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Individually, on behalf of others similarly situated,
and on behalf of Aggrieved Employees pursuant to the
California Private Attorneys General Act*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JESSE ROMERO, individually and on behalf of
others similarly situated,

Plaintiff,

vs.

CALIFORNIA CLOSET COMPANY, a
California corporation; CAL CLOSET RETAIL,
INC., a Delaware corporation; and DOES 1
through 25, inclusive,

Defendants.

Case No. 23STCV27355 (related to Case No.
23STCV31746)

Hon. Lawrence P. Riff, Dept. 7

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: January 29, 2025

Time: 10:00 a.m.

Dept.: 7

Complaint Filed: November 7, 2023

FAC Filed: October 10, 2024

Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT on January 29, 2025 at 10:00 a.m.** in Department 7 of the
3 above-captioned Court located at 312 N. Spring Street, Los Angeles, California 90012, pursuant to Rule
4 3.769 of the California Rules of Court, Plaintiff Jesse Romero (“Plaintiff”) will and hereby does move
5 the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement
6 between Plaintiff and Defendants California Closet Company, Inc. (incorrectly named as California
7 Closet Company) and Cal Closets Retail, Inc. (incorrectly named as Cal Closet Retail, Inc.)
8 (“Defendants”).

9 Plaintiff requests that the Court enter an Order:

10 1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement
11 (“Settlement” or “Settlement Agreement”) attached as Exhibit 2 to the Declaration of Karen I. Gold in
12 Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement (“Gold
13 Decl.”);

14 2. Certifying the Class for Settlement purposes;

15 3. Appointing Plaintiff Jesse Romero as the Class Representative for Settlement purposes;

16 4. Appointing Jonathan M. Genish, Karen I. Gold, Sara Pezeshkpour, Ashley H. Cruz, and
17 Marissa A. Mayood of Blackstone Law, APC as Class Counsel for Settlement purposes;

18 5. Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as
19 Exhibit A to the Settlement Agreement, to be mailed to the Class;

20 6. Approving the opt-out and objection procedures provided in the Settlement Agreement
21 and set forth in the Class Notice;

22 7. For each Class Member, directing Defendants to furnish: (1) their full name; (2) last
23 known mailing address; (3) last known phone number(s); (4) Social Security number; (5) workweek and
24 pay period numbers where feasible, and hire and termination dates to calculate workweeks and pay
25 periods where the workweek/pay period numbers are not provided; and (6) such other information as is
26 necessary for the Settlement Administrator to calculate Workweeks and PAGA Workweeks (if
27 applicable) to the Settlement Administrator within thirty (30) calendar days after entry of the order
28 granting preliminary approval of the Settlement;

8. Approving the proposed deadlines for the settlement administration process; and

9. Setting a Final Approval Hearing.

Pursuant to California Labor Code section 2699(1)(2) and concurrently with the filing of this Motion, a copy of the Settlement was submitted to the California Labor and Workforce Development Agency (“LWDA”) via online submission through the LWDA’s website. (Gold Decl., ¶ 52).

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declaration of Karen I. Gold, the Declaration of Plaintiff Jesse Romero, the Declaration of Sean Hartranft, the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: December 9, 2024

BLACKSTONE LAW, APC

By: Karen Gold
Karen I. Gold
Sara Pezeshkpour
Ashley H. Cruz
Marissa A. Mayhood

Attorneys for Plaintiff, Jese Romero, *Individually,*
on behalf of others similarly situated, and on behalf
of Aggrieved Employees pursuant to the California
Private Attorneys General Act

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jesse Romero (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of Class
4 Action and PAGA Settlement (“Settlement” or “Settlement Agreement”) entered into between Plaintiff
5 and Defendants California Closet Company and Cal Closet Retail, Inc. (“Defendants”) (collectively, the
6 “Parties”). (Declaration of Karen I. Gold in Support of Plaintiff’s Motion for Preliminary Approval of
7 Class Action and PAGA Settlement [“Gold Decl.”], Ex. 2). The Settlement terms are as follows:

- 8
- Class Size: Approximately 658 individuals as of August 23, 2024.
 - 9 • Gross Fund Value: One million four hundred and ninety-five thousand dollars and zero cents
10 (\$1,495,000.00).
 - 11 • Attorneys’ Fees and Costs: Attorneys’ fees of up to one third (33.33%) of the Gross Fund
12 Value (i.e., \$498,333.33 if the Gross Fund Value is \$1,495,000.00) plus actual litigation costs
13 and expenses not to exceed twenty-three thousand dollars and zero cents (\$23,000.00), both
14 of which will be paid from the Gross Fund Value.
 - 15 • Enhancement Payment: Up to seven thousand five hundred dollars and zero cents
16 (\$7,500.00), to be paid from the Gross Fund Value.
 - 17 • PAGA Payment: One hundred and forty-nine thousand five hundred dollars and zero cents
18 (\$149,500.00) from the Gross Fund Value, 75% (\$112,125.00) of which will be paid to the
19 Labor and Workforce Development Agency (“LWDA”) and the remaining 25% (\$37,375.00)
20 to be paid to the Aggrieved Employees.
 - 21 • Settlement Administration Costs: Not to exceed eleven thousand five hundred dollars and
22 zero cents (\$11,500.00), to be paid from the Gross Fund Value. (See generally, Declaration
23 of Sean Hartranft [“Hartranft Decl.”]).
 - 24 • Estimated Net Settlement Amount (Excluding PAGA payment to PAGA aggrieved
25 employees): Eight hundred and forty-two thousand five hundred forty-one dollars and sixty-
26 seven cents (\$842,541.67) to be distributed to Settlement Class Members.

26 As set forth herein, the Settlement is the product of informal discovery and arms-length
27 negotiations with respected wage and hour mediator Kelly A. Knight, and provides a fair, adequate, and
28 reasonable recovery for the Class. Plaintiff therefore respectfully requests that the Court grant preliminary

1 approval of the Settlement, conditionally certify the Class, approve the proposed Notice of Class Action
2 Settlement (“Class Notice”), and set a hearing date for final settlement approval, among other requested
3 relief.

