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9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 Gerardo Tovar, individually and on behalf
of others similarly situated, and on behalf of
13 other aggrieved employees pursuant to the
Private Attorneys General Act,

14 Plaintiff,

15 vs.
16

17 Optima Family Services, Inc., a California
corporation; and DOES 1 through 50,
inclusive,

18 Defendants.
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Case No.: 24STCV22183

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

Hearing Information:

Date: December 2, 2026
Time: 2:00 PM
Dept.: 10
Judge: Hon. William F. Highberger

*[Filed concurrently with: (1) Declaration of
Devin Rauchwerger; (2) Declaration of Plaintiff
Gerardo Tovar; (3) Declaration of Jodey
Lawrence, and (4) [Proposed] Order]*

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

2 **PLEASE TAKE NOTICE THAT** on December 2, 2026, at 2:00 PM, or as soon thereafter
3 as this matter may be heard by the Court in Department 10 of the Los Angeles County Superior
4 Court, located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012,
5 Plaintiff Gerardo Tovar, on behalf of himself and a Settlement Class, will and hereby do move for
6 an Order:

- 7 1) Preliminarily approving the proposed Class Action and PAGA settlement in the
8 above-captioned case;
- 9 2) Preliminarily certifying the Settlement Class;
- 10 3) Preliminarily approving the appointment of Plaintiff as Class Representative;
- 11 4) Preliminarily approving the appointment of Domb & Rauchwerger LLP as Class
12 Counsel;
- 13 5) Approving appointment of Phoenix Class Action Administration Solutions as the
14 Settlement Administrator;
- 15 6) Approving and directing distribution of notice to the Settlement Class; and
- 16 7) Setting a final fairness and approval hearing that is approximately 150 days after
17 the Court grants Preliminary Approval.

18 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
19 permits settlement of a purported class action and allows the Court to preliminarily certify a class
20 for settlement purposes.

21 The proposed settlement is fair, adequate, and reasonable and in the best interests of the
22 settlement class as a whole, and the procedures proposed by the parties are adequate to ensure the
23 opportunity of class members to participate in, opt out of, or object to the settlement.

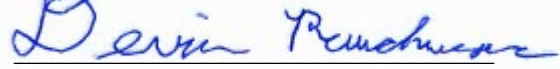
24 This Motion is based upon this notice, the attached memorandum of points and authorities,
25 the Declaration of Devin E. Rauchwerger and all exhibits attached thereto, the Declaration of
26 Plaintiff Gerardo Tovar, the Declaration of Jodey Lawrence on behalf of Phoenix Class Action
27 Administration Solutions and all exhibits attached thereto, the pleadings and other records on file
28 with the Court in this matter, and any other further evidence or argument that the Court may

1 properly receive at or before the hearing.

2
3 Date: August 31, 2026

Respectfully submitted,
DOMB & RAUCHWERGER LLP

4 By:



Zack I. Domb

Devin E. Rauchwerger

Curtis P. Davis

Audrey A. Jorgensen

Attorneys for Plaintiff, Gerardo Tovar, and the
Proposed Class

TABLE OF CONTENTS

I.	INTRODUCTION	9
II.	BACKGROUND AND PROCEDURAL HISTORY	10
A.	The Pleadings & Nature of The Action	10
B.	Discovery Taken By The Parties	10
C.	Mediation With Hon. Jeff Winikow (Ret.)	11
III.	LEGAL ANALYSIS OF SETTLEMENT	11
A.	Two-Step Settlement Process	11
B.	The Settlement Warrants Preliminary Approval Because It Is Fair And Reasonable.	11
C.	No Other Overlapping Cases	12
D.	Due To The Risks Of Continued Litigation, The Settlement Is Fair And In The Best Interests Of The Class.....	12
E.	The <i>Kullar</i> Requirements.....	13
1.	Failure to Pay Minimum and/or Overtime Wages	14
2.	Failure to Provide Meal & Rest Periods	15
3.	Failure to Reimburse Necessary Business Expenses	16
4.	Failure to Provide Accurate Written Wage Statements (Lab. Code § 226 (a)).....	16
5.	Failure to Timely Pay All Final Wages	18
6.	Civil Penalties pursuant to the Private Attorney General Act of 2004 (“PAGA”) (Lab. Code § 2698 <i>et seq.</i>).....	18
7.	Unfair Competition (Bus & Prof. Code § 17200 <i>et. seq.</i>).....	19
8.	Total Damages.	20
IV.	CLASS CERTIFICATION ANALYSIS	20
A.	The Class Is Properly Certified For Settlement Purposes.....	20
1.	The Proposed Class is Numerous and Ascertainable.....	21
2.	The Community of Interest Requirement Is Also Satisfied.....	21

1	B.	Class Counsel Has Extensive Experience In Class Actions And Similar	
2		Cases.	22
3	C.	The Class Representative Is Adequate.....	22
4	D.	The Proposed Class Representative Service Payment To Plaintiff Is	
5		Reasonable.	22
6	E.	Settlement Administration Costs are Reasonable.	23
7	V.	THE PROPOSED SETTLEMENT	23
8	A.	The Settlement Class & Released Claims.....	23
9	B.	The Settlement Payment	24
10	C.	Settlement Payment Distribution Plan	25
11	1.	Calculating Participating Class Members’ Individual Class	
12		Payments	25
13	2.	Calculating Aggrieved Employees’ Individual PAGA Payments .	26
14	3.	Distribution of Settlement Payments	26
15	D.	Notice To The Class Members	27
16	VI.	CONCLUSION	27

