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SUPERIOR COURT OF CALIFORNIA

COUNTY OF TEHAMA

KYLE ROBERTS, on his own behalf and all similarly situated individuals, Plaintiff, v. PROPAK LOGISTICS, LLC; and DOES 1 through 100, Defendants.	Case No.: 23CI-000324 CLASS ACTION **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: January 20, 2025 Time: 8:30 a.m. Dept.: 5

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I. INTRODUCTION

Plaintiff alleged claims for failure to pay minimum wages and overtime, failure to provide meal periods and rest periods, failure to issue accurate itemized wage statements, failure to pay timely wages, failure to pay final wages, failure to reimburse necessary business expenses, and derivative claims under the Unfair Competition Law ("UCL") and Private Attorney General Act ("PAGA").

After engaging in investigation and extensive negotiations with the assistance of a respected mediator, Brandon McKelvey, Esq., the Parties agreed to settle all claims alleged in the Action on a class-wide, non-reversionary basis for $414,750, inclusive of all fees and costs. The Parties' Joint Stipulation For Class And PAGA Action Settlement and Release ("Settlement" or "Settlement Agreement") defines the class as "all non-exempt employees employed by Propak in California during the Class Period," which is the period from December 2, 2020, through October 4, 2025 ("Class" or "Class Members"). All of the approximately 721 Class Members will receive a settlement payment unless they opt out of the Class Settlement.

II. STATUS OF THE LITIGATION

A. Procedural History

On November 28, 2023, pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to Propak and the LWDA by sending the PAGA Notice.

On November 28, 2024, Plaintiff commenced a Class Action by filing a Complaint in this Court asserting the following claims: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Required Meal Periods; (4) Failure to Provide Required Rest Periods; (5) Failure to Furnish Accurate Itemized Wage Statements; (6) Failure to Pay All Wages Due to Discharged and Quitting Employees; and (7) Unfair Competition Law.

On January 2, 2024, Defendant removed the Action to the United States District Court for the Eastern District of California (Case No. 2:24-cv-00008-DJC-JDP). On March 18, 2024, in the United States District Court for the Eastern District of California, Plaintiff filed the First Amended

Complaint asserting the following claims: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Required Meal Periods; (4) Failure to Provide Required Rest Periods; (5) Failure to Furnish Accurate Itemized Wage Statements; (6) Failure to Pay All Wages Due to Discharged and Quitting Employees; (7) Unfair and Unlawful Business Practices; and (8) PAGA Penalties.

On April 16, 2025, the Honorable Daniel J. Calabretta of the United States District Court for the Eastern District of California remanded the Action to Tehama Superior Court for purposes of seeking settlement approval.

The Parties filed a joint stipulation for Plaintiff to file a Second Amended Class Action Complaint asserting the following claims: (a) Failure to provide or pay premium payments for meal periods (Labor Code§§ 204,223,226.7, 512, 1198 1194, 1197; IWC Wage Order No. 1-2001, § 11); (b) Failure to authorize and permit or pay premium payments for rest periods (Labor Code§§ 204, 223, 226.7, 512, 1198; IWC Wage Order No. 1-2001, § 12); (c) failure to pay minimum wage, overtime, or other amounts of wages for failing to compensate "all hours worked" (Cal Labor Code §§ 223, 510, 1194, 1197, 1198; IWC Wage Order No. 1-2001, §§ 3-4); (d) Failure to pay wages due to discharged and quitting employees (see Labor Code §§ 201-203); (e) Failure to timely pay wages during employment (Labor Code § 204); (f) Failure to provide accurate, itemized wage statements (Labor Code§ 226(a)); (g) Failure to reimburse business expenses (Labor Code§ 2800-2802); and h) PAGA penalties for the underlying alleged Labor Code violations. The Court granted the Parties' stipulation on or about August 15, 2025. (*Id.*) Plaintiff then filed the Second Amended Class Action Complaint, which is the Operative Complaint in the Action.

B. Plaintiff’s Claims and Defendant’s Denials

Plaintiff’s claims are based on Defendant’s alleged failure to pay minimum wages and overtime, failure to provide meal periods and rest periods, failure to issue accurate itemized wage statements, failure to pay timely wages, failure to pay final wages, failure to reimburse necessary business expenses, and largely derivative claims under Unfair Competition Law and PAGA.

Specifically, Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members for all hours worked. Furthermore, Plaintiff alleges that Defendant required Plaintiff and Class

Members to work overtime, and failed to pay overtime at the correct regular rate of pay due to not incorporating earned bonuses in the calculations of the regular rate. (Rose Decl., ¶ 20.)

