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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

EDGAR ESTRADA, an individual, on behalf of himself and others similarly situated, PLAINTIFF, v. UNITED AUTO AND TRUCK, INC.; and DOES 1 thru 50, inclusive, DEFENDANTS.	CASE NO. 23STCV18569 [Case Assigned for All Purposes to Hon. Samantha P. Jessner in Dept. 7] **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** *[Filed concurrently with Declaration of Eric B. Kingsley, Edgar Estrada, and Proposed Order]* Date: February 11, 2025 Time: 10:00 AM Dept.: 7 Complaint Filed: August 4, 2023 Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 11, 2025 at 10:00 AM in Department 7 of the above-entitled court, Plaintiff EDGAR ESTRADA will move the Court for an Order of Preliminary Approval of the Class Action and PAGA Settlement Agreement ("Agreement"), a copy of which is filed concurrently herewith.

The Motion will be made on the grounds that the proposed Agreement is fair, adequate, reasonable, and in the best interest of the Class and the Parties.

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Eric B. Kingsley, Edgar Estrada, the Agreement and Release, all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: October 8, 2025

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: ______________________

Eric B. Kingsley
Attorneys for Plaintiff EDGAR ESTRADA and the proposed class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff EDGAR ESTRADA ("Plaintiff") submits this Memorandum of Points and Authorities in support of Plaintiff's Motion for Preliminary Approval of the Class Action and PAGA Settlement Agreement reached between Plaintiff and Defendant United Auto and Truck, Inc. ("Defendant") (Plaintiff and Defendant together, the "Parties").

By this Motion, Plaintiff requests that the Court:

(1) Grant preliminary approval of the fully-executed Class Action and PAGA Settlement Agreement ("Agreement"). A true and correct copy of the Agreement is attached hereto as Exhibit "1";

(2) Approve the proposed Notice to Class Members, a copy of which is attached to the Agreement as Exhibit "A," and direct that the Notice be sent to Class Members in the manner set forth in the Agreement;

(3) Schedule a hearing on final approval of the proposed Settlement and Plaintiff's counsel's application for an award of attorney's fees and litigation costs at which Class Members may be heard ("Final Approval Hearing").

II. FACTUAL BACKGROUND

A. Litigation Overview and Procedural History

On August 4, 2023, Plaintiff filed a Class Action Complaint alleging causes of action for: (1) failure to provide lawful rest breaks; (2) failure to reimburse expenses; (3) failure to provide accurate itemized wage statements; (4) waiting time penalties; (5) failure to provide employment records; and (6) unfair business practices. ("Kingsley Decl.") ¶4.)

Also on August 4, 2023, Plaintiff sent a notice letter, pursuant to Labor Code § 2699 (to the Labor Workforce Development Agency ("LWDA") regarding his intent to seek civil penalties for the same Labor Code violations above, under Labor Code § 2699, et seq. (Kingsley Decl. ¶5.)

On October 13, 2023, Plaintiff then filed the First Amended Class and Representative Action Complaint ("FAC") adding an additional cause of action for penalties pursuant to Labor Code § 2699, et seq., the Private Attorneys General Act ("PAGA") based on the underlying Labor

Code violations already pled. (Kingsley Decl. ¶6.)

B. The Discovery Process and Settlement

The Parties served an initial round of written discovery, but the Parties thereafter agreed to proceed with informal discovery for settlement purposes. (Kingsley Decl. ¶7.) Prior to negotiating the settlement, Plaintiff obtained, through formal and informal discovery, sample Class time records, Class wage statements, the Class list, and Plaintiff's personnel file. (Kingsley Decl. ¶8.)

As a part of the Agreement, Plaintiff agreed to amend the complaint to add additional causes of action for: (a) Failure to Provide Meal Periods in Violation of Labor Code § 226.7 and 512; (b) Failure to Pay all Wages and Overtime Wages in Violation of Labor Code §§ 1118.12, 1194, 1184.2, 1197, 1197.1, 1198. (Kingsley Decl. ¶9.) On June 30, 2025, Plaintiff filed a Second Amended Class and Representative Action Complaint. (Kingsley Decl. ¶10.)

Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest of the settlement classes in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. (Kingsley Decl. ¶11.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to avoid the cost of litigation. (*Id*.)

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or representative action treatment. (Kingsley Decl. ¶12.) Defendant contends, among other things, that, at all times, it has complied with the California Labor Code, and the Industrial Wage Commission Orders. (*Id*.)

Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest of the settlement classes in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. (Kingsley Decl. ¶13.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here. (*Id.*)

III. 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. Court* (2007) 40 Cal.4th 1069, 1078.) They serve an important function by "establishing a technique whereby the claims of many individuals can be resolved at the same time" thereby "eliminat[ing] the possibility of repetitious litigation and provid[ing] small claimants with a method of obtaining redress." (*Richmond v. Dart Industries, Inc*. (1981) 29 Cal.3d 462, 469.) 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. Court* (2004) 34 Cal.4th 319, 340.)

The certification question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." (*Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 439–440.) A court ruling on a certification motion 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.)

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." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.) The "community of interest" requirement includes three additional requirements: (1) common questions of law or fact predominant 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. (*Ibid*, *citing Fireside Bank, supra,* 40 Cal.4th at 1089.)

