Plaintiff Manuel Silveira submits the following Memorandum of Points and Authorities In Support of Plaintiff's Motion for Preliminary Approval.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Manuel Silveira ("Plaintiff" or "Class Representative") filed a class action complaint in the Superior Court of the State of California, Alameda County, Case No. 23CV057493, against Defendants The Dow Chemical Company, Rohn and Haas Chemicals LLC, and Giovana Stein. Plaintiff alleged the following causes of actions: (1) failure to pay minimum wages; (2) nonpayment of wages; (3) failure to pay overtime and/or double-time wages; (4) failure to maintain time records and provide itemized statements; (5) failure to pay all wages due upon discharge; (6) failure to provide meal periods; (7) failure to provide rest periods; and (8) unfair and unlawful business practices. On February 27, 2024, Plaintiff filed a First Amended Complaint to add a representative cause of action under the Private Attorney General Act.

Pursuant to the proposed Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement"), filed concurrently herewith, the class consists of "all of Defendant's current and former non-exempt employees who worked 12-hour shifts at the Hayward plant in California at any time between November 27, 2019, through March 30, 2025." After engaging in substantial investigation, informal discovery, and extensive negotiations with the assistance of a respected third-party neutral Kevin Barnes, the parties have agreed to settle all claims alleged in the lawsuit on a class-wide non-reversionary basis for Four Hundred and Ninety Thousand Dollars and Zero Cents ($490,000.00), inclusive of all fees and costs. All 48 Class Members shall receive a settlement share unless they opt out.

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

II. STATUS OF THE LITIGATION

A. Procedural History

On November 27, 2023, Plaintiff submitted a Private Attorneys General Act ("PAGA") notice letter to the Labor Workforce Development Agency ("LWDA") and served Defendants The Dow Chemical Company and Rohn and Haas Chemicals LLC. (Corren Decl., ¶7) The LWDA did not express an interest in investigating Plaintiff's claims within the 65-day period. (*Ibid.*)

Simultaneously, on November 27, 2023, Plaintiff filed a class action complaint against Defendants The Dow Chemical Company, Rohn and Haas Chemicals LLC, and Giovana Stein alleging eight causes of actions: (1) failure to pay minimum wages; (2) nonpayment of wages; (3) failure to pay overtime and/or double-time wages; (4) failure to maintain time records and provide itemized statements; (5) failure to pay all wages due upon discharge; (6) failure to provide meal periods; (7) failure to provide rest periods; and (8) unfair and unlawful business practices. (Corren Decl., ¶8)

On February 27, 2024, Plaintiff filed a First Amended Complaint to add a representative cause of action under the Private Attorney General Act. (Corren Decl., ¶9)

On April 10, 2024, a dismissal without prejudice was entered as to Defendant Stein. (Corren Decl., ¶10)

Plaintiff contends that Defendants failed to pay Class Members all wages due and owing, including by requiring off the clock work, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, and failing to maintain accurate records. (Corren Decl., ¶11)

B. Investigation

Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto. (Corren Decl., ¶12) This required thorough discussions and interviews between Class Counsel and Plaintiff, as well as preliminary research into the various legal issues involved in the case. (*Ibid.*) After conducting their initial investigation, Class Counsel determined that Plaintiff's claims were well-suited for class and representative action adjudication owing to what appeared to be a common course of conduct affecting a similarly situated group of employees. (*Ibid.*)

After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including: (1) conducting informal discovery and meeting and conferring with defense counsel about same; (2) reviewing and analyzing a sampling of time and pay records as well as relevant policy documents, Plaintiff's personnel file and records, and other documentation; (3) researching the applicable law and potential defenses; (4) constructing damage models based on interpretations of California law; and (5) reviewing information provided by Defendants at the mediation. (Corren Decl., ¶13) The Class enumerated in this action is ascertainable because the Class Members may be readily identified by reference to Defendants' records. (*Ibid.*) Defendants have agreed to share the information from these records with the Settlement Administrator in order to identify and contact the Class Members. (*Ibid.*) There are approximately 48 total Class Members. (*Ibid.*)

