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on behalf of himself and others similarly situated

Electronically FILED by Superior Court of California, County of Los Angeles 4/09/2025 3:31 PM David W. Slayton, Executive Officer/Clerk of Court, By K. Valenzuela, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

DARIN WRIGHT, on behalf of himself and others similarly situated,

Plaintiff,

vs.

TIERRA DEL SOL FOUNDATION, a California nonprofit corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No.: 23STCV24812

[Assigned for all purposes to: Hon. David S. Cunningham, III, Judge; Dept. 11]

PLAINTIFF DARIN WRIGHT'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

[*Filed concurrently with the Declaration of David Lavi; Declaration of Darin Wright; and [Proposed] Order*]

Hearing Information:
Date : August 27, 2025
Time : 10:00 a.m.
Dept. : 11

TO THE HONORABLE COURT, ALL PARTIES, AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that that pursuant to Rule 3.769 of the California Rules of Court, on August 27, 2025, at 10:00 a.m., or as soon thereafter as the matter can be heard in Department 11 of the Los Angeles County Superior Court located at 312 N. Spring St., Los Angeles, California 90012, Plaintiff Darin Wright ("Plaintiff") will, and hereby do, move for an order granting preliminary approval of the proposed class action settlement on the terms and conditions set forth in the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement Agreement") between Plaintiff and Defendant Tierra Del Sol Foundation ("Defendant"), a copy of which is attached to the Declaration of David Lavi ("Lavi Dec.") as Exhibit 1. Plaintiff will further move that the Order specifically encompass the following:

1. Preliminary approval of the proposed class settlement of this lawsuit;

2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Class defined as follows:

> All non-exempt employees who worked for Defendant at any time during the Class Period ("Class" or "Class Members"). The "Class Period" as referred to herein shall be from October 11, 2019 through November 19, 2024.
>
> All non-exempt employees who worked for Defendant at any time during the PAGA Period ("PAGA Period"). The "PAGA Period" as referred to herein shall be from November 9, 2022 through November 19, 2024.

3. Preliminary appointment of Plaintiff Darin Wright as Class Representatives;

4. Preliminary appointment of David Lavi, Esq. and Arie Ebrahimian, Esq. of E&L, LLP as Class Counsel;

5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit Class Representative Service Payment to Plaintiff, Settlement Administrator costs, civil penalties payable to the LWDA, and attorneys' fees and costs to Class Counsel;

6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices;

7. Approval of the proposed Notice Packet which is attached as Exhibit A to the executed Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement"), which is attached to the Declaration of David Lavi as Exhibit 1 filed concurrently herewith, and an order that it be disseminated to the proposed Class as provided in the Settlement Agreement; and

8. Set a Final Approval and Settlement Fairness Hearing on a date that is approximately 150 days after the Court grants preliminary approval of the Settlement.

This Motion is based on this notice of motion, the attached Memorandum of Points and Authorities, the Declarations of Darin Wright, David Lavi, Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Defendant does not intend to oppose this Motion, and given the multiplicity of issues addressed in this Motion, Defendant has indicated its approval of Plaintiff's expressed need to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2). Therefore, Plaintiff respectfully request that the Court consider Plaintiff' memorandum of points and authorities, which is 32 pages in length.

Dated: April 9, 2025

Respectfully submitted,
E&L, LLP

By: ______________________________
David Lavi, Esq.
Arie Ebrahimian, Esq.
Attorneys for PLAINTIFF DARIN WRIGHT,
on behalf of himself and others similarly situated

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Darin Wright ("Plaintiff") has reached a proposed class and representative action settlement with Defendant Tiera Del Sol Foundation ("Defendant") to resolve various wage and hour related violations. Plaintiff primarily alleges the following violations: (1) failure to pay all minimum and overtime violations due to: (i) Defendant's failure to pay its employees all owed wages due to their failure to property keep track of their working hours, or Defendant's unlawful employer-friendly one-way rounding policy; (ii) Defendant's failure to pay its employees all owed wages due to employees performing work off-the-clock for Covid-19 screening; and (iii) Defendant's requirement that employees use a corporate phone for clocking-in and out, however the corporate phone would not allow Plaintiffs to clock-in at their jobsite, but rather at the proximity of their corporate office; (2) failure to pay a proper overtime rate of pay for overtime hours worked based on a failure to factor in non-discretionary bonuses that are not excludable regular rate of pay for overtime calculation purposes; (3) meal period violations, premised on (i) missed, late, and/or short first meal periods due to work demands, and (ii) not providing second meal periods for shifts over 10.0 hours; (4) rest period violations; (5) failure to pay accrued and vested vacation at time of termination; (6) failure to pay sick pay at the proper rate of pay; and (7) failure to reimburse employees for business expenditures that were necessarily incurred by employees by using their cell phones during the course of employment. Based on these violations, Plaintiff also brought derivative claims for Defendant's alleged failure to pay all wages owed, including final wages, for wage statement violations, and sought civil penalties under the Private Attorneys General Act of 2004 ("PAGA").

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, common-fund class action settlement,[1] in which Defendant has agreed to pay Seven-Hundred

[1] The executed Class Action and PAGA Settlement Agreement and Class Notice ("Settlement"), which is nearly identical to the Los Angeles Superior Court Model Class Action and PAGA Settlement Agreement and Class Notice, is attached to the Declaration of David Lavi as Exhibit 1. All defined terms in this motion have the same definitions as used in the Settlement. Plaintiff's PAGA notice letter to the LWDA, which was submitted on November 9, 2023, and confirmation of filing, is attached to the Declaration of David Lavi as Exhibit 2. Plaintiff uploaded the proposed Settlement to the LWDA on January __, 2024. The confirmation is attached as Exhibit 3.

Thousand Dollars and Zero Cents ($700,000.00) on behalf of the following Class:

> All non-exempt employees who worked for Defendant at any time during the Class Period ("Class" or "Class Members"). The "Class Period" as referred to herein shall be from October 11, 2019 to November 19, 2024.

Significantly, Class Members do not need to file a claim to benefit from the Settlement because all Class Members will automatically receive a payment unless they affirmatively opt-out. There are approximately 685 Class members, who worked approximately 78,737 workweeks, rendering the average payment to Class Members to be approximately $580.54. This is an excellent result given the risks of non-certification due to Defendant's numerous bona-fide defenses.

The Settlement was reached after the Parties attended a full day of mediation with David Phillips, Esq., a respected wage and hour class action mediator. In connection with mediation, Defendant produced key data points regarding various class sizes, produced nearly 15% of relevant timekeeping and payroll records for Class Members, as well as applicable documents regarding Defendant's wage and hour policies and other information contained in their employe handbooks. After extensive research and analysis, including an analysis of Defendant's potential exposure by Plaintiff's retained economics expert, Mr. Sean Berger ("Mr. Berger"), a Partner and Senior Data Analyst at Berger Consulting Group, a full-day mediation was held on May 23, 2024, in which the Parties accepted a mediator's proposal for a class-wide resolution of all claims alleged in the class and representative action Complaint.

As stated, if the Settlement is approved, Defendant will pay a non-reversionary Gross Settlement Amount ("GSA") of $700,000.00. After deducting administration costs, Plaintiff' Class Representative Service Payments, attorneys' fees and costs, and payment of PAGA penalties to the California Labor and Workforce Development Agency ("LWDA"), the remaining Net Settlement Amount ("NSA") of approximately $397,666.67 will be distributed to all Class Members who do not opt-out of the Settlement ("Class Members"), which includes 25% of the PAGA Penalties (or $6,250.00) designated to be distributed to certain non-exempt employees regardless of whether they opt-out of the Settlement ("Individual PAGA Payment").

