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and JONELLE VELASQUEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DANIEL HE and JONELLE VELASQUEZ, individually, and on behalf of others similarly situated,

Plaintiffs,

v.

BAY PHOTO LAB INC; CIRCLE GRAHPICHS, INC., a California corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No. 24STCV05682
[related to case no. 24STCV07440]

Honorable Samantha Jessner
Department SSC-7

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

Date:	September 23, 2025
Time:	10:00 a.m.
Dept.:	SSC-7
Complaint Filed:	March 6, 2024
Trial Date:	Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on September 23, 2025 at 10:00 a.m. in Department 7 of the above-captioned Court located at 312 North Spring Street, Los Angeles, California 90012, pursuant to California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiffs Daniel He and Jonelle Velasquez (together, "Plaintiffs") will and hereby do move the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiffs and Defendants Bay Photo Lab Inc. and Circle Graphics Inc. (together, "Defendants") (Plaintiffs and Defendants are referred to collectively as the "Parties").

Plaintiffs request that the Court enter an Order:

1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement ("Settlement" or "Settlement Agreement") attached as Exhibit 3 to the Declaration of Annabel Blanchard in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ("Blanchard Decl.");
2. Certifying the Class for Settlement purposes;
3. Appointing Plaintiffs Daniel He and Jonelle Velasquez as the Class Representative for Settlement purposes;
4. Appointing Jonathan M. Genish, Barbara DuVan-Clarke, Danielle GruppChang, P.J. Van Ert, and Annabel Blanchard, of Blackstone Law, APC as Class Counsel for Settlement purposes;
5. Approving the proposed Notice of Class Action Settlement ("Class Notice"), attached as <u>Exhibit A</u> to the Settlement Agreement, to be mailed to the Class;
6. Approving the opt-out and objection procedures provided in the Settlement Agreement and set forth in the Class Notice;
7. For each Class Member, directing Defendant to furnish their name, last known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods to the Administrator within thirty (30) calendar days after entry of the order granting preliminary approval of the Settlement;
8. Approving the proposed deadlines for the settlement administration process; and
9. Setting a Final Approval Hearing.

Pursuant to California Labor Code section 2699(1)(2), on June 6, 2025, a copy of the Settlement was submitted to the California Labor and Workforce Development Agency ("LWDA") via online submission through the LWDA's website. (Blanchard Decl., ¶ 47 and Exh. 4).

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declaration of Annabel Blanchard, the Declaration of Plaintiffs Daniel He and Jonelle Velasquez, the Declaration of the Administrator (Sean Hartranft of Apex), the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: June 27, 2025

BLACKSTONE LAW, APC

By: A. Blanchard

Annabel Blanchard
Attorneys for Plaintiffs Daniel He and Jonelle Velasquez

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Daniel He and Jonelle Velasquez ("Plaintiffs") seek preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement ("Settlement" or "Settlement Agreement") entered into between Plaintiff and Defendants Bay Photo Lab Inc. and Circle Grpahics, Inc. (herein as "Bay Photo", and "Circle graphics"; together as "Defendants") (collectively, with Plaintiff, the "Parties"). (Declaration of Annabel Blanchard in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ["Blanchard Decl."], Exh. 3). The Settlement terms are outlined as follows:

- Class Size: Approximately 630 individuals.
- Gross Settlement Amount: Six Hundred Fifty Thousand Dollars ($650,000).
- Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment: Attorneys' fees of thirty-five percent (35%) of the Gross Settlement Amount ($227,500) plus actual litigation costs and expenses not to exceed Forty Thousand Dollars ($40,000), to be paid from the Gross Settlement Amount.
- Class Representatives Service Payment: Seven Thousand Five Hundred Dollars to each of the two Plaintiffs (for a total of $15,000), to be paid from the Gross Settlement Amount.
- Administration Expenses Payment: Not to exceed Ten Thousand, Nine Hundred ($10,900), to be paid from the Gross Settlement Amount.
- PAGA Penalties: Fifty Thousand Dollars ($50,000) from the Gross Settlement Amount, 75% of which will be paid to the Labor and Workforce Development Agency ("LWDA") and the remaining 25% to be paid to the Aggrieved Employees.
- Estimated Net Settlement Amount: Three Hundred Six Thousand Six Hundred ($306,600) to be distributed to Settlement Class Members.

