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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

MUSHFIQUR CHOWDHURY, an individual and on behalf of all others similarly situated; Plaintiff, vs. CWT US, LLC, a Delaware limited liability company; and DOES 1 through 50, Defendants.	Case No.: 23STCV25373 [Assigned for All Purposes to: Hon. Stuart M. Rice, Dept. 1] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, CLASS REPRESENTATIVE SERVICE AWARD, AND ATTORNEY'S FEES AND COSTS; MEMORANDUM OF POINTS AND AUTHORITIES** (Filed concurrently with Supporting Declarations and [Proposed] Judgment and Order) DATE: August 22, 2025 TIME: 10:30 a.m. DEPT: 1 Action Filed: October 17, 2023 Trial Date: Not Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court and California Code of Civil Procedure section 382, on August 22, 2025 at 10:30 a.m. in Department 1 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Mushfiqur Chowdhury ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for entry of an Order:

1. Confirming the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;

2. Confirming the appointment of Plaintiff as the Class Representative for settlement purposes;

3. Confirming the appointment of William C. Sung and Tiffany L. Luu as Class Counsel;

4. Granting final approval of the Class Action and PAGA Settlement Agreement ("Settlement" or "Agreement");

5. Approving an award of $168,750.00 in attorney's fees to Class Counsel;

6. Approving an award of $15,274.95 in costs to Class Counsel;

7. Approving an award of $7,000.00 in costs to Apex Class Action LLC for its settlement administration services;

8. Approving a service payment of $7,500.00 to Plaintiff for Class Representative Service Award;

9. Approving a payment of $22,500.00 to the Labor & Workforce Development Agency ("LWDA") for its share of civil penalties under the Private Attorneys General Act ("PAGA"); and

10. Entering final judgment in the form of the Proposed Judgment and Order Granting Final Approval of Class and PAGA Action Settlement filed herewith.

This Motion is made on the following grounds: (l) the Class continues to meet the requirements for class certification for settlement purposes under Code of Civil Procedure § 382;

(2) Plaintiff and Class Counsel continue to be adequate representatives of the Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed wage and hour claims; (4) the requested amounts for Class Counsel's attorneys' fees and costs, settlement administration costs, and the Class Representative service payment are all fair, adequate, and reasonable; and (5) in light of the foregoing, the Proposed Judgment and Order Granting Final Approval of Class and PAGA Action Settlement submitted herewith should be entered so as to give finality to, and allow for disbursements from, the Settlement.

This Motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the supporting declarations of William C. Sung, Tiffany L. Luu, Plaintiff Mushfiqur Chowdhury, and Lindsay Romo of Simpluris, Inc., and the exhibits attached thereto; the Agreement; the pleadings, and other papers filed in this Action; and on any further oral or documentary evidence or argument presented at the time of the hearing.

DATED: July 18, 2025

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ______________________

William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff Mushfiqur Chowdhury

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Mushfiqur Chowdhury ("Plaintiff") submits this Memorandum of Points and Authorities in support of Plaintiff's Motion for Final Approval of Class and PAGA Action Settlement (the "Motion") with Defendant CWT US, LLC ("Defendant") (together with Plaintiff, the "Parties"). Under the Settlement, Defendant has agreed to pay a non-reversionary Maximum Settlement Amount of $506,250.00 to the following Class comprised of 151 individuals:

> All current and former California non-exempt employees of Defendant during the Class Period of October 17, 2019 through December 31, 2024.

In this non-reversionary class and PAGA action settlement, all Participating Class Members will receive automatic payments without the need to submit a claim form, **resulting in an average Individual Class Settlement Share of approximately $1,842.48 to each Participating Class Member**. This is an excellent result for the Class, especially in light of the significant litigation risks that Plaintiff faced. Moreover, after receiving notice of the proposed Settlement and projected estimated Individual Class Settlement Shares, **not a single Class Member has objected to the Settlement or elected to opt-out of the Settlement, resulting in a 100% participation rate**.

As explained further below, the Court should grant Plaintiff's Motion in its entirety because (1) the Class continues to meet the requirements for certification for settlement purposes under Code Civ. Proc. § 382; (2) the Settlement is a fair, adequate, and reasonable compromise of the disputed claims in this case; and (3) the requested amounts for attorneys' fees and costs, settlement administration costs, and class representative service payment are all fair, adequate, and reasonable. In light of the foregoing, Plaintiff respectfully submits that the Court should enter the Proposed Judgment and Order Granting Final Approval submitted herewith.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

Defendant owns and operates a business travel management company with non-exempt employees working remotely in California. Declaration of William C. Sung in Support of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement ("Sung Decl."), ¶ 9. Plaintiff worked for Defendant as a non-exempt, remote employee from approximately January 3, 2023 to approximately September 1, 2023 as a Travel Experience Counselor in California. Declaration of Mushfiqur Chowdhury in Support of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement ("Chowdhury Decl."), ¶ 2.