This proposed Settlement is within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the monetary benefits to be received by Plaintiff and the Class. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH NEGOTATIONS

1. The Parties

Defendant is a nonprofit corporation that holds themselves out as dedicated to empowering individuals with developmental disabilities, including but not limited to, by creating person-centered opportunities in employment, education, and the arts. *See* Declaration of David Lavi In Support of Plaintiff's Motion for Preliminary Approval of Settlement ("Lavi Decl."), ¶ 5. Plaintiff worked for Defendant from approximately August 14, 2000 to on or about September 11, 2023. *See,* Declaration of Darin Wright in Support of Class Action Settlement ("Plaintiff Decl.") ¶ 2. Like the majority of other non-exempt employees, Plaintiff worked for Defendant on an hourly basis as a direct support professional, assisting clients in their daily life activities. *Id*. Plaintiff was subject to Defendant's wage and hour policies that are at issue in this action. Lavi Decl., *Id.*; Plaintiff Decl. ¶ 2.

2. Procedural History

Plaintiff filed a class action complaint against Defendant on October 11, 2023, in Los Angeles County Superior Court, which alleges class wide causes of action for: (1) minimum wage violations; (2) failure to pay all overtime wages, and failure to include additional remuneration when calculating overtime wages; (3) meal period violations; (4) rest period violations; (5) failure to timely pay all vested unused vacation pay upon termination; (6) failure to provide sick pay; (7) failure to reimburse for necessary business expenses; (8) failure to timely pay earned wages during employment; (9) waiting time penalties; (10) wage statement violations; and (11) unfair competition. Lavi Decl., ¶ 6.

On February 16, 2024, Plaintiff amended his complaint to add a cause of action for civil penalties under the Private Attorneys General Act pursuant to Labor Code Sections 2698 *et seq*. (the "Class Action Complaint"). Lavi Decl., ¶ 7.

3. Discovery

After agreeing to participate in mediation, Defendant produced nearly 15% sampling data of its relevant time and pay records as well as its wage and hour policies and other documents and information relevant to the claims alleged in advance of mediation through informal discovery. Lavi Decl., ¶ 8.

Class Counsel conducted a detailed review of the time and pay records produced by Defendant prior to mediation. Lavi Decl., ¶ 9. Specifically, Class Counsel transmitted the time and pay data to their hired expert, Mr. Berger, and requested that Mr. Berger confirm the date range of the data provided, and extrapolate: (i) the number of pay periods and shifts worked by the class during the Class Period and the PAGA period; (ii) the average rate of pay for the class; (iii) the number of shifts worked over 3.5 hours, over 5.0 hours, over 6.0 hours, over 8.0 hours, over 10.0 hours, and over 12.0 hours; and (iv) the first and second meal period violation rate based on the produced time records. *Id.*. In addition, Class Counsel requested that Mr. Berger review the time data produced by Defendant to determine the amount of unpaid wages due to i) Defendant's failure to properly calculate the regular rate of pay, ii) unpaid off-the-clock work due to Covid-19 screening, iii) work that went uncompensated due to Defendant's employer-friendly rounding policy, and unpaid sick pay to include regular rate of pay. *Id.* As discussed in detail below, this analysis allowed Plaintiff to determine the scope of the various violations alleged in the Class Action Complaint and Defendant's potential exposure if the Parties were not able to reach a settlement at mediation. *Id.*

4. Arms-Length Negotiations

On May 23, 2024, after research and analysis, including Class Counsel's analysis of Defendant's potential exposure with the help of a retained economics expert, a full-day mediation was held with Mr. David Phillips, Esq., a well-respected wage and hour class action mediator. Lavi Decl. ¶ 10. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses for the claims alleged in the Class Action Complaint. *Id.* After a full-day mediation, the Parties ultimately accepted a mediator's proposal for a class and representative wide settlement for $700,000. *Id.* Months after mediation, the Parties signed the Class Action and PAGA Settlement Agreement and

Class Notice ("Settlement"), which is nearly identical to the Los Angeles Superior Court Model Class Action and PAGA Settlement and Class Notice. *Id.*

III. ARGUMENT

A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers San Bernardino* (2012) 208 Cal.App.4th 322, 337 (Rule 3.769 requires the trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 (Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Courts act within their discretion in approving settlements which are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905).

For settlement purposes, courts use a less stringent standard for certification of classes. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859). "The reason for this is that no trial is anticipated in a settlement class case, so the case management issues inherent in the ascertainable class determination need not be confronted." (*Id.;* see also *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming certification of class action for settlement purposes only]). Accordingly, this Court has discretion to certify Plaintiff' class for settlement purposes only.

As further explained below, the Class satisfies the criteria for certification of a Class under California law because: (1) the Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff' claims are typical of the claims of absent Class Members; and (4) Plaintiff and their counsel will fairly and adequately represent Class Members' interest. *See* Cal. Civ. Proc. § 382.

1. The Proposed Class Is Ascertainable and Numerous

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Class is defined as all non-exempt employees who worked for Defendant at any time during the period of October 11, 2019 through November 19, 2024 ("Class Period"). *See* Settlement, ¶¶ 1.44. Class Members can therefore be identified via Defendant's personnel and employment records. Defense counsel represents that the Class consists of approximately 685 current and former employees as of May 23, 2024. Lavi Decl., ¶ 11; Settlement ¶ 4.1. It would therefore be impracticable to bring all Class Members before the Court, or for each Class Member to bring an individual lawsuit. The proposed Class therefore satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not the merits, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 327. Plaintiff's claims are predicated on, among other issues, Defendant's alleged failure to pay for all hours worked, to pay overtime at the proper overtime rate of pay, to authorize or permit meal and rest periods, and to pay all wages earned during employment and at time of separation. *See* Plaintiff Decl., ¶ 3-9; Lavi Decl., ¶ 6. These types of claims are commonly held to be proper for class certification. *See e.g.*, *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 (certifying meal and rest period claims); *Bluford v. Safeway, Inc.*, (2013) 216 Cal.App.4th 864, 871 (reversing denial for certification of rest period claim); *Faulkinbury v. Boyd & Assoc., Inc.* (2013) 216 Cal.App.4th 220, 240 (certifying failure to pay all wages claim).

3. The Claims of the Named Plaintiff Are Typical

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical of those held by the members of the proposed Class. Like other Class Members, Plaintiff was employed by Defendant as non-exempt hourly employee and was compensated via Defendant's pay plans during the Class Period. Lavi Decl., ¶ 5; Plaintiff Decl., ¶ 2. Plaintiff alleges that he did not receive all legally compliant meal or rest periods or premium pay in lieu thereof. *Id.* Plaintiff further alleges they he was not paid all hours worked. *Id.* Additionally, Plaintiff asserts that he routinely incurred necessary business expenditures, most notably use of his cell-phone for work related purposes, and was not adequately reimbursed for said expenses. *Id.* Finally, Plaintiff asserts that he did not receive all earned wages at the time of his separation of employment and received non-compliant wage statements. *Id.* Because Plaintiff suffered the same injuries as the other members of the Class, the typicality requirement is satisfied.

4. <u>Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class</u>

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 697. Plaintiff and his counsel will adequately represent the Class, as there are no conflicts between Plaintiff and the proposed Class, and Plaintiff possess claims that are in line with those of the Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Moreover, Plaintiff understood the requirements of a class representative and his obligations to absent class members and took on those responsibilities for their benefit. *See* Plaintiff Decl., at ¶¶ 11-12. Class Counsel also have experience in wage and hour class action litigation. *See* Lavi Decl., ¶ 17; 45-47.

B. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE PROPOSED CLASS ACTION SETTLEMENT BECAUSE IT IS FAIR, ADEQUATE, & REASONABLE

Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair.

