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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

QUIANA BOYETTE, individually, and on behalf of all others similarly situated; Plaintiffs, vs. INCLUSION SPECIALIZED PROGRAMS LLC, a limited liability company; and DOES 1 through 10, inclusive, Defendants. ______________________________ DESIREE SAENZ, on behalf of herself and all other similarly situated employees, and on behalf of the general public; Plaintiffs, vs. INCLUSION SPECIALIZED PROGRAM, LLC, a California Limited Liability Company, and DOES 1 through 10, inclusive, Defendants.	Case No. 23STCV29286 [*Related Case No*. 24STCV05482] **CLASS & REPRESENTATIVE ACTION** **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CERTIFICATION OF CLASS** Hearing Date: April 24, 2026 Time: 11:30 a.m. Dept.: 10 Judge: Hon. William F. Highberger

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I. INTRODUCTION

Plaintiffs Desiree Saenz and Quiana Boyette ("Named Plaintiffs" or "Plaintiffs") seek preliminary approval of a proposed wage and hour class and representative action settlement with Defendant, Inclusion Specialized Services, LLC ("Defendant"). Plaintiffs further seek conditional certification of the proposed class for purposes of settlement. Subject to final approval of this Court, the parties agreed to settle this action on all-inclusive basis for Eight Hundred Twenty-Five Thousand Dollars ($825,000.00). The settlement is the result of arms-length, non-collusive negotiations between the parties arrived at through the assistance of mediator Tripper Ortman. **A unique feature to this class action settlement is that all currently and formerly employed Participating Class Members will recover a monetary benefit without having to submit a claim form.** The proposed resolution of this matter strikes a balance between the risks of continued litigation, fair compensation to the Class Members, and Defendant's ability to pay. The Settlement is fair and reasonable, and provides compensation to current and former employees of Defendant.

It is well within the discretion of this Court to grant preliminary and conditional approval of the Class Action and PAGA Settlement Agreement ("Settlement Agreement") (attached as **Exhibit "B"** to the Declaration of Roman Otkupman submitted concurrently herewith), which satisfies all the criteria for preliminary settlement approval under California law. Accordingly, Named Plaintiffs request that the Court:

(1) provisionally and conditionally certify the proposed Settlement Class;

(2) preliminarily approve Plaintiffs as Class Representatives;

(3) preliminarily approve Otkupman Law Firm, A Law Corporation and Wilshire Law Firm, PLC as Class Counsel;

(4) grant preliminary and conditional approval of the proposed Settlement;

(5) approve the form and content of the proposed Class Notice;

(6) approve ILYM Group, Inc. ("ILYM") as Settlement Administrator and approve settlement administration costs in an amount up to Twelve Thousand Dollars ($12,000.00);

(7) approve Enhancement Payments to Named Plaintiffs in the amount of Ten Thousand Dollars ($10,000.00) each;

(8) approve payment to Class Counsel of reasonable attorney's fees up to one-third (1/3) of the Gross Settlement Amount, amounting to Two Hundred Seventy-Five Thousand Dollars ($275,000.00), and litigation costs up to Thirty Thousand Dollars ($30,000.00);

(9) preliminarily approve PAGA Penalties in the amount of Forty-One Thousand Two Hundred and Fifty Dollars ($41,250.00); and

(10) schedule a final approval hearing.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Procedural History

Defendant is a California limited liability company doing business in California. (Otkupman Decl., ¶ 11) These lawsuits arise from Defendant's alleged unlawful failure to provide meal periods or compensation in lieu thereof, alleged unlawful failure to provide rest periods or compensation in lieu thereof, alleged failure to pay all minimum and overtime wages, alleged knowing and intentional failure to comply with itemized employee wage statement provisions, alleged failure to timely pay wages due at termination, alleged failure to timely pay employees, alleged failure to reimburse employees for business expenses, alleged failure to pay for all hours worked, including overtime hours worked, and alleged unfair business practices. (Otkupman Decl., ¶ 11; Coelho Decl., ¶ 3)

On November 30, 2023, Plaintiff Quiana Boyette, filed a class action Complaint alleging causes of action against Defendant for (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; (8) unfair business practices. (Coelho Decl., ¶ 3) On December 26, 2023, Plaintiff Boyette provided written notice to the Labor and Workforce Development Agency ("LWDA") and Defendant of his intention to file a claim for civil penalties pursuant to the Private Attorneys General Act ("PAGA"). (Coelho Decl., ¶ 4; Otkupman Decl., ¶ 12, Exhibit A) The LWDA did not notify Plaintiff that it intended to investigate within 65 days of this written notice. (Id.) On April 29, 2024, Plaintiff Boyette filed a First Amended Class and Representative Action Complaint against Defendant adding a claim for civil penalties under PAGA. (Coelho Decl., ¶ 4.)

