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Attorneys for Plaintiff JOSE ROBERTO COCA MOLINA
individually and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JOSE ROBERTO COCA MOLINA, individually and on behalf of all others similarly situated, Plaintiff, v. AMM MARKET, INC., dba MISSION RANCH MARKET, a California Corporation, Defendant.	Case No.: 30-2023-01337256-CU-OE-CXC Related to Case No.: 30-2023-01351378-CU-OE-CXC Judge: Hon. Randall J. Sherman Department: CX105 **PLAINTIFF'S UNOPPOSED NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATION IN SUPPORT THEREOF; [PROPOSED] ORDER** Date: January 3, 2025 Time:10:00 a.m. Reservation No.: 74377022

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 3, 2025, at 10:00 a.m. or as soon thereafter as the matter may be heard by the Honorable Randall J. Sherman in Department CX105 of the

Orange County Superior Court, Plaintiff JOSE ROBERTO COCA MOLINA, individually and on behalf of all others similarly situated, will and hereby does move the Court for entry of an Order preliminarily approving the Parties' class action settlement, including:

1. Certifying the class for purposes of settlement only;
2. Preliminarily appointing Plaintiff JOSE ROBERTO COCA MOLINA as class representative for settlement purposes;
3. Appointing Plaintiff's counsel James Hawkins APLC as class counsel for purposes of settlement only;
4. Preliminarily approving the class action settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
5. Approving Apex Class Action Administrators as the administrator and directing distribution of the Class Notice, including notice of the opportunity to exclude oneself from, or object to, the settlement;
6. Setting a date for a final fairness hearing to determine, following dissemination of the Class Notice, whether to grant final approval of the Settlement.

This motion is based upon this Memorandum of Points and Authorities in Support thereof; the Declaration of Plaintiff's counsel James Hawkins APLC in support thereof; the Settlement Agreement and Stipulation to Resolve Class Action and PAGA Claims (the "Settlement Agreement"); the proposed Order granting Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in this action; and upon such other evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: September 5, 2024

JAMES HAWKINS APLC

BY: ______________________________

James Hawkins, Esq.
Gregory Mauro, Esq.
Michael Calvo, Esq.
Lauren Falk, Esq.
Ava Issary, Esq.
Attorneys for Plaintiff and the Proposed Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff JOSE ROBERTO COCA MOLINA seeks preliminary approval of a $800,000.00 wage-and-hour class action settlement (the "Settlement Amount") on behalf of approximately 357 putative class members, which includes all persons who have been employed by Defendant as Non-Exempt Employees or equivalent positions however titled in the state of California and who performed work from July 20, 2019 through September 2, 2024 (the "Class Period").

The payment to each Class Member under the Settlement Agreement is based on the number of Pay Periods that each Class Member worked for Defendant during the Class Period. The Settlement Agreement and Stipulation to Resolve Class Action and PAGA Claims is attached as Exhibit "1" to the Declaration of James Hawkins ("Hawkins Decl."), and is hereinafter referred to as the "Settlement Agreement" or "S.A." The proposed Notice of Settlement of Class Action ("Class Notice") is attached to the Settlement Agreement as Exhibit "A."

Under the terms of the Settlement Agreement, Defendant AMM Market, Inc. dba Mission Ranch Market, a California Corporation ("Defendant") will not oppose Plaintiff Counsel's application for a reasonable award of attorney's fees not to exceed the total amount of $266,666.66 which is 1/3 of the Gross Settlement Amount (hereinafter, the "Settlement Amount"), Plaintiff Counsel's litigation expenses not to exceed $20,000.00, Settlement Administrator Costs of $8,500.00, PAGA penalties of $40,000.00 (of which $30,000.00 or 75% will be paid to the LWDA and the remaining $10,000.00 or 25% will be paid to the Aggrieved Employees on a pro rata basis), and an Enhancement Award of $10,000.00 to Plaintiff JOSE ROBERTO COCA MOLINA ("Class Representative"). (S.A. ¶ 50).