See e.g., *Hanlon*, *supra*, 150 F.3d at 1027. There is an initial presumption of fairness where the Settlement was negotiated at arm's-length by Class Counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. However, the record need not contain an explicit statement of the maximum theoretical recovery:

> "Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims—a number which appears nowhere in the record of this case. But *Kullar* does not, as Greenwell claims, require any such explicit statement of value; it requires a record which allows "an understanding of the amount that is in controversy and the realistic ranges of outcomes of the litigation."

(*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409).

The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the *range of reasonableness* and, therefore, whether notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4th Ed). §11:25). Courts have broad powers to determine whether a proposed settlement is fair under the circumstances of the case. (*Wershba*, *supra,* 91 Cal.App.4th at 234-35; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438).

1. <u>The Preliminary Approval Standard is Met</u>

To make a fairness determination, the Court should consider several factors, including: "the strength of Plaintiff' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case. This litigation has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617). Furthermore, courts must give "proper deference to the private consensual decision of the parties" because "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027).

a. <u>The Strength of Plaintiff's Case</u>

Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described below, Defendant presented multiple defenses to Plaintiff' claims, both on the merits and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through class certification, and ultimately trial, success was far from certain.

b. <u>Risk, Expense, Complexity, and Duration of Further Litigation</u>

Although the Parties engaged in informal discovery in advance of mediation, the Parties still had additional discovery to complete in formal litigation had the matter not settled. Lavi Decl., ¶ 15-17. This would have required expenditure of substantial time and resources by both Parties that would have very likely spanned several years. *Id*. Moreover, even if Plaintiff was able to certify the classes, the Parties would incur considerably more attorney fees and costs through a possible decertification motion, trial, and possible appeal. *Id.* This settlement avoids those risks and the accompanying expense. *Id.*

c. <u>Risk of Maintaining Class Action Status</u>

Plaintiff has not yet filed their motion for class certification, and as such, the extent to which Plaintiff's proposed classes are certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Class (either due to a narrowing of the class definition in a Court order on a contested motion for class certification, or through settlement agreements entered into by Defendant with individual Class Members by way of *Pick-Up-Stix* type settlement agreements and the expected recovery could be significantly reduced, given the settlement amounts that are typically offered through the *Pick-Up-Stix* process). Thus, these factors support preliminary approval of the Settlement.

d. <u>Overview of the Settlement Agreement</u>

If the Court preliminarily approves this Settlement, Defendant will pay a Gross Settlement Amount ("GSA") of $700,000.00. *See* Settlement, ¶ 3.1. The Settlement Administrator shall hold all portions of the Gross Settlement Amount for the benefit of the Class until the time for disbursement. *See* Settlement, ¶ 4.3. Significantly, this Settlement is non-reversionary, and no Class Member will have to submit a claim form to receive an Individual Class Payment and Individual PAGA Payment. *See* Settlement, ¶ 3.1. Each Class Member will automatically receive an Individual Class Payment and Individual PAGA Payment, if eligible, unless he or she affirmatively opts out of the Settlement. *See* Settlement, ¶ 7.5.1.

Based on Defendant's representations of its financial condition made at mediation, the Parties have agreed that the Settlement will be paid out in two installments to accommodate Defendants' financial condition: (l) the first installment payment in the amount of $350,000.00 shall be due 30 days after the Court's Final Approval of the Settlement or May 23, 2025, whichever date comes later; and (2) the second installment in the amount of $350,000.00 shall be due six months (180 days) after the first payment due date. *See* Settlement, ¶¶ 3.1; 4.3.

The Settlement Administrator shall hold all portions of the Maximum Settlement Amount in an interest-bearing account for the benefit of the Settlement Class until the time for disbursement. Settlement, ¶ 4.3. The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	**$700,000.00**
Minus Court-approved attorneys' fees (1/3 of GSA):	$233,333.33
Minus Court-approved, verified costs (not to exceed):	$25,000.00
Minus Court-approved Service Payments (not to exceed):	$10,000.00
Minus Settlement Administrator costs (not to exceed):	$9,000.00
Minus PAGA Payment to the LWDA:	$25,000.00
Net Settlement Amount ("NSA"):	**$397,666.67**

After deducting amounts for the Court-approved attorneys' fees and verified costs, the Class Representative Service Payments to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the Settlement requires Defendant to pay a Net Settlement Amount ("NSA") amount of approximately $397,666.67 to all Class Members who do not timely opt out ("Class Members"). *See* Settlement, ¶¶ 3.1; 7.5.1; *et seq.*[2] The NSA shall be distributed to all Class Members based on each participating Class Member's proportionate number of Eligible Workweeks that he or she was worked during the Class Period. *See* Settlement, ¶ 3.1. Twenty-Five Thousand Dollars and Zero Cents ($25,000.00) of the NSA has been designated as the "PAGA Amount," and shall be distributed to Class Members proportionally based on the number of pay periods worked during the PAGA Period. *See* Settlement, ¶¶ 1.32; 3.2.5, 3.2.5.1.

According to Defendant, there are approximately 685 total Class Members who worked approximately 78,737 workweeks. *See* Settlement, ¶4.1; 8. Lavi Decl., ¶¶ 11; 13. Therefore, the average Individual Settlement Payment is projected to be approximately $580.54. *Id*. Class Members will have forty-five (45) days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶ 7.5.1. The deadline will be extended fourteen (14) calendar days for any Class Member who is remailed a Notice by the Claim Administrator. *See* Settlement, ¶¶ 1.41; 7.4.4. Those Class Members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant included within the Settlement through the Class Period. *See* Settlement, ¶ 7.5.3.

e. <u>The Parties Engaged in Fair and Honest Negotiations</u>

The Settlement resulted from an exchange of data and information, arm's-length negotiations by counsel, a full day of mediation before an experienced wage and hour mediator, and additional months of circulating the long-form settlement agreement for execution. Lavi Decl., ¶¶ 10. The Settlement is entitled to an initial presumption of fairness. *See Kullar*, *supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff carefully vetted the claims at issue and reviewed Class Members' relevant records and conducted a detailed analysis of the data with the assistance of an economics expert to arrive at his estimated class wide damages figures. Lavi Decl., ¶¶ 9-12. Thus, the factors

[2] Defendant will pay the employer's share of payroll taxes separately from, and in addition to, the Gross Settlement Amount. *See* Settlement, ¶ 3.1.

presented before a settlement was reached supports preliminary approval.

f. <u>Amount Offered in Settlement Given Realistic Valus of Claims</u>

The Settlement provides a fair and reasonable recovery for the Class in the face of disputed claims. Plaintiff conducted an analysis of underpaid wages and penalties due to Defendant's alleged failure to pay minimum and overtime wages, off-the-clock violations, failure to pay overtime at the proper rate, failure to pay sick pay at the proper rate, unlawful meal and rest period practices, failure to reimburse, wage statement and waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiff' exposure analysis are discussed below:

<u>Off-The-Clock/Overtime Violations (Covid-19 and Rounding)</u>: $301,543.98

Plaintiff alleged that Defendant utilized a practice/policy of utilizing a rounding mechanism that always benefited the employer and/or only compensated Class Members for scheduled time as opposed to time actually worked. Lavi Decl., ¶ 19. Specifically, the time data analysis confirmed that 38.5% of the shifts had all punch times recorded to a quarter hour (e.g., 8:00 a.m. to 12:15 p.m., 12:45 p.m. to 5:30 p.m.). *Id.* As a result, to the extent a given shift time or meal period was rounded, Plaintiff alleges that it was always rounded against the employees. *Id.* As such, Plaintiff alleges that Defendant's timekeeping policy fails to compensate Class Members when they actually worked more hours than were scheduled to work or when they exercised meal periods of less than 30 minutes. *Id.* As such, Plaintiff made an assumption for the analysis that there were 30-minutes of unpaid wages per week due to off-the-clock, in which Class Members were unpaid for the time spent subjected to Defendant's policy and protocols. *Id.* As such, Plaintiff alleges that Defendant's timekeeping policy failed to compensate Class Members for their hours submit to Defendant's control. *Id.*

