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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF GLENN

Ferry Mendoza, individually and on behalf of all similarly situated individuals,

Plaintiff,

vs.

Baugher Ranch Organics, Inc., a California Corporation; and **Does 1-10,** inclusive;

Defendants.

CASE NO. 25CV000363

[Assigned to the Hon. Alicia Ekland; Dept 2]

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR:

(1) PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;

(2) APPROVAL OF NOTICE TO CLASS MEMBERS AND RELATED MATERIALS; AND

(3) SETTING HEARING FOR FINAL APPROVAL OF SETTLEMENT

Date: August 13, 2025
Time: 2:30 p.m.
Dept.: 2

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that, on August 13, 2025 at 2:30 p.m., or the earliest available date to be assigned by the Court, in Department 2 of the Glenn County Superior Court for the State of California, located at 526 West Sycamore Street, Willows, California 95998, before the Honorable Alicia Ekland pursuant to § 382 of the California Code of Civil Procedure, Plaintiff Ferry Mendoza on behalf of himself individually and on behalf of all members of the Settlement Class as defined, hereby moves this Court for entry of an Order:

1. Certifying the Class for purposes of settlement;

2. Preliminarily appointing Named Plaintiff Ferry Mendoza as Class Representative for purposes of settlement;

3. Appointing Elliot J. Siegel and Julian Burns, King of King & Siegel LLP, Bardia A. Akhavan of Akhavan & Associates, and Navid Barahmand, of Barahmand Law Group, as Class Counsel for purposes of settlement;

4. Preliminarily approving the Settlement as fair, adequate, and reasonable, based upon the terms set forth in the Joint Stipulation of Settlement and Release of Class Action ("Settlement Agreement" or "Settlement"), including payment by Defendants of the non-reversionary Maximum Settlement Amount ("MSA") of $265,000.00;

5. Preliminarily approving payment of reasonable attorneys' fees from the Maximum Settlement Amount in an amount of one-third of the Maximum Settlement Amount (*i.e.*, $83,333.33), plus reasonably incurred litigation costs of up to $20,000.00;

6. Preliminarily approving a Class Representative enhancement payment to Named Plaintiff Ferry Mendoza in an amount of up to $7,500.00, which is to be paid out of the Maximum Settlement Amount, to compensate him for the burdens, responsibilities, time, effort and risks involved in coming forward on behalf of the Class;

8. Preliminarily approving Apex Class Action LLC ("Apex") as Settlement Administrator and further approving the distribution of up to $20,000.00 from the Maximum Settlement Amount to cover the Settlement Administrator's expenses in administering this Settlement;

9. Preliminarily approving payment to the Labor and Workforce Development Agency

("LWDA") in the amount of $15,000.00 from the Maximum Settlement Amount;

10. Approving the proposed Notice of Proposed Class Action Settlement and Hearing Date for Court Approval ("Class Notice") and ordering it be disseminated to the Class as provided in the Settlement Agreement; and

11. Setting a date for a final fairness hearing to determine, following dissemination of notice to the Class, whether to grant final approval of the Settlement.

This motion is based upon this Notice of Motion and Motion; the Memorandum of Points and Authorities in Support thereof; the declarations of Elliot J. Siegel, Navid Barahmand, Bardia A. Akhavan, and Ferry Mendoza in Support thereof; the Joint Stipulation of Settlement and Release of Class Action; the proposed Notice of Proposed Class Action Settlement ; the [Proposed] Order Preliminary Approving Class Action Settlement; the other records, pleadings, and papers filed in this action; and upon such other documentary and verbal evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: May 28, 2025

Respectfully submitted,
KING & SIEGEL LLP

By: *<u>/s/ Elliot J. Siegel</u>*
Elliot J. Siegel

Dated: May 28, 2025

AKHAVAN & ASSOCIATES

By: *<u>/s/ Bardia A. Akhavan</u>*
Bardia A. Akhavan

Dated: May 28, 2025

BARAHMAND LAW GROUP

By: *<u>/s/ Navid Barahmand</u>*
Navid Barahmand
Attorneys for Plaintiff and the Settlement Class

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I. INTRODUCTION

This motion seeks preliminary approval of a wage-and-hour class action settlement for approximately 68 hourly non-exempt employees employed by Defendants who worked at least one shift in California from December 26, 2021 through December 1, 2024 ("Class Members") in the gross amount of $**265,000.00**—representing an approximate average individual gross recovery of $1,678.92 per Class Member.

Because the Settlement here is fair and reasonable and was negotiated at arm's length after adequate investigation by counsel, it should be preliminarily approved. If the Court grants preliminary and final approval to the settlement, the estimated Net Settlement Amount ("NSA") of $114,166.67—after deductions from the MSA for attorneys' fees (up to $88,333.33) and costs (currently expected to be $18,000, but up to $20,000), the Class Representative enhancement payment (up to $7,500), settlement administration costs (currently estimated at $5,000, but up to $20,000.00), and the LWDA's portion of the PAGA penalty payment ($15,000.00)—will be distributed to all Participating Class Members (*i.e.*, all those who do not exclude themselves from the Settlement following distribution of the Notice Packets), with no reversion of any settlement funds to Defendants. Defendants will also pay the applicable employer-side payroll taxes *in addition* to the MSA. Settlement Agmt., at ¶ 28.

No claim form will be required for Class Members to be eligible to receive an individual settlement payment, and all Class Members who do not opt-out will automatically receive individual settlement payments and be subject to the Release set forth in the Settlement Agreement. Settlement Agmt., ¶¶ 68-69; *see also* Class Notice (Declaration of Navid Barahmand ("Barahmand Decl.") in Support of Preliminary Approval, Exhibit (1)(A)).

