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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

KENTON SAMUELS on behalf of
himself, all others similarly situated, and
on behalf of the general public,

Plaintiffs,

v.

WIS INTERNATIONAL, INC.; CHI
MANAGEMENT GROUP LP;
CROSSMARK, INC.; and DOES 1-100,
Defendants.

Case No. 23CV012186
(Consolidated with Case No. 24CV00311)

*[Assigned for all purposes to the
Honorable Jill Talley; Dept. 23]*

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF KENTON SAMUELS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL APPROVAL
HEARING DATE**

Date: April 3, 2026
Time: 9:00 a.m.

Date Filed: November 22, 2023
Trial Date: None Set

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I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND AND PROCEDURAL HISTORY	1
a.	Discovery and Investigation	2
b.	The Parties Attended Mediation	3
III.	THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR PRELIMINARY APPROVAL	3
a.	Class Action Settlements are Subject to Court Review and Approval Under the California Rules of Court.....	3
b.	The Settlement is Fair, Reasonable, and Adequate	3
i.	The Settlement was Reached as a Result of Arm’s Length Negotiations	4
ii.	The Settlement is the Result of Thorough Investigation and Discovery	4
iii.	Counsel for All Parties are Experienced in Similar Litigation	4
iv.	The Proposed Settlement is a Reasonable Compromise of Claims.....	5
IV.	THE PROPOSED SETTLEMENT MEETS THE COURT’S CHECKLIST FOR APPROVAL OF CLASS ACTION AND PAGA SETTLEMENTS.....	6
a.	Non-Reversionary Settlement Amount and Deductions from the Settlement.....	6
b.	Individual Settlement Payments and Tax Allocations.....	6
i.	Individual Class Settlement Payments	6
ii.	Individual PAGA Settlement Payments	7
c.	The Settlement Class	7
d.	The Class Should be Certified for Settlement Purposes.....	7
e.	Summary of the Claims Asserted and the Parties Divergent Positions.....	9
i.	Defendants’ Arbitration Agreements.....	9
ii.	Unpaid Wages.....	9
iii.	Meal Periods	11
iv.	Rest Breaks	12

1	v. Wage Statements	14
2	vi. Business Reimbursements	15
3	vii. Waiting Time Penalties	16
4	viii. PAGA	16
5	f. Released Claims	17
6	g. Potential Exposure on Plaintiff's Claims.....	18
7	i. Arbitration Agreements	18
8	ii. Unpaid Wages.....	18
9	iii. Meal Periods	19
10	iv. Rest Periods	20
11	v. Wage Statements	21
12	vi. Business Reimbursements	22
13	vii. Waiting Time Penalties	23
14	viii. PAGA	24
15	ix. The Settlement Amount of \$6,375,000 is Reasonable	25
16	h. Uncashed Checks.....	25
17	i. Class Notice Process.....	26
18	i. Class Notice Administration.....	26
19	1. Settlement Administrator.....	26
20	2. Qualifications and Experience of Administrator	26
21	3. Anticipated Costs of Settlement Administration	26
22	The anticipated costs of settlement administration are \$59,995.....	26
23	4. Class List	26
24	5. Class Notice Mailing	26
25	6. Disbursement of Settlement Funds.....	27
26	7. Notice of Final Judgment	27
27	ii. Class Notice.....	28
28		

1	1. Proposed Class Notice and Procedures for Notice	28
2	2. Time Limits and Procedures.....	29
3	a. Response Deadline	29
4	b. Objections.....	29
5	c. Requests for Exclusion	29
6	d. Workweek Disputes.....	30
7	e. Responses Received	30
8	j. Attorneys’ Fees and Costs Requested are Fair and Reasonable.....	30
9	i. Requested Fee Is Within The Range Of Fees Approved In Comparable Cases.....	32
10	k. Requested Enhancement Payment is Fair and Reasonable	32
11	l. Pending Litigation	34
12	V. CONCLUSION	35
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

Cases

<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157	14, 16
<i>Augustus v. ABM Security Services, Inc.</i> (2016) 2 Cal.5th 257	12, 13
<i>Avila v. Cold Spring Granite Co.</i> (E.D. Cal. Jan. 12, 2018) 2018 U.S. Dist. LEXIS 6142	17, 24
<i>Bell v. Farmers Ins. Exch.</i> (2004) 115 Cal. App. 4th 715	34
<i>Bono Enterprises, Inc. v. Bradshaw</i> (1995) 32 Cal. App. 4th 968	10
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F. Supp. 610.....	4
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004.....	5, 11, 12, 13
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal. App. 4th 43.....	32
<i>City and County of San Francisco v. Sweet</i> (1995) 12 Cal.4th 105	31
<i>Classen v. Weller</i> (1983) 145 Cal.App.3d 27	9
<i>Dennis v. Kellogg Co.</i> (S.D. Cal. Nov. 14, 2013) 2013 WL 6055326	32
<i>Donohue v. AMN Services, LLC</i> (2021) 11 Cal.5th 58.....	11, 20
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794.....	3, 4, 5, 8
<i>Duran v. U.S. Bank National Assn.</i> (2014) 59 Cal.4th 1	17
<i>Early v. Superior Court</i> (2000) 79 Cal.App.4th 1420	33
<i>Gay v. Waiters' & Dairy Lunchmen's Union</i> (N.D. Cal. 1980) 489 F. Supp. 282, <i>aff'd</i> (9th Cir.	
1982) 694 F.2d 531.....	8
<i>Glob. Minerals & Metals Corp. v. Superior Court</i> (2013) 113 Cal.App.4th 836	8
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126	3
<i>Hernandez v. BCI Coca-Cola Bottling Co.</i> (9th Cir. 2014) 554 Fed. Appx. 661.....	14
<i>In re Beef Industry Antitrust Litigation</i> (5th Cir. 1979) 607 F. 2d 167	3
<i>In re Cellphone Fee Termination Cases</i> (2010) 186 Cal. App. 4th 1380.....	34
<i>In re Rite Aid Corp. Securities Litigation</i> (3d Cir. 2005) 396 F.3d 294.....	31
<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n</i> (1981) 452 U.S. 905	3
<i>Koehl v. Verio, Inc.</i> (2006) 142 Cal.App.4th 1313.....	33
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	5

1	<i>Laffitte v. Robert Half Int'l, Inc.</i> (2016) 1 Cal.5th 480.....	31, 32
2	<i>Maldonado v. Epsilon Plastics, Inc.</i> (2018) 22 Cal.App.5th 1308.....	23
3	<i>McGhee v. Bank of America</i> (1976) 70 Cal.App.3d 442.....	9
4	<i>Morgan v. United Retail Inc.</i> (2010) 186 Cal.App.4th 1136.....	14
5	<i>Morillion v. Royal Packing Co.</i> (2000) 22 Cal. 4th 575.....	10
6	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	5
7	<i>Naranjo v. Spectrum Security Services, Inc.</i> (2024) 15 Cal.5th 1056	15
8	<i>Officers for Justice v. Civil Serv. Comm'n</i> (9th Cir. 1982) 688 F.2d 615	25
9	<i>Quinn v. State of California</i> (1995) 15 Cal.3d 162	31
10	<i>Rawlings v. Prudential-Bache Properties, Inc.</i> (6th Cir. 1993) 9 F.3d 513	31
11	<i>Rebney v. Wells Fargo Bank</i> (1990) 220 Cal.App.3d 1117	25
12	<i>Rose v City of Hayward</i> (1981) 126 Cal.App.3d 926.....	8
13	<i>Serrano v. Priest</i> (1982) 32 Cal.3d 621	32
14	<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25.....	30
15	<i>Sevidal v. Target Corp.</i> (2010) 189 Cal.App.4th 905.....	8
16	<i>Smith v. CRST Van Expedited, Inc.</i> (S.D. Cal. Jan. 14, 2013) 2013 WL 163293.....	32
17	<i>Tech-Bilt v. Woodward-Clyde & Associates</i> (1985) 38 Cal.3d 488	5
18	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800.....	3
19	<i>Wershba v. Apple Computers, Inc.</i> (2001) 91 Cal.App.4th 2	25
20	<i>Whiteway v. Fedex Kinkos Office & Print Services, Inc.</i> (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS	
21	95398	33

I. INTRODUCTION

Plaintiff Kenton Samuels (“Plaintiff”), on behalf of himself and the approximately 12,949 member putative class, respectfully requests that this Court preliminarily approve the Joint Stipulation to Settlement Class and PAGA Claims (“Settlement Agreement”)¹ entered into between Plaintiff and Defendants Retail Services WIS Corp. dba WIS International; Crossmark, Inc., and CHI Management Group, LP (collectively “Defendants”) (Plaintiff and Defendants are collectively referred to as the “Parties”). The Parties’ Settlement Agreement seeks to resolve claims raised against Defendants in this matter in exchange for a non-reversionary \$6,375,000 Maximum Settlement Amount (“MSA”). The proposed class is comprised of all current and former non-exempt employees of Defendants who worked in California during the Class Period (“Class Members”).² The Class Period is November 22, 2019, through June 7, 2025.³

It is requested that the Court grant preliminary approval, as, when analyzing the strengths and vulnerabilities of the class claims along-side Defendants’ potential liability exposure, this proposed settlement of \$6,375,000 is within the range of reasonableness. The proposed Settlement Agreement satisfies all of the criteria for preliminary approval under Rule 3.769 of the California Rules of Court. Accordingly, Plaintiff seeks: (1) preliminary approval of the terms of the Settlement Agreement; (2) provisional certification of the Class; (3) appointment of Plaintiff as Class Representative; (4) appointment of Mara Law Firm, PC, as Class Counsel; (5) approval of the Parties’ proposed Notice of Class Action Settlement⁴ (referred to herein as the “Class Notice” or “Notice”) and method of notifying the Class about the settlement; and (6) set a hearing date for final approval of August 28, 2026, or other available date for the Court.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Defendants provide their customers with retail and manufacturing services, such as inventory and merchandising, in the State of California. Plaintiff and the Class Members were employed by Retail Services WIS Corp. (a company operated under the umbrella of WIS

¹ The Settlement Agreement is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as Exhibit 1. “Exhibit 1” herein refers to the Settlement Agreement.

