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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN BERNARDINO**

11 ALDO OLIVERA FLORES, an individual, on
12 behalf of himself, the State of California, as a
13 private attorney general, and on behalf of all
14 others similarly situated,

15 Plaintiff,

16 v.

17 OPTIMUM, INC., a California non-profit
18 corporation; and DOES 1 TO 50,

19 Defendants.
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Case Number: CIVSB2331827

**Plaintiff's Notice of Motion and Motion for
Preliminary Approval of Class Action
Settlement**

*[Declarations of Jonathan Melmed, Esq. and
Aldo Olivera Flores, and [Proposed] Order filed
concurrently herewith]*

Date: July 15, 2025

Time: 9:00 a.m.

Judge: Hon. Donald Alvarez

Dept: S23

Complaint Filed: December 7, 2023

FAC Filed: December 5, 2024

Trial Date: None Set

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

2 **NOTICE IS HEREBY GIVEN** that, on July 15, 2025 at 9 a.m., or as soon thereafter as the
3 matter may be heard, in Department S23 of San Bernardino County Superior Court for the State of
4 California, located at the San Bernardino Justice Center, 247 West Third Street, San Bernardino, CA
5 92415 before the Honorable Donald Alvarez, pursuant to Cal. Code of Civ. Pro. § 382 and California
6 Rule of Court 3.769(c), plaintiff Aldo Olivera Flores (“Plaintiff”) individually, and on behalf of all
7 others similarly situated, and on behalf of the Aggrieved Employees (as defined herein) will and does
8 hereby move this Court for entry of an Order:

- 9 1. Preliminarily certifying the Class for purposes of settlement;
- 10 2. Preliminarily appointing Plaintiff as Class Representative for purposes of settlement;
- 11 3. Preliminarily appointing Jonathan Melmed and Laura M. Supanich of Melmed Law
12 Group P.C. as Class Counsel for purposes of settlement;
- 13 4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon
14 the terms set forth in the Parties’ Settlement Agreement and Release of Class Action (the “Settlement
15 Agreement”), including payment by defendant Optimum, Inc. (“Defendant”) of the non-reversionary
16 Gross Settlement Amount (“GSA”) of \$450,000.00, plus the employer’s side payroll taxes;
- 17 5. Preliminarily approving Class Counsel’s request for up to one-third of the GSA as
18 attorneys’ fees (*i.e.*, up to \$150,000.00), plus reimbursement of actual litigation costs up to
19 \$30,000.00;
- 20 6. Preliminarily approving, from the GSA, an allocation of PAGA penalties of
21 \$20,000.00, including payment to the Labor and Workforce Development Agency for its share of 75%
22 of the PAGA penalties pursuant to PAGA in an amount of \$15,000.00;
- 23 7. Preliminarily approving a Class Representative incentive award to Plaintiff Aldo
24 Olivera Flores in an amount of up to \$7,500.00 from the Gross Settlement Amount to compensate him
25 for the burdens, responsibilities, time, effort and risks involved in coming forward on behalf of the
26 Class;
- 27 8. Appointing Apex Class Action Administration (“Settlement Administrator”) as the
28 third-party Settlement Administrator for mailing notices and for settlement administration, and

1 approving that \$25,000.00 be deducted from the GSA for the costs of settlement administration; and

2 9. Approving the proposed Notice of Proposed Class Action Settlement (“Class Notice”),
3 and ordering they be disseminated to the Class as provided in the Settlement Agreement.

4 This Motion is based upon the supporting Memorandum of Points and Authorities, the
5 Declarations of Jonathan Melmed, Esq., and Plaintiff Aldo Olivera Flores, the Settlement Agreement,
6 and the [Proposed] Order filed concurrently herewith, along with such evidence and argument of
7 counsel as may be presented at the hearing, and such additional matters as the Court may consider at
8 the hearing on this Motion.

9 Lastly, given the multiplicity of issues addressed in this Motion, and because this Motion is
10 unopposed, Plaintiff believes that there is good cause to exceed the page limit set forth in California
11 Rule of Court 3.764(c)(2), and respectfully requests that the Court consider Plaintiff’s memorandum
12 of points and authorities, which exceeds the statutory page limit.

13
14 Dated: May 8, 2025

MELMED LAW GROUP P.C.

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17 **JONATHAN MELMED**

18 Attorney for Plaintiff, the Putative Class, and the
19 Aggrieved Employees
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TABLE OF CONTENTS

I.	INTRODUCTION	8
II.	BACKGROUND	9
A.	PROCEDURAL HISTORY, DISCOVERY, AND INVESTIGATION	9
B.	MEDIATION AND SETTLEMENT..... ERROR! BOOKMARK NOT DEFINED.	
III.	SUMMARY OF THE PARTIES' CLAIMS AND DEFENSES	11
A.	PLAINTIFF'S MINIMUM WAGE CLAIM	12
B.	PLAINTIFF'S OVERTIME CLAIM	14
C.	PLAINTIFF'S REST PERIOD CLAIMS.....	15
D.	PLAINTIFF'S MEAL PERIOD CLAIM	15
E.	PLAINTIFF'S CLAIM FOR FAILURE TO MAINTAIN ACCURATE RECORDS.....	16
F.	PLAINTIFF'S CLAIM FOR UNTIMELY WAGES DURING EMPLOYMENT	17
G.	PLAINTIFF'S CLAIM FOR WAITING TIME PENALTIES	17
H.	PLAINTIFF'S WAGE STATEMENT CLAIM	19
I.	PLAINTIFF'S UNFAIR COMPETITION CLAIM	19
J.	PLAINTIFF'S PAGA CLAIM	20
K.	DEFENDANT'S TOTAL DENIAL OF LIABILITY AND ITS LEGAL AND FACTUAL DEFENSES	21
L.	FAIR VALUATION OF PLAINTIFF'S CLAIMS	24
IV.	SUMMARY OF BASIC SETTLEMENT TERMS	24
A.	THE SETTLEMENT SUM, ATTORNEYS' FEES, COSTS, AND REPRESENTATIVE AWARD	25
B.	NET FUNDS AVAILABLE TO CLASS CLAIMANTS.....	25
C.	RELEASE.....	25
D.	CLASS NOTICE AND ADMINISTRATION	26
E.	NOTICE PROCESS.....	28
F.	CY PRES DISTRIBUTION.....	29
G.	TAX TREATMENT.....	29
V.	PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT	30
A.	NUMEROSITY AND ASCERTAINABILITY	30
B.	WELL-DEFINED COMMUNITY OF INTEREST	31
1.	<i>Commonality</i>	31
2.	<i>Typicality</i>	31
3.	<i>Adequacy of Representation</i>	31
4.	<i>Superiority</i>	32
VI.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT.....	32
A.	THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS AND REFLECTS A FAIR COMPROMISE OF CLAIMS AND RISK FACTORS	34

1	B. THE EXTENT OF THE INFORMAL DISCOVERY AND INVESTIGATION WAS MORE THAN	
	SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT	34
2	C. THE RISKS INHERENT IN CONTINUED LITIGATION ARE GREAT	34
3	D. THE CLASS NOTICE PLAN CONFORMS TO ALL APPLICABLE STATUTES AND RULES	35
4	VII. PLAINTIFF’S COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR	
	LITIGATION.	36
5	VIII. THE ATTORNEYS’ FEES UNDER THE SETTLEMENT AGREEMENT ARE FAIR.....	36
6	IX. THE CLASS REPRESENTATIVE INCENTIVE AWARD IS FAIR AND APPROPRIATE...	37
7	X. THE COURT SHOULD APPOINT RUST CONSULTING AS SETTLEMENT	
	ADMINISTRATOR	38
8	XI. SUBMISSION TO THE LWDA.....	39
9	XII. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING	39
10	XIII. CONCLUSION	39

TABLE OF AUTHORITIES

CASES

<i>Alberts v. Aurora Behavioral Health Care</i> , (2015) 241 Cal. App. 4th 388, 410 -----	15
<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157 -----	23
<i>Amaro v. Gerawan Farming, Inc.</i> (E.D. Cal. May 19, 2016) 2016 WL 3924400-----	16
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591, 620 (1987)-----	30
<i>Archibald v. Cinerama Hotels</i> , 15 Cal. 3d 853, 861 (1976)-----	35
<i>Arenas v. El Torito Rests., Inc.</i> , 183 Cal. App. 4th 723, 732 (2010)-----	31
<i>Armenta v. Osmose, Inc.</i> (2005) 135 Cal.App.4th 314, 324 -----	13
<i>Atempa v. Pedrazzani</i> (2018) 27 Cal.App.5th 809 -----	23
<i>Augustus v. ABM Security Services, Inc.</i> (2016) 2 Cal. 5th 257, 269-----	14, 15
<i>Barboza v. West Coast Digital GSM, Inc.</i> , 179 Cal. App. 4th 540, 546 (2009) -----	31
<i>Bell v. Home Depot U.S.A., Inc.</i> (E.D. Cal. Apr. 11, 2017) No. 212CV02499JAMCKD, 2017 WL 1353779 -----	21
<i>Bond v. Ferguson Enterprises, Inc.</i> , No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30, 2011)-----	37
<i>Brinker Rest. Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004-----	15, 21
<i>Bush v. Superior Court</i> , 10 Cal. App. 4th 1374 (1992)-----	32
<i>Caliber Bodyworks, Inc. v. Superior Court</i> , 134 Cal. App. 4th 365 (2005)-----	19
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504 -----	23
<i>Cho v. Seagate Tech. Holdings, Inc.</i> , 177 Cal. App. 4th 734 (2009) -----	32
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996) -----	passim
<i>Duran v. U.S. Bank Nat'l Ass'n</i> (2014) 59 Cal.4th 1-----	21
<i>Ellis v. Naval Air Rework Facility</i> , 87 F.R.D. 15 (N.D. Cal. 1980), aff'd, 661 F.2d 939 (9th Cir. 1981) -----	36
<i>Garner v. State Farm Mut. Auto. Ins. Co.</i> , No. CV 08 1365 CW (EMC), 2010 WL 1687832 ((N.D. Cal. Apr. 22, 2010) -----	38
<i>Glass v. UBS Fin. Servs.</i> , No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. Jan. 26, 2007)-----	38
<i>Hubbs v. Big Lots Stores, Inc.</i> (C.D. Cal. Mar. 16, 2018) No. LACV1501601JAKASX, 2018 WL 5264141 -----	21
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 -----	36
<i>Laffitte v. Robert Half International</i> (2016), I Cal. 5 th 480 (Cal. Aug. 11, 2016)-----	36
<i>Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.</i> , 244 F.3d 1152 (9th Cir. 2001) -----	31
<i>Louie v. Kaiser Found. Health Plan, Inc.</i> , CASE NO. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314 (S.D. Cal. Oct. 6, 2008)-----	38
<i>Mamika v. Barca</i> (1998) 68 Cal.App.4th 487-----	18
<i>Medraza v. Honda of N. Hollywood</i> , 166 Cal. App. 4th 89 (2008) -----	30
<i>Parson v. Golden State FC, LLC</i> , 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010-----	17
<i>Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004 -----	22
<i>Ritenour v. Carrington Mortg. Servs., LLC</i> (C.D. Cal. Sept. 12, 2018) No. SACV1602011CJCDFMX, 2018 WL 5858658 -----	21
<i>See's Candy Shops v. Superior Court</i> (2012) 210 Cal. App. 4th 889-----	13

