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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SONOMA

ZACHARY DEL RIO, an individual, on behalf of himself, the State of California, aggrieved employees, and all others similarly situated,

Plaintiffs,

v.

EBIT GOLF, INC., a California corporation; COURSECO, INC., a California corporation; and DOES 1-20, inclusive,

Defendants.

Case No. 23CV01037

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION & PAGA SETTLEMENT

Date:
Time: 3:00 p.m.
Dept: 17

Before the Honorable Jane Gaskell

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I. INTRODUCTION

Plaintiffs Zachary Del Rio and Francisco Diosdado Miranda seek an order: granting conditional certification of the below-defined Class for settlement purposes only, pursuant to Code of Civil Procedure section 382; preliminarily approving the Class and Representative Action Settlement; directing that notice be disseminated to the Class; and scheduling a final approval hearing. The Settlement provides for a non-reversionary fund of $1,900,000 for approximately 8,494 workers in compromise of disputed claims for unpaid wages and penalties.

Plaintiffs believe this motion should be granted because: (1) the Class meets the requirements for conditional class certification for settlement purposes only under of Code of Civil Procedure section 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness, reasonableness, and adequacy; (3) Plaintiffs are adequate to serve as Class Representatives; (4) Plaintiffs' attorneys are adequate to serve as Class Counsel; (5) the proposed class notice and procedures fully comport with due process and adequately apprise Class Members of their rights; and (6) a final fairness hearing must be scheduled to allow Class Members an opportunity to be heard regarding the Settlement and to give it finality. Accordingly, for the reasons detailed below, Plaintiffs respectfully request that the Court grant this motion in its entirety and preliminarily approve the Settlement as presented herein.

II. FACTUAL & PROCEDURAL BACKGROUND

Defendants CourseCo, Inc., Black Point Golf, LLC, and Ebit Golf, Inc., are part of a related family of businesses engaged in golf course management, and generally "the operations of golf courses and associated food & beverage operations, operates, and manages food wholesale operations in California."[1] (Trabucco Decl. at ¶ 8.) As part of this model, CourseCo offers "third-party management services to […] municipal, public access and private clubs." (*Id.*) Plaintiff Miranda was employed at the Black Point Golf Course and Plaintiff Del Rio at the Riverside Golf Course. (*Id.*) Defendants employed non-exempt employees in California in positions such as Cart and Range Attendant, Golf Shop Assistant, Course Worker, Irrigation Specialist, Mechanic,

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[1] ("CourseCo, Our Philosophy," https://www.courseco.com/philosophy.)

Bartender, Cook, and Food and Beverage Staff. (*Id.*) Plaintiffs allege Defendants' employment practices and policies violated the Labor Code and Wage Orders.

On July 13, 2021, Plaintiff Miranda filed a class action Complaint (Alameda Court Case No. RG21105433) against Defendants CourseCo, Inc. and Black Point Golf, LLC, on behalf of himself and all others similarly situated, asserting causes of action for (1) Failure to Pay Minimum Wages; (2) Overtime Wages; (3) Meal Period Violations; (4) Rest Break Violations; (5) Waiting Time Penalties; (6) Wage Statement Penalties; and (7) Unfair Competition, Business and Professions Code §§ 17200, *et seq.*) (the "*Miranda* Action"). (Trabucco Decl. at ¶ 16.)

On October 17, 2023, Plaintiff Del Rio filed a class action complaint (Sonoma County Superior Court, Case No. 23CV01037) against Defendants Ebit Golf, Inc. and CourseCo, Inc., alleging causes of action for (1) Unfair Competition, Business and Professions Code §§ 17200, *et seq.*; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Meal Periods; (5) Failure to Provide Rest Periods; (6) Failure to Provide Itemized Wage Statements; (7) Failure to Reimburse For Required Business Expenses; (8) Failure to Provide Wages When Due; and (9) Failure to Pay Sick Wages (the "*Del Rio* Class Action"). (Trabucco Decl. at ¶ 17.)

On August 22, 2023, Plaintiff Del Rio filed a notice with the Labor and Workforce Development Agency ("LWDA") pursuant to California's Private Attorney General Act ("PAGA"), Labor Code sections 2698, *et seq.*, alleging the same predicate violations as in the *Del Rio* Class Action. On December 20, 2023, Del Rio filed a representative PAGA complaint against Defendants Ebit Golf, Inc. and CourseCo, Inc. (Santa Clara Superior Court Case No. 23CV428017) alleging a single cause of action for Civil Penalties Pursuant to Labor Code § 2699, *et seq.* (the "*Del Rio* PAGA Action"). (Trabucco Decl. at ¶ 18.)

