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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CRUZ

LUIS GERMAN CARDENAS PALOMO, an
individual, on his own behalf and on behalf of
all others similarly situated,

Plaintiffs,

vs.

JA HOLDINGS, INC. DBA VALLEY
HAVEN, a California corporation; ARCILLA
INVESTMENTS, INC. DBA LIVE IN
SERENITY, a California corporation; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 23CV02655

**NOTICE OF MOTION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL**

Judge: Hon. Margorie Laird Carter
Date: September 1, 2026
Time: 8:30 AM
Dept.: 10

Complaint Filed: November 7, 2023

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1 **NOTICE IS HEREBY GIVEN** that, on September 1, 2026, at 8:30 AM in Department
2 10 of the Santa Cruz Superior Court before the Honorable Margorie Laird Carter, pursuant to
3 California Code of Civil Procedure §382, Plaintiff Luis German Cardenas Palomo (“Plaintiff”),
4 on behalf of himself and all others similarly situated, will and does hereby move this Court for
5 entry of an Order:

6 1. Preliminarily certifying the class for purposes of settlement only;

7 2. Preliminarily appointing Plaintiff as Class Representative for purposes of
8 settlement only;

9 3. Preliminarily appointing Kevin Lipeles, Esq. and Thomas Schelly, Esq. of Lipeles
10 Law Group, APC, as Class Counsel for purposes of settlement only;

11 4. Preliminarily approving the settlement as fair, adequate, and reasonable, based
12 upon the terms set forth in the parties’ Class Action and PAGA Settlement Agreement and Class
13 Notice (“Settlement Agreement”), including payment by JA Holdings, Inc. dba Valley Haven and
14 Arcilla Investments, Inc. dba Live In Serenity (collectively “Defendants”) of the Gross Settlement
Amount of \$245,000.00;

15 5. Preliminarily approving a Class Representative Service Payment of \$10,000.00 to
16 Plaintiff in recognition of his service to the Settlement Class and for a general release of all claims
17 arising out of his employment with Defendants;

18 6. Preliminarily approving Plaintiff’s Counsel’s request for up to \$85,750.00 (35%) of
19 the Gross Settlement Amount as attorneys’ fees;

20 7. Preliminarily approving Plaintiff’s Counsel’s request for actual costs from the
21 Gross Settlement Amount in an amount up to \$18,500.00;

22 8. Appointing Phoenix Class Action Administration Solutions (“Phoenix”) as the
23 third-party Settlement Administrator for mailing notices and for claims administration, approving
24 that a maximum of \$7,250 be deducted from the Gross Settlement Amount for the costs of
25 administration, and approving that the fees and costs of the Settlement Administrator will be paid
26 from the Gross Settlement Amount; and

27 9. Approving the proposed Class Notice and ordering it be disseminated to the Class
28 as provided in the Settlement Agreement.

1 This motion is based upon this Notice of Motion and Motion; the Memorandum of Points
2 and Authorities in Support thereof; the declarations of Thomas Schelly, Esq. and Luis German
3 Cardenas Palomo in Support thereof; the Settlement Agreement; the proposed Order; the other
4 records, pleadings, and papers filed in this action; and upon such other documentary and verbal
5 evidence or argument as may be presented to the Court at the hearing of this motion.
6

7 Dated: June 4, 2026

Respectfully submitted,

8 LIPELES LAW GROUP, APC
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11 By: 

Kevin Lipeles, Esq.

Thomas Schelly, Esq.

Attorneys for Plaintiff and the Proposed
Settlement Class
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1 **I. INTRODUCTION**

2 Plaintiff Luis German Cardenas Palomo (“Plaintiff”), on behalf of himself and the putative
3 Settlement Class¹ requests that this Court preliminarily approve the parties’ proposed Settlement
4 Agreement,² entered into by Plaintiff and JA Holdings, Inc. dba Valley Haven and Arcilla
5 Investments, Inc. dba Live In Serenity (collectively “Defendants”) in June 2026. Defendants do
6 not oppose Plaintiff’s instant Motion.³ The proposed Settlement Agreement satisfies all of the
7 criteria for preliminary settlement approval under California Code of Civil Procedure §382, and
8 falls well within the range of reasonableness. Accordingly, Plaintiff requests that the Court grant
9 preliminary approval of the proposed Settlement, approve the proposed notice plan, and schedule a
10 final approval hearing, all of which is described in detail below.

11 The Settlement Agreement seeks to fully release and discharge Defendants from the claims
12 brought against them in the above-captioned matter (the “Action”⁴) and as further provided in the
13 parties’ release. In exchange, Defendants will pay \$245,000.00 (“Settlement Amount”) with no
14 reversion to Defendants.

15 The Settlement Agreement and Notice distribution plan were the products of non-
16 collusive, arm’s-length negotiations by informed counsel and parties. The settlement is fair,
17

18 ¹ The proposed Settlement Class is defined as: all individuals whom Defendants classified as non-exempt hourly-paid
19 employees currently or formerly employed by Defendants in California at any time from November 7, 2019 through
20 the date of preliminary approval of the settlement. However, the Class end date is subject to the Escalator Clause.
Settlement Agreement, §8.

21 ² The Settlement Agreement is attached as Exhibit A to the Declaration of Thomas Schelly (“Schelly Decl.,” filed
herewith). The proposed Class Notice is attached as sub-exhibit A to the Settlement Agreement.

22 ³ Defendants vigorously deny liability or wrongdoing with respect to their wage and hour policies and practices. They
23 also deny that the case is appropriate for class certification. Defendants reserve their right to assert any and all defenses
24 to the claims asserted by Plaintiff and the putative class, including any and all defenses to Plaintiff’s allegations that the
case should be certified for any reason other than to facilitate the parties’ current settlement. Further, Defendants join in
25 this motion to preliminarily approve of the settlement of a lawsuit that was filed as a class action, but specifically deny
that a settlement was necessary as a result of any action or inaction by Defendants. Defendants agree to resolve the
26 claims asserted by Plaintiff on a class basis to avoid incurring additional substantial costs beyond those which have
already been incurred as well as the delay and risks that would be presented by Plaintiff’s further prosecution of the
27 litigation. The proposed settlement includes a non-admissions clause and Defendants have at all times maintained that
their wage and hour policies and practices are fully lawful. Hence, Defendants do not join in the substance of the
28 representations made by Plaintiff in this Motion and specifically deny the negative characterizations of Defendants’
conduct as well as Plaintiff’s interpretation of certain legal authorities. Defendants, therefore, also reserve their right to
clarify any aspect of the Motion that they believe needs to be addressed, as reflected by the discussion of Defendants’
factual and legal defenses discussed herein.

⁴ All capitalized terms have the same meaning as in the Settlement Agreement.

reasonable and adequate to all. Accordingly, Plaintiff seeks: (1) preliminary approval of the Settlement Agreement; (2) provisional certification of the Settlement Class; (3) appointment of Plaintiff as Class Representative; (4) appointment of Kevin Lipeles, Esq. and Thomas Schelly, Esq. as Class Counsel; (5) approval of the parties' proposed form and method of notifying Class Members of the Class Settlement; (6) an order scheduling the hearing date for Final Approval of the Class Settlement; and (7) entry of a preliminary approval Order.

II. FACTUAL SUMMARY

A. Claims

Plaintiff alleges claims for failing to pay daily overtime in excess of eight hours per work day, minimum wages and failing to authorize and permit meal and rest breaks. These extensive alleged Labor Code violations also resulted in Defendants issuing inaccurate itemized wage statements to Class Members and failing to pay wages due upon termination of employment to Class Members who are former employees. Additionally, Plaintiff alleges claims for failing to reimburse business expenses, failing to provide uniforms and pay for uniform maintenance and failing to allow inspection of employment records.

Plaintiff contends that the foregoing also violated Cal. Bus. & Prof. Code §17200, *et seq.* Plaintiff also alleges that Defendants were liable for PAGA penalties pursuant to California Labor Code §2699.

Defendants vigorously deny each of Plaintiff's allegations. They contend that they maintained compliant wage and hour policies and practices. They also argue that key facts regarding their 24-7 business operations, including the schedules and work practices of their diverse, three-shift workforce, undermine Plaintiff's factual allegations about how employees actually perform their jobs. Defendants contend these facts further raise numerous individualized issues that would render any class resolution of any of the alleged claims, other than for purposes of settlement only, inappropriate.

