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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

MICHAEL CASTRO, an individual and on behalf of all others similarly situated;

Plaintiff,

vs.

BRITE NITES, INC., an Utah corporation; and DOES 1 through 50,

Defendants.

Case No.: 24CV061873

[Assigned for All Purposes to:
Hon. Somnath Raj Chatterjee, Dept. 21]

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

(Filed concurrently with Supporting Declarations and [Proposed] Order)

DATE: May 12, 2026
TIME: 2:30 p.m.
DEPT: 21
RESERVATION ID: 042911514321

Action Filed: January 30, 2024
Trial Date: Not Set

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on May 12, 2026 at 2:30 p.m. in Department 21 of the Rene C. Davidson Courthouse, Alameda County Superior Court, located at 1225 Fallon Street Oakland, CA 94612, Plaintiff Michael Castro ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;

2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Class defined as follows:

> All current and former independent contractors who performed work for Brite Nites, Inc. in California during the Class Period of January 30, 2020 through November 13, 2025.

3. Preliminary appointment of Plaintiff as Class Representative;

4. Preliminary appointment of William C. Sung and Tiffany L. Luu of Justice for Workers, P.C. as Class Counsel;

5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a Service Award to Plaintiff, civil penalties payable to the LWDA, settlement administration costs, and attorneys' fees and costs to Class Counsel;

6. Appointment of Apex Class Action LLC as the third-party Settlement Administrator for mailing notices and administering the Settlement; and

7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Class as provided in the Settlement Agreement.

This Motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the supporting declarations of William C. Sung, Plaintiff Michael Castro, Kimberly Sutherland of Apex Class Action LLC, and Silvia R. Argueta of Legal Aid Foundation of Los Angeles, and the exhibits attached thereto; the pleadings, and other papers filed in this Action; and on any further oral or documentary evidence or argument presented at the time of the hearing.

/ / /

DATED: April 14, 2026

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ______________________

William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff Michael Castro

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Michael Castro ("Plaintiff") brought this wage and hour class and representative action on behalf of a Class of all current and former independent contractors who worked for Defendant Brite Nites, Inc. ("Defendant") within the State of California during the Class Period of January 30, 2020 through November 13, 2025. The primary issues in this case pertain to Defendant's alleged misclassification of Class Members as independent contractors and failure to pay all wages due, meal and rest period violations, and failure to reimburse business expenses. Plaintiff contends Defendant is also liable for inaccurate wage statement penalties, waiting time penalties, and civil penalties under the California Private Attorneys' General Act ("PAGA"). Plaintiff now requests that this Court preliminarily approve this non-reversionary, common-fund class action settlement[1], in which Defendant has agreed to pay the Settlement Fund of Three Hundred Thousand Dollars and Zero Cents ($300,000.00) to approximately 115 Class Members.

After deducting administration costs, Plaintiff's requested Service Award, the amount set aside as PAGA Penalties, and requested Class Counsel's attorney's fees and costs, the Payout Fund of approximately $157,500.00 will be distributed to all Class Members who do not opt out of the Settlement based on the proportionate number of workweeks worked by each Class Member during the Class Period. Employees with standing for PAGA penalties will receive additional consideration for their release of PAGA claims.

Significantly, all Class Members will automatically receive a payment unless they affirmatively opt-out. There are approximately 115 Class Members, and **the average payment to participating Class Members is projected to be approximately $1,369.57**. This is a fair and adequate result for Class Members, who will be releasing only those claims alleged or which could have been alleged in the Action. The proposed Settlement is within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further

[1] The Stipulation and Settlement of Class and PAGA Claims ("Settlement" or "Agreement") is attached to the Declaration of William C. Sung as **Exhibit 1**. The proposed Class Notice is attached to the Agreement as **Exhibit 1**. All defined terms in this motion have the same definition as that in the Agreement.

litigation, and the tangible monetary benefits to be received by the Class. For the reasons discussed herein, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

Defendant owns and operates a holiday lighting and decor installation company with operations throughout the State of California (https://britenites.com). Declaration of William C. Sung ("Sung Decl."), ¶ 8. Defendant employed Plaintiff as an hourly-paid lighting and décor installer in Northern California in approximately December 2023 and misclassified him as an independent contractor. Declaration of Michael Castro ("Castro Decl."), ¶ 2.

