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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

ALFONSO CEJA RUIZ individually and on behalf of others similarly situated; and the CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY, a California governmental agency, ex rel. ALFONSO CEJA RUIZ, Plaintiffs, vs. AUTOMOTIVE RACING PRODUCTS, INC., a California corporation; RICHARD JACKSON, an individual; and DOES 1-15, inclusive, Defendants.	Case No. 2023CUOE011192 Judge: Hon. Charmaine H. Buehner Department: 21 <u>CLASS ACTION</u> **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS ACTION SETTLEMENT; AND (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT** *[filed concurrently with Plaintiff's Notice of Motion and Motion; Declaration of Roman Shkodnik; Declaration of Hallie Von Rock; Declaration of Reynaldo Labo; Declaration of Alfonso Ceja Ruiz; Declaration of Christopher Longley; and [Proposed] Order]* Date: January 30, 2025 Time: 8:30 AM Dept.: 21

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to the proposed Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement"), filed concurrently herewith, the class consists of all current and former non-exempt, hourly employees of Defendant Automotive Racing Products, Inc., in the state of California employed during the Class Period from July 10, 2019 through August 12, 2024.

The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Class. Consequently, Plaintiffs Alfonso Ceja Ruiz and Reynaldo Labo (collectively "Plaintiffs"), with the consent of Defendant Automotive Racing Products, Inc. ("Defendant" collectively with Plaintiffs, "the Parties"), hereby move this Court for an order: (1) granting preliminary approval of the proposed class action settlement, as embodied in the Settlement Agreement filed concurrently herewith; (2) approving the Notice of Class Action Settlement to be sent to Class Members, and the notification schedule as set forth in the Settlement Agreement and the Proposed Order, also filed concurrently herewith; and (3) setting a hearing for final approval of the class action settlement.

II. STATUS OF THE LITIGATION

A. Procedural History

On July 10, 2023, Plaintiff Alfonso Ceja Ruiz commenced a Class Action by filing a Complaint in Ventura County Superior Court. On September 8, 2023, Plaintiff Ruiz filed a First Amended Complaint alleging causes of action against Defendant for: (1) Failure to Reimburse Necessary Business Expenses under Labor Code § 2802; (2) Failure to Pay Minimum, Overtime, and Contractual Wages under Labor Code §§ 218.5, 510, 1194, and 1197; (3) Failure to Provide Accurate Wage Statements under Labor Code § 226; (4) Failure to Pay All Wages Due at Separation under Labor Code § 203; (5) Restitution of All Wages Pursuant to Business & Professions Code § 17200, *et seq*.; and (6) Violation of the California Private Attorneys General Act under Labor Code § 2698, *et seq*.

On February 27, 2024, Plaintiff Reynaldo Labo filed a Class Action Complaint in Ventura County Superior Court alleging causes of action against Defendant for: (1) Failure to Pay

Minimum Wages; (2) Failure to Pay Wages and Overtime under Labor Code § 510; (3) Failure to Pay Vacation Wages under Labor Code § 227.3; (4) Failure to Comply with Labor Code §§ 245 *et seq*. and 246; (5) Meal Period Liability Under Labor Code § 226.7; (6) Rest Break Liability Under Labor Code § 226.7; (7) Violation of Labor Code § 226; (8) Violation of Labor Code § 203; and (9) Violation of Business & Professions Code 17200 *et seq*. On February 27, 2024, Plaintiff Labo submitted and sent to Defendant by certified mail his PAGA Notice Letter to the Labor & Workforce Development Agency. The Notice Period ran, and Plaintiff Labo filed a First Amended Class Action Complaint ("FAC") including a tenth cause of action for penalties pursuant to Labor Code § 2699, *et seq*.

Pursuant to the Settlement Agreement, on December 3, 2024, the Parties filed a stipulation and proposed order to file a consolidated complaint in the Ruiz Action adding Plaintiff Labo as a named Plaintiff and adding the allegations contained in Plaintiff Labo's FAC. Once the Court signs the Order re: stipulation, Plaintiffs will file the consolidated complaint.