As demonstrated below, the Settlement is a strong result for the Class and within the zone of reasonableness justifying approval. Accordingly, Plaintiff requests that the Court enter an order: (1) conditionally certifying the Settlement Class under California Code of Civil Procedure section 382 for settlement purposes only and preliminarily approving the Settlement; (2) approving the proposed Class

Notice to be disseminated to Class Members pursuant to the Settlement Agreement[1]; (3) appointing Apex, Inc. as the Settlement Administrator; and (4) scheduling a hearing for final approval of the Settlement Agreement.

II. RELEVANT FACTUAL BACKGROUND

A. The Parties and the Putative Class

Through this Motion, Plaintiff seeks preliminary approval of this Settlement for a Settlement Class defined as: *"All non-exempt persons who worked at least one 3.5-hour shift for Defendants in the State of California during the Release Period."*[2] Barahmand Decl., ¶ 27; *see also* Settlement Agmt., §§ 17-18 (Barahmand Decl., Exhibit (1)).

Based on Defendant's representations and the data produced in informal discovery, the Settlement Class is estimated to comprise of 68 direct employee Class Members who worked 3,477 work weeks during the Class Period.[3] Barahmand Decl., ¶ 10.

Plaintiff Ferry Mendoza is a resident of the State of California. (*See* Declaration of Ferry Mendoza ["Mendoza Decl."] at ¶ 3). Mr. Mendoza was an hourly, non-exempt employee of Baugher Ranch Organics, Inc. working as a forklift operator from approximately September 2023 to November 1, 2023. *Id*. Mr. Mendoza is a member of the Class as defined below. *Id* at ¶ 4. At all relevant times, Plaintiff and other non-exempt employees of Defendants in California were subject to the same policies, practices, and procedures governing the control and payment of wages earned and hours worked. *Id.*

Defendant Baugher Ranch Organics, Inc. ("Baugher" or "Defendant") is a California corporation and is an almond farm. Barahmand Decl., ¶ 9. Based on Defendant's representations, Baugher has employed approximately 68 direct employees of various lengths of employment that comprise the Settlement Class. Barahmand Decl., ¶ 10.

B. Procedural History, Discovery, and Mediation

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[1] The proposed Notice of Proposed Class Action Settlement and Hearing Date for Court Approval ("Class Notice") is **Exhibit A** of the Settlement Agreement. *See* Declaration of Navid Barahmand ("Barahmand Decl."), ¶ 28; Exhibit 1.

[2] The Release period is defined as: "the period from December 26, 2021 to December 1, 2024."

[3] Defendant's representations regarding the number of Class Members/workweeks are a material part of the Settlement and Plaintiff has secured an escalator clause in the Settlement protecting Class Members from dilution should this number increase. *See* Settlement, § 86.

On December 26, 2023, Plaintiff gave notice to the LWDA and Defendants of his intent to file suit and bring claims under the Private Attorney General Act ("PAGA").[4] Barahmand Decl., ¶ 11.

On October 24, 2024, Plaintiff filed this Class Action Complaint in Butte County Superior Court. Barahmand Decl., ¶ 12. The Parties subsequently stipulated to transfer the case to Glenn County Superior Court, where it is now entitled *Ferry Mendoza v. Baugher Ranch Organics, Inc.*, et al., Case No. 25CV00036, alleging class action claims for (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or premium pay in lieu thereof; (4) failure to provide rest periods or premium pay in lieu thereof; (5) failure to provide sick leave; (6) failure to provide and maintain complete and accurate wage statements; (7) failure to maintain accurate records; (8) failure to reimburse necessary business expenses; (9) failure to timely pay all wages during employment; (10) failure to pay all wages due upon termination; (11) civil penalties under the Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code §§ 2698, *et seq.* ("PAGA"); and (12) Unlawful Business Practices, Cal. Bus. & Prof. Code §§ 17200, *et seq*. *Id.*

Prior to the filing of the complaint, Plaintiff's and Defendants' counsel engaged in comprehensive discussions regarding Plaintiff's claims. Barahmand Decl. ¶ 18. Defendants, through their counsel, at all times vigorously denied liability, denied the material allegations of Plaintiff's claims, and asserted various affirmative defenses to the legal claims set forth in the Complaint. *Id.* at ¶ 19.

As part of these discussions, the Parties agreed to attend private mediation to be held on September 24, 2024 with Lynn Frank, of Frank and Feder, a well-respected neutral experienced in wage and hour matters, and agreed to exchange informal discovery for use at mediation. *Id.* at ¶ 20.

Following their agreement to mediate, Defendants provided Plaintiff with an informal production of data and documents relating to the Class, including time clock data and wage statements for employees through February 22, 2024, a list of all employees containing individual pay rates, and start and end dates of employment; and Defendants' relevant policy documents. *Id.* at ¶ 21.

Along with this production, Plaintiff's counsel engaged in extensive factual and legal investigation

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[4] Plaintiff also gave notice of the Settlement to LWDA on May 20, 2025. Barahmand Decl., ¶ 11. As of the date of this Motion, Plaintiff has not received a response from the LWDA regarding the PAGA Notice or the Settlement. *Id.* Class Counsel also is serving a copy of this Motion on the LWDA contemporaneous with the filing. *See* Proof of Service.

into the claims, which included (a) telephonic conferences with Plaintiff regarding his experiences at Defendants' locations and interpretation of the data provided; (b) inspection and analysis of numerous payroll and policy documents and other information produced by Plaintiff and Defendants; (c) analysis of the legal positions taken by Defendants; (d) investigation into the viability of class treatment of the claims asserted in the operative Complaint; (e) analyses of potential class-wide damages, including information sufficient to understand Defendants' potential defenses to Plaintiff's class-wide and individual claims; (f) research of the applicable law with respect to the claims asserted in the operative Complaint and the potential defenses thereto; (g) assembly and analysis of data for calculating damages; (h) hiring the services of an expert to analyze and prepare Defendants' exposure.[5] *Id.*, at ¶ 22.