1	<i>Vasquez v. Coast Valley Roofing, Inc.</i> , 266 F.R.D. 482 (E.D. Cal. 2010)-----	38
2	<i>Washington Mut. Bank v. Superior Court</i> , 24 Cal. 4th 906 (2001) -----	31
3	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001) -----	32, 33
4	<i>West v. Circle K Stores, Inc.</i> , NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558 (E.D. Cal. Oct. 19, 2006)-----	38

Statutes, Rules and Regulations

5	29 C.F.R. § 785.48-----	13
6	Cal. Code Civ. Proc. § 382 -----	30
7	Cal. R. Ct. 3.769 -----	32
8	Labor Code § 203-----	18
9	Labor Code § 226-----	18

OTHER AUTHORITIES

10	<i>Manual For Complex Litigation</i> (Third) § 30.41 (1995) -----	33
11	<i>Newberg on Class Actions</i> (“Newberg”) § 11:25 (4th ed. 2002) -----	33

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

This Motion seeks preliminary approval of a wage-and-hour class action settlement between Plaintiff and Defendant on behalf of *all individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period*. (the “Class” or the “Class Members”). The Class Period is defined as the period of time from December 7, 2019, through January 1, 2025.

Defendant has identified 255 Class Members that worked a total of approximately 20,000 workweeks in the Class Period. After engaging in substantial independent investigation and hard-fought negotiations, the Parties agreed to a *non-reversionary* gross settlement amount of \$450,000.00 plus the employer-side payroll taxes. Declaration of Jonathan Melmed in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“JM Decl.”) ¶ 4.

Subject to court approval, after deductions for attorneys’ fees and litigation expenses to Class Counsel, enhancement award payment to the Class Representative, Settlement Administration expenses, and a payment to the Labor Workforce and Development Agency (“LWDA”) under PAGA, the remaining amount (the “Net Settlement Amount”) will be distributed to Class Members who did not opt out of the Settlement as follows:

Gross Settlement Amount	\$450,000.00
Attorneys’ Fees	(up to \$150,000.00)
Litigation Costs	(up to \$30,000.00)
Settlement Administration Costs	(up to \$25,000.00)
Service Award to Plaintiff	(up to \$7,500.00)
PAGA Payment to LWDA	(\$15,000.00)
Net Settlement Amount	\$222,500.00

Through this motion, Plaintiff requests entry of an order: (1) conditionally certifying the Class under Cal. Code of Civil Procedure § 382 and California Rule of Court 3.769(c) for settlement purposes and preliminarily approving the Settlement; (2) approving the proposed Class Notice to be distributed

1 to Class Members pursuant to the Settlement Agreement;¹ (3) appointing Apex Class Action
2 Administration as the Settlement Administrator; and (4) scheduling a hearing for final approval, for the
3 Court to consider the ultimate fairness of the settlement and the requested fees and costs following
4 distribution of notice to the Class, and examination of the results of the notice process.

5 **II. Background**

6 **A. Procedural History, Discovery, and Investigation**

7 On December 7, 2023, Plaintiff submitted a letter to the California Labor and Workforce
8 Development Agency (“LWDA”) to notify the LWDA, pursuant to PAGA, of Plaintiff’s intent to seek
9 civil penalties against Defendant for violations of Labor Code sections 201, 202, 203, 204, 210, 226,
10 226.3, 226.7, 227.3, 246, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5,
11 1199, 2802, 2804, and others that may be applicable; and California Industrial Welfare Commission
12 (“IWC”) Wage Orders 16-2001, and others that may be applicable (the “Applicable Wage Order”).
13 (Cal. Code of Regs., tit. 8, § 11160; JM Decl. ¶ 8. The letter attached Plaintiff’s original complaint and
14 incorporated the original complaint by reference, and thus sought penalties for claims identical to those
15 alleged in the case. For the Court’s reference, a copy of Plaintiff’s letter to the LWDA is attached as
16 **Exhibit B** to the concurrently filed Declaration of Jonathan Melmed.

17 On December 7, 2023, Plaintiff filed a class action complaint alleging causes of action against
18 Defendant for **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code
19 sections 1194 and 1194.2, and the Applicable Wage Order; **(2)** failure to pay proper overtime wages in
20 violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order; **(3)** failure to
21 provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section
22 226.7 and the Applicable Wage Order; **(4)** failure to provide compliant meal periods and pay missed
23 meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage
24 Order; **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174;
25 **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210;
26 **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202,
27

28 ¹ The Notice of Proposed Class Action and PAGA Settlement (“Class Notice”) and the Share Form are attached
to the Settlement Agreement as internal **Exhibits 1** and **2**, respectively. *See*, Melmed Decl. at **Exhibit A.**)

1 and 203; **(8)** failure to indemnify all necessary business expenditures in violation of Labor Code section
2 2802; **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections
3 226 and 226.3; **(10)** failure to pay sick leave in violation of Labor Code section 246 ; and **(11)** deceptive,
4 fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s
5 Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210.) JM Decl. ¶ 9.

6 On August 12, 2024, Plaintiff filed a Motion for Leave to File the First Amended Complaint.
7 On or about October 1, 2024, this Court granted Plaintiff’s Motion for Leave. On December 5, 2024,
8 Plaintiff filed a First Amended Complaint, alleging causes of action against Defendant for those
9 described in the original Complaint and adding one cause of action for penalties based on the foregoing
10 pursuant to PAGA. (Lab. Code, §§ 2698–2699.6.) JM Decl. ¶ 10.

11 **B. Mediation and Settlement**

12 Thereafter, the Parties agreed to attend a private mediation with experienced wage and hour
13 mediator, Tripper Ortman. JM Decl. ¶ 11. Prior to the mediation, Plaintiff’s counsel conducted
14 significant informal discovery. *Id.* Discovery, investigation, and prosecution have included, among
15 other things, numerous telephonic conferences with Plaintiff; inspection and analysis of hundreds of
16 pages of documents, including Defendant’s relevant policies and employee handbook and other
17 information produced by Plaintiff and Defendant; analysis of work-related data from a sample of Class
18 Members and Aggrieved Employees; an analysis of the legal positions taken by Defendant;
19 investigation into the viability of class treatment of the claims asserted in the action; analysis of
20 potential class-wide damages, including information sufficient to understand Defendant’s potential
21 defenses to Plaintiff’s claims; research of the applicable law with respect to the claims asserted in the
22 Operative Complaint and the potential defenses thereto; and assembling and analyzing of data for
23 calculating damages. *Id.*

24 Among other key pieces of information, Plaintiff’s counsel requested in its informal discovery
25 letter the wage statements and time records for a statistically significant sample size of Class Members
26 during the Class Period. JM Decl. ¶ 12. Defendant produced a sampling of randomly-selected
27 employees. *Id.* This sampling included payroll records and timesheets for the Class Members’ shifts
28

1 during the Class Period. *Id.* From these records, Plaintiff’s expert was able to carefully craft a damages
2 model for each of the categories of alleged claims for which the data would reflect violations. *Id.*

3 On December 10, 2024, the Parties participated in a full-day mediation with Tripper Ortman,
4 who is a full-time mediator with extensive experience in California wage and hour class action lawsuits.
5 JM Decl. ¶ 13. Prior to and during mediation, the Parties exchanged further information and discussed
6 all aspects of the case, including the risks and delays posed by additional litigation, the risks to both
7 Parties for proceeding with a motion for class certification, along with the evolving legal landscape and
8 evidentiary challenges to establishing respective claims and defenses. JM Decl. ¶ 14. These were
9 contentious issues because of the factual and legal complexity of the case. *Id.* However, the Parties
10 were able to reach a settlement. *Id.*

11 The Settlement Agreement was negotiated at arm’s length between counsel using a professional
12 and well-respected third-party neutral. Counsel for both parties were thoroughly familiar with the
13 complex legal and factual questions at issue in this litigation. JM Decl. ¶ 68. The settlement was the
14 product of a non-collusive settlement process in which the Parties were forced to make significant
15 compromises in the interest of reaching a full and complete settlement of the action. JM Decl. ¶ 73.
16 The final settlement amount was reached as a result of reasonable compromises in light of these
17 considerations. *Id.* The Parties entered into a long form Settlement Agreement which is now presented
18 for Court approval. JM Decl. ¶ 14.