On December 27, 2023, Plaintiff Desiree Saenz provided written notice by certified mail ("PAGA letter") to the LWDA and Defendant of the specific provisions of the California Labor Code that Plaintiff asserted Defendant violated. (Otkupman Decl., ¶ 12, Exhibit A) The LWDA did not notify Plaintiff Saenz that it intended to investigate within 65 days of this written notice. (Id.) On March 4, 2024, Plaintiff Saenz filed a Class and Representative Action complaint against Defendant alleging the following causes of action: (1) failure to provide meal periods in violation of Labor Code sections 226.7, 512, 558; (2) failure to provide rest periods in violation of Labor Code sections 226.7, 512, 558; (3) failure to pay all wages in violation of Labor Code sections 510, 1194, and 1194.2; (4) knowing and intentional failure to comply with itemized employee wage statement provisions in violation of Labor Code sections 226(a), (e); (5) failure to timely pay wages due at termination in violation of Labor Code sections 201-203; (6) failure to timely pay employees in violation of Labor Code section 204(a), (b); (7) failure to reimburse for business expenses in violation of Labor Code section 2802; (8) failure to pay for all hours worked, including overtime hours worked, in violation of Labor Code sections 210, 218; (9) violation of Business and Professions Code section 17200; and (10) penalties pursuant to the PAGA. (Otkupman Decl., ¶ 13)

The Complaints allege a failure on the part of Defendant to comply with wage and hour laws protecting its employees. (Otkupman Decl., ¶ 13; Coelho Decl., ¶ 3) The named Plaintiffs seek to represent the following Class: all current and former non-exempt employees of Defendant who worked for Defendant in California at any time during the period from November 30, 2019 through July 11, 2025, and the following Aggrieved Employees: all current and former non-exempt California employees of Defendant who worked for Defendant during the period from December 26, 2022 through July 11, 2025. (Settlement Agreement, ¶¶ 1.4, 1.5, 1.11, 1.30)

Subsequent to the filing of Plaintiffs' Complaints, the parties exchanged information and documentation, including: statistical data, which included wage statements, clock-in and clock-out times, times taken for meal breaks, wages earned during the relevant pay periods, as well as written policies and procedures on meal breaks, rest breaks, overtime compensation, and expense reimbursement, the number of workweeks in the class, the number of pay periods in the PAGA period, the total number of Class Members and Aggrieved Employees, and the average rate of pay for Class Members in each year in question. (Otkupman Decl., ¶¶ 14, 15; Coelho Decl., ¶¶ 5, 6) The statistical data provided by Defendant was used to calculate a damage model and liability analysis. (Id.) Thereafter, the parties participated in a full-day mediation session with Tripper Ortman, which included lengthy and fully informed negotiations. (Otkupman Decl., ¶¶ 16, 17; Coelho Decl., ¶ 7)

B. <u>Parties</u>

Defendant estimates that as of May 12, 2025, there are approximately 517 Class Members who collectively worked a total of 26,680 workweeks during the Class Period. (Settlement Agreement, ¶ 4.1) Based on extensive documentation and data provided to Class Counsel, and through Plaintiffs' investigation, Plaintiffs believe that the Class Members were subject to similar policies and practices that were allegedly violative of California wage and hour laws, including Defendant's alleged failure to provide meal periods or compensation in lieu thereof, alleged failure to provide rest periods or compensation in lieu thereof, alleged failure to pay all minimum and overtime wages, alleged knowing and intentional failure to comply with itemized employee wage statement provisions, alleged failure to timely pay wages due at termination, alleged failure to timely pay employees, alleged failure to reimburse employees for business expenses, and alleged failure to pay for all hours worked, including overtime hours worked. (Otkupman Decl., ¶¶ 29, 30) Defendant, on the other hand, contends that the policies and practices governing the Class Members were legally compliant, and that any evidence of alleged wrongdoing identified by Plaintiff are purely individualized and isolated to certain employees, and all such allegations are adamantly disputed by Defendant. (Otkupman Decl., ¶ 21)

<u>III. SUMMARY OF THE PROPOSED SETTLEMENT TERMS</u>

A. <u>Class Certification</u>

The Parties have agreed to certification of the following class, for settlement purposes only: all current and former non-exempt employees of Defendant who worked for Defendant in California at any time during the period from November 30, 2019 through July 11, 2025. (Settlement Agreement, ¶¶ 1.5, 1.11)

B. Settlement Relief

Pursuant to the terms of the Settlement Agreement, Defendant shall pay a Gross Settlement Amount of Eight Hundred Twenty-Five Thousand Dollars ($825,000.00) (the "Gross Settlement Amount") to be allocated as follows (Settlement Agreement, ¶ 1.21):

1. **Reasonable Expenses of the Settlement Administrator:** From the Total Settlement Amount, the Settlement Administrator, ILYM, will be paid reasonable expenses of administering the settlement in an amount up to Twelve Thousand Dollars ($12,000.00). (Settlement Agreement, ¶ 3.2.3) The Parties have received a bid from ILYM for costs of the administration of this settlement in the amount of $8,950.00 which is attached as Exhibit "F" to the Declaration of Roman Otkupman being filed herewith. (Otkupman Decl., ¶ 40, Exhibit F)