Defendants, for their part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (Corren Decl., ¶14) After Class Counsel analyzed the relevant documents and gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (*Ibid.*) Given the risks present for both sides, the parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Ibid.*)

C. Settlement Efforts

On January 29, 2025, the parties mediated this case with Kevin T. Barnes, a respected and highly experienced mediator in wage and hour class actions. (Corren Decl., ¶15) During mediation, Plaintiff and Defendants' counsel discussed all aspects of the case, including the risks of litigation and the risks to both parties of proceeding with a motion for class certification as well as the law relating to unpaid wages, meal periods, rest periods, wage statements, and final pay. (*Ibid.*) As a result of the mediation and pursuant to a mediator's proposal, the parties agreed to settle the lawsuit according to the terms set forth in the Settlement Agreement. (*Ibid.*; See Exhibit 1 attached to Corren Decl., "Settlement" or "Settlement Agreement".)

From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class Counsel believes that the recovery for each Class Member is fair and reasonable taking into consideration the amounts received in other wage and hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Class Member's claim to the settlement award he or she will receive. (Corren Decl., ¶16) 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. (*Ibid.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, Defendants have agreed to pay Four Hundred Ninety Thousand Dollars and Zero Cents ($490,000.00) ("Gross Settlement Amount") on a non-reversionary basis to settle and release all claims asserted by Plaintiff in the Class Action and PAGA Action on behalf of the proposed Class. (Corren Decl., ¶17; Ex. 1, §3.1) The Settlement Agreement defines the "Class Members" as "all of Defendant's current and former non-exempt employees who worked 12-hour shifts at the Hayward plant in California at any time between November 27, 2019, through March 30, 2025." (Corren Decl., ¶18; Ex. 1, §1.5, 1.12) The "Net Settlement Amount," available for distribution to Class Members, shall be the Gross Settlement Amount, less the Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Attorney's Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (Corren Decl., ¶19; Ex. 1, §1.28) These amounts are detailed as follows:

- not more than One-Third of the Gross-Settlement Amount, which is currently estimated to be One Hundred Sixty-Three Thousand Three Hundred Thirty-Three Dollars and Zero Cents ($163,333.00) to Class Counsel for the Class Counsel Attorney's Fees Payment, and not more than Twenty Thousand Dollars and Zero Cents ($20,000.00) to Class Counsel for the Class Counsel Litigation Expenses Payment; (Corren Decl., ¶19; Ex. 1, §3.2.2);
- not more than Fifteen Thousand Dollars and Zero Cents ($15,000.00) for the Administration Expenses Payment; (Corren Decl., ¶19; Ex. 1, §3.2.3);

- not more than Ten Thousand Dollars and Zero Cents ($10,000.00) to the Plaintiff for the Class Representative Service Payment; (Corren Decl., ¶19; Ex. 1, §3.2.1); and
- Twenty Thousand Dollars and Zero Cents ($20,000.00) for civil penalties under the PAGA, where 75% ($15,000.00) will be paid to the LWDA and 25% ($5,000.00) will be paid to Aggrieved Employees for their Individual PAGA Payments. (Corren Decl., ¶19; Ex. 1, §3.2.4.3)

The "Individual Class Payment," which is each Class Member's share of the Net Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on the number of workweeks a Class Member worked during the Class Period. (Corren Decl., ¶20; Ex. 1, §1.23)

Defendants shall pay its employer payroll tax obligations on the payouts to Class Members in addition to the Gross Settlement Amount. (Corren Decl., ¶21; Ex. 1, §3.1)

The settlement amount was a compromise figure, factoring in the inherent risks related to certification, liability, and damages. (Corren Decl., ¶22) However, taking into account all of the circumstances of the action and the defenses raised by Defendants against certification, liability, and damages, Class Counsel believes that the settlement is fair and reasonable. (*Ibid.*)