In Spring 2022 Plaintiff Miranda served a first set of discovery, and in September 2023 served a second set of discovery. (Trabucco Decl. at ¶ 19.) Later in the Fall of 2023, the Parties agreed to explore early alternative dispute resolution in an attempt to resolve this matter informally before expending further time and resources. (*Id.*) To facilitate that effort, the Parties entered into a stipulation setting out the general framework and information regarding the Parties' anticipated mediation efforts, which was filed on November 28, 2023. (*Id.*) The parties selected renowned neutral Steven Serratore to mediate the matter. (*Id.*)

In preparation for the mediation, the parties exchanged information and data confidentially under mediation privilege. (Trabucco Decl. at ¶ 20.) Defendant produced Plaintiffs' personnel files, a class list with hiring, rehiring, and termination dates for the Class Members, redacted electronic payroll and timekeeping data for the Class, and all pertinent versions of Defendants' policy documents. (*Id.*) From these documents and data, Plaintiffs' expert determined the relevant statistics, including the class size, terminated employees, rates of pay, and number of shifts, workweeks, and pay periods during the 4-year, 3-year, and 1-year limitations periods. (*Id.*)

On July 15, 2024, the Parties participated in a virtual mediation with experienced mediator Steven Serratore. (Trabucco Decl. at ¶ 21.) During the mediation, each side, represented by its respective counsel, engaged with Mr. Serratore regarding the substantial risk of continued litigation or an adverse result in the Action. Ultimately, Mr. Serratore delivered a mediator's proposal of $1,900,000 to resolve the class and representative action claims, which the Parties accepted, resulting in the Settlement described herein. (Trabucco Decl. at ¶ 21.) After exchanging drafts over the next several months, on October 16, 2024, the Parties formally memorialized the core terms of the Settlement in a Memorandum of Understanding. (*Id.*) The Parties then executed the long-form Agreement cited throughout this memorandum.[2] (*Id.*) The settlement reached and presented to the Court with this Motion is the product of informed, arms'-length negotiations between the parties. (*Id.*) In reaching the settlement, counsel on both sides relied on their respective and substantial litigation experiences in similar class and PAGA actions. (*Id.*) As part of this Settlement, Plaintiffs will be filing a First Amended Complaint in the *Del Rio* Class Action, which combines all Parties and claims from the *Miranda* Action and the *Del Rio* PAGA Action into this Action. (*Id.*)

[2] As of the filing of Plaintiffs' Motion for Preliminary Approval, the Joint Stipulation of Class Action and PAGA Settlement is currently being circulated for signature. Plaintiffs will file the fully-executed version of the Agreement in a supplemental declaration prior to the hearing.

III. SUMMARY OF THE TERMS OF THE SETTLEMENT

A. Settlement Payments

As detailed in the Agreement submitted herewith, the Settlement provides for a payment of $1,900,000[3] ("Gross Settlement Amount"). (Ex. 1 to Trabucco Decl., Settlement at § III.A.1.) The parties agreed to the following allocation of the Gross Settlement Amount to determine the Net Settlement Amount ("NSA") for distribution to the Class (*Id*. at § III.B-C):

Gross Settlement Amount	$1,900,000.00
Proposed Attorneys' Fees (33 & 1/3%)	$633,333.33
Estimated Litigation Costs	$50,000.00
Proposed Service Awards ($10,000) for each Named Plaintiff	$20,000.00
PAGA Payment to the LWDA	$65,000.00
Cost of Administration	$46,500.00
Minimum Net Settlement Amount	**$1,085,166.67**

Settlement Shares to Participating Class Members will be calculated as follows:

> Payments to Participating Class Members will be calculated by assigning a certain dollar value to each workweek the Class Members worked during the Class Period. The dollar value of each workweek will be calculated by dividing the aggregate value of the Net Settlement Amount by the total number of workweeks worked during the Class Period by the Class Members who do not submit valid Requests for Exclusion. Partial weeks will be rounded up to the nearest full week. A Class Member who does not submit a valid Request for Exclusion will receive a Settlement Share determined by multiplying their number of workweeks during the Class Period by the dollar value of each workweek.

(Trabucco Decl. at ¶ 24; Settlement at § III.D.1.) Plaintiffs' counsel will submit the executed

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[3] The payment structure of the Gross Settlement Amount begins with Defendants partially funding the QSF with the first installment of six hundred thirty-three thousand dollars ($633,000) fourteen (14) days following the Effective Date, by wiring said amount to the Settlement Administrator, as well as the entirety of the required Employer Payroll Contributions on the Wage Portion of Class Member Settlement Shares (which is not included in the Gross Settlement Amount and that Defendants shall pay separately). (Trabucco Decl. at ¶ 22; Settlement at §§ I.N, I.R, III.F.10.) The second installment of six hundred thirty-three thousand dollars ($633,000) shall be wired to the Settlement Administrator 180 days after the first payment, and the third and final installment of six hundred thirty-four thousand dollars ($634,000) shall be wired to the Settlement Administrator one hundred and eighty (180) days after the date the second installment is wired. (Trabucco Decl. at ¶ 22; Settlement at § III.F.10.)

agreement to the LWDA, per Labor Code section 2699(l)(2). (Trabucco Decl. at ¶ 23, fn. 3.)

B. <u>Process for Administering the Notice after Preliminary Approval</u>

No later than seven (7) days after the Court enters its order granting preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the Class Member Data, in electronic format, containing, for each Class Member, the Class Member's full legal name, employee identification number, last known address, and Social Security number, the start and end date for each Class Member's employment with Defendants. (Settlement at § III.F.3.a.)

Within seven (7) days after receiving the Class Members' data, the Settlement Administrator will mail the English and Spanish Class Notice Packets to all Class Members via first-class U.S. Mail. (Trabucco Decl. at ¶27; Settlement at § III.F.3.b.) If a Class Notice is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than seven (7) days from receipt of the returned packet, search for a more current address for the Class Member using reasonable and cost-effective skip trace methods, and re-mail the Class Notice to the Class Member. (*Id.* at § III.F.3.c.)