4 II. FACTUAL AND PROCEDURAL BACKGROUND

5 Defendants design and build custom closets, entertainment centers, and kitchen pantries. Plaintiff
6 was employed by Defendants as an hourly-paid, non-exempt installer from approximately September
7 2021 to November 2022. (Declaration of Plaintiff Jesse Romero in Support of Motion for Preliminary
8 Approval of Class Action and PAGA Settlement [“Romero Decl.”], ¶ 2). Defendants allegedly jointly
9 and severally employed Plaintiff at their location in Inglewood, California. (*Id.*, at ¶ 2). Defendants deny
10 that they were joint employers. Plaintiff’s job duties included, among other things, installing closets at
11 clients’ locations. (*Id.*, at ¶ 2).

12 Plaintiff contends that Defendants engaged in a pattern and practice of wage abuse against him
13 and other hourly-paid and/or non-exempt employees. (*Id.*, at ¶ 3). This pattern and practice of wage
14 abuse involved, *inter alia*, requiring Plaintiff and other hourly-paid and/or non-exempt employees to
15 work off-the-clock without compensation, failing to properly pay overtime and minimum wages for all
16 hours worked, failing to provide meal and rest breaks to which they were entitled and failing to pay meal
17 and rest break premiums when due, failing to timely pay wages during employment and upon termination
18 of employment, failing to provide accurate wage statements, failing to reimburse necessary business-
19 related expenses and failing to adhere to other related protections afforded by the California Labor Code
20 and the applicable Industrial Welfare Commission Wage Order. Defendants deny these allegations.

21 On October 24, 2023, Plaintiff provided written notice to the LWDA by online submission and
22 to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified
23 provisions of the California Labor Code alleged to have been violated by Defendant (“PAGA Letter”).
24 (Gold Decl., ¶ 10 & Ex. 1).

25 On November 7, 2023, Plaintiff filed a Class Action Complaint for Damages against Defendants
26 in the action entitled *Jesse Romero v. California Closet Company, et al.*, Los Angeles County Superior
27 Court Case No. 23STCV27355 (the “Class Action”), thereby commencing a putative class action against
28 Defendant. (*Id.*, ¶ 11).

1 On December 28, 2023, Plaintiff filed a Complaint for Enforcement Action Under the Private
2 Attorneys General Act, California Labor Code §§ 2698, *et seq.* in the action titled *Jesse Romero v. Cal.*
3 *Closets Retail, Inc. et al.*, Los Angeles County Superior Court, Case No. 23STCV31746 (the “PAGA
4 Action”, and collectively together with the Class Action the “Actions”), thereby commencing a
5 representative PAGA action against Defendants.

6 On October 8, 2024, Plaintiff submitted an amended written notice to the LWDA asserting claims
7 pursuant to California Labor Code sections 201, 202, 203, 204, 210, 213, 216, 218.5, 218.6, 223, 225.5,
8 226, 226.3, 226.6, 226.7, 227.3, 233, 245, 245.5, 246, 246.5, 247, 247.5, 248.1, 248.2, 249, 256,
9 510, 511, 512, 551, 558, 558.1, 1174, 1174.5, 1185, 1194, 1197, 1197.1, 1198, 1199, 2800, 2802,
10 applicable Industrial Welfare Commission Wage Orders, and California Code of Regulations, Title 8,
11 section 11000 *et seq*

12 On October 10, 2024, Plaintiff filed a First Amended Class and PAGA Representative Action
13 Complaint (“Operative Complaint”) in the Class Action. (*Id.*, ¶ 14). The Operative Complaint alleges
14 Defendants violated the California Labor Code for failure to pay minimum wages and straight wages,
15 failure to pay overtime wages, failure to pay vacation and holiday wages, failure to provide notice of
16 entitlement to sick leave and properly pay sick leave, failure to provide compliant meal periods and
17 premium payments in lieu thereof, failure to provide compliant rest periods and premiums payments in
18 lieu thereof, failure to timely pay wages during employment, failure to provide compliant wage
19 statements, failure to maintain required records, recordkeeping violations, failure to timely pay wages
20 upon separation, failure to provide proper payment of final wages, and failure to reimburse necessary
21 business expenses, for violations of California Business & Professions Code Section 17200, *et seq.* based
22 on the aforementioned California Labor Code violations, and for civil penalties under PAGA based on
23 the aforementioned California Labor Code violations. The Operative Complaint also asserts claims for
24 violations of California Labor Code Sections 201, 202, 203, 204, 210, 213, 216, 218.5, 218.6, 223, 225.5,
25 226, 226.3, 226.6, 226.7, 227.3, 233, 245, 245.5, 246, 246.5, 247, 247.5, 248.1, 248.2, 249, 256, 510,
26 511, 512, 551, 558, 558.1, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802,
27 2810.5, and California Industrial Commission Wage Orders. (*Id.*).

1 On June 21, 2024, June 28, 2024, and August 9, 2024, Defendants produced time and pay records
2 for all Class Members for the period of November 7, 2019, through June 14, 2024. (*Id.*, at ¶ 25).

3 On August 20, 2024, the Parties participated in a formal mediation conducted by Kelly Knight,
4 Esq., (“Mediator”), a neutral and respected mediator with extensive experience in complex wage and
5 hour matters, and with the assistance of the Mediator, the Parties were able to reach an agreement to
6 resolve this dispute on a class and representative basis. (*Id.*, ¶ 13). The Parties then worked diligently to
7 negotiate and memorialize the terms in a long form settlement agreement. (*Ibid*).