B. Procedural History

On November 7, 2023, Plaintiff Luis German Cardenas Palomo filed his Original Class Action Complaint in the Superior Court of California, Santa Cruz County, on behalf of himself and others similarly situated for certain present and former employees of Defendants for: (1) failure to

1 pay overtime (Cal. Labor Code §§ 510, 511, 558, 1194, 1198); (2) failure to pay minimum wages
2 (Cal. Labor Code §§ 1194, 1197, 1197.1, 1198); (3) failure to pay for rest periods not provided
3 (Cal. Labor Code §226.7); (4) failure to maintain records and provide accurate itemized wage
4 statements (Cal. Labor Code § 226); (5) failure to pay wages on termination and/or resignation
5 (Cal. Labor Code §§ 201-203); (6) failure to reimburse business expenses (Cal. Labor Code §
6 2802); (7) failure to provide uniforms and maintenance allowance (Cal. Labor Code § 2802); (8)
7 failure to allow inspection of employment records (Cal. Labor Code § 1198.5); and (9)
8 unfair/unlawful business practices (Cal. Bus. and Prof. Code §§ 17200 et seq.)

9 On November 22, 2023, Plaintiff filed his Amended Class Action Complaint in the Santa
10 Cruz Superior Court, adding a claim for failure to provide timely off duty meal periods pursuant to
11 Cal. Labor Code §§ 226.7, 512.

12 On June 28, 2024, Plaintiff filed his Second Amended Class Action Complaint in the Santa
13 Cruz Superior Court, adding a claim pursuant to the Private Attorneys General Act of 2004, Cal.
14 Lab. Code §§2699, *et seq.*

15 On April 7, 2026, Plaintiff filed his Third Amended Class Action Complaint (“TAC”) in the
16 Santa Cruz Superior Court, adding Arcilla Investments, Inc. dba Live In Serenity as a Defendant
17 and supplementing the facts and legal claims to more accurately and completely reflect the scope of
18 Plaintiff’s claims against both Defendants and, in turn, of the parties’ settlement. The TAC is the
19 operative complaint.
20

21 **C. Marshalling of Evidence**

22 Through informal discovery, Plaintiff’s counsel has diligently pursued an investigation of
23 the putative Class Members’ claims, including: (1) detailed examination and analysis of a 15%
24 random sample of time and pay records for Defendants’ non-exempt employees who worked
25 during the Class Period; (2) review of relevant data regarding the size of the putative class; (3)
26 detailed examination of data related to Defendants’ PAGA exposure; and (4) research with respect
27 to the applicable law and the potential defenses thereto. Schelly Decl., ¶10.

28 **1. Documents**

The parties engaged in informal discovery in preparation for a private mediation, which
took place on July 15, 2025. Schelly Decl., ¶ 9. Defendants provided information concerning the

total number of Class Members (approximately 142) and Aggrieved Employees, the average hourly rate, workweeks, pay periods, meal and rest premiums paid during the Class Period, wages earned during the relevant pay periods, wage and hour policies and procedures relating to meal/rest breaks, overtime compensation, minimum wage compensation and a 15% random sampling of time and pay records, among other documents. *Id.* at ¶ 9. The data was either current as of the date of mediation or extrapolated through the date of mediation.

2. Data and Damages Model

As part of informal discovery prior to mediation, Defendants culled their documents relating to their wage and hour policies and practices. To estimate the class-wide damages associated with Plaintiff's and the Class's claims, Plaintiff's counsel examined and analyzed the above-described voluminous documents. Schelly Decl., ¶ 10.

From the data received from Defendants, Plaintiff constructed a damages model based on Defendants' exposure. Certain calculations are extrapolated to the Class since the analysis data was based on a 15% sample. As a result, certain calculations are multiplied by 6.67. Schelly Decl., ¶15.

a. Overtime/Minimum Wage Claims⁵

Plaintiff assumed 5-minutes of off the clock work per shift at a 72.3%/27.63% regular/overtime split rate. Based on the payroll records provided by Defendants, the average wage rate for all employees during the Class Period was \$16.82 per hour.

The total estimated amount of alleged unpaid off the clock time in the statutory period was 377 regular hours and 144 overtime hours. Thus, the total amount of estimated overtime/minimum wages owed, excluding interest and penalties, equaled \$9,974 as of July 15, 2025, calculated as follows: $377 \text{ hours} * \$16.82 + 144 * \$16.82 * 1.5 = \$9,974$. When extrapolated to the Class, the total amount of damages, excluding interest is \$66,527.00 ($\$9,974 * 6.67$ (multiplier)). Schelly Decl., ¶15a.

b. Meal Break Claim

Meal break violations (missed, short and/or late), were calculated and quantified based on the time entries reflected on the time records. The data was converted and both shift durations and

⁵ Damages relating to the minimum wage claim are subsumed within the calculations for overtime wages.

1 break durations were calculated. Employing the “5/10 rule,”⁶ each shift was analyzed to determine
2 whether a meal break was taken and whether that break was short, missed or late. The time records
3 reflected facial/presumed violations during 3,531 shifts during the statutory period, carrying
4 potential exposure of \$59,391.00. (3,531 * \$16.82). Schelly Decl., ¶15b.

5 Further, Plaintiff assumed that 30% of meal breaks (1,044 meal breaks) were interrupted.
6 The average wage rate for all employees during the Class Period was \$16.82 per hour. Based on
7 these numbers, the total damages for interrupted meal breaks would be \$17,560.00 (1,044 *
8 \$16.82). Schelly Decl., ¶15b.

9 According to Plaintiff’s damages model, Defendants’ potential exposure for meal period
10 violations extrapolated to the Class, excluding interest and penalties, amounted to approximately
11 \$396,138.00 (\$59,391 * 6.67). Defendants’ exposure for meal period interruptions extrapolated to
12 the Class, excluding interest and penalties, amounted to approximately \$117,125.00 (\$17,560 *
13 6.67). The total amount of damages for both meal break violations and interruptions, excluding
14 interest and penalties is \$513,263.00. *Id.*

15
16 **c. Rest Break Claim**

17 Regarding rest break violations, Plaintiff assumed one missed rest break per shift greater
18 than 3.5 hours. The average wage rate for all employees during the Class Period was \$16.82 per
19 hour. The total estimated number of rest break violations in the statutory period was 6,180.

20 According to Plaintiff’s damages model, Defendants’ potential exposure for non-complaint
21 rest periods on the shifts, excluding interest, amounted to approximately \$103,948.00 (6,180 *
22 \$16.82). Schelly Decl., ¶15c

23 When extrapolated to the Class, Defendants’ potential exposure for non-compliant rest
24 periods, excluding interest and penalties, amounted to approximately \$693,333.16 (\$103,948 *
25 6.67). *Id.*

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27
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⁶The “5/10 rule” refers to the assumption of no meal break waiver, meaning a shift is eligible for a first meal break at 5 hours and a second meal break at 10 hours.

1 **d. Failure to Provide Accurate Wage Statements Claim**

2 Concerning the wage statement claim,⁷ the putative class was comprised of approximately
3 73 employees during the Section 226 one-year statutory period (*i.e.*, November 7, 2022 through,
4 for purposes here, the July 15, 2025, Mediation Date). Based on the above-assumed wage payment
5 and meal/rest break violations, which potentially would render the wage information provided
6 employees in every one of their wage statements inaccurate, the value of Plaintiff's wage statement
7 claim was \$161,300, calculated as follows: Of the 73 employees in this Sub-Class, 27 of them
8 worked more than 40 Pay Periods during the Section 226 Class Period, entitling them to a
9 maximum individual recovery of \$4,000, for a total potential recovery of ***\$108,000***. The other 46
10 Class Members worked a total of 556 Pay Periods, with their total potential recovery calculated as
11 follows: 46 PPs * \$50 (initial violation) + (556 [total PPs] – 46 [initial PPs] = 510 [PPs] * \$100
12 (subsequent violations) = \$2,300 + \$51,000 = ***\$53,300 + \$108,000 = \$161,300***. Schelly Decl.,
13 ¶15d.
14

15 **e. Failure to Pay Wages on Termination Claim**

16 Concerning waiting time penalties, the putative class is comprised of approximately 109
17 former employees during the statutory period, calculated as of the mediation date. As discussed
18 above, Plaintiff asserted that none of these former employees was paid all wages due on
19 termination. Plaintiff assumed the full penalty amount of 30 days per employee, working 8.15
20 hours per day, \$16.82 average hourly rate of pay for each of the 109 former employees in the
21 Section 203 subclass. The potential value of the waiting time penalty claim⁸ for the Class
22 Members who are former employees of Defendants is \$448,261.00, calculated as follows: 109
23 employees * 8.15 hours per day * \$16.82/hour * 30 days = \$448,261.00. Schelly Decl., ¶15e.
24
25

26 _____
27 ⁷ Labor Code §226(e) provides that an employee is entitled to recover \$50 for the initial pay period in which a violation
28 of Labor Code §226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of
costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally fails to
provide accurate itemized statements to the employee causing the employee to suffer injury. There are 24 pay periods
per year. The wage statement violation claim is derivative of Plaintiff's other claims and depends on the actual number
of violations found to exist.

