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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

JEFFERSON RODRIGUEZ, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act,

Plaintiff,

vs.

STATEWIDE TRAFFIC SAFETY AND SIGNS, INC., a Delaware corporation now doing business as AWP SAFETY; TRAFFIC SOLUTIONS CORPORATION; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 23CV428021

CLASS ACTION

[Assigned for all purposes to the Hon. Theodore C. Zayner, Dept. 19]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: August 13, 2025
Time: 1:30 p.m.
Dept.: 19

Action Filed: December 22, 2023
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on August 13, 2025 at 1:30 p.m., or as soon thereafter as the matter may be heard in Department 19 of the above-entitled Court, located at 161 North First Street, San Jose, California 95113, Plaintiffs Jefferson Rodriguez, Danielle Andrea Perez, and Jesse Knight ("Plaintiffs") will, and hereby do, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement ("Settlement") between Plaintiffs and Defendants Statewide Traffic Safety and Signs, Inc. ("Statewide") and Traffic Solutions Corporation ("TSC") (together "Defendants");
2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification, for settlement purposes only, of the following Settlement Class:

   > All current and former non-exempt hourly employees employed by Defendants in California at any time from December 22, 2019 through January 11, 2025 (the "Class Period").

3. Preliminary appointment of Plaintiffs as Class Representatives;
4. Preliminary appointment of Marquee Law Group, APC and Wilshire Law Firm, PLC as Class Counsel;
5. Appointment of Phoenix Settlement Administrators ("Phoenix") as the Settlement Administrator;
6. Approval of the proposed Notice of Proposed Class Action Settlement (the "Notice Packet"), and an order that the Notice Packet be disseminated to the Settlement Class as provided in the Settlement; and
7. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award Class Representative Service Awards to Plaintiffs, and attorneys' fees and costs to Class Counsel.

This motion is based on this notice of motion; the attached memorandum of points and authorities; the declaration of Tuvia Korobkin and exhibits attached thereto; the declaration of Benjamin Haber and exhibits attached thereto; the declarations of Plaintiffs; the declaration of Jodey Lawrence and exhibits attached thereto; the pleadings and other papers filed in this action; and any further oral or documentary evidence or argument presented at the time of hearing.

Dated: July 10, 2025

MARQUEE LAW GROUP, APC

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Tuvia Korobkin
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Jefferson Rodriguez, Danielle Andrea Perez, and Jesse Knight ("Plaintiffs") seek preliminary approval of a class action settlement ("Settlement") with Defendants Statewide Traffic Safety and Signs, Inc. now doing business as AWP Safety ("Statewide") and Traffic Solutions Corporation ("TSC") (collectively, "Defendants") (together with Plaintiffs, the "Parties"). The Settlement resolves a class and representative action pending before this Court (the "Action"), in which Plaintiffs allege that Defendants failed to pay employees for all hours worked; failed to provide all meal periods; failed to authorize and permit all rest periods; failed to reimburse employees for expenses; and failed to provide required days of rest. Plaintiffs further allege that as a result of these violations, Defendants failed to issue accurate itemized wage statements, failed to pay all wages on termination of employment, engaged in unfair competition, and are liable for civil penalties under the Private Attorneys General act ("PAGA").

Plaintiffs now respectfully request that this Court preliminarily approve this non-reversionary class action Settlement,[1] in which Defendants have agreed to pay **$3,250,000.00** to the following Settlement Class, which is estimated to consist of 1,131 individuals:

> All current and former non-exempt hourly employees employed by Defendants in California at any time from December 22, 2019 through January 11, 2025 (the "Class Period")

The Settlement was reached after the Parties engaged in a full-day mediation with Steve Cerveris, Esq., an experienced class action mediator. In connection with mediation, Defendants produced extensive informal discovery, including timekeeping and payroll records for a sampling of putative class members, relevant written policies, and other documents and information.