8 On November 3, 2024, the Parties executed the Settlement Agreement. (*Id.*, ¶ 15; & Ex. 2).

9 **III. THE SETTLEMENT TERMS**

10 **A. Class Definition**

11 1. For purposes of settlement only, the Parties have agreed that the Class shall be defined as
12 “all current and former hourly-paid and/or non-exempt employees who worked for Defendants within the
13 State of California at any time during the Class Period” (“Class Members” or “Class”). (Gold Decl., ¶
14 16; Settlement Agreement, ¶ 12(b)). The Class Period is defined as November 7, 2019 through
15 Preliminary Approval with regard to defendant California Closet Company, Inc., and January 1, 2022
16 through Preliminary Approval of the settlement with regard to defendant Cal Closets Retail, Inc. (Gold
17 Decl., ¶ 16; Settlement Agreement, ¶ 12(f)). The different class periods are the result of a prior settlement
18 entered into between class counsel in another matter and defendant Cal Closets Retail, Inc. Based on
19 information provided by Defendants, as of August 23, 2024, it is estimated that there are a total of six
20 hundred fifty-eight (658) Class Members. (Gold Decl., ¶ 16).

21 **B. Amount of Settlement**

22 The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint
23 for a non-reversionary Gross Fund Value of one million four hundred and ninety-five thousand dollars
24 and zero cents (\$1,495,000.00), exclusive of employer-side payroll taxes. (Gold Decl., ¶ 17; Settlement
25 Agreement, ¶ 12(p)).

26 **C. Allocation and Funding of the Gross Fund Value**

27 The Gross Fund Value is a common fund and therefore includes all requested costs, fees, and
28 other allocations. (Gold Decl., ¶ 17; Settlement Agreement, ¶ 12(p)). The Gross Fund Value includes:

(1) Class Counsel’s fees in the amount of up to one third (33.33%) of the Gross Fund Value (i.e., \$498,333.33 if the Gross Fund Value is \$1,495,000.00); (2) Class Counsel’s actual litigation costs and expenses, not to exceed twenty-three thousand dollars and zero cents (\$23,000.00); (3) Settlement Administration Costs, not to exceed eleven thousand five hundred dollars and zero cents (\$11,500.00); (4) Enhancement Payment in the amount of up to seven thousand five hundred dollars and zero cents (\$7,500.00); and (5) PAGA Payment of one hundred and forty-nine thousand five hundred and zero cents (\$149,500.00) (Gold Decl., ¶ 17; Settlement Agreement, ¶¶ 12(l), 12(p), 12(w)). After the above-estimated amounts are deducted from the Gross Fund Value, the Net Settlement Amount that will be available for Class Members is currently estimated to be eight hundred and forty-two thousand five hundred forty-one dollars and sixty-seven cents (\$842,541.67). (Gold Decl., ¶ 17). Additionally, 25% of the PAGA Payment (“PAGA Employee Amount”), which is \$37,375.00 out of \$149,500.00 will be distributed to all current and former hourly-paid and/or non-exempt employees who worked for Defendants in the State of California at any time during the PAGA Period (“Aggrieved Employees”). (Gold Decl., ¶ 17; Settlement Agreement, ¶ 12(y)). The “PAGA Period” is defined as the period from October 24, 2022 through Preliminary Approval. (Gold Decl., ¶ 17; Settlement Agreement, ¶ 12(z)).

The Net Settlement Amount will be distributed and paid to all Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Members”) on a *pro rata* basis based on the number of weeks each Class Member worked for Defendants as an hourly-paid and/or non-exempt employee in California during the Class Period (“Workweeks”). (Gold Decl., ¶ 19; Settlement Agreement, ¶¶ 12(u), 12(ll), 20). In order to be counted as a Workweek, the Class Member must have worked at least one shift in a given week. (Settlement Agreement, ¶ 12(mm)). The *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement (“Individual Settlement Share”) will be calculated by the Settlement Administrator in accordance with the Settlement Agreement. (Gold Decl., ¶ 19; Settlement Agreement, ¶¶ 12(r), 20).

The PAGA Employee Amount will be distributed and paid to all Aggrieved Employees on a *pro rata* basis based on the number of weeks each Aggrieved Employee worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA Period (“PAGA Workweeks”). (Gold Decl., ¶ 20; Settlement Agreement, ¶¶ 12(q), 21). In order to be counted as a PAGA Workweek, the

1 Aggrieved Employee must have worked at least one shift in a given week. (Settlement Agreement, ¶
2 12(bb)). The *pro rata* share of the PAGA Employee Amount that an Aggrieved Employee may be eligible
3 to receive under the PAGA Settlement (“Individual PAGA Payment”) will be calculated by the
4 Settlement Administrator in accordance with the Settlement Agreement. (Gold Decl., ¶ 20; Settlement
5 Agreement, ¶ 21).

6 Each Individual Settlement Share will be allocated as twenty-five percent (25%) wages and
7 seventy-five percent (75%) non-wage damages and penalties. (Gold Decl., ¶ 21; Settlement Agreement,
8 ¶ 22). The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to
9 non-wage damages and penalties will be reported on an IRS Form 1099 (if applicable) by the Settlement
10 Administrator. (Gold Decl., ¶ 21; Settlement Agreement, ¶ 22). The Settlement Administrator will
11 withhold the employee’s share of taxes and withholdings with respect to the wages portion of the
12 Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual
13 Settlement Share (“Individual Settlement Payment”). (Gold Decl., ¶ 21; Settlement Agreement, ¶¶ 22).
14 The employer’s share of taxes and contributions in connection with the wages portion of Individual
15 Settlement Shares (the “Employer Taxes”) will be paid by Defendants to the proper taxing authorities
16 separately and in addition to the Gross Settlement Amount. (Gold Decl., ¶ 21; Settlement Agreement, ¶¶
17 12(k), 22). Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties
18 and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Gold Decl.,
19 ¶ 21; Settlement Agreement, ¶ 22).

20 The Gross Fund Value is a non-reversionary settlement. (Gold Decl., ¶ 22; Settlement Agreement,
21 ¶ 12(p)). The Net Settlement Amount will be fully distributed to Settlement Class Members and the
22 PAGA Payment will be fully distributed to the LWDA and Aggrieved Employees, in accordance with
23 the Settlement Agreement. (Gold Decl., ¶ 22; Settlement Agreement, ¶¶ 12(p), 12(u)). No money will
24 revert to Defendants. (Gold Decl., ¶ 22; Settlement Agreement, ¶ 12(p)).