Class certification for settlement purposes is proper in this case as the proposed Settlement Class satisfies each of the requirements under Code of Civil Procedure § 382. Accordingly, this Court should certify the putative settlement class.

A. <u>The Proposed Classes Are Ascertainable and Sufficiently Numerous</u>

1. <u>Ascertainability</u>

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, Plaintiff maintains that the proposed Settlement Class is ascertainable for several reasons: First, Defendant has agreed in the Agreement to provide a class list to the Administrator containing the name, last known mailing address, social security number, and number of Class Period Workweeks and PAGA Pay Periods for all putative class members after issuance of the preliminary approval order. (Kingsley Decl. ¶14; Ex. 1 at ¶1.8.) Second, Settlement Class Member consist of Defendant's hourly employees, and Defendant is required to keep records of its hourly employees' names, home addresses, and social security numbers. (*See* Wage Order 4-2001, subsection 7(c); Kingsley Decl. ¶15.) Third and finally, Defendant formally and informally produced Plaintiff's personnel file and pay statements time and pay data, and wage statements for Settlement Class Members containing class member contact information, which confirms that all Settlement Class Member may be readily identified based on Defendant's records. (Kingsley Decl. ¶16.)

2. <u>Numerosity</u>

There is no set number that is required as a matter of law to maintain a class action. (*See, e.g.*, *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement

Class contains, based upon information and belief, approximately 70 hourly non-exempt employees in the State of California. (Ex. 1 at ¶4.1.) Therefore, Plaintiff is confident he will be able to establish that the proposed Settlement Class is ascertainable and sufficiently numerous. (Kingsley Decl. ¶17.)

B. There Is a Well-Defined Community of Interest

1. There Are Predominant Questions of Law and Fact

In deciding whether questions of common or general interest predominate, 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; *accord*, *Sav–On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) 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; *accord*, *Knapp v. AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

Here, Plaintiff argues that there are questions of law and fact common to the proposed Settlement Class that predominate over any questions affecting only individual Class Members. (Kingsley Decl. ¶18.) These common questions include:

1) Whether Defendant failed to pay all wages and/or overtime compensation;

2) Whether Defendant failed to provide lawfully required meal periods and/or failed to compensate employees one (1) hour's wages in lieu thereof;

3) Whether Defendant failed to provide lawfully required rest periods and/or failed to compensate employees one (1) hour's wages in lieu thereof;

4) Whether Defendant failed to reimburse business-related expenses;

5) Whether Defendant failed to provide accurate itemized wage statements;

6) Whether Defendant failed to pay compensation due and owning upon termination of employment;

7) Whether Defendant engaged in unfair competition; and,

8) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the acts previously alleged.

(Kingsley Decl. ¶19.)

Plaintiff's challenge to Defendant's uniform policies and practices involves common factual and legal issues that are amenable to class treatment. (Kingsley Decl. ¶20.) 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*, *supra*, 53 Cal.4th at 1033; *see also Bradley v. Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) 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 her damages. (*See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at 340.)

Here, Plaintiff maintains that the proposed Settlement Class Members suffered the same injuries, in the same manner: (1) Settlement Class Members did not receive all wages and or overtime wages as required; (2) Settlement Class Members did not receive their meal and rest periods as required; (3) Settlement Class Members were not provided accurate itemized wage statements; (4) Settlement Class Members were not reimbursed for business-related expenses; (5) Settlement Class Members did not receive timely wages; and (6) Settlement Class Members were not paid all wages owed upon termination/resignation. (Kingsley Decl. ¶21.) Plaintiff alleges that Settlement Class Members worked in the same capacity for the same employer and were subject to the same employment policies and practices, the questions of fact and claims regarding the status of these employees are the same for each member of the Settlement Class. Accordingly, for purposes of settlement, certification for settlement purposes is appropriate. (Kingsley Decl. ¶22.)

2. <u>The Class Representative Has Claims Typical of the Proposed Class</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 Class Representatives, 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. (*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.) It is not necessary that the class representative have personally incurred all of the damages suffered by each of the other class members. (*Wershba v. Apple Computer, Inc. (*2001) 91 Cal.App.4th 224, 238.)

Plaintiff worked as an "hourly employee" for Defendant as a mechanic in Los Angeles County. (Kingsley Decl. ¶23.) Plaintiff alleges that he: (1) worked without being paid all wages and/or overtime; (2) worked without being provided meal/rest periods as required by law; (3) worked without being reimbursed for costs associated with tools; (4) worked without being provided accurate itemized wage statements; and (5) worked without being paid all wages due upon separation. He also alleges that he experienced derivative claims for unfair business competition (B&P Code §17200) and Labor Code §2699, et seq. (Kingsley Decl. ¶24.) Plaintiff also contends that his claims are typical of those of the Settlement Class. (Kingsley Decl. ¶25.)

3. <u>Plaintiff Contends That As The Class Representative He Has and Will Fairly Represent the Interests of the Settlement Class Members</u>

A putative class representative must show that they can adequately represent the class. (*Lockheed Martin Corp. v. Superior Court* (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.)

