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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JUNG HO LEE, an individual and on behalf of all others similarly situated;

Plaintiff,

vs.

VIZIO SERVICES, LLC, a Delaware limited liability company; and DOES 1 through 50,

Defendants.

Case No.: 23STCV24004

[Assigned for All Purposes to:
Hon. David S. Cunningham III, Dept. SS11]

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

(Filed concurrently with Supporting Declarations and [Proposed] Order)

DATE: May 7, 2026
TIME: 9:00 a.m.
DEPT: 11

Action Filed: October 13, 2023
Trial Date: Not Set

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on May 7, 2026 at 9:00 a.m. in Department 11 of the Los Angeles Superior Court, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Jung Ho Lee ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;

2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Class defined as follows:

> All current and former exempt employees who worked for Defendant VIZIO Services, LLC or its parent and/or holding company in the VIZIO Ad Sales and Business Development Department and any predecessor department in the positions of Account Executive; Account Executive Ad Sales; Senior Account Executive; Account Manager; Senior Account Manager; Senior Manager, Acquisition Sales; Manager, Acquisition Sales; or Senior Analyst, Strategic Account Management within the State of California during the Class Period of October 3, 2019 to October 11, 2025.

3. Preliminary appointment of Plaintiff as Class Representative;

4. Preliminary appointment of William C. Sung and Tiffany L. Luu of Justice for Workers, P.C. as Class Counsel;

5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a Class Representative Service Payment to Plaintiff, civil penalties payable to the LWDA, settlement administration costs, and attorney's fees and costs to Class Counsel;

6. Appointment of Apex Class Action LLC as the third-party Administrator for mailing notices and administering the Settlement; and

7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Class as provided in the Settlement Agreement.

This Motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the supporting declarations of William C. Sung, Tiffany L. Luu, Plaintiff Jung Ho Lee, and Kimberly Sutherland of Apex Class Action LLC, and the exhibits attached thereto; the pleadings, and other papers filed in this Action; and on any further oral or documentary evidence or argument presented at the time of the hearing.

DATED: March 20, 2026

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ______________________________

William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff Jung Ho Lee

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jung Ho Lee ("Plaintiff") brought this wage and hour class and representative action on behalf of a Class of employees allegedly misclassified by Defendant VIZIO Service LLC ("Defendant") under the inside sales and the administrative exemptions. The primary issues in this case pertain to Defendant's alleged exemption misclassification, resulting in unpaid wages and meal and rest period violations. Plaintiff contends Defendant is also liable for inaccurate wage statement penalties, waiting time penalties, and civil penalties under the California Private Attorney's General Act ("PAGA"). Plaintiff now requests that this Court preliminarily approve this non-reversionary, common-fund class action settlement[1], in which Defendant has agreed to pay the Gross Settlement Amount of $950,000.00 to approximately 39 Class Members.

After deducting administration costs, Plaintiff's requested Class Representative Service Payment, the amount set aside as PAGA Payment, and requested Class Counsel Fees Payment and Litigation Expense Payment, the Net Settlement Amount of approximately $540,143.33 will be distributed to all Class Members who do not opt out of the Settlement based on the proportionate number of Workweeks worked by each Class Member during the Class Period. Employees with standing for PAGA Payment will receive additional consideration for their release of PAGA claims.

Significantly, all Class Members will automatically receive a payment unless they affirmatively opt-out. There are approximately 38 Class Members, and **the average payment to participating Class Members is projected to be approximately $14,543.25** . This is an excellent result for Class Members, who will be releasing only those claims alleged or which could have been alleged in the Action. The proposed Settlement is within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible monetary benefits to be received by the Class. For the reasons discussed herein, Plaintiff

[1] The Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Agreement") is attached to the Declaration of William C. Sung as **Exhibit 1**. The proposed Class Notice is attached to the Agreement as **Exhibit A**. All defined terms in this motion have the same definition as that in the Agreement. A redlined copy of the Agreement is attached as **Exhibit 2** and a redlined copy of the Class Notice is attached as **Exhibit A** to the redlined Agreement.

respectfully requests that this Court grant preliminary approval of the Settlement.