B. Investigation

Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto. (Shkondik Decl., ¶ 11.) After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action. (Shkodnik Decl., ¶ 12.) The Class enumerated in this action is ascertainable because the Class Members may be readily identified by reference to Defendant's records. (*Id.*) Defendant agreed to share information from these records with the Class Action Administrator in order to identify and contact the Class Members. (*Id.*) There are approximately 356 total Class Members. (*Id.*)

Defendants, for their part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (Shkodnik Decl., ¶ 13.) After Class Counsel analyzed the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

C. Settlement Efforts

On June 13, 2024, the Parties mediated this case with Hon. Ernest Goldsmith (Ret.), a respected and highly experienced mediator in wage and hour class actions. During mediation, Plaintiffs' and Defendant's counsel discussed all aspects of the case. (*Id.*) At the mediation, the parties agreed to settle the lawsuit according to the terms set forth in the Settlement Agreement. (*Id.; See* Exhibit 1 attached to Shkodnik Decl., "Settlement" or "Settlement Agreement".)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, the Defendants have agreed to pay $1,970,000.00 ("Gross Settlement Amount") on a non-reversionary basis to settle and release all claims asserted by Plaintiffs in the operative consolidated complaint on behalf of the proposed Class. (Shkodnik Decl., ¶ 15; Exh. 1 ¶ 1.23, p. 3.) The Settlement Agreement defines the "Class" as all non-exempt hourly employees of Automotive Racing Products, Inc., in the state of California employed during the Class Period. The Class Period is the period from July 10, 2019 through August 12, 2024. (Shkodnik Decl., ¶ 16; Exh. 1, ¶¶ 1.5, 1.12 pp. 1-2.) The "Net Settlement Amount," available for distribution to Class Members, shall be the Gross Settlement Amount, less the Class Representative Enhancement Payments, Attorneys' Fees and Costs, Settlement Administration Costs, the LWDA PAGA Payment, and the Individual PAGA Payments. (Shkodnik Decl., ¶ 17; Exh. 1, ¶ 1.28, p. 3.) These amounts are detailed as follows:

- not more than Six Hundred and Fifty-Six Thousand Six Hundred and Sixty-Six Dollars and Sixty-Six Cents ($656,666.66) to Class Counsel for attorneys' fees, and Twenty-Five Thousand Dollars ($25,000.000) in litigation costs; (Shkodnik Decl., ¶ 17; Exh. 1, ¶ 3.2.2, pp. 7-8.);
- not more than Seven Thousand Five Hundred Dollars ($7,500.00) to Plaintiff Labo as Class Representative for Service Enhancement Payment; (Shkodnik Decl., ¶ 17; Exh. 1, ¶ 3.2.1, p. 7.);
- not more than Five Thousand Dollars ($5,000) to Plaintiff Ruiz as Class Representative for Service Enhancement Payment; (Shkodnik Decl., ¶ 17; Exh. 1, ¶ 3.2.1, p. 7.);
- up to Eleven Thousand Dollars ($11,000) for the Settlement Administration Costs;

(Shkodnik Decl., ¶ 17; Exh. 1, ¶ 3.2.3, p. 8.);

- One Hundred and Ninety-Seven Thousand Dollars ($197,000) shall be allocated for settlement of claims for civil penalties under PAGA, where 75% ($147,750) will be paid to the LWDA and 25% ($49,250) will be included in the Net Settlement Amount and distributed to Settlement Class Members); (Shkodnik Decl., ¶ 17; Exh. 1, ¶ 3.3.1.2, p. 9.)

The "Individual Settlement Payment," which is each Class Member's share of the Net Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class Member worked during the Class Period as a non-exempt hourly employee in California. (Shkodnik Decl., ¶ 18; Exh. 1, ¶ 3.3, p. 8.)

The settlement amount was a compromise figure, factoring in the inherent risks related to certification, liability and damages. (Shkodnik Decl., ¶ 19.) However, taking into account all of the circumstances of the action and the defenses raised by Defendant against certification, liability, and damages, Class Counsel believes that the settlement is fair and reasonable. (*Id.*)

Attached to the Settlement Agreement as **Exhibits A and B** are the full notice and post card Notice of Class Action Settlement (the "Class Notice"). The procedures for mailing notice and processing exclusions and objections as well as distribution of the Net Settlement fund is detailed in the Settlement. (Shkodnik Decl., ¶¶ 20-22; Exh. 1, ¶¶ 8.4 – 8.14, pp. 17-20.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at 473-75.) The decision to certify a class is a procedural one, and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

To certify a settlement class, the Court must find the two primary requirements for maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-defined community of interest in the questions of law and fact involving the parties to be represented. (*See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab Company* (1967) 67 Cal. 2d 695, 704.) These criteria are met here for the reasons set forth below.

A. There Is a Numerous and Ascertainable Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class and the means available for identifying class members. (*See Vasquez, supra,* 4 Cal. 3d at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271.) Class members are "ascertainable" where they may be readily identified without unreasonable expense or time.