After all Court-approved deductions from the Settlement Amount, it is estimated that $454,833.34 will be available to pay approximately 357 Class Members, as follows:

	Total Amount
Gross Settlement Amount	$ 800,000.00
Attorneys' Fees (1/3)	$ 266,666.66

Litigation Costs	$	20,000.00
Administrator Costs	$	8,500.00
PAGA Penalties	$	40,000.00
Class Representative's Enhancement Award	$	10,000.00
Net Settlement Amount	**$**	**454,833.34**

Assuming 357 Class Members, the average payment to each class member will be approximately $1,274.04 ($454,833.34 / 357). Of course, the actual payment will be calculated on a pro-rata basis according to the number of weeks worked by each Class Member. Assuming an estimated 25,951 non-exempt workweeks, each workweek will have a settlement value of approximately $17.52 on average. In addition, approximately 218 Aggrieved Employees (*i.e.*, individuals who worked during the PAGA Period starting on July 24, 2022 through September 2, 2024), will receive a pro rata share of the $10,000.00 PAGA Penalties (accounting for 25% of the total $40,000.00 allocation) according to the number of pay periods worked by each Aggrieved Employee. Moreover, the Aggrieved Employees will each receive on average approximately $45.87 for PAGA recovery. (Hawkins Decl., ¶¶ 24-32).

The settlement is non-reversionary and Class Members will not be required to submit claim forms to receive payment, but each Class Member will receive the Class Notice containing information about his/her share, the opportunity to dispute the number of Pay Periods Worked, and the opportunity to opt-out or object to the settlement. All Class Members who do not affirmatively opt-out will receive a settlement check upon the Court granting final approval. Likewise, all Aggrieved Employees will receive a share of the PAGA Penalties once the settlement receives final approval.

Because the settlement is fair and reasonable and was negotiated at arm's length by experienced counsel and an experienced mediator following a sufficient exchange of information and documents prior to mediation, it should be preliminarily approved. Plaintiff respectfully requests that the Court enter an order preliminarily approving the settlement, conditionally certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the proposed Class Notice, appointing Plaintiff's counsel as class counsel, appointing Apex Class Action Administrators as the Settlement Administrator, and scheduling a hearing for final approval of the Settlement.

II. BACKGROUND

A. THE SETTLEMENT CLASS

The Class is defined as follows:

All persons who have been employed by Defendant as Non-Exempt Employees or equivalent positions however titled in the state of California during the Class Period. (S.A. ¶ 8). There are approximately 357 Settlement Class Members.

B. PROCEDURAL HISTORY

On July 20, 2023, Plaintiff submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"). (Hawkins Decl., ¶ 3).

On July 20, 2023, Named Plaintiff filed the Class Action against Defendant in a case entitled *Jose Roberto Coca Molina, et al. v. A MM Market, Inc dba Mission Ranch Market*, Orange County Superior Court Case No. 30-2023-01337256-CU-OE-CXC. On September 27, 2023, Named Plaintiff filed the PAGA Action against Defendant in a case entitled *Jose Roberto Coca Molina, et al. v. AM M Markef1nc dba Mission Ranch Market*, Orange County Superior Court Case No. 30-2023-01351378-CU-OE-CXC. The Class Action and PAGA Action allege that Defendant violated various wage and-hour laws, including: (1) failure to pay wages including overtime as required by Labor Code §§ 510 and 1194; (2) failure to provide meal periods as required by Labor Code§§ 226.7, 512 and IWC Wage Orders; (3) failure to provide rest periods as required by Labor Code§§ 226.7, 512; (4) failure to pay timely wages required by Labor Code§ 203; (5) failure to timely pay wages during employment required by Labor Code § 204; (6) failure to provide accurate wage statements required by Labor Code §§ 226, 226.3, 558.l; (7) failure to maintain accurate records relating to hours worked daily; (8) violation of Business & Professions Code § 17200, et seq.; and (9) penalties pursuant to the California Private Attorneys General Act. (Hawkins Decl., ¶¶ 4-6).

In preparation for the mediation Defendant provided Class Counsel with first and last time punch dates for all employees, time and payroll records and relevant policies for Class Members during the Class Period. (Hawkins Decl., ¶ 7).

