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individually and on behalf of others
similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

JOHN PRICE, individually and on behalf of
others similarly situated,

Plaintiff,

vs.

FORT POINT BEER COMPANY, and DOES 1
through 25, inclusive,

Defendants.

Case No.: CGC-23-610592
[Consolidated with Case No. CGC-24-611779]

Honorable Jeffrey S. Ross
Department 613

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: January 6, 2026
Time: 9:00 a.m.
Dept.: 613

Complaint Filed: November 21, 2023
Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT on January 6, 2026 at 9:00 a.m.** in Department 613 of the
3 above-captioned Court located at 400 McAllister St., San Francisco, California 94102, pursuant to
4 California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiff
5 John Price (“Plaintiff”) will and hereby does move the Court for an Order granting preliminary approval
6 of the proposed class action and PAGA settlement between Plaintiff and Defendant Fort Point Beer
7 Company (“Defendant”).

8 Plaintiff requests that the Court enter an Order:

9 1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement
10 (“Settlement” or “Settlement Agreement”) attached as Exhibit 3 to the Declaration of Alexandra Rose in
11 Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement (“Rose
12 Decl.”);

13 2. Certifying the Class for Settlement purposes;

14 3. Appointing Plaintiff John Price as the Class Representative for Settlement purposes;

15 4. Appointing Jonathan M. Genish, Barbara DuVan-Clarke, Danielle Ling GruppChang, P.J.
16 Van Ert, Alexandra Rose, and Lizeth Marin of Blackstone Law, APC as Class Counsel for Settlement
17 purposes;

18 5. Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as
19 Exhibit A to the Settlement Agreement, to be mailed to the Class;

20 6. Approving the opt-out and objection procedures provided in the Settlement Agreement
21 and set forth in the Class Notice;

22 7. For each Class Member, directing Defendant to furnish their full name, last known mailing
23 address, Social Security number, dates worked for Defendant during the Class Period, and such other
24 information as is necessary for the Settlement Administrator to calculate Workweeks and Pay Periods to
25 the Settlement Administrator within fourteen (14) calendar days after entry of the order granting
26 preliminary approval of the Settlement;

27 8. Approving the proposed deadlines for the settlement administration process; and

28 9. Setting a Final Approval Hearing.

1 Pursuant to California Labor Code section 2699(1)(2), on December 5, 2025, a copy of the
2 Settlement was submitted to the California Labor and Workforce Development Agency (“LWDA”) via
3 online submission through the LWDA’s website. (Rose Decl., ¶ 54 and Exh. 4).

4 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the
5 Declaration of Alexandra Rose, the Declaration of Plaintiff John Price, the Declaration of the Settlement
6 Administrator (Sean Hartranft of Apex Class Action, LLC), the pleadings and other records on file with
7 the Court in this matter, and any other further evidence or argument that the Court may properly receive
8 at or before the hearing.

9 Respectfully submitted,

10 Dated: December 5, 2025

BLACKSTONE LAW, APC

11 By: 
12 Alexandra Rose
13 Attorney for Plaintiff John Price

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff John Price (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of Class
4 Action and PAGA Settlement (“Settlement” or “Settlement Agreement”) entered into between Plaintiff
5 and Defendant Fort Point Beer Company (“Defendant”) (together, with Plaintiff, the “Parties”).
6 (Declaration of Alexandra Rose in Support of Plaintiff’s Motion for Preliminary Approval of Class
7 Action and PAGA Settlement [“Rose Decl.”], Exh. 3). The Settlement terms are outlined as follows:

- 8
- Class Size: Approximately two hundred seventy (270) Class Members.
 - 9 • Gross Settlement Amount: Three Hundred Twenty-Five Thousand Dollars and Zero Cents
10 (\$325,000.00).
 - 11 • Attorneys’ Fees and Costs: Attorneys’ fees of thirty-five percent (35%) of the Gross
12 Settlement Amount (\$113,750.00 if the Gross Settlement Amount is \$325,000.00) plus actual
13 litigation costs and expenses not to exceed Thirty-Five Thousand Dollars and Zero Cents
14 (\$35,000.00), to be paid from the Gross Settlement Amount.
 - 15 • Enhancement Payment: Ten Thousand Dollars and Zero Cents (\$10,000.00), to be paid from
16 the Gross Settlement Amount.
 - 17 • Settlement Administration Costs: Not to exceed Seven Thousand Five Hundred Dollars
18 (\$7,500.00), to be paid from the Gross Settlement Amount.
 - 19 • PAGA Amount: Seventeen Thousand Dollars and Zero Cents (\$17,000.00) from the Gross
20 Settlement Amount, 75% of which will be paid to the Labor and Workforce Development
21 Agency (“LWDA”) and the remaining 25% to be paid to the PAGA Employees.
 - 22 • Estimated Net Settlement Amount: One Hundred Forty-One Thousand Seven Hundred Fifty
23 Dollars and Zero Cents (\$141,750.00) to be distributed to Settlement Class Members.

24 As set forth herein, the Settlement is the product of informed discovery and arms-length
25 negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore
26 respectfully requests that the Court grant preliminarily approval of the Settlement, conditionally certify
27 the Class, approve the proposed Notice of Class Action Settlement (“Class Notice”), and set a hearing
28 date for final settlement approval, among other requested relief.

///

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is an independent San Francisco beer company, operating in several locations throughout San Francisco. Plaintiff was employed by Defendant as an hourly-paid, non-exempt Server from approximately April 2022 to approximately January 2023. (Declaration of Plaintiff John Price in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement [“Price Decl.”], ¶ 2).

On November 14, 2023, Plaintiff provided written notice to the LWDA by online submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendant (“PAGA Letter”). (Rose Decl., ¶ 10 and Exh. 2).