II. <u>SUMMARY OF THE LITIGATION</u>

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

Defendant operates and manages product marketing, advertisement sales, and data analytics for VIZIO smart TVs' built-in application and generates advertisement sales revenue. Declaration of William C. Sung ("Sung Decl."), ¶ 9. Defendants employed Plaintiff in Los Angeles, California as a salaried, exempt Account Executive on its advertisement sales team from October 2022 to August 2023. Declaration of Jung Ho Lee ("Lee Decl."), ¶ 2.

On August 29, 2023, Plaintiff sent a notice letter under PAGA to the Labor and Workforce Development Agency ("LWDA") and gave notice to Defendant. Sung Decl., ¶ 10, **Exh. 3** (PAGA Notice). On October 3, 2023, Plaintiff filed the Class Action Complaint alleged claims for (1) Overtime Wage Violations; (2) Meal Period Violations; (3) Rest Period Violations; (4) Wage Statement Penalties; (5) Waiting Time Penalties; and (6) Unfair Competition. Sung Decl., ¶ 11. On November 9, 2023, Plaintiff filed the operative First Amended Complaint ("Operative Complaint") adding a cause of action for Civil Penalties Under PAGA against Defendant. Sung Decl., ¶ 11, **Exh. 4** (Operative Complaint).

B. PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES

1. Outside Sales and Inside Sales Exemptions

Plaintiff claimed that he and other Class Members were misclassified as exempt employees and they did not qualify for the Inside Sales Exemption, the Outside Sales Exemption, or the Administrative Exemption. Sung Decl., ¶ 12. Defendant sold advertisement placements in its smart TV platform and serviced client accounts like an advertisement agency. *Ibid.* Account Executives like Plaintiff were the salespeople responsible for selling advertisement placements and were provided with a list of clients by Defendant and a quota for sales. *Ibid.* Once Account Executives closed the sale, the account was then turned over to Account Managers to service the accounts. *Ibid.* Account Managers were responsible for putting the packages together, cross-referencing various schedules and calendars to determine which slots were available, and ensuring that once a product was purchased by a client, that such advertisements went live. *Ibid.* Senior Account Executives and Senior

Account Managers simply denoted longer tenure and had the same responsibilities as Account Executives and Account Managers. *Ibid.*

The Outside Sales Exemption is limited to salespeople "who customarily and regularly works more than half the working time away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services, or use of facilities." Wage Order 4, § 2(N). Account Executives did not qualify for the Outside Sales Exemption because they worked full-time in the office or home offices and only spent a few hours a week engaging with clients outside of the office. Sung Decl., ¶ 13. Defendant does not contend that the Outside Sales Exemption applies here. *Bid.*

Wage Order 4 provides a limited exemption to overtime only (not meal and rest periods) called the Inside Sales Exemption: "The [overtime provisions] shall not apply to any employee whose earnings exceed one and one-half (1½) times the minimum wage if more than half of that employee's compensation represents commissions." Wage Order 4, § 3(D). Notably, the Inside Sales Exemption is determined on a pay period basis and an employer may not attribute commission wages paid in one pay period to other pay periods (including the pay periods in which they were earned) in order to satisfy California's compensation requirements. *See Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal.4th 662, 668-670 (rejecting the employer's argument that commissions should be attributed to the monthly pay period for which they were earned and holding that an employer satisfies the minimum earnings prong of the exemption only in those pay periods in which it actually pays the required minimum earnings); *see also* DLSE Enforcement Manual, § 50.6.1 ("Compliance with the requirements of the exemption is determined on a workweek basis. The minimum compensation component of the exemption must be satisfied in each workweek and paid in each pay period.")