2. **Reasonable Service Payments to Named Plaintiffs:** Class counsel requests, and Defendant does not oppose, an award of up to Ten Thousand Dollars ($10,000.00) to each Named Plaintiff as enhancement payments for their services as Class Representatives. The Class Representative Service Payments will include the issuance of an IRS form 1099 in connection with this payment. (Settlement Agreement, ¶ 3.2.1)

3. **Reasonable Attorneys' Fees and Litigation Expenses:** Class Counsel requests, and Defendant does not oppose, an award of attorneys' fees in the amount of Two Hundred Seventy-Five Thousand Dollars ($275,000.00) for all work previously performed with regards to the present case and all remaining work to be performed, and litigation costs in an amount not to exceed Thirty Thousand Dollars ($30,000.00). (Settlement Agreement, ¶ 3.2.2)

4. **Private Attorneys General Act ("PAGA") Penalties:** The Parties have agreed to a PAGA Payment in the amount of Forty-One Thousand Two Hundred and Fifty Dollars ($41,250.00) in consideration for a full and complete release of any claim of penalties that may be owed pursuant to PAGA for the alleged violations of the Labor Code that were or could have been asserted in the Operative Complaint. Seventy-five percent (75%) of this amount, or Thirty Thousand Nine Hundred Thirty-Seven Dollars and Fifty Cents ($30,937.50), will be paid to the LWDA in satisfaction of any claim for penalties that may be owed to that agency under PAGA. Twenty-five percent (25%) of this amount, Ten Thousand Three Hundred Twelve Dollars and Fifty Cents ($10,312.50), will be

included in the amount to be distributed to all Aggrieved Employees. (Settlement Agreement, ¶ 3.2.5)

5. **Allocations to the Class:** An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Settlement Agreement, ¶ 3.2.4) Assuming a total class size of 517 Participating Class Members, the average payment to each Participating Class Member will be approximately $864.11. Of course, those with more workweeks stand to recover proportionally more. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion") and 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). (Settlement Agreement, ¶ 3.2.4.1) The payment for the Non-Wage Portion will be issued through a Form 1099 and will not be subject to tax withholdings or deductions. (Id.)

C. Release of Claims

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Participating Class Members and the LWDA will release claims against all Released Parties as follows:

The claims released by Participating Class Members are all claims, rights, demands, liabilities, and causes of action alleged or which could have reasonably been alleged against the Released Parties based on the facts alleged in the operative Complaints (the "Released Class Claims"), including but not limited to all wage and hour claims, demands, rights, liabilities, and causes of action for the following alleged failures: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay all wages and for all hours worked; (4) failure to pay minimum and straight time wages; (5) failure to pay overtime wages; (6) failure to timely pay wages due at termination; (7) failure to timely pay employees during employment; (8) failure to provide and maintain accurate wage statements; (9) failure to reimburse for business expenses; (10) claims for civil and statutory penalties, interest, liquidated damages, attorney's fees and costs; (11) claims under Labor Code sections 201-203, 204, 210, 218, 218.5, 218.6, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 2802, and applicable Industrial Welfare Commission Wage Orders; and (12) unfair competition claims under California Business & Professions Code sections 17200 et seq. The Released Class Claims are those that accrued during the Class Period. (Settlement Agreement, ¶ 5.2)

The LWDA, by and through Plaintiffs as agents or proxies of the LWDA, shall be deemed to release the Released Parties from all claims for civil penalties under the PAGA that were alleged, or reasonably could have been alleged, against the Released Parties based on the facts alleged in the operative Complaints and alleged in the corresponding PAGA Notices (the "Released PAGA Claims"), including but not limited to claims for civil penalties for alleged violations of Labor Code sections 201-203, 204, 210, 218, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 2698-2699.5, and applicable Wage Orders of the Industrial Welfare Commission; claims under California Business & Professions Code section 17200 *et seq*.; and all related claims for attorneys' fees and costs. The Released PAGA Claims are those that accrued during the PAGA Period. (Settlement Agreement, ¶ 5.3)

The "Released Parties" means Defendant and its former and present shareholders, partners, members, managers, owners, officers, directors, managerial employees, agents, attorneys, insurers, payroll providers, joint venturers, predecessors, successors, and assigns, and any individual or entity that could be liable for any of the released class and PAGA claims. (Settlement Agreement, ¶ 1.40)

D. Administration of Settlement

The parties have agreed that ILYM will manage administration of the settlement and payment, including the preparation and dissemination of the Class Notice to Class Members, requests for exclusion, and the determination and distribution of each Participating Class Members' settlement payment. (Settlement Agreement, ¶ 7.1)

IV. RELEVANT DATES AND DEADLINES

1. **Not later than fourteen (14) calendar days** after the Court grants preliminary approval of the Settlement, Defendant shall provide the Settlement Administrator with the Class Data (Settlement Agreement, ¶ 4.2)