Plaintiff also alleged that Defendant subjected employees to Covid-19 safety protocols by requiring class members to line up and wait to undergo and undergo a nose swab prior to being permitted to clock-in for their shifts. Plaintiff Decl., ¶ 4. Lavi Decl., ¶ 20. Plaintiff alleged that Class Members were not paid for this additional off-the-clock policy of Defendant, which exposes Defendant to unpaid wages and overtime pay. *Id.* Plaintiff made an assumption for the analysis that the Covid-19 protocols, especially nose swaps, enforced by Defendant were for the period of 2020 through 2023, in which Class Members were unpaid for the time spent subjected to Defendant's policy and protocols. *Id.* As such, Plaintiff alleges that Defendant's timekeeping policy failed to compensate Class Members when they actually began working when they started to be screened for Covid-19 safety protocols off-the-clock. *Id.*

Defendant's alleged failure to pay Class Members for all hours worked, if established, would violate California law, which is designed to ensure payment for all hours worked. *See Armenta v. Osmose, Inc.,* (2005) 135 Cal.App.4th 314, 324 ("California's labor statutes reflect a strong public policy in favor of full payment of wages for all hours worked."); *Morillion v. Royal Packing Co.*, (2000) 22 Cal.4th 575, 583 ("hours worked" includes "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."). Plaintiff alleges that Defendant's one way rounding policy resulted in an estimate of 30 minutes per week of off-the-clock being performed, resulting in Class Members being underpaid 39,369 hours of which 32.1% is overtime wages during the Class Period, which would constitute unpaid hours worked. Lavi Decl., ¶ 19.

Further, Plaintiff's analysis alleges that Defendant's Covid-19 protocols resulted in an Class Members being underpaid an estimate of 32,399 hours for nose swabs at 10 minutes per shift during the Class Period, nearly all of which would constitute minimum hours worked since Plaintiff and Class Members worked at least 7.0 hours per shift. Lavi Decl., ¶ 20. Accordingly, Plaintiff estimated Defendant's exposure as follows:

<u>Covid-19 Nose Swab</u>: 32,399 unpaid hours * $16.62 (average rate of pay between June 1, 2020 to December 31, 2022) = $538,471.38.

<u>Rounding</u>: [(39,369 unpaid hours * $26.88 (average rate of overtime pay) * 32.1%] + [39,369 unpaid hours * $17.92 (average rate of pay) * 67.9%] = $818,723.63

Defendant countered that throughout the Class Period it maintained its policy of paying Class Members for all hours worked. Lavi Decl., ¶ 21. Defendant argued further that by its very nature this claim is not suited for class treatment, as there are no records to indicate how often or how much off-the-clock work was performed for Covid-19 screening thereby prohibiting class certification of this claim. *Id.*; *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25 (holding that the defendant must be provided an opportunity to litigate affirmative defenses, even when they turn on individual questions). Additionally, Defendant countered that to the extent that rounding ever occurred, that it was legal because it was applied in a neutral even-handed way. *Id.; Ferra v. Loews Hollywood Hotel, LLC*, (2019) 40 Cal. App. 5th 1239, 1253 (holding that a facially neutral rounding policy that resulted in employees losing time on 55% of shifts, gaining time on 22.8% of shift, and resulted in neither gaining or losing time on the remainder of shifts was not sufficient to show the rounding policy systemically undercompensated employees).

In light of these defenses, Plaintiff discounted the maximum amount for these claims by 45% for risk of non-certification, and an additional 35% for being unsuccessful on the merits, or having the amount of damages reduced due to an over estimation of the amount of off-the-clock work performed to arrive at an estimated exposure of $485,197.22. Lavi Decl., ¶ 22.

<u>First & Second Meal Period Violations</u>: $703,271.92

Plaintiff alleges that Plaintiff and the Class Members were routinely denied timely meal periods, and that meal periods were not received prior to the end of their fifth hour worked. *See,* Plaintiff Decl., ¶¶ 3; 6; Lavi Decl., ¶ 23; See also, *Brinker Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th 1004, 1049 ("Under the wage order, as under the statute, an employer's obligation is to provide a first meal period after no more than five hours of work."). While Defendant's written meal period policies are generally compliant, Plaintiff alleges that he and the Class Members in reality were subject to an inconsistent meal period policy/practice that did not serve to track their meal periods accurately in favor of automatically deducting thirty minutes off of their time sheets each shift, regardless if a timely and legally compliant meal period was actually exercised. *Id.* Accordingly, Plaintiff alleges that he and the Class Members often did not receive meal periods and when they did, the meal periods were often late and not duty-free as they were subject to the carrying for and being with clients of Defendants, whom could not be left alone due to their disabilities. *Id.*; *Brinker, supra,* 53 Cal.App.4th at 1040 ("[w]age orders and governing statute do not countenance an employer's exerting coercion against the taking of, creating incentives to forgo, or otherwise encouraging the skipping of legally protected breaks.") Indeed, the records provided to Plaintiff for analysis reflect approximately 158,566 unique meal period violations[3] during the Class Period taking into account

[3] Unique meal period violations are defined as shifts with at least one of the following: 1) recorded 1st meal

that nearly 53% of recorded shifts over 5.0 hours contained a violation, and over 12% of shifts reflected meal periods being exercised after the conclusion of the 5th hour worked, and nearly 82% of 2,052 shifts reflected no 2nd meal period for shifts between 10 and 12 hours. *Id.* Indeed, *Donohue v. AMN Servs., LLC*, (2021) 11 Cal. 5th 58, 68, makes clear the rounding of meal periods is *per se* illegal ("The practice of rounding time punches for meal periods is inconsistent with the purpose of the Labor Code provisions and the IWC wage order."). As such Plaintiff alleges that nearly 53% of shifts worked by the putative class were unlawful and trigger meal period violations due to this rounding practice. *Id*.

Based on the timekeeping records provided in connection with mediation, Plaintiff estimated Defendant's maximum exposure for first and second meal period violations at $2,841,502.72 (158,566 meal period violations * $17.92 average meal premium). Lavi Decl., ¶ 24.

However, Defendant maintains that it has always provided legally compliant first and second meal periods to Class Members and maintained and enforced lawful meal period policies which provide for timely and duty-free meal periods. Defendant further alleged that Class Members had executed on duty meal waiver agreements, for shifts over 5, 6, and 10/12 hours. Lavi Decl., ¶ 25.

Additionally, Defendant argues that any allegations of systemic meal period violations should not apply to the entire Class because the alleged practice was one that, if it occurred, was limited to a handful of employees who voluntarily skipped meal periods without Defendant's knowledge. Lavi Decl., ¶ 26. Additionally, Defendant argues that to the extent Plaintiff's allegations of meal period violations are premised on Plaintiff's allegations that meal period records were unlawfully rounded, that this theory of liability too would fail, due to Defendant's steadfast position that it was not unlawfully rounding time records and to the extent that rounding ever occurred, that it was applied in a neutral even-handed manner. *Id.* Defendant further argues that this claim would not be certified due to the lack of any common evidence tying together the reason that Class Members experienced a first meal period violation as the experiences of its employees varied greatly depending on the job assignments and clients they worked with. *Id*. Defendant also argues that the presence of these

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break after the end of the 5th hour for shifts greater than 5 hours; 2) first meal break less than 30 minutes for shifts greater than 5 hours; 3) no 1st meal break for shifts greater than 5 hours; or 4) no 2nd meal break for shifts greater than 10 hours.