On November 21, 2023, Plaintiff filed a Class Action Complaint (“Operative Class Complaint”) in the action entitled *John Price v. Fort Point Beer Company*, San Francisco County Superior Court Case No. CGC-23-610592 (“Class Action”), thereby commencing a putative class action against Defendant. (*Id.*, ¶ 11).

On January 19, 2024, Plaintiff filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ *Et Seq.* (“Operative PAGA Complaint”) in the action entitled *John Price v. Fort Point Beer Company*, San Francisco County Superior Court Case No. CGC-24-611779 (“PAGA Action”), which alleged one cause of action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698, *et seq.* (“PAGA”) against Defendant. (*Id.*, ¶ 12). Together, the Class Action and PAGA Action are referred to as the “Actions.” (*Ibid.*).

The Operative Class Complaint and Operative PAGA Complaint (together, “Operative Complaint”) allege causes of action for violations of the California Labor Code for failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant rest periods and premium payments in lieu thereof, failure to timely pay wages during employment, conversion, failure to provide compliant wage statements, failure to timely pay wages upon termination, and failure to reimburse necessary business expenses, for violations of California Business & Professions Code Section 17200, *et seq.*, based on the aforementioned California Labor Code violations, and for civil penalties under PAGA based on the aforementioned California Labor Code violations. (*Id.*, ¶ 13).

1 On September 27, 2024, Plaintiff propounded written formal discovery on to Defendant
2 (specifically, Requests for Admission (Set One), Requests for Production of Documents (Set One),
3 Special Interrogatories (Set One), Form Interrogatories – Employment Law (Set One), and Form
4 Interrogatories – General (Set One)), and noticed the deposition of Defendant’s Person Most
5 Knowledgeable. (*Id.*, ¶ 14).

6 On October 4, 2024, Defendant served its Objections and Responses to Plaintiff Notice of
7 Deposition of Person Most Knowledgeable. (*Id.*, ¶ 15). On November 26, 2024, Defendant responded
8 and served responsive documents to Plaintiff’s written formal discovery (specifically, Requests for
9 Admission (Set One), Requests for Production of Documents (Set One), Special Interrogatories (Set
10 One), Form Interrogatories – Employment Law (Set One), and Form Interrogatories – General (Set One)).
11 (*Ibid.*).

12 On April 6, 2025, the Court consolidated the Class Action and PAGA Action, with the Class
13 Action being designated as the lead case. (*Id.*, ¶ 16).

14 On August 27, 2025, the Parties participated in a formal mediation conducted by Abe Melamed
15 (“Mediator”), a neutral and respected mediator with extensive experience in complex wage and hour
16 matters, and with the assistance of the Mediator’s evaluations, the Parties were able to reach an agreement
17 to resolve this dispute on a class and representative basis. (*Id.*, ¶ 17). The Parties then worked diligently
18 to negotiate and memorialize the terms in a long form settlement agreement. (*Ibid.*).

19 On December 4, 2025, the Parties executed the Settlement Agreement. (*Id.*, ¶ 18 and Exh. 3).

20 **III. THE SETTLEMENT TERMS**

21 **A. Class Definition**

22 For purposes of settlement only, the Parties have agreed that the Class shall be defined as “all
23 current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of
24 California at any time during the Class Period” (“Class” or Class Member(s)). (Rose Decl., ¶ 19;
25 Settlement Agreement, ¶ 10.b). The Class Period is defined as the period from November 21, 2019
26 through August 27, 2025, subject to Paragraph 17 of the Settlement Agreement. (Rose Decl., ¶ 19;
27 Settlement Agreement, ¶ 10.f). Based on information provided by Defendant, it is estimated that there
28 are a total of two hundred seventy (270) Class Members. (Rose Decl., ¶ 19).

1 **B. Amount of Settlement**

2 The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint
3 for a non-reversionary Gross Settlement Amount of Three Hundred Twenty Five Thousand Dollars and
4 Zero Cents (\$325,000.00), exclusive of employer-side payroll taxes. (Rose Decl., ¶ 20; Settlement
5 Agreement, ¶ 10.q).

6 **C. Allocation and Funding of the Gross Settlement Amount**

7 The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees,
8 and other allocations. (Rose Decl., ¶ 20; Settlement Agreement, ¶ 10.q). The Gross Settlement Amount
9 includes: (1) Class Counsel’s fees in the amount of thirty-five percent (35%) of the Gross Settlement
10 Amount (i.e., \$113,750.00 if the Gross Settlement Amount is \$325,000.00); (2) Class Counsel’s actual
11 litigation costs and expenses, not to exceed Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00);
12 (3) Settlement Administration Costs, not to exceed Seven Thousand Five Hundred Dollars and Zero Cents
13 (\$7,500.00); (4) Enhancement Payment in the amount of Ten Thousand Dollars and Zero Cents
14 (\$10,000.00); and (5) PAGA Amount of Seventeen Thousand Dollars and Zero Cents (\$17,000.00).
15 (Rose Decl., ¶ 20; Settlement Agreement, ¶¶ 10.q., 13, 14, 15, and 16). After the above-estimated
16 amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount that will be
17 available for Class Members is currently estimated to be One Hundred Forty-One Thousand Seven
18 Hundred Fifty Dollars and Zero Cents (\$141,750.00). (Rose Decl., ¶ 20). Additionally, 25% of the
19 PAGA Amount (“PAGA Employee Amount”), which is \$4,250.00 out of \$17,000.00, will be fully
20 distributed to “all current and former hourly-paid and/or non-exempt employees who worked for
21 Defendant in the State of California at any time during the PAGA Period” (“PAGA Employee(s)"). (Rose
22 Decl., ¶ 20; Settlement Agreement, ¶¶ 10.y and 10.z). The “PAGA Period” is defined as the period from
23 November 14, 2022 through August 27, 2025, subject to Paragraph 17 of the Settlement Agreement.
24 (Rose Decl., ¶ 20; Settlement Agreement, ¶ 10.aa).