² Exhibit 1 at Section I, ¶ D, Page 4.

³ Exhibit 1 at Section III, ¶ P(3), Page 24.

⁴ The Class Notice is attached to the Settlement Agreement as Exhibit A.

1 International, Inc.) until approximately September 2022. Around that time, Crossmark, Inc. was
2 acquired by WIS International, Inc. and became Plaintiff's and the Class Members' employer.
3 Defendants employed hourly non-exempt employees to provide services to their customers
4 throughout the Class Period.

5 On November 22, 2023, Plaintiff filed a class action complaint against WIS International,
6 Inc.⁵ (Case No. 23CV012186). On January 10, 2024, Plaintiff filed a First Amended Complaint
7 that added CHI Management Group LP and Crossmark, Inc. as named Defendants. On July 11,
8 2024, Plaintiff filed an Amendment to his First Amended Complaint naming Retail Services WIS
9 Corp. as Doe 1. (Mara Dec. at ¶ 11).

10 Plaintiff submitted a letter to the Labor and Workforce Development Agency ("LWDA")
11 in accordance with the Private Attorneys General Act of 2004 ("PAGA") on October 31, 2023. On
12 January 9, 2024, Plaintiff submitted a second letter to the LWDA. On January 10, 2024, Plaintiff
13 filed a PAGA complaint in this Court (Case No. 24CV00311). On July 11, 2024, Plaintiff
14 submitted an amended letter to the LWDA. As part of the settlement, Plaintiff is submitting a
15 second amended letter to the LWDA. (Mara Dec. at ¶ 12).

16 The class and PAGA actions were consolidated by the Court on July 19, 2024. As part of
17 the settlement, Plaintiff is filing a Second Amended Complaint. (Mara Dec. at ¶ 13).

18 **a. Discovery and Investigation**

19 The Parties conducted significant investigation and discovery of the facts and law. Through
20 informal discovery, Defendants produced relevant policy documents that covered employees'
21 employment with Defendants, such as employee handbooks and manuals. Included within these
22 documents were Defendants' wage and hour policies, including its meal and rest period policies.
23 Defendants also produced a sampling of time and wage records for Class Members, which Plaintiff
24 had an expert analyze. Plaintiff also requested, and Defendant produced, the number of current
25 and former employees, as well as the number of workweeks worked by Class Members during the
26 relevant time period, to establish a potential exposure model in preparation for mediation. In
27 addition, Counsel for Plaintiff conducted numerous interviews with Class Members on

28 ⁵ WIS International, Inc. was dismissed from the case on July 12, 2024.

1 Defendant's policies and procedures. From this discovery and investigation, Plaintiff and his
2 Counsel were able to analyze Defendants' liability and prepare a realistic damage model. (Mara
3 Dec. at ¶ 14).

4 **b. The Parties Attended Mediation**

5 The Parties attended an all-day mediation presided over by wage and hour mediator
6 Brandon McKelvey on April 1, 2025. The mediation ended with Mr. McKelvey issuing a
7 mediator's proposal that was ultimately accepted by all Parties. The Parties then met and conferred
8 over all the terms of the settlement and finalized their settlement in the Parties' Settlement
9 Agreement. The Parties seek preliminary approval of the Settlement Agreement in the instant
10 motion. (Mara Dec. at ¶ 15).

11 **III. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR
12 PRELIMINARY APPROVAL**

13 **a. Class Action Settlements are Subject to Court Review and Approval Under
14 the California Rules of Court**

15 Rule 3.769 requires court approval for class action settlements.⁶ "Before final approval, the
16 court must conduct an inquiry into the fairness of the proposed settlement." (California Rules of
17 Court, Rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary approval of
18 class settlements. Courts act within their discretion in approving settlements that are fair, not
19 collusive, and take into account "all the normal perils of litigation as well as the additional
20 uncertainties inherent in complex class actions." *In re Beef Industry Antitrust Litigation* (5th Cir.
21 1979) 607 F. 2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price*
22 *Investigators Ass'n* (1981) 452 U.S. 905.

23 **b. The Settlement is Fair, Reasonable, and Adequate**

24 In deciding whether to approve a proposed class action settlement under Code of Civil
25 Procedure § 382, the Court must find that a proposed settlement is "fair, adequate and reasonable."
26 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is
27 **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-

28 ⁶ The California Supreme Court also has authorized California's trial courts to use Federal Rule 23 and cases applying
it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo*
(1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, the Parties cite Federal Rule 23 and federal case law in
addition to California law.

length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As set forth herein, all of these elements – with the exception of the percentage of objectors, which cannot be anticipated at this stage of the litigation – bearing on the fairness of the proposed settlement are present here and the Court’s grant of preliminary approval is therefore requested.

i. The Settlement was Reached as a Result of Arm’s Length Negotiations

The settlement was reached as a result of arm’s-length negotiations. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. At the mediation and the following negotiations through the mediator, Counsel for the Parties conducted extensive arm’s length settlement negotiations until the settlement was reached. The terms of the settlement are memorialized in the Settlement Agreement which is attached to the Declaration of David Mara, Esq. as Exhibit 1.

ii. The Settlement is the Result of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to support the settlement. The settlement was only possible following discovery and evaluation of Defendants’ policies and procedures, as well as the data produced for the putative class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. This litigation has reached the stage where “the Parties certainly have a clear view of the strengths and weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

iii. Counsel for All Parties are Experienced in Similar Litigation

Both Plaintiff’s Counsel and Defendants’ Counsel are experienced in wage and hour employment law and class actions. Plaintiff’s Counsel has prosecuted numerous wage and hour class action cases on behalf of employees for California Labor Code violations and thus are experienced and qualified to evaluate the class claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. (Mara Dec. at ¶¶ 2-10). Indeed,

David Mara was class co-counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et al.*, which is the subject case in the landmark decision of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. (Mara Dec. at ¶ 4). This experience instructed Plaintiff’s Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed settlement. Defendants’ Counsel have experience representing companies and regularly deal with wage and hour litigation matters. Accordingly, all Parties’ Counsel are experienced in wage and hour employment law and class actions.⁷

iv. The Proposed Settlement is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor into whether the settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is “the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” *Id.*

In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys.” *Kullar, supra*, 168 Cal.App.4th at 133. Finally, *Kullar* does not require an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims, provided there is a record which allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 409. Put differently, “as the court does when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500. As set forth below, the Parties’ investigation and discovery revealed plenty of reasons to discount claims and agree to this settlement.

⁷ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class Notice has been provided to the class and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the final approval motion.

1 **IV. THE PROPOSED SETTLEMENT MEETS THE COURT’S CHECKLIST FOR**
2 **APPROVAL OF CLASS ACTION AND PAGA SETTLEMENTS**

3 As outlined herein, the proposed settlement meets each of the criteria outlined in the
4 Court’s Checklist for Approval of Class Action and PAGA Settlements.

5 **a. Non-Reversionary Settlement Amount and Deductions from the Settlement**

6 The Parties have agreed, subject to and contingent upon the Court’s approval, that this
7 action be settled and compromised for the non-reversionary total sum of \$6,375,000, which
8 includes: (a) attorneys’ fees not to exceed 33.33% of the MSA (\$2,122,875) to compensate Class
9 Counsel for work already performed and all work remaining to be performed in documenting the
10 settlement, administrating the settlement, and securing Court approval; (b) litigation expenses not
11 to exceed \$30,000;⁸ (c) a service award to the named class representative, Kenton Samuels, in a
12 sum not to exceed \$15,000 in consideration for agreeing to a general release of his claims against
13 Defendants which is broader than that of other class members, and in recognition of his efforts in
14 prosecuting this action; (d) claims administration fees and expenses to APEX estimated not to
15 exceed \$75,000;⁹ and (e) PAGA payment of \$400,000 allocated to Plaintiff’s PAGA claims. As
16 such, the Net Settlement Fund is estimated to be approximately \$3,732,125.

17 **b. Individual Settlement Payments and Tax Allocations**

18 **i. Individual Class Settlement Payments**

19 Each Participating Class Member shall be entitled to an Individual Class Settlement Share
20 based on the number of workweeks they worked for Defendants during the Class Period. (Exhibit
21 1 at Section III, ¶ F(2), Page 10). Participating Class Members’ individual settlement shares will
22 be apportioned as 15% wages and 85% penalties and interest. (Exhibit 1 at Paragraph 61).
23 Defendant will be paying the employer-side payroll taxes on the wages portion separately from
24 the MSA. (See Exhibit 1 at Section III, ¶ F(2), Pages 10-11).

25 Under the settlement, Class Members are anticipated to receive approximately \$8.27 per

26 ⁸ These will be tabulated and presented to the Court at final approval. Plaintiff will only seek the amount of actual
27 expenses incurred during the litigation of this case. Should the actual expenses exceed \$30,000, Plaintiff will only
28 seek reimbursement of costs up to \$30,000. Prior to filing this motion, Class Counsel had incurred \$22,797.80 in
29 litigation expenses, and estimates incurring approximately \$190.00 in future costs. See “Costs Summary” attached to
30 the Mara Dec. as Exhibit 2.