On October 17, 2023, Plaintiff commenced this Action by filing a Class Action Complaint alleging causes of action against Defendant for (1) Minimum Wage Violations; (2) Overtime Wage Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Failure to Reimburse Business Expenses; (8) Unlawful Deductions; and (9) Unfair Competition. Sung Decl., ¶ 10. On the same day, October 17, 2023, Plaintiff sent a notice letter under the California Private Attorneys General Act ("PAGA") to the Labor and Workforce Development Agency ("LWDA"). Sung Decl., ¶ 11.

On December 20, 2023, Plaintiff filed the operative First Amended Complaint ("FAC") adding a cause of action for Civil Penalties under PAGA. Sung Decl., ¶ 12.

B. DISCOVERY, MEDIATION, AND PRELIMINARY APPROVAL

In connection with mediation, the Parties engaged in informal discovery. Sung Decl., ¶ 13. Defendant produced (1) class and PAGA statistics including number of Class Members and PAGA Employees, former employees, and workweeks worked during the Class Period and pay periods worked during the PAGA Period through mediation; (2) a random sampling of employee time and payroll records exported on Excel and their contact information; (3) various policies and procedural documents, including employee handbooks and relevant policies and procedures; and (4) Plaintiff's personnel records. *Ibid.* Defendant produced a random sampling of time and payroll records and contact information for 34 Class Members, including Plaintiff, which amounted to a 21.25% sampling. *Ibid.*

In preparation for mediation, Plaintiff's counsel contacted and interviewed Class Members whose contact information was provided as part of the sampling and worked with an expert data analyst to conduct a comprehensive analysis and extrapolation of the payroll and timekeeping data produced by Defendant to create a detailed exposure analysis for all claims at issue. Sung Decl., ¶ 14. This discovery allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and Defendant's potential defenses. *Ibid.*

On October 27, 2024, the Parties participated in a full-day mediation with Gig Kyriacou, Esq., a well-respected wage and hour class action mediator. Sung Decl., ¶ 15. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Ibid.* The Parties reached a tentative class and PAGA settlement at the mediation. *Ibid*. The terms of the Settlement are in the operative Amended Joint Stipulation of Class Action and Private Attorneys General Act Settlement and Release ("Settlement" or "Agreement"). *Ibid.*, **Ex. 1 (Agreement)**.

On January 31, 2025, Plaintiff submitted the proposed Settlement to this Court with Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement. Sung Decl., ¶ 16. On March 20, 2025, this Court issued its Order Granting Preliminary Approval of Class Action and PAGA Settlement. *Ibid.,* **Ex. 2 (Order Granting Preliminary Approval)**.

III. SUMMARY OF THE SETTLEMENT AND NOTICE ADMINISTRATION

A. CLASS DEFINITION

As noted, the Class is comprised of: "All current and former non-exempt employees of Defendant in California during the Class Period." The "Class Period" means the period from October 17, 2019 through December 31, 2024. Order Granting Preliminary Approval, ¶ 5 (Ex. 2 to Sung Decl.)

B. MONETARY TERMS

The Settlement provides for Defendant to pay a non-reversionary Maximum Settlement Amount of $506,250.00. Agreement, § I.N. (Ex. 1 to Sung Decl.). The Class Employee Fund is the amount remaining from the Maximum Settlement Amount after deducting requested attorneys' fees ($168,750.00) and litigation costs ($15,274.95), requested Class Representative Service Award ($7,500.00), settlement administration costs ($7,000.00), and the amount set aside as PAGA civil penalties ($30,000.00). Agreement, §§ III.A.-III.E.; Sung Decl., ¶ 17, Ex. 3. Based on these requested amounts, the Class Employee Fund is estimated at $278,215.05. Declaration of Lindsay Romo of Simpluris, Inc. in Support of Motion for Final Approval of Class Action and PAGA Settlement ("Admin. Decl."), ¶ 15.

