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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

RENATO G. VIRAY, on behalf of himself and all others similarly situated, and the general public, *Plaintiff*, v. CARE INDEED, INC., a California corporation; CARE INDEED HOME HEALTHCARE, INC., a California corporation; and DOES 1 through 50, inclusive, *Defendants*.	Case No.: 23CIV04746 [*Assigned for all purposes to the Hon. Mark A. McCannon, Dept. 2*] **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS AND PAGA ACTION SETTLEMENT; (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT; AND (3) SETTING HEARING FOR FINAL APPROVAL** *[Filed concurrently with Plaintiff's Notice of Motion; Declaration of David Arakelyan; Declaration of Renato G. Viray; Declaration of Sean Hartranft; Declaration of Jarrett Gorlick; and [Proposed] Order]* Date: January 15, 2026 Time: 3:00 p.m. Dept: 2 Original Complaint Filed: October 11, 2023 First Amended Complaint Filed: December 15, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff RENATO G. VIRAY ("Plaintiff" or "Class Representative") filed a class action complaint in the Superior Court of the State of California, San Mateo County, Case No. 23CIV04746, against Defendants CARE INDEED, INC. and CARE INDEED HOME HEALTHCARE, INC. ("Defendants") (hereinafter, Plaintiff and Defendants collectively referred to as the "Parties"). Plaintiff alleged the following causes of action in his operative complaint (First Amended Class Action Complaint): 1) Failure to Provide Meal Periods (La

0b. Code §§ 204, 223, 226.7, 512 and 1198); 2) Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198); 3) Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198); 4) Failure to Pay Proper Sick Pay (Lab. Code § 246); 5) Unlawful Receipt and Collection of Wages (Lab. Code § 221); 6) Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a)); 7) Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203); 8) Failure to Indemnity (Lab. Code § 2802); 9) Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.) and 10) Civil Penalties pursuant to the Private Attorneys General Act ("PAGA"), Labor Code § 2698.

Pursuant to the proposed Class and PAGA Action Settlement Agreement ("Settlement" or "Settlement Agreement"),[1] filed concurrently herewith, the Settlement Class Members (or Settlement Class) consist of all persons who worked for Defendant Care Indeed, Inc., collectively or separately, and/or any staffing agencies and/or any other third parties as non-exempt employees in the State of California at any time from October 11, 2019, through February 1, 2026. The Aggrieved Employees are defined as persons employed by Defendant in California and classified as hourly, non-exempt employees who worked for Defendant during the PAGA Period, i.e. from October 11, 2022, through February 1, 2026.

After engaging in substantial investigation and extensive negotiations with the assistance of a respected third-party neutral, Brandon McKelvey, the parties have agreed to settle all claims

[1] To the extent any capitalized term is not defined in this motion, Plaintiff intends for the definition in the parties' Settlement Agreement to be used. To the extent there are any conflicts between the definitions in the parties' Settlement Agreement and this motion, the definition in the Settlement Agreement controls.

alleged in Plaintiff's operative Class and PAGA Action Complaint on a non-reversionary basis for One Million One-Hundred and Ninety-Three Thousand One Hundred and Seventy-Eight Dollars and Zero Cents ($1,193,178.00), inclusive of all fees and costs. There are approximately 1,388 Settlement Class Members, and each Settlement Class Member shall receive a settlement share unless she/he opts out. It is also estimated that there are a total of 775 Aggrieved Employees during the PAGA Period.

The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. Consequently, Plaintiff, with the consent of Defendants, hereby moves this Court for an order: (1) granting preliminary approval of the proposed class action settlement, as embodied in the Settlement Agreement filed concurrently herewith; (2) approving the Notice of Class Action Settlement to be sent to Settlement Class Members, and the notification schedule as set forth in the Settlement Agreement and the Proposed Order, also filed concurrently herewith; and (3) setting a hearing for final approval of the class action settlement.

II. STATUS OF THE LITIGATION

A. Procedural History

On October 11, 2023, Plaintiff commenced this Class Action by filing a Complaint in the Superior Court of San Mateo County, Case No. 23-CIV-04746, alleging causes of action against Defendants for various Labor Code and California Business and Professions Code violations, including: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure to Pay Hourly Wages and Overtime; (4) Failure to Pay Proper Sick Pay; (5) Unlawful Receipt and Collection of Wages; (6) Failure to Provide Accurate Written Wage Statements; (7) Failure to Timely Pay All Final Wages; (8) Failure to Indemnify; and (9) Unfair Competition (Business & Professions Code §§ 17200 et seq.) ("Action"). Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and California's Labor and Workforce Development Agency ("LWDA") by sending the PAGA Notice on October 11, 2023 (LWDA-CM-98770-23). On December 15, 2023, Plaintiff filed a First Amended Complaint adding a cause of action for Civil Penalties under PAGA. (Declaration of David Arakelyan ("Arakelyan Decl."), filed concurrently herewith, ¶ 4).

Plaintiff contends that Defendants failed to pay Settlement Class Members all wages due and owing, including by requiring off the clock work, failing to properly calculate and pay meal and rest break premiums, unlawfully rounding to the detriment of Class Members, failing to provide meal and rest breaks, failing to provide sick pay, unlawfully collecting and receiving wages, failing to timely pay wages including final wages, and failing to provide accurate wage statements. (*Id*., ¶ 8.)

The First Amended Complaint is the operative complaint in this case as Plaintiff filed a cause of action under the Private Attorneys General Act ("PAGA"). (*Id*., ¶ 4.)