A Class Member who wishes to dispute the number of workweeks they worked outlined in the Class Member Verification Form sent to the Class Member as part of the Class Notice Packet may do so by notifying the Settlement Administrator in writing by either facsimile, email, or mail postmarked no later than Response Deadline. (Trabucco Decl. at ¶27; Settlement at § III.F.4.b.) The Settlement Administrator will make the final determination as to the correct number of compensable workweeks for such a Class Member. (*Id.*)

In an attempt to maximize the recovery of the Class, the Settlement is a checks-mailed settlement. (Trabucco Decl. at ¶ 26; Settlement at § III.D.3.) In sum, this process entails the Settlement Administrator mailing settlement checks to each Class Member who has not opted-out of the Settlement and for whom the Claims Administrator has not received a returned Class Notice Packet and no current address for the Class Member has been found through Accurint or other skip trace methods. (Trabucco Decl. at ¶ 26.) Experienced Class Counsel believes that the notice procedure established by the Agreement will efficiently and accurately ensure that Notice is provided to the Class. (*Id.* at ¶ 33.)

A Class Member must cash their Settlement Share check within one hundred eighty (180) calendar days after it is mailed to them. (Trabucco Decl. at ¶ 32; Settlement at § III.F.13.) If a check is returned to the Settlement Administrator, the Administrator will make all reasonable efforts to re-mail it to the Class Member at the correct address. (*Id.*) If a Class Member fails to cash the check for their Settlement Shares within 180 days after it is mailed to their last known address, they will be submitted to the State of California's Unclaimed Property Fund. (*Id.*)

C. <u>Process for Class Members to Opt-Out or Object to the Settlement</u>

A Class Member who wishes to object to any term of the Settlement must file with the Court and serve on counsel for the Parties a written objection to the Settlement setting forth the grounds for the objection no later than the Response Deadline. (Trabucco Decl. at ¶ 31; Settlement at § III.F.4.a.) The objection must also indicate whether the Class Member intends to appear at the Final Approval Hearing. (*Id.*) Absent good cause found by the Court, Class Members who do not file and serve written objections in the manner and by the deadlines specified in the Class Notice will be deemed to have waived any objections and will be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. (*Id.*)

A Class Member who wishes to exclude themselves from the Settlement must send the Settlement Administrator a written and signed Request for Exclusion which must be postmarked no later than the Response Deadline. (Trabucco Decl. at ¶ 30; Settlement at § III.F.4.c.) To be valid, a Request for Exclusion must contain the name, telephone number, address, last four digits of the social security number, and signature of the Class Member requesting exclusion from the Settlement. (*Id.*) A Class Member who submits a timely Request for Exclusion will not participate in or be bound by the Settlement and the Judgment (except as to claims pursuant to the PAGA) and will not receive a Settlement Share (but will receive a PAGA Share), and will retain the right, if any, they may have to pursue a claim against Defendant, except pursuant to the PAGA. (*See Arias v. Sup. Ct.* (2009) 46 Cal.4th 969.) The Class Notice attached to the Agreement submitted herewith fully explains the objection/comment and exclusion procedures. (*See* Exhibit 2 to Trabucco Decl.)

D. <u>Scope of the Proposed Release for Class Members and Plaintiffs</u>

The scope of the release by Participating Class Members (all Class Members other than those who elect not to participate in the Settlement) tracks the scope of Plaintiffs' allegations and is not broader than the wage-and-hour claims at issue in the consolidated complaint. (Trabucco Decl. at ¶ 29; Settlement at § III.G.2.) There is *no* Civil Code section 1542 waiver by absent Class Members. (*Id*.) Named Plaintiffs Francisco Diosdado-Miranda and Zachary Del Rio have executed a broader release than Participating Class Members, encompassing all claims, whether known or unknown, including an express waiver of Section 1542 of the California Civil Code. (Trabucco Decl. at ¶ 29; Settlement at § III.G.1.)

IV. LEGAL ARGUMENT

A. <u>The Court Should Grant Preliminary Approval to This Class Settlement.</u>

A class action may not be dismissed, compromised, or settled without approval of the Court. (*See* Civ. Code § 1781(f); California Rules of Court ("CRC"), rule 3.769; Fed. Rule Civ. Proc. 23(e).) Proper review and approval of a class action settlement requires three steps: (1) preliminary approval of the proposed settlement after submission of a written motion; (2) dissemination of mailed and or published notice of the settlement to all class members; and (3) a formal fairness hearing, or final settlement approval hearing, at which class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented. (Rule of Court 3.769.)

A settlement is presumptively fair where it is reached through arms' length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The decision to approve or reject a proposed settlement is committed to the sound discretion of the court. (*See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A decision approving a class action settlement may be reversed only upon a strong showing of clear abuse of discretion. (*See id*.)

Courts consider several factors in determining if a class action settlement should be approved, including: (1) the strength of plaintiffs' case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. (*See id*.)

The proposed settlement here satisfies each of the applicable factors. The substantial and comprehensive informal discovery exchanged by the parties prior to mediation with Steven Serratore permitted Plaintiffs and their counsel to fairly evaluate the strengths of the case and the risks associated with ongoing litigation. (Trabucco Decl. at ¶¶ 34-39.) Further, Plaintiffs' counsel are experienced in wage-and-hour class actions and support this Settlement. (*Id*. at ¶¶ 3-7; Nordrehaug Decl. at ¶ 9.)

