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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

JOSHUA HOLLMAN, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

RACK ATTACK USA INC., a corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 23CV034585

*[Assigned for All Purposes to the Hon.
Somnath Raj Chatterjee, Dept. 21]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Preliminary Approval Hearing:

Date: December 30, 2025

Time: 2:30 p.m.

Dept: 21

Reservation ID: 225531471281

Action Filed: May 30, 2023

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on December 30, 2025, at 2:30 p.m., in Department 21 of
3 the Superior Court of California, County of Alameda, René C. Davidson Courthouse, located 1225
4 Fallon Street, Oakland, California 94612, pursuant to California Code of Civil Procedure § 382
5 and California Rules of Court, Rule 3.769, *et seq.*, Plaintiff Joshua Hollman (“Plaintiff”) will move
6 the Court for an Order granting preliminary approval of the proposed class action settlement
7 between Plaintiff and Defendant Rack Attack USA Inc. (“Defendant”). Plaintiff further moves the
8 Court for an Order:

- 9 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement
10 and Class Notice;
- 11 2. Certifying a Class for settlement purposes;
- 12 3. Approving the Class Notice and the plan for distribution of the Class Notice;
- 13 4. Appointing Plaintiff Joshua Hollman as Class Representative for settlement purposes;
- 14 5. Appointing Plaintiff’s Counsel Arrash T. Fattahi, Arman A. Salehi, Emily K. Borman,
15 and Courtney M. Miller of Wilshire Law Firm, PLC, as Class Counsel for settlement
16 purposes;
- 17 6. Appointing Apex Class Action LLC as the Settlement Administrator; and
- 18 7. Scheduling a final approval hearing.

19 The motion will be based upon this notice, the attached memorandum of points and
20 authorities, the accompanying declarations, the records and files in this action, and any other
21 further evidence or argument that the Court may properly receive at or before the hearing.

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Respectfully submitted,

Dated: December 5, 2025

WILSHIRE LAW FIRM, PLC

By: /s/ Courtney M. Miller

Arrash T. Fattahi

Arman A. Salehi

Emily K. Borman

Courtney M. Miller

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Joshua Hollman (“Plaintiff”) seeks preliminary approval of a proposed \$275,000.00 non-reversionary, wage and hour class action settlement with Defendant Rack Attack USA Inc. (“Defendant,” and together with Plaintiff, the “Parties”). This motion for preliminary approval is unopposed. The Settlement will provide substantial monetary payments to approximately 63 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arm’s length and were facilitated by an experienced class action mediator, Jonathan D. Andrews, Esq., over the course of a full day of mediation. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties reached a settlement. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed Class Notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff’s Claims

This is a wage and hour class action and anticipated representative action pursuant to the Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) Plaintiff and putative class members were employed by Defendant in California and classified as non-exempt or hourly-paid employees who worked for Defendant during the class period. (Declaration of Arrash T. Fattahi in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement [“Fattahi Decl.”] at ¶ 2.) Defendant is a specialty rack store that sells racks for cars, bikes, skis, kayaks, and more. (*Id.*) Defendant has over 40 stores nationwide, including seven stores in California. (*Id.*)

Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. (Fattahi Decl. at ¶ 3.) Plaintiff alleges that Defendant failed to pay for all hours worked. (*Id.*) Plaintiff further alleges that Defendant failed to provide employees with legally compliant meal and rest periods, and Defendant failed to reimburse business expenses. (*Id.*) Based

1 on these allegations, Plaintiff asserts related claims for failure to provide accurate wage statements,
2 failure to pay all final wages at termination, unfair business practices, and civil penalties under
3 PAGA. (*Id.*)

4 On May 30, 2023, Plaintiff filed a putative wage and hour class action complaint against
5 Defendant for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime
6 wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5)
7 failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage
8 statements; (7) failure to indemnify employees for expenditures; and (8) unfair business
9 practices. (Fattahi Decl. at ¶ 4.)