31 ⁹ APEX will present to the Court a declaration in conjunction with the final approval motion outlining the costs of the
32 settlement administration process.

workweek. If a Class Member worked 52 workweeks (or one full year), they are anticipated to receive approximately \$430.04 (52 weeks x \$8.27 = \$430.04). If a Class Member worked every work during the Class Period, they will receive approximately \$2,390.03 (289 weeks x \$8.27 = \$2,390.03).

ii. Individual PAGA Settlement Payments

The Settlement Agreement allocates \$400,000 in consideration for the settlement of Plaintiff's PAGA claims, which is to be distributed separately from the Net Settlement Fund to PAGA Employees. PAGA Employees are all current and former non-exempt employees of Defendants who worked in California during the PAGA Period. (Exhibit 1 at Section I, Paragraph T, Page 5). The PAGA Period is November 6, 2022, through June 7, 2025, unless modified by the workweek escalator clause. (Exhibit 1 at Section I, ¶ U, Page 5).

Seventy-five percent (75%) of this amount, or \$300,000, will be paid to the LWDA, while the remaining 25%, or \$100,000, will be distributed to the PAGA Employees. Each PAGA Employees will receive an Individual PAGA Settlement Share based upon the number of pay periods with worked for Defendants during the PAGA Period. (Exhibit 1 at Section III, Paragraph F(3), Page 11). The Individual PAGA Settlement Shares will be apportioned as one hundred percent (100%) penalties. (Exhibit 1 at Section III, ¶ F(3), Page 11).

c. The Settlement Class

Class Members are defined as "[a]ll current and former non-exempt California employees of Defendants who worked in California during the Class Period." (Exhibit 1 at Section I, ¶ D, Page 4). The Class Period is November 22, 2019, through June 7, 2025. (Exhibit 1 at Section I, ¶ E, Page 4). There are approximately 12,949 Class Members. Individual Settlement Shares will be based on the number of workweeks worked by each Class Member. The Settlement encompasses approximately 451,470 workweeks. (See Exhibit 1 at Section III, ¶ P(3), Page 24).

d. The Class Should be Certified for Settlement Purposes

The class certification requirements are met here. Under California law, a class action is appropriate when the class is ascertainable and there is "a well defined community of interest in the questions of law and fact involved affecting the parties to be represented." Cal. Civ. P. Code §

1 382. State law requirements under California Code of Civil Procedure section 382 for class
2 certification follow federal law according to Rule 23 of the Federal Rule of Civil Procedure:
3 numerosity, typicality of the class representatives' claims, adequacy of representation,
4 predominance of common issues, and superiority. Fed. R. Civ. P. 23(a); *see also Hanlon v.*
5 *Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted that while a court must
6 certify a class for settlement purposes if a class has not already been certified, "it is well established
7 that trial courts should use different standards to determine the propriety of a settlement class, as
8 opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for
9 settlement cases." *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836,
10 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19. Plaintiff contends,
11 and Defendants do not dispute for settlement purposes only, each of these elements is present. *See*
12 *Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38.

13 Plaintiff contends that the Class is ascertainable because all of the Class Members have
14 worked for Defendants and have been identified through Defendants' own records, such as
15 employee and payroll files. *See Rose v City of Hayward* (1981) 126 Cal.App.3d 926, 932 (finding
16 that "Class Members are 'ascertainable' where they may be readily identified without
17 unreasonable expense or time by reference to official records."); *Sevidal v. Target Corp.* (2010)
18 189 Cal.App.4th 905, 919 ("[c]lass members are 'ascertainable' where they may be readily
19 identified without unreasonable expense or time by reference to official [or business] records.").
20 Plaintiff contends that the class is sufficiently numerous as it is comprised of 12,949 Class
21 Members. The numerosity requirement is met if the class is so large that joinder of all members
22 would be impracticable. *Gay v. Waiters' & Dairy Lunchmen's Union* (N.D. Cal. 1980) 489 F.
23 Supp. 282, *aff'd* (9th Cir. 1982) 694 F.2d 531. Plaintiff contends that the commonality requirement
24 is met because there are questions of law and fact common to the Class. *Hanlon, supra*, 150 F.3d
25 at 1019 ("The existence of shared legal issues with divergent factual predicates is sufficient, as it
26 a common core of salient facts coupled with disparate legal remedies within the class."). Plaintiff
27 contends that the typicality requirement is met as the claims of the named representative are
28 reasonably coextensive with those of those of the Class. *Hanlon, supra*, 150 F.3d at 1020; *Classen*

1 v. *Weller* (1983) 145 Cal.App.3d 27, 46-47. Plaintiff's and the Class's claims involve similar
2 factual and legal bases. Plaintiff contends that the adequacy requirement is met as Plaintiff has no
3 interests adverse to the interests of the proposed Class Members and is committed to vigorously
4 prosecuting the case on behalf of the class. *Hanlon, supra*, 150 F.3d at 1020; *McGhee v. Bank of*
5 *America* (1976) 70 Cal.App.3d 442, 450-51. As such, Plaintiff believes that certification of the
6 Class for settlement purposes is appropriate here.

7 **e. Summary of the Claims Asserted and the Parties Adversarial Positions**

8 **i. Defendants' Arbitration Agreements**

9 Defendants argue at the outset that they have enforceable arbitration agreements that cover
10 a vast majority of Class Members' employment. (Mara Dec. at ¶ 16).

11 Plaintiff asserts that Defendants' arbitration agreements are unenforceable. Specifically,
12 Plaintiff contends that Defendants' arbitration agreements are procedurally and substantively
13 unconscionable adhesion contracts that lack mutuality. (Mara Dec. at ¶ 17).

14 Defendants disagree and contend that the Court would uphold their agreements.
15 Defendants further assert that, to the extent the Court were to find any of the provisions in the
16 agreements to be unenforceable, the Court could sever those terms from the arbitration agreements
17 and enforce the remainder of the agreements. If Defendants were to prevail on the issue of
18 arbitration, the class mechanism would be unavailable to a vast number of Class Members who
19 would only be able to obtain relief by invoking their individual rights under the respective
20 arbitration agreements. (Mara Dec. at ¶ 18).

21 **ii. Unpaid Wages**

22 Plaintiff contends that Defendants do not pay employees for all time worked. Employees
23 must be paid for all "hours worked," as that phrase is defined in the Wage Order and interpreted
24 by California courts. Hours worked is defined in the Wage Order as "the time during which an
25 employee is subject to the control of an employer and includes all the time the employee is suffered
26 or permitted to work, whether or not required to do so." Wage Order 5-2001, Subd. 2(K); *see also*
27 *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833. Under the control standard, "it is
28 only necessary that the worker be subject to the control of the employer in order to be entitled to

1 compensation.” *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 584. The *Morillion* Court
2 reasoned that an employee is under the employer’s control and entitled to compensation when the
3 employer “directs, commands or restrains’ an employee.” *Morillion*, 22 Cal. 4th at 583 (*quoting*
4 *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal. App. 4th 968, 975). Here, Plaintiff contends
5 that Defendants do not compensate employees for all time they are performing work duties and
6 are under Defendants’ control. This time includes time commuting to and from work in their
7 personal vehicles, time employees are engaged in work related tasks prior to clock in and after
8 clocking out, and time employees have to assist customers and/or clients while off the clock. (Mara
9 Dec. at ¶ 19).

10 Plaintiff contends that under *Morillion*, employees must be paid for all time they are
11 performing work duties and are subject to Defendants’ control. As to the commute time, Plaintiff
12 argues that the case *Oliver v. Konica Minolta Business Solutions U.S.A.* (“*Oliver*”) (2020) 51
13 Cal.App.5th 1, supports his position. In *Oliver*, employees were required to drive their personal
14 vehicles for work and the employer did not have an express policy restricting service technicians
15 from using their vehicles for personal use during their commutes. There, the Court of Appeal
16 outlined three factors that must be shown in order for commute time to be compensable: (1) were
17 employees required to drive their own vehicles; (2) were employees required to bring tools with
18 them on the commute; and (3) if employees had to bring tools with them on their commute, was
19 there so many tools that the employee was effectively prevented from using the commute time for
20 his or her own purposes. (Mara Dec. at ¶ 20).

21 Defendants argue that they pay employees for all time worked. When Class Members are
22 clocked out, it “creates a presumption they are doing no work”¹⁰ – a presumption Defendants claim
23 Plaintiff’s cannot overcome from Defendants’ policies and practices. Defendants assert that they
24 inform employees that they are not allowed to perform any work while off the clock and that all
25 work must be done while clocked in. Defendants contend that supervisors tell employees they
26 cannot perform any work if they are not clocked in. Accordingly, Defendants conclude Plaintiff’s
27 should take nothing on this claim because they would not be able to overcome the clocked-out

28 ¹⁰ *Brinker, supra*, 53 Cal.4th at 1051.

1 presumption of no work and establish that Defendants knew or should have known that the work
2 was taking place. (Mara Dec. at ¶ 21).

3 As to the commute time, Defendants point to the general rule that commute time is not
4 compensable. They also conclude that, under the standards of *Konica*, the time is not compensable,
5 because employees do not have to transport a large amount of materials and supplies and they are
6 free to use their commute time as they please to stop and get coffee, breakfast, or drive children to
7 and from school. (Mara Dec. at ¶ 22).

