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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DAVID T. ATKINS, on behalf of himself and others similarly situated, Plaintiff, vs. GODADDY.COM, LLC. a Delaware limited liability company; GODADDY MEDIA TEMPLE, INC. a California corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: 23STCV23396 <u>Assigned for All Purposes To:</u> Hon. William F. Highberger Dept.: 10 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S <u>UNOPPOSED</u> MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT** Date: September 9, 2025 Time: 10:30 a.m. Dept: 10 Complaint filed: September 26, 2023 First Amended Complaint: November 27, 2023 Trial Date: None set

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I. INTRODUCTION

Plaintiff DAVID T. ATKINS ("Plaintiff") seeks preliminary approval of a $380,000.00 non-reversionary wage and hour class and PAGA action settlement for an estimated 91 non-exempt California employees of Defendants GODADDY.COM LLC and GODADDY MEDIA TEMPLE, INC. ("GoDaddy" or "Defendants") from September 26, 2019, through April 30, 2025 ("Class Period"). Declaration of Marta Manus, ("Manus Decl."), ¶ 9, Settlement Agreement, Ex. 1 ("Settlement Agreement" or "SA").

After engaging in substantial investigation and extensive negotiations with the assistance of a respected mediator, the Parties agreed to settle all claims alleged in the Action on a class-wide, non-reversionary basis. The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Class. Consequently, Plaintiff, with the consent of Defendants, hereby moves this Court for an order: (1) granting preliminary approval of the proposed class action settlement, as embodied in the Settlement Agreement filed concurrently herewith; (2) approving the Notice of Class Action Settlement ("Class Notice") to be sent to Class Members; and (3) setting a hearing for final approval of the class action settlement.

II. THE PARTIES, CLASS, AND AGGRIEVED EMPLOYEES

A. Plaintiff and Defendants

Plaintiff was employed by Defendants as a non-exempt employee in the position of a Care Support Guide providing customer service support including billing and technical support to Defendants' customers, from approximately October 27, 2010, to February 23, 2023. (Manus Decl., ¶¶ 13, 86(c); Declaration of David T. Atkins ("Atkins Decl."), ¶ 2, filed herewith).

Defendants are an American publicly traded internet domain registry and web hosting company, headquartered in Tempe, Arizona, and incorporated in Delaware. (Manus Decl. ¶ 14).

B. The Class and Aggrieved Employees

The Class includes all non-exempt, hourly individuals that worked for Defendants in California during the Class Period (i.e. the period from September 26, 2019, through April 30, 2025). The Aggrieved Employees are all Class Members who worked during the PAGA Period (i.e. the period from September 26, 2022, through April 30, 2025). The Class Members and Aggrieved Employees worked for Defendants in various non-exempt positions, including as customer service representatives and other corporate support employees, and were subject to the same wage and hour policies of Defendants. (Manus Decl. ¶ 13, Ex. 1 ¶ 4).

III. PROCEDURAL HISTORY

On September 26, 2023, Plaintiff commenced the Action by filing a complaint alleging causes of action against Defendants for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime; (3) Meal Period Violations; (4) Rest Period Violations; (5) Violation of Labor Code §226(a); (6) Violation of Labor Code §221; (7) Violation of Labor Code §204; (8) Violation of Labor Code §203; (9) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (10) Failure to Produce Requested Employment Records under Labor Code §§ 226, 1198.5; (11) Failure to Reimburse Necessary Business Expenses; and (12) Violation of Business & Professions Code §17200 *et seq*. (*Id.* ¶ 11; Ex. 1 ¶ 47).

On September 26, 2023, and pursuant to Labor Code §2699.3, subd.(a), Plaintiff gave timely, written notice to the LWDA and Defendants that Plaintiff intended to proceed with a representative action under PAGA (LWDA-CM-983971-23). On November 27, 2023, after the 65-day statutory period passed, Plaintiff filed his First Amended Complaint ("Operative Complaint"), adding a claim for civil penalties under PAGA, Labor Code §2698, *et seq*. (*Id.* at ¶ 12; Ex. 1 ¶ 47).

IV. DISCOVERY, INVESTIGATION, AND MEDIATION

Plaintiff's counsel conducted sufficient informal discovery to evaluate the strengths of his claims and Defendants' defenses.

In advance of mediation, Class Counsel conducted a thorough investigation into the facts of, and applicable law to, the Action, including speaking to current and former employees of Defendants regarding Defendants' employment policies and practices. Plaintiff's counsel provided Defendants' counsel with a comprehensive listing of informal discovery items required to constructively mediate. (Manus Decl., ¶¶ 15-16). Defendants responded by producing approximately a 33% sampling of timekeeping and corresponding payroll records from the putative class members covering the period of September 26, 2019, through November 13, 2024. (Declaration of Bennett Berger ¶ 7, filed herewith). Prior to mediation, Plaintiff therefore obtained and analyzed the production of time and payroll data for Class Members and the necessary policy documents through informal discovery to properly evaluate the strengths and weaknesses of the claims and engage in meaningful settlement discussions. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc*., 48 Cal.App.4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc*., 168 Cal.App.4th 116, 129-130 (2008) ("*Dunk/Kullar*"). (*Id*. at ¶ 19, Ex. 1 ¶ 50).