19 From Class Counsel’s review of the facts, strengths, and weaknesses of the case, the risks and
20 delays posed by further litigation, and Class Counsel’s own prior litigation experience, Class Counsel
21 believe that the recovery for each Settlement Class Member is fair and reasonable taking into
22 consideration the amounts received in other wage and hour class actions, the risks inherent in litigation
23 of this genre, and the reasonable tailoring of each Settlement Class Member’s claims to the settlement
24 award he or she will receive. JM Decl. ¶ 69.

25 The Parties now seek the Court’s preliminary approval of the Settlement.

26 **III. Summary of the Parties’ Claims and Defenses**

27 In the operative First Amended Complaint, Plaintiff, individually and on behalf of the putative
28 Class alleges causes of actions for: **(1)** failure to pay all minimum wages (Labor Code §§ 1194, 1194.2,

1 1197); **(2)** failure to pay all overtime wages (Labor Code §§ 510); **(3)** failure to provide rest periods
2 and pay missed rest period premiums (Labor Code § 226.7 and the applicable IWC Wage Orders); **(4)**
3 failure to provide meal periods and pay missed meal period premiums (Labor Code §§ 512, 226.7 &
4 the applicable IWC Wage Orders); **(5)** failure to maintain accurate employment records in violation of
5 Labor Code section 1174; **(6)** failure to pay wages timely during employment in violation of Labor
6 Code sections 204, 210; **(7)** failure to pay all wages earned and unpaid at separation in violation of
7 Labor Code sections 201, 202, and 203; **(8)** failure to indemnify all necessary business expenditures in
8 violation of Labor Code section 2802; **(9)** failure to furnish accurate itemized wage statements in
9 violation of Labor Code sections 226 and 226.3; **(10)** failure to pay sick leave in violation of Labor
10 Code section; **(11)** deceptive, fraudulent, or otherwise unlawful business practices based on the
11 foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210);
12 and **(12)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6).
13 JM Decl. ¶ 15.

14 As used herein for ease of reference to the reader, the term “Plaintiff and the Class” shall refer
15 to Plaintiff, the putative Class Members, and the Aggrieved Employees.

16 **A. Plaintiff’s Minimum Wage Claim**

17 Labor Code § 1197 states the California requirement that employees must be paid at least the
18 minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful.
19 JM Decl. ¶ 16. Similarly, Labor Code § 1194 entitles “any employee receiving less than the legal
20 minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum
21 wage.” Further, the IWC Wage Order obligates employers to pay each employee minimum wages for
22 all hours worked. *Id.*

23 These minimum wage standards apply to each hour employees worked for which they were not
24 paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee is
25 unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an
26 average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314,
27 324. JM Decl. ¶ 17.

1 Here, Plaintiff claimed that Defendant expected he and the Class Members to perform
2 extensive, time-consuming duties before they were permitted to clock in, depriving them of
3 compensation for all hours worked. JM Decl. ¶ 18. These unpaid tasks allegedly included packing
4 materials, loading boxes onto the company truck, driving the truck to retrieve necessary materials, and
5 returning it to the job site. *Id.* Moreover, Plaintiff asserted that at the end of the workday, upon the
6 truck's arrival back on-premises, Plaintiff and the Class Members were clocked out; however, they
7 were regularly required to complete additional tasks, such as unloading the truck and taking out the
8 trash. *Id.*

9 Plaintiff further argued that he and the Class Members were also required to don and doff
10 protective gear, including safety vests, protective glasses, and hard hats, off-the-clock. JM Decl. ¶ 19.
11 Plaintiff alleged that he and the Class Members were not paid for this time; they did not receive any
12 payment until they begin working after they have completed their duties of putting on their protective
13 gear. *Id.* Further, Plaintiff alleged that they were not paid for their time after their shift is over, for the
14 time spent removing the necessary protective gear. *Id.* As a result, Plaintiff alleged that he and the
15 Class Members were not compensated for all hours worked. *Id.*

16 The United States Supreme Court has consistently held that even under the Fair Labor Standards
17 Act ("FLSA"), 29 U.S.C. §201, et seq., such activities must be compensable. *IBP, Inc. v.*
18 *Alvarez* (2005) 546 U.S. 21, 30 ("[A]ctivities, such as the donning and doffing of specialized protective
19 gear, that are 'performed either before or after the regular work shift, on or off the production line, are
20 compensable under the portal-to-portal provisions of the Fair Labor Standards Act if those activities
21 are an integral and indispensable part of the principal activities for which covered workmen are
22 employed and are not specifically excluded by Section 4(a)(1).' ")

23 As the Court in *Pehle v. Dufour*, 2012 WL 4490955, at *8 (E.D. Cal. Sept. 28, 2012) held:

24 All activities which are "an integral and indispensable part of the principal activities"
25 for which covered workmen are employed, including the donning and doffing of
26 specialized protective gear either before or after the regular work shift, are compensable
27 under the FLSA. *Steiner v. Mitchell*, 350 U.S. 247, 256, 76 S.Ct. 330, 100 L.Ed. 267
28

(1956) (holding that time spent by private employees at a battery plant changing clothes and showering before and after shifts was compensable because the activities were necessary to protect the workers from toxins in the workplace); *see also IBP, Inc. v. Alvarez*, 546 U.S. 21, 37- 42, (2005) (time spent by meat processing plant employees walking between locker rooms and production areas after donning special safety gear in the locker rooms is compensable, as it is time employees spent waiting to doff protective clothes because that time was not a “preliminary or postliminary activity” excluded from FLSA coverage by the Portal-to-Portal Act).

Thus, even under the FLSA, which allows for the averaging of minimum wage across all hours worked, the failure to pay Plaintiff and the Class Members for their time donning and doffing equipment is considered a violation of law. JM Decl. ¶ 20. As a result, Plaintiff asserted that he and the Class Members were denied compensation for all hours worked, in violation of Cal. Labor Code § 1194. *Id.*

B. Plaintiff’s Overtime Claim

Labor Code section 510 states, “[e]ight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.” JM Decl. ¶ 21.

For the reasons stated above, Plaintiff alleged that he and the Class worked certain hours for which they were not paid. JM Decl. ¶ 22. Because Plaintiff and the Class spent eight hours or more working on “compensated” time, this uncompensated time for work completed pre-shift and during meal periods should have been compensated at an overtime rate. *Id.* Instead, Plaintiff asserted that no compensation was paid at all to him and the Class. *Id.*

Further, Plaintiff argued that when Defendant has paid overtime wages, they were not paid at the proper rate to Plaintiff and the Class. Plaintiff alleged that he and the Class only received overtime

1 compensation based on their base hourly wage and not based on their regular rate of pay. JM Decl. ¶
2 23. As a result, Plaintiff argued that Defendant did not take this compensation into consideration when
3 calculating the regular rate of pay used in overtime calculations. *Id.*

4 **C. Plaintiff's Rest Period Claims**

5 Pursuant to the IWC Wage Order, an employer must authorize and permit all employees to take
6 ten (10) minute duty free rest periods for every major fraction of four hours worked. Labor Code §
7 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery
8 period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the
9 Industrial Welfare Commission (“IWC”). See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.
10 5th 257, 269 (concluding that “during rest periods employers must relieve employees of all duties and
11 relinquish control over how employees spend their time.”). JM Decl. ¶ 24.

12 Here, Plaintiff alleged that Defendant failed to authorize or permit Plaintiff and the Class
13 Members to take duty-free rest periods of not less than ten (10) minutes for every major fraction of
14 four (4) hours worked. JM Decl. ¶ 25. Specifically, due to the demands of the job, Plaintiff and the
15 Class Members virtually never authorized or permitted to take a compliant rest period and were not
16 properly informed of their legal entitlement to such breaks. *Id.*

17 Further, Plaintiff asserted that Defendant's written rest period policy was non-compliant, as it
18 only authorized rest periods for every four hours worked, but not every major fraction thereof. JM Decl.
19 ¶ 26.

20 In addition to failing to authorize and permit compliant rest periods, Plaintiff alleged that he
21 and the Class were not compensated with one (1) hour's-worth of pay at their regular rate of
22 compensation when they were not provided with a compliant rest period in accordance with Labor
23 Code § 226.7(b). JM Decl. ¶ 27.

24 **D. Plaintiff's Meal Period Claim**

25 Under California Labor Code Section 512 and the IWC Wage Order, no employer shall employ
26 any person for a work period of more than five (5) hours without providing a meal period of not less
27 than thirty (30) minutes. JM Decl. ¶ 28. During this meal period of not less than thirty (30) minutes,
28 the employee is to be completely free of the employer's control and must not perform any work for the

1 employer. *Id.* If the employee does perform work for the employer during the thirty (30) minute meal
2 period, the employee has not been provided a meal period in accordance with the law. *Id.* Also, the
3 employee is to be compensated for any work performed during the thirty (30) minute meal period. *Id.*
4 Finally, an employer may not employ an employee for a work period of more than ten (10) hours a day
5 without providing the employee with another meal period of not less than thirty (30) minutes. *Id.*

6 Here, due to the demands of their jobs, Plaintiff alleged that he and the Class Members
7 frequently had their meal periods cut short. JM Decl. ¶ 29. Indeed, Plaintiff claimed that Defendant
8 expressed frustration if Plaintiff and the Class Members took more than a 15-minute meal period when
9 a project was expected to exceed an eight-hour workday. *Id.* Further, Plaintiff argued that he and the
10 Class Members often went six hours without receiving their meal periods. *Id.*

11 In addition to failing to authorize and permit compliant meal periods, Plaintiff alleged that he
12 and the Class Members were not compensated with one (1) hour's worth of pay at their regular rate of
13 compensation when they were not provided with a compliant meal period in accordance with Labor
14 Code § 226.7. JM Decl. ¶ 30.