Here, Plaintiff alleged that Account Executives were paid their wages via biweekly pay periods so there are 26 pay period per year and they received their commissions up to 4 times per year. Sung Decl., ¶ 14. Thus, they did not qualify for the Inside Sales Exemption at least 22 out of 26 pay periods in a year, or 84.61% of pay periods in a year. *Ibid.* Furthermore, they are not exempt from the requirement to provide meal and rest periods. *Ibid.* Thus, Defendant is liable to Account Executives for unpaid overtime at least 84.61% of pay periods they worked and for unpaid meal and rest period premiums throughout the Class Period. *Ibid.*

In response, Defendant vigorously contended that Account Executives were properly classified as exempt under the Inside Sales Exemption. *Ibid.* Specifically, Defendant argued that *Peabody*'s holding was limited to the first prong of the exemption—that the employee must earn more than 1½ times the minimum wage each pay period, which Plaintiff and other Class Members' salaries undisputed exceeded. *Ibid.* However, when determining if the second prong of the exemption is met (i.e., more than half of that employee's compensation represents commissions), Defendant may use a "representative period" of "not less than one month" and that the "DLSE will accept a period 'described generally as a period which typifies the total characteristics of an employee's earning pattern in his current employment situation, with respect to the fluctuations of the proportion of his commission earnings to his total compensation.'" *Ibid; see* DLSE Enforcement Manual, § 50.6.4.3 (citing 29 C.F.R. § 779.417(a)). Thus, Defendant asserted that it may use a representative period of a quarter (4 months) in determining whether more than 50% of Account Executives' earnings came from commissions. Sung Decl., ¶ 14.

2. Administrative Exemptions

Under Wage Order 4, § 1(A)(4), the administrative exemption defense requires Defendant to establish that Plaintiff and other class members were in a position:

> (a) Whose duties and responsibilities involve . . . the performance of office or non-manual work directly related to management policies or general business operations of his/her employer or his/her employer's customers; and
>
> (b) Who customarily and regularly exercises discretion and independent judgment; and . . .
>
> (c) Who is primarily engaged in duties that meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such terms are construed in the following regulations under the Fair Labor Standards Act. . . .

Here, Plaintiff claimed that Class Members did not qualify for the Administrative Exemption because they lacked the authority to exercise discretionary and independent judgment in the performance for their duties. Sung Decl., ¶ 15. Plaintiff had little discretion in the performance of his sales duties as the pricing charged to clients were based on predetermined metrics established by upper management and annual bulk discount negotiated by upper management, and Plaintiff played no role and had no discretion over pricing. *Ibid.* As to Account Managers, like Plaintiff, had no discretion over pricing or advertisement scheduling. *Ibid.* Plaintiff further contended that neither position conducted office or non-manual work related to the management or general business operations or oversaw nor managed other employees. *Ibid.* Finally, both positions were focused on packaging and selling advertisement placements rather than duties regarding general business operations such as advising management. *Ibid.*

In response, Defendant vigorously contended that Class Members were properly classified as exempt under the Administrative Exemption. *Ibid.* Defendant argued that Plaintiff's experience was unique, and other Class Members had a lot of discretion in the performance of their duties as Defendant wanted Class Members to expand the business. *Ibid.* Defendant further argued that Class Members performed non-manual work directly related to its general business operations and its clients; specifically, Account Executives sold the company's product and Account Managers served its clients. *Ibid.*

3. Unpaid Wages and Meal and Rest Period Violations

Plaintiff contended that Class Members, due to the misclassification of their employment, they did not record their hours worked, they regularly worked overtime hours for which they were not paid overtime premiums, and they were not provided with compliant meal and rest periods. Sung Decl., ¶ 16. In response, Defendant contended that, even if Class Members were misclassified, actual damages are minimum because Class Members generally worked "nine to five" jobs and had plenty of time throughout the workday to take their meal and rest breaks. *Ibid.* Defendant further maintained that these claims are not suited for class certification since individual inquiries would be needed to assess which employees, if any, had overtime and meal/rest period violations, how many violations, and the reasons why a particular employee experienced a violation. *Ibid.*

4. Waiting Time and Wage Statement Penalties

As a result of the unpaid wages and meal and rest period premium wages described above, Plaintiff contended that Defendant failed to comply with its final pay obligations set forth in Labor Code §§ 201 to 203 to former employees and failed to issue accurate itemized wage statements to Class Members as set forth in Labor Code § 226(a). Sung Decl., ¶ 17. Thus, the claims for waiting time and wage statement penalties are derivative of the underlying claims. *Ibid.*