8 **iii. Meal Periods**

9 Plaintiff contends that Defendants do not provide employees with meal periods that
10 conform with California law. Employers have an obligation under California law to provide
11 employees with thirty (30) minute meal periods. Under California Labor Code § 512(a), “[a]n
12 employer may not employ an employee for a work period of more than five hours per day without
13 providing the employee with a meal period of not less than 30 minutes” Cal. Lab. Code §
14 512(a). An employer “satisfies this obligation [to provide meal periods] if it relieves its employees
15 of all duty, relinquishes control over their activities and permits them a reasonable opportunity to
16 take an uninterrupted 30-minute break, and does not impede or discourage them from doing so.”
17 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. Here, Plaintiff contends
18 that Defendants’ time records show non-compliant meal periods. (Mara Dec. at ¶ 23).

19 In *Donohue v. AMN Services, LLC*, the California Supreme Court issued a decision,
20 wherein it ruled that time records showing late, short, or missed meal periods raises a rebuttable
21 presumption that the meal periods were not provided: “If time records show missed, short, or
22 delayed meal periods with no indication of proper compensation, then a rebuttable presumption
23 arises” that the meal periods were not provided in accordance with California law. *Donohue v.*
24 *AMN Services, LLC* (2021) 11 Cal.5th 58, 74. Plaintiff contends that, here, the time records show
25 non-compliant meal periods. In these shifts, under *Donohue*, Plaintiff contends that it is presumed
26 that meal period violations occurred. (Mara Dec. at ¶ 24).

27 Defendants assert that their meal period policies are lawful and that they provide employees
28 with meal periods in compliance with California law. Defendants rely on their policies that track

1 the requirements of the Labor Code to establish they have met their burden of providing employees
2 with meal periods that California law requires of them. Defendants further rely on *Brinker* to show
3 that, after providing the right to take meal periods through its policies, it is under no obligation to
4 “police” employees who have otherwise been relieved of duty. *Brinker, supra*, 53 Cal.4th at 1040-
5 1041 (“...[T]he employer is not obligated to police meal breaks and ensure no work thereafter is
6 performed. Bonafide relief from duty and the relinquishing of control satisfies the employer’s
7 obligations, and work by a relieved employee during a meal break does not thereby place the
8 employer in violation of its obligations and create liability for premium pay...”). As its policies
9 lawfully “provide” meal periods within the meaning of *Brinker*, Defendant concludes that any
10 irregularities in the records will be rebutted through Defendants’ policies and reflect employee
11 choice or lawful waiver, which do not constitute violations. (Mara Dec. at ¶ 25).

12 **iv. Rest Breaks**

13 Plaintiff alleges that employees are not provided with lawful rest periods. Employers have
14 an obligation to provide employees with ten (10) minute rest periods. An employer’s obligation to
15 provide its employees with rest periods arises under the Industrial Welfare Commission Wage
16 Orders. Wage Order 4-2001, Section 12(A) states, “[e]very employer shall authorize and permit
17 all employees to take rest periods, which insofar as practicable shall be in the middle of each work
18 period. The authorized rest period time shall be based on the total hours worked daily at the rate
19 of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Here, Plaintiff alleges
20 that Defendant requires employees to remain on the premises during rest periods. (Mara Dec. at ¶
21 26).

22 In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme
23 Court ruled that the standards applicable to providing meal periods the Court articulated a few
24 years earlier in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, were equally
25 applicable to the rest period context. Citing *Brinker*, the *Augustus* Court ruled that, like meal
26 periods, “[d]uring required rest periods, employers must relieve their employees of all duties and
27 relinquish any control over how employees spend their break time.” *Augustus*, 2 Cal.5th at 260.
28 At a minimum, to relinquish employer control over how employees spend their break time, the

1 employee must be “free to leave the premises.” *Brinker*, 53 Cal.4th at 1036. As the *Augustus*
2 Court reasoned, the employee must be free to travel five minutes away from the work site so that
3 they can get back within the allotted ten-minute time frame of the break. *Augustus*, 2 Cal.5th at
4 270. Plaintiff contends that, here, Defendants do not permit employees to leave the premises
5 during rest periods. (Mara Dec. at ¶ 27).

6 Defendants contend that they do not require employees to remain on the premises during
7 rest periods. Defendants argue that to resolve this claim, the factfinder would have to ask whether
8 employees thought they could leave the premises during rest breaks. In addition, Defendants
9 contends that employees did, in fact, leave the premises during rest periods. Defendants assert that
10 should litigation continue, they would present declarations from employees stating that they were
11 free to leave the premises, and did leave the premises, during rest periods. (Mara Dec. at ¶ 28).

12 Defendants also counter that even if they did tell employees they are to remain on the
13 premises, a point that Defendants do not concede, the practical limitations the ten (10) minutes
14 allotted for rest periods imposes on an employee’s movement are what prevent employees from
15 leaving the premises. In other words, the time limitation of only having ten (10) minutes for rest
16 periods prevents off-premises movement during rest periods, not expressly or impliedly telling
17 employees that rest periods are to be taken on the premises. Based on the practical limitations
18 associated with ten (10) minute rest periods, and not Defendants’ policies, Defendants contend
19 that their policies are aligned with, and not antagonistic to *Augustus*. Defendants find support for
20 this in the following language from *Augustus*:

21 Because rest periods are 10-minutes in length (Wage Order 4, subd. 12(A)), they
22 impose practical limitations on an employee’s movement. That is, during a rest
23 period an employee generally can travel at most five minutes from a particular work
24 post before returning to make it back on time. Thus, one would expect that
employees will ordinarily have to remain on site or nearby.

25 *Augustus*, *supra*, 2 Cal.5th at 270. (Mara Dec. at ¶ 29).

26 Defendants further assert that employees are relieved of all work and employer control
27 during rest periods. And, to the extent there is any limitation placed on rest periods, it is something
28 that arises simply out of the fact that ten (10) minutes is a short amount of time. Therefore,

1 Defendants assert that the limitations placed on employees, if any, are merely inherent to rest
2 periods and not an exertion of employer control. (Mara Dec. at ¶ 30).

3 **v. Wage Statements**

4 Plaintiff alleges that employees are not provided with accurate itemized wage statements.
5 Section 226(a) provides that employers must furnish an accurate itemized statement in writing
6 showing: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece
7 rate units earned and applicable piece rate if the employee is paid on a piece rate basis; (4) all
8 deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is
9 paid; (7) the name of the employee and only the last four digits of his or her social security number
10 or employee identification number other than a social security number; (8) the name and address
11 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
12 period and corresponding number of hours worked at each hourly rate by the employee. Plaintiff
13 alleges that Defendants fail to provide employees with accurate itemized wage statements because
14 Defendants' wage statements do not meet California Labor Code § 226(a)'s requirements because
15 they fail to accurately provide the employee with their total hours worked and the applicable hourly
16 rates in effect during the pay period and corresponding number of hours worked at each rate. (Mara
17 Dec. at ¶ 31).

18 Defendants dispute this claim. Defendants argue that employees can ascertain the required
19 information, such as the total hours worked and the applicable hourly rates in effect, using simple
20 math. Defendants rely on cases which hold that "[w]age statements comply with § 226(a) when a
21 plaintiff employee can ascertain the required information by performing simple math, using figures
22 on the face of the wage statement." *Hernandez v. BCI Coca-Cola Bottling Co.* (9th Cir. 2014) 554
23 Fed. Appx. 661, 662 (citing *Morgan v. United Retail Inc.* (2010) 186 Cal.App.4th 1136). (Mara
24 Dec. at ¶ 32).

25 Further, Defendants also assert that any violation of California Labor Code § 226 was not
26 "knowing and intentional." *See* Cal. Lab. Code § 226(e) ("An employee suffering injury as a result
27 of a knowing and intentional failure by an employer" may recover damages"); *Amaral v. Cintas*
28 *Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1195 ("Some statutory penalties are imposed only if an

1 employers' violation was 'willful' or 'knowing.' . . . [S]ection 226, subdivision (e) penalizes an
2 employer's 'knowing and intentional' failure to provide itemized wage statements under *section*
3 *226, subdivision (a)[.]*"); *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056.
4 Defendants maintain that they reasonably, and in good faith believe that they were providing a
5 complete and accurate wage statement in compliance with California law. Defendants further
6 contend that employees cannot show that they have suffered an injury because of any potential
7 violation of California Labor Code § 226. Defendants contend that employees knew to talk to their
8 manager or the Human Resources department if they had any questions or concerns with their
9 wage statements. As such, disputes exist as to whether Defendants' wage statements violated
10 California Labor Code § 226(a)(8), whether any such violation was knowing and intentional, and
11 whether employees suffered an injury. (Mara Dec. at ¶ 33).

12 **vi. Business Reimbursements**

13 Plaintiff alleges that employees are not reimbursed for all business expenses. Under Labor
14 Code § 2802, the employer must "indemnify its employees for expenses they necessarily incur in
15 the discharge of their duties..." Plaintiff contends that Defendants fail to reimburse Plaintiff and
16 the Class Members for all miles driven in their personal vehicles. Plaintiff asserts that Defendants
17 do not reimburse Plaintiff and the Class Members for the miles they drive to their first work
18 location and from their last work location. Plaintiff also asserts that Defendants do not reimburse
19 employees for purchasing footwear, tools, and other supplies and equipment. (Mara Dec. at ¶ 34).

20 Defendants contend that, as outlined above, commute time is not compensable time and,
21 therefore, Defendants are not required to reimburse employees for these miles driven. Defendants
22 contend that they reimburse employees for the miles they drive during their workday outside of
23 commute time. Defendants assert that they have reimbursed employees for all necessary business
24 expenses and that employees are informed of how they can submit reimbursements for any
25 necessary expenses. Defendants further assert that they did not have a policy of requiring
26 employees to wear specific footwear and that if an employee did so, it was due to employee choice
27 not an employer mandate. Further, Defendants assert that they provided employees with all
28 necessary tools, supplies, and equipment. (Mara Dec. at ¶ 35).