15 **E. Plaintiff's Claim for Failure to Maintain Accurate Records**

16 Labor Code section 1174 states, "[e]very person employing labor in this state shall... [k]eep, at
17 a central location in the state or at the plants or establishments at which employees are employed,
18 payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at
19 the respective plants or establishments." JM Decl. ¶ 31. The "Records" section of the applicable IWC
20 Wage Order states that every employer shall keep accurate information with respect to each one of its
21 employees, including time records showing when the employee begins and ends each work period and
22 meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid
23 each payroll period. *Id.*

24 Further, Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure
25 to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100
26 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699
27 for a violation of Labor Code section 1174(d). JM Decl. ¶ 32.

1 Plaintiff alleged that Defendant violated these requirements by failing to accurately record
2 employee hours worked including, but not limited to, Defendant's failure to record the proper
3 beginning and end of each work period and each meal period taken, the applicable rates of pay, and the
4 wages paid. JM Decl. ¶ 33.

5 **F. Plaintiff's Claim for Untimely Wages During Employment**

6 Labor Code § 204 expressly requires employers who pay employees on a weekly, biweekly, or
7 semimonthly basis to pay all wages "not more than seven calendar days following the close of the
8 payroll period." JM Decl. ¶ 34.

9 Here, Plaintiff alleged that due to Defendant's failure to pay to Plaintiff and the Class minimum
10 wage and overtime compensation and meal and rest period premiums as described above, Defendant
11 failed to timely pay its employees within seven calendar days following the close of payroll in
12 accordance with Labor Code § 204 on a regular and consistent basis. *See Parson v. Golden State FC,*
13 *LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after
14 *Ling vs. P.F. Chang's China Bistro, Inc.* that a failure to pay rest period premiums can support claims
15 under Labor Code §§ 203 and 204). JM Decl. ¶ 35.

16 Due to Defendant's faulty policies described above, Plaintiff alleged that he and the Class were
17 not compensated for each and every hour worked or at the appropriate rate. JM Decl. ¶ 36.

18 **G. Plaintiff's Reimbursement Claim**

19 Plaintiff claimed that he and the Class, at the direction of Defendant and/or with Defendant's
20 knowledge and acquiescence, used their personal resources to perform necessary work-related duties
21 for Defendant. JM Decl. ¶ 37. Plaintiff claimed that he and the Class were frequently required to use
22 their personal cell phones for work-related purposes, including calling each other at job sites,
23 administering assignments, and coordinating daily tasks. *Id.* Plaintiff claimed that this usage amounted
24 to at least an hour per day. *Id.* Despite this significant work-related use, Plaintiff contended that he and
25 the Class were not reimbursed for their phone usage at all, effectively forcing them to bear these costs
26 without compensation. *Id.*

27 Plaintiff argued that Defendant does not maintain an expense reimbursement policy and/or
28 practice stating that Defendant will affirmatively reimburse the aggrieved employees for a reasonable

1 portion of their monthly personal cell phone bills and other expenses necessarily incurred in their
2 discharge of their duties, as required by *Cochran v. Schwan's Home Service, Inc.* (Cal. Aug. 12, 2014)
3 228 Cal.App.4th 1137 [We hold that when employees must use their personal cell phones for work-
4 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
5 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed
6 is a reasonable percentage of their cell phone bills.”] [reversing denial of class certification in cell
7 phone reimbursement class action and setting forth the applicable law for these claims]]; *Aguilar v.*
8 *Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) [granting plaintiffs’ motion for partial
9 summary judgment on the plaintiffs’ cell phone reimbursement claim]; *Ritchie v. Blue Shield of*
10 *California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen) [certifying class
11 of cell phone reimbursement claim and adopting the logic of *Cochran*.] Defendant’s failure to
12 reimburse Plaintiff and the Class for their on-going business expenses incurred in the discharge of their
13 duties continues through the present day. JM Decl. ¶ 38.

14 In short, Plaintiff asserted that Defendant’s policies and/or practices required and expected,
15 and/or with Defendant’s knowledge thereof permit, Plaintiff and the Class Members to pay for business
16 expenses incurred in direct consequence of discharging their duties on behalf of Defendant, without
17 reimbursement in full by Defendant for such expenses. JM Decl. ¶ 39.

18 **H. Plaintiff’s Claim for Waiting Time Penalties**

19 Plaintiff alleged that, as a result of Defendant’s failure to pay Plaintiff and the Class for meal
20 and rest period premiums, and failure to pay all minimum and overtime wages, Defendant has violated
21 and continues to violate Labor Code section 203. Labor Code section 203 provides “if an employer
22 willfully fails to pay ... any wages of an employee who is discharged or who quits, the wages of the
23 employee shall continue as a penalty...” for up to 30 days. (Lab. Code § 203; *Mamika v. Barca* (1998)
24 68 Cal.App.4th 487, 492). JM Decl. ¶ 40.

25 Due to Defendant’s faulty policies described above, Plaintiff alleged that he and the Class
26 whose employment with Defendant concluded were not compensated for each and every hour worked
27 or at the appropriate rate. Additionally, Plaintiff alleged that Defendant has failed to pay all Class
28 Members for meal and rest period premiums and all unpaid minimum and overtime wages, whose sums

1 were certain, at the time of termination or within seventy-two (72) hours of their resignation and have
2 failed to pay those sums for thirty (30) days thereafter. JM Decl. ¶ 41.

3 **I. Plaintiff's Wage Statement Claim**

4 Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial day period
5 in which a violation of Labor Code §226 occurs and \$100 for each subsequent pay period, not to exceed
6 \$4,000.00, as well as an award of costs and reasonable attorneys' fees, for all such pay periods. JM
7 Decl. ¶ 42.

8 An employee suffering injury as a result of a knowing and intentional failure by an employer
9 to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty
10 dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per
11 employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four
12 thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." *Id.* §
13 226(e). JM Decl. ¶ 43.

14 Plaintiff argued that due to Defendant's failure to provide Plaintiff and the Class with lawful
15 off-duty meal and rest periods and/or pay meal and rest period premiums, and failure to pay minimum
16 and overtime wages, the wage statements issued by Defendant do not indicate the correct amount of
17 gross wages earned, total hours worked, net wages earned, or the applicable hourly rates in effect during
18 the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor
19 Code § 226(a)(1), (2), (5) and (9). JM Decl. ¶ 44.

20 **J. Plaintiff's Sick Leave Claim**

21 Labor Code section 246 provides that every employee who works in California for the same
22 employer for 30 or more days within a year from the commencement of employment is entitled to paid
23 sick days. (Lab. Code, § 246, subd. (a).) JM Decl. ¶ 45. These paid sick days generally accrue at a rate
24 of not less than one hour per every 30 hours worked, and must be paid out using the employees' regular
25 rate of pay. (Lab. Code, § 246, subds. (b), (l).) *Id.* The "regular rate of pay" for these purposes must
26 factor in all nondiscretionary payments for work performed by the employee, including non-
27 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees' base
28

1 hourly rate. (Lab. Code, § 246, subds. (1)(1), (2); see, e.g., *Ferra v. Loews Hollywood Hotel, LLC*
2 (2021) 11 Cal.5th 858, 878.). *Id.*

3 Here, Plaintiff argued that Defendant employed Plaintiff and the Class 30 or more days within
4 a year from the commencement of employment. JM Decl. ¶ 46. Plaintiff asserted that Defendant
5 nevertheless failed to fully pay Plaintiff and the Class for all sick pay that was lawfully earned and
6 accrued. *Id.* Thus, Plaintiff asserted that by failing to fully pay accrued sick time, Defendant violated
7 California Labor Code provisions including, but not limited to, section 246. *Id.*

8 **K. Plaintiff's Unfair Competition Claim**

9 Plaintiff contended that by committing the above-described Labor Code violations, Defendant
10 engaged in unlawful, unfair, and/or fraudulent business practices in violation of Cal. Bus. & Profs.
11 Code §§ 17200-17204 and is liable for restitution to the Plaintiff and the Class. JM Decl. ¶ 47.
12 Moreover, this cause of action lengthens the statute of limitations of the Class's claims to four years
13 preceding the filing of the Complaint. *Id.*

14 Here, Plaintiff alleged that, by virtue of the allegations that Defendant failed to properly pay
15 the Employees their wages as described above, Defendant was liable for restitution in the same amount
16 of the unlawfully withheld wages described above. Because the relief sought under Plaintiff's UCL
17 claims—namely, in the form of restitution for unpaid wages—was coterminous with Plaintiff's other
18 claims, Plaintiff's UCL allegations did not materially change Plaintiff's analysis of Defendant's
19 exposure. JM Decl. ¶ 48.