Attached to the Settlement Agreement as Exhibit A is the Notice of Settlement ("Class Notice"). Class Members shall each receive a Class Notice via first class mail (after the Settlement Administrator conducts a national change of address search). (Corren Decl., ¶23; Ex. 1, §7.4.2) Class Members will have an opportunity to dispute the information provided in their Class Notice and they may produce evidence to support the information is inaccurate. (Corren Decl., ¶23; Ex. 1, §7.6; see also Class Notice, Exhibit A attached to the Settlement Agreement.) The Settlement Administrator shall decide the dispute and may ask Defendants to produce the personnel and payroll files of the Class Member disputing their credited workweeks in order to resolve the dispute. (Corren Decl., ¶23; Ex. 1, §7.6) Class Members wishing to opt-out from the Settlement Agreement must sign and postmark a written request for exclusion to the Settlement Administrator. (Corren Decl., ¶23; Ex. 1, §7.5.1) Class Members will also have the opportunity to object to the Settlement Agreement, by serving a copy of the objection to the Settlement Administrator. (Corren Decl., ¶23; Ex. 1, §7.7) The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Class Notice. (Corren Decl., ¶23;

Ex. 1, §1.43)

The parties have also agreed that Phoenix Class Action Administration Solutions shall handle the notice and settlement administration (Ex. 1, §7.1), and the parties respectfully request this Court to appoint Phoenix Class Action Administration Solutions to handle those procedures. The procedures for mailing notice and processing exclusions and objections as well as distribution of the Net Settlement fund is detailed in the Settlement Agreement. (Ex. 1, §7)

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;) Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at 473-75.) The decision to certify a class is a procedural one, and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

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

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.

Plaintiff contends, and Defendants do not dispute for settlement purposes only, this requirement and the requirement of numerosity is met. Class Members are "all of Defendant's current and former non-exempt employees who worked 12-hour shifts at the Hayward plant in California at any time between November 27, 2019, through March 30, 2025." (Corren Decl., ¶24) Documents and information exchanged between the parties reflect a class of approximately 48 Class Members. (Corren Decl., ¶25) The Class Members have already been identified by reference to Defendants' payroll and personnel records. (*Ibid.*)

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

B. There is a Well-Defined Community of Interest

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

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

(*Id.* at 809)

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof. (Corren Decl., ¶26) Because Plaintiff has alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." (*See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This inference "'eliminates the need for each class member to prove individually the consequences of the defendants' actions to him or her.'" (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).)

This action involves, *inter alia*, a determination about Defendants' alleged failure to provide meal period and rest periods, failure to pay wages and double time due to allegedly common and unlawful policies, failure to pay final wages when required, failure to provide accurate paystubs, and largely derivative claims under the Business & Professions Code and PAGA. Plaintiff contends these practices affected Class Members in the same way. Plaintiff contends these practices resulted in a failure to compensate employees at termination, and inaccurate hours and incomplete wages displayed on wage statements. The outcome of litigation on this matter depends upon questions that are common to Class Members. (Corren Decl., ¶27) While Defendants maintained otherwise, these issues will not be decided on the basis of facts peculiar to each Class Member, but rather on the basis of facts common to them all. It is also true that these issues of liability can be determined on a class-wide basis. (*Ibid.*)

C. The Named Plaintiff's Claims Are Typical

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

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that Plaintiff's claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Corren Decl., ¶28) Plaintiff was employed by Defendants during the Class Period, and was subject to the allegedly unlawful meal and rest policies and pay practices at issue in this litigation. (*Ibid.*) Accordingly, Plaintiff is a member of the Class. (*Ibid.*) The central issues of this litigation (whether Defendants failed to pay all wages, whether Defendants failed to provide meal and rest periods, etc.), which would arise if this was an individual action, applies to the other Class Members as well. The answer to these questions would determine Defendants' liability to the putative class. (*Ibid.*) Thus, the claims of Plaintiff are typical of the claims of the putative class. (*Ibid.*) Accordingly, the typicality requirement is satisfied.