TABLE OF AUTHORITIES

Cases

<i>Amaral v. Cintas</i> (2008) 163 Cal.App.4th 1157	19
<i>Bowles v. Superior Court</i> (1955) 44 Cal.2d 574.....	21
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004	15
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504.....	19
<i>Cartt v. Super. Ct.</i> (1975) 50 Cal.App.3d 960	27
<i>Chu v. Wells Fargo Investments, LLC</i> (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81	19
<i>Cooper v. Am. Sav. & Loan Ass’n.</i> (1976) 55 Cal.App.3d 274	27
<i>Cortez v. Purolator Air Filtration Prod. Co.</i> (2000) 23 Cal.4th 163.....	20
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	11
<i>Duran v. U.S. Bank National Assn.</i> (2014) 59 Cal.4th 1	16
<i>Franco v. Ruiz Food Prods., Inc.</i> (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801	19
<i>Gonzalez v. Downtown LA Motors</i> (2013) 215 Cal.App.4th 36	18
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126.....	11
<i>Gunther v. Alaska Airlines, Inc.</i> (2021) 72 Cal.App.5th 334.....	19
<i>Hebbard v. Colgrove</i> (1972) 28 Cal.App.3d 1017.....	21
<i>Hicks v. Toys ‘R’ Us–Delaware, Inc.</i> (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915.....	19
<i>In re Cellphone Fee Termination Cases</i> (2010) 186 Cal.App.4th 1380	12, 23
<i>Korea Supply v. Lockheed Martin Corp.</i> (2003) 29 Cal.4th 1148.....	20
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	13, 14
<i>Lazarin v. Pro Unlimited, Inc.</i> (N.D. Cal., July 11, 2013) 2013 WL 3541217	19
<i>Morales v. Stevco, Inc.</i> (E.D. Cal. 2011) 2011 WL 5511767, at *11	13
<i>Mouchati v. Bonnie Plants, Inc.</i> (C.D. Cal. Mar. 6, 2014) No. EDCV 14-00037-VAP (SPx), 2014 U.S. Dist. LEXIS 60855, at *8-9	17
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> (2010) 186 Cal.App.4th 399	13
<i>Naranjo v. Spectrum Sec. Servs., Inc.</i> (2022) 13 Cal.5th 93.....	16
<i>Naranjo v. Spectrum Sec. Servs., Inc.</i> (2023) 88 Cal.App.5th 937.....	18

1	<i>Naranjo v. Spectrum Sec. Servs., Inc.</i> (2024) 15 Cal.5th 1056.....	18
2	<i>Novoa v. Charter Communs., Ltd. Liab. Co.</i> (E.D. Cal. 2015) 100 F.Supp.3d 1013	17
3	<i>Phillips Petroleum Co. v. Shutts</i> (1985) 472 U.S. 797	27
4	<i>Renken v. Compton City School Dist.</i> (1962) 207 Cal.App.2d 106.....	21
5	<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	21
6	<i>Ryan v. Cal. Interscholastic Fed’n – San Diego Section</i> (2001) 94 Cal.App.4th 1048.....	27
7	<i>Sarkisov v. Stonemor Partners</i> (N.D. Cal. Apr. 3, 2014) <i>L.P.</i> , No. C 13-04834 WHA, 2014 U.S.	
8	Dist. LEXIS 47021, at *2.....	17
9	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	21, 22
10	<i>Singer v. Becton, Dickinson & Co., Med.-Safe Sys.</i> (S.D. Cal. July 23, 2008) No. 08cv821 IEG	
11	(BLM), 2008 U.S. Dist. LEXIS 56326, at *4-5	17
12	<i>Taylor v. W. Marine Prods.</i> (N.D. Cal. Sep. 19, 2014) No. C 13-04916 WHA, 2014 U.S. Dist.	
13	LEXIS 133728, at *7	17
14	<i>Thurman v. Bayshore Transit Management, Inc.</i> (2012) 203 Cal.App.4th 1112	19
15	<i>Toure v. Amerigroup Corp.</i> (E.D. N.Y. 2012) 2012 WL 1432302, at *1	13
16	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	11
17	<i>Wershba v. Apple Computer</i> (2001) 91 Cal.App.4th 224	11, 12
18	Statutes	
19	Bus & Prof. Code § 17200.....	19
20	Code Civ. Proc. § 382	20, 21
21	Lab. Code § 203	18
22	Lab. Code § 226.....	17
23	Lab. Code § 2698.....	18
24	Lab. Code § 2699.....	18, 19
25	Lab. Code § 2802.....	16
26	Rules	
27	Cal. Rules of Court, rule 3.1113	9
28	Cal. Rules of Court, rule 3.769	2, 11, 27

1	Fed. Rules Civ.Proc. 23(e).....	11
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2	Treatises	
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3	Manual of Complex Litigation, Second § 30.44, at 229	12
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Plaintiff Gerardo Tovar (“Plaintiff”) and Defendant Optima Family Services, Inc., (“Defendant”) have reached a proposed Class Action and PAGA settlement. Plaintiff and Defendant (collectively, the “Parties”) submit the Class Action and PAGA Settlement Agreement and Class Notice (the “Settlement” or “Settlement Agreement”) to the Court for its preliminary approval. The Settlement Agreement (“SA”) is attached to the Declaration of Devin Rauchwerger (“Rauchwerger Decl.”) ¶ 2 as **Exhibit 1**.¹

The Settlement provides for a **non-reversionary** payment of \$750,000.00 for which Defendant will be separately responsible for any employer payroll taxes. (SA §§ 1.21, 3.1.) Approximately \$396,750 will be available for disbursement to Participating Class Members (the “Net Settlement Amount”), which does not include the separate Individual PAGA Payment which will be paid only to the Aggrieved Employees. (Rauchwerger Decl. ¶ 30.) There are believed to be approximately 619 Class Members, and the average Individual Class Payment will be approximately \$640.95 (not including the separate Individual PAGA Payments that will be paid only to the Aggrieved Employees). (Rauchwerger Decl. ¶ 30.)

The Settlement occurred as a result of extensive arm's length negotiations by experienced counsel after sufficient discovery and investigation into the facts with guidance of the Hon. Jeff Winikow (Ret.), a highly experienced and well-respected class action mediator and retired judge. As detailed below, the Settlement is fair, reasonable, and in the best interests of the Settlement Class.

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement and award Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, Administration Expenses Payment, and PAGA Penalties. Plaintiff also moves for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

¹ For ease of reference and consistency, defined terms from the Settlement Agreement are utilized below.

II. BACKGROUND AND PROCEDURAL HISTORY

A. The Pleadings & Nature of The Action

Defendant Optima Family Services, Inc., provides in-home early intervention and applied behavior analysis (“ABA”) services to children and their families, including interactive infant stimulation, early therapeutic services, and behavioral services. (Rauchwerger Decl. ¶ 3.)