20 **L. Plaintiff's PAGA Claim**

21 The Private Attorney General Act of 2004 ("PAGA" - Labor Code §§ 2699-2699.5) allows an
22 aggrieved employee to bring suit against an employer for violations of most Labor Code provisions.
23 Suits brought under PAGA do not affect the employee's right to recover other remedies under state or
24 federal law. *See* Labor Code § 2699(g); *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th
25 365, 375 (2005). JM Decl. ¶ 49. Wherever the Labor Code gives the Labor and Workforce
26 Development Agency discretion to assess a civil penalty, a court is authorized to exercise the same
27 discretion. Labor Code § 2699(e)(1). The statute of limitations for PAGA suits is one year. An
28 employee who prevails in an action brought under PAGA is entitled to an award of reasonable

1 attorney's fees and costs. The penalties available under PAGA are those provided in the underlying
2 Labor Code provision that is violated or, if no penalty is listed, those provided by PAGA itself. Where
3 the Labor Code does not provide for a penalty, PAGA establishes a civil penalty of \$100 for each
4 aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per
5 pay period for each subsequent violation. Labor Code § 2699(f). For any civil penalties collected under
6 PAGA, seventy-five percent of the penalties are distributed to the LWDA for enforcement and
7 education, and twenty-five percent is distributed to the aggrieved employees. *Id.*

8 Plaintiff alleged that by virtue of each of Defendant's foregoing Labor Code violations, Plaintiff
9 and the Class are, in addition to other remedies, entitled to civil penalties under PAGA. JM Decl. ¶ 50.
10 This cause of action opens Defendant to additional penalties for the Labor Code violations, in addition
11 to attorneys' fees and costs. *Id.*

12 **M. Defendant's Total Denial of Liability and Its Legal and Factual Defenses**

13 Defendant denied and continues to deny generally the claims and contentions alleged in the
14 Complaint. JM Decl. ¶ 51.

15 **First**, as to Plaintiff's donning and doffing claim, Defendant argued that employees typically
16 clocked in at the entrance to the facility, and subsequently donned their protective gear (and vice versa
17 at the end of their shifts). JM Decl. ¶ 52. Defendant argued that employees clocked in immediately
18 upon entering the facility and before they donned their protective gear. *Id.* Defendant explained that if
19 any employee chose to don their protective gear prior to clocking in then that employee did so in direct
20 conflict with Defendant's expectations and at his or her own choosing and should not be compensated
21 for such time. *Id.* As a result, Defendant provided compelling factual support to its defense that all
22 employees who are required to don and doff do so while 'on the clock.' *Id.*

23 **Second**, Defendant contended that any overtime compensation received by Plaintiff and the
24 Class was minimal. Defendant further asserted that regular rate violations could only be attributed to
25 engineers, as they were the only Class Members who received commissions, and therefore the Class
26 would be significantly limited as to this claim. JM Decl. ¶ 53. Defendant further argued that any
27 additional pay was discretionary, and thus not required to be incorporated into the employees' regular
28 rate of pay. *Id.*

1 **Third**, Defendant argued that Plaintiff and Class Members were provided with compliant rest
2 periods. Defendant asserted that no documentary evidence demonstrated that Defendant deprived
3 Plaintiff and Class Members of timely and complete rest periods. JM Decl. ¶ 54. Likewise, Defendant
4 argued that Plaintiff will be unable to certify a rest period class because her theory of recovery is not
5 based on facts common to all putative class members. *Id.* Defendant argued that Plaintiff’s rest period
6 claim was not “likely to prove amenable to class treatment.” (*Brinker Rest. Corp. v. Superior Court*
7 (2012) 53 Cal.4th 1004, 1021.) Defendant’s argument was based on the premise that there were
8 different rest break policies applicable to various subgroups of non-exempt employees and that no
9 uniform rest break policy applied across-the-board to all of Defendant’s “non-exempt employees.” For
10 that reason, Defendant contended that a court would have to conduct individualized inquiries as to
11 which employees were subjected to the variant rest break policies, and thus these claims are
12 inappropriate for class treatment. (*Duran v. U.S. Bank Nat’l Ass’n* (2014) 59 Cal.4th 1, 30–31 [“Unless
13 an employer’s uniform policy or consistent practice violates wage and hour laws, California courts
14 have been reluctant to certify class actions alleging misclassification.”]). *Id.*

15 **Fourth**, Defendant argued that Plaintiff and the Class were provided with compliant meal
16 breaks. JM Decl. ¶ 55. Defendant asserted that no documentary evidence demonstrated that Defendant
17 had a uniform policy or practice of interrupting, shorting, or depriving Plaintiff and the Class of their
18 meal breaks. *Id.* Additionally, Defendant argued that it did not promulgate an unlawful auto-deduct
19 meal break policy, specifically alleging that its operations ceased for a half hour each day to allow
20 employees to take a meal period. *Id.*

21 Defendant further argued that Plaintiff could not obtain class certification because the allegedly
22 noncompliant meal periods were not recorded in any meaningful way that would permit the damages
23 to be calculated with any reasonable degree of certainty. *Id.* In *Brinker Restaurant Corp. v. Superior*
24 *Court* (2012) 53 Cal.4th 1004, the California Supreme Court held an employer is required only to
25 “provide” breaks, but is not required (and, in this context, simply cannot as a practical matter) to ensure
26 that they are taken. Given that Defendant had a policy of offering the Class Members permissive meal
27 periods on their schedules, any meal periods that might appear noncompliant were presumably
28 voluntarily waived by Plaintiff and the Class. *Id.*

1 **Fifth**, Defendant argued that any inaccuracies regarding wage statement violations under § 226
2 were the result of innocuous errors and not intentional misconduct. Defendant asserted that the
3 employees did not suffer any material harm or confusion from these errors, as the issue with the
4 paystubs were simply listing the incorrect pay period, not estimating wages. Thus, Defendant argued
5 that Plaintiff would be unable to prove “injury” for purposes of recovering penalties under Labor Code
6 section 226, subdivision (e). JM Decl. ¶ 56.

7 **Sixth**, Defendant argued that Plaintiff is not entitled to recover PAGA penalties at the
8 subsequent violation rate of \$200 per pay period. JM Decl. ¶ 57. California’s appellate courts have held
9 that “[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not
10 the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware
11 [of the violation]” and therefore, until a Court or the Commissioner issues a finding of a violation, the
12 initial \$100 violation rate applies for each pay period in which the alleged violation occurred. (*Amaral*
13 *v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209.) *Id.*

14 In ascertaining Defendant’s exposure for this claim, Plaintiff also considered several important
15 cases. First, courts to consider the issue have refused to “stack” PAGA penalties, severely limiting the
16 recoverable PAGA penalties. (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529
17 [approving PAGA penalty reduction to \$5 per pay period]; accord *Atempa v. Pedrazzani* (2018) 27
18 Cal.App.5th 809.) JM Decl. ¶ 58.

19 Thus, Defendant argued that even if the Plaintiff were able to establish any violation of the
20 Labor Code, the PAGA penalties assessed for these violations will be computed at the \$100 rate, as
21 opposed to the \$100 per pay period rate at maximum, and there is a likelihood that a further reduction
22 of the penalty to \$5 per pay period as approved in *Carrington* would apply given Defendant’s
23 compliance with the Labor Code as discussed above. Defendant further argued that even if Plaintiff
24 were able to recover some PAGA penalties on behalf of other aggrieved employees, courts frequently
25 use their discretion under Labor Code section 2699, subdivision (e)(2), to significantly reduce PAGA
26 penalties where such penalties would be unjust, arbitrary, and improper. JM Decl. ¶ 59.

27 In considering these significant risks and others, as well as the time, expense and cost of
28 litigation, trial and appeals, the Parties agreed that Settlement was appropriate, and that the Settlement

1 here is fair and reasonable. JM Decl. ¶ 60.

2 **N. Fair Valuation of Plaintiff's Claims**

3 As explained above, the issues in this case were hotly contested—both legally and factually.
4 While Plaintiff continues to believe in the merits of the case, Defendant argued that it fully complied
5 with California's wage and hour laws, and thus faced minimal exposure, if any. JM Decl. ¶ 64.
6 Therefore, the Gross Settlement Amount of \$450,000.00 is an excellent result and within the zone of
7 reasonableness for all parties. *Id.*

8 The Gross Settlement Amount in the Settlement Agreement was reached only after the case
9 was thoroughly investigated by Plaintiff's counsel. JM Decl. ¶ 65. As explained above, Plaintiff's
10 counsel reviewed, among other key pieces of information, the records of a sampling of randomly-
11 selected employees, which Plaintiff's counsel determined would provide a statistically significant
12 sample size with a high-degree of confidence for Plaintiff's expert's statistical analysis. *Id.* This
13 sampling included payroll records and timesheets for the Class Members' shifts during the Class
14 Period. *Id.* Plaintiff's counsel also conducted a detailed examination of Defendant's relevant policies
15 to inform Plaintiff's counsel's analysis of Defendant's potential exposure. *Id.* From these records,
16 Plaintiff's expert was able to carefully craft a damages model for each of the categories of alleged
17 claims for which the data would reflect violations. *Id.*

18 These documents, along with the other investigation and discovery described above, were
19 sufficient to allow counsel to act intelligently in reaching the Settlement Agreement and determining
20 that the Gross Settlement Amount was adequate. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
21 1802.) Indeed, after a thorough review of all available evidence in the case, Plaintiff's counsel have
22 concluded that the Gross Settlement Amount represents an excellent result for the Class. JM Decl. ¶
23 66.

24 The estimated 255 Class Members will enjoy substantial monetary recovery amounting to an
25 average recovery per class member of approximately \$872.55 net and an approximate maximum
26 recovery of \$1,738.28 net. JM Decl. ¶ 67.

27 **IV. Summary of Basic Settlement Terms**

28 The Settlement Agreement entered into by the parties is attached as **Exhibit A** to the JM Decl.

1 and incorporated herein by reference in its entirety. The following is a summary of the principal terms
2 of the Settlement Agreement:

3 **A. The Settlement Sum, Attorneys' Fees, Costs, and Representative Award**

4 The non-reversionary Gross Settlement Amount ("GSA") of \$450,000.00 to be paid by
5 Defendant in full settlement includes: (1) Class Counsel's attorney's fees in a sum of up to one third of
6 the GSA as attorneys' fees (*i.e.*, up to \$150,000.00); (2) litigation costs of up to \$30,000.00; (3) the
7 California Labor Workforce and Development Agency PAGA Penalties in the sum of \$15,000.00; (4)
8 settlement administration costs to Apex Class Action Administration in the sum of \$25,000.00; and (5)
9 the Class Representative service award (\$7,500.00). Settlement Agreement, at §§ 8.1, 8.3.