After extensive research and investigation, including a detailed analysis of Defendants' potential exposure made with the assistance of an expert data analyst, the mediation session was held with Mr. Cerveris on November 12, 2024. The Parties did not reach resolution at mediation. However, after more than two months of additional negotiations and discussions (including additional briefing), Mr. Cerveris made a mediator's proposal to resolve the Action, which was

[1] The Settlement is attached as Exhibit 1 to the Korobkin Declaration. The Class Notice and Notice of Estimated Settlement Payment are attached as Exhibits A and B, respectively, to the Settlement.

eventually accepted by the Parties in February 2025. Over the following months, the Parties negotiated the finer terms of their settlement, ultimately resulting in the Settlement.

Notably, Settlement Class members do not need to submit a claim form to receive a payment ("Individual Settlement Payment"). After deductions for proposed administration costs, attorney fees and costs, Plaintiffs' service awards, and the LWDA's share of PAGA civil penalties, the average Individual Settlement Payment is estimated to be at least **$1,661.51**. For the reasons discussed herein, Plaintiffs respectfully submit that the Settlement is fair, reasonable, and adequate, and request that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. FACTUAL AND PROCEDURAL BACKGROUND

Statewide is a full-service traffic control company that provides various traffic control services, including guiding traffic safely around construction sites, providing traffic safety signs, and other services. *See* Declaration of Tuvia Korobkin ("Korobkin Decl."), ¶ 10. TSC is a sister company of Statewide, providing similar traffic management solutions. *Id*. Plaintiffs are former non-exempt employees of Defendants who worked for Defendants in California during the Class Period. *See id*., ¶ 10; Declaration of Benjamin Haber ("Haber Decl."), ¶¶ 3-4.

On December 22, 2023, Plaintiff Rodriguez filed this Action, alleging claims for failure to pay wages, meal and rest period violations, waiting time penalties, wage statement penalties, failure to reimburse expenses, and unfair business practices. Korobkin Decl., ¶ 11. Plaintiff Rodriguez also alleged a claim for PAGA civil penalties, after providing the required written notice to the Labor & Workforce Development Agency (LWDA) on October 10, 2023. *Id*.

On February 28, 2024, Plaintiff Perez filed a class action lawsuit against Defendants in Orange County Superior Court, alleging many of the same claims alleged by Plaintiff Rodriguez in this Action. Korobkin Decl., ¶ 12. That case was later removed to federal court. *Id*. On August 1, 2024, Plaintiff Perez filed another action against Defendants in Orange County Superior Court, alleging a single cause of action under the PAGA based on the same alleged violations. *Id*.

On June 23, 2025, pursuant to the Parties' stipulation, Plaintiffs filed the operative First Amended Complaint ("FAC") in this Action. Korobkin Decl., ¶ 13. The FAC added Ms. Perez and Mr. Knight as named plaintiffs, added TSC as a named defendant, and added the day-of-rest allegation. *Id*. Prior to filing the FAC, Plaintiffs Perez and Knight provided an amended PAGA notice to the LWDA that added Plaintiff Knight and the day-of-rest claim. *Id*.

B. PLAINTIFFS' CLAIMS AND DEFENDANTS' DEFENSES

1. Unpaid Wages Claim

Plaintiffs allege that Defendants failed to pay Plaintiffs and other employees for all hours worked, including pre-shift work (such as waiting for drivers to show up to a worksite), post-shift work (such as answering calls from customers after hours), and work performed during meal periods. Korobkin Decl., ¶ 14. Defendants contend that they have always paid employees for all hours worked, that their policies prohibit off-the-clock work, that they had no knowledge (nor could they have known) that employees worked off-the-clock, and that if employees did work off-the-clock, they could have reported such work and been paid by Defendants. *Id*. Defendants further contend that the vast majority of putative class members were subject to a collective bargaining agreement with a mandatory arbitration provision, and that Plaintiffs' claims therefore would not be able to proceed on a class basis. *Id*. Defendants further argue that differences among employees' job duties and working conditions, as well as issues with proving off-the-clock work on a classwide basis, would further preclude certification. *Id*. Defendants also argue that, to the extent any of the alleged unpaid wages were overtime, such overtime claims would be barred for the vast majority of putative class members because the collective bargaining agreement satisfies the requirements of Labor Code § 514, and therefore, the California overtime statute (i.e., Labor Code § 510) would not apply to them. *Id*.; *see also Vranish v. Exxon Mobil Corp.*, 223 Cal.App.4th 103 (2014) (holding Labor Code § 510 is inapplicable where collective bargaining agreement meets requirements of Labor Code § 514).