25 The Net Settlement Amount will be distributed and paid to all Class Members who do not submit
26 a timely and valid Request for Exclusion (“Settlement Class Member(s)”) on a *pro rata* basis based on
27 the number of weeks each Class Member worked for Defendant as an hourly-paid and/or non-exempt
28 employee in California during the Class Period (“Workweeks”). (Rose Decl., ¶ 21; Settlement

Agreement, ¶¶ 10.mm and 10.nn). The *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement (“Individual Settlement Share”) will be calculated by the Settlement Administrator, in accordance with the Settlement Agreement. (Rose Decl., ¶ 21; Settlement Agreement, ¶¶ 10.t and 18).

The PAGA Employee Amount will be distributed and paid to all PAGA Employees on a *pro rata* basis based on the number of pay periods each PAGA Employee worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA Period (“Pay Periods”). (Rose Decl., ¶ 22; Settlement Agreement, ¶ 10.cc). The *pro rata* share of the PAGA Employee Amount that a PAGA Employee may be eligible to receive under the PAGA Settlement (“Individual PAGA Payment”) will be calculated by the Settlement Administrator, in accordance with the Settlement Agreement. (Rose Decl., ¶ 22; Settlement Agreement, ¶¶ 10.r and 19).

Defendant has represented that the Class Members worked a total of approximately 10,000 Workweeks during the Class Period. (Rose Decl., ¶ 23; Settlement Agreement, ¶ 17). If it is determined by the Settlement Administrator that the total number of Workweeks worked by the Class Members during the Class Period actually exceeds 10,000 by more than 5% (i.e., if the Workweeks exceed 10,500), then the Gross Settlement Amount will be increased on a *pro rata* basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 5%. (Ibid). For example, if the number of Workweeks increases by 6% to 10,600 Workweeks, then the Gross Settlement Amount will increase by 1%. (Ibid). If it is determined by the Settlement Administrator that the total number of Workweeks worked by the Class Members during the Class Period does not exceed 10,000 by more than 5%, then the Class Period and PAGA Period will end on the date of the filing of the motion for preliminary approval, regardless of the total number of Workweeks as of that date, and the Gross Settlement Amount shall not increase. (Ibid).

Each Individual Settlement Share will be allocated as twenty percent (20%) wages and eighty percent (80%) penalties, interest, and non-wage damages. (Rose Decl., ¶ 24; Settlement Agreement, ¶ 20). The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Rose Decl., ¶ 24; Settlement Agreement, ¶ 20). The Settlement Administrator

will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their net payment of their Individual Settlement Share ("Individual Settlement Payment"). (Rose Decl., ¶ 25; Settlement Agreement, ¶¶ 10.s and 20). The employer's share of taxes and contributions in connection with the wages portion of Individual Settlement Shares will be paid by Defendant separately and in addition to the Gross Settlement Amount. (Rose Decl., ¶ 24; Settlement Agreement, ¶¶ 10.q and 20). Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Rose Decl., ¶ 24; Settlement Agreement, ¶ 20).

The Settlement Agreement is a non-reversionary and non-claims made settlement. (Rose Decl., ¶ 25; Settlement Agreement, ¶¶ 10.q and 38). The Net Settlement Amount will be fully distributed to Settlement Class Members and the PAGA Amount will be fully distributed to the LWDA and PAGA Employees, in accordance with the Settlement Agreement. (Rose Decl., ¶ 25; Settlement Agreement, ¶¶ 18 and 19). No money will revert to Defendant. (Rose Decl., ¶ 25; Settlement Agreement, ¶ 10.q).

Defendant shall pay the Gross Settlement Amount in thirteen (13) installments as follows:

(a) Initial Payment: No later than sixty (60) calendar days after Final Approval, Defendant will deposit One Hundred Twenty-Five Thousand Dollars and Zero Cents (\$125,000.00) of the Gross Settlement Amount and Employer Taxes into a Qualified Settlement Fund ("QSF") within the meaning of Treasury Regulation Section 1.468B-1, *et seq.*, to be established by the Settlement Administrator. Defendant shall provide all information necessary for the Settlement Administrator to calculate necessary payroll taxes including its official name, 8-digit state unemployment insurance tax ID number, and other information requested by the Settlement Administrator, no later than five (5) business days after the Effective Date.

(Rose Decl., ¶ 26; Settlement Agreement, ¶ 36.a).

(b) Installment Payment(s): The remainder of the Gross Settlement Amount shall be paid in twelve (12) equal payments for twelve (12) months thereafter until the Gross Settlement Amount has been fully funded. The first of the twelve (12) Installment Payments shall be paid no later than thirty (30) calendar days after the Initial Payment.

(Rose Decl., ¶ 26; Settlement Agreement, ¶ 36.b).

(c) Any failure by Defendant to timely pay the Initial Payment or any Installment Payment shall be an event of default. Within three (3) business days of any default, the Settlement Administrator shall email counsel for both Parties notifying them of any default (the “Default Notice”). Defendant shall have no more than five (5) business days from the date of the Default Notice to cure the default. Any default that is not cured by the 9th business day from the date of the Default Notice shall entitle Plaintiff to seek Ten Percent (10%) interest on top of the Installment Payment. If the default is not cured within thirty (30) calendar days of the Default Notice, Plaintiff is entitled to move ex parte to have all remaining unpaid Installment Payment(s) immediately accelerated and judgment entered against Defendant for the remaining unpaid Installment Payment(s) and interest.

(Rose Decl., ¶ 26; Settlement Agreement, ¶ 36.c).

The Gross Settlement Amount shall be distributed as follows:

(a) Within five (5) business days of the funding of the third Installment Payment, the Settlement Administrator will issue half of the Individual Settlement Payments to Settlement Class Members, half of the Individual PAGA Payments to PAGA Employees, half of the LWDA Payment to the LWDA, half of the Enhancement Payment to Plaintiff, half of the Attorneys’ Fees and Costs to Class Counsel, and half of the Settlement Administration Costs to itself. The Settlement Administrator shall also set aside the Employer Taxes and all employee-side payroll taxes, contributions, and withholding, and timely forward these to the appropriate government authorities.