⁸ Under Labor Code 203(a), Plaintiff and the Class are entitled to one day's wages for each day he or she was not
timely paid, not to exceed 30 days' wages.

1 **f. Failure to Reimburse Business Expenses Claim**⁹

2 Plaintiff assumed there was \$9.28 of unreimbursed cell phone use per week. There were
3 8,738 Workweeks in the Class Period through July 15, 2025. According to Plaintiff's damages
4 model, Defendants' exposure for unreimbursed cell phone use, excluding interest, amounted to
5 approximately \$81,061.00 (8,738 * \$9.28). Schelly Decl., ¶15f.

6 **g. Failure to Provide Uniforms and Maintenance Allowance Claim**

7 Plaintiff assumed there was \$50.00 of uniform cleaning costs per pay period based on 5
8 shirts/pants per week.¹⁰ There were 760 Pay Periods in the Class Period through July 15, 2025.
9 According to Plaintiff's damages model, Defendants' exposure for uniform maintenance expenses,
10 excluding interest, amounted to approximately \$38,000 (760 * \$50.00). According to Plaintiff's
11 damages model, Defendants' exposure for uniform reimbursement extrapolated to the Class,
12 excluding interest, amounted to approximately \$253,460.00 (\$38,000 * 6.67). Schelly Decl., ¶15g.

13 **h. Damages Model**

14 The Damages Model manifested the following conclusions concerning Defendants'
15 exposure, excluding interest:

<u>ALLEGATION</u>	<u>LIABILITY RISK</u>
Overtime/Minimum Wage Claim	\$66,527.00
Rest Break Claim	\$693,333.16
Meal Break Claim (including meal break violations and interruptions)	\$513,263.00
Failure to Issue Accurate Itemized Wage Statement Claim	\$161,300.00
Failure to Pay Wages on Termination Claim	\$448,261.00
Failure to Reimburse Business Expenses Claim	\$81,061.00
Failure to Provide Uniforms and Maintenance Allowance Claim	\$253,460.00
Total, excluding interest	\$2,217,205.16

26 Schelly Decl., ¶15.

27 The following chart shows the amount of PAGA penalties, assuming that PAGA penalties

⁹ At the time of mediation, Plaintiff ascertained that there was no value relating to reimbursement for vehicle expenses because employees did not drive their vehicles to render caregiving services.

¹⁰ See <http://www.amenify.com/blog/how-much-does-dry-cleaning-cost>

can be “stacked” for a given pay period:¹¹

Number of Pay Periods in PAGA Period	1,973	
Number of Pay Periods in PAGA Period – Overtime/Minimum Wage	1,973	
Number of Pay Periods in PAGA Period – Meal Breaks	1,973	
Number of Pay Periods in PAGA Period – Rest Breaks	1,833	
Number of Pay Periods in PAGA Period – Wage Statements	1,973	
Number of Pay Periods in PAGA Period – Failure to Pay Wages on Termination	1,973	
Number of Pay Periods in PAGA Period – Reimbursements (including expenses and uniforms)	1,973	
PAGA for Waiting Time (38 former employees in PAGA Period)	\$3,800	\$100/\$0
PAGA for Overtime/Minimum Wages	\$197,300	\$100/\$100
PAGA for Meal Breaks	\$197,300	\$100/\$100
PAGA for Rest Breaks	\$183,300	\$100/\$100
PAGA for Wage Statements	\$197,300	\$100/\$100
PAGA for Failure to Maintain Records	\$197,300	\$100/\$100
PAGA for Failure to Pay Wages on Termination	\$197,300	\$100/\$100
PAGA for Reimbursements	\$197,300	\$100/\$100
Total PAGA penalties	\$1,367,100.00	

Assuming PAGA penalties should not be stacked (since even under the old PAGA statute most courts did not allow stacking), the maximum recoverable PAGA penalties is \$197,300.00. Schelly Decl., ¶15.

¹¹ While the old PAGA statute applies to this case, under Labor Code §2699(h)(3)(i) as amended, stacking is prohibited. Even prior to the amendment of Labor Code §2699(h)(3)(i), courts generally did not allow penalties to be stacked. Plaintiff's Counsel is not aware of any published California appellate court decisions that have held that plaintiffs may “stack” PAGA penalties, and many federal courts have not allowed stacking. *See, e.g., Hamilton v. Juul Labs*, 20-cv-03710-EMC, at *14 (N.D. Cal. Nov. 16, 2021); *see also Snow v. United Parcel Services, Inc.*, 2020 WL 1638250, *3 (C.D. Cal. April 1, 2020) (“[P]laintiffs may only recover a set of civil penalties for each type of violation.”); *Smith v. Lux Retail North America*, 2013 WL 2932243, *4 (N.D. Cal. June 13, 2013) (“Another necessary but equally flawed assumption undergirding the Luxottica calculation is the stacking of penalties . . . no actual holding in any judicial decision has ever blessed such stacking.”); *Salazar v. PODS Enterprise, LLC*, 2019 WL 2023726, *6 (C.D. Cal. May 8, 2019) (“[I]t is possible (although highly unlikely) that plaintiff could recover PAGA penalties for each separate type of Labor Code violation.”).

1 **D. Settlement Negotiations**

2 On July 15, 2025, the parties virtually attended via Zoom an all-day mediation with
3 mediator Mark LeHocky, Esq. Schelly Decl., ¶17. Thomas Schelly, Esq., and Jasmine Badawi,
4 Esq.¹² of Lipeles Law Group, APC, attended on behalf of Plaintiff. Plaintiff also attended the
5 mediation. *Id.* Ann H. Qushair, Esq. of Lewis Brisbois attended on behalf of Defendants. *Id.*

6 After a full day of negotiations, the parties agreed to settle for \$245,000.00 with no claims
7 process and **no reversion** to Defendants of any settlement monies remaining after all Settlement
8 Class Members are paid.¹³ Schelly Decl., ¶¶17-19; Exhibit A thereto (the parties' Settlement
9 Agreement), §3.1.

10 **E. Summary of Settlement Terms**

11 Under the terms of the Settlement Agreement, Defendants are discharged of all claims
12 asserted in the Action¹⁴ in exchange for paying the Gross Settlement Amount of \$245,000.00.¹⁵
13 The following amounts will be subtracted, subject to court approval: Plaintiff's Class
14 Representative Service Payment of up to \$10,000.00, Class Counsel Fees Payment up to \$85,750,
15 Class Counsel Litigation Expenses Payment to Plaintiff's Counsel in an amount up to \$18,500,
16 PAGA payment to the LWDA in the amount of \$18,375, Individual PAGA Payments in the
17 amount of \$6,125.00 and the Administration Costs up to \$7,250.00. The employer's portion of the
18 payroll taxes attributed to the wage portion of Individual Class Payments to Class Members will be
19 paid by Defendants outside of and in addition to the Gross Settlement Amount.¹⁶ The Net
20 Settlement Amount ("NSA") is the remainder, *i.e.*, approximately \$99,500.00, which shall be
21 available for distribution to Class Members in its entirety.¹⁷

22 The average estimated amount per class member is \$700.70.¹⁸ Settlement Class Members
23 are not required to submit a claim form in order to receive an Individual Class Payment.¹⁹
24
25

26 ¹² Jasmine Badawi, Esq. is no longer employed at LLG.

27 ¹³ The parties continued to negotiate until their finalized Settlement Agreement was fully executed in June 2026.
Schelly Decl., ¶20.

28 ¹⁴ Settlement Agreement, §5.

¹⁵ Settlement Agreement, §3.1.

¹⁶ Settlement Agreement, §3.1.

¹⁷ Settlement Agreement, §1.29.

¹⁸ \$99,500 (NSA)/142 (putative class members) = \$700.70 (average award per class member).

¹⁹ Settlement Agreement, §3.1.