2. Meal Period Claim

Plaintiffs allege that they and other employees were frequently unable to take compliant meal periods, and therefore took late and/or short meal periods or missed meal periods altogether, as a result of the workload imposed on them and understaffing. Korobkin Decl., ¶ 15. Plaintiffs further allege that Defendants failed to provide second meal periods on shifts over 10 hours. *Id*.

Defendants contend they have maintained legally-compliant meal period policies and practices throughout the Class Period (including the provision of second meal periods on shifts over 10 hours), and that under *Brinker* they are only required to "provide" the opportunity to take meal periods, not "ensure" they are taken. Korobkin Decl., ¶ 15; *see Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1038 (rejecting "ensure" standard). Defendants further argue that employees were permitted to take their meal periods at their own discretion, and thus any failure to take a timely, 30-minute meal period was the result of employee choice rather than any policy or practice of Defendants. *Id*. As for second meal periods specifically, Defendants argue that a small minority (less than 25%) of employee shifts were over 10 hours, that an even smaller number (only about 6%) of employee shifts were over 12 hours, and that those who did not take a second meal period on shifts that were more than 10 but less than 12 hours waived their second meal period as they are entitled to do under Labor Code § 512. *Id*. Defendants further argue individualized inquiries would be required to determine whether individual employees – working on many different shifts in various job positions and under varying circumstances, in different locations, and under different managers over a long time period – received a non-compliant meal period and/or did not take a second meal period on each individual shift, and why any meal period was late, short or missed, thereby precluding certification of this claim. *Id*. Moreover, as noted above, Defendants contend this claim would not proceed on a class basis because employees would be required to arbitrate their claims pursuant to the collective bargaining agreement's arbitration provisions. *Id*. Defendants also contend Labor Code § 512 does not apply to most putative class members because they work in the construction industry and are covered by a collective bargaining agreement that meet the requirements of Labor Code § 512(e), and thus Plaintiffs' meal period claims would fail. *Id*.

3. <u>Rest Period Claim</u>

Plaintiffs allege that Defendants often failed to authorize and permit 10-minute rest periods as a result of the workload and understaffing mentioned above. Korobkin Decl., ¶ 16; *Brinker*, 53 Cal.4th at 1028-32 (discussing rest period requirements). Defendants assert that they have always maintained compliant rest period policies and that, in practice, they have always authorized and permitted all required rest periods to non-exempt employees; that they inform employees of their right to rest periods; and that any failure to take a rest period is the result of employee choice rather than any practice of Defendants. *Id*. Defendants further argue that, as with meal periods, this claim is not amenable to class treatment because individualized inquiries would be required to determine whether individual employees in different job positions, different locations, and under different managers and in different time periods, were in fact authorized and permitted to take rest periods on any given shift, thus precluding class certification. *Id*. These manageability concerns are particularly present with respect to rest periods, Defendants contend, since rest periods are not recorded. *Id*. Defendants further contend that the case could not be maintained on a classwide basis due to the arbitration provision in the relevant collective bargaining agreement. *Id*. Defendants also contend that the vast majority of putative class members would be covered by Wage Order 16 (for the construction industry) and that the relevant collective bargaining agreement provides "equivalent protection" regarding rest periods, and thus the exception to the rest period laws found in Wage Order 16, § 11(E) would apply.