1 **vii. Waiting Time Penalties**

2 Plaintiff also pursued waiting time penalties. This claim is derivative of Plaintiff's unpaid
3 wages and meal and rest period claims. Should these claims fail, this claim would also fail. In
4 addition, Defendants contend that even if Plaintiff were successful in his unpaid wages and meal
5 and rest period claims, he would have to prove Defendants "willfully" failed to pay employees the
6 appropriate wages due upon separation of employment. "A willful failure to pay wages within the
7 meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to
8 an employee when those wages are due. However, a good faith dispute that any wages are due will
9 preclude imposition of waiting time penalties under Section 203." Cal. Code Regs. Tit. 8 § 13520.
10 "A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based
11 in law or fact, which would preclude any recovery on the part of the employee. The fact that a
12 defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist."
13 *Id.* Defendants contend that any failure to pay wages due or meal and rest period premiums at the
14 separation of employment was not willful. Defendants argue that they would not be liable for
15 waiting time penalties because a "good faith dispute" exists over the payment of those wages. *See*
16 Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.
17 (Mara Dec. at ¶ 36).

18 **viii. PAGA**

19 Plaintiff also seeks PAGA penalties for the claims outlined above as well as for failure to
20 pay employees twice per month, failure to provide a wage theft prevention notice, and failure to
21 provide one day's rest in seven. PAGA allows the private enforcement of certain California Labor
22 Code sections relating to wage and hour violations. The statute of limitations for PAGA violations
23 goes back one year. Because many of Plaintiff's PAGA claims are based on the same alleged
24 unlawful conduct as his class claims, these PAGA claims are subject to the same risks on the merits
25 as Plaintiff's class claims. Defendants also contend that, as outlined above, they have paid
26 employees all wages owed and paid these wages at least twice per month. Defendants further
27 contend that they have provided employees with all required wage theft prevention notices and
28 have always provided employees with one day's rest in seven. (Mara Dec. at ¶ 37).

Further, Defendants maintain that Plaintiff's PAGA claims face manageability concerns consistent with the class certification challenges. Specifically, Defendants have due process rights which would not permit Plaintiff to attempt to generalize violations from disparate anecdotal evidence. *Duran v. U.S. Bank National Assn.*, 59 Cal.4th 1 (2014). (Mara Dec. at ¶ 38).

In addition, the Court may reduce any PAGA penalties awarded under Section 2699, subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to the Aggrieved Employees – assuming liability is proven as to each of Plaintiff's claims – is higher in this case where these same individuals may also be receiving money for the same unlawful conduct under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 ("Because the PAGA penalties sought are at least partially duplicative of penalties granted by the underlying Labor Code violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the potential PAGA penalties are highly uncertain."). As such, the Court will likely reduce any PAGA penalty amount awarded to the Aggrieved Employees. (Mara Dec. at ¶ 39).

f. Released Claims

In exchange for an Individual Class Settlement Payment, Participating Class Members will release all claims, debts, liabilities, demands, actions, or causes of action under state, federal or local law, whether statutory, common law or administrative, that were alleged in the Actions and/or LWDA Notices or that reasonably could have been alleged based on the factual and/or legal allegations in the Actions and/or LWDA Notices. (Exhibit 1 at Section III, ¶ I(1), Pages 12-13).

In addition, all PAGA Members will release, in exchange for an Individual PAGA Settlement Payment, all claims, actions, and causes of action for civil penalties, attorneys' fees, costs or interest arising under the Private Attorneys General Act, California Labor Code Section 2698, et seq. that were alleged or that reasonably could have been alleged in the Actions and/or the LWDA Notices based on the factual allegations and legal theories contained in the Actions and/or the LWDA Notices. (Exhibit 1 at Section III, ¶ I(3), Page 15-16).

1 In addition, Plaintiff has agreed to a general release of his claims. (See Exhibit 1 at Section
2 III, ¶ I(2), Page 14-15).

3 The releases will be effective upon Defendants' funding the Maximum Settlement Amount.
4 (See Exhibit 1 at Paragraphs Section III, Paragraph I(1), Pages 12-13; Section III, ¶ I(3), Page 15-
5 16).

6 **g. Potential Exposure on Plaintiff's Claims**

7 Class Members worked approximately 1,549,148 shifts. Employees earned approximately
8 \$16.00 per hour on average. (Mara Dec. at ¶ 40).

9 **i. Arbitration Agreements**

10 In evaluating the potential exposure, Plaintiff also had to take into consideration
11 Defendants' arbitration agreements. Defendants' arbitration agreements raised additional risks in
12 proceeding forward with litigation. Plaintiff had to take into consideration the fact that the Court
13 could find that Defendants' arbitration agreements are enforceable. If the agreements are enforced,
14 a majority of class claims would be subject to individual, non-class arbitrations. As Court's have
15 recognized, without the class mechanism, pursuit of individual relief of relatively small claims
16 would likely be rare and sporadic, which, here would create far less value than presented by this
17 class settlement. See *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340 ("By
18 establishing a technique whereby the claims of many individuals can be resolved at the same time,
19 the class suit both eliminates the possibility of repetitious litigation and provides small claimants
20 with a method of obtaining redress for claims which would otherwise be too small to warrant
21 individual litigation."). (Mara Dec. at ¶ 41).

22 **ii. Unpaid Wages**

23 As discussed above, Plaintiff contends that Defendants do not compensate employees for
24 all time they are performing work duties and are under Defendants' control. This time includes
25 time commuting to and from work in their personal vehicles, time employees are engaged in work
26 related tasks prior to clock in and after clocking out, and time employees have to assist customers
27 and/or clients while off the clock. Plaintiff contends that under California law, employees must be
28 paid for this time. If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and

1 the Class Members would be entitled to the following potential damages: \$6,196,592 (1,549,148
2 shifts x \$16.00 x 0.25 = \$6,196,592). (Mara Dec. at ¶ 42).

3 Defendants contend that they pay employees for all time they are performing work duties
4 and are subject to Defendants' control. Defendants further assert that employees' commute time is
5 not compensable. Defendants assert that employees do not have to transport a large amount of
6 materials and supplies such that their commute time is transformed into compensable time worked.
7 Defendants contend that employees can use their commute time for their own purposes and they
8 are not limited in what they can do during this time. As such, Defendants contend that they have
9 properly compensated employees for all work time. (Mara Dec. at ¶ 43).

10 Accordingly, Defendants claim Plaintiff should take nothing on this claim and, if the
11 factfinder agreed, Plaintiff would take nothing. It's a zero-sum outcome. If the Court sides with
12 Defendants' position, Plaintiff and the Class would take nothing. Any responsible negotiation of
13 these claims for settlement purposes had to strongly factor in the take-nothing risk these claims
14 presented. (Mara Dec. at ¶ 44).

15 Although remaining confident in his position, Plaintiff had no way of knowing how the
16 Court and/or factfinder would rule on these issues and a discount had to be given to make
17 settlement possible. Based upon these arguments, Plaintiff evaluated the realistic exposure of this
18 claim at \$309,829. (Mara Dec. at ¶ 45).

19 **iii. Meal Periods**

20 Plaintiff alleges that Defendants failed to provide employees with meal periods in
21 accordance with California law because Defendants' time records show unlawful meal periods.
22 The sampling of records shows meal period violations in approximately 63% of shifts. If Plaintiff
23 were to prevail on this claim for the entire class period, Plaintiff and the Class Members would be
24 entitled to the damages in the amount of approximately \$11,773,984 (1,168,057 shifts over five
25 hours x 0.63 x \$16.00 = \$11,773,984.30). (Mara Dec. at ¶ 46).

26 Defendants contend that this amount is too high as it has paid meal period premiums to
27 employees and/or employees waived their meal periods in these shifts. Defendants assert that no
28 damages would be attributable to shifts in which a premium has already been paid and shifts in

1 which a meal period waiver was signed. As such, Defendants contend that the potential damages
2 would be reduced. (Mara Dec. at ¶ 47).

3 *Donohue* does not establish liability. It establishes a presumption – a rebuttable
4 presumption that Defendants can rebut. Defendants contend that that this amount owed for alleged
5 meal period violations should be zero because it would be able to rebut the presumption under
6 *Donohue*, that the time records reflect meal periods were not provided. Defendant intended to rebut
7 the presumption through its policies it claims lawfully communicate meal period rights. Once the
8 legality of their policies is established, Defendants would have no duty to police employees who
9 decided to not take a meal period or waived it. If the Court sided with Defendants, Plaintiff and
10 the Class would take nothing, this significant hurdle. (Mara Dec. at ¶ 48).

11 In addition, Defendants contend that the fact finder would have to ask each employee what
12 their understanding of Defendants’ meal period policies were. Defendants contend that this would
13 also defeat class certification as to this claim. (Mara Dec. at ¶ 49).

14 Plaintiff had to take Defendants’ arguments into consideration, including that Defendants
15 may be able to rebut the presumption under *Donohue* and that his damages may be reduced based
16 upon waivers and, thus, had to discount this claim. Based upon these arguments, Plaintiff evaluated
17 the realistic exposure of this claim at \$2,354,796. (Mara Dec. at ¶ 50).

18 **iv. Rest Periods**

19 Plaintiff alleges that Defendants failed to provide employees with rest periods in
20 accordance with California law. Plaintiff contends that employees are required to remain on the
21 premises during rest periods. If Plaintiff were to prevail on this claim for the entire class period,
22 Plaintiff and the Class Members would be entitled to damages in the amount of approximately
23 \$23,076,112 (1,442,257 shifts over three and a half hours x \$16.00 = \$23,076,112). (Mara Dec. at
24 ¶ 51).