D. Adequacy of Class Counsel and Class Representative

Class Counsel are experienced in class actions, have represented Plaintiff and the Class Members zealously, and have no conflicts of interest. (Corren Decl., ¶29) Plaintiff contends, and Defendants do not dispute for settlement purposes only, that the Class Representative's interests are aligned with those of the Class Members, has suffered the same injuries as the Class Members, and has no conflicts of interest. (*Ibid.*) Therefore, Class Counsel and the Class Representative are adequate.

E. Predominance and Superiority

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that individual issues do not predominate over those common to the class. (Corren Decl., ¶30) Plaintiff further contends, and Defendants do not dispute for settlement purposes only, that the class action mechanism is superior to individualized actions because Class Members have little incentive to bring claims that are small. (*Ibid.*)

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. (Labor Code § 2699(l)(2).) 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 full settlement hearing.

VI. THE SETTLEMENT IS FAIR AND ADEQUATE

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

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

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

The Settlement here satisfies each of these factors. Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter, including a detailed analysis of Defendants' policies and a considerable sample of Defendants' time and pay records. (Corren Decl., ¶31) 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. (*Ibid.*)

A. The Strength of Plaintiffs' Case

Plaintiff alleges that Defendants failed to pay minimum, regular, and double time wages; failed to provide proper meal periods or provide premium pay in lieu thereof; failed to provide proper rest periods or provide premium pay in lieu thereof; failed to provide accurate wage statements, and failed to timely pay all wages upon termination in violation of California law. (Corren Decl., ¶32)

Class Counsel felt confident that the claims in this case would be certified given that Defendants' policies were applicable to all Class Members and unlawful on their face. (Corren Decl., ¶33) Defendants contended, however, that the policies complied with California law. (*Ibid.*)

B. The Risks Associated with the Merits

As with all litigation, there are risks that a party will not prevail on the merits. In this case, Plaintiff contends that they and other Class Members were not properly provided meal periods. (Corren Decl., ¶34) Defendants contended that Class Members were given a reasonable opportunity to take their meal periods, and in fact received their meal periods pursuant to their time records. (*Ibid.*) If Defendants' contentions are proven true and prevail in trial, the likely outcome of this claim would be no recovery for the Class Members. Plaintiff also contended that Defendants did not provide Class Members with paid 10-minute rest periods for every four hours or major fraction thereof. (Corren Decl., ¶35) Class Members consistently worked in excess of consecutive four-hour shifts and were entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift, which they were denied. Class Members were required to work through their rest breaks, and through their entire shifts. Defendants maintained that they did provide the reasonable opportunity for Class Members to take duty-free rest breaks. (*Ibid.*) Defendants also pointed out that, unlike meal periods, rest breaks need not be recorded and Defendants dispute all allegations that breaks were not received. (*Ibid.)* As these considerations would likely depress the damages ultimately awarded, Class Counsel applied appropriate discounts to the rest-period claim.

Plaintiff alleged that Defendants failed to pay Plaintiff and Class Members minimum, regular, and double time wages for certain off-the-clock hours worked, in violation of California wage laws. (Corren Decl., ¶36) Specifically, Defendants had a uniform policy of requiring Plaintiff and the Class Members to perform off the clock shift turnover work. Plaintiff and the Class Members were required to work 12-hour shifts and were not permitted to record on their timecards work performed in excess of 12 hours in a workday as such work would require the payment of double time compensation. Despite this policy, Plaintiff and the Class Members were instructed and required by Defendants to perform shift turnover work off the clock with their incoming replacement. Plaintiff and the Class Members were never compensated for this off the clock time. (*Ibid.*)

Defendants contended that they paid for all reported hours worked, that Class Members were trained to record all hours worked, and that they paid proper wages for all such hours. (Corren Decl., ¶37) Defendants argued that given their written policies and practices, any unrecorded hours were likely subject to individualized inquiry and unlikely to be certified. (*Ibid.*) Given the possible difficulty in certifying this claim, Class Counsel had to apply a discount to damages based on this theory.