Defendant argued that it possessed strong, good faith defenses to Plaintiff's underlying claims and these claims cannot meet the willfulness standard in Labor Code § 203 or the knowing and intentional standard in Labor Code § 226(e). Sung Decl., ¶ 17. Notably, Defendant relied on the California Supreme Court decision in *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065, which held that an employer's good-faith defenses precludes a "willfulness" finding under Labor Code § 203 and a "knowing and intentional" finding under Labor Code § 226(e) for the imposition of statutory penalties. *Ibid.* Defendant further asserted that Plaintiff's waiting time and wage statement penalty exposure was inflated as not every employee experienced the alleged Labor Code violations. *Ibid.*

5. PAGA Civil Penalties

Plaintiff further contended that, as a result of the foregoing Labor Code violations, Defendant is liable for civil penalties under the PAGA. Sung Decl., ¶ 18. Since Plaintiff's PAGA claims are derivative of Plaintiff's underlying wage claims, Defendant asserted the PAGA claim would fail with those claims. *Ibid*; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant further maintained that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims. Sung Decl., ¶ 18; *see* Lab. Code § 2699(e)(2) (pre-2024 amendment); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties by over 82% in part because employer "not aware" of violations); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming PAGA civil penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

C. DISCOVERY AND MEDIATION

In connection with mediation, the Parties engaged in extensive informal discovery. Sung Decl., ¶ 19. Defendant produced (1) a class list identifying employee initials, numbers, dates of hire and separation, job title, and annual salary; (2) Class Members' wage statements and payroll summaries during the Class Period, offer letters, and commission agreements; (3) Defendant's employee handbooks, standalone policy documents, and job descriptions; and (4) Plaintiff's personnel records. *Ibid.* In preparation for mediation, Class Counsel conducted a comprehensive analysis and extrapolation of the payroll data produced by Defendant to create a detailed exposure analysis for all claims at issue. Sung Decl., ¶ 20. This discovery and analysis allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and Defendant's potential defenses. *Ibid.*

On July 11, 2025, the Parties participated in a full-day mediation with Monique Ngo-Bonnici, Esq. a well-respected wage and hour class action mediator. Sung Decl., ¶ 21. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Ibid.* The Parties reached a tentative class and PAGA settlement at the mediation. *Ibid*. The Parties then finalized the terms of the Settlement and executed Agreement now before the Court. *Ibid*; *see* Sung Decl., ¶ 7, **Exh. 1** (Agreement).

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Defendant will pay a Gross Settlement Amount of $950,000.00. Agreement, § 1.22 (Exh. 1 to Sung Decl.). Significantly, this Settlement is non-reversionary, and no Class Member will have to submit a claim form to receive an Individual Settlement Payment. Agreement, § 3.1. Each Class Member will automatically receive an Individual Settlement Payment unless they affirmatively opt out of the Settlement. Agreement, § 7.5. The monetary terms of the Settlement are summarized below:

Gross Settlement Amount:	$950,000.00
Minus Court-approved attorneys' fees:	$316,666.67
Minus Court-approved verified costs (up to):	$20,000.00
Minus Court-approved Service Payment:	$20,000.00
Minus estimated settlement administration costs:	$3,190.00
Minus amount set aside as PAGA Payment:	$50,000.00
Net Settlement Amount:	$540,143.33
Plus 25% "PAGA Payment" to Class:	$12,500.00
Total Amount Paid to Class Members:	**$552,643.33**

Sung Decl., ¶ 22.

/ / /

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys' fees and costs, Class Representative Service Payment to Plaintiff, the amount set aside as PAGA Payment, and settlement administration costs, the Settlement requires Defendant to pay a Net Settlement Amount of at least **$540,143.33** to all Class Members who do not timely opt-out. Agreement, § 3.2. The Net Settlement Amount shall be distributed to participating Class Members as Individual Class Payment, 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. Agreement, § 3.2.4. Additionally, $12,500.00 of the Gross Settlement Amount has been designated as Individual PAGA Payments to Aggrieved Employees and shall be distributed to Aggrieved Employees (including those who submit a valid and timely Request for Exclusion from the class action settlement) who were employed during the PAGA Period proportionally based on the number of Pay Periods worked during the PAGA Period. Agreement, §§ 3.2.5, 7.5.4. In addition to the Gross Settlement Amount, Defendant is obligated to pay the employer's share of payroll taxes on Individual Class Payments allocated to settlement of wage claims. Agreement, § 3.1.