On January 30, 2025, the Parties attended mediation with Steve Rottman, Esq., a respected and highly experienced mediator in wage and hour class actions. During mediation, Plaintiff's counsel and Defendants' counsel discussed all aspects of the case, including the risks of litigation and the risks to both parties of proceeding with a motion for class certification as well as the law relating to unpaid wages, meal periods, rest periods, wage statements, reimbursement of business expenses, and final pay. After a full day of arms'-length negotiations, the matter was settled in principle. The Parties negotiated all necessary terms and entered into the Settlement Agreement presented for preliminary approval. (Manus Decl., ¶ 18, Ex. 1).

V. SUMMARY OF PROPOSED SETTLEMENT

A. Settlement Terms

Defendants will pay a Gross Settlement Amount ("GSA") of Three Hundred Eighty Thousand Dollars and Zero Cents ($380,000.00), including:

- Class Counsel Fees Payment of not more than One Hundred Twenty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents ($126,666.67) and a Class Counsel Litigation Expenses Payment of not more than Forty Thousand Dollars and Zero Cents ($40,000.00) (*Id.* at ¶ 23, Ex. 1 ¶¶ 7 – 8);
- Administration Costs of not more than Five Thousand Dollars and Zero Cents ($5,000.00) (*Id.* at ¶23, Ex. 1 ¶ 3);
- Class Representative Enhancement Award of not more than Five Thousand Dollars and Zero Cents ($5,000.00) to Plaintiff (*Id.* at ¶ 23, Ex. 1 15); and
- PAGA Penalties in the amount of Forty Thousand Dollars and Zero Cents ($40,000.00) for civil penalties under PAGA, with 75% ($30,000.00) paid to the LWDA for the LWDA PAGA Payment and 25% ($10,000.00) paid to Aggrieved Employees for their Individual PAGA Payments. (*Id.* at ¶ 23, Ex. 1 ¶ 35).

Defendant will pay its employer-side payroll tax obligations on the Wage Portion of the Individual Class Payments in addition to the Gross Settlement Amount. (*Id.* at ¶ 25, Ex. 1 ¶ 53). After Court-approved deductions, the estimated Net Settlement Amount ("NSA") of approximately $163,333.33, will be distributed to Participating Class Members, with each share of the NSA based on the number of workweeks worked during the Class Period. (*Id.* at ¶ 24, Ex. 1 ¶¶ 23-24).

Each Aggrieved Employee will be entitled to payments calculated in accordance with the number of pay periods in which they worked during the PAGA Period, in relation to the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. Depending on the circumstances, individuals entitled to payment from the Settlement will receive payment (a) only as an Aggrieved Employee, (b) only as a Participating Class Member, or (c) as both an Aggrieved Employee and a Settlement Class Member. (Manus Decl., ¶ 26, Ex. 1 ¶¶ 35, 56.5(a)-(b)).

The overall tax allocation for the NSA to be paid to Participating Class Members will be allocated for tax purposes as follows: 80% to statutory and civil penalties and interest, and 20% to wages. The overall tax allocation for the PAGA Payment will be 100% to civil penalties. (*Id.* at ¶ 27, Ex. 1 ¶ 56.4(a)).

The Settlement distribution is fair and reasonable and does not give preferential treatment to any Class Member and can be made from data readily available from Defendants, and the Administrator can apply the formula fairly and transparently.

B. Released Claims

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from those claims arising out of or related to the allegations set forth in the Operative Complaint that arose during the Class Period, including all statutes on which those claims are based in the Operative Complaint, including claims for: failure to pay for all hours worked/compensation due for services, wages, minimum wages, overtime, premium payments, meal periods, rest periods, pay reporting time pay; failure to provide payment of wages during employment and payment of wages at termination; failure to maintain and provide accurate and complete records; failure to reimburse for necessary business expenses; failure to provide sick pay, COVID-19 sick pay, California sick pay, bonus pay, and any unpaid wages or compensation related to any or all of the foregoing, which are based on the facts alleged in the Action; restitution related to any or all of the foregoing, which are based on the facts alleged in the Action; and any penalties, including statutory or civil penalties, related to any or all of the foregoing. This release includes any and all claims pursuant to: California Labor Code §§ 90.5, 201, 202, 203, 204, 206.5, 210, 218.5, 221, 226, 226.2, 226.3, 226.7, 246, 248 *et. seq*., 248.1, 248.2, 248.5, 432.5, 510, 512, 551, 552, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 1198.5, 1199 and 2802; the Fair Labor Standards Act; California Business & Professions Code § 17200 et seq.; California Code of Civil Procedure § 1021.5; and the California Industrial Welfare Commission Wage Orders MW-2014 ("Released Class Claims"). (Manus Dec. Ex. 1 ¶ 66).