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 Defendants' conduct was willful and knowing. (Labor Code §§ 203, 226(e).)

With waiting time penalties, there is always the risk that the trier of fact would not have held that Defendants' 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 alleged that Defendants failed to pay for all hours worked and premiums for non-compliant meal and rest periods. 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 § 203 shall attach. Defendants, however, contend it provided employees with the reasonable opportunity to take meal and rest periods, asked Class Members to confirm the accuracy of their time records, and therefore had good-faith defenses under *Brinker* and its progeny. Defendants likewise contend that it properly paid all hours worked by its employees. Based upon Defendants' potential success in establishing both that a good faith dispute existed with regard to unpaid wages, and Defendants endeavored in good faith to supply accurate wage statements, Defendants argue 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. (Corren Decl., ¶38)

D. The Risks Associated with the PAGA Penalties

Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount by the Labor Code section relating to the underlying alleged Labor Code violation, that amount shall apply. (*Ibid.*) The PAGA also gives the Court discretion to award any lesser amount than the maximum civil penalty. (*Ibid.* ["…a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."]); See, e.g., *Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), rev. denied (2018), (recognizing court's ability to reduce PAGA penalties). Courts have held that situations similar to the current one (e.g. injuryless violations, technical errors, and substantial compliance) should lead to reductions in penalties. See *Thurman v.*

Bayshore Transit Management, Inc., 203 Cal. App. 4th 1112, 1134-1135 (2012) (holding that reduction was justified when employer "attempted to comply with the law"); *Fleming v. Covdien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011) (reducing PAGA penalties more than 80% – from $2.8 million to $500,000 – when "employees suffered no injury" employers were "not aware" of the violation and "took prompt steps to correct all violations once notified").

Plaintiff discounted potential penalties under this claim given this authority, and for other reasons. 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. (Corren Decl., ¶39) This makes the settlement's contemplated PAGA payment of Twenty Thousand Dollars and Zero Cents ($20,000.00) appropriate.

Based on this analysis, Class Counsel believes that this settlement is fair and reasonable and in the best interest of the Class. (Corren Decl., passim.)

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

Given the risks outlined above, the issues in this case were complex and there was considerable risk for Plaintiff and the Class Members. (Corren Decl., ¶41) 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. (*Ibid.*)

Finally, given the complexity and unsettled nature of the issues, it is possible that any outcome at trial could have resulted in a lengthy and costly appeal. An appeal would result in further delay for the Class Members who have already waited years for resolution in this matter. (Corren Decl., ¶42)

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.* (2014) 59 Cal. 4th 1, 34 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 analyzed the time records for Plaintiff and Defendants provided Class Counsel with records for a sampling of the class members. By analyzing this information, Class Counsel was able to estimate the full value of the case if Plaintiff was to prevail at trial.

There are approximately 48 total Class Members. Based on the data provided, Class Counsel estimated the following maximum exposures: unpaid wage claim at $739,810.00; meal period claim at $424,986.50; rest period claim at $424,986.50; wage statement claim at $146,700.00; waiting time penalties at $281,880.00; liquidated damages at $165,299.00; interest on wages and break premiums at $278,072.00; and PAGA penalties at $586,800.00. (Corren Decl., ¶43)

However, taking into account the difficulties of proof, the Defendants' defenses, and other attendant risks, Plaintiff estimates that the total amount of remedies the Class could reasonably expect to be awarded at trial is significantly less than the maximum exposure. (Corren Decl., ¶44)