Each Individual Class Settlement Share to Class Members will be determined by "converting the Class Employee Fund into a Work Week value. The Work Week value will be established by dividing the Class Employee Fund by all Work Weeks actually worked by the Class Employees in California during the Class Period. The Work Weeks actually worked by Class Employees during the Class Period will be determined by Defendant's payroll records. The Individual Class Settlement Share for each Class Employee will be determined by multiplying the Work Week value by each Class Employee's individual Work Weeks. Class Members who opt out pursuant to ¶ III.L.1 will not receive any Individual Class Settlement Share but will still receive their Individual PAGA Settlement Share (defined below). The Settlement Administrator will retain amounts equal to their Individual Class Settlement Share in the Class Employee Fund for distribution to Participating Class Members on a pro rata basis." Agreement, § III.F.1. In addition, 25% of the amount designated as PAGA Penalties (i.e., $7,500.00) will be distributed to all PAGA Employees who worked for Defendant who worked for Defendant from October 17, 2022 through December 31, 2024 (the "PAGA Period") based on the proportionate number of pay periods worked during the PAGA Period. Agreement, § III.F.3.

All Individual Class Settlement Shares from the Class Employee Fund will be classified as 20% wages to be reported on a W-2 form, and 80% penalties and interest to be reported on a 1099 form. Agreement, § III.F.2. Defendant's share of employer-side payroll taxes shall be paid by Defendant separate, and in addition to, the Maximum Settlement Amount. Agreement, § III.A.

C. SUMMARY OF THE NOTICE ADMINISTRATION

On April 3, 2025, Defendant's counsel provided the Administrator with the Class List consisting of 151 Class Members' names, social security numbers, last known mailing addresses, and dates of employment for each class member. Admin. Decl., ¶ 6. The Administrator conducted a National Change of Address ("NCOA") search to ensure the accuracy and validity of the addresses before mailing Class Notices. Admin. Decl., ¶ 6. If an updated address was found in the NCOA database, the Administrator utilized that address; if no updated address was found, the Administrator utilized the original address. Admin. Decl., ¶ 7. On April 17, 2025, the Administrator mailed the Class Notice in English and Spanish to the Class Members via U.S. First Class Mail.

Admin. Decl., ¶ 8, **Ex. A** (Class Notice).

The Administrator received 27 returned Class Notices as undeliverable. Admin. Decl., ¶ 9. The Administrator conducted a computerized skip trace on the returned Class Notices, found 26 updated addresses, and re-mailed the Class Notices to the updated addresses. *Ibid.* Ultimately, 1 Class Notices is considered undeliverable as an updated address could not be found through a skip trace. *Ibid*.

The Administrator received no objections, no requests for exclusion, and no workweek disputes. Admin. Decl., ¶¶ 11-13. Thus, the participation rate by Class Member is 100%. Admin. Decl., ¶ 14. The average estimated Individual Class Settlement Share is approximately $**1,842.48**, with the highest estimated payment being **$3,981.56** and lowest estimated payment being **$14.97**. Admin. Decl., ¶ 16. Additionally, 88 PAGA Employees who were employed during the PAGA Period will receive a portion of the $7,500.00 PAGA Penalties. Admin. Decl., ¶ 17. The average Individual PAGA Payment is approximately $84.23, with the highest estimated payment being $113.85 and the lowest estimated payment being $5.99. Admin. Decl., ¶ 18.

D. FUNDING OF THE SETTLEMENT AND UNCASHED SETTLEMENT CHECKS

Defendant shall deposit the Maximum Settlement Amount and the employer side payroll taxes with the Administrator within 14 calendar days of the Effective Date. Agreement, § III.G.1. Within 14 calendar days after Defendant funds the Maximum Settlement Amount and employer's share of payroll taxes, the Administrator will disburse all Individual Class Settlement Shares, all Individual PAGA Settlement Shares, the LWDA Payment, the Settlement Administration Costs, Class Representative Service Award, and Class Counsel Fees and Expenses. Agreement, § III.G.2.

After disbursement, Class Members will have 180 days to cash their checks. Agreement, § III.G.3. Funds remaining unclaimed after 180 days shall be sent to the California State Controller's Office in the Class Member's name to be held as unclaimed property for the Class Member. *Ibid.*

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IV. LEGAL ARGUMENT

A. THE SETTLEMENT MEETS ALL REQUIREMENTS FOR CLASS CERTIFICATION UNDER CODE OF CIVIL PROCEDURE § 382

Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest, and questions of law and fact common to the class predominate over questions unique to individual class members; (3) the representative's claims are typical of the class's claims; and (4) the representative will fairly and adequately represent the class's interests. *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.