According to Defendant, there are approximately 38 Class Members. Sung Decl., ¶ 23. Therefore, the average Individual Class Payment from the Net Settlement Amount is projected to be approximately **$14,543.25**. *Ibid.* There are also approximately 27 Aggrieved Employees during the PAGA Period who will each receive an average of approximately **$462.96** as Individual PAGA Payments. *Ibid.* Class Members will have 45 calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. Agreement, §§ 1.43, 7.5, 7.7.

Effective on the date when Defendant fully funds the Gross Settlement Amount and employer taxes, Participating Class Members will release all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint, arising during the Class Period; and all Aggrieved Employees are deemed to release all causes of action and claims for civil penalties under the California Private Attorneys

General Act of 2004 that were alleged or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint and PAGA Notice, arising during the PAGA Period. Agreement, §§ 5, 5.2, 5.3. Defendant shall fund the Gross Settlement Amount no later than 14 days after the Effective Date (i.e., the date the Court enters a Judgment on its Order Granting Final Approval and the Judgment is final). Agreement, §§ 1.18, 4.3.

Prior to the hearing on Preliminary Approval, Defendant will verify the number of Workweeks during the Class Period to determine if the Escalator Clause is triggered (i.e., more than 4,110 Workweeks), and if yes, whether Defendant will modify the Class Period end date or increase the Gross Settlement Amount. Agreement, § 8. On March 19, 2026, Defendant verified the number of Workweeks at 3,803 Workweeks; as such, the Escalator Clause is not triggered. Sung Decl., ¶ 24.

2. Attorneys' Fees and Costs, Service Payment, and PAGA Payment

Plaintiff will apply for a Class Representative Service Payment at the time of seeking final approval of the proposed class action settlement in the amount of $20,000.00 for Plaintiff's service to the Class. Agreement, § 3.2.1. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiff's requested Service Payment is intended to recognize the over 40 hours of time and effort Plaintiff expended on behalf of the Class, including providing substantial information and documents to Class Counsel, discussing the claims at issue in the litigation, actively participating in the prosecution of Plaintiff's claims, preparing for the evidentiary hearing on Defendant's Motion to Compel Arbitration, as well as the risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case and the over $14,000 in average recovery that Plaintiff was able to secure for Class Members. *See* Lee Decl., ¶¶ 6-8.

Class Counsel will also apply for an attorneys' fees award of 33 1/3% of the Gross Settlement Amount, which is equivalent to $316,666.67, and up to $20,000.00 in verified costs reimbursement. Agreement, § 3.2.2. The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Sung Decl., ¶ 25. Class Counsel have incurred substantial attorneys' fees and costs conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, opposing Defendant's Motion to Compel Arbitration and attending an evidentiary hearing for this motion, conducting informal discovery, analyzing Class Members' payroll records, creating a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Agreement, preparing this Motion, and otherwise litigating the case. *Ibid.* Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Class Notice process and fielding questions from Class Members, preparing the Final Approval papers, and attending the Final Approval hearing. *Ibid.*

California courts recognize that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of a settlement. *See, e.g., Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of 33 1/3% of the Gross Settlement Amount is well within the range of reasonableness and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013). Class Counsel submit that their request for attorneys' fees is reasonable when viewed as an overall percentage of the Settlement and in light of the substantial risks and significant work undertaken, the results obtained, and the efficiency with which the litigation has been conducted. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified costs upon seeking Final Approval.

Additionally, the Parties have agreed to designate $50,000.00 of the Gross Settlement Amount as PAGA civil penalties, of which $37,500.00 (75%) will be paid to the LWDA, with the remaining $12,500.00 (25%) for distribution to the Aggrieved Employees pursuant to Labor Code § 2699(i) (pre-July 1, 2024 PAGA amendment). Agreement, § 3.2.5. Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC* (N.D. Cal. 2011) Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (approving PAGA payment of $7,500 to LWDA out of $6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal. 2013) Case No. C11-03609 HRL, 2013 WL 3541217 (approving PAGA payment of $7,500 to LWDA out of $1.25 million common-fund settlement).