10 On June 21, 2023, Plaintiff sent a notice to Defendant and the California Labor &
11 Workforce Development Agency (“LWDA”) alleging similar wage and hour violations
12 pursuant to PAGA. (Fattahi Decl. at ¶ 4.) The Parties intend to file a stipulation in advance of
13 the hearing on this Motion, requesting Plaintiff be granted leave to amend to file a First
14 Amended Class & Representative Action Complaint that adds a cause of action for civil
15 penalties under PAGA. (*Id.*)

16 **B. Discovery and Investigation**

17 Following the filing of the initial complaint, the Parties exchanged documents and
18 information before mediating this action. (Fattahi Decl. at ¶ 5.) Defendant produced a sampling
19 of timekeeping and pay records for the class members. (*Id.*) Defendant also provided its policy
20 manual in effect during the class period and information regarding the total number of current
21 and former employees in its informal discovery responses. (*Id.*)

22 After reviewing documents regarding Defendant’s employment policies and practices
23 and analyzing Defendant’s timekeeping and payroll records, Class Counsel was able to evaluate
24 the probability of class certification and success on the merits and assess Defendant’s maximum
25 monetary exposure for all claims. (Fattahi Decl. at ¶ 6.) Class Counsel also investigated the
26 applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Class Counsel
27 reviewed these records and utilized an expert to prepare a damages analysis prior to mediation.
28 (*Id.*)

1 **C. Settlement Negotiations**

2 On December 7, 2023, the Parties participated in a private mediation with experienced
3 class action mediator, Jonathan D. Andrews, Esq. (Fattahi Decl. at ¶ 7.) The settlement
4 negotiations were at arm's length and, although conducted in a professional manner, were
5 adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a
6 settlement of the dispute, but each side was also prepared to litigate their position through trial
7 and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and
8 discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's
9 defenses, the Parties reached a settlement, the material terms of which are encompassed within
10 the Settlement. (*Id.* at ¶ 8, **Ex. 2** [Class Action and PAGA Settlement Agreement and Class
11 Notice].)

12 Class Counsel has conducted a thorough investigation into the facts of this case. (Fattahi
13 Decl. at ¶ 13.) Based on the Parties' informal exchange of documents and information and Class
14 Counsel's own independent investigation and evaluation, Class Counsel is of the opinion that
15 the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement
16 Class Members in light of all known facts and circumstances, the risk of significant delay, the
17 defenses that could be asserted by Defendant both to certification and on the merits, trial risk,
18 and appellate risk. (*Id.*)

19 Indeed, the \$275,000.00 Settlement represents approximately **241%** of the **realistic**
20 **maximum recovery** of \$114,023.12. (Fattahi Decl. at ¶ 22.) Although Class Counsel estimated
21 that Defendant's maximum potential liability for all claims was approximately \$824,104.01,
22 when the risk of prevailing at certification and trial are factored into the equation, Class Counsel
23 believes that Defendant's realistic exposure was approximately \$590,985.02, meaning the
24 Settlement achieves a significant recovery. (*Id.* at ¶¶ 13-26.) Considering the risk and
25 uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class.
26 (*Id.* at ¶ 22.) Indeed, because of the proposed Settlement, class members will receive timely,
27 guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.*)

28 ///

1 **D. Key Terms of the Proposed Settlement**

2 The Settlement’s key terms include:

3 1. Class Definition: For settlement purposes only, the Parties agree to the certification
4 of a class pursuant to California Code of Civil Procedure § 382 defined as: “all persons employed
5 by Defendant in California and classified as non-exempt or hourly-paid employee who worked for
6 Defendant during the Class Period.” (Settlement, § 1.5.)

7 2. Class Period: “means the period from May 30, 2019, to December 14, 2023.”
8 (Settlement, § 1.12.)

9 3. Class Member or Settlement Class Member: “means a member of the Class, as either
10 a Participating Class Member or Non-Participating Class Member (including a Non-Participating
11 Class Member who qualifies as an Aggrieved Employee).” (Settlement, § 1.9.)