Plaintiff believes that he is capable of fairly representing and adequately protecting the interests of the proposed Settlement Class Members. (Kingsley Decl. ¶26.) Plaintiff's interests in this litigation are coextensive with the interests of the proposed Settlement Class Members. 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. (Kingsley Decl. ¶27.) Moreover, Plaintiff has agreed to serve as Class Representative and has retained qualified Counsel who is experienced in prosecuting wage and hour class actions. (Kingsley Decl. ¶28.) This demonstrates his commitment to bringing about the best possible results for the benefit of the proposed Settlement Class. (Kingsley Decl. ¶29.) Plaintiff has provided his Counsel with all necessary and pertinent information. (Kingsley Decl. ¶30.) Plaintiff has been an active participant in the litigation including responding to formal discovery and working closely with Class Counsel to develop the theories of liability. (Kingsley Decl. ¶31.) Plaintiff also was informed of and involved in all of the Settlement negotiations. (Kingsley Decl. ¶32.) Therefore, Plaintiff believes that he has and will continue to adequately represent the proposed Settlement Class Members. (Kingsley Decl. ¶33.)

C. The Class Action Vehicle Is Superior to the Alternatives

"The ultimate question in every case of this type is 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." (*Lockheed Martin*, *supra*, 29 Cal.App.4th at 1104–1105.) The California Supreme Court has directed the courts to utilize the class action device to fashion "an effective and inclusive group remedy." (*Richmond v. Dart Indus., Inc*. (1981) 29 Cal.3d 462, 469.) Normally, in making its class certification decision, the Court must determine that a class action would be superior to alternate means for a fair and efficient adjudication. If the causes of action may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting duplication of effort, class certification is superior to individual litigation. (*See, e.g.*, *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in principal and now seek Court approval of that Settlement, Plaintiff submits that there is not as much need as there would be in an ordinary motion for class certification for the Court to determine that the case can be manageably tried.

Plaintiff maintains that class treatment would be the superior method of managing this case. A class action is superior to individual litigation "when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In cases such as this, where individual damages may be small, the class action device is the most feasible method of recovery. (*See, e.g. Lockheed Martin*, *supra*, 29 Cal.4th at 1131.) In this regard, the superiority of class treatment is evident here because individual pursuit of class members' claims may not be economically viable. (Kingsley Decl. ¶34.) The only alternative to certification would be to force over 56 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether. (Kingsley Decl. ¶35.) Plaintiff maintains that this economic reality would result in a windfall for Defendant if this case were not certified. (Kingsley Decl. ¶36.)

IV. THE PROPOSED SETTLEMENT

A. The Settlement Class

For purposes of Agreement, the settlement class is defined as: "all non-exempt employees who worked for Defendant in California at any time between August 4, 2019 through March 1, 2025." ("Settlement Class Members" or "Class") (Kingsley Decl. ¶37; Agreement, Ex. 1 at ¶1.5.)

The Class Period is August 4, 2019 through March 1, 2025. (Kingsley Decl. ¶38; Ex. 1 at ¶1.12.) As of September 24, 2025, and based on documents and other information produced by Defendant, there are approximately 56 Settlement Class Members. (Kingsley Decl. ¶39; Ex. 1 at ¶4.1.)

B. The Aggrieved Employees

For purposed of the Agreement, the Aggrieved Employees are defined as: "all persons who are employed or have been employed as a non-exempt employee by United Auto and Truck, Inc., in the State of California from August 4, 2022 to March 1, 2025." (Kingsley Decl. ¶40; Ex. 1 at ¶1.4.)

The PAGA Period means the period from August 4, 2022 to March 1, 2025. (Kingsley Decl. ¶41; Ex. 1 at ¶1.32.) As of September 24, 2025, and based on documents and other information produced by Defendant, there are approximately 35 Aggrieved Employees. (Kingsley Decl. ¶42; Ex. 1 at ¶4.1.)

C. Gross Settlement Amount

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of $170,000.00, which includes the sum of the Individual Class Payments, the

Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Costs. (Kingsley Decl. ¶43; Ex. 1 at ¶3.1.)

The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award, Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs. (Kingsley Decl. ¶44; Ex. 1 at ¶1.28.)

The Parties estimate the amount of the Net Settlement Amount as follows:

Gross Settlement Amount:	$	170,000.00
Less Class Representative Enhancement:	$	5,000.00
Less Class Counsel's Fees:	$	56,666.67
Less Class Counsel's Costs:	$	6,000.00
Less PAGA Payment:	$	10,000.00 *($7,500.00 to the LWDA and $2,500.00 to remain in the Net Settlement Amount)*
Less Administrator Costs:	$	6,500.00
Anticipated Net Settlement Amount	$	85,833.33

(Ex. 1 at ¶3.1.)

C. Individual Settlement Payments

The amount of each Participating Class Member's Individual Class Payment is an individualized amount that is based on the number of compensable workweeks worked by the Participating Class Member during the Class Period. (Ex. 1 at ¶1.23; *see also* Ex. A to the Agreement at pp. 3 [Class Notice].) This individual amount shall be determined according to the settlement payment formula set forth in the Agreement. (*See* Ex. 1 at ¶3.2.4; *Id*. at Ex. A to the Agreement [Class Notice].) The Agreement provides for a specific and detailed Workweek dispute process. (*See* Ex. 1 at ¶7.6.)

The Individual PAGA Payment is the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period. (*See* Ex. 1 at ¶1.24.)