B. Investigation

Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto. (Arakelyan Decl., ¶ 14.) This required thorough discussions and interviews between Class Counsel and Plaintiff, as well as preliminary research into the various legal issues involved in the case. (*Id.*) After conducting their initial investigation, Class Counsel determined that Plaintiff's claims were well-suited for class action adjudication owing to what appeared to be a common course of conduct affecting a similarly situated group of employees. (*Id.*)

After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including: (1) conducting formal and informal discovery and meeting and conferring with defense counsel about same; (2) reviewing and analyzing records and data, as well as employment-related policies; (3) reviewing Plaintiff's personnel file and other documentation; (4) interviewing Plaintiff regarding potential Class Members; (5) researching the applicable law and potential defenses; (6) constructing damage models based on interpretations of California law and the facts and numbers provided by Defendants; and (7) reviewing information provided by Defendants in response to informal discovery and in advance of the mediation.. (Arakelyan Decl., ¶ 14.) The Class enumerated in this action is ascertainable because the Class Members may be readily identified by reference to Defendants' records. (*Id.* ¶ 24.) Defendants have agreed to share the information from these records with the settlement Administrator in order to identify and contact the Class Members. (*Id.*) There are approximately 1,388 total Class Members and 775 Aggrieved Employees. ((*Id.* ¶¶ 24, 73.).)

Defendants, for its part, vigorously contest liability, the amount of claimed damages, and the propriety of class certification. (Arakelyan Decl., ¶ 13.) After Class Counsel analyzed the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

C. Settlement Efforts

On October 1, 2025, the parties mediated this case with Brandon McKelvey, a respected and highly experienced mediator in wage and hour class actions. (Arakelyan Decl., ¶ 16.) During mediation, Plaintiff's and Defendants' counsel discussed all aspects of the case, including the risks of litigation and the risks to both parties of proceeding with a motion for class certification as well as the law relating to unpaid wages, meal periods, rest periods, sick pay, wage statements, and final pay. (*Id.*) As a result of the mediation, the parties agreed to settle the lawsuit according to the terms set forth in the Settlement Agreement. (*Id.; See* **Exhibit A** attached to Arakelyan Decl., "Settlement" or "Settlement Agreement".)

From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class Counsel believes that the recovery for each Class Member is fair and reasonable taking into consideration the amounts received in other wage and hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Class Member's claim to the settlement award he or she will receive. (*Id*., ¶ 17.) Further, and based on the settlement negotiations, which were extensive, and conducted in good faith and at arm's length between attorneys with substantial experience litigating class actions and wage and hour cases, the Settlement Agreement was the product of a non-collusive settlement process in which the parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the lawsuit. (*Id.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, the Defendants have agreed to pay

One Million One-Hundred and Ninety-Three Thousand One Hundred and Seventy-Eight Dollars and Zero Cents ($1,193,178.00) (“Gross Settlement Amount”) on a non-reversionary basis to settle and release all claims asserted by Plaintiff in the operative First Amended Complaint. (Arakelyan Decl., ¶ 18; **Exhibit A**, page 5, ¶ 3.1.) The Gross Settlement Amount is in exchange for Plaintiff’s and the Settlement Class Members’ release of all claims. (*Id.*)

“Settlement Class Members” are all persons employed by Defendant Care Indeed, Inc. in California and classified as hourly, non-exempt employees who worked for Defendant during the Class Period, which is defined as October 11, 2019, through February 1, 2026. (Arakelyan Decl., ¶ 19; **Exh. A**, page 1, ¶ 1.5 and page 2, ¶ 1.12.) The “Net Settlement Amount,” available for distribution to Class Members, shall be the Gross Settlement Amount, less all Class Counsel’s attorneys’ fees and litigation costs, the Enhancement Award to the Class Representative, the PAGA penalty payment to the Labor and Workplace Development Agency (“LWDA”), the PAGA Settlement Amount paid directly to the PAGA Members (“Net PAGA Settlement Amount”) and Settlement administration expenses. (Arakelyan Decl., ¶ 12; **Exh. A**, page 3, ¶ 1.28.) These amounts are detailed as follows:

- <u>Class Counsel Fees and Costs</u>: Class Counsel’s attorneys’ fees shall not exceed Three Hundred Ninety-Seven Thousand Seven Hundred Twenty-Six Dollars and Zero Cents ($397,726.00), and actual reasonable litigation costs in an amount not to exceed Thirty Thousand Dollars ($30,000.00); (Arakelyan Decl., ¶ 20; **Exh. A**, page 6, ¶¶ 3.2.2.);
- <u>Settlement Administration Costs</u>, shall not exceed Fifteen Thousand Dollars and Zero Cents ($15,000.00); (Arakelyan Decl., ¶ 20; **Exh. A,** page 6, ¶ 3.2.3; see **Exh. D** for the amount of proposed reimbursement of costs to class counsel and the itemized detail of the costs incurred to date and the estimated future expenses);
- <u>Class Representative Enhancement Payment</u>, shall not exceed Ten Thousand Dollars and Zero Cents ($10,000.00); (Arakelyan Decl., ¶ 20; **Exh. A,** page 6, ¶ 3.2.1.);
- $75,000.00 to the LWDA of the State of California for settlement of claims for

civil penalties under PAGA, which will be paid out of the GSA, leaving $25,000.00 as the Net PAGA Settlement Amount to be paid to PAGA Members. (Arakelyan Decl., ¶ 20; **Exh. A,** page 7, ¶ 3.2.5.);

The Net Settlement Amount after these deductions is estimated to be $665, 452.00.