1 To calculate Individual Class Payments, the Settlement Administrator, using updated Class
2 Data, will calculate the total workweeks for all Participating Class Members. An Individual Class
3 Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of
4 Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying
5 the result by each Participating Class Member's Workweeks.²⁰

6 Because Aggrieved Employees cannot opt out of the PAGA claims, each Aggrieved
7 Employee, whether or not a Participating Class Member, shall also receive his or her Individual
8 PAGA Payment. The Settlement Administrator will calculate each Individual PAGA Payment by (a)
9 dividing the amount of the Aggrieved Employees' 25% share of the PAGA Settlement Amount in
10 the amount of \$6,125 by the total number of PAGA Pay Periods worked by all Aggrieved Employees
11 during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period
12 Pay Periods.²¹

13 For tax purposes, Individual Class Payments shall be allocated and treated as follows:
14 twenty percent (20%) of each Individual Class Payment will be allocated to settlement of wage
15 claims and subject to withholdings and taxes, eighty percent (80%) will be allocated to penalties
16 and interest, and not subject to withholding. Each Individual PAGA Payment shall be treated as
17 100% penalties.²²

18 Individual Class Payment checks issued to Participating Class Members and Aggrieved
19 Employees shall remain valid and negotiable for one hundred and eighty (180) calendar days from
20 the date of issuance. In the event an Individual Class Payment check has not been cashed within
21 one hundred and eighty (180) days, all such checks shall be cancelled and funds associated with
22 such cancelled checks, shall be transmitted to the California State Controller's Office, Unclaimed
23 Property Division in the name of the Participating Class Member for whom the funds are
24 designated.²³

25 **F. Administration of Notice, Objections, and Claims**

26 The actual costs of administration, estimated at up to \$7,250.00, will be deducted from the
27

28 ²⁰ Settlement Agreement, §3.2.4.

²¹ Settlement Agreement, §3.2.5.1.

²² Settlement Agreement, §§3.2.4.1, 3.2.5.1.

²³ Settlement Agreement, §4.3.3.

1 Settlement Amount (Settlement Agreement §3.2.3). The Parties have agreed that Phoenix Class
2 Action Administration Solutions (“Phoenix”) shall serve as the Settlement Administrator. Within
3 twenty (20) days after the entry of the Preliminary Approval Order, Defendants will provide the
4 Settlement Administrator with the Class Data.²⁴ Within fourteen (14) calendar days after receiving
5 the Class Data from Defendants, Phoenix will mail all Class Members the Class Notice.²⁵ The
6 Class Notice (Exhibit A to the Settlement Agreement) shall contain, *inter alia*, the employee
7 ending dates of employment, the number of Workweeks/PAGA Pay Periods worked by each Class
8 Member during the Class Period/PAGA Period (subject to challenge), and the estimated amount of
9 his or her Individual Class Payment/Individual PAGA Payment if he or she does not request to be
10 excluded from the Settlement. The Settlement Administrator shall use the Class Data to determine
11 the dates of employment, calculate the number of Workweeks/PAGA Pay Periods and calculate the
12 estimated Individual Class Payment/Individual PAGA Payment for each Settlement Class Member.

13 Settlement Class Members will not be required to submit a claim form and shall
14 automatically receive an Individual Class Payment unless they submit a valid Request for
15 Exclusion.²⁶ Plaintiff negotiated this term to eliminate any potential fear of retaliation from Class
16 Members, for participating in the settlement.²⁷ The proposed Class Notice is attached to the
17 Settlement Agreement as sub-exhibit A.

18 The Class Notice informs each Settlement Class Member of his or her right to object to the
19 settlement. Settlement Class Members who wish to object to the Settlement must object in writing,
20 stating the grounds of objection, signed by the objecting Class Member or his or her attorney, along
21 with all supporting papers, sent to the Administrator no later than sixty (60) calendar days after the
22 initial mailing of the Class Notice.²⁸

23 **G. Procedure for Requesting Exclusion or Opting Out of Settlement**

24 Class Members who wish to exclude themselves from the Settlement Agreement must sign
25 and mail a written Request for Exclusion opting out of the Settlement Class postmarked no later
26

27 ²⁴ Settlement Agreement, §4.2.

28 ²⁵ Settlement Agreement, §7.4.2.

²⁶ Settlement Agreement, §3.1.

²⁷ Neither Plaintiff nor his counsel believe that Defendants will retaliate against Class Members for participating in the lawsuit. However, Plaintiff’s counsel has found the fear of retaliation to be a common, albeit often unfounded, fear among Class Members in virtually every case.

²⁸ Settlement Agreement, §7.7.

1 than sixty (60) calendar days after the Class Notice is first mailed out.²⁹ (Settlement Agreement §
2 7.5). All Class Members who do not submit a valid Request for Exclusion shall be bound by all the
3 terms of the Settlement Agreement and any Final Judgment entered by the Court if the Court grants
4 final approval of the settlement.

5 **H. Mailing of Individual Class Payments**

6 Settlement Class Members will automatically receive an Individual Class Payment unless
7 they submit a valid Request for Exclusion. Within thirty (30) days of the Effective Date in the
8 Settlement Agreement (defined in §1.20), Defendants shall transfer the Gross Settlement Amount
9 (including any increase to the Gross Settlement Amount pursuant to the Escalator Clause) plus
10 Defendants' share of employer-side payroll taxes, into a QSF established by the Settlement
11 Administrator either directly or by sending the funds to the Administrator to be deposited and
12 distributed.³⁰ Distribution to Settlement Class Members shall be within thirty (30) calendar days of
13 the Defendants' funding of the Gross Settlement Amount.³¹ Defendants will pay Class Counsel
14 Fees Payment and Class Counsel Litigation Expenses Payment within thirty (30) calendar days of
15 Defendants' funding of the Gross Settlement Amount.³² Additionally, within thirty (30) calendar
16 days of Defendants' funding of the Gross Settlement Amount, the Settlement Administrator will
17 pay the Class Representative Service Payment to the Named Plaintiff.³³

18 **III. CLASS ACTION SETTLEMENT APPROVAL PROCEDURE**

19 Any settlement of class litigation must be reviewed and approved by the presiding court,
20 Cal. R. Ct. 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial
21 court; and (2) a subsequent (final) review after the notice has been distributed to the Class
22 Members for their comments and/or objections. The Preliminary Approval Hearing and Final
23 Approval Hearing coincide with these two required steps. The present motion seeks preliminary
24 approval and the setting of a Final Approval Hearing.

25
26 ²⁹ However, those Settlement Class Members who receive a re-mailed Class Notice shall have their response period
27 extended fourteen (14) calendar days from the original response period. Settlement Agreement, §7.5.1.

28 ³⁰ Settlement Agreement, §§4.3, 7.3.

³¹ Settlement Agreement, §4.3.1.

³² Settlement Agreement, §4.3.1. Additionally, any portion of the Class Counsel Fees Payment and Class Counsel
Litigation Expenses Payment not awarded to Plaintiff's Counsel will be available for distribution to Settlement Class
Members as part of the NSA. *Id.*

³³ Settlement Agreement, §4.3.1. Additionally, any portion of the Class Representative Service Payment not awarded to
the Class Representative will be available for distribution to Settlement Class Members as part of the NSA. *Id.*

1 The first step, preliminary approval, proceeds as follows:

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

8 Rubinstein, Conte & Newberg, *Newberg on Class Actions*, §§ 11.24-11.26 (4th Ed. 2002)
9 (“*Newberg*”).

10 California courts favor settlement. *Stambaugh v. Superior Court (Pacific Gas and Electric*
11 *Company)*, 62 Cal. App. 3d 231, 236 (1976). Courts have broad powers to determine whether a
12 proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court (County*
13 *of Marin)*, 89 Cal. App. 3d 434, 438 (1979).

14 Here, the parties have executed and hereby submit the Settlement Agreement, which sets
15 forth all material terms. “Where the settlement terms are fair and reasonable, the settlement is
16 presumptively valid, subject only to objections that may be raised at a final hearing.” *Newberg*,
17 § 11.26. California courts have certified classes in cases similar to the present Class in which
18 Plaintiff’s Counsel was appointed Class Counsel.³⁴

19 The schedule setting forth a proposed sequence for the relevant dates and deadlines is
20 outlined in the Proposed Order filed herewith. Having appropriately presented the materials and
21 information necessary for preliminary approval, the parties request that the Final Approval Hearing
22 be conducted no earlier than November 30, 2026 or as soon thereafter as the Court’s calendar may
23 accommodate.

24 **IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

25 The law favors settlement, particularly in class actions and other complex cases where
26 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
27 *See Newberg* § 11:41 (and cases cited therein); *Class Plaintiff v. City of Seattle*, 955 F.2d 1268,
28 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also*
Potter v. Pac. Coast Lumber Co., 37 Cal. 2d 592, 602 (1951). In evaluating class action
settlements, the court has broad powers to determine whether a proposed settlement is fair under
the circumstances of the case. *Wershba v. Apple Computers, Inc.*, 91 Cal. App. 4th 224, 234-35

³⁴ See Schelly Decl., ¶43.