IV. LEGAL ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337 (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp*. (9th Cir. 1998) 150 F.3d 1011, 1026 (Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g., Hanlo*n, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g., Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

To make a fairness determination, the Court should consider "the strength of Plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. Here, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

1. The Strength of Plaintiff's Case and Risk, Expense, Complexity, and Duration of Further Litigation

Although Plaintiff maintains that Plaintiff's claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. Sung Decl., ¶ 25. As described above, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. *Ibid.* Thus, while Plaintiff was prepared to litigate these claims through class certification and ultimately trial, success was far from certain. Although the Parties engaged in significant informal discovery prior to mediation, the Parties still had significant formal discovery to complete if the Action did not resolve. *Ibid.* This would have required the expenditure of substantial time and resources by both Parties that would have very likely spanned several years. *Ibid.* Even if Plaintiff were to certify the class, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Ibid.* This Settlement avoids those risks and the accompanying expense. *Ibid.*

Plaintiff has not yet filed a motion for class certification, and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Sung Decl., ¶ 26. Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Class due to a *Pick-Up Stix* type strategy where Defendant would buy releases from Class Members. *Ibid.* Thus, this factor, too, supports preliminary approval of the settlement.

2. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a positive recovery for the Class in the face of disputed claims. Plaintiff conducted a detailed analysis of alleged unpaid wages and meal and rest period premium payments owing, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiff's exposure analysis are discussed below:

Unpaid Overtime. Class Counsel estimated 6 hours of unpaid overtime per week and utilizing the formula of hourly rate on each Class Member's salary X 1.5 multiplier under Labor Code 515(c)(2) X number of workweeks each Class Member was allegedly misclassified, found Defendant's maximum exposure for unpaid overtime to be approximately $1,642,798.33. Sung Decl., ¶ 27. As discussed in §§ II.B.1.-3. *supra*, Defendant vigorously contended that Class Members were properly classified under the Inside Sales and Administrative Exemptions, and even if Class Members were misclassified, damages were minimal as Class Members rarely worked overtime. *Ibid.* Defendant further argued that this claim is not suitable for class certification because individualized inquiries predominated. *Ibid.* Thus, Plaintiff discounted Defendant's maximum exposure by 60% to account for the risk of non-certification and for Defendant's defenses on the merits or failing to recover the full amount sought to arrive at an estimated realistic recovery of approximately **$657,119.33**. *Ibid.*

<u>Meal and Rest Period Premiums</u>. Class Counsel estimated a 100% meal and rest period violation (i.e., 5 violations per week), and utilizing the formula of hourly rate on each Class Member's salary X 5 violations per week X number of workweeks each Class Member was allegedly misclassified, found Defendant's maximum exposure for meal period premiums to be approximately $1,388,075.17 and for rest period premiums to be approximately $1,388,075.17. Sung Decl., ¶ 28. As discussed in §§ II.B.1.-3. *supra*, Defendant vigorously contended that Class Members were properly classified under the Inside Sales and Administrative Exemptions, and even if Class Members were misclassified, damages were minimal as Class Members had plenty of time throughout the workday to take meal and rest breaks. *Ibid.* Defendant further argued that this claim is not suitable for class certification because individualized inquiries predominated. *Ibid.* Thus, Plaintiff discounted Defendant's maximum exposure by 60% to account for the risk of non-certification and for Defendant's defenses on the merits or failing to recover the full amount sought to arrive at an estimated realistic recovery of approximately **$555,230.07** for meal period premiums and **$555,230.07** for rest period premiums. *Ibid.*

<u>Waiting Time Penalties:</u> As a result of the regular rate violations described above, Plaintiff contends that Defendant failed to comply with its final pay obligations set forth in Labor Code §§ 201 to 203 to former employees. Sung Decl., ¶ 29. Class Counsel analyzed Defendant's maximum exposure for waiting time penalties for formerly employed Class Members during the three-year limitations period to be approximately $174,982.16. *Ibid.* Defendant presented several defenses, including that because they possessed good-faith defenses to the underlying wage claims, any failure to pay wages was not "willful" as a matter of law; Plaintiff's waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations; and because the waiting time claim is derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Defendant's defenses, both as to class certification and on the merits, as to the underlying claims. *Ibid.* Thus, Plaintiff discounted Defendant's maximum exposure by 80% to

account for the risk of non-certification and Defendant's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated realistic recovery of approximately **$34,996.43**. *Ibid.*