1. <u>The Strength of Plaintiffs' Case</u>

To prepare for mediation, the Parties exchanged significant informal discovery, which Plaintiffs' counsel thoroughly analyzed to construct as reliable a damage model as possible. (Trabucco Decl. at ¶¶ 19-20; 34.) Plaintiffs' and witnesses' experiences provide support for the claims that workers were suffered and permitted to perform work off-the-clock before the start and after the end of shifts such as having to don work uniforms and protective gear and equipment or perform prep work before clocking in, or else doff work uniforms and protective gear and equipment and perform cleaning or closing work after clocking out. (*Id*. at ¶¶ 8; 34.) Relatedly, to the extent any such unpaid time occurred during shifts in which employees worked eight (8) hours or more, such hours worked would result in unpaid overtime wages. (*Id*.)

The payroll and timekeeping data produced by Defendant also allowed Plaintiffs to model the class and PAGA damages for purposes of mediation. (Trabucco Decl. at ¶¶ 20, 34.) For example, Plaintiffs' expert was able to review the time and pay data to determine the extent of Defendants' underpayment of minimum and overtime wages due to biased rounding of timekeeping records, resulting in compensation for less than the full number of recorded hours worked, and by failing to incorporate non-discretionary payments (*e.g.*, bonus, instruction, commission, etc.) into the formula used for calculating non-exempt employees' weekly regular rate of pay for purposes of paying overtime wages. (*Id*. at ¶¶ 8; 34.) Plaintiffs also allege that workers were often were not provided with a meal period until after the fifth hour, were denied net 30-minute meal periods due to insufficient staffing to provide meal periods, off the clock donning and doffing or other work interruptions, and sometimes missed first or second meal periods altogether. (*Id*. at ¶ 9.) While the data provided by Defendants under mediation privilege does seem to contain some measure of payment of meal period premiums, there still appear to be unique meal period violations in thousands of shifts (no meal periods recorded for shifts greater than 5 hours, no second meal periods recorded for shifts greater than 10 hours; recorded meal periods lasting less than 30 minutes; and meal periods beginning after the 5th hour of work), where there is no corresponding payment of meal period premiums. (*Id*.) Plaintiffs' experiences and class-wide evidence of Defendants failing to compensate workers for all hours worked, coupled with payroll and timekeeping data which raise a presumption that Defendant failed to provide timely, complete or otherwise compliant meal periods, formed the backbone of Plaintiffs' class and PAGA wage-and-hour damage assessment.

2. <u>The Risk, Expense, Complexity, and Likely Duration of Further Litigation</u>

While Plaintiffs and their counsel believe that they would prevail on the substance of their core wage claims (minimum and overtime wages, failure to provide lawful meal and rest periods), the claims alleged are not without weaknesses. (Trabucco Decl. at ¶ 36.) For example, the minimum and overtime wage claims are premised in part on putative class members performing work off-the-clock pre-shift and post-shift. (*Id*.) Since the time spent performing work prior to clocking in and after clocking out would be based on class members' testimonial evidence, it is uncertain exactly how much off-the-clock time Plaintiffs could prove at trial. (*Id*.) Or the Court could see this issue of calculating damages based on representative testimony as presenting manageability issues preclusive of class certification, further complicating the litigation. (*Id*.)

Further, the meal and rest period claims face significant challenges regarding individual issues predominating that render class certification of those claims far less than certain. (Trabucco Decl. at ¶ 36.) For example, while Class Counsel's expert found shifts greater than five hours in the timekeeping data without a recorded 30 minute meal period, the Court could find that individual issues predominate in determining whether workers were actually provided with a 30-

minute lunch notwithstanding that timekeeping records did not reflect such meals. (*Id*.) As for rest breaks, Plaintiffs' damage model accounts for the fact that rest breaks are not required to be recorded, and that the same manageability concerns pertaining to meal periods apply to rest breaks, making such claims challenging for certification purposes. (*Id*.) These evidentiary challenges inherent in certifying and maintaining certification of claims where class-wide, documentary evidence is lacking, make trial a significant risk in this matter and increase the likelihood of appeals. (*Id*.)

The PAGA penalties alleged presented another challenge. (Trabucco Decl. at ¶ 37.) Plaintiffs' estimate the PAGA penalties for the underlying Labor Code violations amount to approximately $11,413,150, which the Court had the discretion to reduce and that courts often do reduce pursuant to Labor Code section 2699(e)(2). (See *Magadia v. Wal-Mart Assocs., Inc.* (N.D. Cal. 2019) 384 F.Supp.3d 1058, 1100, *rev'd in part, vacated in part,* 999 F.3d 668 (9th Cir. 2021) [awarding "approximately 36% of the original amount of [Labor Code section 226.3] PAGA penalties Plaintiffs requested"].) While it is likely that a court would award some measure of civil penalties pursuant to PAGA for the Labor Code violations that Plaintiffs proved at trial, the trial court's discretion to reduce the PAGA penalties awarded pursuant to Labor Code section 2699(e)(2) is a substantial risk for Plaintiffs. (Trabucco Decl. at ¶37.) In sum, should this litigation proceed, Plaintiffs would face significant hurdles in their efforts to certify all the claims alleged, prevail, and secure a judgment. Of course, there is also a risk that Defendant would prevail in its asserted defenses.

3. <u>The Risk of Maintaining Class Action Status Through Trial</u>

In class actions, decertification is always a possibility. There is always a risk that a trial of this nature can become unmanageable, especially since the core wage-and-hour claims would have likely required representative testimony at trial. (Trabucco Decl. at ¶36). Given cases like *Duran v. U.S. Bank Nat. Assn*. (2014) 59 Cal.4th 1, 34, addressing the complexity of using statistical samples for litigating class claims, decertification is a real risk in any class action.