All Aggrieved Employees, including 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 facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Action, including PAGA Penalties claims premised on: California Labor Code §§ § 201, 202, 203, 204, 210, 221, 226, 226.7, 227.3, 246, 248.1, 248.2, 248.5, 351, 354, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, 2810.5, 2698, and 2699, *et seq*.; failure to pay for all hours worked/compensation due for services, wages, minimum wages, overtime, premium payments, meal periods, rest periods, pay reporting time pay; failure to provide payment of wages during employment and payment of wages at termination; failure to maintain and provide accurate and complete records; failure to reimburse for necessary business expenses; failure to provide sick pay, COVID-19 sick pay, California sick pay, bonus pay, and any unpaid wages or compensation related to any or all of the foregoing, which are based on the facts alleged in the Action ("Released PAGA Claims"). The Released PAGA Claims apply to claims arising during the PAGA Period. (*Id.*, Ex 1 ¶ 67).

C. Settlement Administration and Notice to the Class

Using best efforts to perform as soon as possible, and in no event later than fourteen days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice, attached to the Settlement Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods used to calculate these amounts. Before mailing Class Notice, the Administrator shall update Class Member addresses using the National Change of Address Database. (*Id.*, Ex 1 ¶ 76.2).

The Administrator, mutually selected by the Parties, will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail. The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided ("Void Date"). (Manus Decl., ¶ 33, Ex. 1 ¶ 60).

The Administrator must conduct a Class Member Address Search for all Class Members whose checks are returned undelivered without a USPS forwarding address. Within seven days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. (*Id*. at ¶3 4, Ex. 1 ¶ 60).

The "Individual Class Payment" is each Class Member's share of the Net Settlement Amount and will be calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class Member worked during the Class Period. (*Id*. at ¶ 21, Ex. 1 ¶ 23). After Court-approved deductions, the estimated Net Settlement Amount ("NSA") of approximately $163,333.33, will be distributed to Settlement Class Members, with each share of the NSA based on number of workweeks worked during the Class Period. Based on data gathered through January 30, 2025, it is estimated that there are 91 Class Members who worked a total of 8,652 Workweeks. (*Id*. at ¶ 75, Ex. 1 § F). Therefore, Class Members are estimated to receive approximately <u>$18.88</u> per Workweek. (*Id*.) The "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA Period. (*Id*. at ¶ 26, Ex. 1 ¶ 24).

Class Members will receive the Class Notice via first class mail. (*Id*. at ¶ 29, Ex. 1 ¶¶ 60-61). Class Members will have an opportunity to dispute the Workweeks and PAGA Pay Period information provided in their Class Notice and produce evidence to support their contentions. (*Id*. at ¶ 30, Ex. 1 ¶ 78). The Administrator will make the final determination as to any disputes involving Class Members' allocation of Workweeks and Pay Periods. (*Id*.)

Class Members wishing to opt out from the Settlement Agreement must send a signed written request for exclusion to the Settlement Administrator within 45 days from the initial mailing of the Class Notice. Participating Class Members will also have the opportunity to object to the Settlement Agreement by serving a copy of the objection to the Settlement Administrator within 45 days after the mailing of the Class Notice. (*Id*. at ¶ 31, Ex. 1 ¶ 77).

The parties have selected Apex Class Action, LLC ("Apex") to handle the notice and administration of the Settlement. (*Id*. at ¶ 32, Ex. 1 ¶ 2). Apex has procedures in place to protect the security of class data, adequate insurance in the event of a data breach or defalcation of funds, and is qualified to administer the Settlement. (See Declaration of Michael Sutherland, filed herewith). The procedures for mailing notice and processing exclusions and objections as well as distribution of the Net Settlement Amount are detailed in the Settlement Agreement. (*Id*. at ¶ 32, Ex. 1 ¶¶ 76-79).

VI. ARGUMENT

A. Class Settlements Are Subject to Court Review and Approval

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

> A two-step process is followed when considering class settlements… If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representative or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.(Manual for Complex Litigation (Second) (1985) at § 30.44.)

The preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. See, e.g., Newberg, § 11.25; *North County Contractor's Assn., Inc. v. Touchstone Ins. Services* 27 Cal. App. 4th 1085, 1094-95 (1994) . Thus, the preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. State courts may be guided by federal authority for class settlements. *Wershba v. Apple Computer, Inc*. 91 Cal. App. 4th 224, 239 (2001) .

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

At preliminary approval, a court limits its inquiry to the extent necessary to reach a reasoned judgment "the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006) .

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

B. The Settlement is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement the Court must find a proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co*., 48 Cal.App.4th 1794, 1801 (1996) . The Court determines whether the Settlement is the product of fraud, overreaching, or collusion, and, taken as a whole, is fair, reasonable and adequate to all concerned. *Dunk, supra* at 1801.

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

The Settlement here satisfies each of these factors. Plaintiff's counsel conducted extensive informal discovery before engaging in meaningful settlement negotiations in this matter, including a detailed analysis of Defendants' policies and a reasonable sample of Defendants' time and pay records. (Manus Decl., ¶¶ 16, 19). This discovery conducted permitted Plaintiff's counsel to fairly evaluate the strengths of the case, and the risks associated with ongoing litigation. Plaintiff's counsel is very experienced in the handling of wage and hour class actions and supports this Settlement. (*Id*. at ¶¶ 19-20).