On January 19, 2024, the Parties participated in mediation with Lisa Klerman, Esq. (the "Mediator"), a respected mediator of complex wage-and-hour actions, and with the assistance of the Mediator's evaluations, the Parties reached settlement. (Hawkins Decl., ¶ 8). The Parties now seek the Court's preliminary approval of the Settlement.

C. SUMMARY OF THE CLAIMS AND DEFENSES

Plaintiff alleged numerous wage and hour violations on behalf of the Class Members. However, Defendant vigorously contested and denied Plaintiff's material allegations on the merits and as to the propriety of a class action or PAGA representative action.

One of the primary claims in this action is for late meal period violations and off the clock work. (Hawkins Decl., 25.) Plaintiff claimed he and other co workers would spend approximately 5 minutes per work shift preparing for the workday. In addition, the records revealed approximately a 60% late meal period violation. This was determined after reviewing the time and pay data for the entire class. As a result, Plaintiff challenged the propriety of Defendant's pay practices, arguing that Defendant failed to account for off-the-clock work performed by Plaintiff and the Class Members. Plaintiff claimed that he and the putative class were denied proper meal breaks and were not paid break premium pay when owed. Most importantly, Plaintiff alleged that these unpaid wage claims triggered waiting time penalties, wage statement penalties and PAGA penalties. (Hawkins Decl. ¶¶ 24-32).

However, Defendant vehemently opposed these unpaid wage and meal period claims both on the merits and as to the propriety of pursuing them on a class and representative PAGA basis. For example, Defendant argued that it maintained lawful policies to compensate employees for all time worked and that any ruling on these unpaid wage claims would require unwieldy individualized assessments that were not proper for class and representative treatment. Defendant also argued that it had compliant meal and rest break policies and practices, and that issues related to any denial of proper breaks would have to be resolved on an individualized basis. As for the waiting time penalty claims, Defendant argued that these would fail along with the underlying wage claims – and, even if the wage claims succeeded, Defendant argued it was entitled to the "good faith" defense and that Plaintiff would be unable to show these violations were "willful." (Id.)

Plaintiff also alleged various PAGA claims arising out of the claimed violations mentioned above. However, Defendant argued that these types of "derivative" claims have no merit. (Id.).

Despite the disputed nature of the claims, the Parties concluded that further litigation of the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled to limit further risk, expense, and protracted litigation.

III. SUMMARY OF THE PROPOSED SETTLEMENT

The following is a summary of the principal terms of the Settlement Agreement.

A. SETTLEMENT CONSIDERATION AND ALLOCATION

The $800,000.00 Settlement Amount is non-reversionary and will be paid out to Class Members without the need to submit a claim form or take any affirmative action. It includes (1) Plaintiff's attorneys' fees and costs, as approved by the Court; (2) an Enhancement Award of $10,000.00 to Plaintiff, subject to approval by the Court; (3) settlement administrator expenses, not to exceed $8,500.00; (4) a $40,000.00 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶ 50). Defendant will separately pay its share of employer's payroll taxes and withholdings.

After all Court-approved deductions from the Settlement Amount, it is estimated that $454,833.34 will be available to pay the Individual Settlement Amounts to approximately 357 Class Members. Thus, the average settlement payment is approximately $1,274.04.

B. NOTICE PROCEDURES

The proposed Class Notice will be provided to the Class Members showing the estimated amount that each Class Member will receive and the number of workweeks he/she is credited (Exhibit A to the Settlement Agreement). Within 14 calendar days after entry of the Preliminary

Approval Order, Defendant will provide to the Settlement Administrator a list of Class Members that identifies each Class Member by name, Social Security Number, and last-known address; and specifies the number of weeks worked by each Class Member in a non-exempt position during the Class Period and the PAGA Period (the "Class List"). (S.A. ¶ 55).

Within 14 calendar days after receipt of the Class List from Defendant, the Settlement Administrator will send the Class Notice to each Class Member via First Class U.S. Mail. (S.A. ¶ 55(a)).

In the event that any Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Member(s), and a second Class Notice will be sent to any new or different address obtained. (S.A. ¶ 55(b-d)).