Wage Statement Penalties: Plaintiff alleged that Defendant is liable for wage statement penalties as a result of unpaid wages. Sung Decl., ¶ 30. Those penalties are calculated as $50 for each "initial" violation and $100 for each "subsequent" violation, with a maximum of $4,000 per employee. Lab. Code § 226(e). Class Counsel found, at $50 for the initial violation and $100 for each subsequent violation per employee, Defendant's maximum exposure for wage statement penalties is $132,700.00. Sung Decl., ¶ 30. As discussed above, Defendant presented several defenses, most notably their assertion that because they possessed good-faith defenses to the underlying claims for meal period violations and any failure to pay wages was not "knowing and intentional" as a matter of law and because the wage statement claim is derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Defendant's defenses, both as to class certification and on the merits, as to his underlying claims. *Ibid.* Thus, Plaintiff discounted Defendant's maximum exposure by 80% to account for the risk of non-certification and Defendant's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated realistic recovery of approximately **$26,540.00**. *Ibid.*

PAGA Penalties: Based on Class Counsel's analysis, Plaintiff estimated a maximum total PAGA exposure of approximately $134,000.00 (1,340 pay periods during the PAGA period X $100 initial violation rate). Sung Decl., ¶ 31; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from the underlying wage and hour violations discussed above, which Defendant disputes vigorously. Sung Decl., ¶ 31*; see e.g., Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Defendant also assert that the Court would drastically reduce any award of PAGA penalties as "confiscatory." Sung Decl., ¶ 31; *see also Thurman*, 203 Cal.App.4th at 1135 (affirming reduction of PAGA penalties); *Fleming*, 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiff discounted the maximum figure by 80% for the risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period and to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately **$26,800.00**. Sung Decl., ¶ 31.

Conclusion: Using these estimated figures for each of the claims described above, Plaintiff predicted that the potential realistic recovery for the Class would be approximately **$1,855,915.90**. Sung Decl., ¶ 32. The proposed Settlement of $950,000.00 represents approximately **$51.19%** of the reasonably forecasted recovery for the Class. *Ibid.* Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Class, which is consistent with what Class Counsel believes could have been recovered had the case proceeded through trial. *Ibid.*

3. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." In *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions and who have been appointed as class counsel. *See* Sung Decl., ¶¶ 2-7. Class Counsel conducted an in-depth review of class records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. The Settlement was also reached with the assistance of an experienced and respected wage-and-hour class action mediator. This factor strongly supports preliminary approval of the Settlement. *See Kullar,* 168 Cal.App.4th at 130.

4. The Preliminary Approval Standard Is Met

At this stage, the Court can grant preliminary approval of the Settlement and direct that notice be given if the proposed Settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and (3) has no obvious deficiencies. *See* Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

The proposed Settlement reflects approximately **$51.19%** of the estimated recovery the Class could reasonably expect in light of the significant litigation risks and will provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc*. (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Class Members at trial"). The average Individual Class Payment of approximately **$14,543.25** exceeds average payments achieved in other wage and hour class action settlements.[2] Thus, the proposed settlement is within the range of possible approval, such that notice should be provided to the Class Members so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Class Members have had the opportunity to opt-out or object.

The Settlement resulted from an exchange of substantial information, arm's-length negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and additional months of negotiating the long-form settlement agreement. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff carefully vetted the claims at issue, analyzed extensive sampling time and payroll data, and conducted a detailed damages analysis to arrive at the estimated class-wide damages figures. *See* Sung Decl., ¶¶ 27-32. Thus, this factor supports preliminary approval.

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide substantial monetary relief to the Class. The amounts proposed for Class Counsel's attorneys' fees and costs, LWDA payment, and Plaintiff's Class Representative Service Payment, are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

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[2] *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average recovery of approximately $105); *Ressler v. Federated Department Stores, Inc*., Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average recovery of approximately $90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average recovery of approximately $80); *Doty v. Costco Wholesale Corp*., Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately $65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately $35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately $20); *Sorenson v. PetSmart, Inc*., Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately $60).