affirmative defenses as to the voluntariness of a particular meal period decision would preclude class certification. *Id.*; *see Duran, supra,* 59 Cal.4th at 25 (holding that the defendant must be provided an opportunity to litigate affirmative defenses, even when they turn on individual questions). Moreover, Defendant argues that its exposure is vastly overestimated as Plaintiff already claims unpaid off-the-clock time as a result of auto-deducting meal period time and that Plaintiff cannot simultaneously recover a premium payment and unpaid wages. *Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal. 5th 93, 102 ("Although the extra pay is designed to compensate for the unlawful deprivation of a guaranteed break, it also compensates for the work the employee performed during the break period.") Therefore, Plaintiff discounted the maximum amount that the class could potentially recover for meal period violations by 65% for a risk of non-certification, and an additional 45% for a risk of losing on the merits, or having exposure reduced due to Defendants' waiver arguments, to arrive at an estimated exposure amount of $703,271.92. *Id.*

<u>Rest Period Violations</u>: $1,028,457.47

Plaintiff argues that Defendant failed to authorize duty-free rest periods and that he and the Class Members were made to work through the entirety of their shifts without rest periods. Plaintiff Decl., ¶ 5; *see also, Brinker, supra,* 53 Cal.4th at 1028-31 (discussing the rate at which rest periods must be authorized and permitted). Plaintiff alleges that Defendant's rest period practice was deficient and served to ensure that Plaintiff and the Class Members were not able to exercise legally compliant rest periods due to their requirements that employees, including Plaintiff, had to monitor clients at all times due to their disabilities. *Id.* Such a policy by its nature violates California law which requires that "[d]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time," just as they must do doing meal periods. *See Augustus v. ABM Security Svcs., Inc.,* (2016) 2 Cal.App.5th 257, 260. Moreover, Defendant also failed to pay any rest period premium wages per Labor Code Section 226.7 and Defendant failed to maintain any pay code for paying rest period premium wages per Labor Code Section 226.7. Lavi Decl., ¶ 27*; See, Safeway, Inc. v. Superior Court (Esparza),* (2016) 238 Cal.App.4th 1138, 1159 (2015) (certifying a UCL class based on failure to make premium payments). Therefore, Plaintiff calculated Defendant's maximum exposure for rest period violations, assuming a rest period violation on all shifts over 3.5 hours, as follows: 327,952 rest period violations * $17.92 average rest period premium = $5,876,899.84. *Id.*

However, Defendant contends that, despite Plaintiff's arguments to the contrary, it maintained legally compliant rest period policies and practices throughout the Class Period, authorized and permitted all rest periods to class members, and in practice did not prevent the Class Members from exercising rest periods. Lavi Decl., ¶ 28. Defendant further argues that Plaintiff's rest period claim is inherently unsuited for class treatment as there are no records of whether or not rest periods were taken, therefore requiring an individualized inquiry into whether each class member failed to take rest periods on each shift, which would devolve into an unmanageable series of mini-trials, especially in light of the fact that Class Members worked different job assignments with Defendant's clients throughout the Class Period, and therefore any alleged restrictions on authorizing rest periods would be unique to the specific job description and/or assignment. *Id*. In light of these defenses, Plaintiff discounted the maximum amount for this claim by 65% for risk of non-certification, and an additional 50% for a risk of being unsuccessful on the merits or having the amount of violations determined to be less than Plaintiff allege to arrive at an estimated exposure of $1,028,457.47. *Id*.

<u>Regular Rate Claim</u>: $22,808.88

Throughout the Class Period, Defendant paid its employees non-discretionary bonus payments that were not factored into the Class's respective regular rates of pay for overtime purposes. Plaintiff Dec., ¶ 7; Lavi Decl., ¶ 29. These additional compensations on Class Members paystubs includes: Additional Earnings: ESS; Additional Earnings: SAW-SPOT Award SAW-SPOT AWARD; Additional Earnings: SG1-SIGN-ON BO; Additional Earnings: WKE; Additional Earnings: INC-INCENTIVE (Monthly); Additional Earnings: SAF-SAFETY PAY (Monthly); and Additional Earnings: BON-BONUS (Quarterly). *Id.* As stated, these non-discretionary payments must be included in the regular rate of pay when calculating employees' overtime rates of pay. *Id.*; *see e.g., Huntington Memorial Hospital v. Superior Court* (2005) 131 Cal.App.4th 893, 902-903 (discussing regular rate calculation requirements). Plaintiff's expert determined that Defendant's failure to include these bonuses when calculating an overtime rate of pay led to a total underpayment of $31,679 during the Class Period. *Id.*

However, Defendant counters that the incentive compensation represents discretionary payments and therefore is not required to be included in the "regular rate" of pay. Lavi Decl., ¶ 30; 29 U.S.C. § 207(e)(2)-(3) (discretionary bonuses, and compensation not made as compensation for hours of employment, need not be included in "regular rate"). Moreover, Defendant argues that differences in the frequency, type, and amount of incentive pay received by different Class Members would preclude class certification of this claim. *Id.* In light of these defenses, Plaintiff discounted the maximum amount that the class could potentially recover for these violations by 20% for a risk of non-certification, and an additional 10% for a risk of losing on the merits, to arrive at an estimated exposure amount of $22,808.88. *Id.*

<u>Wage Statement Violations</u>: $646,100.00

With respect to wage statement violations, Plaintiff contends that for each pay period in which there is an unpaid wage due to off-the-clock violation, meal or rest period violation, regular rate of pay violation, Plaintiff and the Class Members would have received a non-compliant wage statement in violation of Labor Code Section 226. Lavi Decl., ¶ 31. These types of derivative claims are routinely certified. *See, e.g., Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) Case No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151 at *5 ("Thus, this court relies on *Murphy* in finding that Section 226.7 premiums constitute wages, and are therefore required to be included in wage statements under Section 226"). Plaintiff's data analysis reflected that there were approximately 14,854 total wage statements issued during the relevant period and approximately 497 unique employees during the relevant time period. *Id.* Plaintiff calculated Defendant's maximum exposure for wage statement violations at $184,000.00 (497 employees * $4,000 aggregate penalty) = $1,988,000.00. *Id.*; *see also* Labor Code § 226(e). (However, should staking be argued, then Defendant's maximum exposure for wage statement penalty is [$50 x 497] + [$100 x (14,854 - 497)] = $1,460,550.00). *Id.*

Based on Defendant's arguments that: (i) no violations occurred, (ii) any alleged violations were not "knowing and intentional" as required by Labor Code § 226(e), (iii) no injury was suffered, and (iv) the decision in *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, which holds that there is no wage statement violation when the wage statements accurately reflect the compensation received by an employee, Plaintiff discounted the calculated exposure by 50% for a risk of non-certification and an additional 35% for a risk of being unsuccessful on the merits or having the number of violations reduced since only a subset of potential employees were subject to Covid-19 nose swabs, the premise that employees had meal wavier agreements, and that only a subset of employees received compensation, to arrive at an estimated total of $646,100.00. Lavi Decl., ¶ 32.

Waiting Time Penalties: $169,908.48

Plaintiff alleges that Defendant is also liable for waiting time penalties as a result of its failure to pay all off the clock and overtime wages and premium wages owed. *See, e.g., Amaral v. Cintas Corp. No. 2*, (2008) 163 Cal.App.4th 1157, 1201 ("willful" under Section 203 means the "employer has intentionally failed or refused to perform an act which was required to be done" and need not be "based on deliberate evil purpose"). There are approximately 258 Class Members who separated their employment with Defendant within the relevant time period. Lavi Decl., ¶ 33. The estimated average waiting time penalty per former employee was calculated at $6,504.40 ($17.92 average hourly rate of pay * 7.0 hours per day * 30 days = $3,763.20.00), resulting in a total maximum exposure of $970,905.60 (258 former employees x $6,504.40). *Id.*

To the extent that Plaintiff's waiting time penalty claim was derivative of his unpaid wages, and meal and rest period claims, Defendant argues that not all former employees (if any) did, in fact, experience under payment of wages (and therefore Plaintiff's exposure was overstated). Lavi Decl., ¶ 34. Defendant also contends that because it possessed good-faith defenses to the underlying claims, any failure to pay wages was not "willful" as a matter of law. *Id.* Defendant further maintains that waiting time penalties are not recoverable at all for meal and rest period violations. *Id.*; *see also Ling v. P.F. Chang's China Bistro, Inc.,* (2016) 245 Cal.App.4th 1242, 1261 (suggesting that waiting time penalties are not recoverable as a result of unpaid meal period premiums).

