Edward W. Choi, Esq. SBN 211334
LAW OFFICES OF CHOI & ASSOCIATES, APLC
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
Telephone: (213) 381-1515
Facsimile: (213) 465-4885
Email: edward.choi@choiandassociates.com

Justin Lo, Esq. SBN 280102
justin@caworklawyer.com
WORK LAWYERS PC
22939 Hawthorne Blvd., #300
Torrance, CA 90505
Tel: (424) 355-8535
Fax: (424) 355-8335

Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

JORGE SOLIS FLORES, individually and on behalf of all others similarly situated, Plaintiff, vs. S. MARTINELLI & COMPANY, a California Corporation; and DOES 1 through 50, inclusive, Defendants.	Case No. 24CV01510 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** [Assigned for All Purposes to Hon. Timothy Schmal in Department 10] Date: June 26, 2025 Time: 8:30 a.m. Dept.: 10

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 26, 2025 at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Timothy Schmal, judge presiding, in Department 10 of the above referenced Court located at 701 Ocean Street, Santa Cruz, CA 95060, Plaintiff JORGE SOLIS FLORES ("Plaintiff") will seek an Order: (1) preliminarily approving the Class Action and Private Attorney General Act Settlement Agreement ("Settlement Agreement" or "Settlement"); (2) conditionally certifying the following Class for settlement purposes only: any person employed by Defendant in California as a non-exempt, hourly employee during the Class Period (May 22, 2020 through March 31, 2025); (3) appointing Plaintiff as the Class Representative, and Edward W. Choi of Law Offices of Choi & Associates, and Justin Lo of Work Lawyers P.C. as Class Counsel; (4) preliminarily approving the Settlement Agreement and the Gross Settlement Amount of $1,650,000.00; (5) finding on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement, including the amount of the Class Representative's Enhancement Payment, Class Counsel's fees and costs, the settlement administration fees, and the allocation of payments to Class Members, that could ultimately be given final approval by this Court; (6) approving the Notice of Class Action Settlement ("Class Notice") to be sent to Class Members, which is attached as Exhibit A to the Settlement Agreement; (7) approving the distribution of the Class Notice to Class Members substantially in the manner and form set forth in the Settlement Agreement; (8) appointing Phoenix Settlement Administrators as the Settlement Administrator; and (9) setting the matter for a Final Fairness and Final Approval hearing.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify a class for settlement purposes.

The basis for this Motion, filed without any opposition from Defendant S. MARTINELLI & COMPANY, is that the proposed settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of class members to participate in, opt-out of, or object to the settlement.

This Motion will be based on the attached Memorandum of Points and Authorities, the

Settlement Agreement, the proposed Class Notice, and the supporting Declarations of Edward W. Choi, Justin Lo, and Plaintiff Jorge Solis Flores, and upon the oral arguments of counsel (should there be any) and on the complete records and file herein.

DATED: May 30, 2025

LAW OFFICES OF CHOI AND ASSOCIATES

By: ______________________
Edward W. Choi
Attorneys for PLAINTIFF and the CLASS

<u>**TABLE OF CONTENTS**</u>

TABLE OF AUTHORITIES

Federal Cases

Statutes

Rules

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On or about November 14, 2023, Plaintiff JORGE SOLIS FLORES ("Plaintiff") mailed a notice pursuant to the Private Attorneys General Act (the "PAGA"), to the Labor Workplace Development Agency ("LWDA") alleging that Defendant S. MARTINELLI & COMPANY ("Defendant") violated Labor Code §§ 201-204, 233, 226, 226.7, 246, 510, 512, 558, 1194, 2802, the California Industrial Welfare Commission's ("IWC") Wage Orders. (Declaration of Edward W. Choi ("Choi Decl.") ¶ 2).