(Rose Decl., ¶ 27; Settlement Agreement, ¶ 37.a).

(b) Within five (5) business days of the funding of the last Installment Payment, the Settlement Administrator will issue the remaining half of the Individual Settlement Payments to Settlement Class Members, remaining half of the Individual PAGA Payments to PAGA Employees, remaining half of the LWDA Payment to the LWDA, remaining half of the Enhancement Payment to Plaintiff, remaining half of the Attorneys’ Fees and Costs to Class Counsel, and remaining half of the Settlement Administration Costs to itself. (Rose Decl., ¶ 27; Settlement Agreement, ¶ 37.b).

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. (Rose Decl., ¶ 28; Settlement Agreement, ¶ 38). Any funds associated with such canceled checks will be distributed by the Settlement Administrator to the State of California's Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Employee. (Rose Decl., ¶ 28; Settlement Agreement, ¶ 38).

D. Released Claims

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of any and all claims which were alleged or which could have been reasonably alleged based on the factual allegations in the Operative Class Complaint, arising during the Class Period, which shall specifically include claims for Defendant's alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide all accrued gratuities, provide accurate wage statements, and reimburse necessary business-related expenses, in violation of California *Labor Code* Sections 201, 202, 203, 204, 210, 226(a), 226.7, 350-356, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, the applicable Industrial Welfare Commission Wage Order, and California *Business and Professions Code* sections 17200, *et seq.* (collectively, "Released Class Claims"). (Settlement Agreement, ¶¶ 10.ff and 39).

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of any and all claims arising from any of the factual allegations in the PAGA Letter and the Operative PAGA Complaint, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California *Labor Code* Sections 2698 *et seq.*, which shall specifically include claims for Defendant's alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide all accrued gratuities, provide compliant wage statements, maintain complete and accurate payroll

1 records, and reimburse necessary business-related expenses, in violation of California *Labor Code*
2 Sections 201, 202, 203, 204, 210, 226(a), 226.7, 350-356, 510, 512(a), 1174(d), 1194, 1197, 1197.1,
3 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order (collectively,
4 “Released PAGA Claims”). (*Id.*, ¶¶ 10.gg and 40).

5 Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff, individually
6 and on his own behalf, will be deemed to have fully, finally, and forever released, settled, compromised,
7 relinquished, and discharged the Released Parties from any and all claims, debts, liabilities, demands,
8 obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action of any kind or
9 nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, arising out of,
10 relating to, or resulting from his employment and/or separation of employment with Defendant, which
11 Plaintiff, at any time up until the execution of the Settlement Agreement, had or claimed to have or may
12 have. (*Id.*, ¶ 41). It is agreed that this is a general release and is to be broadly construed as a release of
13 all claims, provided that, notwithstanding the foregoing, this Paragraph expressly does not include a
14 release of any claims that cannot be released hereunder by law. (*Ibid.*). Any and all rights granted under
15 any state or federal law or regulation limiting the effect of the Settlement Agreement, including the
16 provisions of Section 1542 of the California *Civil Code*, ARE HEREBY EXPRESSLY WAIVED. (*Ibid.*).
17 Section 1542 of the California *Civil Code* reads as follows: A GENERAL RELEASE DOES NOT
18 EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
19 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
20 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR
21 HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. (*Ibid.*).

22 “Released Parties” means Defendant and its current and former officers, directors, members,
23 insurers, shareholders, subsidiaries, affiliates, predecessors, successors, and assigns. (*Id.*, ¶ 10.hh).

24 **IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL**

25 The settlement of a class action requires court approval. (*See Dunk v. Ford Motor Co.*, 48 Cal.
26 App. 4th 1794 (1996)). “In general, questions whether a settlement was fair and reasonable, whether
27 notice to the class was adequate, whether certification of the class was proper, and whether the attorney
28 fee award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*

1 *Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds)).

2 The review and approval of a proposed class action settlement involves a two-step process. (*See*
3 Cal. Rules of Court, Rule 3.769(c)). First, counsel submit the proposed terms of the settlement and the
4 Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the
5 range of a fair settlement to justify providing notice of the proposed settlement to class members. After
6 notice is provided to the class, the Court must conduct a second inquiry into whether the proposed
7 settlement is fair, reasonable, and adequate. (*Ibid*).

8 The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.”
9 (*Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980)).
10 Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the
11 proposed settlement is within the range of possible approval and, as a result, “whether there is any reason
12 to notify the class members of the proposed settlement and to proceed with a fairness hearing.” A
13 presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2)
14 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
15 is experienced in similar litigation; and (4) the percentage of objectors is small. (*See In re Microsoft I-V*
16 *Cases*, 135 Cal. App. 4th 706, 723 (2006)).

17 Preliminary approval does not require a court to make a final determination that the settlement is
18 fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice
19 of the settlement has been given to the class members and they have had an opportunity to object or
20 exclude themselves from the settlement. (*See* Cal. Rules of Court, Rule 3.769(g)). In considering a
21 potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law
22 which underlie the merits of the dispute and need not engage in a trial on the merits. (*See Officers for*
23 *Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982)).

24 **V. THE SETTLEMENT IS PRESUMED FAIR**

25 **A. The Settlement Was Reached as a Result of Arm’s-Length Bargaining**

26 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
27 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
28 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties’ settlement negotiations

were at all times made at arm's-length and were adversarial. (Rose Decl., ¶ 29). The Settlement was reached following a full day of mediation with a highly respected mediator with substantial experience mediating wage and hour cases. (Ibid). At all times, Plaintiff was willing and prepared to litigate this matter through class certification and trial if the Parties had been unable to reach a favorable resolution. (*Id.*, ¶ 51).