As a result, Plaintiff discounted the maximum exposure by 50% to account for the risk of non-certification of the claims upon which the waiting time penalties rely, and an additional 65% for failing to prevail on the merits, including the inability to recover waiting time penalties for missed meal and rest period premium payments, including the inability to establish willfulness, to arrive at an estimated exposure of $169,908.48. Lavi Decl., ¶ 35.

<u>Sick Pay: $</u>41,999.30

Plaintiff contends Defendant failed to include non-discretionary bonuses and incentives in employees' regular rate of pay for purposes of sick leave pay. Plaintiff Decl., ¶ 8. According to Plaintiff's expert's analysis, the sum of pay period overtime calculated at base rate in addition to one-half of the regular rate of pay is $9,195; the sum of quarterly overtime calculated at base rate in addition to one-half of the regular rate of pay is $20,472; and the sum of monthly overtime calculated at base rate in addition to one-half of the regular rate of pay is $2,011. Lavi Decl., ¶ 36. Finally, Plaintiff's expert determined the amount of underpaid sick leave would be approximately $119,998. *Id.*

Plaintiff alleges that Defendant paid employees non-discretionary bonuses and incentives but failed to include these amounts when calculating sick leave pay. As a result, sick leave compensation was allegedly underpaid. Because these regular rate issues can often be identified through a review of payroll records, Plaintiff argues that these claims are well-suited for class certification, which reduces the risk of denial at the certification stage. However, Defendant is likely to counter these assertions at trial by presenting evidence and witness testimony showing that not all employees were eligible for, or actually received, such bonuses and incentives. Additionally, Defendant may argue that the bonuses were discretionary, which would undermine Plaintiff's theory of liability. Defendant could also produce evidence indicating that such bonuses and incentives were rarely paid during the same pay periods as sick leave, thereby minimizing their impact on sick leave calculations. Given these potential defenses, Plaintiff applied a 30% discount to the maximum potential exposure to reflect the risk of non-certification of the claims supporting the waiting time penalties, and a further 50% discount for the risk of not prevailing on the merits. This results in an estimated exposure of $41,999.30. Lavi Decl., ¶ 37

<u>Failure to Reimburse:</u> No Value

Plaintiff additionally alleged that Defendants as a matter of policy/practice failed to reimburse Plaintiff and the Class Members for business related expenses related to using their personal cell-phones, in violation of Labor Code § 2802. Upon further investigation, however, Plaintiff discovered that this was an issue individualized to Plaintiff, and not a claim typical of other Class Members. As such, Plaintiff assigned no value to this claim. Lavi Decl., ¶ 38

Vacation Pay: No Value

Plaintiff additionally alleged that Defendants as a matter of policy/practice failed to compensate Plaintiff and the Class Members for all vested, unused vacation pay at the time of their separation of employment in violation of Labor Code § 227.3. Upon further investigation, however, Plaintiff discovered that this was an issue individualized to Plaintiff, and not a claim typical of other Class Members. As such, Plaintiff assigned no value to this claim. Lavi Decl., ¶ 39

PAGA Penalties: $1,575,747.00

Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lavi Decl., ¶ 40. The specific statutory violations upon which Plaintiff bases the claim under PAGA are: (i) Cal. Lab. Code §1194, 1194.2, 1197 for failing to pay all minimum wages owed; (ii) Labor Code sections 204, 510, 558, 1197.1, and 1194, for failing to pay all overtime wages owed; (iii) Labor Code sections 226.7, and 512, for meal period violations; (iv) Labor Code sections 226.7 and 516 for rest period violations; (v) Labor Code section 226(e) for failing to provide accurate, itemized wage statements; (vi) failure to provide proper sick pay wages pursuant to Labor Code § 246; and (vii) Labor Code sections 201 through 204, and 210 for failing to pay all timely wages, including wages owed upon termination. *Id.* Plaintiff also alleged stand-alone PAGA Penalties for failure to reimburse business related expenses pursuant to Labor Code § 2802, and failure to pay accrued and vested vacation wages upon separation pursuant to Labor Code § 227.3, however after further investigation into these claims Plaintiffs found neither to be applicable to Plaintiff. Based on the violations addressed above, Plaintiff contends that Defendant is liable for PAGA civil penalties for each of the estimated 14,854 pay periods worked during the PAGA period. *Id.* Accordingly, Plaintiff estimates Defendant's exposure as follows:

a. PAGA For Failure to Pay Wages at Separation: for 124 PAGA pay periods at $100 per violation, the PAGA penalty is **$12,400.00**

b. PAGA for Unpaid Wages: for 497 employees for 14,854 pay periods, at $100 per initial violation, and $100 per subsequent violation, the PAGA penalty is [$100 x 497 aggrieved employees] + [$100 x (14,854 – 497)] = **$1,485,400.00**

c. PAGA for Overtime / Regular Rate of Pay: for 265 employees with 2,315 pay periods, at $100 per initial violation, and $100 per subsequent violation, the PAGA penalty is $100 x 256 aggrieved employees + [$100 x (2,315–256)] = **$231,500.00**

d. PAGA for Meal Breaks: for 426 employees with 11,040 pay periods, ($100 x 426 aggrieved employees) + [$100 x (11,040-426)] = $634,700 x 45.4% = **$1,104,000.00**

e. PAGA for Rest Breaks: for 471 employees with 14,041 pay periods, at $100 per initial violation, and $100 per subsequent violation, the PAGA penalty is ($100 x 471 aggrieved employees) + [$100 x (14,041 – 471)] = $**1,404,100.00**

f. PAGA for Wage Statement Violation: for 497 employees with 14,854 pay periods, at $100 per initial violation, and $100 per subsequent violation, the PAGA penalty is [$100 x 497 aggrieved employees] + [$100 x (14,854 – 497)] = **$1,485,400.00**

g. PAGA for Sik Pay: for 245 employees with 1,133 pay periods, at $100 per initial violation, and $100 per subsequent violation, the PAGA penalty is [$100 x 245 aggrieved employees] + [$100 x (1,133-245)] = **$113,300.00**

h. PAGA For Waiting Time Penalty: PAGA for Waiting Time Penalty: 694 Former Employees x $100 violation = $69,400

i. Total PAGA exposure: **$5,836,100.00**

S*ee, Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until the employer is notified that it is violating a Labor Code provision:

Regarding the PAGA penalty exposure analysis, as an initial matter, in wage and hour class action cases that settle, which are the overwhelming majority of such cases, very little of the total settlement is paid to PAGA penalties in order to maximize payments to class members. *See, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (no abuse of discretion to approve class action settlement allocating $0 to PAGA claims); *Ceja-Corona v. CVS Pharm., Inc*., 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 (E.D. Cal. Jan. 14, 2015) (preliminarily approving $10,000 in PAGA penalties out of a total settlement amount of $900,000), report and recommendation adopted, 2015 U.S. Dist. LEXIS 25730, 2015 WL 925598 (E.D. Cal. Mar. 3, 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (preliminarily approving $10,000 in PAGA penalties out of a total settlement amount of $1,250,000); *Franco v. Ruiz Food Prods*., 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 (E.D. Cal. Nov. 27, 2012) (granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $2,500,000); *Garcia v. Gordon Trucking, Inc*., 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012) (granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $3,700,000); *Chu v. Wells Fargo Invs., LLC*, 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1 al. Feb. 16, 2011) (granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $6,900,000). In these settlements, the parties generally maximize statutory penalties and minimize PAGA penalties. *See, e.g., Franco*, 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *2, *14 (approving a $10,000 PAGA award out of a total settlement amount of $2,500,000).