On February 2, 2024, Plaintiff filed his Complaint as a representative action for Civil Penalties under the Private Attorneys General Act against Defendant in the Santa Cruz Superior Court, Case No. 24CV00325 ("PAGA Action"). (*Id.* ¶3). On May 22, 2024, Plaintiff filed a Class Action Complaint in the Santa Cruz Superior Court, Case No. 24CV01510 ("Class Action") (The PAGA Action and Class Action are collectively referred to as the "Action"). The Action alleges (1) violation of Labor Code §§ 201-204, 510 and 1194; (2) violation of Labor Code § 226; (3) violation of Labor Code §§ 226.7 and 512; (4) violation of Labor Code §§ 201-203, 233 and 246; (5) violation of Labor Code §2802; (6) violation of California Bus. & Prof. Code § 17200, *et seq.*; and (7) violation of Labor Code §2698, *et seq.* ("PAGA"). (Choi Decl. ¶ 4).

Since the filing of the case, the Parties engaged in formal and informal discovery resulting in the production of data necessary for Plaintiff to calculate the potential exposure for this matter. (*Id.* at ¶ 5). On January 15, 2025, the Parties engaged in mediation with well-respected mediator Steve Serratore, Esq. (*Id.* at ¶6). The mediation did not result in settlement, but after continued negotiations, the Parties accepted the mediator's proposal on January 31, 2025. (*Id.* at ¶7).

The terms of the settlement provide that Defendant shall pay the Gross Settlement Amount of One Million Six Hundred Fifty Thousand Dollars ($1,650,000.00) which will be distributed to the class on a **non-reversionary** basis without the need to submit claim forms. (Class Action and Private Attorney General Act Settlement Agreement ("Settlement Agreement" or "Settlement")

¶¶1.22, 3.1)[1]. Thus, the entire settlement amount will be distributed and no remaining amounts, *i.e.*, unclaimed funds, will revert back to Defendant. (*Id.* ¶3.1)

Plaintiff respectfully submits that this amount is fair, adequate, and reasonable, especially given the substantial risks and uncertainty of class certification and liability on the merits. Although Plaintiff and her counsel believe that they can prevail on class certification, as well as on the merits, they recognize the inherent risk in further drawn-out litigation and the specific risks that a class might not be certified and/or that Plaintiff could fail to establish liability. Based on their own independent investigation and evaluation, Plaintiff and her counsel are of the opinion that settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Settlement Class in light of all known facts and circumstances and the expenses and risks inherent in litigation.

Therefore, Plaintiff respectfully requests that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. DISCUSSION

Any settlement of a class action lawsuit must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the class members for their comment or objections. The Manual for Complex Litigation (Third) § 30.41 states:

> Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice … be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.

Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement

[1] The Settlement Agreement is attached as Exhibit B to the Choi Decl.

proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing." 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

The procedures for the parties' submission of a proposed settlement for preliminary approval by the court also are discussed in 4 *Newberg on Class Actions*:

> When the parties to an action reach a monetary settlement, they will usually prepare and execute a joint stipulation of settlement, which is submitted to the court for preliminary approval. The stipulation should set forth the central terms of the agreement, including but not limited to, the amount of settlement, form of payment, manner of determining the effective date of settlement and any recapture clause.

Id. at § 11.24.

Here, the Parties have reached such an agreement and Plaintiff is concurrently filing a copy of the Settlement Agreement with this Motion, fully setting forth the agreement reached among the Parties. The Settlement Agreement sets forth all terms of the agreement reached by the Parties, which include, among other things, the method for calculating the Class Members' Individual Settlement Payments.

The parties also may, at the preliminary approval stage, request that the court provisionally approve certification of the class – conditional upon final approval of the settlement. "[P]re-certification settlements are routinely approved if found to be fair and reasonable." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001). *Accord Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was reached before any "adversary certification," the court was satisfied that it was "fair, adequate and reasonable"); *In re Baldwin-United Corp*., 105 F.R.D. 475, 478 (S.D.N.Y. 1984) ("many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals"). As further explained by Professor Newberg:

> The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal. . . . may be set out in conditional orders granting tentative approval to the various items submitted to the court. Three basic rulings are often conditionally entered at this preliminary hearing. These conditional rulings may approve a temporary settlement class, the proposed settlement, and the class counsel's application for fees and expenses.