(2001); *Mallick v. Superior Court (County of Marin)*, 89 Cal. App. 3d 434, 438 (1979). The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the range of possible approval, also described as the “range of reasonableness,” and thus whether notice to the class of the settlement’s terms and conditions and the scheduling of a formal fairness hearing are worthwhile. *See Wershba*, 91 Cal. App. 4th at 234-235; *North County Contractor’s Ass’n, Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-1090 (1994); *In re Traffic Exec Ass’n*, 627 F.2d 631, 633-634 (2d Cir. 1980); *Newberg*, § 11:25-26.

The *Manual for Complex Litigation*, Fourth (Fed. Judicial Center 2004 (“*Manual*”), § 21.632 characterizes the preliminary approval stage as an “initial evaluation” of the fairness of the proposed settlement made by the court on the basis of written submissions and informal presentation from the settling parties. To make a fairness determination, courts must consider several factors, including “the strength of the Plaintiff’s case, the risk, expense and complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of the discovery completed and the stage of the proceedings, [and] the experience and views of counsel. ...” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” *See Wershba*, 91 Cal. App. 4th at 245.

Furthermore, courts must give “proper deference to the private consensual agreement of the parties,” since “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.*, 150 F.3d 1027 (9th Cir. 1998) (internal quotes and citation omitted). Once the judge is satisfied with the results of the initial inquiry into the fairness, reasonableness, and adequacy of the settlement, the court should direct that the Class Members be given notice of a formal fairness hearing, at which arguments and evidence may be presented in support of, and in opposition to, the settlement. *See Manual*, § 21.633.

1 **A. The Proposed Settlement Is Fair to the Class**

2 The terms of the settlement recognize the strength of the case. The proposed settlement is
3 reasonable, in light of the strength of Plaintiff’s case and the risks of litigation. *Clark v. American*
4 *Residential Services, LLC*, 175 Cal. App. 4th 785, 799 (2009). Under *Clark* “the trial court is
5 obliged, at a minimum, to determine whether a legitimate controversy exists on a legal point, if that
6 legal point significantly affects the valuation of the case for settlement purposes.” *Id.* at 803.
7 However, the trial court is not required to reach any ultimate legal or factual conclusions. *Id.* A
8 settlement is not judged against what might have been recovered had a plaintiff prevailed at trial,
9 nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.
10 *Wershba*, 91 Cal. App. 4th at 224 (holding that “[c]ompromise is inherent and necessary in the
11 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
12 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement
13 because the public interest may indeed be served by a voluntary settlement in which each side gives
14 ground in the interest of avoiding litigation”). Settlement agreements are realistically assessed.
15 *Stambaugh*, 62 Cal. App. 3d at 236; *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989) (“The
16 fact that a plaintiff might have received more if the case had been fully litigated is no reason not to
17 approve the settlement.”).

18 The Settlement Agreement in this case confers a substantial benefit on the Settlement Class.
19 Pursuant to the terms of the Settlement Agreement, Defendants will pay \$245,000 in exchange for
20 a full discharge of Plaintiff’s and Settlement Class Members’ releases of claims.³⁵ Once all the
21 adequate deductions have been made from the Settlement Amount, the amount available for
22 distribution to Plaintiff and the Settlement Class is approximately \$99,500.00.

23 Plaintiff has evaluated the strengths of the class claims, and assessed the range of potential
24 outcomes of the litigation. In addition to disputing the merits of Plaintiff’s claims, Defendants
25 would strongly challenge any request for class certification. Plaintiff believed that this case was
26 suitable for class certification. However, Plaintiff also realized that there is always a significant
27 risk associated with class certification proceedings. In light of the uncertainties of protracted
28 litigation, the Gross Settlement Amount reflects an excellent recovery for the Class Members.

³⁵ Settlement Agreement, §5.

1 Schelly Decl., ¶26.

2 **1. Plaintiff Faced Significant Risk on All of His Claims**

3 Pursuit of the Action through trial would impose significant risks on the outcome of
4 Plaintiff's claims.

5 **a. Plaintiff Faced Significant Challenges to His Class Claims That Defendants**
6 **Are Liable For Violations of California's Overtime and Minimum Wage**
7 **Laws.**

8 Plaintiff claims that Class Members were not paid premium wages for overtime and not
9 paid minimum wages. Defendants contended that it is their policy and practice to pay all wages for
10 all time worked. Defendants arguments included, but were not limited to the following: At all
11 relevant times during the Class Period (1) The Company has had a written policy that requires
12 employees to be paid for all hours worked, has expressly prohibited them from working off the
13 clock, and has required them to report any violations; (2) Defendants will be able to demonstrate
14 that Plaintiff's unpaid wages claims are based on assumptions that are completely inconsistent with
15 Defendants' business operations, employee work practices, and employee work schedules; (3) thus,
16 Plaintiff's exposure numbers grossly exaggerate any potential exposure for these claims; (4)
17 Defendants would only be liable for any unpaid minimum or overtime wages they knew or
18 reasonably should have known were due and owing (*Brinker v. Superior Court*, 53 Cal. 4th 1004,
19 1051 (2012); *Morillion v. Defendants Packing Co.*, 22 Cal. 4th 575, 585 (2012)); and (5) because
20 Defendants did not engage in any common policy or practice that is violative of California wage
21 and hour laws, individualized issues predominate as to whether, for example, any Class Member in
22 any particular job position performed work for which the employee was not paid, the reason for the
23 non-payment, whether the purported non-payment triggers employer liability, and whether that
24 work time, if otherwise compensable, amounted to overtime for which premium pay was required.

25 Plaintiff's Counsel considered these weaknesses in their merits assessment and exposure
26 calculations during settlement negotiations. They also understood there was a high risk that the
27 Court would deny certification of the overtime and minimum wage claims. Schelly Decl., ¶22.
28

1 **b. Plaintiff's Class Claims For Failure to Afford Lawful Meal/Rest Breaks**
2 **Were Fraught With Risk.**

3 Plaintiff claims that Class Members were not afforded meal/rest breaks. Defendants
4 adamantly disagree, contending that, throughout the Class Period, they had and effectively
5 implemented lawful, written policies providing for nonexempt employees to take meal and rest
6 breaks as required by law and that employees regularly and consistently took such breaks. Schelly
7 Decl., ¶15c. Thus, Defendants contend any deviations are on account of individualized issues, as
8 opposed to common policies/practices, precluding class certification.

9
10 Additionally, Defendants argue they have ample evidence to effectively rebut any legal
11 presumptions of non-compliance arising from purely facial meal violations reflected on the time
12 cards, including the fact that overnight workers were subject to lawful On-Duty-Meal Period
13 Agreements. Further, Defendants argue their business operations and staffing models have always
14 otherwise afforded employees ample time and flexibility to regularly take timely and otherwise
15 lawful meal and rest periods throughout the Class Period, without any work interruptions. For
16 these and other reasons, Defendants argue Plaintiff's calculations significantly overestimate
17 liability on both claims, especially considering Plaintiff assumes a rest break violation for every
18 shift worked.

19 Plaintiff's Counsel considered these weaknesses in their merits assessment and exposure
20 calculations during settlement negotiations, as well as the fact there was a high risk that the Court
21 would deny certification of the meal/rest break claims. Schelly Decl., ¶23.

22 **c. Plaintiff Faced Significant Challenges to His Wage Statement Claim**

23 As Plaintiff has acknowledged, his Wage Statement claim under Section 226 is based
24 purely on claims derivative of his underlying, predicate Labor Code claims. Thus, the claim is
25 subject to the same defenses, both as to the merits and as to the appropriateness of class
26 certification, Defendants raise as to each of the underlying claims. Moreover, as Defendants have
27 argued, for Plaintiff to recover penalties under this claim, he would have to show Defendants
28 knowingly and intentionally issued deficient/incorrect wage statements. *See Lab. Code* § 226;
Price v. Starbucks Corporation, 192 Cal. App. 4th 1136, 1142-43 (2011). Schelly Decl., ¶24.