25 Each Individual Settlement Payment and Individual PAGA Payment check will be valid and
26 negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
27 thereafter, shall be canceled. (Gold Decl., ¶ 23; Settlement Agreement, ¶ 39). Any funds associated with
28 such canceled checks will be distributed by the Settlement Administrator to the State of California’s

Unclaimed Property Fund in the name of the Settlement Class Member and/or Aggrieved Employee. (Gold Decl., ¶ 23; Settlement Agreement, ¶ 39).

D. Released Claims

Upon the full funding of the Gross Fund Value, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Class Released Claims. (Settlement Agreement, ¶ 40).

Upon the full funding of the Gross Fund Value, Plaintiff, the State of California with respect to all Aggrieved Employees, and all Aggrieved Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all PAGA Released Claims. (*Id.*, ¶ 41).

“Class Released Claims” means all claims that were alleged, or reasonably could have been alleged based on the factual allegations contained in the Operative Complaint, including, but not limited to, California Labor Code sections 201, 202, 203, 204, 210, 213, 216, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.6, 226.7, 227.3, 233, 245, 245.5, 246, 246.5, 247, 247.5, 248.1, 248.2, 249, 256, 510, 511, 512, 551, 558, 558.1, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, California Industrial Commission Wage Orders, and including all claims related to alleged: (1) Minimum Wage and Straight Time Violations; (2) Overtime Wage Violations; (3) Unpaid Vacation and Holiday Wages; (4) Meal Period Violations; (5) Rest Period Violations; (6) Failure to Timely Pay Wages During Employment; (7) Failure to Provide Accurate Wage Statements, Maintain Required Records, and Recordkeeping Violations; (8) Failure to Pay All Wages Earned and Unpaid at Separation; (9) Improper Payment of Final Wages; (10) Failure to Reimburse Business Expenses; (11); Failure to Provide Sick Leave and Notice of Entitlement to Sick Leave; and (12) Unfair Competition. This further includes any and all other claims under California common law, the California Labor Code, and the California Business and Professions Code alleged in or that could have been alleged under the facts, allegations and/or claims pleaded in the action. This expressly excludes PAGA Released Claims. (*Id.*, at ¶ 12(ee)).

“PAGA Released Claims” means upon Defendants’ fulfillment of their payment obligations of this Agreement, in exchange for the consideration provided by this Agreement, Plaintiff, the State of California, the LWDA, the Aggrieved Employees and their respective former and present representatives,

agents, attorneys, heirs, administrators, successors, and assigns and any other representative, proxy, or agent thereof shall release the Released Parties from all claims made or which could have been made for civil penalties under the PAGA, Labor Code section 2698, *et seq.*, based on the facts pled in Plaintiff's letters to the LWDA (including his initial letter to the LWDA and the amended letter discussed above) and the Operative Complaint, from October 24, 2022 to the date of the Court's order granting Preliminary Approval of the settlement including, but not limited to, any and all claims for PAGA penalties involving any allegations that Defendants failed to pay all wages due (including minimum wages, regular wages, sick pay, vacation pay, holiday pay, paid time off and overtime wages or double time wages); failed to provide legally-compliant meal and rest breaks and failed to pay premium pay for missed, late, interrupted or short meal and rest breaks; failed to timely pay all earned wages and compensation; failed to timely pay wages during employment; improper payment of final wages; failure to provide sick leave and notice of entitlement to sick leave; failed to reimburse necessary business expenses; failed to provide timely final pay; failed to maintain required records; recordkeeping violations; failed to properly pay sick pay and vacation time; failed to provide accurate itemized wage statements, as well as any claims under the California Labor Code for violations of Labor Code Sections 201, 202, 203, 204, 210, 213, 216, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.6, 226.7, 227.3, 233, 245, 245.5, 246, 246.5, 247, 247.5, 248.1, 248.2, 249, 256, 510, 511, 512, 551, 558, 558.1, 1174, 1174.5, 1185, 1194, 1197, 1197.1, 1198, 1199, 2800, 2802, and applicable IWC Wage Orders, and California Code of Regulations, Title 8, Section 11000 *et seq.* The Aggrieved Employees shall release their PAGA claims, to the extent they have any interest, in their entirety and may not opt out of the PAGA Released Claims. (*Id.*, at ¶ 12(ff)).

"Released Parties" means: (i) Defendants; (ii) each of Defendants' past, present, and future direct and indirect parents; (iii) the respective past, present, and future direct and indirect subsidiaries and affiliates of any of the foregoing; (iv) the past, present, and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors and assigns of any of the foregoing; and (v) any individual or entity which could be jointly liable with any of the foregoing. (*Id.*, at ¶ 12(gg)).

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IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The settlement of a class action requires court approval. (*See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996)). “In general, questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds)).

The review and approval of a proposed class action settlement involves a two-step process. (*See* Cal. Rules of Court, Rule 3.769(c)). First, counsel submits the proposed terms of the settlement and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the range of a fair settlement to justify providing notice of the proposed settlement to class members. After notice is provided to the class, the Court must conduct a second inquiry into whether the proposed settlement is fair, reasonable, and adequate. (*Ibid*).

The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.” (*Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980)). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed settlement is within the range of possible approval and, as a result, “whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing.” A presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*See In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006)).

Preliminary approval does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to object or exclude themselves from the settlement. (*See* Cal. Rules of Court, Rule 3.769(g)). In considering a potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. (*See Officers for Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982)).

1 **V. THE SETTLEMENT IS PRESUMED FAIR**

2 **A. The Settlement Was Reached as a Result of Arm’s-Length Bargaining**

3 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
4 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at p. 245; *see also Clark v. Am.*
5 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties’ settlement negotiations
6 were at all times made at arm’s-length and were adversarial. (Gold Decl., ¶ 24). The Settlement was
7 reached following a full day of mediation with a highly respected mediator with substantial experience
8 mediating wage and hour cases. (*Ibid*). At all times, Plaintiff was willing and prepared to litigate this
9 matter through class certification and trial if the Parties had been unable to reach a favorable resolution.
10 (*Id.*, at ¶ 49).