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, this requirement and the requirement of numerosity is met. Class Members are all current and former non-exempt hourly employees of Automotive Racing Products, LLC in the state of California employed during the Class Period. The Class Period is the period from July 10, 2019 August 12, 2024. (Shkodnik Decl., ¶ 16.) Documents and information exchanged between the Parties reflect a class of approximately 356 Class Members. (Shkodnik Decl., ¶ 65(a).) The Class Members have already been identified by reference to Defendant's payroll and personnel records. (Shkodnik Decl., ¶ 65(b).)

Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

B. There Is a Well-Defined Community of Interest

A community of interest is established by the predominance of common issues of law and fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

> [D]oes not depend upon an identical recovery, and the fact that each member of the class must prove his separate claim to a portion of any recovery by the class is only one factor to be considered ... The mere fact that separate transactions are involved does not of itself preclude a finding of the requisite community of interest so long as every member of the alleged class would not be required to litigate numerous and substantial questions to determine his individual right to recover subsequent to the rendering of any class judgment which determined in plaintiffs' favor whatever questions were common to the class.

Id. at 809.

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs, and the Class is united in its proof. (Shkodnik Decl., ¶ 65(e).) Because Plaintiffs have alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." (*See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing In Re NASDAQ Market-Makers Antitrust Litigation, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This inference "'eliminates the need for each class member to prove individually the consequences of the defendants' actions to him or her.'" (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).)

This action involves, *inter alia*, a determination about Defendant's alleged failure to pay wages and overtime due to allegedly common and unlawful policies, failure to reimburse business expenses, failure to provide meal and rest periods, failure to provide paid sick leave, failure to pay vacation wages, the resulting failure to pay final wages when required, the failure to provide accurate paystubs, and the largely derivative claims under the Business & Professions Code and PAGA. Plaintiffs contend these practices affected Class Members in the same way. Plaintiffs contend these practices resulted in a failure to compensate employees at termination, and incomplete wages displayed on wage statements. The outcome of litigation on this matter depends upon questions that are common to Class Members. (Shkodnik Decl., ¶ 65(f).) While Defendant maintained otherwise, these issues will not be decided on the basis of facts peculiar to each Class Member, but rather on the basis of facts common to them all. It is also true that these issues of liability can be determined on a class-wide basis. (*Id.*)

C. The Named Plaintiffs' Claims Are Typical

A class representative's claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative class members, and if their claims rest on the same legal theories. The class representative's claims must be "typical," but not necessarily identical to the claims of other class members. It is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class representative must have identical interests with the class members.") Thus, it is not necessary that the class representative should have personally incurred all of the damages suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that Plaintiffs' claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Shkodnik Decl., ¶ 65(c).) Plaintiffs were employed by Defendant during the Class Period and were subject to the allegedly unlawful meal and rest policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiffs are members of the Class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay all wages, whether Defendant failed to provide meal and rest periods, etc.), which would arise if this was an individual action, applies to the other Class Members as well. The answer to these questions would determine Defendant's liability to the putative class. (*Id.*) Thus, the claims of Plaintiffs are typical of the claims of the putative class. (*Id.*) Accordingly, the typicality requirement is satisfied.

D. Adequacy of Class Counsel and Class Representatives

Class Counsel are experienced in class actions, have represented their clients zealously and have no conflicts of interest. (Shkodnik Decl., ¶¶ 3-9, 65(d); Declaration of Hallie Von Rock, ¶¶ 2-3.) The Class Representatives' interests are aligned with those of the Class Members, they have suffered the same injuries as the Class Members and have no conflicts of interest. (*Id.*)[1] Therefore, Class Counsel and the Class Representatives are adequate.

E. Predominance and Superiority

Individual issues do not predominate over those common to the class. (Shkodnik Decl., ¶

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[1] Plaintiff Ruiz had individual causes of action against defendants ARP and Richard Jackson for assault, battery, negligent retention, and whistleblower retaliation. Mr. Ruiz settled his individual claims against ARP and Mr. Jackson and signed a separate individual settlement agreement. His individual claims were separate from those asserted on behalf of Class Members and PAGA Aggrieved Employees and he had no conflicts of interest in dutifully representing the Class Members and PAGA Aggrieved Employees. *See,* Declaration of Alfonso Ruiz, ¶ 5.

65(f).) The class action mechanism is superior to individualized actions because Class Members have little incentive to bring claims that are small. (Shkondik Decl., ¶ 65(g).)