1 **d. Plaintiff Faces Significant Challenges to His Claims for Failure to Pay**
2 **Wages on Termination.**

3 Plaintiff also faces significant risks as to his Section 203 Claim for failure to pay wages on
4 termination. His claim is subject to all of Defendants’ defenses, both on the merits and as to the
5 appropriateness of class certification, as his underlying claims that putative class members were not
6 paid for all wages due at termination. Additionally, Defendants have a broader, additional defense
7 that could potentially apply even if wages were technically due and owing: a “good faith dispute”
8 acts as a complete defense against “waiting time” penalties. (Cal. Code Regs., tit. 8, § 13520.)
9

10 Finally, with respect to the calculation of Section 203 penalties, Defendants dispute
11 Plaintiff’s use of, among other numbers, a daily wage rate of over 8 hours. Defendants contend
12 employees were regularly scheduled for fewer than 8 hours of work a day, with limited exceptions.
13 Defendants have noted that the Department of Industrial Relations has clarified that, for purposes
14 of calculating Section 203 penalties, “overtime wages are considered only if overtime is regularly
15 scheduled each week. Occasional or infrequent overtime is not considered in the calculation of the
16 daily rate of pay for purposes of computing the penalty.” Department of Industrial Relations,
17 Frequently Asked Questions, https://www.dir.ca.gov/dlse/FAQ_WaitingTimePenalty.htm (May 27,
18 2026). Therefore, Plaintiff also faced significant challenges to his Wage Statement claim. Schelly
19 Decl., ¶24.

20 **e. Plaintiff Faced Significant Challenges to His Claims for Failure to**
21 **Reimburse Business Expenses and Provide a Uniform Maintenance**
22 **Allowance.**

23 Plaintiff claims that Class Members were not reimbursed/fully reimbursed for their business
24 expenses such as cell phone expenses. Defendants maintained that their policies provide for
25 expense reimbursement.
26

27 Further, Plaintiff claims that Class Members were not provided a uniform maintenance
28 allowance, that they were required to purchase their uniforms and to clean their uniforms
themselves. Defendants maintained that the employees’ claimed “uniforms” are standard, every
day clothing and, thus, they were not responsible for maintaining the clothes for their employees.

1 In any event, the clothes could be laundered at home and, therefore, did not even require special
2 maintenance, such as dry cleaning. Therefore, Plaintiff also faces significant risk on his business
3 expense and uniform maintenance claims. Schelly Decl., ¶23.

4 **e. Plaintiff's Potential PAGA Damages Were Far From Certain.**

5 As with Plaintiff's Section 226 Claim, the merit defenses to the predicate Labor Code
6 violations on which Plaintiff's PAGA Claim rests apply with equal force to Plaintiff's PAGA
7 Claim. Additionally, uncertainty relating to Plaintiff's potential PAGA damages played a role in
8 the negotiation considerations. Questions were raised about whether and to what extent a court may
9 award such penalties, especially in light of the caps on punitive damages by the both U.S. Supreme
10 Court and California Supreme Court. Thus, Defendants would argue that penalties greatly in excess
11 of actual damages would be confiscatory and possibly unconstitutional. Further, the actual amount
12 of PAGA penalties awarded by the Court is completely discretionary and penalties are not subject
13 to stacking under Labor Code § 2699(h)(3)(i), as amended.³⁶ As a result, Plaintiff considered that
14 PAGA penalties may not be awarded in amounts that are disproportionate to the actual amount of
15 wages owed. Lastly, since only 25% of any PAGA recovery reaches the PAGA claimants (with the
16 balance going to the state), the strength of Plaintiff's potential PAGA claims and the potentially
17 limited recovery were factors considered during settlement negotiations. Schelly Decl., ¶ 24.

18 Where, as here, the settlement affords the Class Members prompt, substantial relief, while
19 avoiding legal and factual hurdles that otherwise may have prevented the Class from obtaining any
20 recovery at all, or at least after a very significant delay, the reasonableness of the settlement is
21 clear. Because the Settlement Agreement provides immediate and substantial relief, without the
22 attendant risks and delay of continued litigation, it warrants the Court's preliminary approval.
23

24
25
26 ³⁶ In granting final approval of the class action settlement in *Stuart v. RadioShack*, 641 F. Supp. 2d 901 (N.D. Cal. 2009) Judge Chen noted the following:

27 Plaintiffs could arguably get more . . . because they are entitled to penalties under the PAGA, [but] it is not
28 clear that they could get a significant additional amount because the PAGA provides that,
[i]n an action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or
(f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based
on the facts and circumstances of the particular case, to do so otherwise would result in an award that is
unjust, arbitrary and oppressive, or confiscatory.

1 **B. The Proposed Settlement Is the Result of Arm’s-Length Negotiation**

2 Plaintiff’s counsel conducted an extensive investigation, including reviewing voluminous
3 documentary evidence. The parties negotiated in good faith and at arm’s-length on several
4 occasions over many months before reaching an agreement. Thus, Class Counsel negotiated the
5 proposed Settlement with ample knowledge of the strengths and weaknesses of this case, the
6 amounts necessary to compensate Settlement Class Members for their damages, and the benefits of
7 the proposed Settlement under the circumstances of this case. In addition, Class Counsel and
8 Defense Counsel, are experienced class action litigation and employment attorneys, and have used
9 their experience and expertise in fashioning a proposed Settlement that is acceptable to both
10 parties. *See* Schelly Decl., ¶¶38-43.

11 The settlement terms also indicate that the Settlement is fair to the Class. Defendants have
12 legal and factual grounds for defending this action. Among other things, Defendants deny the
13 allegations asserted in the Action and continue to assert defenses to such claims. Defendants further
14 contend that at all relevant times they had valid wage and hour policies and that they properly paid
15 Plaintiff and Class members. Notwithstanding these arguments, the Settlement commits Defendants
16 to pay a total of \$245,000.00, of which approximately \$99,500.00 will go to compensate the
17 Settlement Class Members for their damages, which Class Counsel believes is a fair and adequate
18 amount given the litigation risks and delays inherent in further litigation and appeals. *See* Schelly
19 Decl., ¶¶27-28, 37.

20 Accordingly, preliminary approval of the Settlement is appropriate, and Plaintiff requests
21 that the Court order that Class Notice be disseminated to the Class, and that a final approval
22 hearing be scheduled.

23 **C. Provisional Certification of the Settlement Class Under the Lesser Standard**
24 **of Scrutiny for Settlement-Only Certification Is Appropriate**

25
26 “[P]re-certification settlements are routinely approved if found to be fair and reasonable.”
27 *Wershba*, 91 Cal. App. 4th at 240; *accord Dunk*, 48 Cal. App. 4th at 1803 (although the settlement
28 was reached before any “adversary certification,” the court was satisfied that it was “fair, adequate
and reasonable.”); *see also, 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

1 apparently beneficial settlement proposals.”).

2
3 The strength of the findings made by a judge at a preliminary hearing or
4 conference concerning a tentative settlement proposal . . . may be set out in
5 conditional orders granting tentative approval to the various items submitted to
6 the court. Three basic rulings are often conditionally entered at this preliminary
7 hearing. These conditional rulings may approve a temporary settlement class,
8 the proposed settlement, and the class counsel’s application for fees and
9 expenses.

10 4 *Newberg on Class Actions*, at §11.26.

11 The standard for class certification in the settlement context is a significantly lower
12 threshold than in a contested proceeding or a trial context:

13 The two basic purposes for the Rule 23 certification requirements, as they
14 relate to questions of a nationwide class are: (1) to keep the lawsuit
15 manageable for trial; and (2) to protect the interests of the nonrepresentative
16 members. The first purpose is inapposite in the settlement context, and the
17 second, as it relates to commonality of issues, *only makes a difference if the*
18 *nonrepresentative class members would do much better by litigating on their*
19 *own or in their own jurisdiction.* The second category concerns are protected
20 by the trial court's fairness review of the settlement.

21 *Dunk*, 48 Cal. App. 4th at 1807, n. 19 (emphasis added). The reason for this is that no trial is
22 anticipated in the settlement context, so any case management issues inherent in determining if the
23 class should be certified need not be confronted. *Amchem Products, Inc. v. Windsor* 521 U.S. 591
24 (1987).

25 The very liberal standard expressed in *Dunk* is plainly satisfied here. The requirements for
26 class certification in the settlement context – ascertainability, numerosity, predominance of
27 common questions of law and fact, typicality, and adequacy – are all met. It certainly cannot be
28 said that the Settlement Class members would do “much better by litigating on their own”. *Dunk*,
48 Cal. App. 4th at 1807, n. 19. The proposed Settlement Class should be conditionally certified as
requested.

1. Numerosity and Ascertainability.

Numerosity is met if a proposed class is so large that joinder of all members would be

1 impracticable. *See* Code Civ. Proc. § 382. No set number of class members is required to maintain a
2 class action. *Hebbard v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030. The California Supreme Court
3 has upheld a class of as few as ten members. *Bowles v. Super. Ct. (Nickel, Jr.)* (1955) 44 Cal.2d 574,
4 577-81. A proposed settlement class is ascertainable if the class members can be objectively
5 identified and given notice of the litigation without unreasonable time or expense. *Medrazo v.*
6 *Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). Here, the settlement class consists of
7 approximately 142 current and former employees of Defendants in California, calculated from
8 November 7, 2019 through the date of preliminary approval, who have already been identified from
9 Defendants' regular business records. Schelly Decl., ¶ 9.