4. <u>The Amount Offered in Settlement</u>

On July 15, 2024, the Parties spent a full day in a remote mediation with experienced mediator Steven Serratore. (Trabucco Decl. at ¶21.) Ultimately, Mr. Serratore delivered a mediator's proposal of $1,900,000 to resolve the class and representative action claims, which the Parties accepted, resulting in the Settlement described herein. (*Id.*) The settlement reached and presented to the Court with this Motion is the product of informed, arms-length negotiation between the parties. (*Id.*) The mediator, Steven Serratore, was thoroughly apprised of the arguments and facts of this case by means of extensive briefing and factual presentations by both Plaintiffs and Defendants. (*Id.*) In reaching the settlement, counsel on both sides relied on their respective and substantial litigation experiences in similar class and PAGA actions. (*Id.*)

For purposes of mediation, Plaintiffs' counsel calculated maximum exposure for every alleged violation for all putative class members during the entire class period to be about $49 million. (Trabucco Decl. at ¶ 34.) As noted herein, the proposed $1,900,000 settlement represents a compromise figure considering the strengths and weaknesses of the claims asserted and the benefit to the Class Members for receiving compensation in the short term without the potential for protracted litigation and appeals. (*Id*. at ¶¶ 35-39.) The proposed $1,900,000 settlement provides for about 4% of total damage model developed for mediation purposes, and is a reasonable compromise considering the minor extent of record-driven unpaid time violations, the testimonial nature of off-the-clock work, challenges to manageability of the meal period claims, the expected difficulty in proving rest period claims, and the likelihood that a court would discount any PAGA award. (*Id*.)

The participating Class Members will share in a Net Settlement at least $1,050,166.67 after deducting for attorneys' fees, litigation costs, payment to the LWDA, representative Plaintiff service awards, and settlement administration costs. (Trabucco Decl. at ¶ 39.) The average payment to participate Class Members will be approximately $123.64. (*Id*.) These are substantial payments, particularly given the degree of risk on class certification, liability, and damages, and certainty of delay involved in further litigation and potentially appeals as explained herein. (*Id*. at ¶¶ 35-39.) After considering the likelihood of success on each claim, Plaintiffs' counsel determined that the settlement amount of $1,900,000 was fair and reasonable. (*Id*. at ¶ 39.)

5. <u>The Extent of Discovery Completed and Stage of the Proceedings</u>

Plaintiff Miranda and his counsel began investigating the facts underlying the class claims almost four years ago in January 2021. (Trabucco Decl. at ¶ 40.) Since then, Plaintiffs have continued to investigate the claims and engage in extensive discussions with Defendants, culminating in the significant exchange of evidence in preparation for the mediation conducted on July 15, 2024. (*Id.* at ¶¶ 19-21.) Specifically, Defendants produced Plaintiffs' personnel files, a class list with hiring, rehiring, and termination dates for the Class Members, redacted electronic payroll and timekeeping data for the Class, and all pertinent versions of Defendants' policy documents, from which Plaintiffs' expert determined the relevant statistics, including the class size, terminated employees, rates of pay, and number of shifts, workweeks, and pay periods during the 4-year, 3-year, and 1-year limitations periods. (*Id*. at ¶20.)

A review of this data, coupled with the putative class member interviews, demonstrates that the extent and breadth of the evidence sought and provided were sufficient to assess the class damages and the strengths and weakness of the class claims asserted. (Trabucco Decl. at ¶¶ 34-39.) In sum, Plaintiffs have conducted extensive independent investigation and the parties have exchanged a wealth of evidence in order to effectively evaluate the strengths and weakness of the claims and defenses for purposes of mediation, which weighs in favor of settlement. (*Id*.)

6. <u>The Experience and Views of Plaintiffs' Counsel</u>

The attorneys at Advocates for Worker Rights LLP ("Advocates"), Blumenthal Nordrehaug Bhowmik De Blouw LLP ("BNBD") have decades of combined experience litigating class and representative actions. (Trabucco Decl. at ¶¶ 3-7; Nordrehaug Decl. at ¶¶ 3-5) A list of the class and representative cases proposed Class Counsel has previously litigated and successfully resolved are contained in their accompanying declarations, filed herewith. (*Id*.) Well-versed in class and representative action litigation, the attorneys at Advocates and BNBD have diligently and aggressively pursued this action. (Trabucco Decl. at ¶¶ 16-20.) After weighing the strengths and weakness of both the claims and defenses asserted as detailed above, Plaintiffs' counsel firmly believe that this is a fair and reasonable settlement. (Trabucco Decl. at ¶¶ 35-39.)