Defendant's production and Class Counsel's investigation were fulsome and allowed Plaintiff's counsel to develop a sound understanding of the merits of the claims; their value; and the viability of the defenses asserted by Defendants. *Id.*, at ¶ 24.

On September 24, 2024, the Parties and their counsel attended mediation with Lynn Frank, a well-respected mediator of wage and hour class actions and employment litigation. *Id.*, at ¶ 25. Negotiations lasted all day and were conducted at arm's length. *Id.* The case did settle at mediation. *Id.*

The Parties agreed to settle the entire action, subject to Court approval, for the MSA of $<u>265,000.00</u>. *Id.* The Parties executed a Memorandum of Understanding ("MOU") containing the key deal points that formed the basis for the long-form Settlement Agreement now before the Court for preliminary approval. *Id* at ¶ 26.

On May 5, 2025, the Parties fully executed the Settlement Agreement. *Id.*, at ¶ 27.

Class Counsel's factual investigation, comprehensive discussions between the Parties' counsel, and the informal discovery conducted in this matter have been adequate to give the Class Representative and Class Counsel a sound understanding of the merits of his position and to evaluate the worth of the claims of the Class. *Id.*, at ¶ 29.

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[5] Such analysis included, without limitation, the amount of hours that qualified for overtime treatment; amounts of all underpayments of regular and overtime wages; the number of late, short, and missed meal periods based on time punch data; the number of rest period violations; and other violations sufficient to establish the maximum and realistic exposure for each claim alleged in the Complaint. Barahmand Decl., ¶ 23.

The informal discovery conducted in this Action, and the information exchanged by the Parties before, after, and during the mediation, was sufficient to reliably assess the merits of the respective Parties' positions and to compromise on a fair and equitable basis. *Id.*

Class Counsel believes that the Settlement set forth below confers substantial benefits upon the members of the Class and should be approved. *Id.* Based on their own independent investigation and evaluation, Class Counsel has determined that the agreed upon Settlement is in the best interests of the Settlement Class and now seeks Court approval of the same. *Id.* at ¶ 30.

III. SUMMARY OF THE PARTIES' CLAIMS AND DEFENSES

In the operative Class Action Complaint, Plaintiff alleged twelve causes of actions on behalf of himself and the Putative Class for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or premium pay in lieu thereof; (4) failure to provide rest periods or premium pay in lieu thereof; (5) failure to provide sick leave; (6) failure to provide and maintain complete and accurate wage statements; (7) failure to maintain accurate records; (8) failure to reimburse necessary business expenses; (9) failure to timely pay all wages during employment; (10) failure to pay all wages due upon termination; (11) civil penalties under the Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code §§ 2698, *et seq.* ("PAGA"); and (12) Unlawful Business Practices, Cal. Bus. & Prof. Code §§ 17200, *et seq* Barahmand Decl., ¶ 31.

Class Counsel summarizes the factual and legal bases for the Classes' claims below. Plaintiff's detailed claim-by-claim recitation, analysis, valuation, and risk discount, utilized to arrive at a fair valuation of Plaintiff's claims, is set forth in the Declaration of Navid Barahmand at Paragraphs 31-59.

First, throughout the Class Period, Class Members were denied compliant meal periods as a matter of common practice and policy as demonstrated by employee time records, which confirm that a significant number of first meal periods were taken late and a staggering number of first meal periods were not even taken, in violation of Labor Code §§ 226.7, 512, and Wage Order No. 1. Barahmand Decl., ¶ 14.

Second, throughout the Class Period, Class Members were denied compliant rest periods as a matter of common practice and policy as Defendant required its non-exempt employees to continue working during their rest periods or otherwise interrupting or cut short their rest periods, or remain on duty and under Defendant's control during their rest periods to perform other tasks at Defendant's directions due to Defendant's policies and practices, including their scheduling and staffing practices and policies. Barahmand Decl., ¶ 15.

Third, Plaintiff and Class Members were not reimbursed for necessary business expenditures, such as using their cellular phones to discharge their duties. Barahmand Decl., ¶ 16.

Fourth, Plaintiff alleged that these violations led to derivative penalties under Labor Code §§ 201-203, 210, 226, and under PAGA. Barahmand Decl., ¶ 17.

A. Defendants' Denial of Liability and its Legal and Factual Defenses

Defendants denied and continue to deny generally the claims, contentions, and all material allegations made in the Complaint. Barahmand Decl., ¶ 60. Defendants also claimed various defenses against certification, liability, and damages as to all claims. *Id*., at ¶¶ 60-80.

Defendant asserted various defenses against certification, liability, and damages at mediation and throughout litigation, which are detailed in depth—along with Class Counsel's assessment of these defenses—in the Barahmand Declaration at Paragraphs 81-113.

B. Fair Valuation of the Class's Claims

The Settlement was only entered into after Class Counsel determined its merits based on their damage calculations, risk assessment, and non-collusive, third-party mediated negotiation with Defendants. Barahmand Decl., ¶ 107.

Prior to agreeing to any settlement, Class Counsel conducted its factual investigation, obtained aggregate and individual Class Member data, and numerous wage-related and policy documents as part of formal and informal discovery, including (1) per-shift time punch data, plus itemized wage statements, for the entirety for the Class; (2) a list of Class Members containing individual pay rates and start and end dates of employment; all compensation, security, payroll, time-keeping, time tracking, and meal/rest period policy-related documents in effect during the relevant period; and (4) additional information relevant to potential damages, such as Defendants' positions as to the average shift length for the Class and other aggregate data. Barahmand Decl., ¶ 82.

The informal discovery conducted in this Action, Class Counsel's investigation, and the information exchanged by the Parties before, after, and during the mediation, was sufficient to assess reliably the merits of the respective Parties' positions. Barahmand Decl. ¶ 83.