2. **Not later than fourteen (14) calendar days** after receiving the Class Data, the Administrator shall mail the Class Notice to all identified Class Members whose address information is known. (Settlement Agreement, ¶ 7.2.2)

3. **Not later than three (3) business days** after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. (Settlement Agreement, ¶ 7.2.3)

4. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion **not later than sixty (60) calendar days** after the Administrator initially mails the Class Notice (plus an **additional fourteen (14) calendar days** for Class Members whose Class Notice is re-mailed). The written Request for Exclusion must reasonably communicate the Class Member's election to be excluded from the Settlement and must include the Class Member's name, address, and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. (Settlement Agreement ¶ 73.1) No Aggrieved Employee can seek exclusion from the PAGA portion of the Settlement. (Settlement Agreement, ¶ 7.3.4)

5. Any Participating Class Member may send a written objection to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. Any Participating Class Member who elects to send a written objection to the Administrator, must do so **no later than sixty (60) calendar days** after the Administrator's mailing of the Class Notice (plus an additional **fourteen (14) calendar days** for Class Members whose Class Notice was re-mailed). (Settlement Agreement ¶ 7.5.2)

6. **No later than twenty-one (21) calendar days** after the Effective Date, Defendant shall deposit the Gross Settlement Amount with the Administrator. (Settlement Agreement, ¶ 4.3)

7. **Within fourteen (14) calendar days** after Defendant funds the Gross Settlement

Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments. (Settlement Agreement, ¶ 4.4)

8. Class Members must cash their Individual Payment checks **within one hundred eighty (180) calendar days** after they are mailed. Any settlement checks that are not cashed within one hundred eighty (180) calendar days after distribution by the Administrator shall be void and cancelled. All funds associated with cancelled checks will be distributed by the Settlement Administrator to the California State Controller's Office Unclaimed Property Division. (Settlement Agreement, ¶¶ 4.4.1, 4.4.3)

V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT AS IT IS FAIR, REASONABLE AND ADEQUATE

A class action may not be dismissed, compromised or settled without approval of the Court. See Cal. Civ. Code § 1781(f); Cal. Rules of Court 3.769. The decision to approve or reject a proposed settlement is committed to the sound discretion of the court. *Wershba v. Apple Computer, Inc.*, 91 Cal. App.4th 224, 234-325 (2001). The law favors the settlement of lawsuits, particularly in class actions and other complex cases where substantial resources can be served by avoiding time, expense and rigors of protracted litigation. *Neary v. Regents of Univ. of California*, 3 Cal. 4th 273, 277-81 (1992); *Lealao v. Beneficial California, Inc*. 82 Cal. App. 4th 19, 53, (2000).

The purpose of preliminary evaluation of a proposed class action settlement is to determine only whether the settlement is within the range of possible approval, and thus whether notice to the class of the terms and conditions and the scheduling of a formal fairness hearing is warranted. *Wershba*, 91 Cal.App.4th at 234-235, 251. In determining whether a class settlement is fair, adequate, and reasonable the trial court should consider relevant factors, such as "the strength of plaintiffs' case, the risk, expenses, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in the settlement, the extent of discovery contemplated and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement."

Officers of Justice v. Civil Service Com'n, *Etc.*, supra 688 F.2d at p. 624. The list of factors is not exclusive and the court is free to engage in balancing and weighing of factors depending on the circumstances of the case. *Wershba.* The burden is on the proponent of the settlement to show that it is fair and reasonable. However, "a presumption of fairness exists 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." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th at p. 1802 (1996), 56 Cal.Rptr.2d 483.

Here, the Parties engaged in extensive discussions and comprehensive discovery in which Defendant provided Plaintiffs with relevant information, including data pertaining to the class. (Otkupman Decl., ¶¶ 14, 15; Coelho Decl., ¶¶ 5, 6) The Parties further participated in an all-day mediation session with mediator Tripper Ortman, who is experienced in wage and hour litigation. (Otkupman Decl., ¶ 17; Coelho Decl., ¶ 7)

A. <u>The Amount Offered in Settlement is Fair and Reasonable</u>

The total settlement amount is an all-inclusive amount of Eight Hundred Twenty-Five Thousand Dollars ($825,000.00), which includes payment to Participating Class Members, Enhancement Payments to Named Plaintiffs, the costs of administration of the settlement, attorneys' fees and costs, and payment for PAGA Penalties. Class Counsel requests and Defendant does not oppose an award of attorneys' fees in the amount of Two Hundred Seventy-Five Thousand Dollars ($275,000.00) for all work previously performed in connection with the action and all remaining work to be performed and reimbursement of costs in an amount not to exceed Thirty Thousand Dollars ($30,000.00). (Otkupman Decl., ¶¶ 34 - 36) Further, Class Representatives request and Defendant does not oppose Enhancement Payments of Ten Thousand Dollars ($10,000.00) to each Class Representative. (Otkupman Decl., ¶ 31) The settlement administration costs shall not exceed Twelve Thousand Dollars ($12,000.00) and Forty-One Thousand Two Hundred and Fifty Dollars ($41,250.00) will be allocated to PAGA Penalties. The remaining amount will be available to the Class Members pursuant to the formulas described above. As discussed more fully below, these amounts are entirely fair and reasonable under all of the relevant circumstances. The claims asserted in the complaint are typically subject to class certification. *Sav – On Drug Stores, Inc. v. Superior*

Court, 34 Cal. 4^{th} 319, 340 (2004) (explaining that California "has a public policy which encourages the use of class action device, "particularly in wage and hour cases").