1. The Strength of Plaintiff's Case

Plaintiff alleges that Defendants failed to pay all wages for off-the-clock work, failed to pay the accurate rate of pay due to Defendants' failure to incorporate non-discretionary bonus payments into the regular rate of pay for overtime hours worked and sick leave taken, failed to provide all legally compliant meal and rest breaks, failed to provide accurate wage statements, failed to reimburse necessary business expenses such as decks, chairs, and office supplies, and failed to timely pay all wages due during and upon termination in violation of California law. (*Id*. at ¶ 36).

Investigation and discovery gave the Parties a clear understanding of their strengths and weaknesses before negotiations. *Id., See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 41(2010) (approving settlement where "considerable information [exists] from which to assess the strength of the class claims" and litigation risks).

Plaintiff conducted discovery and investigated each of the claims alleged. Specifically, Defendants produced the following: (a) Defendants' employee handbook in effect during the Class Period; (b) Defendants' policies and procedures pertaining to minimum wages, overtime, meal breaks, and rest breaks, which were in effect during the Class Period; (c) Plaintiff's personnel file;

(d) Plaintiff's timekeeping and payroll records; (e) a 33% sampling of the Class Members' timekeeping and payroll records; and (f) information on the class demographics including the total number of Class Members during the Class Period, total number of Class Members during the PAGA Period, total number of current employees, total number of former employees in the relevant time period, average hourly rate of pay, and the total number of workweeks worked during the Class Period. (Manus Decl., ¶ 38).

Proof of wage and hour class claims is based, at any stage, almost entirely on written policies and pay records. Plaintiff's counsel obtained those records, and an expert analyzed them and prepared a damage model before a settlement was negotiated. Plaintiff's counsel felt confident that the claims in this case would be certified given that Defendants' policies were applicable to all Class Members. *Id*.

a) The Risks Associated with Plaintiff's Underlying Labor Code Claims.

As with all litigation, there are risks that a party will not prevail on the merits. Plaintiff contended that due to the nature of Defendants' compensation scheme, Plaintiff and Class Members received non-discretionary bonuses, in addition to their regular hourly rate. These bonuses were part of an incentive plan designed to reward employees for providing good customer service. Plaintiff contended these non-discretionary bonuses were not factored into the regular rate used to calculate and pay all overtime payments, when they were paid. (*Id*. at ¶¶ 47-48).

Due to the volume of work Defendants required from them, Plaintiff contends that he and the Class Members were also compelled to endure meal period and rest break violations. In some instances when Defendants provided improper meal or rest breaks, Defendants paid some meal period and rest break premiums. However, Plaintiff alleges that Defendants failed to pay meal period and rest break premiums at the required rate by failing to include non-discretionary bonuses in the regular rate used to calculate and pay the premiums. This systematic underpayment of wages occurred, upon information and belief, in connection with the other similarly situated Class members who were paid a bonus or other form of remuneration other than hourly wages and received a meal or rest break premium payment in the same pay period. (*Id*. at ¶ 49).

Defendants contended that Class Members were given a reasonable opportunity to take their meal periods, and in fact were provided with an opportunity to take duty-free breaks on all eligible shifts. Defendants argued that given their written policies and practices, any unrecorded hours are likely subject to individualized inquiry and unlikely to be certified. (*Id*. at ¶ 55). If Defendants' contentions are proven true and prevail in trial, the likely outcome of this claim would be no recovery for Class Members. Defendants also pointed out that, unlike meal periods, rest breaks need not be recorded, so any rest break violations would likely be difficult to prove at trial. *Id*. In light of these considerations, which were likely to diminish the damages and ultimately recoverable, Class Counsel applied appropriate discounts to the valuation of the rest break claim. (*Id*. at ¶ 58).

Plaintiff contended that Defendants paid other forms of remuneration such as non-discretionary bonus pay, which was not factored into the regular rate used to calculate and pay all overtime wages, meal and rest premiums, and sick leave. (*Id*. at ¶ 51). Defendants contended that any other forms of remuneration that Class Members received were discretionary in nature and thus did not factor into the regular rate of pay.

Plaintiff also contended that Defendants required Plaintiff and Class Members to incur necessary business expenses while performing their required job duties without reimbursement. These expenses included personal cell phone use incurred while responding to work-related calls, texts and emails from managers and colleagues and in accessing the internet. Also, Plaintiff contended that Class Members were required to provide themselves with desks, chairs, and office supplies that were needed for them to perform their work. *Id*. Defendants contended Class Members were not required to use personal cell phones for work-related purposes and any such use was voluntary, and their written reimbursement policy complies with California law. Defendant further contended that it supplied Class Members with stipends for home office equipment and provided ways for Class Members to requests supplies and reimbursement. (*Id*. at ¶ 60).

b) The Risks Associated with Paystub Violations and Waiting Time Penalties.

To establish liability for these penalties, Plaintiff would first have to establish liability for the underlying claims. Plaintiff would then have to establish that Defendants' conduct was willful and knowing. (Labor Code §§ 203, 226(e).)