4. **<u>Unreimbursed Expenses Claim</u>**

Plaintiffs allege that Defendants failed to indemnify them and other employees for the use of their personal cell phones and personal vehicles for work purposes, including to communicate with supervisors and customers and to travel between job sites. Korobkin Decl., ¶ 17. Defendants counter that employees did not need to use their personal cell phones or personal vehicles in connection with their job duties, and that if they did, there are procedures in place for employees to request reimbursement of work-related expenses. *Id*. Defendants also contend that employees are provided with any equipment necessary to perform their job duties. *Id.* Defendants further argue that this claim would not be certified, as it would require hundreds of individualized inquiries as to whether employees incurred business-related expenses, whether they were reimbursed, whether Defendants knew (or reasonably should have known) about the expense, and whether the expense was "necessary" under the circumstances. *See Gattuso v. Hart-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) ("In calculating the reimbursement amount due under section 2802, the employer may consider not only the actual expenses that the employee incurred, but also whether each of those expenses was 'necessary,' which in turn depends on the reasonableness of the employee's choices."); *Grissom v. Vons Companies, Inc.*, 1 Cal.App.4th 52, 58 (1991) (under § 2802, "ascertaining what was a necessary expenditure will require an inquiry into what was reasonable under the circumstances"). Defendants further argue that, again, the arbitration provision in the relevant collective bargaining agreement would preclude class adjudication of this claim. Korobkin Decl., ¶ 17.

5. Claims Under Lab. Code §§ 203, 226, and the PAGA

As a result of Defendants alleged failure to pay all wages, as well as its failure to provide all meal and rest periods, Plaintiffs assert that Defendants failed to comply with their final payment and wage statement obligations, in violation of Cal. Labor Code §§ 203 and 226, respectively. Korobkin Decl., ¶ 18. Plaintiffs also seek civil penalties under the PAGA based on the aforementioned claims, as well as their claim that Defendants failed on some occasions to provide one day's rest in seven, in violation of Labor Code § 551 *et seq*. *Id*.

Defendants argue that Plaintiffs' derivative claims fail for the same reasons their underlying claims fail. Korobkin Decl., ¶ 19. Defendants further assert they have strong, good-faith defenses to Plaintiffs' underlying claims, precluding imposition of waiting time penalties. *See* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding "good faith dispute" precluded imposition of waiting time penalties). Defendants further contend that employee wage statements always accurately reflect amounts *paid* to employees and therefore no wage statement violations occurred. Korobkin Decl., ¶ 19; *see also Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) ("The purpose of section 226 is to '*document* the *paid wages* to ensure the employee is fully informed regarding the calculation of those wages.") (citing *Soto v. Motel 6 Operating, L.P.*, 4 Cal.App.5th 385, 392 (2016)).

Defendants contend Plaintiffs' PAGA claim fails because the underlying claims fail. *See, e.g., Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). As for the day-of-rest claim, Defendants argue that this affected a very small number of shifts, and that if any employees worked 7 days in a workweek it was the result of an anomaly or the employee's own request and/or consent. Korobkin Decl., ¶ 19. Defendants further maintain that given their good-faith defenses, the Court would substantially reduce PAGA civil penalties even if it were to find in Plaintiffs' favor on some or all of their claims. *Id.*; *see also* Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties in court's discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties, in part because "the evidence showed…defendants took their obligations…seriously and attempted to comply with the law"); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer was "not aware" of violations and "took prompt steps to correct all violations once notified"); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

C. <u>DISCOVERY AND MEDIATION</u>

The Parties engaged in extensive informal discovery. Defendants produced a sampling of timekeeping and payroll records for putative class members during the Class Period; their wage and hour policies; the number of class members, workweeks, PAGA pay periods, and other data points; the applicable collective bargaining agreement; and other relevant information. Korobkin Decl., ¶ 20. Plaintiffs' counsel hired an expert data analyst to analyze and extrapolate the data produced by Defendants. *Id*. This discovery allowed the Parties to assess the merits and value of Plaintiffs' claims and Defendants' defenses, as well as the chances for class certification. *Id*.