C. EXCLUSION AND OBJECTION PROCEDURES

Class Members who do not timely Opt-Out of the Settlement will be deemed to participate in the Settlement and shall become a Participating Class Member without having to submit a claim form or take any other action. A valid Opt-Out Request must: (i) contain the Class Member's full name and current address; (ii) the Action name and/or case number; (iii) a statement clearly expressing the Class Member's desire to be excluded from (or opt out of) the Settlement; and (iv) be returned so that it is postmarked on or before the expiration of the Notice Period. Alternatively, a Class Member may fill out the Opt-Out Request Form attached to the Class Notice and return it so that it is postmarked on or before the expiration of the Notice Period. (S.A. ¶57).

The Class Notice shall inform the Class Members of their right to object to the Settlement. Any Class Member who wishes to object to the Settlement must submit a written objection to the Settlement Administrator no later than the expiration of the Notice Period. The objection must include the case name and number and must set forth, in clear and concise terms, a statement of the specific reasons why the objector believes the Settlement is unfair or objects to the Settlement. (S.A. ¶ 58).

D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

Class Members are entitled to receive payment under the Class Settlement of their pro rata share of the Net Settlement Amount ("Individual Settlement Payment") based on the number of weeks each Class Member worked for Defendant in a non-exempt position in California during the Class Period ("Workweeks"). To calculate each Individual Settlement Payment, the Settlement Administrator has divided the Participating Class Member's weeks worked in a non-exempt position by the total number of weeks worked by all Class Members in a non-exempt position during the Class Period and multiplying this figure by the Net Class Settlement Amount, to yield each Participating Class Member's Individual Settlement Payment. (Exhibit A at ¶ III(B)).

Additionally, each “Aggrieved Employee” will receive a share of the PAGA Penalties based on a pro-rata basis based on the number of pay periods each Aggrieved Employee worked for Defendant in a non-exempt position in California during the PAGA Period (“Pay Periods Worked”). Thus, the $10,000 PAGA Penalties allocated to the Aggrieved Employees will be divided and paid on a Pay Period basis. (S.A. ¶ 52(e)).

The Class Notice will inform Class Members of the estimated share and the number of Workweeks he/she worked during the Class Period and the number of pay periods he/she worked during the PAGA Period. Class Members may dispute their Workweeks and/or Pay Periods Worked if they feel they worked more in the Class or PAGA Periods than Defendant’s records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 56).

As noted, assuming a class size of 357 Class Members, the average payment to each class member will be approximately $1,274.04 each, although the actual payment will be calculated on a pro-rata basis as shown above. Each workweek will have a value of approximately $17.52 on average. The highest amount a Settlement Class Member will receive is approximately **$4,695** based upon $17.52 per workweek multiplied by approximately 268 maximum workweeks in the Class Period. The lowest payment is estimated to be approximately **$17.52** for someone who worked only one workweek. Indeed, this is a good result for the Class Members. (Hawkins Decl. ¶ 31).

1. Moreover, it is estimated that there are approximately 218 Aggrieved Employees who will share in the $10,000.00 PAGA award on a pro rata basis resulting in approximately As a result, Aggrieved Employees will each receive on average approximately $45.87 for PAGA recovery. The lowest value is approximately $1.55 for one pay period worked. (Id. ¶ 32).

E. TIMING OF SETTLEMENT DISBURSEMENTS

On the later of fifteen (15) calendar days of the Settlement Administrator providing all the information necessary for Defendant to remit payment or fifteen (15) calendar days after the Effective Date, Defendant shall remit to the Settlement Administrator: (i) the Gross Settlement Amount of $800,000.00 and (ii) the employer's taxes for any portion of the Individual Settlement Payments designated as wages. (S.A. ¶ 59(b)). The distribution of Individual Settlement Payments to Participating Class Members and Aggrieved Employees will occur no later than ten (10) calendar days after receipt of the Settlement Fund from Defendant. (S.A. ¶ 59(c)).

Class Members will have 180 days to cash his/her settlement check. If a Class Member fails to cash a check by the deadline, then the Settlement Administrator shall issue the unclaimed funds to the State of California's Unclaimed Property Fund in the name of the Class Member. (S.A. ¶ 59(e)).