V. THE TWO-STEP APPROVAL PROCESS

Any settlement of class action litigation must be reviewed and approved by the Court. This is accomplished in two steps: (1) An early (preliminary) review by the trial court, and (2) a detailed review after the notice has been distributed to the class members for their comments or objections. In this regard, the Manual for Complex Litigation (Second) explains:

> A two-step process is followed when considering class settlements… If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

(*Manual for Complex Litigation (Second)* (1985) at § 30.44.) The preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. (*See, e.g., Newberg*, § 11.25; *North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.) Thus, the preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements.

Settlements to resolve PAGA claims also require court approval. (Labor Code § 2699(l)(2).) There is no articulated standard for approving PAGA settlements. PAGA settlements for as little as $0 have been approved. (*See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated $0 to PAGA claim).) Courts have also approved settlements for $20,000 or less. (*See, e.g., Hicks v. Toys 'R' Us–Delaware, Inc.,* (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving $5,000 PAGA payment in $4 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1 (approving PAGA payment of $7,500 in $6.9 million settlement); *Williams v. Brinderson Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 ($10,000 PAGA settlement in $300,000 settlement).)

A review of the preliminary approval criteria demonstrates a substantial basis for granting the instant Motion and proceeding to a full settlement hearing.

VI. THE SETTLEMENT IS FAIR AND ADEQUATE

As a matter of public policy, courts both encourage the use of the class action device and favor settlement over continued litigation. (*See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434 ("Courts have long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system."); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268, 1276 ("[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned.").)

Moreover, courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents, particularly when settlement has been reached by experienced counsel familiar with the litigation. (*Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.)

In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out several factors that should be analyzed in determining if a class action settlement should be approved. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

The Settlement here satisfies each of these factors. Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter, including a detailed analysis of Defendant's policies and a considerable sample of Defendant's time and pay records. (Shkodnik Decl., ¶¶ 11-12.) This discovery permitted Class Counsel to fairly evaluate the strengths of the case and the risks associated with ongoing litigation. Class Counsel is very experienced in the handling of wage and hour class actions and supports this Settlement. (Shkodnik Decl., ¶¶ 3-9.)

A. The Strength of Plaintiffs' Case.

The claims in this action include failure to pay minimum and overtime wages, failure to provide meal breaks or rest breaks or provide premium pay in lieu thereof, failure to pay vacation wages, failure to provide paid sick leave, failure to reimburse necessary business expenses, failure to provide accurate wage statements, failure to pay final wages when due, and related claims for violations of California's Business & Professions Code and for penalties under PAGA. (Shkodnik Decl., ¶ 10.)

Class Counsel felt confident that the claims in this case would be certified given that Defendant's policies were applicable to all Class Members and unlawful on their face. (Shkodnik Decl., ¶¶ 24-52.) Defendant contends, however, that that the policies complied with California law.

B. The Risk, Expense, Complexity and Likely Duration of Any Litigation.

Given the risks outlined above, the issues in this case were complex and the risk for Plaintiffs and the Class Members associated with this litigation was high. (Shkodnik Decl., ¶¶ 49-52.) A class trial would have required the retention of expensive expert witnesses, the accrual of extensive litigation costs, and the Parties would have had to spend a substantial amount of time.

Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay for the Class Members who have already waited years for resolution in this matter.

C. The Risk of Maintaining Class Action Status Through Trial.

In class actions, decertification is always a possibility. There is always a risk that a trial of this magnitude can become unmanageable. (*Id.*) Given cases like *Duran v. U.S. Bank Nat. Assn.*, 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples in class actions, decertification is a real risk that Class Counsel must take into account.

D. The Amount Offered in Settlement.

There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive, and arms-length negotiations between the parties with an experienced mediator. In order to determine the approximate potential damages which would be owed to each of the Class Members, Class Counsel analyzed the time records for Plaintiffs and Defendant provided Class Counsel with records for a sampling of the Class Members. By analyzing this information, Class Counsel was able to estimate the full value of the case if Plaintiffs were to prevail at trial.

There are approximately 356 total Class Members. Class Counsel estimated the maximum exposure for the meal period claim is $1,235,375.04. (Shkodnik Decl., ¶ 31.) Class Counsel estimated the maximum exposure for the rest period claim is $1,235,375.04. (Shkodnik Decl., ¶ 33.) The maximum exposure on the unpaid wage claim is $463,265.64 and the regular rate claim is $88,794. (*Id.* at ¶ 27.) The maximum exposure for the wage statement claim is $1,076,000.(*Id.* at ¶ 36.) The maximum exposure for the waiting time penalties claim is $482,042. (*Id.* at ¶ 40.) The maximum exposure for the failure to reimburse business expenses claim is $216,775.68. (*Id.* at ¶ 41.) On the PAGA claim, Plaintiff's estimated maximum exposure is $2,541,300. (*Id.* at ¶ 45.)