In coming to a determination that this Settlement was fair and reasonable and in the best interests of the Class, Plaintiff and Class Counsel took into consideration the merits of the action on balance; not certifying the class based on common issues not predominating; the risk of a finding Defendants complied with Labor Code mandates regarding compensable time, compliant meal or rest break policies, or implemented compliant practices regarding the same; the risk of the court not awarding waiting time penalties, and/or other civil or PAGA penalties based on a lack of willfulness or difficulties in establishing bad faith; and other potential defenses of Defendants on the merits. Barahmand Decl. ¶ 108.

If Defendants prevailed on any of these defenses, the claims of the Class would potentially be worth little to nothing. *Id.* at ¶ 109. Class Counsel also took into account the value of an immediate and guaranteed Settlement against the uncertainty and delay that would occur before the Class's claims could be heard at trial, extended by any potential appeals. *Id.*

In considering these significant risks and others, as well as the time, expense and cost of litigation, trial and appeals, Class Counsel determined that Settlement was appropriate, fair and reasonable, and justified by Class Counsel's legal and factual investigation. Barahmand Decl., ¶ 81.

(Plaintiff's detailed claim-by-claim analysis and risk discount of Defendants' defenses, utilized to arrive at a fair valuation of Plaintiff's claims, is set forth in the Declaration of Navid Barahmand at Paragraphs 81-113.)

To be clear, Class Counsel believes that the claims have merit, and that the Class would ultimately prevail at trial; however, Class Counsel is mindful of the risks inherent in continued litigation and the potential adverse outcomes to the Class by proceeding with litigation. Barahmand Decl., ¶ 110. In contrast, the Settlement will yield a *prompt*, *certain*, and *substantial* recovery for Class Members, which also benefits the parties and the Court. Barahmand Decl., ¶ 111.

The Settlement takes those risks and others into account in arriving at the non-reversionary Maximum Settlement Amount of $<u>265,000.00</u>—which is a significant recovery of <u>89.5%</u> of the value of Defendants' *risk-adjusted, realistic, maximum* damages (not including any discount for the time value of money). *Id.* The Settlement obtained here will result in meaningful recovery for each Class member, with Class Members being entitled to an average individual gross recovery of $1,678.92. Barahmand Decl., ¶

111.

The Settlement is well within the "zone of reasonableness" justifying preliminary approval and notice dissemination to the Class—and meets or exceeds settlements in similar wage and hour cases based on the percentage of recovered damages or on average recovery. Barahmand Decl., ¶ 113, fn. 5; *see also City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 & n.2 (2nd Cir. 1974).

IV. SUMMARY OF THE PROPOSED SETTLEMENT AND CLAIMS PROCESS

The Settlement Agreement entered into by the parties is attached as **Exhibit 1** to the Declaration of Navid Barahmand and incorporated herein by reference in its entirety. The following is a summary of the principal terms of the Settlement Agreement:

A. The Settlement sum, Attorneys' Fees, Costs, and Enhancement Award

The non-reversionary Maximum Settlement Amount ("MSA") of $265,000.00 to be paid by Defendants in full settlement includes: (1) Class Counsel's attorney's fees in a sum of up to $88,333.33; (2) litigation costs of up to $20,000, but estimated to be $18,000; (3) Class Representative' enhancement payment of up to $7,500.00; (4) settlement administration costs to Apex, currently estimated at $10,000, but up to $20,000.00; and (5) PAGA penalties in the sum of $15,000, with $11,250.00 to be paid to the California Labor Workforce and Development Agency ("LWDA") and $3,750.00 to be paid to the Class. Settlement Agmt., at ¶¶ 27; 55. Defendants will pay applicable employer-side payroll taxes *in addition* to the MSA. *Id.* ¶ 28.

B. Net Funds Available to Class Participants

Members of the Settlement Class who do not opt out of this Settlement will receive a lump sum payment as consideration for the release of claims set forth in Settlement Agreement, in an amount determined by the Settlement Administrator based on a workweek analysis of their time working for Defendants. Settlement Agmt., ¶ 57.

After all Court-approved deductions from the non-reversionary MSA, it is estimated that a minimum of $114,166.67 (the "Net Settlement Amount" or "NSA") will be distributed to the Class Members. The individual settlement payment to each member of the Settlement Class not excluding themself will be determined as follows:

First, The Settlement Administrator will calculate the number of Workweeks per Participating

Class Member. In calculating Workweeks, the Settlement Administrator will calculate the number of Workweeks based on records in Defendant's possession, custody, or control. *Id.*, at ¶ 57(a).

Next, the respective Workweeks worked by each Settlement Class Member during the Class Period will be divided by total Workweeks for all Settlement Class Members, resulting in an initial Payment Ratio for each Class Member. *Id.*, at ¶ 57(c).

Finally, each Settlement Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Settlement Class Member's estimated Individual Class Payments. However, workweeks worked by exempt employees shall be weighted at 5:1 to the workweeks worked by non-exempt employees to account for the difference in their legal claims and the minimum payment to any given Class Member shall be no less than $25 dollars.[6] *Id,* at ¶ 57(d).

In addition, using the Class Data, the Settlement Administrator will calculate the total number of pay periods in the PAGA Period and will divide each Class Member's individual number of eligible pay periods in the PAGA Period to determine their pro rata portion of the portion of the PAGA payment allocated to Aggrieved Employees. *Id.*, at ¶ 57(e).

There will be no weighting for purposes of calculating Individual Payments.

C. Release by Class and Plaintiff

Upon final approval, Named Plaintiff and all members of the Settlement Class, except those who make a timely and valid Request for Exclusion from the Class ("Participating Class Members"), will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged with respect to all of the Released Parties and any and all Released Claims during the Release Period.[7] Settlement Agmt., ¶¶ 68-69.