F. TAX TREATMENT

All settlement payments paid to Participating Class Members, Aggrieved Employees, and the Named Plaintiff, will be paid in a net amount after applicable state and federal tax withholdings, including payroll taxes, have been deducted. (S.A. ¶ 54). The Participating Class Member Payments shall be reported as follows: 25% of the amount distributed to each Participating Class Member will be considered wages, and will be reported as such to each Participating Class Member on a W-2 Form; (ii) 10% of the amount distributed to each Participating Class Member will be considered interest on the unpaid wages, and (iii) approximately 65% to statutory penalties, and will be reported as such to each Participating Class Member on an IRS Form 1099. The PAGA Payments distributed to each Aggrieved Employee will be considered penalties and will be reported on an IRS Form 1099.entirely as civil penalties and shall be reported as required on an IRS Form 1099. (S.A. ¶ 54(a)).

G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS

In exchange for these payments, the Settlement Agreement ¶ 31 provides that the Participating Class Members will release the Released Parties of the claims alleged or could have been alleged based on the facts stated in the operative complaint, as follows:

> for the duration of the Class Period, any and all claims, actions, or causes of action against Defendant and the other Released Parties (a) that are alleged in the operative complaint; and/or (b) that could have been alleged in the operative complaint based upon or arising out of the facts alleged therein, except those arising under PAGA. Without limiting the foregoing, and in addition to the foregoing, the Released Claims include claims premised on the failure to pay all minimum wages and overtime compensation including, but not limited to, time spent working off-the-clock; failure to provide meal periods and rest breaks or premium payments; failure to provide and maintain complete and accurate itemized wage statements; failure to keep complete and accurate payroll records; untimely payment of wages during employment and at the time of termination; unfair business practices; violations of California Labor Code§§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1194, 1194.2, 1197, 1197 .1, 1198; related violations of the applicable California Wage Orders; violations of all related or corresponding federal laws; and violations of California Business and Professions Code section 17200, et seq in connection with the alleged Labor Code violations alleged (or that could be alleged based on the facts pled) in the Actions. The Released Claims excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation claims, FEHA-related claims for retaliation, discrimination or harassment, and any claims outside of the Class Period.

H. AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS

Exhibit A at paragraph III(E) also defines the "Released PAGA Claims" as follows:

> "Released PAGA Claims" means, for the PAGA Period, claims for penalties under the California Private Attorneys' General Act (California Labor Code § 2698, et seq.) that (a) arise from the facts, matters, transactions or occurrences alleged in the Actions or that could have been alleged in the Actions based on such facts; and/or (b) arise from the facts, matters, transactions or occurrences alleged, or that could have been alleged, in the PAGA Notice Letters sent by the Named Plaintiff to the Labor and Workforce Development Agency ("LWDA") pursuant to Labor Code section 2699.3 on or about July 20, 2023 asserting that Defendant violated various provisions of the Labor Code. Without limiting the foregoing, and in addition to the foregoing, the PAGA Claims include claims premised on the failure to pay all minimum wages and overtime compensation including, but not limited to, time spent working off-the-clock; failure to provide meal periods and rest breaks or premium payments; failure to provide and maintain complete and accurate itemized wage statements; failure to keep

> complete and accurate payroll records; untimely payment of wages during employment and at the time of termination; violations of California Labor Code§§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198; in connection with the allegations in the LWDA Notices and Operative Complaint; and related violations of the applicable California Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq*. The PAGA Claims excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation claims, FEHA-related claims for retaliation, discrimination or harassment, and any claims outside of the PAGA Period.

The time governing the PAGA Released Claims is the period from July 24, 2022, through September 2, 2024. (the "PAGA Period"; see S.A. ¶ 25).

IV. <u>PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT</u>

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19.) The reasons include that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted; and the trial court's fairness review of the settlement protects the interests of the non-representative class members. (*Id.*; *see also Officers for Justice v. Civil Service Com.* (9th Cir. 19150) 688 F.2d 615, 633 ("Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process . . . [C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."). As discussed below, for the purposes of this settlement only, Plaintiff request that this Court provisionally certify the Class, as defined above, under Code of Civil Procedure § 3150.

A. <u>NUMEROSITY AND ASCERTAINABILITY</u>

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. (*See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101.) Here, according to Defendant's records, there are approximately 357 Class Members. This figure satisfies the numerosity requirement.