Plaintiff also alleges that Defendant systematically denied Plaintiff and Class Members the opportunity to take meal periods and rest periods. Furthermore, Plaintiff alleges that Defendant failed to compensate Plaintiff and Class Members for each meal period or rest period not provided at a proper rate.

Plaintiff also alleges that Defendant did not provide Class Members with timely, accurate, and itemized wage statements, in writing, and failed to keep accurate time and wage records.

Defendant denies each and all the allegations in the Operative Complaint and PAGA Notice, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged.

C. Investigation

After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including obtaining payroll data for Plaintiff and key data points. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 *and Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129-130 ("Dunk/Kullar")*. (Rose Decl., ¶ 25.) Class Counsel's expert analysis was informed by an 84.3% sampling of time and pay records produced by Defendant, which is statistically reliable.

D. Settlement Efforts

On May 30, 2024, the Parties participated in an all-day mediation presided over by well-known class action mediator Brandon McKelvey, Esq., which led to the Agreement to settle the Action.

From Class Counsel's review of the strengths and weaknesses of the case and the risks and delays posed by further litigation, Class Counsel believes that the Settlement is fair and reasonable. Further, and based on the settlement negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating class actions and wage and hour cases, the Settlement Agreement was the product of a non-collusive settlement process in which the Parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the lawsuit.

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Defendant entered a settlement agreement. Under the original terms of the Settlement Agreement, Defendant has agreed to pay $395,000.00 as the Gross Settlement Sum on a non-reversionary basis to run though preliminary approval, but with a discretionary cap on workweeks

Defendant invoked the escalator clause ending on October 4, 2025, and the Parties executed a first amendment to the Settlement Agreement specifying the ending date, number of calculated workweeks, final settlement amount and conforming other terms to the invocation of the escalator clause. Under the final settlement numbers, The Agreement specified that if the actual number of workweeks exceeds the parties' original estimate by more than 15% through the date of Preliminary Approval, then at the sole option of Propak, Propak shall elect either to increase the Gross Settlement Sum on a pro rata basis by the additional workweeks and/or pay periods that exceed 15%, or move the end date of the Class Period and PAGA Period to the latest date before Preliminary Approval that does not exceed the 15% threshold. With the escalator, Defendant shall fully fund the Gross Settlement Sum of $414,750.00, and also separately fund the amounts necessary to fully pay Defendant's share of payroll taxes owed on the Wage Portions of the Individual Class Payments. None of the Gross Settlement Sum will revert to Defendant.

The Settlement Agreement defines the Class as "all non-exempt employees employed by Propak in California during the Class Period," which is the period from December 2, 2020, through October 4, 2025. The Net Settlement Sum shall be the Gross Settlement Sum, less the Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. These amounts are detailed as follows:

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- Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is currently estimated to be $138,250.00 and Class Counsel Litigation Expenses Payment of not more than $20,000.00;

- Administration Expenses Payment of not more than $9,500.00 to ILYM Group ("ILYM") to serve as the Administrator;
- Class Representative Service Payment of not more than $5,000.00 to Plaintiff.
- PAGA allocation in the amount of $42,000.00, with 75% ($31,500.00) paid to the LWDA for the LWDA PAGA Payment and 25% ($10,500.00) paid to Aggrieved Employees for their Individual PAGA Payments.

The Individual Class Payment is each Participating Class Member's pro rata share of the Net Settlement Sum calculated according to the number of Workweeks worked during the Class Period. The Workweek means any week during which a Class Member worked for Propak for at least one day in California, during the Class Period. The Individual PAGA Payment means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period. The "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Propak in California for at least one day during the PAGA Period.

Defendant will pay their employer-side payroll tax obligations on the Wage Portion of the Individual Class Payments in addition to the Gross Settlement Amount. 34% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"), and are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 66% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion").

Class Members will receive the Class Notice via first class mail (after the Settlement Administrator conducts a national change of address search). If the Class Notice is returned as non-deliverable on or before the Response Deadline and a new address is obtained by way of a returned Class Notice, then the Settlement Administrator will promptly forward the original Class Notice to the updated address via first-class regular U.S. mail, indicating on the original packet the date of such re-mailing. Class Members will have an opportunity to dispute the Workweeks and PAGA Pay Period information provided in their Class Notice within 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) and produce evidence to support their contentions. The Settlement Administrator shall decide the dispute and must encourage the Class Member disputing their credited workweeks to produce supporting documentation in order to resolve the dispute.