D. Process for Administering Settlement after Preliminary Approval

The detailed Notice Procedure established by the Agreement will efficiently and accurately ensure that Notice is provided to the Settlement Class Members. (Ex. 1 at ¶7.4.) The Parties have agreed to use a reputable third-party claims administrator, Phoenix Class Action Administration

Solutions, to administer the Agreement. (Ex. 1 at ¶1.2.)

F. Process for Settlement Class Members to Respond to Class Notice

As detailed in the Agreement, Class Members will have an opportunity to request exclusion from the Agreement (i.e. opt out) and to object to the Agreement at the Final Approval Hearing. (See Ex. 1 at ¶¶7.5; 7,7; see also Ex. A to the Agreement at pp. 2-3, 5-6, and 9 [Class Notice].) The Agreement and Class Notice contain details about the process to request exclusion or object. (*Id* at Ex. 1; see also Ex. A to the Agreement at pp. 2-3, 5-6, and 9 [Class Notice].)

G. The Release

The Released by Participating Class Members is defined as: "All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action." (Ex. 1 at ¶5.2.)

The Release by Non-Participating Class Members who are Aggrieved Employees is defined as: "All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice and Amended Notice, and ascertained in the course of the Action." (Ex. 1 at ¶5.3.)

V. ARGUMENT

A. Plaintiff Requests Approval of This Class Action Settlement

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

The proposed settlement satisfies each of these factors. Class Counsel conducted extensive formal and informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at Kingsley Decl. ¶¶45-46.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Kingsley Decl. ¶47.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Agreement. (Kingsley Decl. ¶48.)

1. <u>The Strength of Plaintiff's Case</u>

a) The Risks Associated with Wage/Overtime Claim

"California employees are entitled to compensation for all hours worked, which means "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." (Title 8 Cal. Code of Regs., § 11080(2)(G); See *Troester v. Starbucks Corp*. (2018) 5 Cal.5th 829, 845, as modified <u>on denial of reh'g</u> (Aug. 29, 2018).) Time is compensable if an employee is "subject to the control of an employer" even if not working, or if an employee "is suffered or permitted to work" even if not "under the employer's control, provided the employer has or should have knowledge of the employee's work." (*Frlekin v. Apple Inc*. (2020) 8 Cal.5th 1038, 1046, reh'g denied (May 13, 2020) (citations omitted.) An employer controls an employee if the employer directs an employee and the employee is unable to use their time how they wish. (Id. at p. 1047.) Other factors courts may consider include whether the activity is required, "the location of the activity, the degree of the employer's control, whether the activity primarily benefits the employee or employer, and whether the activity is enforced through disciplinary measures." (Id. at p. 1056; Cf. *Gibbs v. TWC Administration, LLC* (S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768, at *9 (denying Defendant's motion for summary judgment when plaintiff-employees conducted off-the-clock pre-shift activity in preparation to start work right when they clocked in).)

Plaintiff alleges that Defendant has violated Labor Code §§ 1118.12, 1184.2, 1194, 1197. 1197.1, 1198. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. Plaintiff and the Proposed Class worked in excess of 8 hours in a day and 40 hours in a week, and therefore, were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime and double-time hours worked. (Kingsley Decl. ¶49.)

Additionally, Plaintiff and the Proposed Class earn nondiscretionary remuneration, including, but not limited to, shift and other differentials, non- discretionary bonuses, and performance pay. (Kingsley Decl. ¶50.) Defendant, on occasion, failed to include such nondiscretionary remuneration in the regular rate calculation, thereby underpaying Plaintiff and the Proposed Class when they worked overtime or double-time. (Kingsley Decl. ¶51.)

Plaintiff alleges that Defendant failed to pay Plaintiff and the Proposed Class at least the legal overtime wage for all hours worked (in violation of Labor Code sections 1182.12, 1184.2 1194, 1197, 1197.1, and 1198) due to Defendant's failure to pay wages using the appropriate regular rate of pay. (Kingsley Decl. ¶52.)

Upon review of Plaintiff's time and pay records, there was only one pay period in which he received a bonus and overtime in the same pay period that was not properly blended into his regular rate of pay. (Kingsley Decl. ¶53.) As such, while this is clearly a violation, Plaintiff acknowledges that the overall violation rate among the Proposed Class is likely to be relatively low. (Kingsley Decl. ¶54.)

b) The Risks Associated with the Meal Break Claim

Under California Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work. Likewise, Wage Order 1-2001 states that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Furthermore, Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. In *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858 (2021), the California Supreme Court set forth the formula for calculating the one extra hour of bonus pay that employees are owed if an employer fails to provide a compliant meal period or rest break. (*Id.*) Specifically, the Court held that those bonus payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses, commissions, etc.), and cannot simply be paid at an employee's base hourly rate. (*Id.*)

Plaintiff alleges that Defendant failed to provide lawful meal periods and failed to maintain a policy informing Plaintiff and the Proposed Class of their rights associated with meal periods. (Kingsley Decl. ¶55.) In addition, Defendant has had a consistent policy of: (1) failing to provide Plaintiff and the Proposed Class uninterrupted meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the compliant meal period was not provided. (*Id.*) Out of 1,369 shifts in the sample data, there were 19 meal break violations and 68 deductions of 0.1 hours. (Kingsley Decl. ¶56.)