"Released Claims" means those claims for civil penalties asserted in the Complaint or Plaintiff's LWDA letter under the Private Attorneys General Act, Labor Code section 2698 et seq. ("PAGA") based

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[6] For tax purposes, the Individual Settlement Payments will be allocated as 20% to unpaid wages and 80% to civil penalties, interest, and expense reimbursement. Settlement Agmt., ¶ 56.

[7] Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitutes payment of all sums allegedly due to them. *Id.* Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payment. *Id.*

on predicate violations of California Labor Code sections 96, 98.6, 201, 202, 203, 204, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, 432, 510, 512, 558, 1102.5 1182.12, 1174, 1194, 1194.2, 1197, 1198, 1401, 2802, and 2810.5, et seq., California Industrial Commission Wage Orders, Cal. Code Regs., Title. 8, section 11040, et seq., during the PAGA Release Period. *Id.*, ¶ 39, 80-81.

"Released Parties" shall mean (i) Defendants; (ii) as well as their subsidiaries and/or parent corporations, divisions, affiliates, past and present officers, predecessors, directors, employees, agents, shareholders, fiduciaries, representatives, attorneys, insurers, benefit plans, private investigators and each and all of the foregoing persons' heirs, assigns, executors, administrators and successors, or any of them. *Id.*, ¶ 42.

The "Release Period" means the "period from December 26, 2021 through December 1, 2024." *Id.*, ¶ 40.

The "Released PAGA Claims" means the release of claims by Aggrieved Employees for civil penalties under PAGA asserted in the Complaint or LWDA letter, or that could have reasonably been alleged based on the factual allegations contained in the Operative Complaint and PAGA Notice. The Released PAGA Claims shall be release through the PAGA Release Period. No Aggrieved Employee may opt out of the PAGA Release and will be bound by this Release regardless of whether they cash their Individual PAGA Payment. The Release will only take effect upon the latter of the Effective Date and full funding of the MSA by Defendants. *Id.*, ¶ 41, 82.

D. Class Notice and Administration

Subject to Court approval, the Parties agree to engage Apex to administer the Settlement and to act as the Settlement Administrator to administer the settlement process, which includes but is not limited to distributing and responding to inquiries about the Notice Packet, determining the validity of any Workweek disputes and opt-outs, and calculating all amounts to be paid from the Net Settlement Amount. *See generally* Settlement Agmt. Charges and expenses of the Settlement Administrator will be paid from the Maximum Settlement Amount. *Id.*, at ¶ 28. If the actual Settlement Administrator fees are less than the Parties' estimation, the difference between the actual and estimated Settlement Administrator fees will be included in the Net Settlement Amount. *Id.*, at ¶ 56.

The Notice Packet shall include the Notice of Class Action Settlement and Share Form. *Id.*, at ¶

89. The Notice Packet shall provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal terms; (c) the Settlement Class definition; (d) each Class Member's estimated Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (e) the dates which comprise the Class Period; (f) instructions on how to submit valid Requests for Exclusion or objections; (g) the deadlines by which the Class Member must fax or postmark Requests for Exclusions or file and serve objections to the Settlement; (h) the claims to be released, as set forth herein; and (i) the date for the Final Approval Hearing. *Id*., at ¶ 64; *see also* Class Notice (Barahmand Decl., Exhibit (1)(A)).

Apex will provide notice and other settlement administration functions necessary for the Parties to fulfill their Settlement obligations including, identify the Class Members and ensure that their addresses are updated, mail out the Notice Packets, and if returned as non-deliverable re-mail to the forwarding address, as to all members of the Class. *Id*., at ¶¶ 43-44.

Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address, and/or Social Security number (or other Taxpayer Identification Number, if applicable) of the Class Member involved and will then perform a single re-mailing. Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have between the later of: (a) an additional fifteen (15) calendar days; or (b) the Response Deadline to fax or postmark a Request for Exclusion, or file and serve an objection to the Settlement. *Id*., at ¶ 65.

Within five (5) calendar days following receipt of the Class List, which will be provided by Defendants within five (5) calendar days of Preliminary Approval, the Settlement Administrator shall mail copies of the Notice Packet, containing the Class Notice, Exclusion Form, Objection Form, and individualized, populated Share Form, to all Class Members via First-Class U.S. Mail. *Id*., ¶¶ 63-64.

E. Opportunity to be Excluded or Object

The Notice Packet shall enclose an Exclusion, Objection, and Share Form for Settlement Class Members to allow Class Members to more easily exercise their rights with respect to the Settlement. Settlement Agmt., at ¶ 31; *see also* Class Notice (Barahmand Decl., Exhibit (1)(A)).

Class Members will have 35 calendar days from the date the Notice Packets (*i.e.,* the Notice of Class Action Settlement and Share Form) are mailed by the Settlement Administrator to postmark their request for exclusion or notice of objection. Settlement Agmt., at ¶¶ 31, 44, 64. The date of the initial mailing of the Notice Packet, and the date of the postmark on the return mailing envelope will be the exclusive means to determine whether a request for exclusion has been timely submitted. *Id*., at ¶ 43. The postmark date of the filing and service will be the exclusive means for determining that the notice of objection is timely. *Id*., at ¶ 57. The Settlement Administrator's decision as to the total number of Individual Workweeks shall otherwise be final and non-appealable. *Id*.

F. Exclusion, Objection, and Share Forms

For each Settlement Class member, the Share Form will identify the number of Individual Workweeks that she/he was employed and their estimated Individual Settlement Payment. *Id*., at ¶ 64; *see also* Class Notice (Barahmand Decl., Exhibit (1)(A)). The Notice Packet will also inform the employee of their right to dispute this number by completing and returning the form by their Response Deadline, which will be thirty (30) calendar days from the postmark date of the Share Form. *Id*., at ¶¶ 30, 49, 64; *see also* Class Notice (Barahmand Decl., Exhibit (1)(A)). A Settlement Class Member's receipt of Settlement proceeds is not conditional on the submission of the Share Form. *see* Class Notice (Barahmand Decl., Exhibit (1)(A)). Absent the receipt of a Share Form, the number of workweeks identified in the Share Form shall be conclusively deemed to be accurate. *Id*., at ¶ 44.