25 Defendants contend that this amount should be zero because it has a lawful rest period
26 policy and practice. Defendants contend that they do not require employees to remain on the
27 premises during rest periods and that employees do, in fact, leave the premises during rest periods.
28 (Mara Dec. at ¶ 52).

1 As to class certification, Defendants contend that there is no common policy or practice on
2 which Plaintiff can rely to support this claim because they contend their rest period policies are
3 facially compliant. Defendants assert that under Plaintiff's theory, liability will need to be
4 determined person-by-person and day-by-day and will depend on individualized facts. Defendants
5 contend that these individualized issues render Plaintiff's rest break claim wholly unsuited to class
6 treatment. Accordingly, Defendants claim Plaintiff should take nothing on this claim. (Mara Dec.
7 at ¶ 53).

8 If the factfinder agreed with Defendants' arguments, Plaintiff would take nothing on this
9 claim. Plaintiff had to take Defendants' arguments into consideration in assessing the strength of
10 his rest period claim given the all or nothing prospect of establishing liability. Based upon these
11 arguments, Plaintiff evaluated the realistic exposure of this claim at \$2,307,611. (Mara Dec. at
12 ¶ 54).

13 **v. Wage Statements**

14 Plaintiff alleges that Defendants failed to provide accurate itemized wage statements. The
15 statute of limitations for Plaintiff's wage statement claim is one year. Under California Labor Code
16 § 226(e)(1), the damages for breach of this section are fifty dollars (\$50) for the initial pay period
17 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
18 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000). If
19 Plaintiff were to prevail on this claim, the potential damages would be approximately \$13,012,000
20 (3,253 employees within one year statute of limitations x \$4,000 maximum penalty =
21 \$13,012,000). (Mara Dec. at ¶ 55).

22 Defendants argue that employees can ascertain the required information, such as the total
23 hours worked and the applicable hourly rates in effect, using simple math. Defendants also assert
24 that any violation of California Labor Code § 226 was not "knowing and intentional." Defendants
25 further contend that employees cannot show that they have suffered an injury as a result of any
26 potential violation of California Labor Code § 226. (Mara Dec. at ¶ 56).

27 Plaintiff had to take Defendants' arguments into consideration in evaluating this claim.
28 Based upon these arguments, Plaintiff evaluated the realistic exposure of this claim at \$1,040,960.

(Mara Dec. at ¶ 57).

vi. Business Reimbursements

Plaintiff contends that employees are not reimbursed for business expenses because they are not reimbursed for miles driven to their first job location and from their last job location. If Plaintiff were to prevail on this claim, the potential damages would be approximately \$14,325,746 (1,549,148 shifts x 15 miles x 0.6165 average IRS rate per mile = \$14,325,746.10). (Mara Dec. at ¶ 58).

In addition, Plaintiff contends that employees are not reimbursed for purchasing footwear, tools, and other supplies and equipment. If Plaintiff were to prevail on this claim, the potential damages would be approximately \$2,589,800 (12,949 employees x \$200 = \$2,589,800). (Mara Dec. at ¶ 59).

Defendants contend that commute time is not compensable time and, therefore, Defendants are not required to reimburse employees for these miles driven. Defendants contend that they reimburse employees for the miles they drive during their workday outside of commute time. Defendants assert that they have reimbursed employees for all necessary business expenses. Defendants further contend that the same individualized issues that predominate Plaintiff's unpaid wages claim, also predominate this claim. For that reason, Defendants contend that class certification of this claim is not proper. (Mara Dec. at ¶ 60).

In addition, Defendants contend that they reimburse employees for all necessary business expenses. Defendants assert that they have reimbursed employees for all necessary business expenses and that employees are informed of how they can submit reimbursements for any necessary expenses. As to class certification, Defendants assert that the fact finder would have to ask each employee whether they had to purchase footwear, tools, supplies, or equipment. Defendants assert that this would defeat class certification because there would be varying employee experiences that would raise individualized issues. (Mara Dec. at ¶ 61).

If the factfinder agreed with Defendants' arguments, Plaintiff would take nothing on this claim. Plaintiff had to take Defendants' arguments into consideration in assessing the value of this

1 claim for settlement purposes. Based upon these arguments, Plaintiff evaluated the realistic
2 exposure of this claim at \$338,310. (Mara Dec. at ¶ 62).

3 **vii. Waiting Time Penalties**

4 If Plaintiff were to prevail on his unpaid wages and meal and rest period claims, he and the
5 Class Members may also be entitled to waiting time penalties. Plaintiff calculates the potential
6 exposure under his waiting time penalties cause of action as \$30,792,960 (8,019 former employees
7 in wage statement statute of limitations x 30 days x 8 hours per shift x \$16.00 = \$30,792,960).
8 (Mara Dec. at ¶ 63).

9 If Plaintiff's unpaid wages and meal period and rest period claims fail, these claims also
10 fail. There is also a possibility that the factfinder could find that these violations are not willful
11 and knowing and intentional. If this were to occur, Plaintiff and the Class would receive nothing
12 under these claims. In addition, a good faith dispute that any wages are due will preclude
13 imposition of waiting time penalties. Defendants argue that Plaintiff will not be able to show that
14 any violations were knowing and intentional and willful. Defendants also contend that there is a
15 good faith dispute about whether any wages are due. Defendants further argue that Plaintiff's
16 unpaid wages, meal period, and rest period claims cannot form the basis of his wage statement
17 claim. Defendants rely on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th
18 1308, for the position that employees do not suffer injury under California Labor Code § 226(a)
19 so long as the wage statements correctly reflected the hours worked and the pay received even if
20 the pay is later determined to be inaccurate. (Mara Dec. at ¶ 64).

21 Plaintiff had to take Defendants' arguments into consideration in evaluating the value of
22 this claim for settlement purposes. Plaintiff had to take into consideration the fact that this claim
23 is derivative of Plaintiff's unpaid wages, meal period, and rest period claims. Plaintiff also had to
24 consider the fact that he would also have to establish that any violation was willful. Moreover,
25 Plaintiff had to consider that Defendants may be able to prove that a good faith dispute as to the
26 wages due would preclude imposition of waiting time penalties. Based upon these arguments,
27 Plaintiff evaluated the realistic exposure of this claim at \$615,859. (Mara Dec. at ¶ 65).

28 ///

1 **viii. PAGA**

2 Plaintiff also seeks PAGA penalties. PAGA allows the private enforcement of certain
3 California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2)
4 reads, in part, as follows:

5 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per
6 pay period for the initial violation and two hundred dollars (\$200) for each
aggrieved employee per pay period for each subsequent violation.

7 The statute of limitations for PAGA violations go back one year. The potential damages under
8 Plaintiff's PAGA claim is \$64,435,500.¹¹ Defendant contends that Plaintiff would not be allowed
9 to "stack" PAGA penalties. If the Court were to agree with this and only award one PAGA penalty
10 per pay period, Defendant's exposure would be \$7,954,200.¹² (Mara Dec. at ¶ 66).

11 As Plaintiff's PAGA claims are based on the same alleged unlawful conduct as his class
12 claims, Plaintiff's PAGA claims are subject to the same risks on the merits as Plaintiff's class
13 claims. In addition, the Court may reduce any PAGA penalties awarded under Section 2699,
14 subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to Plaintiff
15 and the PAGA Aggrieved Employees – assuming liability is proven as to each of Plaintiff's claims
16 – is higher in this case where these same individuals may also be receiving money for the same
17 unlawful conduct under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12,
18 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 ("Because the
19 PAGA penalties sought are at least partially duplicative of penalties granted by the underlying
20 Labor Code violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court
21 has discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code §
22 2699(e)(2), Plaintiff recognizes that the potential PAGA penalties are highly uncertain."). As such,
23 the Court may reduce any PAGA penalty amount awarded to Plaintiff and the PAGA Members.
24 Based upon these arguments, Plaintiff evaluated the realistic exposure of this claim at \$322,177.
25 (Mara Dec. at ¶ 67).

26
27
28 ¹¹ (\$100 x 8 PAGA violations x 79,542 pay periods = \$63,633,600) + (\$100 x 1 PAGA violation for waiting time
penalties x 8,019 pay periods = \$801,900).

¹² 79,542 pay periods x \$100 = \$7,954,200

1 **ix. The Settlement Amount of \$6,375,000 is Reasonable**

2 As detailed herein, there are substantial risks with respect to each of Plaintiff's claims that
3 justify compromise, including the risk that class certification will not be granted. Based upon the
4 risks outlined above, Plaintiff evaluated the realistic exposure on his claims at \$7,289,542. All of
5 the factors discussed above led Plaintiff to reduce the realistic potential exposure in order to gain
6 a definite monetary recovery for the class. The proposed settlement is 87% of Plaintiff's realistic
7 exposure. (Mara Dec. at ¶ 68).

8 In light of the risks Plaintiff's claims faced, Plaintiff and his Counsel believe that the
9 settlement amount of \$6,375,000 – with an average settlement share amount estimated at \$288.22
10 – is a reasonable and fair settlement amount. (Mara Dec. at ¶ 69).

11 A settlement is not judged **solely** against what might have been recovered, had the plaintiffs
12 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
13 and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250; *Rebney*
14 *v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139; “Compromise is inherent and necessary
15 in the settlement process...even if the relief afforded by the proposed settlement is substantially
16 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
17 settlement because the public interest may indeed be served by a voluntary settlement in which
18 each side gives ground in the interest of avoiding litigation.” *Wershba, supra*, at 250; *Officers for*
19 *Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 628 (“It is well-settled law that a cash
20 settlement amounting to only a fraction of the potential recovery does not...render the settlement
21 inadequate or unfair”).