Once Class Counsel was able to determine the maximum potential damages, it was able to determine a fair and reasonable settlement for the Class. (Corren Decl., ¶45) Class Counsel analyzed the likelihood of success on the merits. (*Ibid.*) It believes that the Class had a reasonable likelihood of success on the core claims. (*Ibid.*) However, Defendants dispute this contention, denies all wrongdoing in this matter and are confident they have strong legal and factual defenses to Plaintiffs' claims. Moreover, Class Counsel determined that the likelihood of success on the claims for meal and rest periods was not as strong, because various defenses, including issues not suitable for class treatment. Defendants also may have had the opportunity to establish that they had a good faith belief that they were complying with the law, which could have prevented the recovery of certain penalties. After taking into account the likelihood of success on each claim and the challenges faced with certifying these claims, Class Counsel determined that the settlement amount of Four Hundred Ninety Thousand Dollars and Zero Cents ($490,000.00) was fair and reasonable. (*Ibid.*)

Under the Settlement, each of the approximately 48 Class Members will receive on average $5,451.00, assuming they worked throughout the class period. (Corren Decl., ¶46) Plaintiff feels that this Settlement is fair, reasonable, and advantageous to the class. (*Ibid.*)

To summarize, the Settlement here is fair because it provides a substantial payment to each Class Member for releasing his or her claims; extinguishes the risk of litigation; and provides a fair and adequate distribution of the settlement proceeds whereby the funds are allocated to Class Members proportionally based on their Payout Ratio.

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

Class Counsel has devoted a considerable amount of time to the prosecution of this case, including but not limited to, interviewing Plaintiff on repeated occasions; drafting pleadings; conducting informal discovery, and meeting and conferring with Defense Counsel about same; reviewing and analyzing time records and various handbooks and policies, Plaintiff's personnel file, and other documentation; researching California law; interviewing class members regarding their experiences; preparing for and attending mediation; and negotiating and finalizing the Settlement Agreement and related documents. (Corren Decl., ¶48)

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

These factors each indicated that the interests of Class Members are best served by a settlement of this action in the manner and upon the terms set forth in the Settlement Agreement. The Settlement

Agreement confers a substantial benefit on the class of Four Hundred Ninety Thousand Dollars and Zero Cents ($490,000.00). Moreover, the settlement awards for each Class Member will be tailored to their workweeks during the Class Period.

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

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 his efforts and initiative in bringing and helping to prosecute this class action. Plaintiff spent significant time better apprising himself of his rights, deciding whether remedial action should be taken, how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing his case and the law. (Corren Decl., ¶50) In the end, Plaintiff decided to vindicate not only his own rights but also those of his co-workers by filing a class action lawsuit.

The courage it took to do this should not be underestimated. By suing Defendants, Plaintiff contends he increased the risk of retaliation by prospective employers. (Corren Decl., ¶ 51) Plaintiff's lawsuit has now cost Defendants considerable resources, and Plaintiff contends such conduct will not be lost on a prospective employer who has to choose between an applicant who has never sued a prior employer and one who has. (*Ibid.*) Plaintiff contends this risk is particularly real in the information age, where employers can, more easily than ever, perform background checks of prospective employees, sometimes with the stroke of a key. (*Ibid.*)

But Plaintiff did not allow his fear of the potential repercussions of being a class representative deter him from acting for the benefit of the Class Members. (Corren Decl., ¶52) To the contrary, Plaintiff has been intimately involved in this case since its inception. (*Ibid.*) He has devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation. (*Ibid.*) Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel to discuss every aspect of this case; Plaintiff has provided Class Counsel with information about Defendants and about the industry generally, reviewed documents, identified witnesses, consulted Class Counsel throughout the litigation, participated in the mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the settlement agreement. (*Ibid.*)

Plaintiff spent a significant amount of time with Class Counsel detailing his knowledge of Defendants' practices. (Corren Decl., ¶53) He has diligently, adequately, and fairly represented Class Members, and has not placed his interests above any member of the putative class. (*Ibid.*) This sort of payment to a class representative has been a common feature of settlements negotiated by Class Counsel and has been routinely approved by trial courts. (*Ibid.*)