B. <u>WELL-DEFINED COMMUNITY OF INTEREST</u>

1. <u>Commonality</u>

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. (*See Arenas v. El Torito Rests., Inc*. (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank v. Superior Court* (2001) 24 Cal.4th 906, 913).) Plaintiff contends that the Class was subject to common policies and practices relating to the payment of wages, meal and rest breaks, among other things. While the Parties dispute whether a class would be appropriate if the litigation were to continue, they agree to class certification for the purposes of this settlement only. (Hawkins Decl. ¶¶ 13-45).

2. <u>Typicality</u>

Typicality "focuses on whether there exists a relationship between the Plaintiff's claims and the claims alleged on behalf of the class." (*See* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("*Newberg*") § 3:13 (4th ed. 2002).) Again, the Parties dispute whether Plaintiff's claims are typical of the Class for the purposes of any continued litigation of the Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding Defendant's meal and rest break practices, wage statements, and the provisions governing the timely and complete payment of wages, which are at the core of the lawsuit.

3. <u>Adequacy of Representation</u>

The proposed class representative must establish that he or she will adequately represent the proposed class. (*See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.) Specifically, Plaintiff is adequate to represent the class because he was employed by Defendant as a non-exempt employee during the Class Period, experienced the same wage and hour practices as the rest of the Class, understood his duties as a Class Representative, has been willing to undergo the risks of litigation, and has no conflict of interest.

Adequacy may be established by the fact that counsel are experienced practitioners. (*See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162.) Here, Plaintiff is represented by Class Counsel with extensive experience in wage and hour class actions like the instant matter. (Hawkins Decl. ¶ 40).

4. <u>Superiority</u>

Certification of the Class for settlement purposes is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. Class certification for settlement purposes is also vastly superior to litigation of numerous individual claims because most of the claims are too small to litigate outside of the class context.

V. <u>THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE</u>

A. <u>CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT</u>

The law favors settlements. (*Bush v. Superior Court* (1992) 10 Cal.App.4th 1374.) This is particularly true in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. However, a class action may not be dismissed, compromised, or settled without the Court’s approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed settlement. (*See* Cal. R. Ct. 3.769(c), (e-g).)

The decision to approve or reject a proposed settlement lies within the Court's sound discretion. (*See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35.) Nevertheless, in considering a potential settlement for approval, a court is not to turn the approval hearing "into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute." (*Officers for Justice*, 688 F.2d at 625.)

The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. (*See Dunk*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable" standard) (citing *Officers for Justice, supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only after determining that it is "'fair, adequate and reasonable,'" considering factors such as the "'risk, expense, [and] complexity'" of continued litigation) (citations omitted).) The Court enjoys broad discretion in making its fairness determination, and should consider factors including, but not limited to:

> [T]he 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 . . . and the reaction of the class members to the proposed settlement.

Dunk, supra (detailing non-exhaustive list of factors for court's consideration at final approval).

The above factors are 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.) However, in doing so, the Court must give "[due] regard to what is otherwise a private consensual agreement between the parties." (*Id.*) The inquiry must be limited "to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." (*Id.* (citation and internal quotation marks omitted).)

At the preliminary approval stage, the Court need only determine that the settlement falls within the "range of possible judicial approval," so that notice to the class and the scheduling of the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant preliminary approval if there are no "grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement] appears to fall within the range of possible approval." (*Manual For Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802.) A "presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and informal 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*, *supra* (citing *Newberg* § 11:41).) As shown below, the settlement falls well within the range of approval because there are no grounds to doubt its fairness.

B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS

The settlement was the product of extensive arm's length negotiations between counsel and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and professional, the settlement negotiations were adversarial and non-collusive in nature. The settlement reached is the product of substantial effort by the parties and their counsel. Although Plaintiff and his counsel believed that there was a possibility of certifying the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. In addition, if Defendant prevailed on any of its defenses, the employees may not have received any monetary recovery.

C. THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT

Plaintiff thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the settlement. As described above, the settlement was reached after extensive investigation and research, thorough calculations and risk evaluation, and a substantial exchange of information relating to the Class Members prior to mediation.