Class Members wishing to opt out from the Settlement Agreement must send a signed written request for exclusion to the Settlement Administrator within 45 days (plus an additional 14 days for Class Members whose Class Notice is re-mailed) from the initial mailing of the Class Notice. Participating Class Members will also have the opportunity to object to the Settlement Agreement by serving a copy of the objection to the Settlement Administrator within 45 days (plus an additional 14 days for Class Members whose Class Notice is re-mailed) after the mailing of the Class Notice.

ILYM Group ("ILYM") will handle the notice and administration of the Settlement. The procedures for mailing notice and processing exclusions and objections as well as distribution of the Net Settlement Amount are detailed in the Settlement Agreement.

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at 473-75.) The decision to certify a class is a procedural one, and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

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

A. There Is A Numerous and Ascertainable Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class and the means available for identifying class members. (*See Vasquez, supra,* 4 Cal. 3d at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271.) Class members are "ascertainable" where they may be readily identified without unreasonable expense or time. *See Rose v. City of Hayward*, 126 Cal. App. 3d 926, 932 (1981) (finding that "class members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records).

B. Plaintiff contends, and Defendant does not dispute for settlement purposes only, this requirement and the requirement of numerosity is met. Class Members are "all non-exempt employees employed by Propak in California during the Class Period," which is the period from December 2, 2020, through October 4, 2025. Documents and information exchanged between the Parties reflect a class of approximately 721 Class Members. The Class Members have already been identified by reference to Defendant's payroll and personnel records. There Is A Well-Defined Community of Interest

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

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

Id. at 809.

Plaintiff contends, and Defendant does not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims. Because Plaintiff has alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." (*See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123.) (citing In Re NASDAQ Market-Makers

Antitrust Litigation, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no hesitancy” in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.)

This action involves, *inter alia*, a determination about Defendant’s alleged failure to pay minimum wages and overtime, failure to provide meal periods and rest periods, failure to issue accurate itemized wage statements, failure to pay final wages, failure to pay timely wages, failure to reimburse necessary business expenses, and largely derivative claims under Unfair Competition Law and PAGA. Plaintiff contends these practices affected Class Members in the same way.

C. Plaintiff’s Claims Are Typical

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

Plaintiff contends, and Defendant does not dispute for settlement purposes only, that Plaintiff’s claims are typical of Class Members’ claims because they arose from the same factual basis and are based on the same legal theories. Plaintiff was employed by Defendant during the Class Period and subject to the allegedly unlawful meal and rest break policies and pay practices at issue in this litigation. Thus, the claims of Plaintiff are typical of the claims of the Class.

D. Adequacy of Class Counsel and Class Representative

Class Counsel are experienced in class actions, have represented their clients zealously and have no conflicts of interest. The Class Representative’s interests are aligned with those of

Class Members, he has suffered the same injuries as Class Members, and has no conflicts of interest. Therefore, Class Counsel and the Class Representative are adequate.

E. Predominance and Superiority

Individual issues do not predominate over those common to the class. The class action mechanism is superior to individualized actions because Class Members have little incentive to bring claims that are small.

V. THE TWO-STEP APPROVAL PROCESS

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

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

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

Settlements to resolve PAGA claims also require court approval. There is no articulated standard for approving PAGA settlements. PAGA settlements for as little as $0 have been approved. (*See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated $0 to PAGA claim).) Courts have also approved settlements for $20,000 or less. (*See, e.g., Hicks v. Toys 'R' Us–Delaware, Inc.,* (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving $5,000 PAGA payment in $4 million settlement); *Chu v.*

Wells Fargo Invest. LLC (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1 (approving PAGA payment of $7,500 in $6.9 million settlement); *Williams v. Brinderson Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 ($10,000 PAGA settlement in $300,000 settlement).)

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

VI. THE SETTLEMENT IS FAIR AND ADEQUATE

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

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

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

The Settlement here satisfies each of these factors. Class Counsel conducted informal discovery before entering into meaningful settlement negotiations in this matter, including obtaining through formal and informal discovery, voluminous company records and documents from Propak, including payroll data for Plaintiff and key data points. (This discovery permitted Class Counsel to fairly evaluate the strengths of the case and the risks associated with ongoing litigation. Class Counsel is very experienced in the handling of wage and hour class actions and supports this Settlement.

A. The Strength of Plaintiff's Case.

Class Counsel felt confident that the claims in this case would be certified given that Defendant's policies were applicable to all Class Members and unlawful. Defendant contended, however, that their policies complied with California law and denied Plaintiff's allegations.

B. The Risks Associated with the Merits.

As with all litigation, there are risks that a party will not prevail on the merits. Plaintiff alleged that Defendant failed to pay Plaintiff and Class Members all wages that were owed, including for all work performed and for all their overtime hours worked.