However, Defendant asserts a number of credible defenses to Plaintiff' claims. First, the vast majority of these penalties derive from the underlying wage and hour violations discussed above, which Defendant vigorously disputes. Lavi Decl., ¶ 42; *see e.g.*, *Green v. Lawrence Service Co.* (C.D. Cal. 2013) Case No. LA CV12-06155 JAK (VBKx), 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Defendant also maintains that given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims. *Id.* Defendant further alleges that none of the violations would be deemed knowing and intentional as there is no evidence to suggest Defendant intentionally violated the Labor Code and that Defendant's policies and procedures demonstrate that Defendant acted in good faith in regards to paying the Class Members all wages due. *Id.* For these reasons, Defendant argues the Court would drastically reduce any award of PAGA penalties as "confiscatory." *Id.; see, Thurman v. Bayshore Transit Mgmt., Inc.,* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties). Indeed, courts while considering the issue have refused to "stack" PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty reduction to $5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809. California's appellate courts have held that "[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware [of the violation]" and therefore, until a Court or the Commissioner issues a finding of a violation, the initial $100 violation rate applies for each pay period in which the alleged violation occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc*. (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at *9 ("[u]nder California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"). Therefore, Plaintiff discounted the maximum PAGA exposure by 55% for risk of losing on the merits, and an additional 40% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of $1,575,747.00. *Id.*

g. <u>The Settlement Amount is Within the Range of Possible Approval</u>

Using these estimated figures for each of the claims described above, Plaintiff predicted that the potential recovery for the Class would be approximately $4,489,837.03. Lavi Decl., ¶ 43. The proposed settlement of $700,000 represents approximately 16% of the reasonably forecasted recovery for the Class. *Id*. Preliminary approval is appropriate since the Settlement will provide significant monetary relief to Class Members, which is consistent with what Class Counsel believes could have been recovered had the case proceeded through trial. *Id.*

As stated, the proposed settlement reflects approximately 16% of the estimated recovery the Class could reasonably expect in light of the significant litigation risks, and will provide tangible, monetary compensation for hotly disputed claims desperately needed by Class Members now more than ever due to the looming economic recession. See, *Dunleavy v. Nadler* 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Class Members at trial").

There are significant legal uncertainties associated with cases such as this as they can be factually complex and require protracted litigation to resolve. A settlement is not judged solely against what might have been recovered had plaintiff prevailed at trial, nor does the settlement have to provide

100% of the damages sought to be fair and reasonable. See, *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139. Instead, "[c]ompromise is inherent and necessary in the settlement process...even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation". See, *Wershba*, 91 Cal.App.4th at 250.

Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Class has had the opportunity to opt-out or object.

h. <u>The Experience Views of Counsel</u>

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378 . The view of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp., supra,* 485 F.Supp. at 617). Here, Plaintiff is represented by competent, experienced counsel who possess experience in wage-and-hour class actions. Lavi Decl., ¶ 45. Class Counsel conducted an in-depth review of Defendant's policies and Class Members' records with the assistance of a retained expert, and drew on their extensive experience in similar cases in preparing their analysis to assess the strengths and weaknesses of Plaintiff' case. Lavi Decl., ¶¶ 9-10; 45-46. The Settlement was also reached with the assistance of an experienced and respected wage and hour class action mediator. Lavi Decl., ¶¶ 10; 17; 45-46. These factors strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

i. <u>Attorney's Fees and Costs</u>

Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which is currently estimated to be $233,333.33 and up to $25,000 in verified costs reimbursement. *See* Settlement, ¶ 3.2.2. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff' claims, engaging in informal discovery, conducting research, reviewing Defendant's documents and policies, analyzing Class Members' relevant records while working with a retained expert to create a comprehensive damages model, preparing for and attending a full day mediation, negotiating and preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. Lavi Decl., ¶ 48. Class Counsel expects to expend additional attorney time in attending the hearing on this Motion, overseeing the notice process and fielding questions from Class Members, preparing the final approval papers, and attending the Final Approval hearing. *Id.*

California courts have recognized that an appropriate method for awarding attorney's fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. See e*.g., Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 (holding "the percentage of fund method survives in California class action cases"). (*City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15 Cal. 3d 162, 168; *see also Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253, 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26). The basis of the common fund is fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful. (*City & County of San Francisco v. Sweet*, *supra,* 12 Cal. 4th at 111). In *Quinn*, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Quinn v. State, supra,* 15 Cal. 3d at 167). Similarly, in *Sweet*, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*City & County of San Francisco v. Sweet, supra,* 12 Cal. 4th at 110). Lavi Decl., ¶ 49

Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. (*Lealao*, *supra,* 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F. Supp. 1373, 1375]). The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79). The Ninth Circuit now routinely uses the percentage of the common fund approach to determine the award of attorney's fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 [approving attorney's fee of 33%]).

Class Counsel's request for fees of one-third of the GSA is well within the range of reasonableness, and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013). Moreover, as part of the final approval motion, Class Counsel will provide the necessary information regarding hours reasonably expended and Class Counsel's reasonable hourly rate to allow the Court to perform a lodestar cross-check. Lavi Decl., ¶ 49; *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503-506.

The settlement also provides for reimbursement of costs reasonably incurred not to exceed $25,000. *See* Settlement, ¶ 3.2.2. To date, Class Counsel has incurred approximately $14,251.00 in litigation costs. Lavi Decl., ¶ 50. Counsel anticipates additional charges pertaining to filing the instant motion and motion for final approval, and supplement filings requested by the Court. *Id.* As part of Plaintiff' motion for final approval, Class Counsel will request only the reimbursement of costs reasonably incurred supported by declaration with an itemized cost sheet. The costs Plaintiff seeks are the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer* 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre* (N.D. Cal. 2011), No. 05-03759 CW, 2011 WL 825713, at * 3 ("costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.* 460 F.3d 1253, 1258-59 (9th Cir. 2006)(legal research costs are reimbursable); *In re Immune Response Securities Litigation* 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).

j. <u>Administrative Costs</u>

Phoenix Settlement Administrators settlement administration fees have been quoted at no more than $9,000.00 after having factored in the hourly costs associated with administrating the settlement. *See* Declaration of Jodey Lawrence ("Lawrence Decl."). This request is reasonable in light of the proposed class size of approximately 673 Class Members and the costs and expenses associated with administering the notices and distributing the awards. Lavi Decl., ¶ 51

k. <u>Class Representative Service Payment</u>

Plaintiff will separately apply for a Class Representative Service Payment at the time of seeking final approval of the proposed class action settlement in the amount of $10,000.00 for his service to the Class. *See* Settlement, ¶3.2.1. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. As will be fully briefed at the time of final approval, Plaintiff's requested Class Representative Service Payment is intended to recognize the time and effort Plaintiff expended on behalf of the Class, including providing substantial factual information and documents to Class Counsel, attending multiple in person and virtual meetings with Class Counsel to discuss the claims and theories at issue in the litigation, reviewing and discussing policies produced by Defendant, actively participating in the prosecution of the putative class claims, discussing the claims and case strategy during the full-day mediation, as well as the significant risks