Here, this Court found that the Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement. *See generally* Sung Decl., Ex. 2. Subsequent to the Court's Order granting preliminary approval, no events have cast doubt on the propriety of this determination, and in fact, the reaction of the Class has been overwhelmingly supportive of the Settlement, with not a single objection and not a single request for exclusion submitted, resulting in a 100% participating rate. *See* Admin. Decl., ¶¶ 11-12. This Court should therefore confirm its conditional certification of the Class.

B. THE SETTLEMENT IS A FAIR, ADEQUATE, AND REASONABLE COMPROMISE OF DISPUTED WAGE AND HOUR CLAIMS

California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-79. This approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held, at which class members have the opportunity to be heard with respect to the settlement. *Ibid*. Now that notice has been provided to the Class, Plaintiff respectfully requests that this Court finally approve the Settlement as fair, adequate, and reasonable.

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1. The Settlement Was Reached Through Arms-Length Negotiation by Experienced Counsel and Presumably Fair, Adequate, and Reasonable

A class settlement is presumptively fair where it is reached through arm's-length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors to the settlement is small. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438. In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider include, but are not limited to:

> [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Id. These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors to each case and give due regard to "what is otherwise a private consensual agreement between the parties." *Id*.

"In the context of a settlement agreement, the test is not the maximum amount a plaintiff might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250. Because settlements inherently involve compromise, even settlements providing for substantially narrower relief than likely would be obtained if the suit were successfully litigated can be reasonable because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id*. (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109). In addition, courts review the discovery process and information received through it to aid them in assessing whether the parties sufficiently developed the claims and their supporting factual bases before reaching settlement. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-31. Information is sufficient where it allows the parties and the court to form "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Clark v. Am. Residential Svcs. LLC* (2009) 175 Cal.App.4th 785, 801. This requirement exists so that the parties can provide the Court with "a meaningful and substantiated explanation of the manner in which the factual and legal issues have been evaluated." *Kullar*, 168 Cal.App.4th at 132-33.

2. <u>The Settlement is Fair, Adequate, and Reasonable in Light of the Risks Faced by Plaintiff</u>

While Plaintiff steadfastly maintains Plaintiff's claims are meritorious, Plaintiff acknowledges Plaintiff's position included substantial risks and uncertainty, which justifies a downward departure from the maximum exposure each claim potentially carried.

As detailed in Plaintiff's Motion for Preliminary Approval, there is a significant risk of non-certification and/or not prevailing on the merits with respect to each of Plaintiff's claims. Sung Decl., ¶ 18. For example, Plaintiff contends that Class Members, including Plaintiff, were frequently unable to take any meal and rest periods or took their meal periods late (i.e., after the end of the fifth hour) because of their high volume of work, need to take client calls, and lack of coverage. *Ibid.* Defendant counters that it has maintained compliant written meal and rest period policies throughout the Class Period and has always provided compliant meal and rest periods in line with those policies. *Ibid; see Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004. Defendant contends that meal periods for Class Members were programmed into their schedules, Class Members answer customer calls that are routed to them and their system can go into a "do not disturb" mode where no calls will be routed to them while they are taking their meal and rest periods, and some Class Members are not required to record their meal breaks even though they took them. Sung Decl., ¶ 18. Finally, Defendant maintains Plaintiff's meal and rest period claim is not suited for class certification since individual inquiries would be needed to assess which employees, if any, took non-compliant meal and rest periods, how many meal and rest periods were non-compliant, and the reasons why a particular employee did not take a meal and rest period on a particular shift. *Ibid.*

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Plaintiff alleges that Class Members, including Plaintiff, due to Defendant's operational needs and their workload, they sometimes worked off the clock without compensation. Sung Decl., ¶ 19. Defendant argues it has compliant policies that prohibit working off the clock, require all employees to receive wages for all hours worked, its payroll records show a substantial amount of overtime premiums paid during the Class Period, and it had no knowledge that Class Members worked off the clock because they worked remotely from home. *Ibid.* Defendant thus contends that Plaintiff's off-the-clock work claim is individualized and not suited for class certification since there is no evidence of a common policy or practice forcing Class Members to work off the clock and numerous individual inquiries would be needed to assess which Class Members, if any, worked off the clock, how often, the reasons why a particular Class Member worked off the clock, and whether Defendant knew or should have known that Class Members who worked remotely from home worked off the clock for the imposition of classwide liability. *Ibid*; see, e.g., *Troester v. Starbucks Corporation* (C.D. Cal., Jan. 27, 2020, No. CV1207677CJCPJWX) 2020 WL 553572, at *9 (denying certification of off-the-clock work claim because of individualized inquiries); *Williams v. Superior Court* (2013) 221 Cal.App.4th 1353, 1369, as modified Dec. 24, 2013 (applying "know or should have known" standard for liability for off-the-clock work).