11 **B. Sufficient Investigation and Discovery by Experienced Class Counsel**

12 Courts typically assess the status of discovery in determining whether a class action settlement
13 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at p. 1801). Prior to mediation,
14 Defendants produced time and pay records for all putative Class Members for the period of November 7,
15 2019, through June 14, 2024. (Gold Decl., ¶ 25). Defendants also produced their Team Member
16 Handbook and Employee Handbook, which detail Defendants’ employment policies and practices. (Gold
17 Decl., ¶ 25).

18 Thus, the voluminous and detailed records produced by Defendants allowed Class Counsel to conduct
19 an informed assessment and analysis of the strengths and weaknesses of the claims and the potential
20 class-wide damages. (*Id.*, ¶ 26). Based on information exchanged, the Parties extensively briefed issues
21 regarding class certification and liability and provided their analyses to the Mediator who helped the
22 Parties debate the strengths and weakness of their respective positions. (*Id.*, ¶ 27). Additionally,
23 settlement negotiations were conducted by highly capable and experienced counsel. (*Id.*, ¶¶ 4-7, and 48).
24 Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating
25 the Settlement.

26 **C. The Settlement is Fair and Reasonable in Light of the Parties’ Respective Legal Positions**
27 **and Recovery Risks**

1 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
2 trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable.
3 (*Wershba*, 91 Cal.App.4th at pp. 246, 250). In evaluating the reasonableness of a settlement, a trial court
4 must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
5 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
6 extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the
7 presence of a governmental participant, and the reaction of the class members to the proposed settlement.”
8 (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).

9 Here, the reasonableness of the Settlement is underscored by the fact that Defendants have legal
10 and factual grounds for defending the Action. Based upon Class Counsel’s experience litigating similar
11 complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification
12 and the merits of the Action absent a settlement.

13 **1. Class Counsel’s Analysis of the Maximum Reasonable Liability and Damages**

14 Class Counsel analyzed all available data and estimated Defendants’ maximum reasonable
15 exposure to be approximately \$17,243,749, assuming the litigation was successful at trial on all claims
16 at issue and reasonable violation rates. This maximum reasonable potential analysis was then reduced
17 based on the challenges facing the likelihood of obtaining class certification, prevailing at trial, and other
18 attendant risks. (Gold Decl., ¶ 41). This estimate is based on an estimated reasonable liability for all
19 claims at issue and the total aggregate workweeks during the relevant time period, less interest, and based
20 on the analysis of the data which was extrapolated out for all class members across the entire putative
21 class period, which included: \$307,053 for unpaid overtime premium wages; \$4,633,006 for unpaid
22 overtime wages at the regular rate of pay; \$1,144,266 for unpaid off-the-clock work for 1 hour per
23 workweek of off-the-clock work; \$998,160 in liquidated damages for off-the-clock work; \$206,213 in
24 unpaid sick pay at the regular rate of pay; \$3,523,460 for meal period violations; \$1,305,606 for rest
25 break violations at a 20% violation rate; \$1,453,150 for wage statement penalties; \$1,779,496 for waiting
26 time penalties; \$383,639 for unreimbursed business expenses. (*Ibid*). Plaintiff further estimated that
27 Defendants faced an additional exposure of \$1,509,700 in non-stacked (*i.e.*, one penalty, per employee,
28 per pay period during the PAGA statutory period) PAGA penalties. (*Ibid*). Together with the PAGA

penalties, Defendants' maximum reasonable exposure totaled \$17,243,749 in damages and penalties. (*Ibid*).

2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments

While Plaintiff believes that Defendants faced significant exposure, substantial barriers to a recovery existed. Defendants contended that Plaintiff's claims are not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. (Gold Decl., ¶ 31; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011)). While Plaintiff and Class Counsel disagree with Defendants' predictions, they also recognize that there is a significant risk that the Court may deny class certification. (Gold Decl., ¶ 31; *see also, Findings of the Study of California Class Action Litigation*, 2000-2006, available at <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class actions were certified either as part of a settlement or as part of a contested certification motion)).

For example, Plaintiff's meal period claims, which were based on Defendants' alleged failure to provide lawful meal periods, have been increasingly difficult to certify in recent years. (Gold Decl., ¶ 32; *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiff's theory of liability for meal period violations was based on allegations that Defendants had failed to implement their policies and that their practices failed to allow Class Members to take meal breaks in the manner required under California law. (Gold Decl., ¶ 32; *See Bradley v. Networkers Int'l, LLC*, 211 Cal. App. 4th 1129, 1150 (2012) (holding that "the lack of a meal/rest break policy and uniform failure to authorize such breaks are matters of common proof.")). Defendants contended that their policies and practices at all times during the Class Period were lawful. Additionally, Defendants pointed to the fact that many of their employees who frequently worked shifts that did not exceed six hours in length had signed lawful meal period waivers, thereby reducing the alleged violation rate. Defendants further argued that the rate of purported meal period violations reflected in the data would require individualized inquiry and that such inquiry would prohibit a class from being certified. (*Ibid*). Class Counsel also had to consider the risk that the Court would find validity in an individualized proof defense to certification of Plaintiff's meal period claim. (*Ibid*).

1 As another example, a large portion of Defendants' overall liability lies in Plaintiff's rest period
2 allegations. (*Id.*, at ¶ 34). As with the meal period allegations, Defendants contended that they had a
3 lawful written rest period policy, provided compliant rest breaks, and relieved Class Members of all duties
4 as required under California law. (*Ibid*). Additionally, this claim was even more uncertain given the
5 difficulties associated with proving the alleged rest period violations, as Defendants were not required to
6 record these breaks. (*Ibid*). Given the lack of records demonstrating rest period violations, there were
7 legitimate concerns Plaintiff would not be able to certify these claims or prove substantial damages with
8 requisite certainty, which made the estimated value of this claim subject to challenge. (*Ibid*).