22 **h. Uncashed Checks**

23 Individual Settlement Payment checks issued to Participating Class Members and
24 Individual PAGA Settlement Shares issued to PAGA Employees shall remain valid for a period
25 of 180 calendar days after they issue, and shall be cancelled thereafter. Uncashed checks and/or
26 checks that are not cashed, deposited, or otherwise negotiated, will be sent to the State Controller's
27 Unclaimed Property Fund in the name of the intended recipient. (Exhibit 1 at Section III, ¶ G(3),
28 Page 12).

1 **i. Class Notice Process**

2 **i. Class Notice Administration**

3 **1. Settlement Administrator**

4 The settlement administrator selected by the Parties is APEX. In selecting an administrator,
5 Plaintiff requested quotes from three administration companies, Simpluris, ILYM, and APEX. The
6 Parties believe that APEX is the best administrator for this case based on their prior experience
7 using APEX for the settlement administration process in other cases.

8 **2. Qualifications and Experience of Administrator**

9 APEX's qualifications and experience are set forth in the declaration from APEX filed
10 herewith. (*See Declaration of Sean Hartranft on Behalf of APEX*). APEX's declaration also
11 includes evidence that it has procedures in place to protect the security of class data, and sufficient
12 insurance in the event of a data breach or mishandling of settlement funds.

13 **3. Anticipated Costs of Settlement Administration**

14 The anticipated costs of settlement administration are \$59,995.

15 **4. Class List**

16 Within ten (10) business days after the Court grants preliminary approval of the Settlement,
17 Defendants shall provide to the Settlement Administrator with the Class Data List. (Exhibit 1 at
18 Section III, ¶ K(1), Page 17). The Class Data List is the last-known contact information that it has
19 for the Class Members, including their full name, last known mailing address, Social Security
20 numbers, and the number of Class Pay Periods during the Class Period and the number of PAGA
21 Pay Periods during the PAGA Period. (Exhibit 1 at Section III, ¶ K(1), Page 17).

22 **5. Class Notice Mailing**

23 Within fourteen (14) calendar days after receiving the Class Data List from Defendants,
24 the Settlement Administrator shall mail the Class Notice to all identified Class Members via first-
25 class U.S. Mail, using the last known address information provided by Defendants, unless such
26 address is modified by any updated address information that the Settlement Administrator obtains
27 in the course of administration of the Settlement. (Exhibit 1 at Section III, ¶ K(2), Pages 17-18).
28 Prior to completing this mailing, the Settlement Administrator shall perform a National Change of

1 Address (“NCOA”) search to confirm the validity of and update Class Members’ mailing
2 addresses. (Exhibit 1 at Section III, ¶ K(2), Page 18).

3 **6. Disbursement of Settlement Funds**

4 Within ten business days of the Effective Date, the Settlement Administrator shall provide
5 Class Counsel and Defendants’ Counsel with the account information so that Defendants can wire
6 the Maximum Settlement Amount and the Employer Taxes, and Defendants shall wire said
7 amounts within 30 business days of the Effective Date or by April 30, 2026, whichever is later.
8 (Exhibit 1 at Section III, ¶ G(1), Page 11). The Effective Date is the date by which all of the
9 following have occurred: the Court has finally approved the Settlement and entered Judgment
10 thereon pursuant to California Rules of Court 3.769(h); and the Judgment has become Final.
11 (Exhibit 1 at Section I, ¶ K, Page 4). The Judgment becomes final when the Settlement has been
12 finally approved by the Court without material modification and either: (i) if there are no
13 objections, appeals, or writs, or if an objection(s) is made and overruled, 61 days after notice of
14 entry of the order granting final approval of the Settlement; or (ii) if an appeal, review, or writ is
15 sought from the final approval order, the day after the Judgment is affirmed or the appeal, review
16 or writ is dismissed or denied, and the Judgment is no longer subject to further judicial review.
17 (Exhibit 1 at Section I, ¶ L, Page 4).

18 The Settlement Administrator shall distribute Individual Settlement Payments to
19 Participating Class Members, Individual PAGA Settlement Shares to PAGA Employees, the
20 payment to the Labor and Workforce Development Agency, the Court-approved Class
21 Representative Service Award to Plaintiff and Court-approved Class Counsel Fees and Expenses
22 to Class Counsel, within ten (10) business days of receipt of payment from Defendants pursuant
23 to this Section. (Exhibit 1 at Section III, ¶ G(2), Pages 11-12).

24 **7. Notice of Final Judgment**

25 A copy of the final judgment will be posted to the Settlement Administrator’s website for
26 a period of at least 60 days. (See Exhibit 1 at Section III, ¶ S, Pages 25-26).

27 ///

28 ///

1 **ii. Class Notice**

2 **1. Proposed Class Notice and Procedures for Notice**

3 The proposed Class Notice is attached to the Settlement Agreement as Exhibit A. All Class
4 Members will be mailed a Class Notice in English and Spanish. The Class Notice complies with
5 California Rule of Court 3.766(d) as it contains (1) a brief explanation of the case, including the
6 basic contentions or denials of the parties (*see* Exhibit A at Section 2); (2) a statement that the
7 Court will exclude the member from the class if the member so requests by a specified date (*see*
8 Exhibit A at Sections 6 and 7); (3) a procedure for the member to follow in requesting exclusion
9 from the class (*see* Exhibit A at Section 7); (4) a statement that the judgment, whether favorable
10 or not, will bind all members who do not request exclusion (*see* Exhibit A at Section 7); and (5) a
11 statement that any member who does not request exclusion may, if the member so desires, enter
12 an appearance through counsel (*see* Exhibit A at Section 8).

13 In addition, the Class Notice specifies the amount that the Class Member will receive and
14 how that amount was calculated. (*See* Exhibit A at Page 1 and Section 10(D)). The Class Notice
15 also contains a separate breakdown for PAGA payments and explains that PAGA Members may
16 not opt out of the PAGA portion of the settlement. (*See* Exhibit A at Page 1, Section 6, Section 7,
17 and Section 10(D)). Further, the Class Notice contains the terms of the release of claims. (*See*
18 Exhibit A at Section 9).

19 Moreover, each Class Notice will provide: (a) information regarding the nature of the
20 Actions; (b) a summary of the Settlement's principal terms; (c) the Settlement Class and PAGA
21 Member definitions; (d) the total number of Workweeks each respective Class Member and PAGA
22 Member worked for Defendant during the Class Period and PAGA Period; (e) each Class
23 Member's and PAGA Member's estimated Individual Settlement Payment and the formula for
24 calculating Individual Settlement Payments; (f) the dates which comprise the Class Period and
25 PAGA Period; (g) instructions on how to submit Requests for Exclusion or Notices of Objection;
26 (h) the deadlines by which the Class Member must postmark or fax Request for Exclusions, or
27 postmark Notices of Objection to the Settlement; and (i) the claims to be released.

28 ///

2. Time Limits and Procedures

a. Response Deadline

After notices are mailed, Class Members will have sixty (60) days to respond to the settlement (this is referred to as the “Response Deadline”). (Exhibit 1 at Section III, ¶ K(2), Page 18). Those Class Members who receive a re-mailed Class Notice will have until (a) the Response Deadline or (b) fifteen (15) calendar days after the remailing of a Class Notice in accordance with the Agreement, whichever is later, to postmark an Opt-Out Notice, objection, or dispute (this is referred to as the “Extended Response Deadline”). (Exhibit 1 at Section III, ¶ K(3), Page 18).

b. Objections

The Class Notice shall provide that Participating Class Members (i.e., Class Members who do not timely opt out of the Settlement) who wish to object to the Settlement must submit an objection to the Settlement Administrator by first class U.S. mail at the address specified on the Class Notice, not later than the Response Deadline, or in the instance of a re-mailed Class Notice, the Extended Response Deadline. Written objections must include: (1) the objector’s full name, address, last four digits of his or her Social Security number, and signature; (2) the case name and number; (3) the factual and legal basis, with supporting documents, if any, on which the objection is based; (4) whether the objector is represented by an attorney and providing the contact information of any such attorney; and (5) whether the objector plans to appear at the Final Approval Hearing. Alternatively, or in addition to a written objection, Class Members may appear at the Final Approval Hearing to make an oral objection. (Exhibit 1 at Section III, ¶ L(2), Page 21).

c. Requests for Exclusion

The Class Notice shall provide that Class Members who do not want to participate in the class portion of the Settlement may exclude themselves by submitting a timely and valid written request seeking to opt-out of the class portion of the Settlement (“Opt-Out Notice”) to the Settlement Administrator by mail, postmarked on or before the Response Deadline or, in the instance of a re-mailed Class Notice, the Extended Response Deadline. An Opt-Out Notice must: (a) contain the full name, address, and last four digits of the Social Security number of the Class

Member requesting to opt-out; (b) be signed and dated by the Class Member requesting to opt-out; (c) reference the Actions by name and case number; and (d) contain a statement clearly indicating that the Class Member submitting the request seeks to be excluded from the Settlement. (Exhibit 1 at Section III, ¶ L(1), Pages 19-20).

d. Workweek Disputes

If a Class Member disputes the number of pay periods credited to him or her, which will be stated in the Class Notice, the Class Member must submit a written dispute to the Settlement Administrator, postmarked no later than the Response Deadline, or in the instance of a re-mailed Class Notice, the Extended Response Deadline. The dispute must: (a) contain the full name, address, and last four digits of the Social Security number of the Class Member; (b) be signed and dated by the Class Member; (c) reference the Actions by name and case number; (d) contain a statement clearly indicating that the Class Member disputes the number of pay periods that are credited to him or her and the number of pay periods that the Class Member claims should be credited to him or her; and (e) attach supporting documentation, if any, that they may have. (Exhibit 1 at Section III, ¶ M(1), Pages 22-23).

e. Responses Received

Requests for exclusions, disputes, and/or objections will be received by the settlement administrator.

j. Attorneys' Fees and Costs Requested are Fair and Reasonable

At Final Approval, Plaintiff's Counsel will apply for an award of attorneys' fees of up to one-third of the MSA (\$2,122,875). California courts have recognized an appropriate method for determining an award of attorneys' fees is based on a percentage of the total value of benefits to Class Members by the settlement, also known as the "common fund" method. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (*Serrano III*) 34 ("when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund."); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power

1 to prevent the other parties' unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9
2 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorney's fees
3 more accurately reflects the results achieved for the putative class than the lodestar method and
4 "establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected
5 recovery; and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid*
6 *Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery
7 method is generally favored in common fund cases because it allows courts to award fees from the
8 fund 'in a manner that rewards counsel for success and penalizes it for failure.'").