The "Individual Class Payment" is each Participating Class Member's pro rata share of the Net Settlement Amount, which will be calculated and apportioned from the Net Settlement Amount based on the number of workweeks a Participating Class Member worked during the Class Period as a non-exempt employee in California. (Arakelyan Decl., ¶ 21; **Exh. A,** page 3, ¶ 1.2.3.) The individual PAGA payment mean the Aggrieved Employees' pro rata share of 25% of the PAGA penalties calculated according to the number of Workweeks worked during the PAGA Period. (*Id*. **Exh. A,** page 3, ¶ 1.2.4.) All individual settlements will be allocated 20% to wages and 80% to interest and statutory penalties. (Arakelyan Decl., **Exh. A,** page 6, ¶ 3.2.2 and page ¶ 7, 3.2.4.1);

Defendants shall pay their employer-side payroll tax obligations on the Wage Portion of the Individual Class Payments in addition to the Gross Settlement Amount and shall wire or mail the employer's share of payroll taxes to the Settlement Administrator within thirty (30) calendar days after the Court grants final approval, as defined in the Settlement Agreement. None of the Gross Settlement Amount will revert to Defendants. (Arakelyan Decl., ¶ 18; **Exh. A**, page 5, ¶ 3.1.)

The settlement amount was a compromise figure, factoring in the inherent risks related to certification, liability and damages. (Arakelyan Decl., ¶ 17.) However, taking into account all of the circumstances of the action and the defenses raised by Defendants against certification, liability and damages, Class Counsel believes that the settlement is fair and reasonable. (*Id*. ¶ 17, 23)

Attached to the Settlement Agreement as **Exhibit 1** is the Notice of Class Action Settlement ("Class Notice"). Class Members shall each receive a Class Notice via first class mail (after the settlement Administrator conducts a national change of address search). (Arakelyan Decl., ¶ 81; **Exh. A**, page 12, ¶ 7.4.2.) Class Members will have an opportunity to dispute the information provided in their Class Notice and they may produce evidence to support the information is inaccurate. (Arakelyan Decl., ¶ 22; **Exh. A**, pages 13 – 14, ¶ 7.6; *see also* Class Notice, **Exhibit 1** attached to the Settlement Agreement.) The Settlement Administrator shall decide the dispute and may ask the challenging Class Member to produce documentation in support of their challenge. (*Id.*)

The Class Notice adequately informs the Class Members about the claims, the terms of the settlement, the release of claims, their anticipated distribution, the amount of fees and expenses being requested by class counsel, the amount of any incentive award to the class representatives, the opportunity to object and the requirements for objections, the date and place of the final approval hearing, and the opportunity to opt out of the settlement and the procedure for requesting exclusion. The Class Notice is consistent with the terms of the settlement. Class Members wishing to opt-out from the Settlement Agreement must sign and postmark a written request for exclusion to the settlement Administrator within the Response Deadline (forty-five (45) calendar days from the initial mailing of the Class Notice). (*Id.*, ¶ 18; **Exh. A**, page 13, ¶ 7.5.1.) Participating Class Members will also have the opportunity to object to the Settlement Agreement, by serving a copy of the objection to the Settlement Administrator within the Response Deadline. (*Id.*, ¶ 18; **Exh. A**, page 14, ¶ 7.7.2; Only Participating Class Members may object to the class action settlement. (*Id.*, **Exh. A**, page 14, ¶ 7.7.2.)

The parties have also agreed that Apex Class Action Administration Solutions shall handle the notice and settlement administration, including objections and opt-outs, and the parties respectfully request this Court to appoint Apex Class Action Administration Solutions to handle those procedures. (**Exh. A**, page 11, ¶ 7.1.) The procedures for mailing notice and processing exclusions and objections as well as distribution of the Net Settlement Amount is detailed in the Settlement Agreement. (**Exh. A,** pages 11 – 15.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

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

Thrifty Oil Co. (2000) 23 Cal. 4th 429, 439-41.)

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

D. There Is A Numerous and Ascertainable Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class and the means available for identifying class members. (*See Vasquez, supra,* 4 Cal. 3d at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271.) Class members are "ascertainable" where they may be readily identified without unreasonable expense or time. *See Rose v. City of Hayward*, 126 Cal. App. 3d 926, 932 (1981) (finding that "class members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records). Plaintiff contends, and Defendants do not dispute for settlement purposes only, this requirement and the requirement of numerosity is met. Class Members are all persons who worked for Defendant Care Indeed, Inc. as non-exempt employees in the State of California at any time from October 11, 2019, through February 1, 2026. (Arakelyan Decl., ¶ 24.) Documents and information exchanged between the parties reflect a class of approximately 1,388 Class Members. (*Id.*, ¶ 24.) The Class Members have already been identified by reference to Defendants' payroll and personnel records. (*Id.*)

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

A. **There Is A Well-Defined Community of Interest**

A community of interest is established by the predominance of common issues of law and fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

> [D]oes not depend upon an identical recovery, and the fact that each member of the class must prove his separate claim to a portion of any recovery by the class is only one factor to be considered ... The mere fact that separate transactions are involved does not of itself preclude a finding of the requisite community of interest so long as every member of the alleged class would not be required to litigate numerous and substantial questions to determine his individual right

> to recover subsequent to the rendering of any class judgment which determined in plaintiff' favor whatever questions were common to the class.

Id. at 809.

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof. (Arakelyan Decl., ¶ 25.) Because Plaintiff has alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." (*See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing In Re NASDAQ Market-Makers Antitrust Litigation, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This inference "'eliminates the need for each class member to prove individually the consequences of the defendants' actions to him or her.'" (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).)