4 Newberg on Class Actions, at §11.26

In addition to such terms as class identification, settlement amount and payment procedures, the Settlement Agreement reached among the Parties contains a provision pursuant to which the Parties stipulate to the Court's provisional certification of the Class, but do so for the purposes of this settlement only. The Settlement Agreement further provides that if, for any reason, the Settlement is not approved, the stipulation to certification will be void and Defendant has reserved all rights to challenge certification.

A. PROPOSED CLASS DEFINITION

The current settlement is being settled on behalf of the following Class:

> "any person employed by Defendant in California as a non-exempt, hourly employee during the Class Period (May 22, 2020 through March 31, 2025)."

(Settlement Agreement ¶¶ 1.5 and 1.12).

B. NUMEROSITY

Courts generally find that numerosity is satisfied if the class includes forty or more members. (*See Villalpando v. Excel Direct Inc*. (N.D. Cal. 2014) 303 F.R.D. 588, 605-606; *see also Jordan v. L.A. County* (9th Cir. 1982) 669 F.2d 1311, 1320 (noting, in dicta, that the court "would be inclined to find the numerosity requirement…satisfied solely on the basis of [39] ascertained class members"), *vacated on other grounds*, 459 U.S. 810 (1982); *Ark. Educ. Ass'n v. Bd. of Educ. of the Portland* (8th Cir. 1971) 446 F.2d 763, 765-66 (approving class of 20 members).)

In this case, there are approximately a total of 519 class members, therefore, numerosity is satisfied. (Choi Decl. ¶ 8).

C. ASCERTAINABILITY

Class members are ascertainable where they may be "readily identified without unreasonable expense or time by reference to official records." (*Lee v. Dynamex, Inc.* (2008) 166 Cal. App. 4th 1325, 1334; *see also Faulkinbury v. Boyd & Assocs., Inc*. (2013) 216 Cal. App. 4th 220, 240.)

Here, for settlement purposes, the identity of class members is clearly ascertainable from Defendant's employment and payroll records and have already been identified during the informal discovery and mediation process.

D. TYPICALITY AND ADEQUACY OF REPRESENTATION

1. Class Representative's Claims are Typical of the Class

The commonality requirement is met when there are questions of law and fact common to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) ("The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within the class"). Commonality requires only that some common legal or factual questions exist; the Plaintiff need not show that all issues in the litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant's conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Ca1. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer's conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the Defendant's policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

Plaintiff alleges that Defendant violated Labor Code §§ 201-204, 233, 226, 226.7, 246, 510, 512, 558, 1194, 2802, the California Industrial Welfare Commission's ("IWC") Wage Orders by failing to pay overtime pay at the correct regular rate of pay, failing to provide duty-free meal and rest breaks, failing to pay sick pay at the correct regular rate of pay, failing to reimburse business expenses and failing to provide accurate itemized wage statements. Based on the foregoing, Plaintiff further seeks penalties under the PAGA. Plaintiff alleges that he was subject to the foregoing policies, practices and payment procedures. (Declaration of Jorge Solis Flores ("Flores Decl.") ¶ 3).

Plaintiff does not have any interests adverse to the Class, nor has any such issues been raised or presented. (Flores Decl. ¶ 4). Plaintiff has taken all necessary steps to represent the interests of the Class, by providing information and documents. (*Id.* at ¶ 6). For such reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

///

///

2. Class Counsel Have Adequately Represented the Class and Has Experience with Wage and Hour Class Actions

From the inception of the case, Class Counsel have solely represented the interest of the Class. For example, Plaintiff's counsel conducted formal and informal discovery on behalf of Plaintiff, the Class, and towards Class issues. (Choi Decl. ¶¶5, 7). Class counsel also engaged in numerous meet and confers with opposing counsel and obtained the Class data prior to mediation. (*Id.*) The mediation and settlement were also obtained for the benefit of the Class, as opposed to the individual Plaintiff. Finally, Class counsel have been approved as class counsel on a number of prior cases and are competent to represent the class. (Choi Decl. at ¶ 15; Declaration of Justin Lo ("Lo Decl.") at ¶¶ 3-6.