Defendant heavily contested this claim. (Kingsley Decl. ¶57.) Defendant argued that the employees received timely meal and rest periods and the time data provided demonstrated that. At trial, Defendant would present this evidence, along with other employees who would testify to that fact. (Kingsley Decl. ¶58.) Defendant argued that its policies and practices ensured high compliance with meal and rest break laws because employees were required to document non-compliant meal periods for every shift through its electronic timekeeping system. (*Id.*) Additionally, because Defendant maintained facially valid meal and rest period policies, Defendant argued that it would be entitled to inquire of each and every purported class member whether his/her meal periods were provided, and if not, why not – essentially arguing that any untimely or short meal periods in the records were a result of an employee's volition rather than Defendant's own failure to provide them. (*Id.*) Had the Parties proceeded to trial, Defendant would have retained a expert to analyze employee data to rebut any alleged meal break violations to show that premiums were properly paid, or employees voluntarily chose not to take them. (*Id.*) These presented risks on the meal and rest period claims that Plaintiffs considered when evaluating this settlement. (*Id.*)

c) The Risks Associated with the Rest Break Claim

Labor Code section 226.7(c) also requires an employer to pay an additional hour of compensation for each workday the employer fails to provide a rest period according to law. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or major fraction thereof. (Cal. Code Regs., tit. 8, § 11140, subd. 12(A).) Thus, employees are entitled to two rest periods if working a shift of 8 hours, and three rest periods if working a shift of over 10 hours.

The California Supreme Court has held: "Employees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." (*Brinker Rest. Corp. v. Superior Court*, *supra*, 53 Cal.4th at 1029.) In an eight-hour workday, being denied the two paid rest breaks in a day is "essentially perform[ing] 20 minutes of 'free' work." (*Murphy v. Kenneth Cole Productions, Inc*. (2007) 40 Cal.4th 1094, 1104.)

The Court also clarified what steps an employer has to take to "make available" rest breaks to its employees. Under *Brinker*,

> An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—it has violated the wage order and is liable. No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.

(*Brinker Rest. Corp. v. Superior Court*, supra, 53 Cal.4th at 1033 (emphasis added.).)

Employers must authorize and permit a net ten-minute paid rest period for every four hours, or major fraction thereof, of work for its employees. If an employer does not, then the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that the rest period is not provided. (Cal. Code Regs., tit. 8, § 11070, subd. 12(B).)

Moreover, in *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate.

Plaintiff and the Class consistently worked shifts with no rest breaks, and Plaintiff alleges that Defendant failed to provide Plaintiff and the Class with rest breaks of not less than ten (10) minutes as required by the Labor Code during the relevant time period. (Kingsley Decl. ¶59.) Rest breaks were frequently missed, interrupted, or late, as Plaintiff and the Proposed Class had a heavy workload and were not always able to take a rest break. (*Id*.) Plaintiff further alleges that Defendant failed to provide Plaintiff and the Proposed Class with a second rest period despite regularly requiring Plaintiff and the Proposed Class work over six (6) hours. (Kingsley Decl. ¶60.) As a result, Defendant failed to provide Plaintiff and the Proposed Class with compliant rest periods. Further, Plaintiff and the Proposed Class were not compensated with one (1) hour of wages at the regular rate of compensation for each compliant rest period that was not provided as required by Labor Code § 226.7. When rest premiums are provided, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7. (Kingsley Decl. ¶61.)

In its defense, Defendant would have argued that Plaintiffs' rest period claim was not appropriate for certification because California law does not require employees to record rest periods. (Kingsley Decl. ¶62.) Absent a shift-by-shift, break-by-break, employee-by-employee inquiry, Defendant would have argued that there was simply no way to know (1) whether a break was taken; and (2) if not, why not. (*Id*.) For each instance where an employee did not take a 10-minute rest period by the end of the fourth hour of work, the trier of fact would still have to determine why that particular employee had less than their full allotment of rest time. (*Id*.) Accordingly would have argued that rest break claims are inherently individualized in nature because employers only need to "authorize and permit" breaks; they need not ensure that rest breaks are taken. *Brinker*, 53 Cal. 4th at 1004. To succeed, "[a]n employee must show that the employer prevented the employee from taking breaks; mere proof of knowledge that the employee was forgoing breaks is insufficient." As such, Plaintiff had to acknowledge that it could potentially by easy for Defendant to defeat certification of this claim if it was able to gather testimonial evidence from class members indicating that they were able to take all required rest breaks each day. (*Id.*) Though Plaintiff does not believe this was the case, Plaintiff must acknowledge it poses risks for the Class. (*Id.*) There is certainly risk as to both sides as to what declarations and depositions of class members might reveal. (*Id.*)

d) The Risks Associated with the Reimbursement Claim

Under California Labor Code§ 2802(a) an employer "shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." An employee acts in "discharge of his duties," for purposes of this Section when the employee acts within the "course and scope of employment." See *O'Hara v. Teamsters Union Local No. 856,* C.A.9 (Cal.)1998, 151 F.3d 1152.