On January 29, 2024, Plaintiff sent a notice letter under PAGA to the Labor and Workforce Development Agency ("LWDA") and gave notice to Defendant. Sung Decl., ¶ 9, **Exh. 2** (PAGA Notice). On January 30, 2024, Plaintiff filed a Class Action Complaint against Defendant alleging: (1) Minimum Wage Violations; (2) Overtime Wage Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Failure to Reimburse Necessary Business Expenses; and (8) Unfair Competition. Sung Decl., ¶ 10. On May 21, 2024, following a stipulation for leave for Plaintiff to amend the Complaint, Plaintiff filed the operative First Amended Complaint ("Operative Complaint") adding a cause of action for Civil Penalties under the California Private Attorneys General Act ("PAGA"). Sung Decl., ¶ 11, **Exh. 3** (Operative Complaint).

B. PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES

1. Defendant's Financial Condition

Defendant argued it is in financial distress and this defense applies to all claims. Sung Decl., ¶ 12. For mediation, Defendant produced its corporate tax returns for years 2020 to 2023 and Balance Sheets for years 2022 to 2024. *Ibid*. The tax returns revealed a business with modest profits and high cash flow issues for most of the year. *Ibid.* Based on Class Counsel's review of Defendant's financial records, Class Counsel does not believe Defendant has the financial capability to fund a substantial class settlement. *Ibid.* As such, Class Counsel's strong understanding of Defendant's financial condition guided Class Counsel's valuation of the Action as well as the terms of the Settlement (discuss below). *Ibid.*

2. Independent Contractor Misclassification

As to all claims, Plaintiff alleged Defendant misclassified him and Class Members as independent contractors under the ABC Test. Sung Decl., ¶ 13; *see* Lab. Code § 2750.3(a)(1). Specifically, Plaintiff contended that Class Members were subject to Defendant's control and direction in the performance of their holiday décor installation work; they performed work within the usual course of Defendant's business—i.e., installation of holiday decorations; and they were not engaged in an independently established trade, occupation, or business. Sung Decl., ¶ 13. In response, Defendant contended that it properly classified Class Members as independent contractors because it did not control or direct how Class Members installed holiday décor; like Uber, Defendant merely connected contractors to clients who wanted to install holiday decorations; and these independent contractors were engaged in an independently established trade of installing decoration during the holiday seasons. *Ibid.*

3. Unpaid Wages

Plaintiff contended that Class Members regularly worked more than 8 hours in a shift but were not paid any overtime premiums. Sung Decl., ¶ 14. In response, Defendant argued that Class Members were properly classified as independent contractors and not entitled to overtime pay. *Ibid.*

4. Meal and Rest Period Violations

Plaintiff alleged that Class Members were often not provided with meal and rest periods. Sung Decl., ¶ 15. In response and in addition to the arguing it properly classified Class Members as independent contractors, Defendant contended that it did not have any policy or practice against meal and rest breaks and Class Members were free to schedule and take their breaks while on jobs. *Ibid.* As such, Defendant maintained Plaintiff's meal and rest period claims were not suited for class certification since individual inquiries would be needed to assess which Class Members, if any, took non-compliant meal or rest periods, how many meal or rest periods were non-compliant, and the reasons why a particular Class Member did not take a meal or rest period on a particular shift. *Ibid.*

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5. Failure to Reimburse Necessary Business Expenses

Plaintiff alleged that he was required to use his personal cellphone to clock in and out on an application and to communicate with Defendant regarding his jobs. Sung Decl., ¶ 16. In response, Defendant argued that Class Members were properly classified as independent contractors and not entitled to business expense reimbursement. *Ibid.*