B. <u>A Review of the Facts and Legal Contentions</u>

Defendant contends that its employment policies and practices did not violate applicable wage and hour laws. (Otkupman Decl., ¶ 21) It further contends that the evidence mustered by Plaintiffs does not evince any common policy or practice that is violative of California wage and hour laws. In fact, according to Defendant, the evidence merely demonstrates that any violations arose from individualized and isolated events that would not be susceptible to class-wide determination, and Defendant adamantly denies any and all alleged violations. (Id.) Defendant further contends that even if class certification was granted, there is no guarantee of a good outcome for Plaintiff at trial. (Id.) Specifically, Defendant alleges that it complied with wage and hour and Labor Code laws. (Id.) Defendant alleges its employees were entitled to and actually provided meal and rest breaks, were provided with all wages owed, were provided compliant itemized employee wage statements, were timely paid all wages due at termination, were timely paid all wages during employment, and were reimbursed for business expenses. (Id.)

Defendant claims that none of Plaintiffs' claims are suitable for class certification because individual issues predominate over common issues on these claims. (Id.) Individualized inquiries preclude class certification because a class action cannot be maintained where the existence of damage, the cause of damage and the extent of damage have to be determined on a case-by-case basis, even if there are some common questions. See *Brinker Restaurant Corp. v. Superior Ct.,* 54 Cal.4^{th} 1004, 1021 (2012); (whether common issues predominate turns on whether the theory of recovery advanced by proponents of certification is, as an analytical matter, likely to prove amenable to class treatment). Here, the individualized inquiry could be focused on each individual who was not paid their requisite wages. (Id.)

Defendant is represented by competent and experienced counsel and would undoubtedly have raised all of the above arguments, and more, in continued litigation. (Otkupman Decl., ¶ 22) Despite Plaintiffs' confidence in their ability to prove all of their claims on a class wide basis, any one of the above defenses, if decided in favor of Defendant could reduce or even eliminate any potential damage award. (Id.) These defenses, if successful, would severely, if not completely, reduce the damages recoverable by Class Members. (Id.)

By virtue of this settlement, each member of the class shall receive a guaranteed settlement depending on the total number of workweeks worked by the class members during the class period. While the amount is below the maximum penalty allowed under the California Labor Code, the law is clear in that the LWDA imposes the penalty based on the willfulness of Defendant's conduct. Defendant strongly denies that there was any willfulness on its part. Furthermore, Defendant adamantly denies the existence of any liability on its part.

C. Attorney's Estimate of Total Damages Recoverable:

In evaluating the allegations, Plaintiffs determined that the estimated maximum potential recovery for a total victory in this case would be **$1,224,956.37**. The Parties settled for **$825,000.00**, which equates to approximately **67%** of the maximum potential recovery. To assist the Parties in coming to the settlement, the Parties relied upon the following exposure calculations:

Overtime Violations: Plaintiffs maintained that Plaintiffs and Defendant's California employees were not properly compensated for all overtime hours worked. Based on Class Counsel's investigation, which included discussing the merits with their clients and reviewing the informal data provided by Defendant, they concluded that approximately 60 unpaid overtime minutes were worked without adequate compensation per workweek. Defendant denies this allegation. There are a total of approximately 26,680 workweeks in the class and the average overtime rate is $29.09. If proven, the total amount was calculated to be **$776,121.20**. Class Counsel believed they had a 15% probability of prevailing on this claim based on the sample data provided by Defendant and because Defendant had lawful policies. As such, Plaintiffs felt the real exposure of this claim was alleged to be **$116,418.18.**

Rest Break Violations: Class Counsel's investigation from speaking with Plaintiffs, reviewing Defendant's policies and addressing the practices with Plaintiffs, determined that rest periods were seldom missed. Class Counsel's investigation revealed that approximately twice per week, Plaintiffs and other Class Member's rest breaks were interrupted. Defendant denies this allegation. Based on Plaintiffs' allegations and the investigation, it was estimated that there were 2 missed rest breaks per workweek with no premium pay during the Class Period. Based on this estimate, Plaintiffs allege that they and other putative Class Members missed a total of approximately 53,360 rest periods at an average hourly rate of $19.39 for a total of **$1,034,650.40** in rest period exposure. Class Counsel believed they had a 10% probability of prevailing on this claim based on Defendant's legally compliant policy. The law further does not require that Defendant keep the necessary records of the rest breaks taken and considering that Defendant had compliant policies, proving this claim on a class basis would be a challenge. Yet another challenge with this claim is that the failure to take the rest breaks may require an individualized inquiry, something that may have contributed to the class not being certified. This settlement avoided that risk. As such, Plaintiffs felt that the real exposure for this claim was approximately **$103,465.04.**