In light of the foregoing, Class Counsel believes that the incentive award in the amount of Ten Thousand Dollars and Zero Cents ($10,000.00) to the Class Representative is fair and reasonable. (Corren Decl., ¶54)

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

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

The Class Notice meets constitutional standards because it provides all the information a reasonable person would need to make a fully informed decision about the settlement. It will notify all class members of the terms of the settlement, of its effect on their rights, of their options as class members (i.e., participate, object, opt out, do nothing), and of the consequences of exercising those options. (Corren Decl., ¶55) Moreover, the Class Notice will specifically direct any class members who have questions or concerns to contact the Settlement Administrator, Phoenix Class Action Administration Solutions, or Class Counsel. (*Ibid.*)

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. (Corren Decl., ¶56) 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. (*Ibid.*) Thus, most, if not all, class members will likely receive the Class Notice.

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

IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT

Non-settling parties and third parties periodically may attempt to object to proposed class action settlements, but the right of non-settling parties to object at the final settlement approval hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class members have standing to object to a proposed settlement. "Beginning from the unassailable premise that settlements are to be encouraged, it follows that to routinely allow non-class members to inject their concerns via objection at the settlement stage would tend to frustrate this goal." (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284) Since an application is being filed to obtain a good faith determination, no persons other than class members have standing to object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d 1330.)

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

Under the Settlement Agreement, subject to approval by this Court, Class Counsel will seek an award of fees of no more than One-Third of the Gross Settlement Amount, currently estimated to be Hundred Sixty-Three Thousand Three Hundred Thirty-Three Dollars and Zero Cents ($163,333.00), and not more than Twenty-Thousand Dollars and Zero Cents ($20,000.00) in costs. 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. (Corren Decl. ¶57) Defendants will not oppose Class Counsel's fees and cost request.

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

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

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

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

In wage and hour class actions in particular, California trial courts have customarily approved attorney's fees consistent with or greater than the percentage of the common fund requested in this case. (See *Stevenson v. Vanguard Security Services Inc.* San Joaquin County Superior Court Case No. STK-CV-UOE-2003-6232 (Hon. Linda L. Lofthus) (November 2017) (approving an award of attorneys' fees of 50% of the settlement); *Lehmeidi v. Quality Resturant Enterprises Inc.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2018-4096 (Hon. George Abdallah) (July 2023) (approving an award of attorneys' fees of at least 33-1/3% of the settlement); *Leyva/Sysavath v. Universal Service Recycling Inc.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2023-7875 (Hon. Jayne Lee) (July 2025) (approving an award of attorneys' fees of at least 33-1/3% of the settlement);*Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC 220525 (Hon. Richard C. Hubbell) (Dec. 2001); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super. Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los Angeles County Super.Ct. Case No. BC 278170 (April 2004) (Hon. David M. Minning); *Josiah Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon. Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County Super.Ct. Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper Restaurants*, Orange County

Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).)

Here, Class Counsel has borne the entire risk and costs of litigation and will not receive any compensation until recovery is obtained. (Corren Decl., ¶58) The Court should also consider the benefit obtained by Class Counsel on behalf of class members. Thus, the requested award for Class Counsel is reasonable.

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

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

1. Review and approve the Settlement Agreement;

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

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

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

5. Approve and appoint Adam Corren and Spencer Sinclair of Law Offices of Corren & Corren to serve as Class Counsel for settlement purposes;

6. Approve and appoint Phoenix Class Action Administration Solutions 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 claims made under PAGA;

8. Order Defendants to disclose to Phoenix Class Action Administration Solutions the names, last-known addresses, telephone numbers, dates of employment, and social security numbers of class members as set forth in the Settlement Agreement;

9. Order that Phoenix Class Action Administration Solutions mail the Class Notices to class members; and

10. Set a date for the Final Approval Hearing.

DATED: LAW OFFICES OF CORREN & CORREN

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ADAM BLAIR CORREN
Attorney for Plaintiff