6. Waiting Time and Wage Statement Penalties

As a result of the misclassification and unpaid wages and meal and rest period premium wages described above, Plaintiff contended that Defendant failed to comply with its final pay obligations set forth in Labor Code §§ 201 to 203 to former employees and failed to issue any itemized wage statements to Class Members as set forth in Labor Code § 226(a). Sung Decl., ¶ 17. Thus, the claims for waiting time and wage statement penalties are derivative of the underlying claims. *Ibid.* Defendant argued that Defendant possessed strong, good faith defenses to Plaintiff's underlying claims and these claims cannot meet the willfulness standard in Labor Code § 203 or the knowing and intentional standard in Labor Code § 226(e). Sung Decl., ¶ 18. Defendant relied on the California Supreme Court decision in *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065, which held that an employer's good-faith defenses precludes a "willfulness" finding under Labor Code § 203 and a "knowing and intentional" finding under Labor Code § 226(e) for the imposition of statutory penalties. *Ibid.* Defendant further asserts that Plaintiff's waiting time and wage statement penalty exposure was inflated as not every employee experienced the alleged Labor Code violations. *Ibid.*

7. PAGA Civil Penalties

Plaintiff further contended that, as a result of the foregoing Labor Code violations, Defendant is liable for civil penalties under the PAGA. Sung Decl., ¶ 19. Since Plaintiff's PAGA claims are derivative of Plaintiff's underlying wage claims, Defendant asserted the PAGA claim would fail with those claims. *Ibid*; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant maintained that, given their good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable. Sung Decl., ¶ 19; *see*

Lab. Code § 2699(e)(2) (pre-2024 amendment); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties by over 82%); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming PAGA civil penalty of just $5 per pay period).

C. DISCOVERY AND MEDIATION

Prior to mediation, Plaintiff engaged in formal written discovery and thereafter, in connection with mediation, the Parties engaged in extensive informal discovery. Sung Decl., ¶ 20. Defendant produced (1) a class list identify Class Members' positions, dates of first payment and last payment, and work location; (2) a 50% sampling of time and payment records of Class Members; and (3) documents related to Defendant's financial condition. *Ibid.*

In preparation for mediation, Class Counsel reviewed and evaluated the pre-mediation production, including the class list and time and payment records, and conducted a comprehensive analysis and extrapolation to create a detailed exposure analysis for all claims at issue. Sung Decl., ¶ 21. This discovery and analysis allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and Defendant's potential defenses. *Ibid.*

On August 15, 2025, the Parties participated in a full-day mediation with Joann Rezzo, Esq., a well-respected employment law mediator. Sung Decl., ¶ 22. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Ibid.* The Parties reached a tentative class and PAGA settlement at the mediation. *Ibid*. The Parties then finalized the terms of the Settlement and executed Agreement now before the Court. *Ibid*; *see* Sung Decl., ¶ 22, **Exhibit 1** (Agreement).

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Defendant will pay a Settlement Fund of $300,000.00. Agreement, § X.E. (Ex. 1 to Sung Decl.). Significantly, this Settlement is non-reversionary, and no Class Member will have to submit a claim form to receive an Individual Settlement Award. *Ibid*. Each Class Member will automatically receive an Individual Settlement

Award unless they affirmatively opt out of the Settlement. Agreement, § E.2.b. The monetary terms of the Settlement are summarized below:

Settlement Fund:	$300,000.00
Minus Court-approved attorneys' fees:	$100,000.00
Minus Court-approved verified costs (up to):	$20,000.00
Minus Court-approved Service Award:	$3,750.00
Minus estimated settlement administration costs:	$8,690.00
Minus amount set aside as PAGA penalties:	$15,000.00
Payout Fund:	**$157,500.00**
Plus 25% PAGA Penalties to Aggrieved Employees:	$3,750.00

Sung Decl., ¶ 23.