This action involves, *inter alia*, a determination about Defendants' alleged failure to provide meal period and rest periods, failure to pay hourly wages and overtime due to allegedly common and unlawful policies, failure to pay sick pay, unlawfully collecting and receiving wages, failure to pay final wages when required, failure to reimburse, and largely derivative claims under the Business & Professions Code. Plaintiff contends these practices affected Class Members in the same way. Plaintiff contends these practices resulted in a failure to compensate employees at termination, and incomplete wages displayed on wage statements. The outcome of litigation on this matter depends upon questions that are common to Class Members. (Arakelyan Decl., ¶ 25).) While Defendants maintain otherwise, these issues will not be decided on the basis of facts peculiar to each Class Member, but rather on the basis of facts common to them all. It is also true that these issues of liability can be determined on a class-wide basis. (*Id.*)

E. The Named Plaintiff's Claims Are Typical

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

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that Plaintiff's claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Arakelyan Decl., ¶ 26.) Plaintiff was employed by Defendants during the Class Period, and was subject to the allegedly unlawful wage and hour policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiff is a member of the Class. (*Id.*) The central issues of this litigation (whether Defendants failed to pay all wages, whether Defendants failed to provide meal and rest periods, etc.), which would arise if this was an individual action, applies to the other Class Members as well. The answer to these questions would determine Defendants' liability to the putative class. (*Id.*) Thus, the claims of Plaintiff are typical of the claims of the putative class. (*Id.*) Accordingly, the typicality requirement is satisfied.

F. Adequacy of Class Counsel and Class Representative

Class Counsel are experienced in class actions, have represented their clients zealously and have no conflicts of interest. (Arakelyan Decl., ¶¶ 1 – 2, 83 – 93.) The Class Representative's interests are aligned with those of the Class Members, he has suffered the same injuries as the Class Members and has no conflicts of interest. (*Id* ¶ 27.) Therefore Class Counsel and the Class Representative are adequate.

G. Predominance and Superiority

Individual issues do not predominate over those common to the class. (Arakelyan Decl., ¶ 28.) The class action mechanism is superior to individualized actions because Class Members have little incentive to bring claims that are small. (*Id.*)

V. THE TWO-STEP APPROVAL PROCESS

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

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

(*Manual for Complex Litigation (Second)* (1985) at § 30.44.) The preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. (*See, e.g., Newberg*, § 11.25; *North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.) Thus, the preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements.

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

VI. THE SETTLEMENT IS FAIR AND ADEQUATE

As a matter of public policy, courts both encourage the use of the class action device and favor settlement over continued litigation. (*See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434 ("Courts have long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system."); *Class Plaintiff v. City of Seattle* (1992) 955 F.2d 1268, 1276 ("[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned.").)

Moreover, courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents, particularly when settlement has been reached by experienced counsel familiar with the litigation. (*Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.)

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

The settlement here satisfies each of these factors. Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter, including a detailed analysis of Defendants' policies and a considerable sample of Defendants' time and pay records. (Arakelyan Decl., ¶¶ 14 – 15.) This discovery permitted Class Counsel to fairly evaluate the strengths of the case and the risks associated with ongoing litigation. Class Counsel is very experienced in the handling of wage and hour class actions and supports this Settlement. (*Id.*, Arakelyan Decl., ¶¶ 1 – 2, 83 – 93.)

A. The Strength of Plaintiff's Case.

Plaintiff alleges that Defendants failed pay Class Members all wages due and owing, including by requiring off the clock work, failed to properly calculate and pay meal and rest break premiums, failed to provide sick pay, wages upon termination, failed to reimburse for business expenses, unlawfully received and collected wages, failed to issue compliant wage statements, and had an unlawful rounding policy detrimental to Class Members. Plaintiff further alleges that Defendants failed to provide proper meal and rest breaks or provide premium pay in lieu thereof, failed to timely pay wages including final wages. (Arakelyan Decl., ¶¶ 8 – 12.)

Class Counsel felt confident that the claims in this case would be certified given that

Defendants' policies were applicable to all Class Members and its practices were unlawful. (*Id*., ¶¶ 30 – 75.) Defendants contend, however, that its policies complied with California law and denies Plaintiff's allegations.

B. The Risks Associated with the Merits.

As with all litigation, there are risks that a party will not prevail on the merits. In this case, Plaintiff contends that they and other Class Members were not properly provided meal periods. (Arakelyan Decl., ¶¶ 47 – 48.) Defendants contend that Class Members were given a reasonable opportunity to take their meal periods, and in fact received their meal periods most of the time, and that the majority of Class Members have executed meal period waivers and fall under the personal care attendant exemption (*Id.,* ¶ 49.) If Defendants' contentions are proven true and prevail in trial, the likely outcome of this claim would be no recovery for the Class Members. Plaintiff also contends that Defendants did not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction thereof. (Arakelyan Decl., ¶ 50.) Class Members consistently worked in excess of consecutive four-hour shifts and were entitled to paid rest breaks of not less than ten minutes for each consecutive four-hour shift which they were denied. (*Id.).* The Class Members were systematically denied the opportunity to take rest periods since they were not relieved of their duties and were consistently required to work through their rest breaks due to the excessive workloads. Lastly, the inaccurate recordkeeping practices described above, and the off-the-clock work done by Class Members resulted in the rest periods falling outside of the timeline authorized under California law. (*Id.)*

Defendants maintain that they did provide the reasonable opportunity for Class Members to take duty-free rest breaks. (Arakelyan Decl., ¶ 51.) Defendants also pointed out that, unlike meal periods, rest breaks need not be recorded and Defendants dispute all allegations that breaks were not received. Defendants also contended that the personal attendant exemption applies to the vast majority of Class Members, significantly decreasing Defendants' liability on the rest break claim. As these considerations would likely depress the damages *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts to the rest-break claim. (*Id*.)