Defendant contended that they paid for all reported hours worked. Defendant argued that given their written policies and practices, any unrecorded hours were likely subject to individualized inquiry and unlikely to be certified. Given Defendant's defenses and the difficulty in certifying this claim, Class Counsel had to apply a significant discount to damages based on this theory.

Plaintiff alleged that Defendant systematically denied Plaintiff and Class Members the opportunity to take meal periods and rest periods. Furthermore, Defendant failed to compensate Plaintiff and Class Members for each meal period or rest period not provided at a proper rate.

Defendant disagreed with Class Counsel's interpretation of the law and facts. Defendant contended that Plaintiff and Class Members were given a reasonable opportunity to take their meal periods, and in fact received their meal periods most of the time. Defendant argued they have a high meal period compliance rate and paid meal period premiums when meal periods were not provided. Given Defendant's defenses and potential hurdles facing certification of this claim, Class Counsel had to apply a significant discount on this theory.

Plaintiff also contended that the same argument applied to rest breaks. Plaintiff alleged that Plaintiff and Class Members were often required to work or to otherwise remain under Defendant's control during rest periods, including by responding to work requirements or walk to break areas. Plaintiff alleged that Defendant did not compensate Plaintiff and Class Members with an additional hour of pay at each Class Member's regular rate for each day that Defendant filed to provide them with adequate rest breaks.

Defendant disagreed with Plaintiff's allegations, and maintained that it did provide the reasonable opportunity for Plaintiff and Class Members to take duty-free rest breaks. Defendant also pointed out that, unlike meal periods, rest breaks need not be recorded, so any rest break violations would likely be difficult to prove at trial and difficult to certify. Defendant disputes all allegations that breaks were not received. As these considerations could likely depress the damages.

C. The Risks Associated with Paystub Violations and Waiting Time Penalties.

In order to establish liability for these penalties, Plaintiff would first have to establish liability for the underlying claims. Plaintiff would then have to establish that Defendant's conduct was willful and knowing.

With waiting time penalties, there is always the risk that the trier of fact would not have held that Defendant's actions were done "willfully." A good faith belief in a legal defense can preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleges that Defendant failed to pay for all hours worked and premiums for non-compliant meal breaks due to the underreporting of hours and off the clock work. Plaintiff contends the Class Members are entitled to these wages and premiums, which they allege were not paid at the time of their termination or resignation. If Plaintiff is successful on their claims, the penalties pursuant to Labor Code § 203 shall attach. Defendant, however, contended it provided employees with the reasonable opportunity to take meal breaks, asked Class Members to confirm the accuracy of their time records, and therefore had good-faith defenses under *Brinker* and its progeny. Defendant likewise contended that it properly paid all hours worked by its employees. Based upon Defendant's potential success in establishing both that a good faith dispute existed with regard to unpaid wages, and Defendant endeavored in good faith to supply accurate wage statements, Defendant argues the claims for paystub violations and waiting time penalties have little or no value. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage statements that accurately report wages paid to employees do not violate Labor Code § 226, even if it is later determined that employer did not properly pay all wages due). As such, there was risk associated with wage statement and waiting time penalties that Class Counsel had to consider.

D. The Risks Associated with the PAGA Penalties.

Plaintiff discounted potential penalties for reasons already discussed. The PAGA claims are premised on the same underlying unpaid wages, meal and rest break, wage statement, and waiting time claims, and thus subject to the same disputes and defenses. There is also a dispute as to whether violations in later pay periods trigger the $200 penalty under PAGA as a "subsequent violation." (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1203 (2008).) As such, there is a fair amount of risk associated with PAGA claims makes the settlement's proposed PAGA payment of $40,000 appropriate.

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

Given the risks outlined above, the issues in this case were complex and the risk for Plaintiff and Class Members associated with this litigation was significant. A class trial would have required the retention of expensive expert witnesses, the accrual of extensive litigation costs, and the parties would have had to spend a substantial amount of time litigating this matter.

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

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

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

G. The Amount Offered in Settlement.

There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive, and arms-length negotiations between the parties with an experienced mediator. In order to determine the approximate potential damages which would be owed to each of the Class Members, Class Counsel's expert analyzed the time records for Plaintiff and Defendant provided Class Counsel with records for a 84.3% sampling of time and pay records of Class Members. By analyzing this information, Class Counsel was able to estimate the full value of the case if Plaintiff were to prevail at trial.

Based on the data provided, Class Counsel estimated the realistic exposure on the primary claims in this case as follows: unpaid minimum and overtime wage claims at **$86,011.40**, meal period claim at **$34,198.40**, wage statement claim at **$125,825.00**, waiting time penalties at **$169,175.10,** and on PAGA at **$128,000.00,** for a total realistic maximum exposure of **$543,209.90**.