On August 29, 2024, Plaintiff filed the above-entitled civil complaint alleging nine causes of action for: (1) Violation of Cal. Labor Code §§ 510, and 1198 (Unpaid Overtime), (2) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums), (3) Violation of Cal. Labor Code § 226.7 (Unpaid Rest Period Premiums), (4) Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1 (Unpaid Minimum Wages), (5) Violation of Cal. Labor Code §§ 201, 202 and 203 (Final Wages Not Timely Paid), (6) Violation of Labor Code §§ 204 and 210 (Wages Not Timely Paid During Employment), (7) Violation of California Labor Code § 226(a) (Failure to Provide Accurate Wage Statements), (8) Violation of California Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses), and (9) Violation of California Business & Professions Code §§ 17200, et seq. (Rauchwerger Decl. ¶ 4.)

On June 4, 2026, Plaintiff submitted a letter to the Labor and Workforce Development Agency alleging various violations of the California Labor Code. (Rauchwerger Decl. ¶ 5.) On June 30, 2026, the Parties submitted a joint stipulation for Plaintiff to file a First Amended Complaint adding a PAGA cause of action. (*Id.*) On July 2, 2026, the Court granted the stipulation, and Plaintiff filed the First Amended Complaint that same day (“Operative Complaint”). (*Id.*)

B. Discovery Taken By The Parties

The Parties conducted mediation-related discovery and Defendant produced thousands of pages of relevant documents and data in this action, including a large sampling of the time sheets and payroll records for the Class. (Rauchwerger Decl. ¶ 6.) Further, the Parties held numerous meetings and informal conferences prior to the mediation wherein they exchanged information, additional class data, and theories of the case. (*Id.*)

//

1 **C. Mediation With Hon. Jeff Winikow (Ret.)**

2 The Parties participated in a full-day mediation with the Hon. Jeff Winikow (Ret.).
3 (Rauchwerger Decl. ¶ 7.) The Parties agreed to use Judge Winikow based on his excellent skills
4 and experience as a judge and mediator in wage-and-hour class actions such as this one. (*Id.*)
5 After contentious and lengthy negotiations, the Parties were not able to resolve the case at
6 mediation, but the Parties continued with their litigation and settlement efforts. (*Id.*) For
7 example, Plaintiff was preparing to file a motion to amend the complaint and also propounded
8 written discovery requests. (*Id.*) Ultimately, the parties ended up agreeing to settle the matter for
9 \$750,000.00, with the understanding that Defendant would need to pay over time given
10 Defendant's financial situation. (*Id.*) After the Parties reached a settlement, the Parties negotiated
11 a Memorandum of Understanding which led to negotiating and executing the long-form
12 Settlement Agreement. (*Id.*)

13 **III. LEGAL ANALYSIS OF SETTLEMENT**

14 **A. Two-Step Settlement Process**

15 Any settlement of class litigation must be reviewed and approved by the Court. (Cal.
16 Rules of Court, rule 3.769; Fed. Rules Civ. Proc. 23(e).²) This is done in two steps: (1) a
17 preliminary review by the trial court, and (2) a final review after notice has been distributed to
18 the Settlement Class informing them of the terms of the settlement and allowing them to exclude
19 themselves from and/or object to the settlement.

20 **B. The Settlement Warrants Preliminary Approval Because It Is Fair And**
21 **Reasonable.**

22 The approval of a proposed settlement of a class action suit is a matter within the broad
23 discretion of the trial Court. (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 234-235;
24 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794.) Pursuant to California Rules of Court,
25 rule 3.769(d), parties also may, at the preliminary approval stage, request that the Court
26

27 ² The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and cases applying
28 it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v.*
Obledo (1981) 29 Cal.3d 126, 145-146.) Where appropriate, Plaintiff cites Federal Rule 23 and federal case law in
addition to California law.

provisionally approve certification of the class conditional upon final approval of the settlement. “[P]re-certification settlements are routinely approved if found to be fair and reasonable.” (*Wershba v. Apple Computer, supra*, 91 Cal.App.4th at p. 240.) A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. No one factor should be determinative, but rather all factors should be considered. These criteria have been summarized as follows:

“If the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.”

Manual of Complex Litigation, Second § 30.44, at 229.

Moreover, a proposed settlement is presumptively fair and reasonable where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389 (citations omitted).) Here, as discussed above and further below, the Settlement meets all these criteria, including having been reached through an arms-length negotiation by way of a mediation followed by additional negotiations, having a sufficient investigation conducted to determine the settlement is fair, and being agreed to by counsel who all have extensive experience with class actions. (Rauchwerger Decl. ¶¶ 26-27.) Furthermore, there is no reason to suspect that the amount of class members objecting will be high. (Rauchwerger Decl. ¶ 8.)

C. No Other Overlapping Cases

Plaintiff’s Counsel is not aware of any other class, collective or representative actions that overlap with the present case. (Rauchwerger Decl. ¶ 9.)

D. Due To The Risks Of Continued Litigation, The Settlement Is Fair And In The Best Interests Of The Class.

Based on the foregoing data and their own independent investigation and evaluation,

1 Class Counsel believe that the settlement with Defendant for the consideration and on the terms
2 set forth in the Settlement Agreement is fair, reasonable, adequate, and is in the best interest of
3 the Class in light of all known risks, facts and circumstances. (Rauchwerger Decl. ¶ 10.) These
4 risks include: the risk of significant delay in class members receiving any type of funds,
5 particularly if the Defendant were to declare bankruptcy; the prospect of Defendant obtaining
6 releases from putative class members; and the potential for the Court to reduce PAGA penalties.
7 (*Id.*)

8 Finally, the Settlement was reached after lengthy negotiations, exchange of documents
9 and information, and with the assistance and supervision of the Hon. Jeff Winikow (Ret.), who
10 has mediated numerous wage-and-hour class actions, and clearly qualifies to oversee serious and
11 informed negotiations conducted by the Parties. (See *Toure v. Amerigroup Corp.* (E.D. N.Y.
12 2012) 2012 WL 1432302, at *1 [“The assistance of an experienced mediator, Linda Singer, Esq.,
13 reinforces that the Settlement Agreement is non-collusive”]; *Morales v. Stevco, Inc.* (E.D. Cal.
14 2011) 2011 WL 5511767, at *11 [concluding that the class action settlement was not collusive
15 because “[t]he parties utilized an impartial mediator, and the matter was ‘resolved by means of
16 a mediator’s proposal.’”].)