The Parties attended a full-day mediation with Mr. Cerveris on November 12, 2024, during which they vigorously debated Plaintiffs' claims and Defendants' defenses, and the chances of certification. Korobkin Decl., ¶ 21. The Parties did not reach resolution at mediation. *Id*. For more than two months the Parties continued their negotiations, which included Plaintiffs' providing a supplemental brief to Mr. Cerveris regarding some of the issues where the Parties strongly disagreed. *Id*. Eventually, Mr. Cerveris made a Mediator's Proposal, which was accepted by the Parties in February 2025. Over the following months, and the Parties negotiated the finer terms of the settlement, ultimately resulting in the Settlement. *Id*.

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, Defendants will pay a non-reversionary Gross Settlement Amount ("GSA") of $3,250,000.00. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount ("GSA"):	$3,250,000.00
• Minus Court-approved attorneys' fees (one-third):	$1,083,333.33
• Minus Court-approved costs (up to):	$50,000.00
• Minus Court-approved Service Awards:	$30,000.00
• Minus Amount Set Aside as PAGA penalties:	$250,000.00
• Minus settlement administration costs (up to):	$20,000.00
Net Settlement Amount ("NSA"):	**$1,816,666.67**
PLUS 25% of PAGA penalties ("PAGA Members' Payment"):	$62,500.00
Total Amount Paid to Settlement Class:	**$1,879,166.67**

1. The Settlement Provides for Reasonable Monetary Payments

As noted above, after deducting amounts for a court-approved service payments, administration costs, attorneys' fees and costs, and PAGA payment to the LWDA, Settlement Class members will receive at least $1,879,166.67. *See* Settlement, § 49. Defendants represent that there are approximately 1,131 Settlement Class members. *Id.*, § 43. Thus, the average payment to Settlement Class members is estimated to be **$1,661.51**. Korobkin Decl., ¶ 23.

The NSA will be distributed to Participating Class Members (those Settlement Class members who do not opt out) proportionally based on the number of workweeks worked as non-exempt employees in California during the Class Period. *See* Settlement, § 50(A). Additionally, all Settlement Class members (even those who opt out) who were employed by Defendants as non-exempt employees in California at any time from October 10, 2022 to the end of the Class Period (the "PAGA Period") are known as "PAGA Members" and will receive a portion of the $62,500 PAGA Members' Payment, based on their proportionate number of pay periods worked for Defendants as a non-exempt employee in California during the PAGA Period. *Id.*, § 50(B).

Payments from the NSA will be treated as one-third wages reported on a Form W-2, with the remaining two-thirds treated as interest and penalties and reported on a Form 1099. *See* Settlement, § 51(B). Payments from the PAGA Members' Payment will be treated as 100% penalties. *Id.* Defendants will separately pay the employer's share of payroll taxes on the amount designated as "wages," in addition to the GSA. *Id.*, §§ 11, 51(B).

2. Notice Period and Release of Claims

Settlement Class members will have 60 days from the Notice mailing to opt out of or object to the Settlement, or submit disputes, thereby providing ample time to review the Notice without unduly delaying the Settlement. *See* Settlement, §§ 28, 55(D)-(F).

Participating Class Members will be bound by the Settlement and shall release all wage and hour claims that were pled in the Action, or that could have been pled based on the facts alleged in the Action, during the Class Period ("Class Released Claims"). *See* Settlement, §§ 25, 44. In addition, all PAGA Members will release all claims against Defendants for PAGA penalties based on the facts alleged in the PAGA letters submitted by the Plaintiffs, that arose during the PAGA Period ("Released PAGA Claims"). *Id*., §§ 26, 45.