G. Payment of the Maximum Settlement Amount and Distributions

Within 7 calendar days of the Effective Date (*i.e*., the date Final Approval is granted assuming no pending objections as further detailed in the Settlement Agreement), the Settlement Administrator will provide the Parties with an accounting of the amounts to be paid by Defendants pursuant to the terms of the Settlement. Settlement Agmt., ¶ 50.

Defendants will then make payment of the entire Maximum Settlement Amount under the

Settlement, plus all the employer-side payroll taxes, within 14 calendar days of the "Effective Date." *Id.* at ¶¶ 50-51. Defendants' payment will be deposited into a Qualified Settlement Account to be established by the Settlement Administrator.

If a Class Member does not exclude themselves, they will be mailed a check no later than seven (7) calendar days after Defendants' deposit of payment. Settlement Agmt., at ¶ 51. Any settlement checks that remain uncashed for more than 180 calendar days after issuance shall be voided, and the Settlement Administrator will transmit the funds represented by such checks to a Court-approved non-profit organization or foundation recipients whose work is related to the subject matter of the lawsuit, its underlying objections, and the Class Members' claims consistent with F.R.C.P. 23(e) ("Cy Pres Recipient"). Settlement Agmt., at ¶ 72.

H. Tax Treatment

Twenty percent of all Individual Settlement Payments shall constitute unpaid wages in the form of back pay (and each Class Participant will be issued an IRS Form W-2 for such payment to him or her), and eighty percent shall constitute civil penalties, statutory penalties, and interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her). *See* Settlement Agmt., at ¶¶ 75-77. Employment taxes and other legally required withholdings will be withheld from payments to the members of the Settlement Class. *Id.* Defendants will bear the cost of all employer-side payroll taxes, which shall not be paid from the Settlement Amount. *Id.*, at ¶¶ 28, 77.

I. Certification Reports

The Settlement Administrator will provide Defendants' counsel and Class Counsel a weekly report which certifies: (a) the number of Class Members who have submitted valid Requests for Exclusion; and (b) whether any Class Member has submitted a challenge to any information contained in their Share Form or Notice Packet. Settlement Agmt., at ¶ 71. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested. *Id.* No later than thirty (30) days prior to the deadline for Class Counsel to file its motion in support of the Final Approval and Fairness Hearing, the Settlement Administrator will compile and deliver to Class Counsel and Defense Counsel a declaration with summary information of the Notice process, including but not limited to (a) the total amount of final Individual Settlement Payments of each Settlement Class Member (b) the number of Settlement Class Members to receive such payments, (c) the final number of Requests for Exclusion/Opt-Outs and objections, (d) the Settlement Administrator's qualifications for administration, and (e) an explanation of the steps taken to implement the Notice process as set forth in this Agreement. *Id.*

V. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co. 9* ("*Dunk*"), 48 Cal. App. 4th 1794, 1807 n.19 (1996). Since no trial is anticipated in a settlement class, the case management issues inherent in determining if the class should be certified need not be confronted; and the trial court's fairness review of the settlement protects the interests of the non-representative class members. (*Id.*); *see also Officers for Justice*, 690 F.2d at 633 ("Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process . . . . [C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1987) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.").

As discussed below, for the purposes of this settlement only, the Parties ask this Court to provisionally certify the Class, as defined above, under section 382 of the Code of Civil Procedure.

A. Numerosity and Ascertainability

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Cal. Code Civ. Proc. § 382. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). At the time of settlement, Defendants represented that the proposed Class consisted of approximately over 68 current and former employees—a sufficient number in the context of a Settlement Class. Barahmand Decl., ¶ 10; *see also* Settlement Agmt., ¶ 18.

B. Well-Defined Community of Interest

1. Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 913 (2001). While the Parties dispute whether a class would be appropriate if the litigation were to continue, they agree, for the purposes of this Settlement only, that the Class is subject to a failure to pay minimum and overtime compensation policies and practices, and meal and rest period policies and practices. Settlement Agmt., ¶ 49; *see Bluford v. v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864 (2013) (certification appropriate).

2. Typicality

Typicality "focuses on whether there exists a relationship between the plaintiff's claims and the claims alleged on behalf of the class." Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("*Newberg*")*,* § 3:13. Again, the Parties dispute whether Plaintiff's claims are typical of the Class for the purposes of any continued litigation of the Action, but agree for the purposes of this Settlement only, that Plaintiff asserts claims regarding Defendants' failure to pay minimum wages, overtime compensation, and meal and rest period policies and practices that are at the core of the lawsuit. Settlement Agmt., ¶ 49.

3. Adequacy of Representation

The proposed class representative must establish that he or she will adequately represent the proposed class. *See Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009). Specifically, Named Plaintiff is adequate to represent the Class because he was employed by Defendants during the Class Period, experienced the same wage and hour practices as the rest of the Class, understands his duties as a class representative, has been willing to undergo the risks of litigation, and has no conflicts of interest with the other Class Members. Mendoza Decl., ¶¶ 3-4.

Adequacy may be established by the fact that counsel are experienced practitioners. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). The

Class is well represented by counsel with extensive experience in wage-and-hour litigation, including numerous wage-and-hour class actions. Siegel Decl., ¶¶ 3-8; Barahmand Decl., ¶¶ 3-7; Akhavan Decl., ¶¶ 3-6.