B. Sufficient Investigation and Discovery by Experienced Class Counsel

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation, Defendant produced a random sampling of putative class members' time and pay records as well as Defendant's relevant wage and hour policies, and information regarding the total number of putative class members, the number of current versus former employees, the total workweeks worked by the putative class members, and the average rate of pay for the putative class members. (Rose Decl., ¶ 30). This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and weaknesses of the claims and the potential class-wide damages. (Ibid).

Additionally, Defendant produced information and documents related to its financial condition. (*Id.*, ¶ 31). Class Counsel's financial expert thoroughly analyzed these financial documents. (Ibid). Based on this information and documents, Class Counsel determined that a payment plan was the only way to move forward with a settlement. (Ibid).

Based on information exchanged, the Parties extensively briefed issues regarding class certification and liability and provided their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective positions. (*Id.*, ¶ 32). Additionally, settlement negotiations were conducted by highly capable and experienced counsel. (Rose Decl., ¶¶ 2–9). Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court

1 must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
2 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
3 extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the
4 presence of a governmental participant, and the reaction of the class members to the proposed settlement.”
5 (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).

6 Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal and
7 factual grounds for defending the Actions. Based upon Class Counsel’s experience litigating similar
8 complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification
9 and the merits of the Actions absent a settlement.

10 **1. Class Counsel’s Analysis of the Maximum Available Liability and Damages**

11 Class Counsel analyzed all available data and estimated Defendant’s maximum potential exposure
12 to be approximately \$2,091,305, assuming the litigation was successful at trial on all claims at issue and
13 every employee had a violation for each claim on every shift worked. (Rose Decl., ¶ 33). This maximum
14 potential analysis was then reduced based on the challenges facing the likelihood of obtaining class
15 certification, prevailing at trial, and other attendant risks. (Ibid). This estimate is based off an estimated
16 maximum liability for all claims at issue and the total aggregate workweeks during the relevant time
17 period, less interest, and based on the analysis of the data which was extrapolated out for all class
18 members across the entire putative class period, which included: \$335,441 for meal period violations;
19 \$885,881 for rest period violations at a 100% violation rate; \$215,779 for unpaid off-the-clock work for
20 1 hour per workweek of off-the-clock work; \$39,910 for unpaid overtime wages; \$76,560 for
21 unreimbursed business expenses; \$409,334 for waiting time penalties; and \$128,400 for wage statement
22 penalties. (Ibid). Plaintiff further estimated that Defendant faced an additional exposure of \$171,800 in
23 potential, non-stacked (i.e., one penalty, per employee, per pay period during the PAGA statutory period)
24 PAGA penalties. (Ibid). Together with the PAGA penalties, Defendant’s maximum potential exposure
25 totaled \$2,263,105 in damages. (Ibid).

26 **2. Class Counsel’s Risk-Based Analysis and Risk-Based Adjustments**

27 While Plaintiff believes that Defendant faced significant exposure, substantial barriers to a
28 recovery existed. Defendant contended that Plaintiff’s claims are not suitable for class certification

1 because individual issues and affirmative defenses would predominate should this case go to trial. (Rose
2 Decl., ¶ 36; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank*
3 *Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011)).
4 While Plaintiff and Class Counsel disagree with Defendant’s predictions, they also recognize that there
5 is a significant risk that the Court may deny class certification. (Rose Decl., ¶ 36).

6 For example, Plaintiff’s meal period claims, which were based on Defendant’s alleged failure to
7 provide lawful meal periods, have been increasingly difficult to certify in recent years. (Rose Decl., ¶
8 37; *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiff’s theory of liability for meal period violations was
9 based on allegations that Defendant had failed to implement its policies and that its practices failed to
10 allow Class Members to take meal breaks in the manner required under California law. (Rose Decl., ¶
11 37; *See Bradley v. Networkers Int’l, LLC*, 211 Cal.App.4th 1129, 1150 (2012) (holding that “the lack of
12 a meal/rest break policy and the uniform failure to authorize such breaks are matters of common proof.”)).
13 Defendant contended that its policies and practices at all times during the Class Period were lawful. (Rose
14 Decl., ¶ 37). Plaintiff’s analysis revealed a 41.8% violation rate for purported unique meal period
15 violations. (Ibid). Defendant argued that the rate of purported meal period violations reflected in the
16 data would require individualized inquiry and that such inquiry would prohibit a class from being
17 certified. (Ibid). Class Counsel also had to consider the risk that the Court would find validity in an
18 individualized proof defense to certification of Plaintiff’s meal period claim. (Ibid).

19 Additionally, a large portion of Defendant’s overall liability lies in Plaintiff’s rest period
20 allegations. (*Id.*, ¶ 38). As with the meal period allegations, Defendant contended that it had a lawful
21 written rest period policy, provided compliant rest breaks, and relieved Class Members of all duties as
22 required under California law. (Ibid). Additionally, this claim was even more uncertain given the
23 difficulties associated with proving the alleged rest period violations, as Defendant was not required to
24 record these breaks. (Ibid). Given the lack of records demonstrating rest period violations, there were
25 legitimate concerns Plaintiff would not be able to certify these claims or prove substantial damages with
26 requisite certainty, which made the estimated value of this claim subject to much challenge. (Ibid).

27 ///

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1 Plaintiff also faced challenges certifying and proving liability for his minimum wage and overtime
2 claims. (*Id.*, ¶ 39). These claims were largely based on Defendant's unrecorded, off-the-clock work
3 performed by the Class Members both before and after their shifts and during purported meal periods.
4 (*Ibid*). For example, it was reported that Class Members were required to set up tables and open the
5 restaurant prior to clocking in and stay late for guests and clean up after guests after clocking out. (*Ibid*).
6 However, the individualized nature of why this work was performed and the individualized nature of
7 damages presented substantial concerns regarding the manageability of the case and the risk the Court
8 could find these issues prevented certification, and the estimated damages for this claim were based on
9 an assumption that all Class Members worked off the clock for at least one hour per week. (*Ibid*).