3. Funding of the Settlement

The Gross Settlement Amount will be funded no later than thirty (30) days following the "Effective Date" of the Settlement. *See* Settlement, § 49(A). If there are no objections to the Settlement, the Effective Date will be approximately 65 days after final approval. *Id.*, § 10.

4. Attorneys' Fees and Costs, Enhancement Award, and PAGA Payment

At final approval, Plaintiffs will apply for Class Representative Service Awards in the amount of $10,000 each. *See* Settlement, §§ 6, 49(B)(iii). "[I]ncentive awards are fairly typical in class action cases…and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be briefed at final approval, Plaintiffs' requested payments are in recognition of the time and effort they expended on behalf of the Settlement Class, including providing factual information and documents to counsel, discussing with counsel the claims and theories at issue in the litigation, reviewing the settlement agreement and other documents, and otherwise actively participating in the prosecution of this case. Korobkin Decl., ¶ 34. Plaintiffs respectfully submit that the requested payments are well within the range of permissible approval. *See, e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal. May 17, 2011) (approving $7,500 award to each of <u>five</u> named plaintiffs ($37,500 total) from $505,058.60 settlement);

Martinez v. Knight Transportation, *Inc.*, No. 1:16-cv-01730-SKO, 2023 WL 5917989 (E.D. Cal. Sept. 11, 2023) (awarding $10,000 incentive award from $400,000 claims-made settlement where average settlement payment was just $127.61).

The parties have also designated $250,000 of the GSA as PAGA penalties, of which $187,500 (75%) will be paid to the LWDA, with the remaining $62,500 (25%) distributed to Settlement Class members (*see* Settlement, § 49(B)(iv)), consistent with the PAGA's requirement that 75% of penalties be allocated to the LWDA with the remaining 25% of penalties allocated to aggrieved employees (Labor Code § 2699(i)).[2] Plaintiffs submit this allocation to the LWDA is reasonable. *See, e.g., Chu v. Wells Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011) (approving $10,000 PAGA payment from $6.9 million settlement); *Lagunas v. Young Adult Institute, Inc.,* No. 23-cv-00654-RS, 2024 WL 1025121 (N.D. Cal. Mar. 8, 2024) (preliminarily approving PAGA allocation of $20,000 from $850,000 settlement).

At final approval, Plaintiffs' counsel will request attorneys' fees of one-third of the GSA (currently estimated at $1,083,333.33), and up to $50,000 in litigation costs. *See* Settlement, § 49(B)(iv)-(v). The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. Plaintiffs' counsel have incurred substantial attorneys' fees, in, among other things, conducting pre-filing investigation and legal research; analyzing timekeeping, payroll, and other data with Plaintiffs' data expert to create a comprehensive damages model; preparing for and attending mediation; continuing negotiations post-mediation; negotiating and preparing the Settlement; preparing this Motion; and otherwise prosecuting this case. Korobkin Decl., ¶ 33; Declaration of Benjamin Haber ("Haber Decl."), ¶¶ 9-10, 28. Counsel will also incur future attorney fees in overseeing the Notice process, fielding phone calls from Settlement Class members, preparing the Final Approval Motion and supporting documents, and appearing at the Final Approval Hearing. *Id*.

It is appropriate to award attorney fees as a percentage of the "common fund" created by the settlement. *Laffitte v. Robert Half Int'l, Inc.,* 1 Cal.5th 480 (2016) (holding "the percentage of fund method survives in California class action cases"). Counsel's fee request is well within the

[2] Plaintiffs' original PAGA letters were submitted prior to the June 2024 PAGA amendments.

range of reasonableness and is typical for common fund settlements. *See*, *e.g.*, *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, n.11 (2008) ("regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery"). As will be briefed at final approval, the fee request is reasonable in light of the substantial risks and significant work undertaken, the results obtained, and the efficiency with which counsel litigated.