17 **E. The Kullar Requirements**

18 In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Court of Appeals
19 explained that, although “not exhaustive,” a determination of whether a settlement is “fair,
20 adequate and reasonable” should take into account the strength of a plaintiff’s case, the risk,
21 expense, complexity and the likely duration of further litigation. (*Id.* at 127-128.) Subsequently,
22 in *Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, the Court of Appeals
23 clarified:

24 “[Appellant] misunderstands *Kullar*, apparently interpreting it to require the
25 record in all cases to contain evidence in the form of an explicit statement of the
26 maximum amount the Plaintiffs class could recover if it prevailed on all its
27 claims—a number which appears nowhere in the record of this case. But *Kullar*
28 does not, as [Appellant] 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 range of outcomes of the litigation.”

(*Id.* at 409 (quoting *Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at 120))

Here, the potential damages for the causes of action asserted in the Action along with the relative risks, complexities, and expenses are detailed below. The key data points and associated documentation upon which Plaintiff relied in analyzing Defendant's potential exposure are as follows:

- Total Class Size: Approximately 619 individuals.
- Total number of workweeks for class between August 29, 2020 through the present: Approximately 41,902.
- Total Former Employees within 3-year SOL: Approximately 260.
- Total Aggrieved Employees: 361.
- Total number of pay periods worked by Aggrieved Employees from August 29, 2023 through the present: Approximately 10,071 pay periods.
- Average Regular Rate: \$23.62 per hour.

(Rauchwerger Decl. ¶ 11.)

1. Failure to Pay Minimum and/or Overtime Wages

Plaintiff alleges that Defendant's uniform policies, practices and procedures regularly required them to work off the clock, for which they were not paid, due to Defendant's policy of requiring employees to round their time to the nearest quarter hour, while also insisting that employees ensure they arrive to work on time. (Rauchwerger Decl. ¶ 12.)

To determine Defendant's reasonable exposure to the class for these off the clock allegations, Plaintiff's counsel assumed that employees lost approximately 5 minutes per work shift due to Defendant's policy of requiring employees to round their time to the nearest quarter hour. (Rauchwerger Decl. ¶ 13.) Furthermore, most of the employees, including Plaintiff, did not work up to or more than eight hours per day, so Plaintiff's counsel used the average regular rate instead of an overtime rate for purposes of damage exposure. (*Id.*) Based on the 41,902 workweeks, and using the average regular rate of \$23.62 per hour rather than an overtime rate, this would mean that employees would have lost approximately \$412,385. (*Id.*)

The risks related to proving the rounding claim are significant, as it is impossible to

discern from the records the exact amount of alleged off-the-clock work that each employee purportedly performed and what they are entitled to given that there was a self-rounding policy in place and not an actual rounding policy. (Rauchwerger Decl. ¶ 14.) These questions could be viewed as creating individualized issues inappropriate for class certification, particularly since Plaintiff would bear the burden of establishing liability for alleged off-the-clock work. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1051 [holding “that employees are clocked out creates a presumption they are doing no work, a presumption [plaintiff] and the putative class members have the burden to rebut. As all parties agree, liability is contingent on proof [the employer] knew or should have known off-the-clock work was occurring.”])).

2. Failure to Provide Meal & Rest Periods

Plaintiff contends that he and the Class Members routinely did not receive lawful and compliant meal periods, nor were they paid meal period premiums when a meal period was missed, short or delayed. (Rauchwerger Decl. ¶ 15.) The premium owed for failing to provide a legally mandated meal period is payment of one hour of wages at the employee’s regular rate of pay. The range of this claim depends on the number of meal periods that Class Members were denied as a result of Defendant’s policies. (*Id.*)

To determine Defendant’s reasonable exposure for meal break violations, Plaintiff’s Counsel first determined from the sample data that only about 40% of shifts were longer than five hours and were therefore eligible for meal breaks. (Rauchwerger Decl. ¶ 16.) This means that roughly 83,804 shifts qualified for a meal break. (*Id.*) Assuming a 20% meal break violation rate would lead to approximately 16,760 meal break violations. (*Id.*) At the average hourly rate of \$23.62, this would make Defendant’s reasonable exposure \$395,871.20. (*Id.*)

Plaintiff also alleged that he and the class members were not able to take compliant rest periods each shift due to the nature of the work. (Rauchwerger Decl. ¶ 17.) Plaintiff also alleged that Defendant’s rest break policy was not compliant because the written policy only specified that employees were entitled to rest breaks for every four hours worked, but left out the part regarding “or majority fraction thereof.” (*Id.*)

Estimating that each Class Member did not receive a compliant rest period approximately

two days per week, and using the average regular rate of \$23.62, Defendant’s reasonable exposure to the Class for missed rest breaks is \$1,979,450.48. (Rauchwerger Decl. ¶ 17.) There are unique risks to the unrecorded rest period claims because, *inter alia*, employers are not required to record rest periods and such rest periods are paid. Thus, unlike meal periods, where there are often records showing whether an employee was subject to a violation, there is no such evidence to prove a missed rest period. Managing such claims at trial may be exceedingly difficult. Plaintiff would depend on sample witness testimony and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. (See *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 31 (explaining “[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling.”).)

3. Failure to Reimburse Necessary Business Expenses

Plaintiff contends that Defendant failed to reimburse Plaintiff and other hourly paid employees for necessary business expenses, and more specifically, for when employees had to use their personal internet to conduct telehealth sessions during COVID. (Rauchwerger Decl. ¶ 18.) California Labor Code section 2802 requires employers indemnify their employees for all necessary expenditures made by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

For this claim, if Defendant was required to reimburse Class Members \$5 per workweek for use of their personal devices or internet, that would equate to \$209,510 in reimbursable business expenses. (*Id.*)

4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226 (a))

Plaintiff contends that due to allegedly working off the clock and lack of premium pay for purportedly noncompliant meal/rest periods and/or accurate calculation and payment of wages, the Class Members’ wage statements were not accurate. (See *Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal.5th 93, 117 (Because premium pay for missed meal and rest breaks

1 under Lab. Code, § 226.7 compensated employees for the work performed during a break period
2 and therefore constituted wages within the meaning of Lab. Code, §§ 200, subd. (a), 203, 226,
3 penalties are available for an employer’s alleged failure to timely pay or report such payments.).)
4 Pursuant to Labor Code section 226(e), statutory damages are “fifty dollars (\$50) for the initial
5 pay period in which a violation occurs and one hundred dollars (\$100) per employee for each
6 violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars
7 (\$4,000).” As proving actual damages for each employee on a class-wide basis is unlikely, this
8 claim would likely be subject to a one-year statutory period.³