B. THE COURT SHOULD CERTIFY THE CLASS

The Class satisfies the criteria for certification of a settlement class under California law because: (1) the Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims are typical of the claims of absent Class Members; and (4) Plaintiff and Class Counsel will fairly and adequately represent Class Members' interest. *See* Code Civ. Proc. § 382.

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the Class is defined as "all current and former non-exempt employees who worked for Defendant within the State of California during the Class Period." Therefore, Class Members can be identified from Defendant's personnel and employment records. Defendant represents that the Class consists of approximately 39 current and former non-exempt employees. It would therefore be impracticable to bring all Class Members before the Court or for each Class Member to bring an individual lawsuit. Thus, the proposed Class satisfies numerosity. *See, e.g., Bowles v. Superior Court* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

The focus in a certification dispute is not on the merits but rather on what types of questions, "common or individual," are likely to arise in the Action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 327. Plaintiff's claims are predicated on, among other issues, Defendant's uniform policy and practice regarding provision of meal and rest periods, regular rate of pay, timekeeping, and provision of wage statements and final wages. These types of claims are commonly held to be proper for class certification. *See e.g., Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 (certifying meal and rest period claims*); Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 324 (certifying exemption misclassification and unpaid overtime claim).

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d

1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical of those held by the Class Members. First, Defendant employed Plaintiff as a salaried exempt employee during the Class Period, and Plaintiff was subject to Defendant's wage and hour policies at issue in this case. Lee Decl., ¶¶ 2-4. Second, Plaintiff was injured by the same challenged policies/practices that allegedly injured the Class as a whole: alleged misclassification as an exempt employee resulting in unpaid wages, meal/rest period violations, and derivative statutory and civil penalties. *Ibid*. Because Plaintiff has suffered the same injuries as the other members of the Class, the typicality requirement is satisfied.

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 697. Plaintiff and Class Counsel will adequately represent the Class, as there are no conflicts between Plaintiff and the proposed Class, and Plaintiff possesses claims that are in line with those of the Class. Sung Decl., ¶ 33; Lee Decl., ¶ 7; *see McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation. *See* Sung Decl., ¶¶ 2-7.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS NOTICE

This Court should order distribution to the Class of the proposed Class Notice by U.S. Mail, postage prepaid using the last known mailing address information provided by Defendant. *See* Agreement, §§ 1.8, 7.4.2, **Exhibit A** (Class Notice). In light of Class Members' highly paid job positions as Account Executives, Account Managers, and similar positions, the Class Noice will only be distributed in English. *See* Lee Decl., ¶ 3. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173.

Here, the Parties have agreed that the Settlement be administered by Apex Class Action LLC ("Administrator"), an experienced class action settlement administrator. *See generally* Declaration of

Kimberly Sutherland ("Administrator Decl.") and attached exhibits. Class Members' addresses will be ascertainable through Defendant's personnel and payroll records, which Defendant will provide to the Administrator within 15 days of preliminary approval of the Settlement. Agreement, § 4.2. Within 14 days of receipt of the Class Members' addresses, the Administrator will run the names of all Class Members through the National Change of Address database to update addresses and mail the Class Notice to all Class Members. Agreement, § 7.4.2. To the extent that any notices are returned, the Administrator will perform a "skip trace" to track any Class Member's current mailing address and remail the notice within 3 business days. Agreement, § 7.4.3.

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Class Members of the nature of the claims, basic contentions and denials of the parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Class Member, and advises them that they will be bound by the terms of the Agreement if they do not opt-out. *See* Agreement, **Exhibit A** (Class Notice). The proposed Class Notice will also notify Class Members of the final approval hearing date and provides the Class contact information for Class Counsel and advises Class Members that they may enter an appearance through counsel if they wish to. *Ibid.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Class Members.

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, this Court should set a hearing for Final Approval of the Settlement on a date appropriately scheduled to follow the deadline by which Class Members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Class, and enter the Proposed Order submitted concurrently herewith.

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DATED: March 20, 2026

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ______________________

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