Here, Plaintiff alleges that Defendant failed to reimburse Plaintiff and the Proposed Class for the cost of using tools that were not provided by Defendant but were necessary for the performance of Plaintiff and the Proposed Class's job duties. (Kingsley Decl. ¶63.) Defendant provided tools for Plaintiff and the Proposed Class to perform their duties, however these tools were old and rusty, and prevented Plaintiff and the Proposed Class from performing their job duties. (*Id.*) As a result, Plaintiff and the Proposed Class had to purchase specific heavy-duty tools/equipment that was necessary to perform their job duties that were specialized for the semi-trucks that they performed work on. (*Id.*) Plaintiff further alleges that Defendant required that he and the Proposed Class use their personal cell phones to communicate with supervisors and send photos throughout their shifts if they needed assistance. (*Id.*) Defendant did not reimburse Plaintiff and the Proposed Class for this business use of their personal cell phone. (*Id.*) This tools/equipment were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the Proposed Class for the costs associated with using this personal tools/equipment.

Defendant strongly argued that it provided all necessary tools to perform work on the semi-trucks and that any use of their personal cell phone was voluntary and not required as part of the employees' job duties. (Kingsley Decl. ¶64.) Defendant would also likely argue that, if there was work-related use of personal cell phones, that use of their personal cell phones was minimal and infrequent, which would greatly reduce the actual amount of damages owed under this claim. (*Id*.) Furthermore, Defendant would further argue that because it purportedly provided all necessary tools to its employees, if an employee purchased tools to use for work that it was purely an employee's preference. (*Id*.) While Plaintiff denies that this position is factually correct or legally persuasive, Plaintiff nonetheless acknowledges what testimony and declarations may later reveal.

e) The Risks Associated with the Inaccurate Wage Statement Claim

California Labor Code §226(a) requires Defendant to provide its employees with an accurate, itemized written wage statement that shows, in relevant part, total hours worked by the employee, and all applicable hourly rates and the corresponding number of hours worked.

Plaintiff and the Class are issued wage statements that do not include the total hours worked by the employee. (Kingsley Decl. ¶65.) Plaintiff and the Class are issued wage statements that do not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. (Kingsley Decl. ¶66.)

Although wage statement claims are readily certifiable, they are vulnerable to an unfavorable disposition on summary judgment as defendants commonly argue that, without more, wage statement claims are nothing but technical violations for which Class Members suffer no injury. Before Section 226(e) was amended, the dispositive issue was whether "suffering injury" was satisfied by the deprivation of a legal right (i.e., an employer's provision of non-compliant wage statements), or by consequential damages caused by the non-compliant wage statements. Employers had frequently prevailed in arguing for the latter interpretation. Even after the enactment of section 226(e), some courts have held that this amendment merely clarifies existing law and have held that plaintiffs must demonstrate actual injury. See *Loud v. Eden Med. Ctr*., 2013 U.S. Dist. LEXIS 122873, **36-53 (N.D. Cal. Aug. 28, 2013) (granting summary judgment on wage statement claim because plaintiff could not show injury due to defects and that incorrect wage information is not willful).

Plaintiff also anticipated that Defendant would argue that the "subsequent" penalty applies only after a determination that the employer has violated the Labor Code. See *Amaral v. Cintas Corp.* No. 2, 163 Cal. App. 4th 1157, 1209 (2008) ("Although common sense might suggest a "subsequent" violation is nothing more than a violation that occurs at a later point in time after an "initial" violation, this definition is inadequate because the statutes provide for multiple penalties for "each failure to pay each employee" incurred in an initial violation . . . Until the employer has been notified that it is violating a Labor Code provision (whether or not the Commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware that its continuing underpayment of employees is a "violation" subject to penalties.").

f) The Risks Associated with the Waiting Time Penalty Claim

Under Labor Code section 203, if an employer fails to provide wages at the time of an employee's termination or within seventy-two (72) hours of resignation, then the employee's wages shall continue as a penalty for up to thirty (30) days. (Labor Code § 203.) Section 203 reflects a public policy that favors the full and prompt payment of earned wages. (See, e.g., *Barnhill v. Robert Saunders & Co*. (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

Here, Plaintiff and numerous Class members are no longer employed by Defendant. (Kingsley Decl. ¶67.) Plaintiff contends that Defendant failed to pay all wages owed and due upon their termination and/or resignation. (Kingsley Decl. ¶68.)

Plaintiff also alleged that Defendant owes waiting time penalties by not paying former alleged employees all wages owed and all premium payments for non-compliant meal or rest periods, Labor Code § 226.7. Pursuant to *Murphy v. Kenneth Cole Productions, Inc.* (2002) 40 Cal.4th 1094, 1120, Plaintiff contended that break premium payments constitute "wages" under Labor Code § 203. ("We hold that section 226.7's plain language, the administrative and legislative history, and the compensatory purpose of the remedy compel the conclusion that the 'additional hour of pay' is a premium wage, not a penalty"). (Kingsley Decl. ¶69.)

The bigger risk that Plaintiff analyzed, however, is that to establish liability for waiting time penalties, Plaintiff would have to establish not only that the underlying violations occurred, but also that Defendant's conduct was "willful." (Labor Code § 203; Kingsley Decl. ¶70.) If

Defendant could establish that any alleged failure to blend was the result of mistake or oversight and not "willful", then it is possible that Plaintiff would not be able to recover penalties for this claim. (Kingsley Decl. ¶71.) Because of this risk, Plaintiff determined that accepting a discount for settlement purposes was appropriate. (Kingsley Decl. ¶72.)

g) The Risks Associated with the PAGA Claim

California's Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq*., permits private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of $100 per employee per pay period for the initial violation and $200 for subsequent violations.