9 Plaintiff contends that each paystub failed to include complete itemizations for monies
10 owed, including overtime, the number of hours the Class Members worked and the appropriate
11 hourly rates, and the meal and rest break premiums owed to the Class Members. (Rauchwerger
12 Decl. ¶ 19.) There are 361 class members that worked during the one-year statute of limitations.
13 (*Id.*) If we assume that each employee received an average of \$1,000 in penalties, that would
14 equate to a total penalty amount of \$361,000 (*Id.*)

15 Some hurdles to obtaining class certification would apply to this claim. Defendant
16 contends that the wage statements were accurate in all material respects and that Labor Code
17 section 226 requires “a knowing and intentional failure by an employer to comply with
18 subdivision (a).” (*See* Lab. Code § 226(e); *see also* Lab. Code § 226(e)(3) (For purposes of this
19 subdivision, a “knowing and intentional failure” does not include an isolated and unintentional
20 payroll error due to a clerical or inadvertent mistake.”)) In this regard, Defendant contends that
21 any failure to include information on wage statements was an inadvertent or isolated mistake,
22 and Defendant had a reasonable, good faith belief that its employees were being provided wage
23 statements in compliance with Labor Code section 226(a). (*Naranjo v. Spectrum Sec. Servs., Inc.*

24
25 ³ “Courts that have recognized that two limitations periods apply to Section 226 have uniformly found that the \$50
26 and \$100 figures recoverable under Section 226(e)(1) are penalties, subject to a one-year limitation period.” *Novoa*
27 *v. Charter Communs., Ltd. Liab. Co.* (E.D. Cal. 2015) 100 F.Supp.3d 1013, 1025 (citing *Taylor v. W. Marine Prods.*
28 *(N.D. Cal. Sep. 19, 2014) No. C 13-04916 WHA, 2014 U.S. Dist. LEXIS 133728, at *7; Sarkisov v. Stonemor*
*Partners (N.D. Cal. Apr. 3, 2014) L.P., No. C 13-04834 WHA, 2014 U.S. Dist. LEXIS 47021, at *2; Mouchati v.*
Bonnie Plants, Inc. (C.D. Cal. Mar. 6, 2014) No. EDCV 14-00037-VAP (SPx), 2014 U.S. Dist. LEXIS 60855, at
**8-9; Singer v. Becton, Dickinson & Co., Med.-Safe Sys. (S.D. Cal. July 23, 2008) No. 08cv821 IEG (BLM), 2008*
*U.S. Dist. LEXIS 56326, at *4-5e.*

(2024) 15 Cal.5th 1056, 1065 [“We now conclude that if an employer reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law.”].).

5. Failure to Timely Pay All Final Wages

An employer who willfully fails to pay any wages due to a terminated employee at the time of their termination or within 72 hours for employees who quit, may be assessed a waiting time penalty pursuant to California Labor Code section 203 . The waiting time penalty is an amount equal to the employee’s daily rate of pay for each day the wages remain unpaid, up to a maximum of 30 calendar days. There were approximately 260 separated employees during the three-year statutory period. (Rauchwerger Decl. ¶ 20.) Using the hourly rate of \$23.62, the potential exposure for waiting time penalties is \$1,105,416 (\$23.62/hour x 6⁴ hours/per x 30-day maximum x 260 separated employees). (*Id.*) However, to prevail under Section 203, Plaintiff must establish not only the underlying violations addressed above and that the wages were paid late, but also that Defendant’s failure to timely pay such wages was willful. (Lab. Code § 203(a).) A good faith belief in a legal defense precludes any finding of willfulness. (*Naranjo v. Spectrum Sec. Servs., Inc.* (2023) 88 Cal.App.5th 937, 944–948 [affirming the trial court’s ruling that, although meal period premiums were owed to employees, a good faith dispute that such premiums were owed precluded imposing waiting time penalties], affirmed on other grounds in *Naranjo v. Spectrum Sec. Servs., Inc.* (2024) 15 Cal.5th 1056, 1065; *Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54.)

6. Civil Penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”) (Lab. Code § 2698 et seq.)

PAGA penalties for unpaid minimum wages and meal period violations are \$100 per pay period for each initial violation and \$200 per pay period for any subsequent violation. (Lab. Code § 2699(f)(2).) Courts have held that there is no “subsequent violation” until an employer has

⁴ Given most employees did not work 8 hours per day, Plaintiff’s counsel used an average of 6 hours instead of 8 hours for purposes of the 203 penalty calculation. (Rauchwerger Decl. ¶ 20.)

1 been notified by the Labor Commissioner or a court that its practices are in violation of the law.
2 (*Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355–356; *Amaral v. Cintas*
3 (2008)163 Cal.App.4th 1157). A Court also may award a lesser amount “if, based on the facts
4 and circumstances of the particular case, to do otherwise would result in an award that is unjust,
5 arbitrary and oppressive, or confiscatory.” (Lab. Code § 2699 (e)(2).) The statute of limitations
6 under PAGA is one year.

7 There are approximately 10,071 PAGA Pay Periods worked by Aggrieved Employees
8 during the PAGA Period (Rauchwerger Decl. ¶ 21.) Assuming that no penalty “stacking” will
9 apply (i.e. the imposition of multiple penalties per pay period) and that the Court will use the
10 penalty rate of \$100 per pay period, potential PAGA penalties equal \$1,007,100. (*Id.*) Plaintiff’s
11 PAGA claims are also predicated on the violations described above, and thus subject to the same
12 disputes and defenses. (*Id.*) Additionally, PAGA states that a court has discretion to award a
13 lesser amount than the maximum penalty. (Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit*
14 *Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 [reducing PAGA award]; *Carrington v.*
15 *Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 [affirming the trial court’s PAGA penalty
16 award of \$5 per violation].) These uncertainties increased the risks related to the PAGA cause
17 of action.