1. The Settlement Provides for Reasonable Monetary Payments

Due to Defendant's financial condition, the Parties agreed that Defendant will fund the Settlement Fund by making three annual contributions of $100,000.00 into an escrow account maintained by the Administrator and to make two settlement distributions. Sung Decl., ¶ 24. Defendant has timely deposited the first $100,000.00 into the escrow account. *Ibid.*

The Settlement Fund will be funded based on the following schedule: on or before January 31, 2026, on or before January 31, 2027; and on or before January 31, 2028, and Defendant shall also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 15 days after the Effective Date (i.e., 60 days from entry of Judgment if no objection to the Settlement is made) for the first settlement disbursement and on or before January 31, 2027, for the second settlement disbursement. Agreement, §§ I.L., X.E. The first distribution of monies in the Settlement Fund will be made within 21 calendar days of the Effective Date and the second distribution of all remaining monies in the Settlement Fund will be made within 21 calendar days of January 31, 2028. Agreement, § X.F.12.

After deducting amounts for the Court-approved attorneys' fees and costs, Service Award to Plaintiff, the amount set aside as PAGA Penalties, and settlement administration costs, the Settlement requires Defendant to pay a Payout Fund of at least **$157,500.00** to all Class Members who do not timely opt-out. Agreement, § X.E. The Payout Fund shall be distributed to participating Class Members as Individual Settlement Awards calculated by (a) dividing the Payout Fund 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. Agreement, § X.E.2.b(2). Additionally, $3,750.00 of the Settlement Fund has been designated as Individual PAGA Awards to Aggrieved Employees and shall be distributed to Aggrieved Employees (including those who submit a valid and timely Request for Exclusion from the class action settlement) who were employed during the PAGA Period proportionally based on the number of Pay Periods worked during the PAGA Period. Agreement, § X.E.2.f. In addition to the Settlement Fund, Defendant is obligated to pay the employer's share of payroll taxes on Individual Settlement Awards allocated to settlement of wage claims. Agreement, § X.E.

According to Defendant, there are approximately 115 Class Members. Sung Decl., ¶ 25. Therefore, the average Individual Settlement Award from the Payout Fund is projected to be approximately **$1,369.57**. *Ibid.* There are also approximately 66 Aggrieved Employees during the PAGA Period who will each receive an average of approximately **$56.82** as Individual PAGA Awards. *Ibid.* Class Members will have 60 calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. Agreement, § X.F.5.

Effective on the date when Defendant fully fund the Settlement Fund and employer taxes, Participating Class Members will release all claims alleged in the Operative Complaint in the Action or that could have been alleged based upon the facts pleaded in the Operative Complaint arising during the Class Period, and Aggrieved Employees will release all claims for civil penalties under the PAGA alleged in Plaintiff's letter to the LWDA and Defendant dated January 29, 2024 alleging violations of the PAGA and Plaintiff's Operative Complaint in the Action, or that could have been alleged based upon the facts pleaded in the LWDA Notice and Operative Complaint arising during the PAGA Period. Agreement, § X.B. The Parties agreed that Participating Class Members' release of class claims shall have full res judicata effect as to FLSA claims as described in *Rangel v. PLS Check Cashers of California, Inc.* (9th Cir. 2018) 899 F.3d 1106, if the Participating Class Member endorses and cashes his or her settlement check. *Ibid.*

Class Members shall have 120 days from the issuance of their settlement checks to cash their checks. Agreement, X.E.12.c. Unclaimed funds from uncashed checks and Unlocated Class

Members (i.e., any Class Member whose Notice has been returned as undeliverable), shall be transmitted to the Legal Aid Foundation of Los Angeles ("Cy Pres Recipient") in accordance with Code of Civil Procedure § 384(b) regarding distribution of unpaid cash residue and unclaimed or abandoned funds in class action litigation. Agreement, §§ I.K., X.E., X.E.2.f.

In selecting the Cy Pres Recipient, Class Counsel researched and proposed to Defendant three non-profit organizations providing legal services to low-income, immigrant workers in California, and Defendant selected the Cy Pres Recipient. Sung Decl., ¶ 26; *see also* Declaration of Silvia Argueta, ¶¶ 2-10 (describing LAFLA's work, including "its mission of protecting the rights of employees to fair wages including the protection of minimum wage and overtime wages as well as the protection of workers to safe, living wage jobs"). Class Counsel does not have any conflict of interest with respect to the Cy Pres Recipient. Sung Decl., ¶ 26.