E. SUPERIORITY

Class treatment is clearly superior to any other method of resolving Plaintiff's claims. (*Sav-on Drug Stores, Inc.*, *supra*, 34 Cal. 4th 319 at p. 326) In employment actions, class actions are in fact encouraged. (*Jaimez v. DAIOHS USA, Inc.* (2010) 181 Cal. App. 4th 1286, 1308 ("In light of the numerous common issues of fact and law that predominate in this lawsuit, we conclude that proceeding by way of class action is the superior method of adjudication. Doing so would further judicial economy by avoiding repetitious suits, would unify what would otherwise be a series of small claims so as to enhance the class members' access to redress…").)

Here, Plaintiff's claims are based on the alleged Class-wide policies, procedures, and practices that apply to all Class Members and can be most efficiently litigated on a Class-wide basis. The alternative would be the unrealistic filing of numerous individual claims. Since the putative class members are employees with relatively modest individual claims and limited resources, there is a strong likelihood that individual claims would never be brought. (*See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund* (9th Cir. 2001) 244 F.3d 1152, 1163 (superiority requirement met where class members would recover, at most, about $1,330); *see also Gentry v. Sup. Ct.* (2007) 42 Cal. 4th 443, 462.)

///

///

F. SUMMARY OF THE CASE, INVESTIGATION AND DISCOVERY, AND REASONABLE ESTIMATE OF THE NATURE AND AMOUNT OF RECOVERY

As discussed above, the Action alleges seven causes of action for violation of Labor Code § 201-203, 226, 226.7, 510, 512, 558, 1194 and 2698, *et seq* . (Choi Decl. ¶¶ 3-4).

Specifically, Plaintiff alleges that Defendant failed to calculate and/or factor Bonus wages into the regular rate of pay for purposes of calculating overtime pay. In addition, Plaintiff alleges Defendant failed to provide duty-free meal and rest breaks and failed to pay meal and rest break premium pay at the regular rate of pay. Further, Plaintiff alleges that sick pay wages were not paid at the regular rate of pay. As a result of these violations, Plaintiff and Class members were not provided with accurate itemized wage statements that reflect the correct overtime wages rates and net/gross wages earned. (*Id.* at ¶ 4). Defendant denies the allegations in the Operative Complaints, denies any failure to comply with the laws identified in in the Operative Complaints and denies any and all liability for the causes of action alleged. (Settlement Agreement ¶2.1).

Since the filing of the case, the Parties engaged in formal and informal discovery resulting in the production of data necessary for Plaintiff to calculate the potential exposure for this matter. On January 15, 2025, the Parties engaged in mediation with well-respected mediator Steve Serratore. (Choi Decl. ¶6) The mediation did not result in a settlement, but after continued negotiations, the Parties accepted a mediator's proposal on January 31, 2025. (*Id.* ¶7).

Based on their own independent investigations and evaluations, the Parties and their respective counsel are of the opinion that settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Class and Defendant in light of all known facts and circumstances and the expenses and risks inherent in litigation, and is designed so that the Parties may buy their peace and avoid continuing litigation and costs. (Choi Decl. ¶¶ 12-13).

As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc*., 168 Cal. App. 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has conducted sufficient discovery and the settlement is reasonable in light of the strengths of the plaintiff's claims. As discussed herein, Plaintiff' counsel has conducted extensive discovery and investigation and, in light of the strength and weaknesses of Plaintiff' claims, Plaintiff' attorneys submit that this settlement is fair pursuant to *Kullar*.

Plaintiff estimated that the maximum Labor Code damages and PAGA penalties that could be awarded was approximately $10,466,376.56. (Choi Decl. ¶8).