9 Plaintiff also faced challenges certifying and proving liability for his overtime and unpaid off-the-
10 clock claims, which comprise a large portion of Defendants' estimated overall liability. (*Id.*, at ¶ 36).
11 These claims were largely based on Defendants' unrecorded, off-the-clock work performed by the Class
12 Members both before and after their shifts and during purported meal and rest periods. (*Ibid*). However,
13 the individualized nature of why this work was performed and the individualized nature of damages
14 presented substantial concerns regarding the manageability of the case and the risk the Court could find
15 these issues prevented certification, and the estimated damages for this claim were based on an
16 assumption that all Class Members worked off the clock for at least one hour per week. (*Ibid*).

17 There are also substantial risks associated with Plaintiff's waiting time penalties and wage
18 statement claims. (*Id.*, at ¶ 39). First, these claims were derivative of Plaintiff's claims for unpaid meal
19 period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages,
20 and if certification was denied on those underlying claims, these derivative claims for penalties would
21 also likely fail. (*Ibid*). Further, even if Plaintiff prevailed on his underlying claims, he would still be
22 required to demonstrate that Defendants' violations of California Labor Code section 203 were *willful*
23 violations. (Gold Decl., ¶ 39; *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013)
24 (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding
25 of willfulness")). Wage statement claims have also seen varying treatment at the appellate level because
26 such claims have an element of discretion attached to them rather than a pure calculation of damages after
27 liability is proven. (*Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010); *Price v. Starbucks*
28

1 *Corp.*, 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which comprised a
2 substantial portion of Defendants' estimated liability, were therefore uncertain. (Gold Decl., ¶ 43).

3 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the
4 amount of wages due to Class Members would be expensive and time-consuming. (*Id.*, at ¶ 40). To
5 prove liability and damages, Class Counsel will need to request and analyze thousands of pages of
6 additional documents, obtain the Class Members' contact information, contact them, and obtain their
7 declarations at great expense. (*Ibid*). Obtaining the cooperation of current employees would also be
8 difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. (*Ibid*).
9 On the other hand, Defendants would likely be able to obtain the cooperation of their employees. (*Ibid*).
10 Moreover, even if Plaintiff prevailed at class certification and trial, possible appeals would substantially
11 delay any recovery by the Class. (*Ibid*).

12 Therefore, taking into account how each of the above risks potentially effected Plaintiff's ability
13 to first obtain class certification, and then prove the underlying violations, plus the cost and delay in
14 recovering the alleged potential damages, Class Counsel discounted Defendants' estimated liability based
15 on the challenges facing his ability to succeed on class certification by 50% to \$8,621,874.50. (*Id.*, at ¶
16 41). The merits-based risk factors further reduced Defendant's estimated liability by an additional 50%.
17 (*Ibid*). This resulted in an adjusted estimated liability of \$4,310,937.25. In light thereof, the settlement
18 amount of \$1,495,000.00 is a significant and reasonable settlement. (*Ibid*).

19 Class Counsel also contemplated the risks of proceeding with the PAGA action and potential
20 liability Defendants could face from this claim as part of the global resolution. (*Id.*, at ¶ 42). Existing
21 case law makes PAGA claims subject to the same defenses and risks as Plaintiff's underlying wage
22 claims. (Gold Decl., ¶ 42; *see Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D.
23 Cal. 2008) ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because all of
24 Plaintiff's other claims fail as a matter of law, so does her PAGA claim")). Class Counsel also anticipated
25 that even if successful on the merits at trial, the imposition of cumulative civil penalties based on the
26 alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory,
27 and that Defendants would argue that they made a good faith attempt to comply with their legal
28

obligations, thus warranting a discretionary reduction in penalties. (Gold Decl., ¶ 42).¹ Class Counsel also anticipated Defendants would argue that they made a good faith attempt to comply with their legal obligations and that the violations per pay period were low, warranting an additional reduction in civil penalties. (*Ibid*). Finally, Class Counsel was also mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended to facilitate enforcement of California’s labor laws by financing state activities and educating and deterring non-compliance. (*Ibid*).

Therefore, after considering this multitude of factors, Plaintiff and Class Counsel concluded that it was in the best interest of the State of California and the Aggrieved Employees to enter into the Settlement, and to allocate one hundred and forty-nine thousand, five hundred dollars and zero cents (\$149,500.00) of the Gross Fund Value towards the PAGA claim, which represents 10% of the Gross Fund Value. (*Id.*, at ¶ 43). This percentage of the settlement is well within the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. (*Ibid*). Often, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as reasonable by courts. (*Ibid*). Moreover, the overall relief obtained by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California’s labor laws, provide funds to the state, and deter future non-compliance by the employer. (*Ibid*).

The Settlement is in the best interest of the Class Members, the Aggrieved Employees, and the State of California and is within the accepted range of recoveries for this type of litigation given the

¹ See, e.g., *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) (“duplicative effect” of penalties is a factor in favor of “reducing ...the PAGA penalty”); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez v. McDonalds Restaurants of California, Inc.*, 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties arising out of the same conduct); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (approving reduction in penalties from \$50 per pay period to \$5 per pay period based on good faith attempts to comply with obligations and minimal violations).

1 inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further
2 litigation. (*Id.*, at ¶ 44).

3 **VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

4 Three basic requirements must be met in order to sustain any class action: (1) there must be an
5 ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact
6 affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants
7 and the courts, *i.e.*, proceeding as a class action is superior to other methods. (*See Dunk*, 48 Cal.App.4th
8 at 1806). Plaintiff contends that the Action, which is based upon Defendants' wage and hour policies
9 and practices, satisfies these class certification requirements. Defendants deny Plaintiff's allegations, but
10 for purposes of the Settlement only, Defendants have stipulated to certification of the Class. (Settlement
11 Agreement, ¶ 13).

12 **A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is** 13 **Impracticable**

14 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
15 the class, and (3) the means of identifying the class members. (*Miller v. Woods*, 148 Cal.App.3d 862,
16 873 (1983)). In this case, all three considerations favor class certification. Here, the Class is defined as
17 "all current and former hourly-paid and/or non-exempt employees who worked for Defendants within the
18 State of California at any time during the Class Period." (Gold Decl., ¶ 16; Settlement Agreement, ¶
19 12(b)). This provides a clear and definite scope for the proposed class.