18 Pursuant to California Labor Code section 2699(l), the Settlement Agreement, this
19 motion, and all supporting papers have been provided to the Labor and Workforce Development
20 Agency and a proof of service is attached as **Exhibit 2** to the Declaration of Devin Rauchwerger.
21 (Rauchwerger Decl. ¶ 22.) The amount to be paid to the LWDA (\$31,687.50 of the \$48,750
22 total) comports with PAGA settlement amounts approved by other courts.⁵

23 **7. Unfair Competition (Bus & Prof. Code § 17200 et. seq.)**

24 Though Plaintiff may assert a UCL claim for purported wage violations, remedies are

25 ⁵ See *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA
26 payment of \$7,500 to LWDA out of \$6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11,
27 2013) 2013 WL 3541217 (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common fund
28 settlement); *Hicks v. Toys ‘R’ Us–Delaware, Inc.* (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving
\$5,000 PAGA payment in a case involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov.
27, 2012) 2012 WL 5941801 at *14 (approving PAGA penalties of \$10,000 as part of \$2.5 million settlement).

1 still limited to restitution and injunctive relief. (See *Korea Supply v. Lockheed Martin Corp.*
2 (2003) 29 Cal.4th 1148-51; see also *Cortez v. Purolator Air Filtration Prod. Co.* (2000) 23
3 Cal.4th 163, 173.) In wage-and-hour class actions, a UCL claim typically has little to no
4 independent value and is instead pled for the purposes of extending the statute of limitations on
5 unpaid wage claims to four years. The unfair competition law's (UCL) four-year limitations
6 period, rather than the shorter periods of limitation applicable to contractual or statutory wage
7 claims, governs a UCL action based on failure to pay wages because the UCL provides that
8 "any" action on "any" UCL cause of action is subject to the four-year period of limitations.
9 (*Cortez v. Purolator Air Filtration Prod. Co.* (2000) 23 Cal.4th 163, 178.)

10 **8. Total Damages.**

11 Based on the above estimates, the total amount of possible damages that the class could
12 be awarded at trial, including the applicable 35% portion of PAGA penalties, is approximately
13 \$4,816,117.68⁶. (Rauchwerger Decl. ¶ 23.) However, after taking into account the strengths and
14 weaknesses of each claim, the unique risks associated therewith, the general risks associated with
15 litigating the case, and the significant additional costs and expenses that would be incurred by
16 both sides in litigating the Action through class certification, trial, and appeals, Class Counsel's
17 assessment of this case is that payment of \$750,000.00 is an excellent result that provides the
18 class with a certain recovery while avoiding the risks, delay, and expense associated with
19 continued litigation. (*Id.*)

20 **IV. CLASS CERTIFICATION ANALYSIS**

21 **A. The Class Is Properly Certified For Settlement Purposes.**

22 Plaintiff seek certification of this action for settlement purposes under California Code
23 of Civil Procedure section 382. The California Supreme Court has summarized that:

24 "Code of Civil Procedure section 382 authorizes class actions when the question
25 is one of a common or general interest, of many persons, or when the parties are
26 numerous, and it is impracticable to bring them all before the court. The party
27 seeking certification has the burden to establish the existence of both an
ascertainable class and a well-defined community of interest among class
members. The "community of interest" requirement embodies three factors: (1)

28 ⁶ This takes into account 35% of the total PAGA penalties that would be awarded to the PAGA members, since
65% of the PAGA penalties go to the LWDA. (Rauchwerger Decl. ¶ 23.)

1 predominant common questions of law or fact; (2) class representatives with
2 claims or defenses typical of the class; and (3) class Representatives who can
adequately represent the class.”

3 (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (internal citations
4 omitted)).

5 While Defendant reserves all rights to dispute Plaintiff’s ability to satisfy any of these
6 requirements, the Parties agree that for purposes of settlement, Defendant will not raise such a
7 dispute. (Rauchwerger Decl. ¶ 24.) Therefore, the proposed Settlement Class should be certified
8 for purposes of settlement.

9 **1. The Proposed Class is Numerous and Ascertainable**

10 The class consists of approximately 619 members with specifically identifiable
11 information. (Rauchwerger Decl. ¶ 25.) The requirement of Code of Civil Procedure section 382
12 that there be “many” parties to a class action suit is indefinite and has been construed liberally.
13 (*Renken v. Compton City School Dist.* (1962) 207 Cal.App.2d 106, 113.) No set number is
14 required as a matter of law for the maintenance of a class action. (*Hebbard v. Colgrove* (1972)
15 28 Cal.App.3d 1017, 1030; See also *Bowles v. Superior Court* (1955) 44 Cal.2d 574 (class with
16 10 members sufficiently numerous); see also *Rose v. City of Hayward* (1981) 126 Cal.App.3d
17 926, 934 (class of 48 members satisfies the numerosity requirement).) Class members are
18 “ascertainable” where they may be readily identified without unreasonable expense or time by
19 reference to official records. (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932.) Here,
20 the class is sufficiently numerous and there is a common interest to many persons as this claim
21 will confer significant benefits to those persons. (Rauchwerger Decl. ¶ 25.) Furthermore, it
22 would be impracticable to bring all of them before the Court on an individual basis. (*Id.*)
23 Moreover, the Class is readily ascertainable as Defendant is in possession of contact information
24 for its current and former employees via regularly maintained employment records. (*Id.*)

25 **2. The Community of Interest Requirement Is Also Satisfied.**

26 “The ‘community of interest’ requirement embodies three factors: (1) predominant
27 common questions of law or fact; (2) class representatives with claims or defenses typical of the
28 class; and (3) class representatives who can adequately represent the class.” (*Sav-On Drug*

1 *Stores, Inc. v. Superior Court, supra*, 34 Cal.4th 319, 326.) Here, the common questions of law
2 and fact clearly exist, as the underlying dispute involves Defendant’s employment policies and
3 practices which affected all the employees in the proposed Class. (Rauchwerger Decl. ¶ 25.)
4 Plaintiff is typical of the class he seeks to represent because Plaintiff worked for Defendant,
5 contends that the alleged violations occurred as a result of a common policy affecting all the
6 putative Class Members, and contends that he had a similar experience to each of the Class
7 Members because they were all subjected to common policies and practices by Defendant.
8 (Declaration of Gerardo Tovar “Tovar Decl.” ¶¶ 3-4.)

9 **B. Class Counsel Has Extensive Experience In Class Actions And Similar Cases.**

10 Class Counsel has extensive experience in similar cases and believe that the proposed
11 Settlement is adequate, reasonable, fair, and in the best interests of all class members.
12 (Rauchwerger Decl. ¶¶ 26-27.)