Defendant contested the merits and denied it was liable at all. (Choi Decl. ¶9). Defendant argued that individualized issues would predominate and Plaintiff may not have been able to prevail on his meal and rest break claims. (*Id.*) With respect to waiting time penalties, Defendant contended that it would not be subject to Section 203 penalties, based on a good faith defense since its policy was compliant. (*Id.*) With respect to wage statement liability, Defendant contended that liability under Section 226(e) would be subject to additional defenses requiring proof of injuries resulting from knowing and intentional violations. (*Id.*)

PAGA penalties are also subject to any good faith defenses that Defendant may raise. (*Id.* at ¶10). Moreover, PAGA penalties are discretionary and subject to reduction by this Court. Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties where "…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." Indeed, courts have affirmed the reduction of PAGA penalties in the past. As shown in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018), the Court of Appeal affirmed the trial court's reduction of PAGA penalties by 90 percent, citing the employer's good faith attempt at complying with the law. Defendant argued that based on their compliant policies, that the Court would not be inclined to impose maximum PAGA penalties based on their compliant policies and good faith attempt to pay out any premiums that were due to class members. (*Id.*)

Based on the foregoing defenses a applying a 50% risk factor the realistic total exposure is estimated at $5,233,188.28. (*Id.* at ¶11). Thus, the current settlement is 31.53% of the realistic total exposure ($1,650,000 divided by $5,233,188.28). (*Id.*)

Numerous courts have held that **gross** settlements approximating between only 8 and 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs.*

Litig., 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment"; noting that whether the settlement is fair and adequate depends on the "the difficulties in proving the case"); *Bellinghausen v. Tractor Supply Co*., No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc*., U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which obtained ***only 9.1%*** of projected damages, given the risks of continued litigation) *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable); *Greko v. Diesel U.S.A., Inc.*, No. 10–cv–02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24 percent was reasonable).

In the present case, 31.53% of the realistic total exposure is well within the range of that the court could approve.

G. SETTLEMENT WAS NEGOTIATED AT ARMS-LENGTH AND IS NOT COLLUSIVE

Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co*., 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig*., 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc*., 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig*., 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan*

Ass'n, 79 F.R.D. 571 (E.D. Pa. 1978).

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in formal and informal discovery and negotiations for some period of time, appear to be competent, have experience with this type of litigation, and have exchanged substantial evidence from the opposing party. *See Newberg on Class Actions*, *supra*, at § 11.47; *Nat'l Rural Telecomms. Coop*., 221 F.R.D. at 528 (quoting *In re Paine Webber Ltd. P'ships Litig*., 171 F.R.D. 104, 125 (S.D.N.Y. 1997) ("[s]o long as the integrity of the arm's length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement . . . [citations] and 'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation")).

Here, both Plaintiff and Defendant's counsel have a great deal of experience in wage and hour class action litigation. Plaintiff's counsel have been approved as class counsel in a number of wage and hour class actions and have extensive litigation experience. (Choi Decl. at ¶ 15; Lo Decl. at ¶ 6). Moreover, as discussed above, Plaintiff's counsel conducted a very extensive investigation of the allegations involved in this case since the inception. Each side has apprised the other of their respective factual contentions, legal theories and defenses, resulting in extensive arms' length negotiations taking place among the Parties.

The settlement for each participating Class Member is fair, reasonable and adequate, given the inherent risks of litigation, including the substantial risks relative to class certification, and the costs of pursuing such litigation. The settlement is the result of extensive arms' length negotiations between the Parties and their counsel, which was achieved after a full day of mediation before a highly regarded mediator.

Although Plaintiff believes that a class can be certified, Plaintiff also believes in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff in not prevailing on one or more of the causes of action or theories alleged in the Action, the possibility of non-certification, adverse disposition, and potential for appeals by one or both sides. (Choi Decl. at ¶¶12-13). Despite the asserted fairness of the settlement terms, as set forth in the *Class Notice*, should any Class Member wish to pursue his or her own case for the claims being released herein, each Class Member has the right to submit a request for exclusion (*i.e.*, Opt-Out) from the settlement. Moreover, as set forth in the *Class Notice*, Class Members are advised of their right to attend the final approval hearing and object to any of the terms contained in the proposed Settlement Agreement, provided that they give proper notice to the Parties and the Court.