Once Class Counsel was able to determine the maximum potential damages, it was able to determine a fair and reasonable settlement for the Class. (*Id*. at ¶¶ 49-52.) Class Counsel analyzed the likelihood of success on the merits. (*Id*.) It believes that the Class had a reasonable likelihood of success on the core claims. (*Id*.) However, Defendant disputes this contention, denies all wrongdoing in this matter and is confident it has strong legal and factual defenses to Plaintiffs' claims. Moreover, Class Counsel determined that the likelihood of success on the claims for unpaid wages and waiting time penalties were not as strong, because various defenses including issues not suitable for class treatment, no detriment to the class members over time, and *de minimis* defenses. Defendant may have had the opportunity to establish that it had a good faith belief that it was complying with the law. (*Id*.) After taking into account the likelihood of success on each claim and the challenges faced with certifying these claims, Class Counsel determined that the settlement amount of $1,970,000.00 was fair and reasonable.

Under the Settlement, each of the approximately 356 Class Members will receive on average $3,137 after expenses. (*Id.* at ¶ 48.) Plaintiffs feel that this Settlement is fair, reasonable, and advantageous to the class. (*Id.*)

To summarize, the Settlement here is fair because it provides a substantial payment to each Class Member for releasing his or her claims; extinguishes the risk of litigation; and provides a fair and adequate distribution of the settlement proceeds whereby the funds are allocated to Class Members proportionally based on their Payout Ratio.

As detailed at length in the accompanying Declaration of Roman Shkodnik, the settlement is the result of extensive settlement negotiations between the Parties, conducted at arm's length, and informed by substantial factual and legal investigations. (Shkodnik Decl., *passim*.) Throughout this case, Class Members have been represented by experienced counsel with many years of experience in employment class action litigation. (Shkodnik Decl., ¶¶ 3-9.)

Class Counsel has devoted a considerable amount of time to the prosecution of this case, including but not limited to, interviewing Plaintiffs on repeated occasions; drafting pleadings; conducting considerable discovery, and meeting and conferring with defense counsel about same; reviewing and analyzing time records and various handbooks and policies, Plaintiffs' personnel files, and other documentation; researching California law; preparing for and attending mediation; and negotiating and finalizing the Settlement Agreement and related documents. (Shkodnik Decl., ¶¶ 11-14.)

Among those matters considered during the course of settlement negotiations were the strength of Plaintiffs' case versus the amounts offered in settlement; the risks, expenses, and length of further litigation, including class certification and the appeals process; the present state of the law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present value of a settlement versus the long wait necessitated by any potential judgment in class members' favor; the burdens of proof necessary to establish liability against Defendant; and Defendant's defenses to the action. (Shkondik Decl., *passim*.)

These factors each indicated that the interests of Class Members are best served by a settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.

The Settlement Agreement confers a substantial benefit on the class of up to $1,970,000.00. Moreover, the settlement awards for each Class Member will be tailored to their workweeks during the class period. (*Id.* at ¶ 18.)

Class Counsel believes that the settlement is fair and reasonable and serves the best interests of the Class Members. Although the recommendations of counsel proposing the class settlement are not conclusive, the Court can properly take the recommendations into account, particularly if counsel has been involved in litigation for some period of time, appear to be competent, and have experience with this type of litigation, and significant discovery has been completed. *See Newberg,* §11.47.

VII. THE CLASS REPRESENTATIVE ENHANCEMENTS ARE FAIR AND REASONABLE

It is appropriate to provide a relatively modest additional incentive payment to the class representative. See *Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294.

Plaintiffs are entitled to reasonable service payments for their efforts and initiative in bringing and helping to prosecute this class action. Plaintiffs spent significant time better apprising themselves of their rights, deciding whether remedial action should be taken, how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiffs discussing their cases and the law. (Shkodnik Decl., ¶¶ 60-64.) In light of the foregoing, Class Counsel believes that the incentive awards in the amounts of $7,500.00 to Plaintiff Labo and $5,000 to Plaintiff Ruiz as Class Representatives are fair and reasonable. (*Id.*at ¶ 64; *see also,* Declarations of Ruiz and Labo.)

VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS.