12 4. Aggrieved Employee: “means a person employed by Defendant in California and
13 classified as a non-exempt or hourly-paid employee who worked for Defendant during the PAGA
14 Period.” (Settlement, § 1.4.)

15 5. PAGA Period: “means the period from June 21, 2022, to December 14, 2023.”
16 (Settlement, § 1.31.)

17 6. Gross Settlement Amount: “means \$275,000.00 which is the total amount
18 Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross
19 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,
20 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
21 Service Payment and the Administrator’s Expenses.” (Settlement, § 1.22.) “Except as otherwise
22 provided by Paragraphs 8 and 9 below, Defendant promises to pay \$275,000.00 and no more as
23 the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on
24 the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross
25 Settlement Amount (or any payroll taxes) prior to the deadlines stated in Paragraph 4.3 of this
26 Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking
27 or requiring Participating Class Members or Aggrieved Employees to submit any claim as a
28 condition of payment. None of the Gross Settlement Amount will revert to Defendant.”

1 (Settlement, § 3.1.)

2 7. Uncashed Checks: Any settlement checks remaining uncashed after 120 days shall
3 be cancelled and the funds represented by such checks shall be transmitted to University of
4 California College of the Law, San Francisco Workers' Rights Clinic as the *cy pres* recipient,
5 subject to Court approval. (Settlement, §§ 4.4.1, 4.4.3.)

6 8. Released Class Claims: "All Participating Class Members release the Released
7 Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class
8 Period facts stated in the Operative Complaint, including any and all claims involving any alleged
9 failure to pay minimum, straight time, or overtime wages; failure to provide meal and rest periods;
10 failure to provide accurate wage statements; failure to pay all wages due upon separation of
11 employment; and failure to reimburse business expenses, and unfair business practices – not
12 including any claims asserted under PAGA. Participating Class Members do not release claims for
13 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
14 unemployment insurance, disability, social security, workers' compensation, or claims based on
15 facts occurring outside the Class Period." (Settlement, § 5.2.)

16 9. Released PAGA Claims: "Plaintiff as a proxy or agent of the LWDA, releases the
17 Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have
18 been alleged, based on the PAGA Period facts stated in the PAGA Notice, including any and all
19 claims involving any alleged failure to pay minimum, straight time, and overtime wages; failure to
20 provide meal and rest periods; failure to maintain accurate records of hours worked and meal
21 periods; failure to provide accurate wage statements; failure to timely pay wages during
22 employment; failure to timely pay all wages due upon separation of employment; and failure to
23 reimburse business expenses." (Settlement, § 5.3.)

24 10. No Reversion, No Claims Made: means that "[n]one of the Gross Settlement
25 Amount will revert to Defendant." (Settlement, § 3.1.)

26 11. PAGA Allocation: The settlement includes \$10,000.00 allocated to Plaintiff's
27 claims under PAGA, with 75% (\$7,500.00) being paid to the LWDA and 25% (\$2,500.00) being
28 paid to the Aggrieved Employees. (Settlement, § 3.2.5.) Once Plaintiff files a First Amended

Complaint that adds a cause of action for civil penalties under PAGA, Class Counsel will submit the proposed Settlement to the LWDA. (Fattahi Decl. at ¶ 9.)

12. Net Settlement Amount: “means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.” (Settlement, § 1.28.)

13. Distribution Formula: The Individual Class Payment will be “calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member’s Workweeks.” (Settlement, § 3.2.4.) As to PAGA, “[t]he Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.” (Settlement, § 3.2.5.1.)

14. Tax Allocation: 30% of each Participating Class Member’s Individual Class Payment will be allocated to settlement of wage claims (the “Wage Portion”). The remaining 70% of each Participating Class Member’s Individual Class Payment will be allocated to settlement of claims for interest and penalties (the “Non-Wage Portion”). (Settlement, § 3.2.4.1.)