H. SETTLEMENT TERMS AND EVALUATION

1. Proposed Terms of the Settlement

This is a non-reversionary settlement wherein Class Members will be automatically paid out of the settlement if he/she does not opt-out of the settlement. The key terms of the settlement are as follows.

The Settlement Agreement provides for a Class Gross Settlement Amount of One Million Six Hundred and Fifty Thousand Dollars ($1,650,000.00). (Settlement Agreement ¶ 1.22.). Attorney's fees of up to 35% or $557,500.00 will be paid to Class Counsel, along with costs of up to $50,000.00. (Settlement Agreement ¶ 3.2.2). Plaintiff will seek a Class Representative Enhancement Payment up to $10,000.00. (Settlement Agreement ¶ 3.2.1). The Settlement Administrator will be paid an estimated amount of $11,000.00 for costs of administering this settlement. (Settlement Agreement ¶ 3.2.3). After deduction of the foregoing, the remainder will be distributed to Class Members who do not opt-out of the Settlement Agreement based on the number of Workweeks a Class Member worked during the Class Period. (Settlement Agreement ¶¶ 3.2.4). Further, 25% of the PAGA amount ($20,000.00) will be dispersed pro rata to all Aggrieved Employees regardless of whether they submit timely, valid requests for exclusion, based on the number of Work Weeks issued during the PAGA period. (Settlement Agreement ¶ 3.2.5).

2. Nature of Any Injunctive Relief

The Settlement Agreement does not provide for any injunctive relief.

3. Amount and Manner of Distribution of the Compensation to be Provided to Class Members Including the Amount, or an Estimate, of What Each Class Member Will Receive

The Net Settlement Amount (calculated after deduction of attorneys' fees, costs, class representative service payment, the PAGA portion of the settlement payable to the State and Aggrieved Employees and claims administration costs) shall be paid to all Class Members who do not opt out of the settlement. (Settlement Agreement ¶3.2.4). The amount allocated to each Class Member will be based on the number of Workweeks each Class Member worked during the Class Period. (Settlement Agreement ¶ 3.2.4.1). The reason for such allocation is so that the Class Members who suffered higher damages will be allocated greater recovery. Class Members may opt-out of the Settlement if they so choose. (Settlement Agreement ¶ 7.5.1). Based on the Net Settlement Amount, on a pure raw average, each class member will receive approximately $1,814.07. (Choi Decl. ¶ 11). Such amounts for each person could increase or decrease depending on a number of factors, including the amount of Workweeks worked by each Class Member. The actual amount each person will be entitled to will not be known until the class data is transferred to the Settlement Administrator for processing.

4. Whether, and Under What Circumstances, Amounts May Revert to Defendant, Disposition of Any Un-cashed Checks

This is a non-reversionary settlement as the entirety of the settlement amount will be fully paid out. Settlement checks will remain valid for a period of 180 calendar days after they issue. Any check not cashed within 180 calendar days will be distributed to the California Controller's Unclaimed Property Fund and held in the name of the Participating Class Member. (Settlement Agreement ¶ 4.4.3).

5. Scope of the Release of Class Members' Claims

The scope of the release, as listed below, is identified in the Settlement Agreement at paragraph 5.2 as well as in each of the Notices that will be sent to Class Members.

> "(a) Failure to Pay Minimum, Regular, and Overtime Wages [Lab. Code §§ 201-204, 510, 1194, 1194.2, 1197, 1197.1, 1198]; Failure to Provide Compliant Meal and Rest Periods [Lab. Code §§ 226.7, 512]; Violation of Labor Code sections 233 and 246; Failure to Pay Timely and All Wages Due at Termination; Failure to Provide Accurate Itemized Wage Statements [Lab. Code § 226]; and Failure to Reimburse Necessary Business Expenses [Lab. Code § 2802], as well as any and all claims, liabilities, demands, obligations, penalties, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, contingent