10 **B. Net Funds Available to Class Claimants**

11 "Net Settlement Amount" is the Gross Settlement amount minus: Administrative Expenses;
12 Class Attorney Fees and Expenses; 75% of the share of the Gross Settlement Amount allowed toward
13 penalties pursuant to the Labor Code Private Attorney General Act of 2004 ("PAGA"), codified at
14 Labor Code sections 2698 through 2699.6, which are payable to the California Labor and Workforce
15 Development Agency ("LWDA"); and Plaintiff's Incentive Award. Settlement Agreement, at § 1.25.

16 After all Court-approved deductions from the non-reversionary GSA, it is estimated that
17 **\$222,500.00** (the "Net Settlement Amount" or "NSA") will be distributed to the Class Members.

18 Individual Settlement Amounts to be paid to the Class Participants will be paid from the Net
19 Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a
20 "checks cashed" basis based on the proportional number of weeks worked by each Class Member
21 during the Class Period (the "Individual Settlement Payments"). Settlement Agreement, at § 8.2.

22 Individual payments to the Aggrieved Employees from the PAGA portion of the settlement
23 (*i.e.*, the portion not being sent to the LWDA), will be calculated and apportioned based on the pro rata
24 number of weeks worked by each particular PAGA Settlement Class member during the PAGA Period
25 as a proportion of all weeks worked by all PAGA Settlement Class members during the PAGA Period.
26 Settlement Agreement, at § 8.3.

27 **C. Release**
28

1 Upon the Effective Date, the Releasing Parties shall be deemed to each release the Released
2 Parties, and each of them, of and from any and all Released Claims arising during the Class Period.
3 The Released Claims shall mean those claims arising out of or related to the allegations set forth in the
4 operative complaint and/or PAGA notice to the California Labor and Workforce Development Agency
5 that arose during the Class Period and/or PAGA Period, including claims for: (1) failure to pay
6 minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the
7 applicable IWC Wage Order(s); (2) failure to pay proper overtime wages in violation of Labor Code
8 sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); (3) failure to provide compliant
9 rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the
10 applicable IWC Wage Order(s); (4) failure to provide compliant meal periods and pay missed meal
11 period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage
12 Order(s); (5) failure to maintain accurate employment records in violation of Labor Code section 1174;
13 (6) failure to pay timely wages during employment in violation of Labor Code sections 204, 210;
14 (7) failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202,
15 and 203; (8) failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804;
16 (9) failure to provide complete and accurate wage statements in violation of Labor Code sections 226
17 and 226.3; (10) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing
18 in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210);
19 (11) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6); and
20 (12) all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing. Settlement
21 Agreement, at § 1.34.

22 No other claims are released other than those claims specifically plead in the Complaint or
23 otherwise specifically identified herein. This Settlement Agreement will not release any person, party,
24 or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability
25 benefits of any nature. Nor does it release any claims, actions, or causes of action which may be
26 possessed by Class Members under state or federal discrimination statutes, including, without
27 limitation, the California Fair Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh
28 Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of

1 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the
2 Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their
3 implementing regulations and interpretive guidelines. *Id.*

4 **D. Class Notice and Administration**

5 Subject to Court approval, the parties agree to engage Apex Class Action Administration to be
6 responsible for administration of the Class Settlement and related matters. Settlement Agreement §
7 1.38 The Settlement Administrator will be responsible for: mailing the Class Notice and Share Form
8 to Class Members; posting notice of entry of final order and judgment certifying the Class Settlement
9 and approving this Settlement Agreement; handling inquiries from Class Members concerning the
10 Class Notice; determining Individual Settlement Amounts; determining individual payments to
11 members of the PAGA Settlement Class; maintaining the settlement funds in an appropriate interest-
12 bearing account; preparing, administrating, and distributing Individual Settlement Amounts to Class
13 Participants; preparing, administrating, and distributing individual payments to members of the PAGA
14 Settlement Class; distributing the portion of the PAGA Payment payable to the LWDA; issuing a final
15 report and performing such other duties as the Parties may direct. Additionally, the Settlement
16 Administrator will handle all tax document preparation and reporting, including state and federal tax
17 forms, if any. Settlement Agreement, at § 7.1.

18 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
19 Defense Counsel with summary information updating them as to the number of validated and timely
20 objections and Opt Out requests. The Settlement Administrator will serve on Class Counsel and
21 Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections no
22 later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel
23 with proof of mailing of the Class Notice, without listing individual Class Member names which the
24 Settlement Administrator will file with the Court at the time Class Counsel files its motion in support
25 of the Court's Final Approval and Fairness Hearing. *Id.*

26 No later than thirty (30) days prior to the Final Approval and Fairness Hearing, the Settlement
27 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary
28 information regarding: (a) the total amount of final Individual Settlement Amounts of each Class

Participant, without any identifying personal information; (b) the number of Class Participants to receive such payments, and (c) the final number of Opt-Outs and objections. *Id.*

Administrative Expenses are not anticipated to exceed \$25,000.00. Prior to the calculation and distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the total Administrative Expenses through the conclusion of their services and such actual amount will be deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement Amounts. *Id.*

E. Notice Process

Notice shall be provided to Class Members in the following manner: Within fourteen (14) days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with an updated list of Class Members and members of the PAGA Settlement Class containing names, social security numbers, dates of employment, last-known addresses, phone numbers, and weeks worked for each Class Member and/or member of the PAGA Settlement Class (the “Database”). The Database shall be marked “Confidential – Settlement Administrator’s Eyes Only.” Class Counsel shall not receive a copy of this list. Settlement Agreement, at § 7.2.

Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement Administrator shall send each Class Member the Class Notice via first-class, United States mail. The Class Notice shall also contain an easily-understood statement alerting the Class Members that, unless they elect to Opt Out of the Class Settlement, the Class Member is releasing and waiving all Released Claims against the Released Parties. *Id.*

The Class Notice will inform Class Members of their estimated share of the settlement and the number of workweeks they worked during the Class Period. Class Members may dispute their workweeks if they believe they worked more weeks in the Class Period than Defendant’s records show by submitting information to the Settlement Administrator no later than forty-five (45) days after being mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined Response Deadline. The Settlement Administrator will jointly work with Plaintiff and Defendant to resolve the dispute in good faith. If Plaintiff and Defendant cannot agree over the workweeks to be

1 credited, the Settlement Administrator shall make the final decision based on the information presented
2 by the Class Member and Defendant. *Id.*

3 **F. Cy Pres Distribution**

4 Any funds associated with checks that have not been cashed within one hundred eighty (180)
5 days, will become void and the Individual Settlement Amount associated with the uncashed check will
6 be remitted pursuant to Code of Civil Procedure section 384 to the California State Controller for
7 deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. The
8 Parties agree that this disposition results in no “unpaid residue” within the meaning of California Civil
9 Procedure Code section 384, as the entire Net Settlement Amount will be paid out to Class Participants,
10 whether or not they all cash their Individual Settlement Amount checks. Therefore, Defendant shall not
11 be required to pay any interest on said amount. For the purposes of determining whether Defendant has
12 met their financial obligation to pay the Individual Settlement Payment, Defendant will be deemed to
13 have fulfilled its obligation upon the mailing of the check to the Class Member, regardless of whether
14 such Class Member subsequently negotiates the check. Settlement Agreement, at § 8.8.

15 **G. Tax Treatment**

16 For the purpose of calculating Employee’s Taxes and Required Withholding for the Individual
17 Settlement Amounts for Class Participants (including any payments to the Class Representative but
18 exclusive of his Incentive Award), the Parties agree that 20% of each Individual Settlement Amount
19 shall constitute payment in the form of wages (and each Class Participant will be issued an IRS Form
20 W-2 for such payment to him or her), and 80% of each Individual Settlement Amount shall constitute
21 penalties and interest (and the Settlement Administrator shall issue to each Class Participant an IRS
22 Form 1099 for such payment to him or her). Prior to final distribution, the Settlement Administrator
23 shall calculate the total Employee’s Taxes and Required Withholding due as a result of the wage portion
24 of Class Participants’ anticipated Individual Settlement Amounts and such actual amount will be
25 deducted from the Net Settlement Amount. Additionally, prior to the funding of the Gross Settlement
26 Amount and final distribution, the Settlement Administrator shall calculate the total Employer’s Taxes
27 due on the wage portion of the Class Participants’ Individual Settlement Amounts and issue instructions
28 to Defendant to separately fund these tax obligations/withholdings. The Parties understand that Plaintiff

1 and the Class Participants who receive any payment pursuant to this Settlement Agreement shall be
2 solely responsible for all other individual tax obligations. Settlement Agreement, at § 5.5.