20 Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity
21 requirement. Courts have certified classes with as few as ten or twenty-eight class members. (*Rose v.*
22 *City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995);
23 *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972)). Here, the estimated Class size of six hundred
24 and fifty-eight (658) individuals (as of August 23, 2024) meets the numerosity requirement.

25 Finally, the question of whether class members are easily identifiable turns on whether a plaintiff
26 can establish "the existence of an ascertainable class." (*Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706
27 (1967)). The existence of an ascertainable class in this case can be established through Defendants'
28 payroll records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and

1 the Court to determine the parameters of the Class. (*See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d
2 605, 617 (1987)).

3 **B. The Class Shares a Well-Defined Community of Interest**

4 The community of interest requirement embodies three factors: (1) predominant questions of law
5 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
6 who can adequately represent the class. (*Dunk*, 48 Cal.App.4th at 1806). Here, all three requirements
7 are easily satisfied.

8 The commonality criterion requires the existence of common question of law or fact and is
9 generally established with the issues of predominance and typicality. (*See Daar*, 67 Cal.2d 695, 706).
10 What is required is that a common question of fact or law exists which predominates over issues unique
11 to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising
12 from employment—is not a bar to class certification as long as they do not render class litigation
13 unmanageable or predominate over the common issues. (*See B.W.I. Custom Kitchen v. Owens-Illinois,*
14 *Inc.*, 191 Cal.App.3d 1341, 1354 (1987)).

15 Here, Plaintiff's claims present common issues of law and fact that predominate and warrant class
16 certification. Plaintiff alleges that Defendants denied compliant meal and rest periods to employees,
17 required employees to perform work off-the-clock, and failed to fully compensate employees for all time
18 actually worked. These policies and practices meant that Defendants allegedly failed to pay minimum
19 and overtime wages, and other related claims. Plaintiff alleges that Defendants' policies and practices
20 were uniform as to all Class Members. Thus, class treatment is appropriate.

21 To satisfy the typicality requirement, California law does not require that plaintiffs' claims be
22 identical to the other class members. Rather, the test of typicality for a class representative is whether
23 other members have the same or similar injury, whether the action is based on conduct which is not
24 unique to the named plaintiff, and whether other class members have been injured by the same course of
25 conduct. (*Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007)). The typicality requirement
26 for a class representative refers to the nature of the claim or defense of the representative, and not to the
27 specific facts from which it arose or the relief sought. (*Ibid*).

28 Here, Plaintiff alleges that his claims are similar to that of the other Class Members and that

1 Plaintiff's claims arise out of the same alleged course of conduct giving rise to the claims of the other
2 Class Members. Because Plaintiff's claims are based upon the same alleged conduct and business
3 practices as those of Class Members, the typicality requirement has been satisfied.

4 Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney
5 qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of
6 the class." (*McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976)). Here, these considerations are
7 satisfied. Class Counsel is well-regarded and is qualified and experienced in employment-related, class-
8 action litigation. (Gold Decl., ¶¶ 4-7, and 48). Plaintiff will vigorously, adequately, and fairly represent
9 the interests of the Class. Plaintiff has, at all times, throughout the course of the litigation considered the
10 interests of the Class and understood that he must take steps to adequately represent the Class and their
11 interests. (Romero Decl., ¶¶ 4-9). Because Plaintiff's claims are typical of other Class Members and are
12 not based on unique circumstances, there is no antagonism between the interests of Plaintiff and the Class.

13 **C. A Class Action is Superior to a Multiplicity of Litigation**

14 Under the circumstances present here, proceeding as a class action is a superior means of resolving
15 this dispute, as the Class Members and the Court will derive substantial benefits. Class certification
16 would serve as the only means to deter and redress the alleged violations. (*See Linder v. Thrifty Oil Co.*,
17 23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will
18 come forward to prove his or her separate claim and whether the class approach would actually serve to
19 deter and redress the alleged wrongdoing)). Further, individual actions arising out of the same operative
20 facts would unduly burden the courts and could result in inconsistent results. Therefore, class action
21 proceedings are superior to individual litigation.

22 **VII. THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE**

23 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation
24 "for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz*
25 *v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010)). Courts routinely grant approval of
26 class action settlement agreements containing enhancements for the class representative, which are
27 necessary to provide incentive to represent the class and are appropriate given the benefit the class
28 representatives help to bring about for the class. (*See In re Online DVD Rental*, 779 F.3d 934, 947-948

(9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and reasonable”).

Plaintiff initiated this litigation on behalf of his former co-workers who will now be entitled to receive payment from the Settlement. Plaintiff invested substantial time and effort into litigation, including his own research, reviewing documents, and extensive discussions with Class Counsel. (Romeo Decl., ¶¶ 4-9). Further, the requested amount for Plaintiff is also reasonable given the average award and the benefit gained by other Class Members. (*See* Gold Decl., 45). For these reasons, Plaintiff requests that an Enhancement Payment of seven thousand, five hundred dollars and zero cents (\$7,500.00) to Plaintiff be preliminarily approved by the Court. (Gold Decl., ¶ 45; Romero Decl., ¶ 12).

VIII. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE

Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” (*Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 41 (2000)). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. (*Id.*, at p. 47). In cases where class members present claims against a common fund and the defendant agrees to a percentage of the fund as part of the settlement, use of the percentage method is appropriate. (*Id.*, at p. 32).

Here, the requested attorneys’ fees in the amount up to one third (33.33%) of the Gross Fund Value (*i.e.*, \$498,333.33 if the Gross Fund Value is \$1,495,000.00) is disclosed to Class Members in the proposed Class Notice. (Settlement Agreement, Ex. A). The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendants. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel’s request for the reimbursement of litigation costs and expenses not to exceed twenty-three thousand dollars and zero cents (\$23,000.00) (Gold Decl., ¶¶ 46, 49). Moreover, any Attorneys’ Fees and Costs not ultimately approved by the Court will be included in the Net Settlement Amount to be distributed to Settlement Class Members as this is a non-reversionary settlement. (Settlement Agreement, ¶ 15).