13 **C. The Class Representative Is Adequate.**

14 Plaintiff Tovar is an adequate Class Representative who has similar, co-extensive
15 interests with the proposed Class Members. (Rauchwerger Decl. ¶ 28.) Plaintiff has remained
16 intricately involved in this lawsuit and has understood his responsibilities with respect to the
17 class. (Tovar Decl. ¶ 5.) Plaintiff understood from the beginning that he had a duty to look out
18 for the best interests of the Class, and he understood that by taking on this case, he was agreeing
19 to take on significant responsibility, which could include having to be deposed and provide
20 extensive information to respond to discovery requests, as well as potentially testifying at trial.
21 (*Id.*) Plaintiff has taken his responsibility as Class Representative seriously and learned the laws
22 as they relate to the payment of wages, requirements for meal and rest periods, and other issues
23 related to this Action. (*Id.* at ¶ 6.) Moreover, Plaintiff is unaware of any conflicts between his
24 own interests and goals and the interests and goals of anyone else in the Class. (*Id.* at ¶ 7.)

25 **D. The Proposed Class Representative Service Payment To Plaintiff Is**
26 **Reasonable.**

27 In connection with the final approval hearing, Class Counsel will request approval of the
28 Class Representative Service Payment of \$10,000.00 to Plaintiff for his service as Class

1 Representative and in consideration for the broader release and Civil Code section 1542 waiver
2 set forth in Settlement Agreement sections 5.1 and 5.1.1. This amount is based on the extent of
3 Plaintiff's assistance in this lawsuit, including providing relevant information and documents to
4 Class Counsel, answering various questions and providing additional information throughout the
5 entirety of the case, reviewing the complaint, attending mediation, and reviewing the settlement
6 agreement and having related discussions. (*See e.g., Tovar Decl. ¶¶ 4-6.*) This amount is also
7 reasonable given that Plaintiff is providing a broader release than the release applicable to
8 Participating Class Members and is waiving the protections of Civil Code section 1542, as
9 provided in Settlement Agreement sections 5.1 and 5.1.1. The requested incentive payment is
10 well within the accepted range of awards for purposes of preliminary approval. (*See, e.g. In re*
11 *Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393).

12 **E. Settlement Administration Costs are Reasonable.**

13 The parties have agreed upon Phoenix Class Action Administration Solutions
14 ("Phoenix") to administer the settlement. (Rauchwerger Decl. ¶ 29.) Phoenix works in the
15 settlement administration business, and costs of administration should not exceed \$12,000.00.
16 (Declaration of Jodey Lawrence on behalf of Phoenix Class Action Administration Solutions
17 "Phoenix Decl.") Plaintiff respectfully request that the Court approve the appointment of
18 Phoenix as the Settlement Administrator. (*See, e.g., Phoenix Decl. ¶¶ 5-16.*)

19 **V. THE PROPOSED SETTLEMENT**

20 **A. The Settlement Class & Released Claims**

21 **Class & Class Size:** The "Class" is defined as "all current and former non-exempt or
22 hourly paid employees who worked for Defendant at any time during the Class Period." (SA §
23 1.5.) The "Class Period" means the period from August 29, 2020 through the date the Court
24 grants preliminary approval of the Settlement. (SA § 1.12.) A "Participating Class Member" is
25 a Class Member who does not submit a valid and timely Request for Exclusion from the
26 Settlement. (SA § 1.34.)

27 An "Aggrieved Employee" means "all current and former non-exempt or hourly paid
28 employees who worked for Defendant in California at any time during the PAGA Period." (SA

§ 1.4.) The “PAGA Period” means the period from August 29, 2023 through the date the Court grants preliminary approval of the Settlement. (SA § 1.30.)

Release: The release applicable to Participating Class Members is appropriately limited to claims that were or could have been alleged or asserted in the pleadings filed in this Action, to the extent they are based on the facts alleged in the pleadings and in any related notice submitted to the Labor and Workforce Development Agency (“LWDA”). (SA § 5.2.) The release includes, without limitation, claims for unpaid overtime, unpaid minimum wages, meal and rest period violations, waiting time penalties, wage statement violations, payroll record violations, reporting time pay, split shift premiums, unreimbursed business expenses, unfair competition, and all statutory penalties predicated on those claims, together with any associated interest and attorneys’ fees recoverable under California law. (*Id.*)

All Aggrieved Employees similarly release the Released Parties from any and all claims for civil penalties or other remedies recoverable under the Labor Code Private Attorneys General Act (“PAGA”) that were or could have been alleged or asserted in the pleadings filed in this Action, to the extent they are based on the facts alleged in the pleadings and in any related notice submitted to the LWDA. (SA § 5.3.) This release includes, without limitation, claims for PAGA civil penalties predicated on alleged unpaid overtime, unpaid minimum wages, meal and rest period violations, waiting time penalties, wage statement violations, payroll record violations, reporting time pay, split shift premiums, unreimbursed business expenses, unfair competition, and any associated interest and attorneys’ fees recoverable under PAGA. (*Id.*)

B. The Settlement Payment

Defendant will, through the Settlement Administrator, establish a non-reversionary Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00). (SA §§ 1.21, 3.1.) The Gross Settlement Amount will be used to fund the Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service Payment, Class Counsel’s attorneys’ fees and litigation expenses, and the Administration Expenses Payment. (SA §§ 1.21, 3.2.) Individual Class Payments will be allocated as ten percent (10%) wages, to be reported on IRS Forms W-2 and subject to applicable payroll withholdings, and ninety percent

(90%) interest and penalties, to be reported on IRS Forms 1099. (SA § 3.2.4.1.) Defendant will separately pay the employer's share of payroll taxes attributable to the wage portion of the Individual Class Payments, which will not be deducted from the Gross Settlement Amount. (SA §§ 1.21, 3.1.) Defendant will fund the Gross Settlement Amount in two equal installments of \$375,000, with the first payment due thirty (30) calendar days after Final Approval and the second payment due no later than three hundred sixty-five (365) calendar days after Final Approval. (SA § 4.2.)