Meal Break Violations: According to Plaintiffs, approximately three times per week, theirs and other Class Members' meal breaks were interrupted. Based on the sample data provided, which included punch records, and according to Plaintiffs, it was determined that Defendant's employees were not always provided the opportunity to take uninterrupted meal breaks. Therefore, it was estimated that there were 3 missed meal breaks per workweek with no premium pay during the Class Period. Based on this determination, Plaintiffs allege that they and other putative Class Members missed a total of 80,040 meal breaks at an average hourly rate of $19.39 for a total of **$1,551,975.60** in meal period exposure. Defendant denies this allegation. Class Counsel believed we had a 15% probability of prevailing on this claim as several risk factors exist as follows: Defendant had a legally compliant meal period policy in place; Plaintiffs and the rest of the Class would have to prove that their reason for failure to take a compliant meal break was not unique and that a similar practice applied to the rest of the Class. This can be especially difficult considering that Defendant had a compliant meal period policy. As such, the realistic exposure was approximately **$232,796.34.**

Reimbursement for Business Expenses Claim: According to Plaintiffs, they and other employees of Defendant were not reimbursed for being required to use their personal cell phones. Plaintiffs estimated $15.00 per workweek in reimbursements owed to Plaintiff and others, for a total of **$400,200.00.** Defendant denies this allegation.

Derivative Wage Statement Claim: Based on Class Counsel's investigation and the extrapolation of data, it was calculated that there would have been a 10% violation rate if this case was taken to trial. Defendant issued approximately 7,304 wage statements during the relevant period. Plaintiff used a penalty of $50 for the initial violation and $100 for all subsequent violations to determine the potential penalty for wage statement violations if this case was taken to trial. As such the damages are as follows: 50 x 1 + 100 x 7,303 x 0.10 = **$73,035.00**. Defendant denies this allegation.

Derivative Waiting Time Penalty Claim: Based on Class Counsel's investigation and the extrapolation of data, it was calculated that there would have been a 10% violation rate if this case was taken to trial. Plaintiff used the approximate number of former employees in the class (318 employees) and calculated their average rate of pay ($19.39) times 8 hours a day times 30 days to determine that the potential for waiting time penalties at a 10% violation rate was **$147,984.48**. Defendant denies this allegation.

PAGA Claim: Maximum exposure was based upon an analysis of a 100% violation rate. While this would be unlikely, even for the purposes of the maximum exposure, Plaintiffs calculated the PAGA liability at 100%. Plaintiffs used the data provided by Defendant and determined that there were 7,092 PAGA pay periods. Since the Labor Code allows for a maximum of $100 per pay period and there were 7,092 pay periods in the PAGA Period, the maximum exposure was **$709,200.00.** Defendant denies this allegation. PAGA claims are subject to a one-year statute of limitations, and penalties can be recovered for a period of one year prior to the date notice is sent to the LWDA. *Taylor v. Interstate Grp., LLC*, No. 15-CV-05462-YGR, 2016 WL 335226, at *1 (N.D. Cal. Jan. 28, 2016). Unless a Labor Code provision provides for a specific civil penalty, PAGA imposes a default civil penalty of "one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation." Cal. Lab. Code § 2699(f)(2). The court in *Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 3 F.4th 1127, 1144, held that the defendant was not liable for heightened penalties for any Labor Code violation that occurred before the defendant was notified by the Labor Commissioner or any court that it had violated the Labor Code provisions at issue. The California

Court of Appeal in *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 356 confirmed that "the increased $200 civil penalty for 'subsequent violation[s]' does not apply unless [plaintiff] presents evidence that the Labor Commission or a court notified [defendant] that it was in violation of the Labor Code"). Here, PAGA penalties were discounted by using only initial violation rates, based on Defendant's argument that heightened penalties would not apply for violations that occurred before Defendant was notified by the Labor Commissioner or any court that it had violated the Labor Code provisions at issue. Class Counsel believed that since the violations were not willful and Defendant had compliant policies, that the Court would award a smaller portion of the potential PAGA Claim. Plaintiffs believed that it would be difficult to obtain penalties for wage statement violations and waiting time penalties in addition to the PAGA penalties. Plaintiffs believed that the realistic exposure was a 10% probability of success. As such, Plaintiffs estimated the realistic value of this claim if Plaintiffs prevailed at trial would be **$70,920.00**. Defendant denies this allegation.

Interest: Interest will accrue at a rate of seven percent (7%). As such, the interest was calculated in the amount of **$80,137.33**. (Otkupman Decl., ¶ 38)

D. The Payment to the Class Representatives for their Services to the Class are Reasonable and Routinely Awarded by Courts.