With waiting time penalties, there is always the risk that the trier of fact would not have held that Defendants' actions were done "willfully." A good faith belief in a legal defense can preclude a finding of willfulness. *Gonzalez v. Downtown LA Motors*, 215 Cal.App.4th 36, 54 (2013) ; 8 C.C.R. § 13520. As discussed above, Plaintiff alleged that Defendants failed to pay for all hours worked and premiums for non-compliant meal breaks due to the failure to correctly calculate the regular rate of pay. Plaintiff contended the Class Members are entitled to these wages and premiums, which he alleged were not paid at the time of their termination or resignation. If Plaintiff is successful on his claims, the penalties pursuant to Labor Code § 203 shall attach. Defendants, however, contend it provided employees with the reasonable opportunity to take meal breaks, asked Class Members to confirm the accuracy of their time records, and therefore had good-faith defenses under *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012) and its progeny. Defendants likewise contend that they properly paid all hours worked by employees. Based upon Defendants' potential success in establishing both that a good faith dispute existed regarding unpaid wages, and Defendants endeavored in good faith to supply accurate wage statements, Defendants argue the claims for paystub violations and waiting time penalties have little or no value. *See Maldonado v. Epsilon Plastics, Inc*., 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage statements that accurately report wages paid to employees do not violate Labor Code § 226, even if it is later determined that employer did not properly pay all wages due). As such, there was risk associated with wage statement and waiting time penalties that Class Counsel had to consider. (Manus Decl., ¶¶ 62-64).

c) The Risks Associated with PAGA Penalties.

Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount by the Labor Code section relating to the underlying alleged Labor Code violation, that amount shall apply. *Id*. The PAGA also gives the Court discretion to award any lesser amount than the maximum civil penalty. (Id. ["…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., Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), rev. denied (2018), (recognizing court's ability to reduce PAGA penalties). Courts have held that situations like the current one (e.g. injury less violations, technical errors, and substantial compliance) should lead to reductions in penalties. *See Thurman v. Bayshore Transit Management, Inc*., 203 Cal. App. 4th 1112, 1134-1135 (2012) (holding that reduction was justified when employer "attempted to comply with the law"); *Fleming v. Covdien, Inc*., No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011) (reducing PAGA penalties more than 80% – from $2.8 million to $500,000 – when "employees suffered no injury" employers were "not aware" of the violation and "took prompt steps to correct all violations once notified").

Plaintiff discounted potential penalties under this claim given this authority, and for reasons already discussed. The PAGA claims are premised on the same underlying unpaid wages, meal and rest break, wage statement, and waiting time claims, and thus subject to the same disputes and defenses. There is also a dispute as to whether violations in later pay periods trigger the $200 penalty under PAGA as a "subsequent violation." *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1203 (2008) . As such, there is a fair amount of risk associated with PAGA claims which makes the proposed PAGA payment of $40,000 appropriate. (Manus Decl., ¶ 72).

2. The Risk, Expense, Complexity and Likely Duration of Further Litigation

Given the risks outlined above, the issues in this case were complex and the risk for Plaintiff and Class Members associated with this litigation was significant. (*Id*. at ¶¶ 76-79). A class trial would have required the retention of expensive expert witnesses, the accrual of extensive litigation costs, and the parties would have had to spend a substantial amount of time litigating this matter.

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

3. The Risk of Maintaining Class Action Status Through Trial

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

4. The Amount Offered in Settlement

There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive, and arms-length negotiations between the parties with an experienced mediator. To determine the approximate potential damages which would be owed to each of the Class Members, Class Counsel analyzed the data, documents, and time and pay records for Plaintiff and Defendants provided Class Counsel with records for a sampling of Class Members. By analyzing this information, Class Counsel was able to estimate the full value of the case if Plaintiff were to prevail at trial. (*Id*. at ¶¶ 38-39).

Based on data gathered through January 30, 2025, it is estimated that there are 91 Class Members. (*Id*. at ¶ 75, Ex. 1 ¶ 57). Based on the data provided, Class Counsel estimated Defendants' realistic exposure on the primary claims in this case as follows:

- unpaid minimum wages claim (off-the-clock hours) at $416,100 (discounted by 75% to $104,025);
- unpaid/underpaid overtime wages claim (miscalculation of regular rate) at $3,238;
- meal period claim at $46,835 (discounted by 50% to $23,417.50);
- rest period claim at $1,928,569 (discounted by 75% to $482,142.25);
- wage statement claim at $197,900 (discounted by 50% to $98,950)
- waiting time penalties at $623,903 (discounted by 75% to $155,975.75);
- underpaid meal premium and sick leave claim (miscalculation of regular rate) at $57,173 (discounted by 50% to $28,586.50);

- unreimbursed business expenses claim at $86,300 (discounted by 50% to $43,150).

With the discounts applied, the total damages exposures amount to $939,485. PAGA penalties were calculated at $868,600 (using the initial violation rate of $100 per employee per violation). PAGA penalties were discounted by 50% due to the discretionary nature and requirement to prove the underlying violation, bringing PAGA penalties to $434,300 and bringing the maximum total exposure to $1,373,785 ($939,485+ $434,300). (Manus Decl., ¶¶ 39-72).