11 **2. Well-Defined Community of Interest.**

12 **a. Commonality.**

13 To justify certification, the class proponent must show that questions of law or fact common
14 to the class predominate over the questions affecting the individual members. *See Arenas v.*
15 *El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010). Plaintiff contends the Class is subject to
16 common compensation policies and/or practices and/or that Defendants' challenges to those
17 policies and/or practices would be certifiable. *See e.g., Bluford v. Safeway Stores, Inc.*, 216 Cal.
18 App. 4th 864, 872-73 (certifiable issues were raised by claim that the employer's per mile piece-
19 rate system did not compensate drivers for their statutory rest break time).

20 **b. Typicality.**

21 Typicality means merely that the class representative is similarly situated to the members of
22 the class, not that his claims are identical. *Classen v. Weller*, 145 Cal. App. 3d 27, 45-46 (1983). It
23 suffices if the class representative's claims arise from the same event or course of conduct that
24 gives rise to the class claims, and are premised upon the same legal theories. *Id.* Here, for
25 purposes of settlement, the parties generally agree that Plaintiff asserts claims regarding
26 Defendants' wage and hour compensation practices that are at the core of the action. Schelly Decl.,
27 ¶ 5.
28

c. Adequacy of representation.

The proposed class representative must establish that he or she will adequately represent the

1 proposed class. *See Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009).
2 Adequacy may be established by the fact that counsel are experienced. *See Local Joint Exec. Bd.*
3 *of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001).
4 Here, Plaintiff alleges, and Defendants do not dispute for purposes of settlement, that Plaintiff and
5 the Class are represented by counsel with extensive experience in wage-and-hour litigation and that
6 Plaintiff is an adequate class representative. Schelly Decl., ¶ 4.

7
8 **D. An Award of Class Counsel Fees Payment, Class Counsel Litigation**
9 **Expenses Payment, and Payment for the Class Representative Service**
10 **Payment from the Settlement Fund Are Justified in this Case.**

11 The proposed Settlement provides that Plaintiff will request, and Defendants will not
12 oppose, an award to Class Counsel in an amount not to exceed \$85,750.00 in attorneys' fees (35%
13 of the Gross Settlement Amount), actual costs up to \$18,500, Class Representative Service
14 Payment of \$10,000.00 to the Named Plaintiff in recognition of his time, effort, and risk as Class
15 Representative, PAGA Penalties payment in the amount of \$24,500 (allocated \$18,375 to the
16 LWDA and \$6,125 to the Aggrieved Employees), and up to \$7,250 in claims administration costs.
17 The foregoing awards amount to \$145,500 and Plaintiff therefore requests that the Court approve a
18 total deduction of \$145,500.00 from the \$245,000.00 Gross Settlement Amount. Viewing the
19 participation, service and risk payment as an additional cost of litigation, in combination with the
20 allocation for attorneys' fees, expenses and costs, this total deduction of \$145,500.00 is within the
21 range of attorneys' fees, expenses and costs awarded in similar cases. *See Schelly Decl.*, ¶29. The
22 participation payment to Plaintiff is also justified as a Class Representative Service
23 Payment/compensation for his General Release, which courts regularly award in class action
litigation.

24 **1. The Proposed Class Counsel Fees Payment and Class Counsel Litigation Expenses**
25 **Payment Requested Are Reasonable, Fair and Appropriate Under the Common**
26 **Fund Doctrine and Should be Preliminarily Approved.**

27 Plaintiff seeks preliminary approval of his request for reasonable attorneys' fees in an
28 amount up to \$85,750 and actual expenses and costs up to \$18,500.00.³⁷ As discussed in more

³⁷ Prior to the expiration of the period of time allotted for class members to make objections to the settlement, Plaintiff

1 detail below, this fee award is reasonable under the common fund approach in determining
2 reasonable attorneys' fees.

3 An attorneys' fees award is justified where the legal action has produced its benefits by way
4 of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987). California
5 law provides that when a party is entitled to statutory fees, he must be compensated for all time
6 reasonably spent seeking to accomplish the desired litigation result. *See Serrano v. Unruh*, 32
7 Cal.3d 621, 624 (1982). Courts in and out of California have long recognized the equitable
8 "common fund" doctrine under which attorneys that create a common fund or benefit for a group of
9 persons may be awarded their fees and costs out of the fund. "[W]hen a number of persons are
10 entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the
11 benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be
12 awarded attorneys' fees out of the fund." *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977), *see also*
13 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[A] lawyer who recovers a common fund...
14 is entitled to reasonable attorneys' fees from the fund as a whole").

15 In addition to spreading the litigation costs among all beneficiaries, awards of common fund
16 fees are essential to furthering the important societal goal of attracting competent counsel to handle
17 these often complex contingency cases, "who will be more willing to undertake and diligently
18 prosecute proper litigation for the protection or recovery of the fund if assured that [they] will be
19 promptly and directly compensated should [their] efforts be successful." *Melendres v. City of Los*
20 *Angeles*, 45 Cal. App. 3d 267, 273 (1975) (*quoting Estate of Stauffer*, 53 Cal.2d 124, 132 (1959)).
21 In California, trial courts have inherent equitable power to award attorneys' fees on a common fund
22 basis when counsel's efforts "have resulted in the preservation or recovery of a certain or easily
23 calculable sum of money." *Serrano*, 20 Cal.3d 25 at 35; *see also Bank of America Nat'l Trust &*
24 *Sav. Ass'n v. Cory*, 164 Cal. App. 3d 66, 89 (1985); *Melendres*, 45 Cal. App. 3d at 277 (trial courts'
25 "broad discretion" in awarding common fund fees is well-established).

26 The traditional method for calculating a common fund fee is to award a percentage of the
27 total fund. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 900, 916 (1984); *Six (6) Mexican Workers v.*
28

will file a motion and brief for fees and costs (to be heard at the same time as the Final Fairness Hearing) so that class members will be able, if they elect to do so, to review the fees motion prior to making objections or filing a claim. The motion and brief for fees and costs will include, *inter alia*, an itemized listing of all costs incurred in litigating this case. *See Schelly Decl.*, ¶45.

1 *Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Lealao v. Beneficial California, Inc.*,
2 82 Cal. App. 4th 19, 26 (2000); *Melendres*, 45 Cal. App. 3d at 278. Indeed, California courts have
3 regularly approved payments of attorneys' fees amounting to 35% or more of the common fund in
4 similar class actions.

5 California state and federal courts have regularly approved payments of attorneys' fees
6 amounting to as much as 35% or more of the common fund in similar wage and hour class actions
7 alleging missed meal and/or rest periods. *See, e.g., Morales v. Southland Sod Farms Operations, Inc.*,
8 No. 56-2017-00496912, 2018 WL 6928228, *2 (Cal. Super. Oct. 10, 2018) (granting final approval in a
9 wage and hour action and awarding 35% in attorneys' fees); *Erickson v. Q.S.P., Inc.*, No. BC469830,
10 2013 WL 4369736, *5, (Cal. Super. July 9, 2013) (granting final approval in a wage and hour action
11 and finding that 35% in attorneys' fees was reasonable); *Cabrera v. Advantage Sale & Marketing, LLC*,
12 No. BC485259, 2013 WL 1182822, (Cal. Sup. Mar. 12, 2013) (granting final approval for failure to
13 afford meal/rest breaks and awarding 35% in attorneys' fees). Where, as here, the common fund is
14 relatively small, class action commentators have noted that courts typically award 30-50% of the
15 common fund as attorneys' fees. *See Newberg* at §14.6.

16 Finally, several other factors support the requested attorneys' fees. Plaintiff and his counsel
17 brought this class action to prevent Defendants from continuing to commit the alleged violations of
18 California law regarding wage and hour violations alleged in the TAC. Plaintiff's Counsel handled
19 this case on a contingency basis and the case involved significant risks of non-payment of
20 attorneys' fees and non-recovery of litigation expenses if class certification was not granted and/or
21 if Plaintiff's Counsel did not settle or prevail. For these reasons, a costs award and common fund
22 fee of 35% of the settlement fund (*i.e.*, a total of up to \$104,250.00) is fair, reasonable and
23 appropriate. Furthermore, because Plaintiff's requested attorneys' fees of 35% of the common fund
24 is reasonable and falls within the range of approved percentages in similar common fund class
25 action cases, Plaintiff's request for fees of 35% of the common fund should be granted.