D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS

To evaluate a settlement, the parties must provide the trial court with "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) The *Kullar* requirement was further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, which held that an explicit statement of the maximum theoretical amount that the class could recover was not necessary:

> Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims – a number which appears nowhere in the record of the case. But *Kullar* does not, as Greenwell claims, require any such explicit statement of value; it requires a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.

A settlement is not judged against what might have been recovered had a 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 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.").)

In light of the uncertainties of protracted litigation, this negotiated settlement reflects the best practicable recovery for the Class. While the total settlement amount is, of course, a compromise figure, the potential risks and opportunities of both parties were effectively weighed and considered by the parties, resulting in a fair and equitable settlement.

As discussed in detail in the Hawkins declaration, the GSA of $800,000.00 represents a reasonable recovery and accounts for approximately 30% of the overall potential value. This recovery could easily be much lower if at trial PAGA penalties were reduced or damages for certain pay periods or workweeks could not be proven for certain individuals. The proposed

GSA is within the "ballpark of reasonableness" and should be approved. (Hawkins Decl., ¶¶ 18-32).

E. <u>Plaintiff's Counsel is Experienced in Similar Wage-And-Hour Litigation</u>

The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *aff'd* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (court must take into account "the experience and view of counsel") (internal quotation and citation omitted).)

Plaintiff's counsel has a great deal of experience in wage and hour class action litigation over the last 25 years and has obtained certification of several classes, and been approved as class counsel in many other wage/hour class actions. (Hawkins Decl., ¶ 42).

F. <u>The Class Notice Conforms to All Applicable Statutes and Rules</u>

The proposed Class Notice should be approved, as it fully informs the Class Members of the nature of the lawsuit and each Class Member's rights under the terms of the Settlement Agreement and applicable law. The manner in which the Class Notice shall be disseminated, as outlined above, shall ensure that all or nearly all of the Class Members shall be properly notified of the proposed settlement.

The proposed Class Notice and proposed plan for the Settlement Administrator to mail the Class Notice to the last known address of all class members complies with all the requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys' fees, litigation expenses, and the costs of administration; (3) details about the final fairness hearing and how class members may elect to exclude themselves or make an objection; and (4) how class members can obtain additional information. *See* Class Notice (Exhibit A to Settlement Agreement). In addition, it will inform Class Members of their estimated settlement share.

The Court has wide discretion in approving the means of providing notice, so long as the class representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of class members." (*Archibald v. Cinerama Hotels*, (1976) 15 Cal.3d 853, 861.) Here, the parties' notice plan is that notice of the Settlement will be disseminated directly to the class members by first class mail by the settlement administrator, since Defendant has the last known addresses of all class members, and the Settlement Administrator will perform a skip trace and update those addresses for any class notices that are returned and re-send the notice.

The Class Notice satisfies the requirements of Rule of Court 3.766 and afford Settlement Class Members with all due process protections required by the United States Constitution. Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the Notice includes, without limitation (1) a detailed explanation of the case, including the basic contentions or denials of the parties; (2) a statement that the court will exclude the member from the class if the member so requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. The 60-day deadline for Class Members to exclude themselves is reasonable, as it provides Class Members with sufficient time to do so and, if they so choose, to seek independent legal advice in the interim. If a Class Member does not opt-out, then he or she will automatically be sent a settlement check.

G. THE NON-REVERSIONARY CHECKS CASHED DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS

Each member who does not opt out of the Settlement shall be mailed a check ensures that every Class Member will be paid unless he or she affirmatively acts to exclude himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no settlement funds will revert to Defendant; instead, if any checks are not cashed before the objection deadline, the funds will be transferred to the State of California's Unclaimed Property Fund subject to approval of the Court. Such terms are favored by Courts and demonstrate that there was no collusion between counsel for the parties and that the Settlement is fair and favorable to the Class Members.