2. Attorneys' Fees and Costs, Service Award, and PAGA Payment

Plaintiff will apply for Service Award at the time of seeking final approval of the proposed class action settlement in the amount of $7,500.00 for Plaintiff's service to the Class. Agreement, § 3.2.1. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiff's requested Service Award is intended to recognize the time and effort Plaintiff expended on behalf of the Class, including providing substantial information and documents to Class Counsel, discussing the claims at issue in the litigation, actively participating in the prosecution of Plaintiff's claims, as well as the risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case. *See* Castro Decl., ¶¶ 4-6.

Class Counsel will also apply for an attorneys' fees award of 33 1/3% of the Settlement Fund, which is equivalent to $100,000.00, and up to $20,000.00 in verified costs reimbursement. Agreement, § X.E.1. The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Sung Decl., ¶ 27. Class Counsel have incurred substantial attorneys' fees and costs conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, propounding written discovery, conducting informal discovery, analyzing Class Members' time and payment records, creating a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Agreement, preparing this Motion, and otherwise litigating the case. *Ibid.* Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Class Notice process and fielding questions from Class Members, preparing the Final Approval papers, and attending the Final Approval hearing. *Ibid.*

California courts recognize that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of a settlement. *See, e.g., Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of 33 1/3% of the Settlement Fund is well within the range of reasonableness and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013). Class Counsel submit that their request for attorneys' fees is reasonable when viewed as an overall percentage of the Settlement and in light of the substantial risks and significant work undertaken, the results obtained, and the efficiency with which the litigation has been conducted. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified costs upon seeking Final Approval.

Additionally, the parties have agreed to designate $15,000.00 of the Settlement Fund as PAGA civil penalties, of which $11,250.00 (75%) will be paid to the LWDA, with the remaining $3,750.00 (25%) for distribution to the Aggrieved Employees pursuant to Labor Code § 2699(i) (pre-July 1, 2024 PAGA amendment). Agreement, § X.E. Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC* (N.D. Cal. 2011) Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (approving PAGA payment of $3,750 to LWDA out of $6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal. 2013) Case No. C11-03609 HRL, 2013 WL 3541217 (approving PAGA payment of $3,750 to LWDA out of $1.25 million common-fund settlement).

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IV. LEGAL ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337 (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp*. (9th Cir. 1998) 150 F.3d 1011, 1026 (Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g., Hanlo*n, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g., Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

To make a fairness determination, the Court should consider "the 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, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. Here, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

1. The Strength of Plaintiff's Case and Risk, Expense, Complexity, and Duration of Further Litigation

Although Plaintiff maintains that Plaintiff's claims are meritorious, Plaintiff acknowledges there are substantial risks and uncertainty in proceeding with litigation. Defendant presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification.

While Plaintiff was prepared to litigate these claims through class certification and ultimately trial, success was far from certain. Although the Parties engaged in significant informal discovery prior to mediation, the Parties still had significant formal discovery to complete if the Action did not resolve. Sung Decl., ¶ 28. This would have required the expenditure of substantial time and resources by both Parties that would have very likely spanned several years. *Ibid.* Even if Plaintiff were to certify the class, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Ibid.* Due to Defendant's financial condition, at each stage of the litigation there continue to be a risk that Defendant will seek bankruptcy protection, thereby eliminating Class Counsel's ability to obtain any monetary recovery for the Class. *Ibid.* This Settlement avoids those risks and the accompanying expense, and ensures a fair and reasonable monetary recovery is obtained for the Class. *Ibid.*

Plaintiff has not yet filed a motion for class certification, and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Sung Decl., ¶ 29. Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Class due to a narrowing of the class definition in a Court order on a contested motion for class certification or through executing a *Pick-Up-Stix* strategy by buying releases from Class Members. *Ibid*. Thus, this factor, too, supports preliminary approval of the settlement. *Ibid.*

2. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a positive recovery for the Class in the face of disputed claims. Class Counsel conducted a detailed damages analysis. A summary of the results of Plaintiff's exposure analysis are discussed below:

<u>Unpaid Wages</u>: Plaintiff claimed Class Members worked in excess of 8 hours but were not paid any overtime premiums. Sung Decl., ¶ 30. Based on Class Counsel's analysis of the sampling records and calculation of hours worked in excess of 8 hours, Class Counsel estimated Defendant's maximum exposure for unpaid overtime/double time premiums to be approximately $299,965.68. *Ibid.* As discussed above, Defendant presented defenses both as to classification and financial ability to pay. *Ibid.* Accordingly, Plaintiff discounted Defendant's maximum exposure by 25% to

account for Defendant's defenses on the merits or failing to recover the full amount sought, including the risk of Defendant seeking bankruptcy protection, to arrive at an estimated realistic recovery of approximately **$224,974.26**. *Ibid.*

Meal and Rest Period Violations: Plaintiff alleged that Class Members were not able to take all of their compliant meal and rest breaks. Sung Decl., ¶ 31. Based on Class Counsel's analysis of the sampling records and utilizing a 100% violation rate (every shift had a meal and rest break violation), Class Counsel estimated Defendant's maximum exposure for unpaid meal and rest period premiums $82,720.00 and $82,720.00 respectively. *Ibid.* As discussed above, Defendant presented defenses both as to classification, certification/manageability, and financial ability to pay. *Ibid.* Accordingly, Plaintiff discounted Defendant's maximum exposure by 25% to account for Defendant's defenses on the merits or failing to recover the full amount sought, including the risk of Defendant seeking bankruptcy protection, to arrive at an estimated realistic recovery of approximately **$62,046.00** for meal period premiums and **$62,046.00** for rest period premiums. *Ibid.*

Unreimbursed Business Expenses: Plaintiff alleged that he was required to use his personal cellphone to perform his job functions. Sung Decl., ¶ 32. Estimating a $10 reimbursement rate per week, extrapolated over 1,208 workweeks, Plaintiff estimates Defendant's maximum exposure for unreimbursed expenses to be approximately $24,160.00. *Ibid.* As discussed above, Defendant presented defenses both as to classification and financial ability to pay. *Ibid.* Accordingly, Plaintiff discounted Defendant's maximum exposure by 25% to account for Defendant's defenses on the merits or failing to recover the full amount sought, including the risk of Defendant seeking bankruptcy protection, to arrive at an estimated realistic recovery of approximately **$18,120.00**. *Ibid*

Waiting Time Penalties: As a result of the unpaid wages and meal and rest period premiums described above, Plaintiff contends that Defendant failed to comply with its final pay obligations set forth in Labor Code §§ 201 to 203 to former employees. Sung Decl., ¶ 33. There are approximately 87 formerly employed Class Members during the 3-year limitations period, and assuming every former employee experienced an unpaid wage violation, Plaintiff estimates Defendant's maximum exposure for waiting time penalties to be approximately $375,840.00. *Ibid.* Defendant presented several defenses, including that because it possessed good-faith defenses to the underlying wage claims, any failure to pay wages was not "willful" as a matter of law; Plaintiff's waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations; and because the waiting time claim is derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Defendant's defenses, both as to class certification and on the merits, as to the underlying claims. *Ibid.* Thus, Plaintiff discounted Defendant's maximum exposure by 75% to account for Defendant's defenses on the merits or failing to recover the full amount sought, including the risk of Defendant seeking bankruptcy protection, to arrive at an estimated realistic recovery of approximately **$187,920.00**. *Ibid.*