Plaintiffs seek Enhancement Payments up to Ten Thousand Dollars ($10,000.00) each. Class Counsel believe that the Enhancement Payments are reasonable, proper and supported by the circumstances of this case and applicable law. Defendant does not oppose this request. (Otkupman Decl., ¶ 31)

Courts have long acknowledged that active litigants are entitled to be compensated for bearing the risk and time to represent others. Where class representatives are provided with special compensation as part of class settlement, the Court should ensure that it is fair and reasonable. However, "it is the complete package, taken as a whole, rather than the individual component parts, that must be examined." *Officers of Justice v. Civil Service Commission of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). Incentive awards are not uncommon and can serve an important function in promoting class action settlements." *Sheppard v. Consol. Edison Co. of N.Y., Inc.,* No. 94-CV-0403 (JG), 2002 WL 2003206 (E.D.N.Y. Aug. 1, 2002). The service award sought here is justified by the

Class Representatives' level of involvement in the lawsuit. The Class Representatives assisted in the investigation, provided counsel with relevant information and also provided counsel with wage statements pertaining to the relevant period Defendant allegedly did not comply with the pertinent labor laws. (Otkupman Decl., ¶ 31) Class Representatives further helped investigate the documents provided by Defendant to Plaintiffs in the course of Plaintiffs' investigation. (Id.) Further, the Class Representatives consulted extensively with Plaintiffs' counsel in order to assist in various aspects of investigation and litigation. (Id.) In short, the Class Representatives were extremely active and motivated to assist the attorneys in resolving this matter. The Class Representatives stuck their necks out for the benefit of their fellow employees. The participation of the Class Representatives was crucial to the mediation resulting in a settlement as it did, which is the reason the enhancement amount up to Ten Thousand Dollars ($10,000.00) is reasonable in light of all of the circumstances. (Id.)

E. <u>The Attorneys' Fee Award Is Reasonable and Routinely Awarded</u>

California Rule of Court 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any application for the approval of the dismissal or settlement of an action that has been certified as a class action." In the present case, Class Counsel requests up to one-third (1/3) of the Gross Settlement Amount or Two Hundred Seventy-Five Thousand Dollars ($275,000.00) to include all work previously rendered by Class Counsel and any work that will be rendered throughout the conclusion of this case. (Otkupman Decl., ¶¶ 34 – 36) Class Counsel achieved a result whereby each member of the Class will receive a payment depending on the amount of Workweeks that person worked during the relevant time. The Class Members will not be obliged to submit a claim form or worry about sending it in. Moreover, Class Counsel's work is not yet complete, as they will spend a significant amount of time overseeing and participating in the settlement administration process and final approval proceedings. (Id.)

VI. <u>THE PROPOSED SETTLEMENT CLASS SHOULD BE CONDITIONALLY CERTIFIED FOR SETTLEMENT PURPOSES</u>

California courts are authorized to adjudicate class wide claims based on a common course of conduct. California law and policy favors the fullest and most flexible use of the class action procedure, so any doubt as to the appropriateness of certification should be resolved in favor of certification. *See Richmond v. Dart Industries, Inc.,* 29 Cal. 3d 462, 469, 473-474 (1981). Class certification is appropriate when (1) the class is ascertainable and (2) there is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." *Dunk*, supra, 48 Cal. App. 4th at 1806. The "community of interest" element embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." Finally, the court must determine that a class action proceeding is the superior means for the fair and efficient adjudication of the litigation. (*Id.*) For settlement purposes, each of these prerequisites must be met.

Plaintiffs meet each of the requirements for class certification for settlement purposes. First, the class is readily ascertainable from the payroll records of Defendant. *See Rose v. City of Hayward*, 126 Cal. App.3d 926, 932 (1981) (finding that "class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records"). The class is also sufficiently numerous, as there are approximately 517 Class Members, making joinder impracticable. (Otkupman Decl., ¶ 28) See *Gay v. Waiters' & Dairy Lunchmen's Union* 489 F. Supp. 282 (N.D. Cal. 1980), aff'd 694 F.2d 531 (9th Cir. 1982; See *Hebbard v. Colgrove* 28 Cal. App. 3d 1017, 1030 (1972) **(**no set minimum to meet the numerosity prerequisite, but class as few as 28 members is acceptable). Typicality is also met as Plaintiffs' claims are the same as that of the Class (*See Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983) (the purported representative's claim need not be identical to the claims of other members of the class; it is sufficient that the representative is similarly situated, so that he or she will have the motive to litigate on behalf of all class members).