4. Superiority

Certification of the Class for settlement purposes is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. *See* Settlement Agmt., ¶ 49. Class certification is also vastly superior to litigation of multiple individual claims because most, if not all, of the claims are too small to litigate outside of the class context. *Id.*

VI. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE

A. Class Action Settlements Are Subject to Judicial Review and Approval Under the California Rules of Court

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

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

The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *See Dunk,* 48 Cal. App. 4th at 1801 (setting forth the "fair, adequate, and reasonable" standard) (citing *Officers for Justice*, 690 F.2d at 625); *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742 43 (2009) (a trial court must approve a class action settlement agreement, but only after determining that it is "'fair, adequate and reasonable,'" considering factors such as the "'risk, expense, [and] complexity'" of continued litigation). The Court enjoys broad discretion in making its fairness determination, and should consider factors including but not limited to:

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

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

The above factors are not exclusive, ". . . and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba*, 91 Cal. App. 4th at 245. However, in doing so, the Court must give "[due] regard to what is otherwise a private consensual agreement between the parties." *Id.; see also In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006) (same). The inquiry must be limited "to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Id.* (citation and internal quotation marks omitted).

At the preliminary approval stage, the Court need only determine that the settlement falls within the "range of possible judicial approval," so that notice to the class and the scheduling of the fairness hearing are worthwhile. *See Newberg*, § 11:25 (4th ed. 2002); *see also Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016) ("At the preliminary approval stage, the court "evaluate[s] the terms of the settlement to determine whether they are within a range of possible judicial approval.").

The Court should grant preliminary approval if there are no "grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement] appears to fall within the range of possible approval." *Manual For Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal. App. 4th at 1802.

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*, 48 Cal. App. 4th at 1802 (citing *Newberg*, § 11:41); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 ("The trial court operates under a presumption of fairness when the settlement is the result of arm's-length negotiation, investigation and discovery that are sufficient to permit counsel and the court to act intelligently, counsel are experienced in similar litigation, and the percentage of objectors is small.").

As shown below, the Settlement falls well within the range of approval and there are no grounds to doubt its fairness.

B. The Settlement Is The Result Of Serious, Informed, Non-Collusive Negotiations and Reflects a Fair Compromise of Claims and Risk Factors

The settlement was the product of extensive arm's length negotiations utilizing a professional and well-respected third-party neutral. Barahmand Decl., ¶ 107. Though professional, the mediation and settlement negotiations were adversarial and non-collusive in nature. *Id*. The Settlement reached is the product of substantial effort by the Parties and their counsel. *Id.*; *see generally*, Barahmand Decl.

Although Plaintiff and his counsel believed the Class's claims have merit and that they could have potentially certified the class and claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. Barahmand Decl., ¶ 94.

The resulting Settlement was based on Class Counsel's informed calculations, risk assessment, and non-collusive negotiation, as well as the mediator's impartial evaluation of the matter; it takes the risks identified above and others into account in arriving at the non-reversionary settlement amount of $265,000.00. Barahmand Decl., ¶ 107.

C. The Extent Of The Pre-Litigation Discovery And Investigation Was More Than Sufficient To Permit Preliminary Approval Of The Settlement

Class Counsel thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the Settlement. As described above, the Settlement was reached after extensive investigation and research, calculations and risk evaluation, substantial exchanges of informal discovery and production of documents, and Class Counsel's thorough factual investigation and expert damages assessments—all of which was sufficient to evaluate Defendants' liabilities and defenses.

Barahmand Decl., ¶¶ 22, 82, 112. The Settlement came only after the case was thoroughly investigated by Class Counsel. *Id.*

D. The Risks Inherent in Continued Litigation Are Significant

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also should consider "[t]he strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, [and] the risk of maintaining class action status." *See Dunk*, 48 Cal. App. 4th at 1801. As described above and detailed in the Barahmand Decl., Defendants have asserted defenses to Plaintiff's claims, which create a real possibility that the claims might not all be certified and/or might fail on the merits. Barahmand Decl., ¶¶ 81-113. Another risk inherent in continued litigation is the risk of non-certification and maintaining class action status through trial, and appeal. There was risk that Defendants could defeat class certification or merits as to the rounding and unpaid meal and rest period claims and a very real possibility that the Court reduce the value available discretionary penalties, which comprise a significant portion of the value of the Class's claims. *Id.*, at ¶¶ 94-113.

In considering these risks, Class Counsel's analysis strongly militated towards the Settlement. Barahmand Decl., ¶¶ 22, 81-113. Proceeding with litigation would impose a significant risk of substantially lower recovery as well as ongoing, substantial additional expenditures of time and resources. If settlement were not achieved, continued litigation of the claims would take a substantial amount time and possibly confer less benefit to Class Members. *Id.*

By contrast, the Settlement will yield a *prompt*, *certain*, and *substantial* recovery for the Class, which also benefits the Parties and the Court. *Id.*, at ¶ 107.

E. The Class Notice Plan Conforms To All Applicable Statutes and Rules

The proposed Class Notice should be approved, as it fully informs the Class Members of the nature of the lawsuit and each Class Member's rights under the terms of the Settlement Agreement and applicable law. *See* Settlement Agmt., Exhibit A. The manner in which the Class Notice shall be disseminated, as outlined above, will ensure that all or nearly all of the Class Members will be properly notified of the proposed Settlement.[8] *Id.*

The notice plan and the Class Notice satisfy the requirements of Rule of Court 3.766 and afford Settlement Class Members with all due process protections required by the United States Constitution. Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the Notice includes, without limitation (1) a detailed 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. *See* Settlement Agmt., Exhibit A. The 30-calendar day response deadline for Class Members to exclude themselves, object, or challenge their Workweeks is reasonable, as it provides Class Members with ample time to do so and, if they so choose, to seek independent legal advice in the interim.

F. Class Counsel Are Experienced In Similar Wage-And-Hour Litigation.

The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (court must take into account "the experience and view of counsel.").

Class Counsel are experienced wage-and-hour practitioners and litigators who have worked for several of the country's top litigation firms and have been certified as adequate and competent class counsel in numerous other wage-and-hour class actions. Siegel Decl., ¶¶ 3-8; Barahmand Decl., ¶¶ 3-7; Akhavan Decl., ¶¶ 3-6.