Plaintiff alleges that Defendants failed to pay Plaintiff and Class Members minimum and overtime wages for all hours worked, in violation of minimum wage and overtime laws. (Arakelyan Decl., ¶¶ 42 – 44.) Specifically, Plaintiff alleges Defendants unlawfully rounded down the hours Class Members worked. (*Id.*) Plaintiff contends the time punches Class Members were required to input were rounded and reduced to reflect the scheduled work time rather than the actual hours worked. Consequently, the wage payments Defendants made to Plaintiff and Class Members did not reflect the actual hours worked but rather rounded time, inputted by Defendants. (*Id.*)

Moreover, Plaintiff alleges Class Members were consistently required to perform work, off-the-clock, for which they were not paid wages. (*Id.*, ¶ 42.) Specifically, Plaintiff and Class Members were systemically required to perform work-related tasks during unpaid meal periods. Additionally, Defendants had a common policy and practice of automatically deducting 30 minutes of wages for alleged meal periods which Plaintiff and Class Members were denied. Additionally, Defendants systematically required Plaintiff and Class Members to use their cellular phones to conduct work-related activities, off-the-clock, both before the beginning and after the end of their shifts. (*Id.*)

Finally, Plaintiff contends that Defendants also failed to pay him and Class Members overtime wages at the proper and applicable regular rates of pay. Specifically, Plaintiff and Class Members earned shift differential pay as well as performance-based non-discretionary bonuses in addition to their hourly pay. However, these supplemental earnings were not accounted for when determining Class Members' regular rates of pay, and respective and proper overtime rates of pay. Defendants' practices led to Plaintiff and Class Members not being compensated for all hours worked, resulting in unpaid regular and overtime wages. (*Id.*, ¶ 45.)

Defendants contend that they paid for all reported hours worked, that Class Members were trained to record all hours worked, and that they paid proper minimum wages. (*Id.*, ¶ 45.) Defendants also maintain that the allegations regarding failure to pay wages for hours worked in excess of eight hours in a day did not constitute a basis for violation of Labor Code § 510 as most class members would qualify for the personal attendant exemption, where overtime is not payable until after 9 hours of work per day (pursuant to the Domestic Worker Bill of Rights, AB 241). Defendants argue that given their written policies and practices, any unrecorded hours were likely subject to individualized inquiry and unlikely to be certified. Given the difficulty in certifying this claim, Class Counsel had to apply a significant discount to damages based on this theory.

Plaintiff alleged Defendants issued wage statements to Plaintiff and Class Members that did not accurately list all hours worked by omitting off-the-clock work and inaccurately listing applicable hourly rates. (*Id.*, ¶ 53.) Defendants challenged Plaintiff's claim for Labor Code § 226(e) penalties, including by arguing they were merely derivative of the other claims that lacked merit, and Plaintiff's failure to prove the underlying claims could result in the dismissal of these derivative claims. (*Id.*, ¶ 54.)

Plaintiff alleges that Defendants unlawfully collected and received wages from Plaintiff and Class Members in violation of Labor Code § 221. Specifically, Plaintiff alleges that Defendants deducted screening fees from Plaintiff's and Class Members' wages, generally in the amount of $35 from their paychecks at the start of their employment, without their knowledge. Plaintiff further alleges that Defendants' handbooks are silent regarding this deduction, which was not authorized by the Class Members. (*Id.*, ¶ 56.)

Defendants challenge Plaintiff's claims for Labor Code § 221 violations by stating that Class Members had consented to this deduction and that they were informed about it ahead of time. Defendants also argued that it did not knowingly and intentionally commit these alleged violations. (*Id.*, ¶ 57.)

Plaintiff contends that Class Members were not paid all reimbursements owed to them during their employment with Defendants. Specifically, Plaintiff contends that he and Class Members were required to use their personal cellular phones for work (including downloading and using a timekeeping application), drive their personal vehicles, and purchase groceries for patients. (*Id.*, ¶ 59.)

Defendants contend that they properly paid out all reimbursements to Class Members for authorized business expenses and had compliant policies and practices, including providing a monthly stipend to Class Members for phone plans. (*Id.*, ¶ 60.) Defendants contend that the allegations regarding failure to indemnify Class Members for necessary business expenses did not constitute a basis for violation of California Labor Code § 2802. (*Id.*)

Class Counsel's expert's damages analysis revealed that Defendants had a common policy and practice of systemically failing to pay Class Members the sick pay in accordance with California Law, at the employees' applicable regular rates of pay. (*Id.*, ¶ 66.)

Defendants cite to their policy, which guarantees accrual of maximum of 48 hours of sick leave for those employees who worked more than 30 days in a calendar year. Defendants also point out that it has consistently paid out sick leave pay to its employees throughout the Class Period and does not have any outstanding liability. Defendants also contend that many Class Members did not work long enough to qualify for sick pay. (*Id.*, ¶ 67.)

E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.

Given the risks outlined above, the issues in this case were complex and the risk for Plaintiff and the Class Members associated with this litigation was high. (Arakelyan Decl., ¶ 33.) Should the Parties have failed to reach a settlement, discovery disputes would have been in the offing. Additionally, a class trial would have required the retention of expensive expert witnesses, the accrual of extensive litigation costs, and the parties would have had to spend a substantial amount of time on prepare the case for trial. (*Id.*)

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

F. The Risk of Maintaining Class Action Status Through Trial.

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

G. The Amount Offered in Settlement Is Fair and Reasonable Given the Potential Value of Settlement.

There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive, and arms-length negotiations between the parties with an experienced mediator. In order to determine the approximate potential damages which would be owed to each of the Class

Members, Class Counsel analyzed the time records for Plaintiff and Defendants provided Class Counsel with records for a sampling of the class members. By analyzing this information, Class Counsel was able to estimate the full value of the case if Plaintiff was to prevail at trial.