<u>Wage Statement Penalties:</u> Plaintiff alleged that Defendant is liable for wage statement penalties because it failed to provide any wage statements to Class Members. Sung Decl., ¶ 34. Those penalties are calculated as $50 for each "initial" violation and $100 for each "subsequent" violation, with a maximum of $4,000 per employee. Lab. Code § 226(e). There are approximately 439 pay periods during the one-year limitations period, and Defendant's maximum exposure for wage statement penalties are $43,900.00. Sung Decl., ¶ 34. As discussed above, Defendant presented several defenses, including its assertion that because it possessed good-faith defenses to the underlying claims for misclassification and unpaid wages and any violation was not "knowing and intentional" as a matter of law, and Plaintiff would need to overcome Defendant's defenses, both as to class certification and on the merits, as to his underlying claims. *Ibid.* Thus, Plaintiff discounted Defendant's maximum exposure by 50% to account for Defendant's defenses on the merits or failing to recover the full amount sought, including the risk of Defendant seeking bankruptcy protection, to arrive at an estimated realistic recovery of approximately **$21,950.00**. *Ibid.*

<u>PAGA Penalties:</u> Class Counsel estimated a maximum total PAGA exposure of approximately $219,500.00. Sung Decl., ¶ 35. However, these penalties derive from the underlying wage and hour violations discussed above, which Defendant disputes vigorously. *Ibid; see e.g., Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Defendant also assert that the Court would drastically reduce any award of PAGA penalties as "confiscatory." Sung

Decl., ¶ 35; *see also Thurman*, 203 Cal.App.4th at 1135 (affirming reduction of PAGA penalties); *Fleming*, 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiff discounted the maximum figure by 50% for the risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, including the risk of Defendant seeking bankruptcy protection, and to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately **$109,750.00**. Sung Decl., ¶ 35.

Conclusion: Using these estimated figures for each of the claims described above, Plaintiff predicted that the potential realistic recovery for the Class would be approximately **$686,806.26**. Sung Decl., ¶ 36. The proposed Settlement of $300,000.00 represents approximately **43.68%** of the reasonably forecasted recovery for the Class. *Ibid.* Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Class, which is consistent with what Class Counsel believes could have been recovered had the case proceeded through trial. *Ibid.*

3. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." In *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions and who have been appointed as class counsel. *See* Sung Decl., ¶¶ 2-7. Class Counsel conducted an in-depth review of class records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. The Settlement was also reached with the assistance of an experienced and respected employment law mediator. Sung Decl., ¶ 22. This factor strongly supports preliminary approval of the Settlement. *See Kullar,* 168 Cal.App.4th at 130.

4. The Preliminary Approval Standard Is Met

At this stage, the Court can grant preliminary approval of the Settlement and direct that notice be given if the proposed Settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and (3) has no obvious deficiencies. *See* Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 Newberg on

Class Actions § 11:24-25 (4th Ed. 2013).

The proposed Settlement reflects approximately **43.68%** of the estimated recovery the Class could reasonably expect in light of the significant litigation risks and will provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc*. (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Class Members at trial"). The average Individual Settlement Award of approximately **$1,369.57** is on par with average payments achieved in other wage and hour class action settlements.[2] Thus, the proposed settlement is within the range of possible approval, such that notice should be provided to the Class Members so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Class Members have had the opportunity to opt-out or object.

The Settlement resulted from an exchange of substantial information, arm's-length negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and additional months of negotiating the long-form settlement agreement. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff carefully vetted the claims at issue, analyzed extensive sampling time and

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[2] *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average recovery of approximately $105); *Ressler v. Federated Department Stores, Inc*., Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average recovery of approximately $90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average recovery of approximately $80); *Doty v. Costco Wholesale Corp*., Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately $65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately $35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately $20); *Sorenson v. PetSmart, Inc*., Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately $60).

payroll data, and conducted a detailed damages analysis to arrive at the estimated class-wide damages figures. *See* Sung Decl., ¶¶ 30-36. Thus, this factor supports preliminary approval.

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide substantial monetary relief to the Class. The amounts proposed for Class Counsel's attorneys' fees and costs, LWDA payment, and Plaintiff's Service Award, are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE CLASS

The Class satisfies the criteria for certification of a settlement class under California law because: (1) the Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims are typical of the claims of absent Class Members; and (4) Plaintiff and Class Counsel will fairly and adequately represent Class Members' interest. *See* Code Civ. Proc. § 382.