C. Settlement Payment Distribution Plan

All payments associated with the Settlement will be paid from the Gross Settlement Amount of \$750,000.00. (SA §§ 1.21, 3.1.) The Gross Settlement Amount will fund: (1) attorneys' fees to Class Counsel in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount, or \$262,500; (2) litigation costs not to exceed \$20,000; (3) Administration Expenses not to exceed \$12,000; (4) a Class Representative Service Payment not to exceed \$10,000 to Plaintiff; (5) PAGA penalties in the amount of \$48,750, of which 65% (\$31,687.50) will be paid to the California Labor and Workforce Development Agency ("LWDA") and 35% (\$17,062.50) will be distributed to Aggrieved Employees through Individual PAGA Payments; and (6) the remaining Net Settlement Amount to Participating Class Members through Individual Class Payments. (SA §§ 3.2.1-3.2.5.)

1. Calculating Participating Class Members' Individual Class Payments

After deduction of the Court-approved attorneys' fees, litigation costs, Class Representative Service Payment, Administration Expenses, and PAGA Payments, the remaining Net Settlement Amount will be distributed to Participating Class Members as Individual Class Payments. (SA §§ 1.27, 3.2.4.)

Each Participating Class Member's Individual Class Payment will be calculated by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, thereby determining the value of each Workweek, and then multiplying that value by the number of Workweeks worked by each Participating Class Member during the Class Period. (SA § 3.2.4.)

1 The estimated Net Settlement Amount is approximately \$396,750.00. (Rauchwerger
2 Decl. ¶ 30.) Based on the current estimates, the average Individual Class Payment is
3 approximately \$640.95. (*Id.*) A rough estimate of the average amount to be recovered by
4 aggrieved employees for their share of the PAGA penalties is \$47.26 per employee.
5 (Rauchwerger Decl. ¶ 31.)

6 The Parties agree that this allocation formula is fair and reasonable because it
7 compensates Participating Class Members on a pro rata basis according to the amount of time
8 worked during the Class Period, thereby reasonably reflecting each individual's potential
9 recovery in light of the disputed claims and risks of continued litigation. (SA § 3.2.4;
10 Rauchwerger Decl. ¶ 32.)

11 **2. Calculating Aggrieved Employees' Individual PAGA Payments**

12 The Individual PAGA Payments will be calculated from the Aggrieved Employees' 35%
13 share of the PAGA Penalties, totaling \$17,062.50. (SA §§ 3.2.5, 3.2.5.1.) The Settlement
14 Administrator will divide that amount by the total number of PAGA Pay Periods worked by all
15 Aggrieved Employees during the PAGA Period and multiply the resulting value by each
16 Aggrieved Employee's number of PAGA Pay Periods. (SA § 3.2.5.1.)

17 **3. Distribution of Settlement Payments**

18 Within fourteen (14) days after Defendant fully funds the Gross Settlement Amount, the
19 Settlement Administrator will distribute the Court-approved payments as follows: (1) Individual
20 Class Payments to Participating Class Members; (2) Individual PAGA Payments to Aggrieved
21 Employees; (3) the LWDA PAGA Payment to the LWDA; (4) the Class Representative Service
22 Payment to Plaintiff; (5) Class Counsel's attorneys' fees and litigation expenses to Class
23 Counsel; and (6) the Administration Expenses Payment to the Settlement Administrator. (SA §
24 4.3.)

25 Checks not negotiated within 180 days after mailing will be void. Any uncashed
26 Individual Class Payment or Individual PAGA Payment checks will not revert to Defendant.
27 Instead, the funds represented by those checks will be transmitted to the California Controller's
28 Unclaimed Property Fund in the name of the respective Class Member or Aggrieved Employee.

1 (SA §§ 4.3.3-4.3.4.)

2 **D. Notice To The Class Members**

3 Attached to the Declaration of Devin Rauchwerger as Exhibit 3 is the [Proposed] Court
4 Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval. (SA §
5 1.11; Rauchwerger Decl. ¶ 33, **Exhibit 3**.) The Notice will be sent to the Class members in
6 English and in Spanish. (*Id.*) To protect the rights of absent class members, the court must
7 provide class members with the best class action settlement notice practicable. (See Cal. Rules
8 of Court, rule 3.769(f); *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12.) The
9 primary purpose of class notice is to provide affected parties with due process rights reasonably
10 calculated to apprise interested parties of the pendency of the action affecting their interests and
11 an opportunity to present their objections. (See *Ryan v. Cal. Interscholastic Fed'n – San Diego*
12 *Section* (2001) 94 Cal.App.4th 1048, 1072.) The proposed Notice of Class Action Settlement
13 and Hearing Date for Final Court Approval satisfies these requirements. (SA §§ 1.11, 7.4.2;
14 Rauchwerger Decl. ¶ 33, **Exhibit 3**.) The proposed Class Notice ensures the Settlement Class is
15 alerted to the terms of the Settlement and allows Settlement Class Members to protect their
16 rights. (SA §§ 1.11, 7.4.2-7.7; Rauchwerger Decl. ¶ 33, **Exhibit 3**.) The proposed notice plan,
17 calling for first-class mailed notice to all members of the Settlement Class, is consistent with
18 notice plans approved by state and federal courts and constitutes the best notice practicable. (SA
19 § 7.4.1-7.4.5; Rauchwerger Decl. ¶ 33; *Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 966;
20 *Cooper v. Am. Sav. & Loan Ass'n.* (1976) 55 Cal.App.3d 274, 285.)

21 Prior to mailing the Notice, the Settlement Administrator will update addresses using the
22 National Change of Address database, perform skip tracing for notices returned with forwarding
23 information or updated addresses, and promptly re-mail notices as appropriate. (SA §§ 1.10,
24 7.4.2-7.4.4.)

25 **VI. CONCLUSION**

26 For the foregoing reasons, the Parties respectfully submit that the Settlement's terms are
27 fair, adequate, and reasonable and that it is in the best interest of the Class Members. Under the
28 applicable class action criteria and guidelines, this Class should be conditionally certified, the

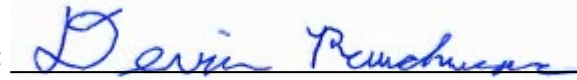
1 Settlement should be preliminarily approved, the Class should be notified regarding the
2 Settlement, and the Court should schedule a final approval hearing for 150 days after the Court
3 grants Preliminary Approval.

4
5 Dated: August 31, 2026

Respectfully submitted,

DOMB & RAUCHWERGER LLP

6
7 By:



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