Plaintiff alleges that Defendant underpaid overtime and paid sick leave wages to Class Members, including Plaintiff, by failing to incorporate non-discretionary incentive compensation, including bonuses and shift differentials into the regular rate of pay. Sung Decl., ¶ 20; *see also Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554, as modified (Apr. 25, 2018) (stating the regular rate of pay includes incentive compensation); Labor Code § 246(l)(1) (the paid sick leave rate is the same as the regular rate for overtime). In response, Defendant argues that it properly factored incentive compensation into the regular rate for overtime. Sung Decl., ¶ 20. As to paid sick leave, Defendant contends that there is no private right of action for paid sick leave violations and Plaintiff cannot recover underpaid paid sick leave wages. *Ibid*; *see* Lab. Code § 248.5(e) (only the "Labor Commissioner or the Attorney General may bring a civil action . . . .")

Plaintiff alleges that Class Members, including Plaintiff, were required to work remotely from home because Defendant did not have any physical offices in California, and Defendant failed to reimburse Class Members for the use of their home internet to perform their duties. Sung Decl., ¶ 21. Defendant counters that it reimbursed Class Members for their home internet expenses upon the Class Members' submission of reimbursement requests to Defendant pursuant to its expense reimbursement policy. *Ibid.* Defendant thus contends that Plaintiff's reimbursement claim is individualized and not suited for class certification since there is no evidence of a common policy or practice of failing to reimburse Class Members and numerous individual inquiries would be needed to assess which Class Members, if any, incurred unreimbursed expenses, how often, whether the Class Member submitted reimbursement requests, and whether and why the reimbursement requests were not approved. *Ibid.*

Plaintiff alleges that Defendant made deductions from the wages of Class Members, including Plaintiff, without their written consent for purported overpayment of wages. Sung Decl., ¶ 22. In response, Defendant argues that, while it overpaid wages to Plaintiff and deducted the overpayment from Plaintiff's wages once, this was a one-off occurrence, as evidenced by Defendant's payroll records. *Ibid.* Defendant thus contends that Plaintiff's unlawful deductions claim is individualized and not suited for class certification since there is no evidence of a common policy or practice of deducting overpayment of wages from Class Members and numerous individual inquiries would be needed to assess which Class Members, if any, was overpaid, had their wages deducted, and whether they approved the deduction. *Ibid*.

As to Plaintiff's derivative claims for statutory waiting time and wage statement penalties under Labor Code §§ 203 and 226(e), Defendant denies liability for waiting time and wage statements, and argues that it possesses strong, good faith defenses to Plaintiff's underlying claims, thus precluding recovery of waiting time penalties that are only available for "willful" failure to pay wages. Sung Dec., ¶ 23. Defendant further maintains that any alleged wage statement violations were not "knowing and intentional," and that Plaintiff cannot show the Class "suffer[ed] injury" due to these alleged violations as required by Labor Code § 226(e) for the imposition of penalties. *Ibid.* Defendant relies on *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065, for the proposition that an employer's good-faith defenses precludes a "willfulness" finding under Labor Code § 203 and a "knowing and intentional" finding under Labor Code § 226(e) for the imposition of statutory penalties. Sung Dec., ¶ 23. Defendant also claims that Plaintiff's alleged exposure for waiting time and wage statement penalties was grossly inflated because not every employee experienced an alleged Labor Code violation. *Ibid.*

Finally, with respect to Plaintiff's claim for civil penalties under PAGA, since Plaintiff's PAGA claim is derivative of Plaintiff's underlying wage claims, Defendant asserts the PAGA claim would fail with those claims. Sung Dec., ¶ 24; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant further maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims. Sung Dec., ¶ 24; *see* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc* .(2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties by over 82% in part because employer "not aware" of violations); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming PAGA civil penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

These considerations not only bore heavily on the Parties' negotiations, but also confirm that the Settlement is a fair and reasonable compromise in view of the risk of further litigation. As detailed in Plaintiff's Motion for Preliminary Approval, Plaintiff carefully vetted the claims at issue and conducted a detailed statistical analysis of classwide data with the help of a retained expert to arrive at the calculated damages figures. Thus, while these risks are far from exhaustive, they demonstrate the Settlement is fair, adequate, and reasonable in view of them.