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the Class is defined as "all current and former independent contractors who worked for Defendant within the State of California during the Class Period." Therefore, Class Members can be identified from Defendant's personnel and employment records. Defendant represents that the Class consists of approximately **115** current and former independent contractors. Sung Decl., ¶ 24. It would therefore be impracticable to bring all Class Members before the Court or for each Class Member to bring an individual lawsuit. Thus, the proposed Class satisfies numerosity. *See, e.g., Bowles v. Superior Court* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

The focus in a certification dispute is not on the merits but rather on what types of questions, "common or individual," are likely to arise in the Action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 327. Plaintiff's claims are predicated on, among other issues, Defendant's uniform policy and practice regarding provision of meal periods, regular rate of pay, timekeeping, and provision of wage statements and final wages. These types of claims are commonly held to be proper for class certification. *See e.g., Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 (certifying meal and rest period claims*); Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 324 (certifying exemption misclassification and unpaid overtime claim).

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical of those held by the Class Members. First, Defendant employed Plaintiff as independent contractor during the Class Period, and Plaintiff was subject to Defendant's wage and hour policies at issue in this case. Castro Decl., ¶¶ 2-3. Second, Plaintiff was injured by the same challenged policies/practices that allegedly injured the Class as a whole: meal/rest period violations, unpaid wages, and derivative statutory and civil penalties. Castro Decl., ¶ 3. Because Plaintiff has suffered the same injuries as the other members of the Class, the typicality requirement is satisfied.

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 697. Plaintiff and Class Counsel will adequately represent the Class, as there are no conflicts between Plaintiff and the proposed Class, and Plaintiff possesses claims that are in line with those of the Class. Sung Decl., ¶ 37; Castro Decl., ¶ 5; *see McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation. *See* Sung Decl., ¶¶ 2-7.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS NOTICE

This Court should order distribution to the Class of the proposed Class Notice by U.S. Mail, postage prepaid using the last known mailing address information provided by Defendant. *See*

Agreement, §§ X.E.2.a., X.F.4.b., **Exhibit 1** (Class Notice). The Class Notice will be distributed in English and Spanish. Agreement, § X.F.4.b. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, the Parties have agreed that the Settlement be administered by Apex Class Action LLC ("Settlement Administrator"), an experienced class action settlement administrator. *See generally* Declaration of Kimberly Sutherland ("Administrator Decl.") and attached exhibits. Class Members' addresses will be ascertainable through Defendant's personnel and payroll records, which Defendant will provide to the Settlement Administrator within 14 days of preliminary approval of the Settlement. Agreement, § X.F.4.a. Within 14 days of receipt of the Class Members' addresses, the Settlement Administrator will run the names of all Class Members through the National Change of Address database to update addresses and mail the Class Notice to all Class Members. Agreement, § X.F.4.c.

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Class Members of the nature of the claims, basic contentions and denials of the parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Class Member, and advises them that they will be bound by the terms of the Agreement if they do not opt-out. *See* Agreement, **Exhibit 1** (Class Notice). The proposed Class Notice will also notify Class Members of the final approval hearing date and provides the Class contact information for Class Counsel and advises Class Members that they may enter an appearance through counsel if they wish to. *Ibid.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Class Members.

V. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Class, and enter the Proposed Order submitted concurrently herewith.

/ / /

DATED: April 14, 2026

JUSTICE FOR WORKERS, P.C.

By: ______________________________

William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff MICHAEL CASTRO

Court Reservation Receipt

Reservation

Reservation ID: 042911514321	Status: RESERVED
Reservation Type: Motion re: (Approval of Class Action and PAGA Settlement)	Number of Motions: 1
Case Number: 24CV061873	Case Title: CASTRO vs BRITE NITES, INC.
Filing Party: Michael Castro (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 21
Date/Time: May 12th 2026, 2:30PM	Confirmation Code: CR-7HKTTVWYBAG6AC8R4

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	.00	1	.00
Court Technology Fee	1.00	1	1.00
TOTAL			**$1.00**

Payment

Amount: $1.00	Type: MasterCard
Account Number: XXXX3458	Authorization: 04403G
Payment Date: 2026-01-08	

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