The Parties discounted the PAGA claim for multiple reasons. First, the aggrieved employees' PAGA claims are derivative of all the foregoing class claims. Second, a court has discretion to award less than the maximum penalty. Labor Code § 2699(e)(2) ("a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"). *See e.g*., *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). Finally, the Settlement Class is compensated for these violations in the proposed Agreement, and thus any PAGA recovery for these same violations would be duplicative. As such, the Agreement's contemplated PAGA payment of $10,000.00 is appropriate. (Kingsley Decl. ¶73.) *See Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating $0 of $6.4 million settlement to PAGA penalties).

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

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Agreement now. (Kingsley Decl. ¶74.) If the Court did eventually certify a meal or wage statement class, trial of a case involving approximately 56 Settlement Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Kingsley Decl.

¶75.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Kingsley Decl. ¶76.) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

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

This case has not been certified to be tried as a class action. (Kingsley Decl. ¶77.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant's meal and rest policies. (*Id.*) There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected. (*Id.*)

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

It was very difficult for the Parties to reach this Settlement of $170,000.00. (Kingsley Decl. ¶78.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Kingsley Decl. ¶79.) The Parties arrived at this settlement after extensive investigation and discovery, careful evaluation of the law, risks, and all information substantiating the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable. (*Id.*) Additionally, a significant factor in assessing this overall settlement was Defendant's inability to pay a larger settlement. (*Id.*)

a) Plaintiff's Assessment of Defendant's Maximum Exposure

Defendant produced a sample time records for 36 employees who worked a total of 1,369 shifts. (Kingsley Decl. ¶80.)

Plaintiff assessed full value of the Wages claim, without any discount, at approximately $139,194.96. (Kingsley Decl. ¶81.) This calculation assumes is owed approximately 1 hour of unpaid time per workweek. (Kingsley Decl. ¶82.) This assumes unpaid time of approximately 56 minutes for missing 5 rest breaks per week (100% violation rate) and approximately of 6 minutes of time shaved due to the 0.1 deductions from meal period punches. (Kingsley Decl. ¶83.) Plaintiff used an hourly average rate of $26.50 and 5,648 total workweeks for Settlement Class Members. (Kingsley Decl. ¶84.) However, for the reasons stated above, Plaintiff determined that accepting a discount on the full amount was appropriate. (Kingsley Decl. ¶85.)

The full value of the Meal Period claim, without any discount, was approximately $748,360.00. (Kingsley Decl. ¶86.) This figure assumes a 100% violation rate (using 5,648 workweeks). (Kingsley Decl. ¶87.) However, in the dataset that Defendant produced to Plaintiff, Plaintiff identified only 19 shifts with meal break violations across 1,369 shifts, which is a 1.3% violation rate. (Kingsley Decl. ¶88.) Using this violation rate, this would reduce Defendant's maximum exposure to $9,728.68. (Kingsley Decl. ¶89.) For the reasons above, Plaintiff determined that accepting a discount of the full amount was appropriate. (Kingsley Decl. ¶90.)

The full value of the Rest Period claim, without any discount, was approximately $748,360.00. (Kingsley Decl. ¶91.) This figure assumes a 100% violation rate (using 5,648 workweeks). (Kingsley Decl. ¶92.) However, as mentioned above, rest breaks were not recorded by Defendant and thus would solely rely on employees' testimony to determine the likely violation rate. (Kingsley Decl. ¶93.) Given that, based on the sample data, the meal period violation rate was low, Plaintiff also takes that into consideration here and adjusts Defendant's maximum exposure on this claim to also be $9,728.68. (Kingsley Decl. ¶94.) For the reasons above, Plaintiff determined that accepting a discount of the full amount was appropriate. (Kingsley Decl. ¶95.)

With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable to value the potential reimbursement at $1,000 per employee for reimbursement of specialized tools purchased without reimbursement and personal cell phone usage. (Kingsley Decl. ¶96.) This would amount to a maximum exposure of $56,000.00. (Kingsley Decl. ¶97.) However, this amount is likely overstated because the amount spent on specialized tools and personal cell phone usage varies from employee to employee. (Kingsley Decl. ¶98.)

Plaintiff valued the Wage Statement Claim, without discount, at $564,800.00. (Kingsley Decl. ¶99.) Plaintiff used $100 for each wage statement issued (weekly pay periods), but this figure is overstated because Labor Code §226(e)(1) uses $50 for the initial pay period (not $100) and puts a $4,000 cap on wage statement penalties per employee. (Kingsley Decl. ¶100.) Due to the risk discussed above that 226(a) liability wouldn't attach under *Naranjo* and *Maldonado*, Plaintiff determined that a steep discount of this claim was fair for settlement purposes, and the adjusted maximum exposure using the $4,000 cap on penalties per employee is $224,000.00. (Kingsley Decl. ¶101.)

Plaintiff valued the Waiting Time Claim, tied to the Wage/Overtime claim, at $324,360.00. (Kingsley Decl. ¶102.) Considering the derivate nature of Labor Code §203 and the dispute over whether class members were owed any wages, Plaintiff determined that accepting a discount on this claim was appropriate. (Kingsley Decl. ¶103.)