10 Plaintiff also contended that Defendant failed to reimburse Plaintiff and the other Class Members
11 for necessary business-related expenses, such as the usage of personal cell phones and internet for work-
12 related purposes. (*Id.*, ¶ 40). Defendant contended that, with respect to the alleged expenses for which
13 Plaintiff and the other Class Members never requested reimbursement from Defendant, it did not know
14 and had no reason to know that alleged business-related expenses had been incurred. (*Ibid*). Defendant
15 further contended that the reason for why a Class Member undertook certain expenses, while not others,
16 and failed to receive reimbursement for certain expenses while not others, would raise individual issues
17 that could not be certified. (*Ibid*).

18 Plaintiff additionally contended that Defendant wrongfully exercised dominion over gratuities
19 through its practices of withholding gratuities and putting an improperly large portion of them in tipping
20 pools. (*Id.*, ¶ 40). Defendant contended that its policies regarding tipping complied with the California
21 Labor Code. (*Ibid*). Defendant further contended that any tipping pool that was conducted was fair and
22 reasonable. (*Ibid*). Essentially, it was determined that Plaintiff faced challenges with these claims. (*Ibid*).

23 There are also substantial risks associated with Plaintiff's waiting time penalties and wage
24 statement claims. (*Id.*, ¶ 42). First, these claims were derivative of Plaintiff's claims for unpaid meal
25 period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages,
26 and if certification was denied on those underlying claims, these derivative claims for penalties would
27 also likely fail. (*Ibid*). Further, even if Plaintiff prevailed on his underlying claims, he would still be
28 required to demonstrate that Defendant's violations of *California Labor Code* section 203 were *willful*

violations. (Rose Decl., ¶ 42; *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013) (holding that “an employer’s reasonable, good faith belief that wages are not owed may negate a finding of willfulness”)). Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them rather than a pure calculation of damages after liability is proven. (Rose Decl. ¶ 42; *Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which comprised a substantial portion of Defendant’s estimated liability, were therefore uncertain. (Rose Decl., ¶ 42).

Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the amount of wages due to Class Members would be an expensive, time-consuming, and uncertain proposition. (*Id.*, ¶ 43). In order to prove liability and damages, Class Counsel will need to request and analyze thousands of pages of documents, obtain the Class Members’ contact information, contact them, and obtain their declarations at great expense. (*Ibid.*). Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. (*Ibid.*). On the other hand, Defendant would likely be able to obtain the cooperation of its employees. (*Ibid.*). Moreover, even if Plaintiff prevailed at class certification and trial, possible appeals would substantially delay any recovery by the Class. (*Ibid.*).

Therefore, taking into account how each of the above risks potentially effected Plaintiff’s ability to first obtain class certification, and then prove the underlying violations, plus the cost and delay in recovering the alleged potential damages, Class Counsel discounted Defendant’s estimated liability based on the challenges facing his ability to succeed on class certification by 60% to \$905,242. (*Id.*, ¶ 44). The merits-based risk factors further reduced Defendant’s estimated liability by an additional 60%. (*Ibid.*). This resulted in an adjusted estimated liability of \$362,097. (*Ibid.*). In light thereof, the settlement amount of \$325,000 is a significant settlement. (*Ibid.*).

Class Counsel also contemplated the risks of proceeding with the PAGA claims and potential liability Defendant could face from these claims as part of the global resolution. (*Id.*, ¶ 45). Existing case law makes PAGA claims subject to the same defenses and risks as Plaintiff’s underlying wage claims. (Rose Decl., ¶ 45; *see, Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D.

1 Cal. 2008) (“Plaintiff’s claim under [PAGA] is wholly dependent upon her other claims. Because all of
2 Plaintiff’s other claims fail as a matter of law, so does her PAGA claim”). Class Counsel also anticipated
3 that even if successful on the merits at trial, the imposition of cumulative civil penalties based on the
4 alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory,
5 and that Defendant would argue that it made a good faith attempt to comply with its legal obligations
6 warranting a reduction in penalties. (Rose Decl., ¶ 45).¹ Class Counsel also anticipated Defendant would
7 argue that the violations per pay period were low, warranting an additional reduction in civil penalties.
8 (Ibid). Finally, Class Counsel was also mindful of the fact that PAGA is fundamentally not intended to
9 be compensatory in nature but is instead intended to facilitate enforcement of California’s labor laws by
10 financing state activities and educating and deterring non-compliance. (Ibid).

11 Therefore, after considering this multitude of factors, Plaintiff and Class Counsel concluded that
12 it was in the best interest of the State of California and the PAGA Employees to enter into the Settlement,
13 and to allocate Seventeen Thousand and Zero Cents (\$17,000.00) of the Gross Settlement Amount
14 towards the PAGA claims, which represents approximately 5.23% of the Gross Settlement Amount. (*Id.*,
15 ¶ 46). This percentage of the settlement is well within the range of wage and hour settlements regularly
16 approved in both state and federal court for cases that include both a class and PAGA action. (Ibid).
17 Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and,
18 indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as
19 reasonable by courts. (Ibid). Moreover, the overall relief obtained by the Settlement is significant, not
20 only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to
21 promote enforcement of California’s labor laws, provide funds to the state, and deter future non-
22 compliance by the employer. (Ibid).

23
24 ¹ See, e.g., *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory
25 and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis*
26 *Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) (“duplicative effect” of penalties is a factor in favor of “reducing ...the
27 PAGA penalty”); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to
28 stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez*
v. McDonalds Restaurants of California, Inc., 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties
arising out of the same conduct); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing
PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is
warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018)
(approving reduction in penalties from \$50 per pay period to \$5 per pay period based on good faith attempts to comply with
obligations and minimal violations).

1 The Settlement is in the best interest of the Class Members, the PAGA Employees, and the State
2 of California and is within the accepted range of recoveries for this type of litigation given the inherent
3 risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further
4 litigation. (*Id.*, ¶ 47).