However, considering the difficulties of proof, the Defendants' defenses, and other attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or other relief that the class could reasonably expect to be awarded at trial is significantly less than the exposure estimated above. Plaintiff believes the realistic exposure is no more than 50% of the maximum, or $686,892.50. Manus Decl., ¶ 42. Once Class Counsel was able to determine the maximum potential damages, it was able to determine a fair and reasonable settlement for the Class. *Id*.

Class Counsel analyzed the likelihood of success on the merits and believed that the Class had a reasonable likelihood of success on the core claims. However, Defendants dispute this contention, deny all wrongdoing in this matter and are confident it has strong legal and factual defenses to Plaintiff's claims. After considering the likelihood of success on each claim and the challenges faced with certifying these claims, Class Counsel determined that the settlement amount of $380,000.00 was fair and reasonable. (*Id*. at ¶ 43).

This result was reached after good-faith negotiation with input from the mediator. *Id*. Where PAGA penalties are negotiated in good faith, with "no indication [the] amount was the result of self-interest at the expense of other Class Members," such amounts are considered reasonable. *Hopson v. Hanesbrands Inc*., Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); see, e.g., *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 579 (2010) (No abuse of discretion approving settlement which allocates $0 to the PAGA claims).

The $40,000.00 PAGA allocation is well within the range approved by California courts. *In re Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 589 (2010) (no abuse of discretion approving a class settlement attributing $0 to PAGA penalties.); *Alcala v. Meyer Logistics, Inc*., 2019 LEXIS 166879, *26 (C.D. Cal. June 17, 2019) (PAGA penalties 1.25% of settlement, "falls within the zero to two percent range for PAGA claims approved by courts."); *In re M.L. Stern Overtime Litig*., 2009 LEXIS 31650, *1 (S.D. Cal. Apr. 13, 2009) (PAGA settlement of 2%). This Motion and its exhibits were provided to the LWDA on the date filed with this court. (Manus Decl., ¶ 93– Ex. 3).

5. The Extent of Discovery Completed and Stage of the Proceedings

Class Counsel has devoted a considerable amount of time to the litigation of this case, including but not limited to, interviewing Plaintiff on repeated occasions, drafting pleadings, conducting discovery, and meeting and conferring with defense counsel about same; reviewing and analyzing time records and various policies, Plaintiff's personnel file, and other documentation applicable to Class Members; researching California law; preparing for and attending mediation; and negotiating and finalizing the Settlement Agreement and related documents. (Manus Decl., ¶¶ 15-16, 19).

Class Counsel relied on similar documents and data as in *Munoz*, including time and pay records. Plaintiff's economist analyzed the relevant data and documents, and calculated class-wide damages through the date of mediation. (*Id*. at ¶ 19).

6. The Experience and Views of Counsel

Plaintiff's counsel has significant experience in wage and hour employment class actions. (*Id*. at ¶¶ 3-8). This allowed Plaintiff's counsel to compare settlement of Class claims with the risks of further litigation, including trial and appeals. *Id.* Defense counsel, with the firm Ogletree, Deakins, Nash, Smoak & Stewart, P.C., are highly skilled and experienced wage and hour class action litigators who defended their client vigorously throughout this case, including through mediation and subsequent negotiations of all terms of the settlement agreement. (*Id*. at ¶ 17).

Experienced counsel believes the Settlement is fair, reasonable, and in the Class's best interest considering the monetary recovery, risks of certification, summary adjudication, the lengthy process of establishing damages, and uncertainty of appeals. (*Id*. at ¶ 43).

The view of the attorneys actively conducting the litigation "is entitled to significant weight" in settlement approval. *Fisher Bros. v. Cambridge Lee Industries, Inc*., 630 F. Supp. 482, 488 (E.D. Pa. 1985). The Settlement satisfies the three *Dunk* requirements, should be presumed fair, adequate, and reasonable, and preliminarily approved.

VII. CONDITIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE

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

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

A. There is a Numerous and Ascertainable Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class and the means available for identifying class members. *See Vasquez, supra*, 4 Cal. 3d at 821-22; *Reyes v. Board of Supervisors of San Diego County*, 196 Cal. App. 3d 1263, 1271 (1987). Class members are "ascertainable" where they may be readily identified without unreasonable expense or time. *See Rose v. City of Hayward*, 126 Cal. App. 3d 926, 932 (1981) (finding that "class members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records).

Plaintiff contends, and Defendant does not dispute for settlement purposes only, this requirement and the requirement of numerosity is met. Class Members are "all non-exempt, hourly employees that worked for Defendant in California from September 26, 2019, through April 30, 2025." Documents and information exchanged between the parties reflect a class of approximately 91 Class Members. (Manus Decl., ¶ 92(a), Ex. 1 ¶ 57). The Class Members have already been identified by reference to Defendant's payroll and personnel records. (*Id*. at ¶ 92(b)).

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

B. There is a Well-Defined Community of Interest

A community of interest is established by the predominance of common issues of law and fact. *See Vasquez,* 4 Cal. 3d at 811. Plaintiff contends, and Defendants do not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof. (*Id*. at ¶ 92(e)). Because Plaintiff has alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." *See In re NASDAQ Market-Makers Antitrust Litigation*, 172 F.R.D. 119, 123 (SDNY 1997) (citing *In re NASDAQ Market-Makers Antitrust Litigation*, 169 F.R.D. 493, 518 (SDNY 1997)).) California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. B.*W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350. This inference "'eliminates the need for each class member to prove individually the consequences of the defendants' actions to him or her.'" *Id*. at 1351 (quoting *Rosack v. Volvo of America Corp*, 131 Cal. App. 3d 741, 753 (1982) [emphasis added]).