26 **2. The Proposed Payment to the Class Representative for His Service to the Class**
27 **Is Reasonable, Routinely Awarded, and Should be Preliminarily Approved.**

28 The proposed payment of \$10,000.00 to the Named Plaintiff³⁸ is intended to recognize the

³⁸ Any portion of the Class Representative Incentive Award not awarded to Plaintiff will be made available for distribution to Settlement Class Members as part of the NSA. Settlement Agreement, §3.2.1.

critical role he played in this case and the time, effort and risk undertaken in helping secure the result obtained on behalf of the Class. *See Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing class case); Manual §21.62 n. 973 (noting service awards are warranted).

“Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation.” *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (*quoting In re S. Ohio Correctional Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997) (approving \$303,000 payment to each class representative plaintiff in employment case settling before class certification); *Martens v. Smith Barney*, No. 96 Civ. 3779, 1998 W.L. 1661385, *4 (S.D.N.Y. 1998) and 181 F.R.D. 243, 262 (S.D.N.Y. 1998) (approving payments of up to \$150,000 for named plaintiffs, for a total of \$1.9 million in incentive payments for employment cases settling prior to class certification); *Roberts v. Texaco*, 979 F. Supp. 185 (S.D.N.Y. 1997) (approving incentive payments up to \$85,000 for named plaintiffs in employment case settling prior to class certification).

The factors courts use in determining the amount of incentive payments include (1) a comparison between the incentive awards and the range of monetary recovery available to the class; *see, e.g., Ingram*, 200 F.R.D. at 694; *Roberts v. Texaco, Inc.* 979 F. Supp. 185, 204 (S.D.N.Y. 1997); (2) time and effort put into the litigation; *see, e.g., Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (1995); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998); (3) whether the litigation will further the public policy underlying the statutory scheme; *see, e.g., Roberts*, 979 F. Supp. at 201; (4) risks of retaliation; *see Roberts*, 979 F. Supp. at 202; *Cook*, 142 F.3d 1004,1016; (5) compromise of unique individual claims; *see, e.g. Women’s Comm. For Equal Employment Opportunity v. Nat’l Broad. Co.*, 76 F.R.D. 173, 180 (S.D.N.Y. 1977); and (6) risks of an adverse attorneys’ fees award; *see, e.g., Rodriguez v. West Publishing*, 563 F.3d 948, 958 (9th Cir. 2009) (“Incentive awards are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.”).

These factors support the approval of the incentive payment requested here for the Class Representative. First, the Named Plaintiff spent time providing invaluable assistance to Class

1 Counsel and the Class in this case, including providing factual background for the Class
2 Complaint; providing and explaining documents corroborating his allegations to Class Counsel;
3 reviewing the Complaint and other pleadings filed with the Court by Plaintiff and Defendants;
4 participating in multiple conference calls and phone calls to discuss litigation and settlement
5 strategy, and remotely attending the all-day mediation. *See* Declaration of Luis German Cardenas
6 Palomo (“Palomo Decl.”), ¶6. The Named Plaintiff has been actively involved in this case, and has
7 proven himself to be an invaluable resource of information throughout the settlement discussions.
8 Schelly Decl., ¶33; Palomo Decl., ¶6. Second, by bringing this action, the Named Plaintiff
9 furthered the public policy goal of encouraging compliance with the wage and hour provisions of
10 the Labor Code. Finally, the requested Class Representative Service Payment of \$10,000.00 to the
11 Plaintiff falls well within the range of incentive payments typically awarded to Class
12 Representatives in such class actions. Schelly Decl., ¶33; *see e.g., Ross v. US Bank Nat’l Ass’n*, No.
13 C 07–02951 SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving \$20,000
14 enhancement awards to each of four class representatives in the wage and hour class action);
15 *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17
16 n.8 (N.D. Cal. Apr. 22, 2010) (“Numerous courts in the Ninth Circuit and elsewhere have approved
17 incentive awards of \$20,000 or more where, as here, the class representative has demonstrated a
18 strong commitment to the class”).

19 Accordingly, the requested incentive award of \$10,000.00 to the Named Plaintiff is fully
20 deserved and justified and thus should be preliminarily approved.

21 **V. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

22 **A. The Proposed Notice of Class Action Settlement Satisfies Due Process**

23 California statutory and case law vests the Court with broad discretion in fashioning an
24 appropriate notice program. *See Cal. Rules of Court* 1859(f); *Cartt v. Superior Court*, 50 Cal. App.
25 3d 960, 973-74 (1975). The notice plan here entails mailing, and if necessary, re-mailing, the notice
26 to all identified participating Settlement Class Members based on Defendants’ employment
27 records. Defendants will provide the last known addresses for all identified Class Members.
28 Plaintiff has proposed the services of an experienced class action settlement administration firm,
Phoenix, to implement the proposed Class Notice procedures. The Class Notice is consistent with

1 class certification notices approved by numerous state and federal courts, and is, under the
2 circumstances of this case, the best notice practicable. Such notice satisfies all due process
3 requirements. *See Cartt*, 50 Cal. App. 3d at 966-975.

4 **B. The Proposed Notice of Class Action Settlement is Accurate and**
5 **Informative**

6 The proposed Class Notice, attached as sub-exhibit A to the proposed Settlement
7 Agreement, provides among other things: (1) information regarding the nature of the Action; (2) a
8 summary of the substance of the settlement; (3) the class definition; (4) the formulae for calculating
9 Individual Class Payments/Individual PAGA Payments; (5) the dates the Settlement Class Member
10 was employed by Defendants during the Class Period; (6) the number of Workweeks/PAGA Pay
11 Periods based on Defendants' business records; (7) instructions on how Settlement Class Members
12 may submit a valid Request for Exclusion; (8) the procedure for objecting to the settlement; (9) the
13 deadline by which Settlement Class Members must postmark an objection to the settlement; (10)
14 notice that the Settlement Class Members will permanently forego their right to pursue any and all
15 of their released claims against Defendants, unless they elect not to participate in the Action; and
16 (11) notice that Settlement Class Members will automatically receive an Individual Class Payment
17 unless they submit a valid request for exclusion.

18 The best practicable means of providing notice to all Class Members will be used. Notice
19 will be mailed to all known and reasonably ascertainable Class Members, using Defendants'
20 records. The information in those records will be updated prior to mailing, using the National
21 Change of Address Database or its equivalent. If any Class Notices are returned as undeliverable,
22 the Settlement Administrator will take appropriate steps, such as skip-tracing, to maximize the
23 probability that the Class Notice will be received by all Class Members. (Settlement Agreement
24 §4.3.2).

25 The Class Notice also fulfills the requirement of neutrality in Class Notices. *See Newberg* §
26 8:39 at pp. 284, 285. The Class Notice summarizes the proceedings to date, the significant legal
27 developments since the date of the settlement, and the terms and conditions of the settlement, in a
28 coherent and informative manner. The Class Notice clearly states that the Settlement does not
constitute an admission of liability by Defendants and recognizes that the Court has not ruled on

1 the merits of the Action, nor has made any ruling regarding whether the case can be certified as a
2 class action. The Class Notice also states that the final settlement approval decision has yet to be
3 made. Accordingly, the Class Notice complies with the standards of fairness, completeness and
4 neutrality required of a settlement notice disseminated under authority of the Court. *Newberg*
5 §8:21, §8:39; *Manual* § 21.312.

6 **VI. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED**

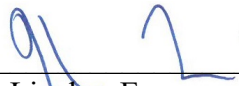
7 The last step in the settlement approval process is the formal final approval hearing, at
8 which the Court may hear all evidence and argument necessary to evaluate the proposed
9 Settlement. *See Cal. Rules of Court* 1859(b). At that hearing, proponents of the Settlement may
10 explain and describe its terms and conditions and offer argument in support of the Settlement
11 approval. Furthermore, members of the Settlement Class, or their counsel, may be heard in support
12 of or in opposition to the proposed Settlement. Class Counsel requests that the hearing be held no
13 earlier than November 30, 2026, or as soon thereafter as the Court's calendar may accommodate.

14 **VII. CONCLUSION**

15 For the reasons discussed above, Plaintiff requests that the Court enter an order of
16 preliminary approval of the class action settlement, approve the form of the proposed notice, and
17 approve the proposed schedule, including setting a date for a final approval hearing.

18
19 Dated: June 4, 2026 Respectfully submitted,

20
21 LIPELES LAW GROUP, APC

22 By: 
23 Kevin Lipeles, Esq.
24 Thomas Schelly, Esq.
25 Attorneys for Plaintiff and the Class
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