5 **VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

6 Code of Civil Procedure Section 382 provides that three basic requirements must be met in order
7 to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined
8 community of interest in the question of law or fact affecting the parties to be represented; and (3)
9 certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class action
10 is superior to other methods. (*See Dunk*, 48 Cal.App.4th at 1806). Plaintiff contends that the Class
11 Action, which is based upon Defendant's wage and hour policies and practices, satisfies the class
12 certification requirements under California Code of Civil Procedure section 382. Defendant denies
13 Plaintiff's allegations, but for purposes of the Settlement only, Defendant has stipulated to certification
14 of the Class.

15 **A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is**
16 **Impracticable**

17 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
18 the class, and (3) the means of identifying the class members. (*See Miller v. Woods*, 148 Cal.App.3d 862,
19 873 (1983)). In this case, all three considerations strongly favor class certification. Here, the Class is
20 defined as "all current and former hourly-paid and/or non-exempt employees who worked for Defendant
21 in the State of California at any time during the Class Period." (Rose Decl., ¶ 19; Settlement Agreement,
22 ¶ 10.b). This provides a clear and definite scope for the proposed class.

23 Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity
24 requirement. Courts have certified classes with as few as ten or twenty-eight class members. (*Rose v.*
25 *City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995);
26 *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972)). Here, the estimated Class size of two hundred
27 seventy (270) Class Members meets the numerosity requirement.

28 ///

1 Finally, the question of whether class members are easily identifiable turns on whether a plaintiff
2 can establish “the existence of an ascertainable class.” (*Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706
3 (1967)). The existence of an ascertainable class in this case can be established through Defendant’s
4 payroll records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and
5 the Court to determine the parameters of the Class. (*See Clothesrigger, Inc. v. GTE Corp.*, 191
6 Cal.App.3d 605, 617 (1987)).

7 **B. The Class Shares a Well-Defined Community of Interest**

8 The community of interest requirement embodies three factors: (1) predominant questions of law
9 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
10 who can adequately represent the class. (*Dunk*, 48 Cal.App.4th at 1806). Here, all three requirements
11 are easily satisfied.

12 The commonality criterion requires the existence of common question of law or fact and is
13 generally established with the issues of predominance and typicality. (*See Daar*, 67 Cal.2d 695, 706).
14 What is required is that a common question of fact or law exists which predominates over issues unique
15 to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising
16 from employment—is not a bar to class certification as long as they do not render class litigation
17 unmanageable or predominate over the common issues. (*See B.W.I. Custom Kitchen v. Owens-Illinois,*
18 *Inc.*, 191 Cal.App.3d 1341, 1354 (1987)).

19 Here, Plaintiff’s claims present common issues of law and fact that predominate and warrant class
20 certification. Plaintiff alleges that Defendant denied compliant meal and rest periods to employees,
21 required employees to perform work off-the-clock, and failed to fully compensate employees for all time
22 actually worked. These policies and practices meant that Defendant allegedly failed to pay minimum and
23 overtime wages, and other related claims. Plaintiff alleges that Defendant’s policies and practices were
24 uniform as to all Class Members. Thus, class treatment is appropriate.

25 To satisfy the typicality requirement, California law does not require that plaintiffs’ claims be
26 identical to the other class members. Rather, the test of typicality for a class representative is whether
27 other members have the same or similar injury, whether the action is based on conduct which is not
28 unique to the named plaintiff, and whether other class members have been injured by the same course of

1 conduct. (*See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007)). The typicality requirement
2 for a class representative refers to the nature of the claim or defense of the representative, and not to the
3 specific facts from which it arose or the relief sought. (*See Ibid*).

4 Here, Plaintiff alleges that his claims are similar to that of the other Class Members and that
5 Plaintiff's claims arise out of the same alleged course of conduct giving rise to the claims of the other
6 Class Members. Because Plaintiff's claims are based upon the same alleged conduct and business
7 practices as those of Class Members, the typicality requirement has been satisfied.

8 Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney
9 is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the
10 interests of the class." (*McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976)). Here, these
11 considerations are satisfied. Class Counsel is well-regarded and is qualified and experienced in
12 employment-related, class-action litigation. (Rose Decl., ¶¶ 2–9). Plaintiff will vigorously, adequately,
13 and fairly represent the interests of the Class. Plaintiff has, at all times, throughout the course of the
14 litigation considered the interests of the Class and understood that he must take steps to adequately
15 represent the Class and their interests. (Price Decl., ¶ 11). Because Plaintiff's claims are typical of other
16 Class Members and are not based on unique circumstances, there is no antagonism between the interests
17 of Plaintiff and the Class.

18 **C. A Class Action is Superior to a Multiplicity of Litigation**

19 Under the circumstances, proceeding as a class action is a superior means of resolving this dispute,
20 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
21 the only means to deter and redress the alleged violations. (*See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429,
22 434 (2000) (relevant considerations include the probability that each class member will come forward to
23 prove his or her separate claim and whether the class approach would actually serve to deter and redress
24 the alleged wrongdoing)). Further, individual actions arising out of the same operative facts would
25 unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are
26 superior to individual litigation.

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28 ///

1 **VII. THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE**

2 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation
3 “for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz*
4 *v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010)). Courts routinely grant approval of
5 class action settlement agreements containing enhancements for the class representative, which are
6 necessary to provide incentive to represent the class and are appropriate given the benefit the class
7 representatives help to bring about for the class. (*See In re Online DVD Rental*, 779 F.3d 934, 947-948
8 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive
9 award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL
10 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and
11 reasonable”)).