H. **<u>THE ATTORNEY'S FEES AND COSTS ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS FAIR</u>**

Under the terms of the Settlement Agreement, Class Counsel is requesting $266,666.66 in attorneys' fees, which is equal to one-third of the Settlement Amount. (S*ee, e.g. Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of $6.33 million at a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the benefit of the class members, the trial court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack Corp*. (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3 of the total maximum settlement amount of $4.5 million) (the court noted that the fee award of 1/3 of the total settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"); *Singer v. Becton Dickinson and Co*. (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund in a wage and hour class action, noting: "[f]ee awards in class actions average around one-third of the recovery."); *Martin v. FedEx Ground Package System, Inc*. (N.D. Cal. Dec. 31, 2008) No. C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of common fund).)

Additionally, Plaintiff is seeking up to $20,000 in litigation costs, pursuant to the Settlement Agreement.

Once the Court grants preliminary approval of the Settlement Agreement and Class Notice is disseminated, Plaintiff's counsel will submit a comprehensive request for attorneys' fees and costs with its final approval motion.

I. **<u>THE CLASS REPRESENTATIVE'S ENHANCEMENT AWARD REQUEST IS FAIR AND APPROPRIATE</u>**

The Settlement Agreement provides an enhancement award payment of $10,000.00 to the Class Representative, which is reasonable given large recovery that Class Members will receive on average, as well as the time and effort he devoted to this case. His efforts included providing factual background for the Class and PAGA complaint; providing documents and information about Defendant's compensation plan; participating in phone calls to discuss litigation and settlement strategy; making himself available throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the settlement documents. The Class Representative also assumed significant risk in bringing this litigation—namely, had he lost, he could have been ordered to pay Defendant's costs.

The requested Enhancement Award falls within the range of incentive payments typically awarded to Class Representatives in similar class actions. (*See e.g. Bond v. Ferguson Enterprises, Inc*. (E.D. Cal. June 30, 2011) No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879 (approving $11,250 enhancement award to each of the two class representatives in a trucker meal break class action; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2 (approving $20,000 enhancement award to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc*. (E.D. Cal. 2010) 266 F.R.D. 4150, 493 (approving Enhancement Awards in the amount of $15,000 each from a $300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc*. (E.D. Cal. Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 ("the court finds Plaintiff's enhancement payments of $ 15,000 each to be reasonable."); *Glass v. UBS Fin. Servs*. (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 (finding "requested payment of $ 25,000 to each of the named Plaintiff is appropriate" in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc*. (S.D. Cal. Oct. 6, 2008) Case No. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (approving "$25,000 incentive award for each Class Representative" in wage an hour settlement).)

VI. <u>THE COURT SHOULD APPOINT APEX CLASS ACTION ADMINISTRATORS AS SETTLEMENT ADMINISTRATOR</u>

Subject to the Court's approval, the parties stipulated to APEX Class Action Administrators serving as the Settlement Administrator. APEX is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for $8,500.00. (Hawkins Decl. ¶¶ 37,38).

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, whereby proponents of the settlement may explain and describe its terms and conditions and offer argument in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. Subject to the Court's approval, the Parties propose that the Court schedule a hearing for final approval approximately 120 days after the Preliminary Approval Date, as follows:

	Preliminary Approval (PA) hearing
(28 days after PA)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
(*60 days after mailing Class Notice*)	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and Enhancement Award.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval of Settlement, or filing any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
To Be Determined (Approximately 120 days after Preliminary Approval is granted)	Final Approval Hearing.

VIII. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that the Court grant the unopposed motion for preliminary approval of the settlement.

Dated: September 5, 2024

JAMES HAWKINS APLC

BY: ______________________

James Hawkins, Esq.
Gregory Mauro, Esq.
Michael Calvo, Esq.
Lauren Falk, Esq.
Ava Issary, Esq.

Attorneys for Plaintiff and the Proposed Class

PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On September 5, 2024, I served on the interested parties in this action the following document(s) entitled:

PLAINTIFF'S UNOPPOSED NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATION IN SUPPORT THEREOF; [PROPOSED] ORDER

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Alma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST

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Labor and Workforce Development Agency
Attn: PAGA Administrator
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Oakland, CA 94612
http://www.dir.ca.gov/Private-Attorneys-General-Act

[XX] **STATE:** I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on September 5, 2024, at Irvine, California

Alma Chavarin
Alma Chavarin