There are approximately 1,388 total Class Members who worked an estimated 85,227 workweeks during the class period, with an average hourly pay rate of $21.49. Based on the data provided, Class Counsel estimated the following exposures:

- $1,831,528.23: for meal and rest period liability [one violation per week x 85,227 weeks x $21.49];
- $2,747,292.35: for unpaid wages and overtime [one hour of unpaid time per week x 85,227 weeks x $32.235 (1.5 times the average rate of pay)];
- $4,285,965.60: for waiting time penalties under Section 203 [8 hours x 30 days x 813 terminated employees x $21.49];
- $3,100,000: for wage statement penalties [$4,000 maximum penalty x 775 Class Members to whom wage statements were issued during the one-year statutory period];
- $48,580 for unlawful deductions from wages [$35 deduction x 1,388 Class Members]
- $29,828.12: for unpaid sick pay [1,388 class members x $21.49 x 1 hour];
- $213,067.50: for unpaid reimbursements [21,306.75 work months x $10 per month];
- $3,963,500.00: for penalties under the PAGA [$100 x 39,635 Pay Periods during the PAGA Period].

Class Counsel estimates the maximum exposure of damages and penalties at $16,219,761.80. (Arakelyan Decl., ¶ 40.)

Class Counsel estimated Defendants' maximum total exposure on PAGA claims at approximately $3,963,500.00 (39,635 PAGA Pay Periods x $100) for 775 Aggrieved Employees. However, Class Counsel also estimated any PAGA recovery would be substantially reduced, and applied discounts in light of the countervailing arguments with regard to the other causes of action and the Court's power to award "a lesser amount than the maximum civil liability." The PAGA allocation agreed upon by the Parties therefore was $100,000.00, subject to the Court's final approval. In addition, the Parties believes that the bulk of the recovery in this settlement should go to the employees, who suffered the harm from the violations of the Labor Code, rather than the State of California. As the Courts have discretion over the amount of PAGA penalties awarded, the Parties felt that allocating a bigger portion to the Class Settlement would be more beneficial to all employees, including the Aggrieved Employees. Also, Defendants conducted an audit of their records and corrected many of its practices after the filing of this matter, which warrants a further discount on the PAGA settlement allocation. (*Id.*, ¶ 73.)

However, taking into account the difficulties of proof, the Defendants' defenses, and other attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or other relief that the class could reasonably expect to be awarded at trial is significantly less than the maximum exposure. (*Id.*, ¶ 41.)

Once Class Counsel was able to determine the maximum potential damages, it was able to determine a fair and reasonable settlement for the Class. (*Id.* at ¶¶ 42 – 76) Class Counsel analyzed the likelihood of success on the merits. (*Id.*) It believes that the Class had a reasonable likelihood of success on the core claims. (*Id.*) However, Defendants dispute this contention, deny all wrongdoing in this matter and are confident they have strong legal and factual defenses to Plaintiff's claims. Moreover, Class Counsel determined that the likelihood of success on the claims for unpaid wages, and waiting time penalties were not as strong, because various defenses including issues not suitable for class treatment, no detriment to the class members over time, and *de minimis* defenses. Defendants may have the opportunity to establish that they had a good faith belief that they were complying with law. (*Id.*.) After taking into account the likelihood of success on each claim and the challenges faced with certifying these claims, Class Counsel determined that the settlement amount of $1,193,178.00 was fair and reasonable.

Each of the approximately 1,388 Class Members will receive on average, assuming they worked throughout the class period, $479.43 after expenses (*Id.*, ¶ 21.) Since there are 85,227 workweeks at issue in this settlement, each class member will receive $7.81 per workweek after expenses (and $14 per workweek before expenses). Plaintiff feels that this Settlement is fair, reasonable, and advantageous to the class. (*Id.*, ¶¶ 21, 40.)

To summarize, the Settlement here is fair because it provides a substantial payment to each

Class Member for releasing his or her claims; extinguishes the risk of litigation; and provides a fair and adequate distribution of the settlement proceeds whereby the funds are allocated to Class Members proportionally based on their payout ratio.

As detailed at length in the accompanying Declaration of David Arakelyan, the settlement is the result of extensive settlement negotiations between the parties, conducted at arm's length, and informed by substantial factual and legal investigations. (Arakelyan Decl., *passim*.) Throughout this case, Class Members have been represented by experienced counsel with many years of experience in employment class action litigation. (Arakelyan Decl., ¶¶ 83 – 93.)

Class Counsel has devoted a considerable amount of time to the prosecution of this case, including but not limited to, interviewing Plaintiff on repeated occasions; drafting pleadings; conducting considerable formal and informal discovery, and meeting and conferring with defense counsel about the same; reviewing and analyzing time records and various handbooks and policies, Plaintiff's personnel file, and other documentation; researching California law; preparing for and attending mediation; and negotiating and finalizing the Settlement Agreement and related documents. (Arakelyan Decl., ¶¶ 14 – 15.)

Among those matters considered during the course of settlement negotiations were the strength of Plaintiff's case versus the amounts offered in settlement; the risks, expenses, and length of further litigation, including class certification and the appeals process; the present state of the law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present value of a settlement versus the long wait necessitated by any potential judgment in class members' favor; the burdens of proof necessary to establish liability against Defendants; and Defendants' defenses to the action. (Arakelyan Decl., *passim*.).

These factors each indicated that the interests of Class Members are best served by a settlement of this action in the manner and upon the terms set forth in the Settlement Agreement. The Settlement Agreement confers a substantial benefit on the class of up to $1,193,178.00. Moreover, the settlement awards for each Class Member will be tailored to their workweeks during the class period. (*Id.* at ¶ 21) In addition Class Counsel secured prospective relief for the class in that Defendants will ensure its policies comply with California law.

Class Counsel believes that the settlement is fair and reasonable and serves the best interests of the Class Members. Although the recommendations of counsel proposing the class settlement are not conclusive, the Court can properly take the recommendations into account, particularly if counsel has been involved in litigation for some period of time, appear to be competent, and have experience with this type of litigation, and significant discovery has been completed. *See Newberg,* §11.47.