12 Plaintiff initiated this litigation on behalf of his former co-workers who will now be entitled to
13 receive payment from the Settlement. Plaintiff invested substantial time and effort into litigation,
14 including his own research, reviewing documents, and extensive discussions with Class Counsel. (Price
15 Decl., ¶¶ 3–5). Further, the requested amount for Plaintiff is also reasonable given the average award
16 and the benefit gained by other Class Members. For these reasons, Plaintiff requests that an Enhancement
17 Payment of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff be preliminarily approved by
18 the Court. (Rose Decl., ¶ 48; Price Decl., ¶ 13).

19 **VIII. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE**

20 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions are
21 “not to be disturbed on appeal absent a manifest abuse of discretion.” (*Lealao v. Beneficial Cal, Inc.*, 82
22 Cal.App.4th 19, 41 (2000)). California law provides that attorney fee awards should be equivalent to fees
23 paid in the legal marketplace to compensate for the result achieved and risk incurred. (*Id.* at 47). In cases
24 where class members present claims against a common fund and the defendant agrees to a percentage of
25 the fund as part of the settlement, use of the percentage method is appropriate. (*Id.* at 32).

26 Here, the requested attorneys’ fees of thirty-five (35%) of the Gross Settlement Amount (i.e.,
27 \$113,750.00 if the Gross Settlement Amount is \$325,000.00) is disclosed to Class Members in the
28 proposed Class Notice. (Settlement Agreement, Exh. A). The requested fee was freely negotiated, is

common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel's request for the reimbursement of litigation costs and expenses not to exceed Thirty-Five Thousand Dollars (\$35,000.00). (Rose Decl., ¶¶ 49 and 51). The Attorneys' Fees and Costs that are not ultimately approved by the Court shall instead be included in the Net Settlement Amount to be distributed to Settlement Class Members. (Settlement Agreement, ¶ 13).

**IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS
MEETS DUE PROCESS REQUIREMENTS**

The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members. (*Id.*, Exh. A). The Class Notice will include information regarding the nature of the Actions, a summary of the terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the Class Settlement and to dispute Workweeks and/or Pay Periods, and the date of the Final Approval Hearing. (*Ibid.*). The Class Notice will list each Class Member's total Workweeks and their estimated Individual Settlement Share and each PAGA Employee's total Pay Periods and their estimated Individual PAGA Payment. (*Ibid.*).

Within fourteen (14) calendar days after entry of the preliminary approval order, Defendant will provide a list in a formatted readable Microsoft Office Excel spreadsheet to the Settlement Administrator containing the following information for each Class Member: full name; last known mailing address; Social Security number; dates worked for Defendant during the Class Period; and such other information as is necessary for the Settlement Administrator to calculate Workweeks and Pay Periods (collectively referred to as the "Class List"). (*Id.*, ¶¶ 10.d and 27). Within fourteen (14) calendar days after receiving the Class List from Defendant, the Settlement Administrator will perform a search based on the National Change of Address Database or other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator. (*Id.*, ¶ 28.a). The Parties have agreed to use Apex Class Action, LLC as the Settlement Administrator. (Rose Decl., ¶ 52; Settlement Agreement, ¶ 10.kk).

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1 In determining whether to approve a settlement of a class action, a trial court has virtually
2 complete discretion as to the manner of giving notice to class members, and review on appeal is governed
3 by the abuse of discretion standard. (*See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380
4 (2010)). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which
5 would result in a higher likelihood of actual notice. (Rose Decl., ¶ 53). The original source of the mailing
6 addresses is from Class Members, who provided the information to Defendant. (Ibid).

7 Class Members will have forty-five (45) calendar days from the initial mailing of the Class Notice
8 by the Settlement Administrator to submit a Request for Exclusion, Notice of Objection, and/or Dispute
9 (“Response Deadline”). (Settlement Agreement, ¶ 10.jj).

10 Any Class Notice returned to the Settlement Administrator as undeliverable on or before the
11 Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed
12 thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.
13 (*Id.*, ¶ 28.b). If no forwarding address is provided, the Settlement Administrator will promptly attempt
14 to determine a correct address using a skip-trace or other search, using the name, address, and/or Social
15 Security number of the Class Member, and perform a single re-mailing within five (5) calendar days.
16 (Ibid). In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that
17 Class Member shall be extended fifteen (15) calendar days from the original Response Deadline. (*Id.*, ¶
18 10.jj).

19 Class Members will have an opportunity to dispute the number of Workweeks and/or Pay Periods
20 to which they have been credited, as reflected in their respective Class Notices, by submitting a timely
21 and valid letter (“Dispute”) to the Settlement Administrator, by mail, postmarked on or before the
22 Response Deadline. (*Id.*, ¶¶ 10.j and 29). A Dispute must: (a) contain the case name and number of the
23 Class Action; (b) contain the Class Member’s full name, signature, address, and telephone number (c)
24 clearly state that the Class Member disputes the number of Workweeks and/or Pay Periods credited to
25 that Class Member and what the Class Member contends is the correct number; and (d) be returned by
26 mail to the Settlement Administrator at the specified address, postmarked on or before the Response
27 Deadline. (*Id.*, ¶ 10.j).

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Any Class Member wishing to be excluded from the Class Settlement must submit a timely and valid letter (“Request for Exclusion”) to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. (*Id.*, ¶¶ 10.ii and 30). A Request for Exclusion must: (a) contain the case name and number of the Class Action; (b) contain the Class Member’s full name, signature, address, and telephone number; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*, ¶ 10.ii). Notwithstanding the above, all PAGA Employees will be bound by the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion. (*Id.*, ¶ 30).

To object to the Class Settlement, Settlement Class Members must submit a timely and complete written objection (“Notice of Objection”) to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. (*Id.*, ¶¶ 10.w and 31). A Notice of Objection must: (a) contain the case name and number of the Class Action; (b) contain the objector’s full name, signature, address, and telephone number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*, ¶ 10.w). Settlement Class Members, individually or through counsel, may also present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a Notice of Objection. (*Id.*, ¶ 31).

X. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

Respectfully submitted,

Dated: December 5, 2025

BLACKSTONE LAW, APC

By:



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