3. The Settlement Fairly, Reasonably, and Adequately Compensates Class Members

As noted, the Individual Class Settlement Shares and Individual PAGA Settlement Shares will be calculated based on the proportionate number of workweeks worked by each Participating Class Member during the Class Period and based on proportionate number of pay periods worked by each Aggrieved Employee during the PAGA Period, respectively. Agreement, §§ III.F.1.; III.F.3.

This method of distribution compensates Class Members based on the estimated extent of their injuries, as Class Members who worked more workweeks or pay periods would have been subject to more of the alleged wage and hour violations than those who worked fewer workweeks. Thus, the formula for compensating Class Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could be recovered by them.

4. <u>The Absence of Any Objections or Opt Outs Confirms that the Settlement is Fair, Adequate, and Reasonable</u>

Class members' response to a settlement is relevant in evaluating whether it merits final approval. *Dunk*, 48 Cal.App.4th at 1801. The absence of objections and requests for exclusion supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a "particularly impressive" favorable response from class members).

Here, not a single Class Member has objected to the Settlement or elected to opt-out, resulting in a 100% participation rate. Admin. Decl., ¶¶ 11-12. This extremely favorable response of the Class further confirms that the Settlement is fair, adequate, and reasonable.

C. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE AS A PERCENTAGE OF THE COMMON FUND CONFIRMED BY A LODESTAR "CROSS-CHECK"

Plaintiff and the Class, as the prevailing parties in settlement, are entitled to recover their attorney's fees and costs for their wage claims. An attorney's fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. S*ee e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Cmmty. for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53; *see also* Code Civ. Proc. § 1021.5. Here, Plaintiff submits that Plaintiff is entitled to recover attorneys' fees under the common fund theory, as confirmed by a lodestar "cross-check."

1. <u>Under the Common Fund Doctrine, It Is Proper to Compensate Class Counsel Based on a Percentage of the Recovery Obtained for the Class</u>

When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. *Wershba*, 91 Cal.App.4th at 254 (recognizing the "percentage of recovery" method). The California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 that "[t]he percentage of fund method survives in California class action cases." Our Supreme Court held:

> The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Id. at 503; *see also e.g.*, *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 ("when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund."); *Serrano v. Unruh* (1982) 32 Cal.3d 621, 627 (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties' unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516 (percentage of fund method more accurately reflects the results achieved for the putative class and "establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Sec. Litig.* (3d Cir. 2005) 396 F.3d 294, 300 ("The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.").

Here, Class Counsel's fee request of $168,750.00 (one-third of the Maximum Settlement Amount) is fair and reasonable based on a percentage of the recovery. First, "regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 66, n.11. This is also consistent with Class Counsel's experience in similar matters. *See* Sung Decl., ¶ 25. Thus, the percentage sought by Class Counsel (the same percentage approved in *Laffitte*) is reasonable.

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2. The Fee Request Is Also Reasonable Based on a Lodestar "Cross-Check"

The California Supreme Court in *Laffitte* also held that trial courts have discretion to assess the reasonableness of fee awards with tools such as the "lodestar cross-check," whereby the trial court calculates counsel's lodestar and determines whether the "lodestar multiplier" needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 ("[w]e hold further that the trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.").

Under the lodestar method, the court multiplies the number of hours reasonably expended by each attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar figure by a "multiplier" to account for a range of factors, such as the contingent nature of the case and the degree of success achieved. *See Serrano*, 20 Cal.3d at 48-49; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank* (2001) 92 Cal. App. 4th 819, 834 ("There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation").

Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*, 162 Cal.App.4th at 49-50 (approving multiplier of about 2.5); *Coalition for L.A. County Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251 (approving multiplier of about 12.8). In class actions such as this one, where the value of the benefit conferred to the class "can be monetized with a reasonable degree of certainty," the court may "adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.

Here, Class Counsel have a lodestar of approximately $100,645.00, which results in a multiplier of approximately **1.68** compared to the $168,750.00 fee request. *See* Sung Decl., ¶¶ 26-28, **Ex. 5 (William Sung Time and Task Log)** & **Ex. 6 (Tiffany Luu Time and Task Log)**. The multiplier well-below the 2.13 multiplier approved by the Supreme Court in *Laffitte*, 1 Cal.5th at

487, with additional work to be performed, and within the recognized multiplier range of between 2 and 4. *See, e.g., Wershba*, 91 Cal.App.4th at 255 ("multipliers can range from 2 to 4 or even higher."); *In re Sutter Health Uninsured Pricing Cases* (2009) 71 Cal.App.4th 495, 512 (affirming multiplier of 2.52 as "fair and reasonable); *Chavez*, 162 Cal.App.4th at 66 (affirming multiplier of 2.53 as well within the approved range of 2 to 4).