15. Class Representative Service Payment: Defendant agrees not to oppose Plaintiff’s request for a service payment to Plaintiff of up to \$10,000.00. (Settlement, § 3.2.1.) This payment shall be in addition to the *pro rata* recovery received by Plaintiff as part of the Settlement.

16. Attorneys’ Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to one third (1/3) of the Gross Settlement Amount (currently estimated to be \$91,666.67), plus out-of-pocket costs not to exceed \$25,000.00. (Settlement, § 3.2.2.)

17. Notice of Proposed Class Action Settlement: The Class Notice sets forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of

attorneys' fees, costs, and service payment being sought, and an explanation of how the settlement allocations are calculated. (Settlement, Ex. A, Class Notice.) Class Members will be notified by first-class mail of the settlement. (Settlement, § 7.4.2.) Apex Class Action LLC ("Apex"), the proposed Settlement Administrator, will undertake its best efforts to ensure that the class notice is provided to the current addresses of class members, including conducting a national change of address search and re-mailing the class notice to updated addresses. (*Id.*; Fattahi Decl. at ¶ 10, Ex. 3 [Apex's Bid].)

III. DISCUSSION

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached through arm's-length bargaining; (2) investigation is 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 p. 1800.)

In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include the strength of plaintiff's 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 of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require "an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims", but instead, only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."].)

As discussed below, Class Counsel has provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed settlement is fair, adequate, and reasonable.

A. The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation

1. The Settlement Is the Product of Discovery, Investigation, and Informed and Non-Collusive Arm's-Length Negotiations

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption here that the negotiations were conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.) Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement.”].)

The Settlement was reached following extensive negotiations following one day of mediation with experienced class action employment mediator, Jonathan D. Andrews, Esq. (Fattahi Decl. at ¶ 7.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached an agreement. (*Id.* at ¶ 8.)

Prior to reaching this settlement, Class Counsel conducted informal discovery concerning the claims set forth in the litigation, such as a sampling of timekeeping and payroll records for the class members, Defendant's policy manual in effect during the class period, and information regarding the total number of current and former employees in its informal discovery responses. (Fattahi Decl. at ¶¶ 5-6.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.* at

¶ 6.) Thus, Plaintiff and Class Counsel were able to act intelligently and effectively in negotiating the proposed Settlement.

Class Counsel also has considerable experience and has demonstrated competence with litigating wage and hour class actions. (Fattahi Decl. at ¶¶ 37-48.) Again, this supports the position that the terms of the Settlement are premised on objective evidence that has been considered and weighed in light of the risks, expenses, and time consumption to both sides of continued litigation of this action.

2. The Settlement Is Fair and Reasonable in Light of the Parties' Respective Legal Positions

A settlement is not judged against what might plaintiff recover had plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“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 of avoiding litigation.”].)

This settlement avoids the risks and the accompanying expense of further litigation. (Fattahi Decl. at ¶ 24.) While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 23.) Plaintiff also recognizes that proving the amount of wages due to each class member would be an expensive, time-consuming, and uncertain proposition. (*Id.*)

The proposed settlement of \$275,000.00 therefore represents a substantial recovery when compared to Plaintiff’s reasonably forecasted recovery. (Fattahi Decl. at ¶¶ 13-26.) Because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of \$275,000.00 is well within the “ballpark” of reasonableness, and preliminary settlement approval is appropriate. (*Id.*)

1 *Indeed, each Settlement Class Member is eligible to receive an average net benefit of*
2 *approximately \$2,076.72. (Id. at ¶ 25.)*

3 **3. Class Counsel Has Extensive Experience in Class Action Litigation**

4 The settlement negotiations were conducted by highly capable and experienced counsel.
5 Class Counsel has a strong record of vigorous and effective advocacy for their clients and are
6 experienced in handling complex wage and hour class action litigation. (Fattahi Decl. at ¶¶ 37-48.)
7 Although Plaintiff and Class Counsel were prepared to litigate the claims alleged in the litigation,
8 they support the proposed Settlement as being in the best interests of the class.