This action involves, inter alia, a determination about Defendant's alleged failure to provide meal period and rest periods, failure to pay wages and overtime due to allegedly common and unlawful policies, failure to provide accurate wage statements, failure to reimburse business expenses, failure to pay sick pay, failure to pay final wages when required, and largely derivative claims under the Business & Professions Code and PAGA. Plaintiff contends these practices affected Class Members in the same way. The outcome of litigation on this matter depends upon questions that are common to Class Members. (Manus Decl., ¶ 92(e)-(f)).

C. The Named Plaintiff's Claims Are Typical

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

Plaintiff alleges each Class Member was subject to policies which damaged him and the Class, including policies which underpaid wages and unlawful meal and rest break policies. (Manus Decl., ¶ 92(c). Where the same alleged conduct forms the basis for claims of Plaintiff and the Class, it is common for settlement purposes. Plaintiff was employed by Defendants during the Class Period and was subject to the allegedly unlawful meal and rest policies and pay practices at issue in this litigation. *Id*. Accordingly, Plaintiff is a member of the Class. *Id*. The central issues of this litigation (whether Defendants failed to pay all wages, whether Defendants failed to provide meal and rest periods, etc.) apply to the other Class Members as well. The answer to these questions would determine Defendants' liability to the Class. *Id*. Thus, the claims of Plaintiff are typical of the claims of the Class. *Id*. Accordingly, the typicality requirement is satisfied.

D. Adequacy of Class Counsel and Class Representative

Class Counsel are experienced in class actions, have represented their clients zealously and have no conflicts of interest. (Manus Decl., ¶¶ 3-8). The Class Representative's interests are aligned with those of Class Members; he has suffered the same injuries as Class Members and has no conflicts of interest. (*Id*. at ¶ 92(c)). Therefore, Class Counsel and the Class Representative are adequate.

Plaintiff, as the Class Representative, has and will continue to adequately protect the interests of the Class. *Wershba, Id*., at 238. Plaintiff accepted the risks of serving as a class representative, spent significant time assisting in the prosecution of the action, and placed the interest of the class above his own. (Manus Decl., ¶¶ 88-90; Declaration of David Atkins Decl., ¶ 9-10). *Clark v. American Residential Services, LLC*, (2009) 175 Cal.App.4th 785, 804-807.

E. Predominance and Superiority

Individual issues do not predominate over those common to the Class. The class action mechanism is superior to individualized actions because Class Members have little incentive to bring claims that are small. (Manus Decl., ¶ 92(e)-(f)).

VIII. THE CLASS REPRESENTATIVE ENHANCEMENT AWARD IS FAIR AND REASONABLE

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

Plaintiff is entitled to a reasonable service payment for his efforts and initiative in bringing and helping to prosecute this class action. Plaintiff spent significant time better apprising himself of his rights, deciding whether remedial action should be taken, how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing the case and the law. (Manus Decl. ¶ 87; Atkins Decl., ¶9-10). In the end, Plaintiff decided to vindicate not only his own rights but also those of his co-workers by filing a class action lawsuit. *Id*.

Plaintiff undertook the risk of filing a lawsuit and serving as a class representative knowing that a prospective employer may choose between an applicant who has never sued a prior employer and one who has. (Atkins Decl., ¶ 11). Plaintiff contends this risk is particularly real in the information age, where employers can, more easily than ever, perform background checks of prospective employees, sometimes with the stroke of a key. (Manus Decl. ¶ 88). Plaintiff has been intimately involved in this case since its inception. He has devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel to discuss every aspect of this case; Plaintiff has provided Class Counsel with information about Defendant and about the industry generally, reviewed documents, identified witnesses, consulted Class Counsel throughout the litigation, participated in the mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the Settlement Agreement. (*Id*. at ¶ 89; Atkins Decl., ¶ 9-10).

Plaintiff has diligently, adequately, and fairly represented Class Members, and has not placed his interests above any member of the putative class. (Manus Decl. ¶¶ 89-90). This sort of payment to a class representative has been a common feature of settlements negotiated by Class Counsel and has been routinely approved by trial courts.

The Settlement allocates an incentive award in the amount of $5,000 to the Class Representative. (*Id*. at ¶ 23, Ex. 1 ¶ 15). Although Class Counsel appreciate that the Court has a duty to ensure that class representatives are not overcompensated at the expense of the class, modest incentive awards in employment class actions, such as the one here, are necessary not only to compensate class representatives for the time they spend in the case, but also, and more importantly, to encourage employees to challenge questionable employment practices notwithstanding the very real consequences they may face.

Considering the foregoing, Class Counsel believes that the enhancement award in the amount of $5,000 is fair and reasonable. (Manus Decl., ¶ 91).