3 With respect to the PAGA Payment and any payments made to individual members of the
4 PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest
5 thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the
6 PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement
7 Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made
8 to them. *Id.*

9 **V. Provisional Certification of the Settlement Class Under the Lesser Standard of Scrutiny**
10 **for Settlement-Only Certification Is Appropriate for Purposes of Settlement**

11 California Rule of Court 3.769(d) provides that the Court may make an order approving
12 certification of a provisional settlement class at the preliminary approval stage. It is well-established
13 that trial courts should use a “lesser standard of scrutiny” for determining the propriety of certifying a
14 settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* 9 (“*Dunk*”), 48 Cal. App. 4th
15 1794, 1807 n.19 (1996). The reasons include that no trial is anticipated in a settlement class, so the case
16 management issues inherent in determining if the class should be certified need not be confronted; and
17 the trial court’s fairness review of the settlement protects the interests of the non-representative class
18 members. (*Id.*); *see also Officers for Justice*, 690 F.2d at 633 (“Th[e] relationship between the
19 certification determination and the merits of the case is further attenuated within the context of the
20 settlement evaluation process[C]ertification issues raised by class action litigation that is resolved
21 short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v. Windsor*,
22 521 U.S. 591, 620 (1987) (“Confronted with a request for settlement-only class certification, a district
23 court need not inquire whether the case, if tried, would present intractable management problems . . .
24 .for the proposal is that there be no trial.”). As discussed below, for the purposes of this settlement only,
25 the parties ask this Court to provisionally certify the Class, as defined above, under section 382 of the
26 Code of Civil Procedure.

27 **A. Numerosity And Ascertainability**

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

1 impracticable. *See* Cal. Code Civ. Proc. § 382. A proposed settlement class is ascertainable if the class
2 members can be objectively identified and given notice of the litigation without unreasonable time or
3 expense. *See Medrazo v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). Here, the Parties
4 have determined that the size of the Class is approximately 255 Class Members. JM Decl. ¶ 4.

5 **B. Well-Defined Community of Interest**

6 **1. Commonality**

7 To justify certification, the class proponent must show that questions of law or fact common to
8 the class predominate over the questions affecting the individual members. *See Arenas v. El Torito*
9 *Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court*, 24
10 Cal. 4th 906, 913 (2001)). While the Parties dispute whether a class would be appropriate if the litigation
11 were to continue, they agree, for the purposes of this settlement only, that the Class is subject to
12 common compensation policies, and common policies regarding the provision of meal and rest breaks,
13 and reimbursement policies. JM Decl. ¶¶ 15-60.

14 **2. Typicality**

15 Typicality “focuses on whether there exists a relationship between the plaintiff’s claims and the
16 claims alleged on behalf of the class.” *Newberg*, § 3:13. Again, the Parties dispute whether Plaintiff’s
17 claims are typical of the Class for the purposes of any continued litigation of the Action, but agree for
18 the purposes of this settlement only, that Plaintiff asserts claims regarding Defendant’s compensation
19 practices, meal and rest break practices, and reimbursement policies are at the core of the lawsuit. JM
20 Decl. ¶¶ 15-60.

21 **3. Adequacy of Representation**

22 The proposed class representative must establish that he or she will adequately represent the
23 proposed class. *See Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009).
24 Specifically, Plaintiff is adequate to represent the class because he was employed by Defendant during
25 the Class Period, experienced the same wage and hour practices as the rest of the class, understood his
26 duties as a class representative, has been willing to undergo the risk of litigation, and has no conflict of
27 interest with the other Class Members.

28 Adequacy may be established by the fact that counsel are experienced practitioners. *See Local*

1 *Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th
2 Cir. 2001). Here, Plaintiff alleges, and Defendant does not dispute, for purposes of this settlement, that
3 Plaintiff and the Class are represented by counsel with extensive experience in wage-and-hour
4 litigation. JM Decl. ¶¶ 77-82.

5 **4. Superiority**

6 Certification of the Class for settlement purposes is superior here because there will be a global
7 resolution of all claims at once, which fosters judicial economy. Class certification is also vastly
8 superior to litigation of numerous individual claims because most of the claims are too small to litigate
9 outside of the class context.

10 **VI. The Court Should Preliminarily Approve the Settlement, Which Is Fair, Adequate, and** 11 **Reasonable Class Action Settlements Are Subject to Judicial Review and Approval** 12 **Under the California Rules of Court**

13 The law favors settlements. *Bush v. Superior Court*, 10 Cal. App. 4th 1374, 1382 (1992). This
14 is particularly true in class actions where substantial resources can be conserved by avoiding the time,
15 cost, and rigors of formal litigation. However, a class action may not be dismissed, compromised, or
16 settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the
17 procedures for court approval of a class action settlement: (1) the Court preliminarily approves the
18 settlement; (2) class members receive notice as directed by the Court; and (3) the Court conducts a final
19 approval hearing to inquire into the fairness of the proposed settlement. Cal. R. Ct. 3.769(c), (e)-(g).

20 The decision to approve or reject a proposed settlement lies within the Court's sound discretion.
21 *See Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001). Nevertheless, in
22 considering a potential settlement for approval, a court is not to turn the approval hearing "into a trial
23 or rehearsal for trial on the merits. . . .[or] to reach any ultimate conclusions on the contested issues of
24 fact and law which underlie the merits of the dispute." *Officers for Justice v. Civil Serv. Comm'n*, 690
25 F.2d 615, 625 (9th Cir. 1982.)

26 The Court's ultimate duty is to determine whether the settlement is fair, adequate, and
27 reasonable. *See Dunk*, 48 Cal. App. 4th at 1801 (setting forth the "fair, adequate, and reasonable"
28 standard) (citing *Officers for Justice*, 690 F.2d at 625); *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal.

1 App. 4th 734, 742 43 (2009) (a trial court must approve a class action settlement agreement, but only
2 after determining that it is ““fair, adequate and reasonable,”” considering factors such as the ““risk,
3 expense, [and] complexity”” of continued litigation). The Court enjoys broad discretion in making its
4 fairness determination, and should consider factors including but not limited to:

5 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
6 further litigation, the risk of maintaining class action status through trial, the amount
7 offered in settlement, the extent of discovery completed and the stage of the
8 proceedings, the experience and views of counsel and the reaction of the class
9 members to the proposed settlement.
10

11 *Dunk*, 48 Cal. App. 4th at 1801 (setting forth a non-exhaustive list of factors for the court’s
12 consideration at final approval).

13 The above factors are not exclusive, “. . . .and the court is free to engage in a balancing and
14 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at 245.
15 However, in doing so, the Court must give “[due] regard to what is otherwise a private consensual
16 agreement between the parties.” *Id.* The inquiry must be limited “to the extent necessary to reach a
17 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
18 between, the negotiating parties.” *Id.* (citation and internal quotation marks omitted).

19 At the preliminary approval stage, the Court need only determine that the settlement falls within
20 the “range of possible judicial approval,” so that notice to the class and the scheduling of the fairness
21 hearing are worthwhile. *See* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions*
22 (“*Newberg*”) § 11:25 (4th ed. 2002). Indeed, the Court should grant preliminary approval if there are
23 no “grounds to doubt its fairness or other obvious deficiencies and [the settlement] appears to fall
24 within the range of possible approval.” *Manual For Complex Litigation* (Third) § 30.41 (1995); *see*
25 *Dunk*, 48 Cal. App. 4th at 1802. A “presumption of fairness exists where: (1) the settlement is reached
26 through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and
27 the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
28 objectors is small.” *Dunk*, 48 Cal. App. 4th at 1802 (citing *Newberg* § 11:41). As shown below, the

1 settlement falls well within the range of approval because there are no grounds to doubt its fairness.

2 **A. The Settlement Is the Result of Serious, Informed, Non-collusive Negotiations and**
3 **Reflects a Fair Compromise of Claims and Risk Factors**

4 The settlement was the product of extensive arm's-length negotiations. JM Decl. ¶ 73. Through
5 cordial and professional, the settlement negotiation was adversarial and non-collusive in nature. The
6 settlement reached is the product of substantial effort by the parties and their counsel. *Id.*

7 Although Plaintiff and his counsel believed that there was a strong possibility of certifying the
8 claims, they recognized the potential risk, expense, and complexity posed by litigation, such as
9 unfavorable decisions on class certification, summary judgment, at trial and/or on the damages
10 awarded, and/or on an appeal that can take several more years to litigate. JM Decl. ¶¶ 68-70. Plaintiff
11 and his counsel further recognized the very real risk of recovering nothing if this case proceeded with
12 expensive protracted litigation. *Id.*

13 The resulting Settlement was based on calculations, risk assessment, and non-collusive
14 negotiation; it takes the risks identified above and others into account in arriving at the non-
15 reversionary settlement amount of \$450,000.00. JM Decl. ¶ 74.

16 **B. The Extent of the Informal Discovery and Investigation Was More than Sufficient**
17 **to Permit Preliminary Approval of the Settlement**

18 The Parties thoroughly investigated and evaluated the factual and legal strengths and
19 weaknesses of this case before reaching the settlement. JM Decl. ¶ 75. As described above, the
20 settlement was reached after extensive investigation and research, thorough calculations and risk
21 evaluation, substantial exchanges of documents, a thorough evaluation of data for the Class, and an
22 exchange of information required to evaluate Defendant's defenses. *Id.* The settlement came only after
23 the case was thoroughly investigated by Plaintiff's counsel. *Id.*

24 **C. The Risks Inherent in Continued Litigation Are Great**

25 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also
26 should consider "[t]he strength of plaintiff's case, the risk, expense, complexity and likely duration of
27 further litigation, [and] the risk of maintaining class action status." *See Dunk*, 48 Cal. App. 4th at 1801.
28 As described above, Defendant has strong defenses to Plaintiff's claims, which create a real possibility

1 that the claims might not be certified and/or might fail on the merits. JM Decl. ¶¶ 70-71. Proceeding
2 with litigation would impose a significant risk of no recovery as well as ongoing, substantial additional
3 expenditures of time and resources. *Id.* If settlement were not achieved, continued litigation of the
4 claims would take a substantial amount time and possibly confer no benefit on Class Members. *Id.* By
5 contrast, the settlement will yield a prompt, certain, and substantial recovery for the Class, which also
6 benefits the Parties and the Court. *Id.*

7 Another risk inherent in continued litigation is the risk of non-certification and/or maintaining
8 class action status through trial, and appeal. *Id.* In considering these risks, the choice was
9 overwhelmingly in favor of settlement. JM Decl. ¶ 72.