9 **B. The Proposed Class Notice of Settlement Should Be Approved**

10 The proposed Class Notice, in the form attached to the Settlement Agreement, should be
11 approved for distribution to the class. The Class Notice informs the class of the terms of the
12 settlement and of their rights to be excluded from the settlement. And if there are class members
13 who wish to object to this proposed class action settlement, they will have the opportunity to submit
14 their objections and be heard at the Final Approval Hearing. Accordingly, the proposed Class
15 Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court.

16 **C. The Proposed Attorneys' Fees and Costs Are Reasonable**

17 Under the Settlement, subject to the Court's approval, the Parties agreed to allocate
18 reasonable attorneys' fees in an amount currently estimated to be \$91,666.67, and up to \$25,000.00
19 in costs. (Settlement, § 3.2.2.) These amounts are disclosed to all class members in the proposed
20 Class Notice and are reasonable.

21 **1. Class Counsel Request an Award of Fees Based on the "Common Fund"**
22 **Method**

23 California courts have long awarded attorneys' fees as a percentage of the benefit created
24 by counsel in creating a common fund. The California Supreme Court held that "when a number
25 of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs
26 for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
27 may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34,
28 quoting *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

1 Class Counsel seeks an award of attorneys’ fees on the “percentage of recovery/common
2 fund” theory. The purpose of this approach is to “spread litigation costs proportionally among all
3 the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent v.*
4 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995)
5 15 Cal.3d 162, the California Supreme Court stated: “[O]ne who expends attorneys’ fees in
6 winning a suit which creates a fund from which others derive benefits may require those passive
7 beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and*
8 *County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized
9 that the common fund doctrine has been applied “consistently in California when an action brought
10 by one party creates a fund in which other persons are entitled to share.” (*Id.* at p. 110.)

11 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
12 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
13 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
14 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
15 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
16 method—including relative ease of calculation, alignment of incentives between counsel and the
17 class, a better approximation of market conditions in a contingency case, and the encouragement
18 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
19 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
20 (*Id.* [internal citations omitted].)

21 **2. The Requested Fee Award Is in Line with Typical Cases**

22 According to a leading treatise on class actions, “[n]o general rule can be articulated on what
23 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
24 reasonable fee award from a common fund in order to assure that the fees do not consume a
25 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
26 are not unprecedented.” (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.)
27 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty
28 to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also*

1 *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most
2 cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million].)

3 Here, Plaintiff requests attorneys’ fees equal one third (1/3) of the Gross Settlement
4 Amount, which is in line with the prevailing guidelines established in California case law and
5 academic literature and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008)
6 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage
7 method or the lodestar method is used, fee awards in class actions average around one-third of the
8 recovery.”].) Accordingly, Plaintiff respectfully requests that the Court approve the attorneys’ fees
9 as negotiated by the Parties and requested herein.

10 **3. This Matter Involves A “Fee-Shifting” Provision of the Labor Code**

11 Labor Code § 1194 (a) provides for the recovery of “minimum wage or overtime
12 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this
13 section, Plaintiff would be permitted to recover his actual attorneys’ fees, even if those fees were
14 larger than the total class recovery at the conclusion of this case. This settlement is beneficial in
15 that it limits the risk of continued expenses and consumption of time, energy, and resources facing
16 Defendant while at the same time rewarding Class Counsel for their decision to assume risk by
17 taking on this matter. In fact, prosecution of this action involved significant financial risk for Class
18 Counsel. (Fattahi Decl. at ¶¶ 35-36.) Class Counsel undertook this matter solely on a contingent
19 basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the
20 Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class
21 ahead of all other concerns.

22 **4. The Experience, Reputation and Ability of Class Counsel Support the** 23 **Requested Fee Award**

24 As demonstrated by their past experience in pursuing class actions on behalf of consumers
25 and employees, Class Counsel possesses considerable expertise in litigating class actions. (Fattahi
26 Decl. at ¶¶ 37-48.) Class Counsel has been involved as lead counsel or co-counsel in several class
27 actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class
28 counsel commensurate with their skill, reputation and experience, Class Counsel’s requested fee

award is supported here.