The predominance factor is satisfied here as well. Plaintiffs have alleged that each of the class members did not receive: meal and rest periods or compensation in lieu thereof; all minimum and overtime wages owed to them; Labor Code compliant wage statements; timely payment of all wages due at termination; timely payment of wages during employment; and reimbursement for business expenses. *See Wershba v. Apple Computer*, supra, 91 Cal.App.4th at 238 (where all class members have suffered a common alleged wrong, class action is appropriate); *Employment Development*

Department v. Superior Court 30 Cal. 3d 256, 265 (1981) (class action appropriate where a large number of applicants have been harmed on the basis of an invalid government administrative practice); *Armstrong v. Davis* 275 F. Rd 849, 868 (9th Cir.2001)(commonality is generally satisfied where (as here) "the lawsuit challenges a system-wide practice or policy that affects all of the putative class members); *Laduke v. Nelson* 762 F.2d 1318, 1332 (9th Cir. 1985); *Kincaid v. City of Fresno* 244 F.R.D. 597, 602 (E.D. Cal. 2007); *Gasperoni v. Metabolife, International* 2000 WL 33365948 (E.D. Mich. 2000) (where all plaintiffs allege a common method of misrepresentation and the same legal claim, class action is appropriate). The adequacy requirement is met here too since Class Counsel has been involved in numerous wage and hour actions throughout their careers. (Otkupman Decl., ¶¶ 5, 6; Coelho Decl., ¶¶ 21-28) Furthermore, there is no indication of any actual (or potential) conflicts between Plaintiffs and the Class. (Otkupman Decl., ¶ 31) It is sufficient to show that the representatives stand in the same shoes as every other member of the class, and seek the same relief. No more is required. *Bowles v. Superior Court* 44 Cal. 2d 574, 587 (1955); *McGhee v. Bank of America* 60 Cal. App. 3d 442, 450 (1976). Plaintiffs are, therefore, adequate representatives.

Class resolution is superior to other available methods for the fair and efficient adjudication of the controversy. (See *Hanlon*, 150 F.3d at 1023; see *Dunk*, 48 Cal. App. 4th at 1807 n. 19). The superiority requirement involves a comparative evaluation of alternative mechanics of dispute resolution." *Hanlon*, 150 F.3d at 1023. Here, as in *Hanlon,* the alternative methods of resolution are individual claims for a very small amount of damages. *Id*. These claims "would prove uneconomic for potential plaintiffs "because litigation costs would dwarf potential recovery." *Id*. For this reason, in this case, as in *Hanlon*, a class action is the preferred method of resolution.

VII. THE PROPOSED CLASS NOTICE IS APPROPRIATE

A. The Class Notice Satisfies Due Process

California statutory and case law vests the Court with broad discretion in fashioning an appropriate notice program. See C.C. Section 1781; *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). The notice plan here entails mailing the notice to all known and reasonably ascertainable Class Members based on records maintained by Defendant. Defendant has agreed to provide the last known address for all Class Members to the Settlement Administrator. The Settlement

Administrator shall have the responsibility of mailing the notice to all ascertainable parties. For notices returned undeliverable, it is agreed that the Settlement Administrator shall send an additional notice to any new address identified. Such notice more than satisfies due process. *Id*. at 962. Since the addresses of each of the Class Members are available from Defendant's records, the Parties believe it would not be cost effective to employ other methods of notice, such as notice by publication.

B. The Proposed Class Notice is Accurate and Informative

A court order preliminarily approving a class settlement must contain the notice to be given to the class. Cal. R. Ct. 3.769 (e). According to California Rule of Court 3.766(d), the notice must include the following: (1) a brief explanation of the case, including the basic contentions or denials of the parties; (2) a statement that the court will exclude the member from the class if the member so requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel.

The court has broad discretion in deciding whether to approve the proposed class notice. *Wershba*, 91 Cal.App.4th at 252. According to the California Rules of Court 3.766(d), the notice must include the following: The proposed Class Notice provides information on the meaning and nature of the proposed settlement Class; the terms and provision of the settlement; the relief the settlement will provide settlement Class Members; how Class Members will receive their portion of the settlement proceeds; the application by Plaintiffs' counsel for reimbursement of costs and attorneys' fees; the date, time and place of the final settlement approval hearing; and the procedure and deadlines for opting out of the settlement or for submitting comments and objections. The Class Notice further fulfills the requirement of neutrality in class notices. It summarizes the proceedings to date, and the terms and conditions of the settlement, in an informative and coherent manner. The Class Notice clearly states that the settlement does not constitute an admission of liability by Defendant and recognizes that the Court has not ruled on the merits of the action. It also states that the final settlement approval decision has yet to be made. Accordingly, the Class Notice complies with the standards of fairness, completeness and neutrality required of a settlement class notice designated under authority of the Court.

VIII. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

The last step in the Settlement approval process is the formal hearing, at which the court may hear all evidence and arguments necessary to evaluate the proposed Settlement. At that hearing, proponents of the Settlement may explain and describe its terms and conditions and offer arguments in support of the Settlement approval; Participating Class Members, or their counsel, may be heard in support of or in opposition to the Settlement Agreement.

IX. CONCLUSION

For reasons set forth herein, Plaintiffs respectfully request that the Court grant their motion for preliminary approval of the proposed Class and Representative Action Settlement.

DATED: January 2, 2026 **OTKUPMAN LAW FIRM, A LAW CORPORATION**

By: ______________________________

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