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions class action settlements on court approval, which is generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court's role is to ensure the settlement agreement taken as a whole is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is a presumption of fairness when a settlement is negotiated at arm's length by counsel. *See, e.g.*, *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval

To make a fairness determination, the Court should consider several factors, including: "the strength of Plaintiff's 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, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). "The list of factors is not exclusive and the Court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

a. <u>The Strength of Plaintiffs' Case</u>

While Plaintiffs are confident in the merits of their claims, Plaintiffs acknowledge there were substantial risks and uncertainty in proceeding with class certification and eventual trial on the merits. As described in section II.B., *supra*, Defendants presented multiple defenses to Plaintiffs' claims, both on the merits and to class certification, rendering success far from certain.

b. <u>Risk, Expense, Complexity, and Duration of Further Litigation</u>

Although the Parties engaged in significant informal discovery, they had not completed formal written and deposition discovery, which would have required expenditure of substantial time and resources. Korobkin Decl., ¶ 35. Plaintiffs also still had to file for class certification. *Id*. Even if Plaintiffs obtained certification, the Parties would incur considerable attorneys' fees and costs through a possible decertification motion, motions for summary judgment, trial, and potential appeals. *Id*. The Settlement avoids those risks and the accompanying expense. *Id.* Thus, this factor supports preliminary approval.

c. <u>Risk of Maintaining Class Action Status</u>

Plaintiffs had not yet filed their class certification motion, and as such, the extent to which Plaintiffs' proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk there would not be a certified class at trial, or if there were, that it would consist of a significantly smaller group of employees than the proposed Settlement Class, and the expected recovery would be significantly reduced. Thus, this factor supports preliminary approval.

d. <u>Amount Offered in Settlement Given Realistic Value of Claims</u>

The Settlement provides a fair and reasonable monetary recovery for the Settlement Class for disputed claims. As detailed in the Korobkin Declaration, and with the assistance of a data expert, Plaintiffs conducted an analysis of potential damages due to Defendants' allegedly unlawful policies and practices. After applying reasonable discounts for risks of not obtaining class certification and risks of losing on the merits, Plaintiffs estimated their claims had a realistic potential value of $3,896,541. Korobkin Decl., ¶¶ 25-32. The proposed settlement of $3,250,000 thus represents over 83% of Plaintiffs' reasonably forecasted classwide recovery. *Id* at ¶ 32. Preliminary approval is appropriate as the Settlement provides significant monetary relief.

e. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter. Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, counsel have extensive experience litigating wage and hour class actions, and have been appointed class counsel in numerous cases alleging similar claims. *See* Korobkin Decl., ¶¶ 2-8,; Haber Decl., ¶¶ 31-36. Counsel conducted an in-depth review of Defendants' policies, timekeeping and payroll records, and other relevant data, and drew on their extensive experience to assess Plaintiffs' claims. The Settlement was also reached after a mediation session with mediator Steve Cerveris, Esq., an experienced wage and hour class action mediator. Korobkin Decl., ¶ 21. This strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

2. The Preliminary Approval Standard Is Met

The Court can grant preliminary approval of a proposed settlement and direct that notice be given if the settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed negotiations; and (3) has no obvious deficiencies. *See Manual for Complex Litig.*, § 30.41 (3rd Ed. 1995); *Newberg on Class Actions*, §§ 11:24-25 (4th Ed. 2013).

a. The Settlement Is Within the Range of Possible Approval

As noted, the Settlement reflects over 83% of the realistic estimated recovery on Plaintiffs' claims, and will provide tangible, monetary compensation for hotly disputed wage claims. Accordingly, Plaintiffs submit the Settlement is within the range of possible approval.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement resulted from an exchange of substantial information, arm's-length negotiations, a mediation session with an experienced mediator, and months of additional negotiations. Plaintiffs carefully vetted the claims at issue and conducted a detailed analysis of the relevant data and information with the help of a retained expert. Korobkin Decl., ¶¶ 25-32. The Settlement is thus entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130.