Constitutional due process requires that class members be provided with notice sufficient to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient information to make an informed decision as to whether to accept or object to the settlement. (*Id.*

at 314.) The notice must apprise the class members of the pendency of the action; reasonably convey information regarding the settlement and the class members' rights, entitlements, and obligations; and afford class members the opportunity to present their objections. (*Id.*)

The Notice meets constitutional standards because it provides all the information a reasonable person would need to make a fully informed decision about the settlement. It will notify all class members of the terms of the settlement, of its effect on their rights, of their options as class members (i.e., participate, object, opt out, do nothing), and of the consequences of exercising those options. (Shkodnik Decl., ¶¶ 53-55.) Moreover, the Notice will specifically direct any class members who have questions or concerns to contact the Class Action Administrator, Atticus Administration, or Class Counsel. (*Id*.)

The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California's Deskbook on the Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual notice by mail is preferred when possible and dissemination of combined certification/settlement notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.)

Here, a Class Notice post card will be sent via first-class mail to each class member and a settlement website will contain the full Class Notice. (Shkodnik Decl., ¶ 53.) If any Class Notices are returned undeliverable without a forwarding address, the Settlement Administrator will use the national change of address database and perform a skip trace to locate the class member and mail a new Class Notice to him or her at the correct address. (*Id.; see also,* Declaration of Christopher Longley ¶¶ 8-9.) Thus, most, if not all, class members will likely receive the Notice post card.

Pursuant to controlling authority, the proposed Class Notice and method of distribution fully comport with due process requirements. Therefore, the Court should approve the Class Notice and direct that it be distributed as proposed herein.

IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT

Non-settling parties and third parties periodically may attempt to object to proposed class action settlements, but the right of non-settling parties to object at the final settlement approval hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class members have standing to object to a proposed settlement. "Beginning from the unassailable premise that settlements are to be encouraged, it follows that to routinely allow non-class members to inject their concerns via objection at the settlement stage would tend to frustrate this goal." (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being filed to obtain a good faith determination, no persons other than class members have standing to object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d 1330.)

X. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS REASONABLE AND SHOULD BE APPROVED.

Under the Settlement Agreement, subject to approval by this Court, Class Counsel will seek an award of fees of no more than $656,666.66, approximately one-third of the Gross Settlement Amount, and reasonable litigation costs. The requested fees are fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-consuming litigation solely on a contingent basis. (Shkodnik Decl. ¶¶ 57-59.) Defendant will not oppose Class Counsel's fees and cost request.

Here, Class Counsel has borne the entire risk and costs of litigation and will not receive any compensation until recovery is obtained. (*See,* Shkonik Decl., ¶¶ 57-59.) The Court should also consider the benefit obtained by Class Counsel on behalf of class members. Thus, the requested award for Class Counsel is reasonable.

XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY APPROVAL

The Parties respectfully request this Court, as part of the preliminary approval process, to grant the following relief and make the following orders:

1. Review and approve the Settlement Agreement;

2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibits

A and B;

3. Consider and determine that the proposed class action settlement as set forth in the Settlement Agreement preliminarily appears fair, reasonable, and adequate;

4. Enter an order conditionally certifying the action as a class action for settlement purposes only and preliminarily approving the proposed class action settlement and the Settlement Agreement;

5. Approve and appoint David Yeremian, Emma Geesaman, and Roman Shkodnik of D.Law, Inc. and Hallie Von Rock of Aiman-Smith & Marcy PC to serve as Class Counsel for settlement purposes;

6. Approve and appoint Atticus Administration. as the Class Action Administrator to handle the notice and claims procedures as set forth in the Settlement Agreement;

7. Approve the proposed settlement's allocation of funds to claims made under PAGA;

8. Order Defendant to disclose to Atticus Administration the names, last-known addresses, dates of employment, and social security numbers of class members as set forth in the Settlement Agreement;

9. Order that Atticus Administration mail the Class Notice to class members; and

10. Set a date for the Final Approval Hearing.

Dated: January 7, 2025

Respectfully submitted,

D.LAW, INC.

By: /s/ David Shkodnik

____

David Yeremian
Roman Shkodnik
Emma Geesaman
Attorneys for Plaintiff
Reynaldo Rabo, on behalf
of himself and others similarly situated

Dated: January 7, 2025

Respectfully submitted,

AIMAN-SMITH & MARCY PC

By: /s/ Hallie Von Rock

Hallie Von Rock
Attorneys for Plaintiff
Alfonso Ceja Ruiz, on behalf
of himself and others similarly situated