The Gross Settlement Amount of $395,000.00 represents a recovery for the Class of approximately 72.7% of the total realistic exposure Plaintiff estimated that Defendant could face on the primary claims in this case. Plaintiff and Class Counsel submit that this is an excellent result in the face of uncertainty and the prospects of protracted and contested litigation through class certification, summary judgment, and trial, and particularly in light of all of the factors described above.

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

VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND REASONABLE

It is appropriate to provide a relatively modest additional incentive payment to the class representative. See *Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294.

Plaintiff is entitled to a reasonable service payment for efforts and initiative in bringing and helping to prosecute this class action. Plaintiff spent significant time apprising himself of his rights, deciding whether remedial action should be taken, how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not only his own rights but also those of co-workers by filing a class action lawsuit.

The courage it took to stand up to Defendant by filing and litigating this action in this way should not be underestimated as Plaintiff increased the risk of retaliation by prospective employers. But Plaintiff did not allow his fear of the potential repercussions of being a class representative deter from acting for the benefit of Class Members. To the contrary, Plaintiff has been intimately involved in this case since its inception. (*Id.*) He has devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel on numerous occasions to discuss every aspect of his case. Plaintiff provided Class Counsel with information about Defendant and about the industry generally, reviewed documents, identified witnesses, consulted Class Counsel throughout the litigation repeatedly and at length, participated in the mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the Settlement Agreement.

The Settlement allocates an incentive award in the amount of $5,000.00. This amount is a far cry from the $50,000 of enhancement awards to the two named plaintiffs approved by the trial court in *Clark. See Clark Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th at 807. Although Class Counsel appreciate that the Court has a duty to ensure that class representatives are not overcompensated at the expense of the class, modest incentive awards in employment class actions, such as the one here, are necessary not only to compensate class representatives for the time they spend in the case, but also, and more importantly, to encourage aggrieved employees to challenge questionable employment practices notwithstanding the very real consequences they may face.

In light of the foregoing, Class Counsel believes that the incentive award in the amount of $5,000.00 to Class Representative is fair and reasonable.

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

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

The Class Notice meets due process standards because it provides all the information a reasonable person would need to make a fully informed decision about the settlement. It will notify all class members of the terms of the settlement, of its effect on their rights, of their options as class members (i.e., participate, object, opt out, do nothing), and of the consequences of exercising those options. Moreover, the Class Notice will specifically direct any Class Members who have questions or concerns to contact the Settlement Administrator or Class Counsel.

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

Here, the Class Notice will be sent via first-class mail to each Class Member. If any Class Notices are returned undeliverable without a forwarding address, the Settlement Administrator will use the national change of address database and perform a skip trace to locate the Class Member and mail a new Class Notice to him or her at the correct address. Thus, most, if not all, Class Members will likely receive the Class Notice.

Therefore, the Court should approve the Class Notice and direct that it be distributed as proposed herein.

IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT

As a general rule, only class members have standing to object to a proposed settlement. "Beginning from the unassailable premise that settlements are to be encouraged, it follows that to routinely allow non-class members to inject their concerns via objection at the settlement stage would tend to frustrate this goal." (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.)

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

Under the Settlement Agreement, subject to approval by this Court, Class Counsel will seek an award of fees of $138,250.00, one-third of the Gross Settlement Amount, and reasonable litigation costs and expenses incurred in to prosecute this Action. The requested fees are fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-consuming litigation solely on a contingent basis. Defendant will not oppose Class Counsel's above fees and cost request.

Here, Class Counsel has borne the entire risk and costs of litigation and will not receive any compensation until recovery is obtained. The Court should also consider the benefit obtained by Class Counsel on behalf of Class Members. Thus, the requested award for Class Counsel is reasonable.

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

The parties respectfully request this Court, as part of the preliminary approval process in accordance with Cal. Rules of Court, rule 3.769(c), to grant the following relief and make the following orders:

1. Approve the Settlement Agreement;

2. Approve the Class Notice;

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

4. Enter an order conditionally certifying the action as a class action for settlement purposes only;

5. Approve and appoint Adam Rose of Frontier Law Center to serve as Class Counsel for settlement purposes;

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

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

8. Order Defendant to disclose to ILYM the class members' identities to effectuate the terms of the Settlement;

9. Order that ILYM mail the Class Notices to Class Members; and

10. Set a date for the Final Approval Hearing.

Date: December 24, 2025

FRONTIER LAW CENTER

/s/ Adam Rose, Esq,
Attorney for Plaintiff
Kyle Roberts