A general summary showing the number of hours of work performed by each attorney is set forth below. The billing rates used are reasonable in view of the evidence submitted herewith. Sung Decl., ¶¶ 26-28, **Ex. 4 (Laffey Matrix)**; Declaration of Tiffany L. Luu in Support of Motion for Final Approval ("Luu Decl."), ¶ 7.

Name	Rate	Hours	Lodestar
William C. Sung (14th Year Attorney)	$850	94.70	$80,495.00
Tiffany L. Luu (5th Year Attorney)	$500	40.30	$20,150.00
		Total Lodestar:	$100,645.00

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Class in an uncertain and risky case while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-51 (finding that exceptional results in a contingency case, significant risk, and the absence of supporting precedents, are proper considerations in awarding attorney's fees). Class Counsel negotiated a substantial recovery for the Class, resulting in a **100%** participation rate, and not a single Class Member objected to the Settlement, including Class Counsel's requested fees.

In addition, the average estimated Individual Class Settlement Share in this case of **$1,842.48** far exceeds average payments in similar wage and hour class action settlements. *See, e.g., Sorenson v. PetSmart, Inc.* (E.D. Cal. 2008) No. 2:06-CV-02674-JAM-DAD (wage and hour class action settlement approved where average class member recovery was approximately $60); *Schiller v. David's Bridal, Inc.* (E.D. Cal. June 11, 2012) No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 (finding that average payment to class members of less than $200 was a "good" result); *Williams v.*

Centerplate, Inc. (S.D. Cal. Aug. 26, 2013) No. 11-CV-2159 HKSC, 2013 WL 4525428 (granting final approval of class action settlement where average recovery for each class member was approximately $108 and describing result as "very favorable"). The fact that Class Counsel achieved these results in the face of serious defense challenges and in an uncertain legal landscape, confirms the strength of the results achieved.

As noted, this case presented significant risk as to both class certification and prevailing on the merits. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis. Since undertaking representation of Plaintiff in this litigation, Class Counsel have borne all the costs of litigation since the filing of the Action without receiving any compensation to date. *See* Sung Decl., Sung Decl., ¶ 29. During this time, Plaintiff's counsel have incurred and/or will incur $15,274.95 in litigation costs, and devoted substantial time to this litigation. *Ibid.*

Counsel's efforts have included: pre-filing research and investigation; analyzing Plaintiff's claims and potential defenses to the same; conducting legal research; conducting extensive and informal discovery; analyzing Class Members' timekeeping and payroll records and other data and documents with the help of a retained expert; creating a comprehensive damages model; preparing for and attending mediation; negotiating and preparing the long-form Settlement Agreement; preparing the Motion for Preliminary Approval; overseeing Notice administration; drafting this Motion for Final Approval; and otherwise litigating this Action. Sung Decl., ¶ 30. Given the considerable potential for adverse outcomes in this case, including but not limited to losing on class certification and/or merits issues, the contingent risk borne by counsel in this case was great.

Class Counsel's previous experience in litigating wage and hour class actions also supports the reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and hour class action litigation, with two decades of combined experience litigating claims similar to those raised in this case. *See* Sung Decl., ¶¶ 2-7; Luu Decl., ¶¶ 2-6. Class Counsel have been certified as class counsel in a number of other cases. Sung Decl., ¶ 6; Luu Decl., ¶ 6. Their experience in similar matters was integral in evaluating the claims against Defendant and the reasonableness of the Settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law, as well as the procedural law of class action litigation. Because it is reasonable to compensate Class Counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the Maximum Settlement Amount is reasonable. Thus, Plaintiff submits the requested fee award is fair, reasonable, and adequate and should be approved.

D. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE AS A PERCENTAGE OF THE COMMON FUND CONFIRMED BY A LODESTAR "CROSS-CHECK"

Plaintiff seeks $15,274.95 in litigation costs. Sung Decl., ¶ 17, Ex. 3. The requested litigation cost award include $14,538.64 in costs incurred to date and future estimated costs of $77.97 for filing this Motion, $16.17 for filing any supplemental briefing and/or amended proposed order for this Motion, $171 in Case Anywhere system access fees through final approval, $16.17 for filing the Administrator's declaration of compliance, and $455 for Case Anywhere system access fees from final approval through a compliance hearing[1]. *See id.*, Ex. 3.