7. <u>The Proposed Plan of Allocation Is Fair and Reasonable.</u>

Distribution of class settlements are subject to the same standard of review as class action settlements; they must be "fair, adequate and reasonable." (*See*, *e.g.*, *Officers for Justice v. Civil Service Comm'n* (9th Cir. 1982) 688 F.2d 615, 624-25, 629-30.) Here, the proposed plan of distribution compensates Class Members based on a *pro rata* basis based on each Participating Class Member's proportionate workweeks worked during the Class Period, as described above. (Trabucco Decl. at ¶ 24; Settlement at § III.D.1.) Participating Class Members who are also Aggrieved Employees shall receive a PAGA Share based on their proportionate number of workweeks in the PAGA Period. (*Id*.) This proposed distribution method provides a simple, readily determinable, and fair method for distribution, while also allowing for a distribution that corresponds closely to the alleged damages and likely recoveries. (Trabucco Decl. at ¶ 25.) Further, this method will allow Class Members to review and confirm for themselves the number of months of employment. (*Id*.) The formula employed in the Settlement is commonly used in wage-and-hour cases, and is appropriate in this case, where many workers experienced the same working conditions and have similar claims that roughly correlate with the above formula. (*Id*.)

Ninety percent (90%) of each Settlement Share will be treated as a payment in settlement of the Class Member's claims for alleged statutory and civil penalties and interest. (Trabucco Decl. at ¶ 28; Settlement at § III.D.2.a.) Ten percent (10%) of each Settlement Share will be treated as payment in settlement of the Class Member's claims for unpaid wages. (*Id*.) Accordingly, the Wage Portion will be reduced by applicable payroll tax withholding and deductions, and the Class Members will receive a Form W-2. (*Id*.) The Gross Settlement Amount does not include required Employer Payroll Contributions on the wage portion of Class Member Settlement Shares, which Defendant shall pay separately. (*Id*. at § III.A.1.) The parties agreed to this allocation because Plaintiffs' damage model, based on Defendant's records, provided a roughly analogous breakdown: $41,251,487 or 85% of damages attributable to interest, statutory and civil penalties; versus $7,791,433, or 15%, attributable to wages. (Trabucco Decl. at ¶ 28.)

8. <u>The Proposed Notice Fairly Apprises Class Members as to the Settlement.</u>

Plaintiffs request that the Court approve the proposed plan and form of Class Notice. (*See* Ex. 2 to Trabucco Decl.) The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt* *v. Sup. Ct.* (1975) 50 Cal.App.3d 960, 974.)

Following preliminary approval of the Settlement by the Court, the Settlement Administrator will mail a Class Notice Packet to each of the approximately 8,494 Class Members detailing the terms of the Settlement and how a Class Member can request exclusion from the Settlement or object to the terms of the Settlement. (Trabucco Decl. at ¶ 27; Settlement at §§ III.F.3.b, III.F.3-4.) Included in Class Notice Packet will be an estimate of the Class Member's respective share of the Settlement, as well as a Class Member Verification Form detailing the number of work weeks worked upon which their share is based. (*Id.*) A Class Member who wishes to dispute the number of workweeks worked may do so by notifying the Settlement Administrator in writing by mail postmarked no later than forty-five (45) days after the dispute form has been mailed to them, or by FAX or email on the same deadline. (*Id.* at § III.F.4.b.) The Settlement Administrator will make the final determination as to the correct number of compensable workweeks for such a Class Member. (*Id.*) If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than seven (7) days from receipt of the returned packet, search for a more current address for the Class Member using reasonable and cost-effective skip trace methods, and re-mail the Class Notice Packet to the Class Member. (*Id.* at § III.F.3.c.)

With respect to its contents, the "notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." (*Trotsky v. L.A. Fed. Sav. & Loan Ass'n* (1975) 48 Cal.App.3d 134, 151-52.) Here, the Notice clearly explains the proposed Settlement and the option to request exclusion from the Settlement or contest it at the Final Approval Hearing. (Trabucco Decl. at ¶ 33.)

In short, the proposed Class Notice should be approved because it describes the proposed Settlement with enough specificity to allow Class Members to make an informed choice regarding whether to participate in the Settlement.

a) <u>Phoenix Is Well-Qualified as the Settlement Administrator.</u>

After seeking bids from several experienced and known class action settlement administrators, Plaintiffs' counsel proposes Phoenix Class Action Administration Solutions

("Phoenix") to administer the settlement. (*See* Declaration of Jodey Lawrence filed herewith.) Phoenix provided a bid not to exceed $46,500 to administer this Settlement. (Trabucco Decl. at ¶ 42.) Should the administration cost be less than $46,500, the difference will return to the Net Settlement Amount for distribution to Participating Class Members. (Settlement at § III.B.3.)

B. The Proposed Settlement Class Should Be Certified for Settlement Purposes.

Originally creatures of equity, class actions have been statutorily embraced by the Legislature whenever "the question [in a case] is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." (Code Civ. Proc. § 382; *see*, *e.g.*, *Fireside Bank v. Sup. Ct.* (2007) 40 Cal.4th 1069, 1078.) Public policy supports the use of class actions to enforce wage and overtime laws for the benefit of workers. (*See Sav-On Drug Stores, Inc. v. Sup. Ct.* (2004) 34 Cal.4th 319, 340.)

The California Supreme Court has identified three certification requirements: (1) "the existence of an ascertainable and sufficiently numerous class"; (2) "a well-defined community of interest"; and (3) "substantial benefits from certification that render proceeding as a class superior to the alternatives." (*Fireside Bank*, 40 Cal.4th at 1089.) The "community of interest" requirement includes three additional requirements: (1) common questions of law or fact predominate over individual questions; (2) the class representatives have claims or defenses typical of the class; and (3) the class representatives can adequately represent the class. (*Id*., citing *Fireside Bank,* 40 Cal.4th at 1089.)

Defendants do not oppose Plaintiffs' request for provisional class certification. Class certification for settlement purposes is therefore proper in this case as the proposed settlement class satisfies each of the requirements under Code of Civil Procedure section 382.