Plaintiff undertook by agreeing to serve as the named plaintiff in this case. Lavi Decl., ¶ 52; Plaintiff Decl. ¶ 10-11. *see, e.g.*, *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 947 (approving an award $45,000 in enhancement payments, which was roughly 417 times greater than average award but, in aggregate, only 0.17% of gross settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1265 (awarding enhancement payment of $10,000, approximately 50 times average award and less than 0.02% of gross settlement); *Ross v. U.S. Bank Nat'l Ass'n,* Civ. (N.D. Cal. Sept. 29, 2010) No. 3:07-2951 SI, 2010 WL 3833922, at *3 (approving award of $14,000 to each of four named Plaintiff where settlement fund was $1,050,000, based on their contributions to litigation and risk that being a class representative would harm their reputation). *Id.*

l. <u>PAGA Payment</u>

The Parties have agreed to designate $25,000.00 of the GSA as PAGA penalties, of which $18,750.00 (75%) will be paid to the LWDA, with the remaining $6,250.00 (25%) part of the NSA for distribution to the Class. *See* Settlement, ¶¶ 3.2.5. The estimated total number of employees during the PAGA period and the estimated total pay periods therein are 497 and 14,854, respectively. This $25,000.00 represents approximately 3.6% of the $700,000.00 Gross Settlement Amount and is consistent with the zero to two percent range for PAGA claims approved by Courts. Lavi Decl., ¶ 53. *See e.g., In re M.L. Stern Overtime Litig.* (S.D. Cal. Apr. 13, 2009) No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (approving PAGA settlement of 2 percent, or $14,000); *Hopson v. Hanesbrands, Inc.* (S.D. Cal. Apr. 13, 2009) No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (approving a PAGA settlement of 0.3 percent, or $1,500); *Nordstrom Comm'n Cases,* 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under which no money was allocated to the PAGA claims); *Poisson v. Dispatch Transportation, Inc., et al.,* Case No. RIC1504851, Riverside Superior Court, Hon. Craig Reimer presiding (approving $14,000 PAGA allocation in a $970,000 settlement); *Edmiston v. Loma Linda University Medical Center – Murrieta, et al.,* Case No. MCC 1300610, Riverside Superior Court, Hon. Craig R Riemer presiding (approving $10,000 PAGA allocation in a $912,500 settlement): *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. 2011) Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (approving PAGA payment of $7,500 to LWDA out of $6.9 million common-fund settlement); *Lazarin v. Pro*

Unlimited, Inc. (N.D. Cal. 2013).

Further, neither the Court nor a jury has made a factual finding of a violation of any Labor Code provision such that approving an amount that is less than the statutory maximum is appropriate. Lavi Decl., ¶ 54. As discussed above (and without waiving the mediation privileges and confidentiality agreements), the Parties specifically negotiated the payment, like the other terms of the settlement, and ultimately agreed to resolve the PAGA claim for $25,000.00 at mediation. *Id*. Approval of less than the statutory maximum is appropriate in this case because Defendant expressly denies and continues to deny any liability. *See* Settlement, ¶ 2.1,1; 12.1.

m. <u>Payroll Taxes and Individual Settlement Payment Tax Allocation</u>

The Settlement provides that the employer's share of payroll taxes shall be paid separately from, and in addition to, the Gross Settlement Amount. Settlement, ¶ 3.1. Moreover, the Parties have agreed to allocate 10% of the Individual Settlement Payments as unpaid wages and 90% as penalties and interest. Settlement, ¶ 3.2.4.1; Lavi Decl., ¶ 55

n. <u>Uncashed Funds</u>

The Settlement provides that Class Members will have 180 days from the date the Settlement Administrator mails the checks to negotiate them. *See* Settlement, ¶ 4.4.1. The funds from any uncashed checks shall be transferred by the settlement administrator to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure § 384, subdivision (b). *See* Settlement, ¶ 4.4.3. After final distribution of the settlement funds, Class Counsel will submit a declaration regarding disbursement of Settlement funds. *See* Settlement, ¶ 7.8.6. The declaration shall state the date the checks were mailed, the total number of checks mailed to Class Members, the average amount of those checks, the number of checks that remain uncashed, the total value of those uncashed checks, the average amount of the uncashed checks, and the nature and date of the disposition of those unclaimed funds. *Id;* Lavi Decl., ¶ 56

o. <u>Released Parties and Scope of Release</u>

The scope of the release includes all claims and factual allegations that were or could have been alleged in the in the operative Complaint, as set forth more fully in the Settlement Agreement.

See Settlement, ¶ 5.2. Therefore, the language expressly confirms that the scope of the release is limited to the claims which could have been asserted based on the same allegations as set forth in the Operative Complaint. *Id.*, ¶ 2.1. Lavi Decl., ¶ 57. This type of release is permissible in wage and hour class action settlements such as this one. *Shine v. Williams Sonoma* (2018) 23 Cal.App.5th 1070, 1078 ("[A] judgment pursuant to a class settlement can bar [subsequent] claims based on the allegations underlying the claims in the settled action. This is true even though the preclude claim was not presented, and could not have been presented, in the class action itself (citation omitted).")

C. THE SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES

Preliminary approval of the Settlement is also warranted because there are no deficiencies. The Settlement will provide monetary relief to Class Members. The amounts proposed for the PAGA allocation, the Class Representative Service Payment, and Class Counsel's attorneys' fees and costs, are all reasonable and appropriate based on the facts of this case. Further, the Parties utilized the judicially crafted LASC Model Class Action and PAGA Settlement Agreement and Class Notice, giving rise to the presumption that the terms of the settlement are fair and comprehensive. Lavi Decl., ¶ 58

D. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE TO CLASS MEMBERS

This Court should order distribution to the Class of the proposed Class Notice by U.S. Mail, postage prepaid, using last known mailing address information provided by Defendant. *See* Settlement, ¶ 7.4 *et seq.* This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff proposes that the Settlement be administered by Phoenix Settlement Administrators ("Phoenix"), an experienced class action settlement administrator. *See generally* Declaration of Jodey Lawrence ("Lawrence Decl.") and attached exhibits. Class Members' addresses will be ascertainable through Defendant's personnel and payroll records, which Defendant will provide to Phoenix within Fifteen (15) days of preliminary approval of the Settlement. *See* Settlement, ¶ 4.2. Within fourteen (14) days of receipt of the class list information, Phoenix will run the addresses through the United States Postal

Service Notice of Change of Address database (which provides updated addresses for any individual who has moved in the previous four years and has notified the U.S. Postal Service of a forwarding addresses) and mail the notices to Class Members. *See* Settlement, ¶ 7.4.2. To the extent that any notices are returned, Phoenix will perform a "skip trace" to track any Class Member's current mailing address. *See* Settlement, ¶ 7.4.3.

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Class Members of the nature of the claims, basic contentions and denials of the parties and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Class Member, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Lavi Decl., Exh. 1, Exh. A. Class Members to whom Notice Packets are re-sent after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to mail a Request for Exclusion, challenge or objection. Settlement, ¶¶ 7.4.4., 7.5.1., 7.6, 7.7.2. The proposed Notice will be sent in Spanish and English. Lavi Decl., ¶ 60; Settlement ¶ 7.4.2. The proposed Class Notice will also notify Class Members of the final approval hearing date and provides the contact information for Class Counsel. *Id.* The proposed Notice further provides that relevant case documents, including the final judgment, and any changes to the final approval hearing date and time will be posted on the Settlement Administrator's website. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Class Members.

E. <u>THE COURT SHOULD SET A FINAL APPROVAL HEARING</u>

Finally, this Court should set a hearing for final approval of the Settlement on a date appropriately scheduled to follow the deadline by which Class Members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Class, and enter the Proposed Order submitted concurrently herewith.

Dated: April 9, 2025

Respectfully submitted,
E&L, LLP

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