The cost request is fair, adequate, and reasonable, as the costs were reasonably incurred, and the costs Plaintiff seeks are routinely approved by courts. *See e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre* (N.D. Cal. Mar. 7, 2011) No. 05-03759 CW, 2011 WL 825713 at *3 ("costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients"); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.* (9th Cir. 2006) 460 F.3d 1253, 1258-59 (legal research costs reimbursable); *In re Immune Response Sec. Litig.* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 (mediation, consultant and expert fees; legal research; copies; postage; filing fees; messenger and overnight delivery costs reimbursable). In addition, not a single Class Member objected to the

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[1] In lieu of incur approximately $455 in Case Anywhere system access fees through a compliance hearing, Plaintiff's counsel requests that the Court issue an order directing Case Anywhere to close this matter out upon final approval so that said anticipated fees can be included in the Class Employee Fund and distributed to Class Members.

Settlement, including Class Counsel's request of up to $20,000.00 in litigation costs. Because these costs were reasonably incurred, and no Class Member has objected to them, the Court should grant the request.

E. THE COURT SHOULD APPROVAL THE REQUESTED SETTLEMENT ADMINISTRATION COSTS.

Plaintiff also requests that this Court approve $7,000.00 in settlement administration costs to the Administrator. As detailed in the Admin. Decl., the Administrator performed duties that were integral in effectuating the Settlement and the Notice process. Among other things, the Administrator calculated each Class member's Individual Class and PAGA Payments, updated addresses contained in the class data supplied by Defendant, formatted and translated the Class Notice for mailing, mailed Class Notices to all Class Members, kept the Parties informed of any objections or requests for exclusion, and otherwise administered the Settlement. *See* Admin. Decl., ¶¶ 3-18. For these reasons, the Administrator's requested costs are fair, reasonable, and adequate, and should be finally approved.

F. THE COURT SHOULD APPROVE PLAINTIFF'S REQUESTED CLASS REPRESENTATIVE SERVICE AWARD

Courts routinely approve service payments to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294 (approving $50,000 service payment). Indeed, "[i]ncentive awards are fairly typical in class action cases." *Rodriguez v. West Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958. The Court may award incentive payments "to compensate [Plaintiff] for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action. *Id.* at 958-59.

Here, Plaintiff seeks a Service Award of $7,500.00 and Plaintiff and Class Counsel submit that this request is reasonable given Plaintiff's efforts in this case and the risks Plaintiff undertook on behalf of the Class. *See* Chowdhury Decl., ¶¶ 4-6; Sung Decl., ¶ 30. Plaintiff expended substantial time and effort on behalf of the Class, including providing factual information and documents to counsel, attending meetings with counsel to discuss the claims and theories at issue in the litigation, and otherwise actively participating in the prosecution of his claims. Chowdhury Decl., ¶ 4.

Plaintiff also undertook the risk of being liable for Defendant's costs if this case were lost, as well as the reputational risk of being the named plaintiff in a wage and hour class action against an employer. *See, e.g., Deaver v. Compass Bank* (N.D. Cal. Dec. 11, 2015) 2015 WL 8526982 at *14-15 (approving incentive payment in wage and hour settlement, finding the award "particularly appropriate in this wage and hour class action, where Plaintiff undertook a significant 'reputational risk' in bringing this action against his former employer"). Plaintiff is also agreeing to a much broader release than other Class Members, including a waiver of Civil Code § 1542. *See* Agreement, § III.I.2.; *see also Bellinghausen v. Tractor Supply Co.* (N.D. Cal. 2015) 306 F.R.D. 245, 268 (approving $15,000 total award to named plaintiff in wage and hour class action settlement, including $10,000 incentive award plus an additional $5,000 for plaintiff's release of claims).

Finally, after receiving notice of the proposed Class Representative Service Award for Plaintiff, no Class Member objected to the amount. Given Plaintiff's significant contributions to this case, the risks Plaintiff undertook, and the lack of any objection from Class Members, Plaintiff's requested Service Award is appropriate and justified as part of the Settlement and should be finally approved.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully submits that this Court should grant Plaintiff's Motion in its entirety and adopt the Proposed Judgment and Order Granting Final Approval of Class Action and PAGA Settlement submitted herewith.

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DATED: July 18, 2025

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ______________________

William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff Mushfiqur Chowdhury