Class Counsel believes that this Settlement is fair and reasonable in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation. Given the risks inherent in litigation and the defenses

[8] The Court has wide discretion in approving the means of providing notice, so long as the class representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*, 15 Cal. 3d 853, 861 (1976).

asserted, this Settlement is fair, adequate, and reasonable and in the best interests of Class Members and should be preliminarily approved.

The Settlement is also consistent with other settlements that received approval. Barahmand Decl., ¶ 113, fn. 5.

G. The Attorneys' Fees Under the Settlement Agreement Are Fair

Under the terms of the Settlement Agreement, Class Counsel is requesting one-third (1/3) of the $265,000.00 Maximum Settlement Amount in attorneys' fees, or $88,333.33. Barahmand Decl., ¶ 114.

As the California Supreme Court has made clear, one-third of the common fund is a reasonable percentage for a trial court to award as attorneys' fees in a class action where a common fund was generated as a result of the case. *See Laffitte v. Robert Half International* (2016), I Cal. 5th 480, 506 (Cal. Aug. 11, 2016) ("We therefore agree with the Court of Appeal below that 'the percentage of fund method survives in California class action cases, and the trial court did not abuse its discretion in using it, in part, to approve the fee request [of one-third of the common fund] in this class action"). The California Supreme Court further clarified that trial courts "have discretion to conduct a lode-star cross check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross check and use other means to evaluate the reasonableness of a requested percentage fee."[9] *Id.*

In similar class action cases, numerous courts have approved fees of up to one-third of the common fund. *See e.g., Martin v. FedEx Ground Package System, Inc.*, 2008 WL 5478576, at *8 (N.D. Cal. Dec. 31, 2008) (federal district court approved attorneys' fees of one-third of common fund); *Stuart v. RadioShack Corp.*, No. C-07-4499 EMC, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010) (approving fee award of one-third of the total maximum settlement and noting that the fee award of one-third of the total settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"); *Wilson v. Kiewit Pacific Co.*, No. 09-cv-03630, ECF No. 119 (N.D. Cal. 2012) (approving fee award of one-third of the common fund and noting that such award is fair, reasonable and appropriate); *Romero v. Producers Dairy Foods, Inc.*, No. 1:05cv0484 DLB, 2007 WL 3492841, at *4

[9] "With regard to expenditure of judicial resources, we note that trial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys." *Laffitte*, 1 Cal. 5th at 505.

(E.D. Cal. Nov. 14, 2007) (awarding fees of one-third of common fund in a wage and hour class action, noting: "[f]ee awards in class actions average around one-third of the recovery."). Similarly, the Retainer in this case provides fees up to one-third of the amount obtained. Barahmand Decl., ¶ 114.

Accordingly, the Court should preliminarily approve the requested award of attorneys' fees of one-third of the common fund as reasonable.

Once the Court grants preliminary approval to the settlement and authorizes the dissemination of notice of the settlement to the class, Class Counsel anticipates filing a Motion for Attorneys' Fees, Costs, and Incentive Award that will be scheduled to be heard concurrently (or will be part of) the Motion for Final Approval and Fairness Hearing. In connection with the filing of the Motion for Attorneys' Fees and Costs, Class Counsel will submit updated information in the form of a sworn declaration setting forth a summary of their lodestar hours on this case, as well all of their costs incurred in the litigation this case. Barahmand Decl., ¶ 115; Akhavan Decl. ¶ 8; Barahmand Decl. ¶ 9.

H. The Class Representative Enhancement Award is Fair and Appropriate

The parties request payment of an Enhancement Award from the non-reversionary Maximum Settlement Amount to the Class Representative in the amount of $7,500.00, in addition to whatever payment he is otherwise entitled to receive as a Class Member. Barahmand Decl., ¶ 117.

The proposed Enhancement Award is reasonable compensation given the time and effort that the named Plaintiff devoted to this case; the valuable assistance they provided to Class Counsel; and the strength of his individual claims, and the fact that he entered into a general release of claims that is broader than the release of the Class. *Id.*

Plaintiff provided invaluable assistance to Class Counsel and the Class in this case, including providing factual background for mediation and the Class Complaint; reviewing the relevant documents, and Complaint; participating in phone calls with Class Counsel to discuss litigation and settlement strategy; remaining on-call and available during mediation, and reviewing the settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal benefit. *Id.*, at ¶ 118; Mendoza Decl., ¶ 8.

Further, Plaintiff agreed to undertake the financial risk of serving as Class Representative and exposed himself to the risk of negative publicity by anyone who opposed this case. Barahmand Decl., ¶

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

VII. <u>APEX SHOULD BE APPROVED AS SETTLEMENT ADMINISTRATOR</u>

Class counsel proposes that the Court appoint Apex to serve as the Settlement Administrator. Barahmand Decl., ¶¶ 121-122. Apex is experienced in administering class action settlements. *Id.* Apex has administered thousands of class actions and is qualified to administer this Settlement. *Id.* Apex provided a discounted quote of $5,000 to administer this Settlement with notice in both English and Spanish. *Id.*, at ¶ 122.

VIII. <u>THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING</u>

The last step in the approval process is a formal hearing, whereby proponents of the Settlement may explain and describe its terms and conditions and offer argument in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the Settlement.

The parties propose that the Court schedule a hearing for final approval of the settlement, including Plaintiff's request for attorneys' fees, costs and the service award, on the earliest date convenient for the Court in August 2025.

IX. CONCLUSION

For all of the foregoing reasons, the Plaintiff respectfully requests that the Court grant preliminary approval of the Parties' Settlement, order dissemination of notice to the Class, and set a hearing date for final approval.

Dated: May 28, 2025

Respectfully Submitted,
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