H. The Scope of the Release

The scope of the release provided by Class Members is fairly tailored to the claims that were or could be asserted in the lawsuit based on the facts alleged in the complaint. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App. 5th 529, 538 – 539). The Settlement Agreement states that "[a]ll participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action, including any and all claims involving any alleged (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay hourly wages and overtime; (4) failure to pay proper sick pay; (5) unlawful receipt and collection of wages; (6) failure to provide accurate written wage statements; (7) failure to timely pay all final wages; (8) failure to indemnify; (9) unfair competition; and (10) PAGA Penalties during the PAG Period." (the "Released Class Claims"). (Arakelyand Decl., **Exh. A**, page 10, ¶ 5.2.) Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period." (*Id.*) The effective date of the release is the date when Defendants fully fund the Gross Settlement Amount, and all employer payroll taxes owed on the Wage Portion of the Individual Class Payments. (*Id.* at ¶ 5)

I. Plaintiff's Release

Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, releases and discharges Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under paragraph 6.2 of the Settlement Agreement. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. (Arakelyan Decl,. **Exh. A**, page 9, ¶ 5.1.)

Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. *Id*.

For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

(Arakelyan Decl., **Exh. A**, page 10, ¶ 5.1.1)

J. Release by Aggrieved Employees

All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice and ascertained in the course of the Action. (Arakelyan Decl., **Exh. A**, page 10, ¶ 5.3)

K. The Presence of a Governmental Participant

On December 18, 2025, Plaintiff submitted the Class Action and PAGA Settlement Agreement and Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement and supporting documents to the LWDA. A true and correct copy of the confirmatory email from the LWDA is attached hereto as **Exhibit C.** (Arakelyan Decl., ¶ 36)

L. Allocation of the Settlement for Tax Purposes

20% of each Class Member's Individual Class Payment, about $95.89 of the $479.43 average individual Settlement Award to each Class Member will be allocated to settlement of wage claims (the "Wage Portion.") (Arakelyan Decl., ¶ 21, **Exh. A**, ¶ 3.2.4.1). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. *Id*. The remaining 80% of the average gross individual Settlement Award to each Class Member will be allocated to will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion.") *Id.* The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. *Id*. The Class Notice provides this information to Participating Class Members. Class Notice, Pg. 5, Paragraph 4.

Defendants will separately pay employer payroll taxes they owe on the Wage Portion. (Arakelyan Decl., ¶ 18; **Exh. A**, page 5, ¶ 3.1.). Moreover, the Individual PAGA Payments are counted as penalties rather than wages for tax purposes. **Exh. A**, page 5, ¶ 4.

M. Unclaimed Funds

The Settlement Agreement does not provide for a *cy pres*. Instead, for any Class Member whose Individual Class Payment check is uncashed and canceled after the void date, the Administrator shall transmit the funds represented by such checks to the California Unclaimed Property Fund, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Arakelyan Decl**., Exh. A**, page 9, ¶ 4.3.3)

VII. THE CLASS REPRESENTATIVE ENHANCEMENT IS FAIR AND REASONABLE

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

F.Supp. 294.

Plaintiff is entitled to reasonable service payments for his efforts and initiative in bringing and helping to prosecute this class action. Plaintiff spent significant time better apprising himself of his rights, deciding whether remedial action should be taken, how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing their case and the law. (Arakelyan Decl., ¶¶ 78 – 79; Viray Declaration ("Viray Decl.") ¶¶ 1 – 20.) In the end, Plaintiff decided to vindicate not only his own rights but also those of his co-workers by filing a class action lawsuit. (Arakelyan Decl., ¶ 78.)

The courage it took to do this should not be underestimated. By suing Defendants, Plaintiff contends he increased his risk of retaliation by prospective employers. (Viray Decl. ¶ 15.) Plaintiff's lawsuit has now cost Defendants considerable resources, and Plaintiff contends such conduct will not be lost on a prospective employer who has to choose between an applicant who has never sued a prior employer and one who has. (*Id.*) Plaintiff contends this risk is particularly real in the information age, where employers can, more easily than ever, perform background checks of prospective employees, sometimes with the stroke of a key. (*Id.*)

Plaintiff did not allow his fear of the potential repercussions of being a class representative deter her from acting for the benefit of Class Members. (Arakelyan Decl., ¶ 78; Viray Decl. ¶ 15.) To the contrary, Plaintiff has been intimately involved in this case since its inception. He has devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation. (*Id.*) Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel to discuss every aspect of this case; Plaintiff has provided Class Counsel with information about Defendants and about the industry generally, reviewed documents, consulted Class Counsel throughout the litigation, participated in the mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the settlement agreement. (Arakelyan Decl., ¶ 79; Viray Decl., ¶ 15 – 17.)

Plaintiff has spent a significant amount of time with Class Counsel detailing his knowledge of Defendants' practices. (*Id.,* ¶ 79.) He has diligently, adequately, and fairly represented Class Members, and has not placed his interests above any member of the putative class. (*Id.*) This sort of payment to a class representative has been a common feature of settlements negotiated by Class Counsel and has been routinely approved by trial courts. (*Id.*)

In light of the foregoing, Class Counsel believes that the incentive award in the amount of $10,000.00 to the Class Representative is fair and reasonable. (Arakelyan Decl*.,* ¶ 80; Viray Decl., ¶ 20.)

VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS.