Class Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. Based on these and other factors, Class Counsel has frequently received fee awards of this percentage from the gross recovery for the class. Therefore, the requested fee award is reasonable and fair.

D. The PAGA Allocation is Reasonable

Where settlements negotiate a good faith amount for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of other" class members, such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9.) Courts have approved amounts for PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement. (*Id.* [approving a PAGA payment of 0.3%, or \$1,500]; *see also Jack v. Hartford Fire Ins. Co.* (S.D. Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v. Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here, the amount to be paid to the LWDA is larger than many other PAGA settlement amounts approved by the courts where seemingly nominal amounts were allocated for such claims. (*See, e.g., Zubia v. Shamrock Foods Co.* (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431, at *14 [approving a PAGA settlement of 0.1%]; *Hopson*, 2008 WL 3385452, at *1 [approving a PAGA settlement of 0.3% or \$1,500]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012) No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA settlement of 0.27%].) Here, the Parties negotiated a good faith amount of \$10,000.00, 75% percent of which (\$7,500.00) will be paid to the LWDA and 25% (\$2,500.00) to be distributed to the Aggrieved Employees. (Settlement, § 3.2.5.) The Parties negotiated to allocate approximately 3.6% of the Settlement to PAGA penalties in good faith and the \$10,000.00 allocation equates to approximately

3.6% of the Gross Settlement Amount, which far exceeds amounts that are routinely approved. Moreover, the \$10,000.00 allocation for PAGA penalties represents approximately 126% of the realistic maximum recovery represents (\$10,000.00 / \$7,940.00). (Fattahi Decl. at ¶ 22.)

E. The Service Payment to Named Plaintiff Is Reasonable

Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59.)

Service awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in California Labor Code § 90.5, which provides, “it is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions” Nonetheless, the California Supreme Court has noted that “retaliation against employees for asserting statutory rights under the Labor Code is widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

Under the Settlement, subject to the Court’s approval, Defendant agreed to pay a Class Representative Service Payment in the amount of \$10,000.00 to Plaintiff. (Settlement, § 3.2.1.) Courts routinely approve a \$10,000 enhancement award for plaintiffs represented by Class Counsel. (*See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) 2021 WL 3673845, *3 [“The Court concludes a \$10,000 incentive award is appropriate.”]; *Suarez v. Bank of America, National Association* (N.D. Cal., Jan. 11, 2024, No. 18-CV-01202-LB) 2024 WL 150721, at *4 [“The court approves awards of \$10,000 for each class representative.”].) Class Counsel

1 represents that Plaintiff devoted a great deal of time and work assisting counsel in the case,
2 communicated with counsel very frequently for litigation and to prepare for mediation, and was
3 frequently in contact with Class Counsel during the mediation. (Fattahi Decl. at ¶¶ 27-31; *see*
4 *generally* Plaintiff’s declaration.) This amount is reasonable particularly in light of the substantial
5 benefits Plaintiff generated for all class members. (*Id.*)

6 When compared with the amounts awarded in typical class action cases, the amount
7 requested here is particularly reasonable. Indeed, a 2006 study examining the average incentive
8 award given to class action plaintiffs from 1993 to 2002 found that the “average award per class
9 representative was \$15,992 and the median award per class representative was \$4,357.” (Eisenberg
10 & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev.
11 1303,1308.) That same study found that named plaintiffs in employment discrimination class
12 actions received an average award of \$69,850 and a median award of \$31,081, while named
13 plaintiffs in other employment class actions received an average award of \$12,121 and a median
14 award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in
15 employment cases reflected the “courts’ wish to make representative plaintiffs whole by
16 compensating them for the high costs of their service to the class, including risks of stigmatization
17 or retaliation on the job.” (*Id.* at p. 1308.)