IX. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS

Constitutional due process requires that class members be provided with notice sufficient to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Proper notice must provide the class members with sufficient information to make an informed decision as to whether to accept or object to the settlement. *Id.* at 314. The notice must apprise the class members of the pendency of the action; reasonably convey information regarding the settlement and the class members' rights, entitlements, and obligations; and afford class members the opportunity to present their objections. *Id*.

The Class Notice meets constitutional standards because it provides all the information a reasonable person would need to make a fully informed decision about the settlement. It will notify all class members of the terms of the settlement, of its effect on their rights, of their options as class members (i.e., participate, object, opt out, do nothing), and of the consequences of exercising those options. (Manus Decl., ¶¶ 80-82). Moreover, the Class Notice will specifically direct any class members who have questions or concerns to contact the Settlement Administrator or Class Counsel. *Id*.

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

Here, the Class Notice will be sent via first-class mail to each Class Member. (*Id*. at ¶ 80, Ex. 1 ¶ 76.3). If any Class Notices are returned undeliverable without a forwarding address, the Settlement Administrator will use the national change of address database and perform a skip trace to locate the Class Member and mail a new Class Notice to him or her at the correct address. *Id*. Thus, most, if not all, Class Members will likely receive the Class Notice.

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

X. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE

California courts routinely look to the federal courts on class action approvals. The Ninth Circuit has recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund." *Vincent v. Hughes Air West, Inc*., 557 F.2d 759, 769 (9th Cir. 1977) . The purpose of the common fund approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Id*. Accordingly, courts have discretion to choose either the percentage-of-the-fund method or the lodestar method. *In re Wash. Pub.Power Supply Sys. Sec. Litigation*, 19 F.3d 1291, 1295-96 (9th Cir. 1994).

Several courts have, however, expressed frustration with the "lodestar" approach for deciding fee awards, which usually involves wading through voluminous time records. Thus, the percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. *In re Activision Securities Litigation*, 723 F.Supp. 1373, 1378-79 (N.D. Cal. 1989). The Ninth Circuit has used the percentage of the common fund approach to determine the award of attorneys' fees. *In re Pacific Enterprises Securities Litigation*, 47 F.3d 373, 378-79 (9th Cir. 1994) (approving attorneys' fee of 33 1/3% of settlement fund).

Under the Settlement Agreement, subject to approval by this Court, Class Counsel will seek an award of fees of no more $126,666.67, one-third of the Gross Settlement Amount, and actual reasonable litigation costs in an amount not to exceed $40,000.00. (Manus Decl. ¶ 84; SA ¶¶ 8-9). The requested fees are fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-consuming litigation solely on a contingent basis. Defendants do not oppose Class Counsel's above fees and cost request. *Id*.

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding this case is well within the range of reasonableness. The attorneys' fees request provided for in the Settlement Agreement is commensurate with judicial precedent. Both state and federal courts regularly approve fee awards equal to or greater than the percentage requested in this case. (*See, e.g., In re Pacific Enterprises Securities Litigation*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming an award equal to 33% of the common fund); *In re Activision Securities Litigation*, 723 F.Supp. 1373, 1375 (N.D. Cal. 1989) (awarding plaintiff' counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin Antitrust Litigation,* 526 F.Supp. 494 (D. D.C. 1981) (awarding 45% of $7.3 million settlement fund); *Parker v. City of Los Angeles*, 44 Cal.App.3d 556, 557-568 (1974) (affirming fee award to counsel of one-third (1/3) of recovery achieved).

California trial courts have customarily approved attorney's fees consistent with or greater than the percentage of the common fund requested in this case. *See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at least 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super. Ct. Case No. BC 262247 (Hon. Anthony J. Mohr) (May 2005); *Moreno v. Miller Brewing*, Los Angeles County Super.Ct. Case No.BC 278170 (Hon. David M. Minning) (April 2004); *Josiah Eaton v. Adolph Coors Company* Orange County Super. Ct. Case No. 01CC00140 (Hon. Stephen J. Sundvold) (2003); *Manusbell v. Abercrombie & Fitch Stores, Inc*., Los Angeles County Super.Ct. Case No.BC 277359 (Hon. Kenneth R. Freeman) Sept. 2006); *Daum v. Claim Jumper Restaurants*, Orange County Super.Ct. Case No.02CC10201 (Hon. Ronald L. Bauer) (2006)).

Here, Class Counsel has borne the entire risk and costs of litigation and will not receive any compensation until recovery is obtained. (Manus Decl., ¶ 85). The Court should also consider the benefit obtained by Class Counsel on behalf of Class Members. Thus, the requested award for Class Counsel is reasonable.

XI. CONCLUSION

Plaintiff respectfully requests the Settlement be preliminarily approved, Notice approved and ordered mailed to the Class, Apex be appointed Settlement Administrator, Emil Davtyan, David Yeremian, Alvin B. Lindsay, Enoch J. Kim, Marta Manus, and the other attorneys of D.Law, Inc. be appointed Class Counsel, David T. Atkins be appointed Class Representative, and a Final Approval Hearing date be set.

Dated: June 13, 2025

Respectfully submitted,

D.LAW, INC.

By ______________________________

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Marta Manus
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