> or accrued, that are alleged or that reasonably could have been alleged based on the facts alleged in the operative class complaint in this Action.
> (b) All claims for unfair business practices under California Business & Professions Code Section 17200, *et seq.* that could have been premised on the claims, causes of action, or legal theories of relief described above in (a)-(e) and which were alleged or that reasonably could have been alleged based on the facts alleged in the Action; and
> (c) All claims under applicable IWC Wage Orders that could have been premised on the claims, causes of action, or legal theories of relief described. above in (a)-(e) and which were alleged or that reasonably could have been alleged based on the facts alleged in the Action, or could have been ascertained during the Action, and expressly excluding all other claims, including claims for unemployment insurance, disability, social security, and workers' compensation, and claims outside of the Class Period ("Released Class Claims")."

(Settlement Agreement ¶ 5.2).

As shown, the scope of the release is limited to the claims asserted in the Action. Further, the Release does not waive Civil Code §1542 for Class Members, it does so only for and with regard to the named Class Representative.

6. Tax Treatment of Settlement Amounts

All Individual Settlement Payments are allocated as follows: 15% wages subject to withholding and reported on IRS W2 forms and 85% penalties and interest reported by IRS 1099 forms. (Settlement Agreement ¶ 3.2.4.1).

7. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations

As stated above, Class Members do not need to do anything should they wish to receive their share of the settlement funds. Thus, this substantially decreases the amount of burden each Class Member must bear in order to receive their settlement share. If a Class Member does not wish to take part in this settlement and be bound by the release, he/she must submit an exclusion request.

Such obligations are thoroughly identified in each class member's Class Notices. (Settlement Agreement, Ex. A).

///

I. SUBMISSION OF CLAIMS/EXCLUSIONS/OBJECTIONS

Class Members will not be required to submit a claim form to receive compensation. Instead, this is a non-reversionary Settlement Agreement. Class Members will be provided 45 calendar days to opt out or object to the settlement. (Settlement Agreement ¶1.43). Any Class Member who does not opt-out of the settlement will be automatically issued his/her share of the settlement proceeds. Given that this is a non-reversionary settlement, the parties believe that 45 calendar days is sufficient time for class members to object or opt-out of the settlement. Further, Class Members will be notified of the Fairness/Final Approval hearing and will have an opportunity to appear at the Fairness hearing.

J. CY PRES DISTRIBUTION

Individual Settlement Payments checks remaining un-cashed for more than 180 days after issuance will be tendered to California State Controller Unclaimed Property Fund and held in the name of the Settlement Class Member. (Settlement Agreement ¶ 4.4.3). Thus, the Settlement Agreement does not provide for a cy pres recipient.

K. NOTICE TO CLASS MEMBERS

Within fifteen (15) calendar days of preliminary approval of this settlement, Defendant will provide the Class List to the Settlement Administrator. (Settlement Agreement ¶4.2). The Settlement Administrator will mail a Class Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List. (*Id*. at ¶ 7.4.1). Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. (*Id*.). If a Notice is returned as non-deliverable but with a forwarding address, the Settlement Administrator shall resend the Notice to the forwarding address. (*Id*.) If a Notice is returned as non-deliverable with no forwarding address, the Settlement Administrator shall conduct a skip trace to locate the most current address of the person to whom the Notice was addressed and shall resend the Notice to any updated address. (*Id*.) Each Class Notice will provide: (i) information regarding the nature of the Action; (ii) a summary of the Settlement's principal terms; (iii) the Settlement Class definition; (iv) the total number of Workweeks each respective Settlement

Class Member worked for Defendant during the Class Period; (v) each Settlement Class Member's estimated Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (vi) the dates which comprise the Class Period; (vii) instructions on how to submit Requests for Exclusion or Notices of Objection; (viii) the deadlines by which the Settlement Class Member must postmark or fax any requests for exclusions/opt-outs/objections; and (ix) the claims to be released. (*Id*., Ex. A)

Based on the foregoing, the notice procedures fully comply with California Rules of Court Rule 3.766 (d) & (e).

L. COSTS AND FEES

1. Attorneys' Fees and Costs

California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to Class Members by the settlement. *Wershba v. Apple Computer, Inc*., 91 Cal.App.4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc*., 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F. 2d at 769.