18 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

19 **A. Legal Standard**

20 The proposed Settlement Class is well suited for class certification. All of the claims derive
21 from a core set of alleged violations of California’s wage and hour laws and regulations. For the
22 reasons set forth more fully below, for purposes of settlement only, the Class satisfies the
23 prerequisites for certification under California Code of Civil Procedure § 382. Section 382
24 provides: “when the question is one of a common or general interest, of many persons, or when
25 the parties are numerous, and it is impracticable to bring them all before the court, one or more
26 may sue or defend for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to
27 section 382: “(1) There must be an ascertainable class; and (2) there must be a well-defined
28 community of interest in the questions of law and fact involved affecting the parties to be

represented.” (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 704 [citations omitted].) To clarify these requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-interest requirement itself embodies three factors: “(1) predominant 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.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470.)

California law and policy favor the fullest and most flexible use of the class action device. (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system” particularly where the rights of consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434.) Any doubt as to the appropriateness of class treatment should be resolved in favor of certification. (*Richmond, supra*, 29 Cal.3d at pp. 473-75.)

B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for Settlement Purposes.

1. The Class is Ascertainable and Numerous

The proposed class that Plaintiff seeks to represent is easily ascertainable and includes approximately 63 employees of Defendant.

Plaintiff maintains that there is an easily ascertainable class, defined by objective and precise criteria. Because class members are identified using specific criteria in the regular business records of Defendant, i.e., job position, the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the subject of the lawsuit is sufficient to make the class ascertainable].)

“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.” (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action may be maintained as a class action even where the parties are numerous and it is in fact practicable to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust

1 in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574; *see*
2 *also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) Therefore, Plaintiff
3 contends that numerosity is plainly satisfied.

4 **2. There are Many Common Issues of Law and Fact Which Predominate**

5 The Court should grant conditional class certification for settlement purposes here on the
6 grounds that questions of law and fact common to all class and subclass predominate over any
7 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
8 warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
9 Cal.App.3d 605.)

10 Here, the employment practices at issue are: whether Defendant had legally compliant
11 policies and practices for all hours worked, including overtime wages; whether Defendant had
12 legally compliant policies and practices to provide employees with meal periods; whether
13 Defendant had legally compliant policies and practices authorizing and permitting its employees
14 to take rest periods; whether Defendant reimbursed employees for business expenses; whether
15 Defendant consequently paid final wages timely at termination; and whether Defendant
16 consequently failed to provide accurate itemized wage statements. Plaintiff contends that the
17 factual and legal issues are the same for all the identified class members, including Plaintiff.
18 Further, all class members suffered from, and seek redress for, the same alleged injuries.

19 **3. Plaintiff’s Claims Are Typical of the Claims of the Class**

20 The typicality requirement does not focus on the individual characteristics or
21 circumstances of the representative plaintiff compared to those of the remainder of the class,
22 but rather upon the typicality of the proposed representative’s claims as they relate to the
23 defendant’s conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 “[t]he
24 only requirements are that common questions of law and fact predominate and that the class
25 representative be similarly situated” vis-à-vis the class.]) A representative plaintiff’s claims
26 are typical of the class if they arise from the same event, practice or course of conduct, and if
27 the claims rest on the same legal theories. (*Id.*) That is precisely the case here. Plaintiff is a
28 former employee of Defendant. As such, he alleges that he was subject to the same policies

1 and practices as other similarly situated employees.

2 **4. Plaintiff and His Counsel Meet the Adequacy Requirement**

3 The adequacy of representation requirements is met by fulfilling two conditions: first, a
4 named plaintiff must be represented by counsel qualified to conduct the pending litigation; second,
5 a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of*
6 *America* (1976) 60 Cal.App.3d 442, 451.)