10 **D. The Class Notice Plan Conforms to All Applicable Statutes and Rules**

11 The proposed Class Notice should be approved, as it fully informs the Class Members of the
12 nature of the lawsuit and each Class Member's rights under the terms of the Settlement Agreement and
13 applicable law. *See Exhibit 1.* The manner in which the Class Notice shall be disseminated, as outlined
14 above, will ensure that all or nearly all of the Class Members will be properly notified of the proposed
15 settlement.

16 The Court has wide discretion in approving the means of providing notice, so long as the class
17 representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching
18 a substantial percentage of class members." *Archibald v. Cinerama Hotels*, 15 Cal. 3d 853, 861 (1976).
19 Here, the Parties' notice plan is that notice of the Settlement will be disseminated directly to the Class
20 Members by first class mail by the settlement administrator within 28 days of preliminary approval.
21 Settlement Agreement, at § 7.2.

22 The notice plan and the Class Notice satisfy the requirements of Rule of Court 3.766 and afford
23 Settlement Class Members with all due process protections required by the United States Constitution.
24 Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the
25 Notice includes, without limitation (1) a detailed explanation of the case, including the basic
26 contentions or denials of the parties; (2) a statement that the court will exclude the member from the
27 class if the member so requests by a specified date; (3) a procedure for the member to follow in
28 requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will

1 bind all members who do not request exclusion; and (5) a statement that any member who does not
2 request exclusion may, if the member so desires, enter an appearance through counsel. *See* Settlement
3 Agreement, **Exhibit 1**. The 45-calendar day deadline for Class Members to exclude themselves or
4 challenge their weeks worked is reasonable, as it provides Class Members with sufficient time to do so
5 and, if they so choose, to seek independent legal advice in the interim.

6 **VII. Plaintiff's Counsel Is Experienced in Similar Wage-and-Hour Litigation.**

7 Plaintiff's Counsel are experienced in wage-and-hour class actions. Numerous state and federal
8 courts have certified them as adequate and competent class counsel in such class actions. JM Decl. ¶¶
9 77-82.

10 The Parties' counsel agree that this settlement is fair and reasonable in light of the nature of the
11 claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and
12 uncertainties of class certification and litigation. JM Decl. ¶¶ 69, 70. Given the risks inherent in
13 litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and in the best
14 interests of Class Members and should be preliminarily approved. JM Decl. ¶ 72.

15 Experienced counsel, operating at arm's length, have weighed the strengths and risks of the
16 case, and endorse the proposed settlement. JM Decl. ¶ 73. The view of the attorneys actively conducting
17 the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v.*
18 *Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981);
19 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008 (court must take into account "the
20 experience and view of counsel").

21 **VIII. The Attorneys' Fees Under the Settlement Agreement Are Fair**

22 Under the terms of the Settlement Agreement, Class Counsel is requesting \$150,000.00 in
23 attorneys' fees. JM Decl. ¶ 83. This amount is one-third (1/3) of the \$450,000.00 agreed upon by the
24 parties as the non-reversionary Gross Settlement Amount. *Id.*

25 As the California Supreme Court has made clear, 1/3 of the common fund is a reasonable
26 percentage for a trial court to award as attorney fees in a class action where a common fund was
27 generated as a result of the case. *See Laffitte v. Robert Half International* (2016), I Cal. 5th 480, 506
28 (Cal. Aug. 11, 2016) ("We therefore agree with the Court of Appeal below that 'the percentage of fund

1 method survives in California class action cases, and the trial court did not abuse its discretion in using
2 it, in part, to approve the fee request [of 1/3 of the common fund] in this class action”). The California
3 Supreme Court further clarified that trial courts “have discretion to conduct a lode-star cross check on
4 a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross check
5 and use other means to evaluate the reasonableness of a requested percentage fee.”).²

6 In similar class action cases, numerous courts have approved fees of up to 1/3 of the common
7 fund. *See e.g., Martin v. FedEx Ground Package System, Inc.*, 2008 WL 5478576, at *8 (N.D. Cal.
8 Dec. 31, 2008) (federal district court approved attorneys’ fees of 1/3 of common fund); *Stuart v.*
9 *RadioShack Corp.*, No. C-07-4499 EMC, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010) (approving fee
10 award of 1/3 of the total maximum settlement and noting that the fee award of 1/3 of the total settlement
11 was “well within the range of percentages which courts have upheld as reasonable in other class action
12 lawsuits”); *Wilson v. Kiewit Pacific Co.*, No. 09-cv-03630, ECF No. 119 (N.D. Cal. 2012) (approving
13 fee award of 1/3 of the common fund and noting that such award is fair, reasonable and appropriate);
14 *Romero v. Producers Dairy Foods, Inc.*, No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (E.D. Cal.
15 Nov. 14, 2007) (awarding fees of 1/3 of common fund in a wage and hour class action, noting: “[f]ee
16 awards in class actions average around one-third of the recovery.”); Significantly, the Retainer
17 Agreement in this case provides fees up to one-third of the amount obtained. *See Id.* Accordingly,
18 preliminary approval of attorneys’ fees of one-third of the common fund are reasonable and should be
19 conditionally approved here.

20 **IX. The Class Representative Incentive Award Is Fair and Appropriate**

21 The Parties request payment of an Incentive Award from the non-reversionary Gross Settlement
22 Amount to the Class Representative in the amount of \$7,500.00, in addition to whatever payment he is
23 otherwise entitled to receive as a Class Member. The proposed Incentive Award is reasonable
24 compensation given the time and effort that the named Plaintiff devoted to this case; the valuable
25 assistance he provided to Class Counsel; and the fact that he entered into a general release of claims
26 that is broader than the release of the Class. JM Decl. ¶¶ 85-87.

27 ² Once the Court grants preliminary approval of the Settlement Agreement and Class Notice is disseminated, Plaintiff’s
28 Counsel will later submit a comprehensive motion for attorneys’ fees and costs to be heard at the same time as the final approval hearing.

1 Plaintiff provided invaluable assistance to Class Counsel and the Class in this case, including
2 providing factual background for mediation and the class complaints; reviewing the relevant documents
3 and complaint; participating in phone calls with his lawyers to discuss litigation and settlement strategy;
4 participating in mediation by telephone; and reviewing the settlement documents. Plaintiff agreed to
5 participate in this case with no guarantee of personal benefit. *Id.*

6 Further, Plaintiff agreed to undertake the financial risk of serving as a Class Representative and
7 exposed himself to the risk of negative publicity by anyone who opposed this case. *Id.* Moreover, the
8 requested \$7,500.00 Incentive Award for the Class Representative falls within the range of incentive
9 payments typically awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson*
10 *Enterprises, Inc.*, No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30, 2011)
11 (approving \$11,250 service award to each of the two class representatives in a trucker meal break class
12 action; *Ross v. US Bank National Association*, No. C 07-02951 SI, 2010 WL 3833922, at *2 (N.D. Cal.
13 Sept. 29, 2010) (approving \$20,000 enhancement award to Class Representative in California wage-
14 and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 493 (E.D.
15 Cal. 2010) (approving service awards in the amount of \$10,000 each from a \$300,000 settlement fund
16 in a wage/hour class action); *West v. Circle K Stores, Inc.*, NO. CIV. S-04-0438 WBS GGH, 2006 U.S.
17 Dist. LEXIS 76558, at *28 (E.D. Cal. Oct. 19, 2006) (“the court finds plaintiffs' enhancement payments
18 of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.*, No. C-06-4068 MMC, 2007 U.S. Dist.
19 LEXIS 8476, at *52 (N.D. Cal. Jan. 26, 2007) (finding “requested payment of \$ 25,000 to each of the
20 named plaintiffs is appropriate” in wage and hour settlement); *Louie v. Kaiser Found. Health Plan,*
21 *Inc.*, CASE NO. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (S.D. Cal. Oct. 6, 2008)
22 (approving “\$25,000 incentive award for each Class Representative” in wage an hour settlement);
23 *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8
24 (N.D. Cal. Apr. 22, 2010) (“Numerous courts in the Ninth Circuit and elsewhere have approved
25 incentive awards of \$20,000 or more where, as here, the class representative has demonstrated a strong
26 commitment to the class”). *Id.*

27 **X. The Court Should Appoint Apex Class Action Administration as Settlement**
28 **Administrator**

1 The Parties propose that Apex Class Action Administration serve as the Settlement
2 Administrator. JM Decl. ¶ 88. Apex Class Action Administration is experienced in administering class
3 action settlements. *Id.* and **Exhibit E**.

4 **XI. Submission to the LWDA**

5 The Settlement Agreement and this motion are concurrently being submitted to the LWDA in
6 accordance with Labor Code section 2699, subdivision (1)(2). JM Decl. ¶ 89. The proof of electronic
7 submission is attached as **Exhibit F** to the Declaration of Jonathan Melmed.

8 **XII. The Court Should Schedule a Final Approval Hearing**

9 The last step in the approval process is the final approval hearing, whereby proponents of the
10 settlement may explain and describe its terms and conditions and offer argument in support of approval,
11 and Class Members or their counsel may be heard in support of or in opposition to the settlement. The
12 Parties propose that the Court schedule a hearing for final approval of the settlement, including
13 Plaintiff's request for attorneys' fees, costs and the service award, for January 2026.

14 **XIII. Conclusion**

15 For all of the foregoing reasons, the Parties respectfully request that the Court grant their motion
16 for preliminary approval of the Parties' settlement.

17
18 Dated: May 8, 2025

MELMED LAW GROUP P.C.

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20 

21 **JONATHAN MELMED**

22 Attorney for Plaintiff, the Putative Class, and the
23 Aggrieved Employees
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