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

The Class Notice (**Exhibit 1** to the Settlement "Class Notice") meets constitutional standards because it provides all the information a reasonable person would need to make a fully informed decision about the settlement. It will notify all class members of the terms of the settlement, of its effect on their rights, of their options as class members (i.e., participate, object, opt out, do nothing), and of the consequences of exercising those options. (Arakelyan Decl., ¶¶ 81 – 82, Ex 1, "Class Notice".) Moreover, the Class Notice will specifically direct any class members who have questions or concerns to contact the Settlement Administrator, Apex Class Action Administration Solutions, or Class Counsel. (*Id.*)

The Parties have jointly agreed to the language of the Class Notice and have also agreed that a Spanish translation of the notice should be provided to Class Members (*Id.*). The Parties will also maintain a settlement website. Plaintiff solicited a bid for settlement administration costs. The Parties jointly chose Apex Class Action Administration Solutions ("Apex") as the administrator based on the quote that was fair and reasonable in light of the class size as well as the experience of the administrator. Both Parties have worked with Apex Class Action Administration Solutions in the past, and believe that it can competently and properly administer the notice to class members. Apex provided a bid, which estimates the cost of administering the notice to Class Members to be $14,945.00, which includes the costs of printing the Notice, mailing and remailing, handling telephone calls from Class Members, and other functions generally performed by administrators. (See Declaration of Sean Hartranft, on file herein)

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

Here, the Class Notice will be sent via first-class mail to each class member. (Arakelyan Decl., ¶ 22.) The Class Notice shall be mailed to Class Member not later than 14 (fourteen) days after the Settlement Administrator receives the Class Data/Class List from Defendants. (*Id.*) The Class Data has not been delivered to the Settlement Administrator by Defendants at this time, but must be delivered within fifteen (15) days after the Court Grants Preliminary Approval of Settlement. (Arakelyan Decl., **Exh. A**, page 8, ¶ 4.2.) If any Class Notices are returned undeliverable without a forwarding address, the Settlement Administrator will use the national change of address database and perform a skip trace to locate the class member and mail a new Class Notice to him or her at the correct address. (Arakelyan Decl., ¶¶ 81.) Thus, most, if not all, class members will likely receive the Class Notice.

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

Within fourteen (14) days after Defendants fully fund the GSA, the Administrator will mail checks for all payments, as described in the Settlement Agreement (Arakelyan Decl., **Exh. A**, page 8, ¶ 4.3.). The Administrator will issue checks for the Individual Class Payments and send them to the Class Members via First Class U.S. Mail. (*Id.*, **Exh. A**., page 8, ¶ 4.3.1.) The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided ("Void Date"). The Administrator will cancel all checks not cashed by the Void Date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom the Class Notice was returned undelivered). Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. (**Exh. A**, page 8, ¶ 4.3.1) For any Class Member whose Individual Class Payment check is uncashed and canceled after the void date, the Administrator shall transmit the funds represented by such checks to the California Unclaimed Property Fund, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (**Exh. A**, page 9, ¶ 4.3.3)

The Notice also properly informs Class Members that settlement payment is conditioned on the entry of judgement in this matter as to all settlement class members. (See **Exhibit 1**, p. 4. ¶ 3; and p. 6, ¶ 7.)

IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT

Non-settling parties and third parties periodically may attempt to object to proposed class action settlements, but the right of non-settling parties to object at the final settlement approval hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class members have standing to object to a proposed settlement. "Beginning from the unassailable premise that settlements are to be encouraged, it follows that to routinely allow non-class members to inject their concerns via objection at the settlement stage would tend to frustrate this goal." (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.)

X. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS REASONABLE AND SHOULD BE APPROVED.

Under the Settlement Agreement, subject to approval by this Court, Class Counsel will seek an award of fees of no more than Three Hundred Ninety-Seven Thousand Seven Hundred Twenty-Six Dollars and Zero Cents ($397,726.00), approximately one-third of the Gross Settlement Amount, and actual reasonable litigation costs in an amount not to exceed Thirty Thousand Dollars ($30,000.00). The requested fees are fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-consuming litigation solely on a contingent basis. (Arakelyan Decl. ¶ 77.) Defendants will not oppose Class Counsel's above fees and cost request.

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

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

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding this case is well within the range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50% of the common fund, depending on the circumstances of the case. (*Newberg*, at §14.03; *see also In re Activision Securities Litigation*, 723 F. Supp. at 1378.) *Newberg* further notes: "[A]chievement of a substantial recovery with modest hours expended should not be penalized but should be rewarded for considerations of time saved by superior services performed." (*Id.* at §§ 14-10:14-11.)

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

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

Here, Class Counsel has borne the entire risk and costs of litigation and will not receive any compensation until recovery is obtained. (*See* Arakelyan Decl., ¶¶ 15, 30 – 35, 77.) The Court should also consider the benefit obtained by Class Counsel on behalf of class members. Thus, the requested award for Class Counsel is reasonable.

XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY APPROVAL

The parties respectfully request this Court, as part of the preliminary approval process, to grant the following relief and make the following orders:

1. Review and approve the Settlement Agreement;

2. Review and approve the Class Notice, attached as **Exhibit 1** to the Settlement Agreement;

3. Consider and determine that the proposed class action settlement as set forth in the Settlement Agreement preliminarily appears fair, reasonable, and adequate;

4. Enter an order conditionally certifying the action as a class action for settlement purposes only and preliminarily approving the proposed class action settlement and the Settlement Agreement;

5. Approve and appoint D.Law, Inc. to serve as Class Counsel for settlement purposes;

6. Approve and appoint Apex as the Administrator to handle the notice and claims procedures as set forth in the Settlement Agreement;

7. Approve the proposed settlement's allocation of funds to claims made under PAGA;

8. Order Defendants to disclose to Apex the names, last-known mailing addresses, last known telephone numbers, Social Security numbers, and the number of Class Period workweeks and PAGA Period workweeks as set forth in the Settlement Agreement;

9. Order Apex to mail the Class Notice to Class Members; and

10. Set a date for the Final Approval Hearing.

Dated: December 18, 2025

Respectfully submitted,

D.LAW, INC.

By: ______________________________

David Yeremian
David Keledjian
David Arakelyan
Attorneys for Plaintiff RENATO G. VIRAY, on behalf of himself and others similarly situated