1. The Proposed Class is Ascertainable and Sufficiently Numerous.

a) Ascertainability

Putative class members are deemed "ascertainable" when they may be "readily identified without unreasonable expense or time by reference to official records." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court scrutinizes the class definition, the size of the class and the means of identifying class members.

(*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, the proposed settlement class is ascertainable as Defendants have agreed to provide Class Member Data to the Settlement Administrator containing the name, employee identification number, last known address, Social Security numbers, the end date for each Class Member's employment, and the number of workweeks worked by the Class Member. (Settlement at § III.F.3.a.)

b) <u>Numerosity</u>

In California state court, there is no set number that is required as a matter of law to maintain a class action. (*See*, *e.g.*, *Rose,* 126 Cal.App.3d at 934.) Here, the proposed Class contains approximately 8,494 Class Members, so there is no question that the proposed Class is sufficiently numerous. (Trabucco Decl. at ¶¶ 2, 20.)

2. <u>There Is a Well-Defined Community of Interest.</u>

a) <u>Questions of Law and Fact Predominate.</u>

A court must determine whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238.) As a general matter, if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages. (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107.)

Here, there are questions of law and fact common to the proposed Class that predominate over any questions affecting only individual Class Members. These common questions include:

1. Whether Defendants suffered and permitted Plaintiffs and the Class to work without compensation based on rounding of recorded hours worked, incorrect regular rate of pay calculation, or off the clock work suffered and permitted at the start and end of shifts and during unpaid meal periods, in violation of the Labor Code and the Wage Orders;

2. Whether Defendants failed to compensate Plaintiffs and the Class at the statutory rate, regular rate, and/or agreed-upon wage rates, in violation of the Labor Code and the Wage Orders;

3. Whether Defendants suffered and permitted Plaintiffs and the Class to work in excess of eight (8) hours per day and/or over forty (40) hours per week and/or the first eight (8) hours on the seventh (7th) consecutive workday in a workweek, and

failed to pay the legally required overtime compensation, in violation of the Labor Code and the Wage Orders;

4. Whether the burden of proof will shift to Defendants for failing to maintain accurate records of the start and end of work periods, meal periods, total daily hours worked and wages earned, in violation of the violation of the Labor Code, the Wage Orders, and California law;

5. Whether Defendants, as a matter of policy or practice, failed to relieve Plaintiffs and the Class of all duty for a first net thirty (30) minute meal period before the end of the fifth (5th) hour of shifts, in violation of the Labor Code, the Wage Orders, and California law;

6. Whether Defendants, as a matter of policy or practice, failed to relieve Plaintiffs and the Class of all duty for a second net thirty (30) minute meal period before the end of the tenth (10th) hour of shifts, in violation of the Labor Code, the Wage Orders, and California law;

7. Whether Defendants, as a matter of policy or practice, failed to permit Plaintiffs and the Class to take net ten (10) minute rest breaks for each four (4) hour work period, or major portion thereof, in violation of the Labor Code, the Wage Orders, and California law;

8. Whether Defendants, as a matter of policy or practice, failed to pay Plaintiffs and the Class premium wages for all unlawfully provided meal periods and rest breaks, in violation of the Labor Code, the Wage Orders, and California law;

9. Whether Defendants, as a matter of policy or practice, failed to reimburse Plaintiffs and the Class for all necessary business expenses, in violation of the Labor Code, the Wage Orders, and California law;

10. Whether Defendants knowingly and intentionally failed to provide Plaintiffs and the Class written wage statements that accurately reflect all gross and net wages earned, total hours worked, applicable hourly rates and all deductions made, in violation of the Labor Code, the Wage Orders, and California law;

11. Whether Plaintiffs and the Class suffered injury within the meaning of Labor Code section 226 for the wage statement violations described herein;

12. Whether Defendants' conduct as described herein was willful or reckless;

13. Whether Defendants engaged in unlawful and/or unfair business practices in violation of Business & Professions Code sections 17200, *et seq.* ("UCL");

14. Whether Defendants are liable to Plaintiffs and the Class pursuant to the UCL for restitution of unpaid or underpaid statutory and/or agreed upon wages;

15. Whether Defendants are liable to Plaintiffs and the Class pursuant to the UCL for restitution of premium wages for unlawfully failing to provide meal periods and rest breaks; and

16. Whether Plaintiffs and members of the class whose employment terminated are entitled to waiting time penalties under Labor Code section 203 for Defendants' failure to pay all wages owed timely upon the separation from employment.

As the California Supreme Court has emphasized, "[c]aims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage-and-hour laws are of the sort routinely, and properly, found suitable for class treatment." (*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) Moreover, a class of similarly situated employees may be certified based on common questions of fact or law, even if each employee has to establish the amount of his or his damages. (*See Bell v. Farmers Ins. Exch*. (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores,* 34 Cal.4th at 340.)

Because the Class Members worked for CourseCo, the parent employer controlling operations at dozens of golf courses in California, and were subject to the same employment policies, the questions of fact and claims regarding the status of these employees are the same for each member of the class. The evidence reviewed by Plaintiffs' counsel demonstrates that common timekeeping, compensation and pay, meal, rest, and reimbursement policies applied to the proposed Class, and certification for settlement purposes is therefore appropriate.

b) <u>The Proposed Class Representatives' Claims Are Typical.</u>

A putative class representative's claim must be "typical," but not necessarily identical to the claims of other class members. The test of typicality "is whether other members have the same or similar injury, whether the action is based on conduct, which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. (*See*, *e.g.*, *Classen v. Weller* (1983) 145 Cal.App.3d 27, 45.)