9 The purpose of the common fund/percentage approach is to "spread litigation costs
10 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
11 burden alone." *Vincent*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d 162,
12 167, the Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund
13 from which others derive benefits may require those passive beneficiaries to bear a fair share of
14 the litigation costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th
15 105, 110, the California Supreme Court recognized that the common fund doctrine has been
16 applied "consistently in California when an action brought by one party creates a fund in which
17 other persons are entitled to share." The reasons for applying the common fund doctrine include:
18 "...fairness to the successful litigant, who might otherwise receive no benefit because his recovery
19 might be consumed by the expenses; correlative prevention of an unfair advantage to the others
20 who are entitled to share in the fund and who should bear their share of the burden of its recovery;
21 encouragement of the attorney for the successful litigant, who will be more willing to undertake
22 and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured
23 that he will be properly and directly compensated should his efforts be successful." *Id.*

24 Indeed, the California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.* that
25 using the percentage method has many advantages:

26 The recognized advantages of the percentage method - including relative ease of
27 calculation, alignment of incentives between counsel and the class, a better
28 approximation of market conditions in a contingency case, and the encouragement
it provides counsel to seek an early settlement and avoid unnecessarily prolonging

1 the litigation—convince us the percentage method is a valuable tool that should
2 not be denied our trial courts.

3 *Id.* at 503 (internal citation omitted).¹³ Because there is a defined and traceable benefit to the Class,
4 the Court can base an award of attorneys’ fees using a ‘common fund’ approach.

5 **i. Requested Fee Is Within The Range Of Fees Approved In Comparable**
6 **Cases**

7 Several studies of class action fee awards have found that the median common fund fee
8 award is approximately one-third of the total settlement fund.¹⁴ The requested fee falls in the mid-
9 range of percentage class fee awards, which generally range from 20% to 50% of a common fund,
10 and it constitutes fair compensation for undertaking complex, risky, expensive, and time-
11 consuming litigation on a contingent basis and compensates Class Counsel for their efforts, as well
12 as the result achieved for the benefit of the Class. Numerous state and federal courts in California
13 routinely approve fee requests equal to or greater than 33% of the common fund. Indeed, courts
14 have found that an award of 33% of the common fund represents the “benchmark” in California.¹⁵
15 In short, Plaintiff Counsel’s fee request of one-third of the MSA is in line with awards in similar
16 cases in California and nationwide and demonstrates that Plaintiff’s counsels’ fee request is
17 consistent with market rates and is reasonable.¹⁶

18 **k. Requested Enhancement Payment is Fair and Reasonable**

19 At final approval, Class Counsel will seek approval of the Class Representative
20 Enhancement Payment to the named Plaintiff in the sum of \$15,000. As will be detailed at final

21 ¹³ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar
22 cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold further that trial courts have discretion
23 to conduct a lodestar cross-check on a percentage fee . . . they also retain the discretion to forgo a lodestar cross-check
24 and use other means to evaluate the reasonableness of a requested percentage fee”).

25 ¹⁴ *See*, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have shown that “fee
26 awards in class actions average around one-third of the recovery.”); Reagan W. Silber and Frank E. Goodrich,
27 *Common Funds and Common Problems: Fee Objections and Class Counsel’s Response*, 17 Rev. Litig. 525, 546 ; T.
28 Willging, L. Hooper and R. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report*
to the Advisory Committee on Civil Rules, 90 (1996) (finding that attorneys’ fees in class litigation “were generally in
the traditional range of approximately one-third of the total settlement”).

¹⁵ *Smith v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) 10-CV-1116- IEG WMC, 2013 U.S. Dist. LEXIS 6049,
*14 (“These percentages compare favorably with both California (33%) and federal (25%) benchmarks.”); *Dennis v.*
Kellogg Co. (S.D. Cal. Nov. 14, 2013) 09-CV-1786-L WMC, 2013 U.S. Dist. LEXIS 163118, *22 (“This percentage
compares favorably with both California (33%) and federal (25%) benchmarks and the requested fee compares well
with a lodestar cross-check as well.”).

¹⁶ At Final Approval, Plaintiff’s Counsel will also show that the fee request is reasonable when calculated using the
lodestar method.

1 approval, the requested enhancement is reasonable in light of the broad general release Plaintiff is
2 giving to Defendants in exchange for the \$15,000 payment and the work he performed in this case.

3 The general release being given by Plaintiff is far greater than the release proposed for
4 Class Members. This payment not only compensates Plaintiff for the work he undertook in this
5 case, but also for the claims and potential claims he may have against Defendants that he is
6 releasing. For example, Plaintiff brought this class action lawsuit to seek recourse for other
7 employees instead of filing an individual case on behalf of merely himself. Since the inception of
8 this case, he has put the Class's interests ahead of his own. This payment compensates Plaintiff for
9 the claims that he forwent bringing for the betterment of the Class Members.

10 Moreover, as representative for the absent class members, Plaintiff risked a potential
11 judgment taken against him for attorneys' fees and costs if this matter had not been successfully
12 concluded. Case law holds that a losing party is liable for the prevailing party's costs. *See Early v.*
13 *Superior Court*, 79 Cal.App.4th 1420, 1433 (2000). And in some wage and hour actions, such as
14 this case, pursuant to California Labor Code § 218.5, the prevailing party can be liable for
15 attorneys' fees as well. Though the fee agreement provides that Class Counsel would pay such
16 costs, Plaintiff would nevertheless have had a cost bill entered against him leaving him ultimately
17 liable for potentially hundreds of thousands of dollars in the unexpected possibility that Class
18 Counsel did not meet their obligation to cover those costs. Unfortunately, there have been
19 judgments like this entered against class representatives.¹⁷ The risk of payment of Defendant's
20 costs, alone, is a sufficient basis for an award of the requested service award. Few individuals are
21 willing to take this risk, and Plaintiff championed a cause on behalf of others with potentially huge
22 monetary risks.

23 Additionally, the modern-day work force is mobile, with employees holding several jobs
24 over the span of their career. It is also true that prospective employers in this computer, high-tech
25 age "Google" and/or do extensive background checks and have access to court databases to see if

26 ¹⁷ See, e.g. *Koehl v. Verio, Inc.*, 142 Cal.App.4th 1313, 1328 (2006) (a wage and hour class action where Defendant
27 prevailed at trial, the named Plaintiffs were held liable, jointly and severally for the Defendant's attorneys' fees);
28 *Whiteway v. Fedex Kinkos Office & Print Services, Inc.*, No. 05-2320, 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. Dec.
17, 2007) (a wage and hour misclassification case lost on summary judgment, after the case was certified, the named
Plaintiff was assessed costs in the sum of \$56,788.).

1 applicants have ever filed a lawsuit or have ever been sued. Here, Plaintiff's conduct will not be
2 lost on a prospective employer who has to choose between an applicant who has never sued an
3 employer and one who has done so. The requested award far from compensates Plaintiff for
4 opportunities he may lose in the future because of the exercise of a Constitutional right to Petition
5 the Courts for redress of a grievance.

6 Courts routinely approve service payments, or incentive awards, to compensate named
7 plaintiffs for the services they provide and the risks they incur during class litigation. See *In re*
8 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers*
9 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
10 representatives); Manual § 21.62 n.971 (noting that service payments are warranted). Based on the
11 foregoing, the \$15,000 payment to the named Class Representative is fair, appropriate and justified
12 as part of the overall settlement.

13 **I. Pending Litigation**

14 Plaintiff is aware of two pending cases against Defendants, both of which were filed
15 approximately a year and a half after Plaintiff's case was filed. The claims in these cases are
16 duplicative of Plaintiff's earlier filed action. These cases are: (1) *Susana Aldaz v. Crossmark, Inc.*;
17 *CHI Management Group, LP* (Alameda County Superior Court Case No. 25CV122141, filed on
18 May 7, 2025)¹⁸; and (2) *Gwendolyn Lederer v. CHI Management Group, LP; Crossmark, Inc.*;
19 *Acosta, Inc.; Services WIS Corporation; WIS International* (Ventura County Superior Court Case
20 No. 2025CUOE044135, filed on May 15, 2025).

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28 ¹⁸ Based upon the Register of Actions, the *Lederer* case is currently in arbitration. The Register of Actions reflects a
Post-Arbitration Status Conference is set for September 28, 2026.

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Dated: March 11, 2026


David Mara, Esq.

Jill Vecchi, Esq.

Carter Cordura, Esq.

Carter Cordura, Esq.

Attorneys for Plaintiff KENTON SAMUELS on
behalf of himself, all others similarly situated, and on
behalf of the general public