Under California law, the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (Aug. 11, 2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created."). Under the percentage of the fund method, the Court's objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market will set... The judge, in other words, is trying to mimic the market in legal services.").

In the *Laffitte* intermediate court decision, the court observed that "35 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits." *Laffitte v. Robert Half Int'l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award representing 35% of the fund clearly falls within that range, and is consistent with other comprehensive surveys of class action settlements and fee awards. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that "[m]ost fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent."); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates).

The results delivered by Plaintiff's Counsel also support the requested percentage of the fund. Here, the Parties have agreed to a payment of a maximum of 35% of the settlement ($577,500.00) for payment to Class Counsel as attorneys' fees. (Settlement Agreement ¶ 3.2.2). Further, the parties have agreed to reimbursement of class counsel's reasonable and actual litigation costs incurred of up to $50,000.00. (*Id.*) Class counsel have, at their own risk, expended costs, for example, to file this instant action, service of process, payment of mediation fees, and other litigation related costs and will be submitting detailed cost sheets for the respective costs incurred prior to the Motion for Final Approval. Based on the foregoing, the court should preliminarily approve the attorney's fees and costs being requested by the parties.

2. Proposed Payment to Class Representative

Plaintiff requests a Class Representative Enhancement Payment of $10,000.00. (Settlement Agreement ¶ 3.2.1). Plaintiff conferred with Class Counsel about the case, provided documents and information to Class Counsel, and reviewed and signed the Settlement Agreement. (Flores Decl. ¶ 6). Moreover, as part of Plaintiff's duties as the representative, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement. (*Id.*)

Given that future employers are much less likely to hire individuals who have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the future from other potential employers. Plaintiff assumed these risks from which the whole class benefited. Class members did not have to file individual lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a public lawsuit.

Notably, courts have routinely granted approval of representative enhancements for far greater amounts than the $7,500.00 sought by Plaintiff in this case. *See, e.g., Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of $50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of $ 55,000, and three incentive awards of $ 35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a $50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) ($50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding $25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming $25,000 Incentive award to class representative in ERISA case). Here, Plaintiff requests an enhancement of $10,00.00, which is "presumptively reasonable" and consistent with case law.

3. Class Administration Fees

The Settlement Administration Costs are currently estimated to Eleven Thousand Dollars ($11,000). (Settlement Agreement ¶ 3.2.3). The Parties have agreed to Phoenix Settlement Administrators, for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Maximum Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. (*Id.*). Phoenix is a well-recognized class action Settlement Administrator. The parties believe that the administration fee is reasonable and should be approved.

III. LWDA HAS BEEN PROVIDED WITH NOTICE OF THIS MOTION

Plaintiff uploaded a copy of this Motion, Settlement Agreement and Proposed Order to the LWDA. (Choi Decl. ¶ 16)

IV. PROPOSED SCHEDULE FOR *CLASS NOTICE*, OBJECTION, OPT OUT, MOTION FOR APPROVAL, ATTORNEY'S FEES, AND FINAL ACCOUNTING

Description	Date	Details	Settlement Agreement
Preliminary Approval Date			
Class List to Administrator		15 calendar days from preliminary approval	¶4.2
Class Notice Distribution		14 calendar days from receipt of Class List	¶7.4.2
Opt Out/Objection Deadline		45 days from Notice Mailing	¶7.5.1
Final Approval	On or after 10/13/25		

V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL

Here, the proposed settlement is fair, adequate, and reasonable. It will result in both substantial monetary benefits to class members; it is non-collusive; and it was achieved as the result of informed, extensive, and arms' length negotiations conducted by counsel for respective parties who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiff respectfully request that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice, and set a date for a final approval hearing on or after October 13, 2025, or a later date that is convenient for the Court.

DATED: May 30, 2025

LAW OFFICES OF CHOI AND ASSOCIATES

By: ______________________________
Edward W. Choi
Attorneys for PLAINTIFF and the CLASS