Here, the typicality requirement is met because Plaintiffs and all other class members claim the same injury and seek the same relief, based on the same policies and practices. For example, rounding and regular rate of pay violations are discernible from the records because they are the downstream effects of CourseCo's timekeeping and payroll systems. Unpaid time claims based on those systems' application of the relevant parameters, formulas, and settings, uniformly across all Class Members, are undoubtedly typical and focused on a common injury.

c) <u>The Proposed Class Representatives and Counsel Are Adequate.</u>

A putative class representative must show that they can adequately represent the class. (*Lockheed Martin Corp. v. Sup. Ct.* (2003) 29 Cal.App.4th 1096, 1104.) The representative, through qualified counsel, must be capable of "vigorously and tenaciously" protecting the interests of the class members. (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846.)

The named Plaintiffs in this action have devoted significant time and effort to prosecuting the claims alleged, including gathering, organizing, and reviewing documents with counsel, assisting counsel with investigating the case, responding to discovery, and assisting counsel in preparing for and participating actively in mediation to resolve the claims.[4]

Plaintiffs Francisco Diosdado-Miranda and Zachary Del Rio believe the Settlement is fair and reasonable and in the best interest of the Class. (Trabucco Decl. at ¶ 41.) Plaintiffs voluntarily signed the Agreement. (*Id*.) Plaintiffs are capable of fairly representing and adequately protecting the interests of the proposed Class Members. (*Id*.) Plaintiffs' interests in this litigation are coextensive with the interests of the proposed Settlement Class. (*Id*.) The members of the proposed Settlement Class all worked for Defendant during the relevant time period and incurred the same type of alleged damages with regard to Defendant's alleged violations of the law. (*Id*.) Moreover, Plaintiffs have agreed to serve as Class Representatives and have specifically acknowledged the duties required of class representatives in writing. (*Id*.) This demonstrates Plaintiffs' commitment to bringing about the best possible results for the Settlement Class. As discussed above, Plaintiffs' counsel is also qualified to represent the Settlement Class. (Trabucco Decl. at ¶¶ 3-7; Nordrehaug Decl. at ¶¶ 3-5.)

C. A Class Action Is Superior to the Alternatives.

Class certification is appropriate where common questions of law and fact predominate over individual questions, and where class-wide treatment of a dispute is superior to individual litigation. (*See Sav-On Drug Stores*, 34 Cal.4th at 326.) The test is whether the proposed class is sufficiently cohesive to warrant adjudication by representation. (*See Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1022.) Here, the Settlement Class in this case is sufficiently

[4] Plaintiffs' counsel and the proposed Class Representatives will submit additional declarations at final approval detailing the Representatives' specific actions taken, time committed, and risks faced.

cohesive, since all members share a "common nucleus of facts and potential legal remedies." (*See id*.) Plaintiffs and Class Members seek unpaid wages owed for work performed and statutory and civil penalties as a result of Defendant's alleged policies and practices. The Class Members share many, if not all, potential legal remedies in common.

Furthermore, particularly in the settlement context, class resolution is superior to other available methods for the fair and efficient adjudication of the controversy. (*See Hanlon*, 150 F.3d at 1023; *Dunk*, 48 Cal.App.4th at 1807 n.19; *Lewis v. Starbucks Corp.* (E.D. Cal. Sep. 11, 2008) 2008 WL 4196690, at *4 ["as the parties have already agreed on a settlement, 'the desirability of concentrating the litigation in one forum is obvious'" (citation omitted)].) The superiority requirement involves a "comparative evaluation of alternative mechanisms of dispute resolution." (*Hanlon*, 150 F.3d at 1023.) Here, alternative methods of resolution are individual claims for a relatively small amount of damages. (*See id*.) But there is little incentive to bring such small claims because "litigation costs would dwarf potential recovery." (*Id*.)

"[T]he alternative to a class action is potentially [8,494] individual cases seeking damages unlikely to cover the costs of litigation, and thus no tangible alternative remedy exists." (*Starbucks*, 2008 WL 4196690, at *4.) A large number of repetitive individual cases would waste judicial resources and could lead to inconsistent adjudications of similar monetary issues and claims. Many class members with relatively small claims would likely decide not to bother pursuing their claims at all. Aside from class treatment, a group-wide adjudication of unlawful conduct is not available. Rather than having a multiplicity of proceedings, all involving the same and evidence, a class action allows these matters to be resolved once on behalf of all claimants. For all these reasons, the Settlement Class should be certified.

V. CONCLUSION

The arms-length settlement of this action avoids further litigation and makes a $1,900,000 settlement fund available to 8,494 of Defendant's current and former workers. For all the reasons set forth herein, Plaintiffs and the putative Class respectfully request that the Court conditionally certify the proposed Settlement Class, grant preliminary approval of the Settlement, approve the proposed Class Notice and notice procedures, appoint Plaintiffs Zachary

Del Rio and Francisco Diosdado-Miranda as Class Representatives, approve Advocates for Worker Rights LLP and Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel, and schedule a Final Approval hearing.

Respectfully submitted,

Dated: February 6, 2025

ADVOCATES FOR WORKER RIGHTS LLP

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