Finally, Plaintiff calculated the value of the PAGA claim at $266,000.00 for Settlement Class Members (using $100 per pay period). (Kingsley Decl. ¶104.) The main risk taken into account with PAGA is the discretionary nature of the penalty award. (Kingsley Decl. ¶105.) A judge can award the statutory maximum of $100 for the initial violation and $200 thereafter or – in theory – one cent per wage statement. (Kingsley Decl. ¶106.) While there is a dearth of available authority, in Plaintiff's view, were he to succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also award a large amount of penalties of top of any damages recovered. (Kingsley Decl. ¶107.)

Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the Settlement Class Members' claims was approximately $1,029,012.32. (Kingsley Decl. ¶108.) However, as a result of the significant forgoing risks on the merits, and Defendant's inability to pay a larger settlement, Class Counsel believes the Gross Settlement Amount of $170,000.00 is fair and reasonable. (Kingsley Decl. ¶109.)

5. <u>The Experience and Views of Counsel</u>

Finally, counsel's experience and success in similar class actions also weigh in favor of preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley Szamet Employment Lawyers is very experienced in prosecuting complex employment litigation, and the firm has focused its practice since the year 2000 on complex wage, hour, and working condition violations. (Kingsley Decl. ¶¶110-112.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*Id.*) Kingsley Szamet Employment Lawyers currently serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of representative cases that Kingsley Szamet Employment Lawyers has handled is included in the accompanying declaration of Eric B. Kingsley. (*Id.*) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Kingsley Decl. ¶113.)

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

Plans of allocation 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, 624–625, 629–630.) Here, the proposed plan of allocation compensates Settlement Class Members pro rata based on the number of compensable work weeks worked by the Settlement Class Member during the Class Period. The lump sum payment to each Settlement Class Member not excluding him/ herself will be determined on an individualized basis based upon the compensable pay periods worked by the Settlement Class Member (Ex. 1 at ¶3.2.4.) This allocation distributes Agreement funds proportionally to each class member's potential damages and should therefore be approved as fair, adequate, and reasonable. (Kingsley Decl. ¶114.)

7. <u>The Proposed Notice Fairly Apprises the Settlement Class Members of the Terms of the Settlement and of the Class Members' Rights under the Settlement</u>

Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) Pursuant to the Agreement, the Notice will be sent to the last known address of all Settlement Class Members, or to an updated address if one is located in the National Change of Address Database. (Ex. 1 at ¶7.4.2). If any Notices are returned as undeliverable, the Administrator will undertake another reasonable address verification measure to locate a valid mailing address and will promptly send the Notice to the new address. (*Id.*) As such, the Notice is likely to reach most, if not all, Settlement Class Members.

With respect to the contents of the Notice, 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.) The purpose of a class notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (*Ibid*.)

Here, the Notice clearly explains the proposed Agreement and the options to opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. 1 at ¶7.5; *see also* Ex. A to the Agreement at pp. 1-2, 4 [Class Notice].) In short, the Court should approve the proposed Class Notice because it describes the proposed settlement with enough specificity to allow Settlement Class Members to make an informed choice regarding whether to participate.

VI. THE SERVICE AWARD TO THE NAMED PLAINTIFF

The Class Representative is entitled to an enhancement for his valiant effort and time expended in this matter. (Kingsley Decl. ¶115.) The time spent by Edgar Estrada is significant and includes researching and retaining competent counsel; providing information to Class Counsel regarding the nature of the work at Defendant; compiling relevant documents; working closely with Class Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the status of the case with Class Counsel; discussing the case via telephone with many Settlement Class Members; providing formal discovery responses; and responding promptly to Class Counsel's communications regarding settlement. (*Id*.) Thus, in addition to the sums paid to Settlement Class Members, Plaintiff requests a proposed litigation enhancement in the amount of $5,000.00, to be paid from the Gross Settlement Amount. (Ex. 1 at ¶3.2.1.) As set forth in the Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Kingsley Decl. ¶116; Ex. 1 at ¶5.1.1.)

Class Counsel considers this to be a fair and reasonable enhancement. (Kingsley Decl. ¶117.) The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming forward to litigate this matter on behalf of all Settlement Class Members. (*Id*.) Plaintiff will provide a detailed declaration with the Final Approval Motion detailing his participation and further justification for the enhancement. (*Id*.)

VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Eric B. Kingsley as Exhibit "2." (Kingsley Decl. ¶118.)

VIII. CONCLUSION

Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members. Therefore, the Parties respectfully request that the Court (1) grant preliminary approval of the Class Action and PAGA Settlement Agreement, and all of its terms; (2) approve the proposed form of notice, and direct that the Notice be sent to Settlement Class Members in the manner set forth in the Class Action and PAGA Settlement Agreement; and (3) schedule a hearing on final approval of the Agreement and Class Counsel's application for an award of attorney's fees and litigation costs.

DATED: October 8, 2025

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: ______________________

Eric B. Kingsley
Attorneys for Plaintiff EDGAR ESTRADA and the proposed class

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On October 8, 2025, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof in a sealed envelope addressed as stated on the attached service list:

Lonnie D. Giamela
lgiamela@fisherphillips.com
Lirit King
lking@fisherphillips.com
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, California, 90012

[XX] **(BY ELECTRONIC MAIL THROUGH CASE ANYWHERE):** On interested parties set forth on the attached service list.

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

Executed on October 8, 2025, at West Hollywood, California.

Taylor Gregg