7 All of these requirements are met here for settlement purposes. Plaintiff retained counsel
8 with extensive experience in prosecuting complex class actions, including similar class actions that
9 previously settled. (Fattahi Decl. at ¶¶ 37-48.) Class Counsel unquestionably is "qualified,
10 experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148
11 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel,
12 litigated this case and diligently reviewed the settlement terms, showing his dedication. Plaintiff's
13 willingness to serve as a representative demonstrates his serious commitment to bringing about the
14 best results possible for the class. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

15 **5. A Class Action is Superior to a Multiplicity of Litigation**

16 Finally, in making its class certification decision, the Court must determine that a class
17 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
18 By consolidating many potential individual actions into a single proceeding, this Court's use of the
19 class action device enables it to manage this litigation in a manner that serves the economics of
20 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly
21 situated employees with small but nevertheless meritorious claims for damages would, as a
22 practical matter, have no means of redress because of the time, effort and expense required to
23 prosecute individual actions. (*Gentry, supra*, 42 Cal.4th at pp. 457-62; *Leyva v. Medline Ind.* (9th
24 Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are
25 essentially non-existent.

26 **V. THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND**

27 **A. The Proposed Class Notice Plan Satisfies Due Process**

28 Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,

1 Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an
2 appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no
3 statutory or due process requirement that all class members receive actual notice, but in this matter,
4 the class members will receive direct mailed notice. As the Court of Appeals has explained, “[t]he
5 notice given should have a reasonable chance of reaching a substantial percentage of the Class
6 Members . . .” (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided by
7 direct mailing, the best possible form of notice.

8 **B. The Class Notice is Accurate and Informative**

9 The proposed Class Notice should be approved. It will be disseminated through direct U.S.
10 first class mail to the last known address for each Class Member. It informs the Class Members of
11 the terms of the Settlement and their right to be excluded from the Settlement. And if there are
12 Class Members who wish to object to this proposed class action settlement, they will have the
13 opportunity to submit their objections and be heard at the Final Approval Hearing.

14 The Class Notice also fulfills the requirement of neutrality in class notices. (Conte &
15 Newberg, *Newberg on Class Actions* (3rd Ed.) § 8.39.) It summarizes the proceedings to date
16 and the terms and conditions of the settlement agreement, in an informative and coherent
17 manner. It makes clear that the settlement agreement does not constitute an admission of liability
18 by the Defendant, who denies all liability, and it recognizes that this Court has not ruled on the
19 merits of the action. It also states that the final settlement approval decision has yet to be made.
20 The Class Notice thus complies with the standards of fairness, completeness, and neutrality
21 required of a combined settlement-certification class notice.

22 ///

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1 **VI. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
3 approval of the proposed settlement and set a Final Approval Hearing.

4
5 Respectfully submitted,

6 Dated: December 5, 2025

WILSHIRE LAW FIRM, PLC

7
8 By: /s/ Courtney M. Miller

Arrash T. Fattahi

Arman A. Salehi

Emily K. Borman

Courtney M. Miller

10
11 Attorneys for Plaintiff



Superior Court of Alameda County Public Portal

Reschedule a Reservation

Reservation

Reservation ID:
225531471281

Reservation Type:
Motion re: (Motion for Preliminary Approval of Class Action and PAGA Settlement)

Case Number:
23CV034585

Case Title:
HOLLMAN, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED vs RACK ATTACK USA INC., A CORPORATION

Filing Party:
Joshua Hollman, individually, and on behalf of all others similarly situated (Plaintiff)

Location:
Rene C. Davidson Courthouse - Department 21

Date/Time:
December 23rd 2025, 2:30PM

Status:
RESERVED

Number of Motions:
1

Motions to Reschedule

Motion re: (Motion for Preliminary Approval of Class Action and PAGA Settlement)

Reschedule To:

Date: 12/30/2025 2:30 PM

Location: Rene C. Davidson Courthouse - Department 21

Fees

Description	Fee	Qty	Amount
Reschedule Fee	1.00	1	1.00

Description	Fee	Qty	Amount
TOTAL			\$1.00

Payment

Amount:
\$1.00

Type:
MasterCard

Account Number:
XXXX3132

Authorization:
02106Q

Payment Date:
n/a

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