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c. The Settlement Is Devoid of Obvious Deficiencies

The Settlement provides tangible monetary relief to the Settlement Class, and the amounts proposed for attorneys' fees, costs, Plaintiffs' incentive awards, and PAGA penalties are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS

The proposed Settlement Class satisfies the criteria for certification because: 1) the Settlement Class is ascertainable and numerous; 2) common questions of law and fact predominate; 3) Plaintiffs' claims are typical of the Settlement Class; and 4) Plaintiffs and their counsel will fairly and adequately represent the Settlement Class. Cal. Code Civ. Proc. § 382.

1. The Proposed Class Is Ascertainable and Numerous

A class is "ascertainable" where members "may be readily identified without unreason-able expense or time by reference to official [or business] records." *Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 919 (2010). The Settlement Class includes non-exempt employees who worked for Defendants in California during the Class Period, and thus can be readily identified from Defendants' records. Defendants represent there are approximately 1,131 Settlement Class members, rendering it impracticable to bring them all before the Court. Numerosity is satisfied.

2. Common Issues of Law and Fact Predominate

The focus on certification is not on the merits, but rather on what types of questions, "common or individual," are likely to arise in the action. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiffs' claims are predicated primarily on Defendants' allegedly unlawful failure to pay all wages due, allegedly unlawful meal and rest period policies/practices, and alleged failure to reimburse expenses. Such claims are commonly held proper for class certification. *See, e.g., Benton v. Telecom Network Specialists, Inc.* 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims); *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161 (9th Cir. 2014) (affirming certification of off-the-clock claim); *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014) (reversing denial of certification of reimbursement claim).

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3. The Named Plaintiffs' Claims Are Typical

The typicality requirement is satisfied where class representatives have claims that are typical of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.,* 191 Cal.App.3d 1341, 1347 (1987). Here, Plaintiffs' claims are typical of those held by Settlement Class members. Plaintiffs were employed by Defendants as non-exempt employees in California during the Class Period, and Plaintiffs contend they were injured by the same challenged policies that allegedly injured the Settlement Class as a whole. *See* Korobkin Decl., ¶¶ 14-18. Thus, typicality is satisfied.

4. Plaintiffs and Class Counsel Will Adequately Represent the Class

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.,* 155 Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the Settlement Class, as there are no known conflicts between Plaintiffs or their counsel and the Settlement Class. *See McGhee v. Bank of Am.,* 60 Cal.App.3d 442, 450 (1976) (finding adequacy satisfied where there was no indication that plaintiff's counsel was not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation, as noted above.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

The Court should order distribution of the proposed Notice by U.S. Mail, using last known mailing addresses provided by Defendants. This is the "best notice practicable" under the circumstances as it provides "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 173 (1974). Plaintiffs propose the Settlement be administered by Phoenix Settlement Administrators, an experienced administrator. *See* Jodey Lawrence Declaration and exhibits. Phoenix will run all addresses through the USPS National Change of Address database and will perform "skip traces" to obtain current addresses for Notices returned as undeliverable. *See* Settlement, § 55(B) & (G).

The proposed Notice satisfies Cal. Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims; the basic contentions and denials of the parties; the key terms of the Settlement; the 60-day deadline to opt out, object, or submit a dispute and how to do so; explains the recovery formula and expected recovery amount for each Settlement Class member; and explains the releases of claims included in the Settlement. *See* Korobkin Decl., Exh. A to Exh. 1. The proposed Notice also includes the final approval hearing date and time, and provides contact information for Class Counsel and the administrator in the event Settlement Class members have any questions about the Settlement. *Id.* This Notice satisfies Cal. Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching the Settlement Class.

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, the Court should set a hearing for final approval on a date appropriately scheduled to follow Settlement Class members' response deadline. *See* Cal. Rule of Court 3.769.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order submitted concurrently herewith.

Dated: July 10, 2025

Respectfully submitted,
MARQUEE LAW GROUP, APC

By: ______________________
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