1 **IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS**
2 **MEETS DUE PROCESS REQUIREMENTS**

3 The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members.
4 (*Id.*, Ex. A). The Class Notice will include information regarding the nature of the Action, a summary of
5 the terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the
6 Class Settlement and to dispute Workweeks and/or PAGA Workweeks, and the date of the Final Approval
7 Hearing. (*Ibid*). The Class Notice will list each Class Member’s total Workweeks and their estimated
8 Individual Settlement Share and each Aggrieved Employee’s total PAGA Workweeks and their estimated
9 Individual PAGA Payment. (*Ibid*).

10 Within thirty (30) calendar days after entry of the preliminary approval order, Defendants will
11 provide a list in a formatted readable Microsoft Office Excel spreadsheet to the Settlement Administrator
12 containing the following information for each Class Member: (1) full name; (2) last known mailing
13 address; (3) last known phone numbers; (4) Social Security number; (5) workweek and pay period
14 numbers where feasible, and hire and termination dates to calculate workweeks and pay periods where
15 workweek/pay period numbers are not provided; and (6) such other information as is necessary for the
16 Settlement Administrator to calculate Workweeks and PAGA Workweeks (collectively referred to as the
17 “Class List”). (*Id.*, ¶¶ 6, 12(d)). Within seven (7) calendar days after receiving the Class List from
18 Defendant, the Settlement Administrator will perform a search based on the National Change of Address
19 Database or other similar services available, such as provided by Experian, for information to update and
20 correct for any known or identifiable address changes, and will mail a Class Notice in English and Spanish
21 to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses
22 identified by the Settlement Administrator. (*Id.*, ¶ 30(a)). The Parties have agreed to use Apex Class
23 Action, LLC as the Settlement Administrator. (Gold Decl., ¶ 50; Settlement Agreement, ¶ 12(jj)).

24 In determining whether to approve a settlement of a class action, a trial court has wide discretion
25 as to the manner of giving notice to class members, and review on appeal is governed by the abuse of
26 discretion standard. (*See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380 (2010)). Here,
27 Class Counsel is not aware of an alternative method of providing notice to the Class which would result
28 in a higher likelihood of actual notice. (Gold Decl., ¶ 51). The original source of the mailing addresses

1 is from Class Members, who provided the information to Defendants. (*Ibid*).

2 Class Members will have forty-five (45) calendar days from the initial mailing of the Class Notice
3 by the Settlement Administrator to submit a Request for Exclusion, Notice of Objection, and/or
4 Workweeks Dispute (“Response Deadline”). (Settlement Agreement, ¶ 12(ii)).

5 Any Class Notice returned to the Settlement Administrator as undeliverable on or before the
6 Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed
7 thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.
8 (*Id.*, at ¶ 30(b)). If no forwarding address is provided, the Settlement Administrator will promptly attempt
9 to determine a correct address using a skip-trace or other search, using the name, address, and/or Social
10 Security number of the Class Member, and perform a single re-mailing within five (5) calendar days.
11 (*Ibid*). In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that
12 Class Member shall be extended fifteen (15) calendar days from the original Response Deadline. (*Id.*, at
13 ¶ 12(ii)).

14 Class Members will have an opportunity to dispute the number of Workweeks and/or PAGA
15 Workweeks to which they have been credited, as reflected in their respective Class Notices, by submitting
16 a timely and valid letter (“Workweeks Dispute”) to the Settlement Administrator, by mail, postmarked
17 on or before the Response Deadline. (*Id.*, at ¶¶ 12(ii), 12(nn)). A Workweeks Dispute must: (a) contain
18 the case name and number of the Actions; (b) contain the Class Member’s full name, signature, address,
19 telephone number, and the last four (4) digits of the Class Member’s Social Security number; (c) clearly
20 state that the Class Member disputes the number of Workweeks and/or PAGA Workweeks credited to
21 that Class Member and what the Class Member contends is the correct number; and (d) be returned by
22 mail to the Settlement Administrator at the specified address, postmarked on or before the Response
23 Deadline. (*Id.*, at ¶ 12(nn)).

24 Any Class Member wishing to be excluded from the Class Settlement must submit a timely and
25 valid letter (“Request for Exclusion”) to the Settlement Administrator, by mail, postmarked on or before
26 the Response Deadline. (*Id.*, at ¶¶ 12(ii), 32). A Request for Exclusion must: (a) contain the case name
27 and number of the Actions; (b) contain the Class Member’s full name, signature, address, telephone
28 number, and last four (4) digits of the Class Member’s Social Security number; (c) clearly state that the

1 Class Member does not wish to be included in the Class Settlement; and (3) be returned by mail to the
2 Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*,
3 at ¶ 12(hh)). Notwithstanding the above, all Aggrieved Employees will be bound by the PAGA
4 Settlement and will be issued their Individual PAGA Payment, irrespective of whether they submit a
5 Request for Exclusion. (*Id.*, at ¶ 32).

6 To object to the Class Settlement, Settlement Class Members must submit a timely and complete
7 written objection (“Notice of Objection”) to the Settlement Administrator, by mail, postmarked on or
8 before the Response Deadline. (*Id.*, at ¶ 33). A Notice of Objection must: (a) contain the case name and
9 number of the Actions; (b) contain the objector’s full name, signature, address, telephone number, and
10 the last four (4) digits of the objector’s Social Security number; (c) contain a written statement of all
11 grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any
12 papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the
13 Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*,
14 at ¶ 12(v)). Settlement Class Members, individually or through counsel, may also present their objection
15 orally at the Final Approval Hearing, regardless of whether they have submitted a Notice of Objection.
16 (*Id.*, at ¶ 33).

17 **X. CONCLUSION**

18 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff’s
19 Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

20 Respectfully submitted,

21 Dated: **December 9, 2024**

BLACKSTONE LAW, APC

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23 _____

24 By:

Karen Gold
Sara Pezeshkpour
Ashley Cruz
Marissa Mayhood

27 Attorneys for Plaintiff, Jese Romero, *Individually, on behalf*
28 *of others similarly situated, and on behalf of Aggrieved*
Employees pursuant to the California Private Attorneys
General Act