ 8:21; *Manual for Complex Litig.* at §§ 21:311 and 21:312. Based on the foregoing, the Class Notice complies with the standards of fairness, completeness, and neutrality required of a settlement class notice disseminated under authority of the Court.

VII. THE PROPOSED IMPLEMENTATION SCHEDULE

Plaintiffs respectfully request the Court approve the proposed implementation schedule for approval of the Settlement set forth in Plaintiffs' Notice of Motion and proposed order.

VIII. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court grant this Motion for Preliminary Approval of the Settlement Agreement and enter an Order consistent with the Proposed Order submitted herewith.

Dated: June 4, 2025

Respectfully submitted,

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