As set forth herein, the Settlement is the product of informed discovery and arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiffs therefore respectfully request that the Court grant preliminarily approval of the Settlement, conditionally certify the Class, approve the proposed Notice of Class Action Settlement ("Class Notice"), and set a hearing date for final settlement approval, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant Bay Photo is in the business of developing and processing photography, and similar services. Defendant Circle Graphics states on its website that it is the "world's foremost producer of grand and large-format digital graphics" and "an industry leader in creating innovative products for outdoor advertising and business signage." Circle Graphics acquired Bay Photo in or around September 16, 2020. Plaintiff Daniel He was employed by Defendants as a Lab Technician and Giclee Lead Technician from approximately October 2017 to approximately July 2021. (Declaration of Plaintiff Daniel He in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement ["He Decl."], ¶ 2).

Plaintiff Jonelle Velasquez was employed by Defendants as an Invoice Technician and Giclee Printing Technician from approximately November 2017 to April 2025. (Declaration of Plaintiff Jonelle Velasquez in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement ["Velasquez Decl."], ¶ 2).

On January 11, 2024, Plaintiff Velasquez provided written notice to the LWDA by online submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendant ("PAGA Letter"). (Blanchard Decl., ¶ 10 and Exh. 2).

On March 6, 2024, Plaintiffs filed a Class Action Complaint for Damages in the action entitled *Daniel He and Jonelle Velasquez v. Bay Photo Lab Inc.; Circle Graphics Inc.*, Los Angeles County Superior Court Case No. 24STCV05682 ("Class Action"), thereby commencing a putative class action against Defendant. (*Id.*, ¶ 11).

On March 25, 2024, Plaintiff Velasquez filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 *et seq.* ("PAGA Complaint") in the action entitled *JONELLE VELASQUEZ v. BAY PHOTO LAB INC.; CIRCLE GRAPHICS INC.*, Los Angeles County Case No. 24STCV07440 against Bay Photo Lab Inc. and Circle Graphics Inc. (the "PAGA Action") (together, the Class Action and PAGA Action shall be referred to herein as the "Actions."). (*Id.,* ¶ 12).

On May 13, 2024, the Court ordered the PAGA Action related to the Class Action, and designated the Class Action as the lead case. (Blanchard Decl., ¶ 13).

On October 2, 2024, the Parties participated in a formal mediation conducted by Monique Ngo-Bonnici ("Mediator"), a neutral and respected mediator with extensive experience in complex wage and hour matters, and with the assistance of the Mediator's evaluations, the Parties were able to reach an agreement to resolve this dispute on a class and representative basis. (*Id*., ¶ 14). The Parties then worked diligently to negotiate and memorialize the terms in a long form settlement agreement. (Ibid).

On April 8, 2025, the Parties executed the Settlement Agreement. (*Id*., ¶ 15 and Exh. 3).

III. THE SETTLEMENT TERMS

A. Class Definition

For purposes of settlement only, the Parties have agreed that the Class shall be defined as "all current and former hourly paid and/or non-exempt employees who worked for Bay Photo Lab Inc. in California during the Class Period." ("Class" or "Class Members"). (Blanchard Decl., ¶ 16; Settlement Agreement, ¶ 1.5). The Class Period is defined as the period from November 19, 2021, through January 1, 2025. (Blanchard Decl., ¶ 16; Settlement Agreement, ¶ 1.12). Based on information provided by Defendant, it is estimated that there are approximately six hundred thirty (630) Class Members. (Blanchard Decl., ¶ 16).

B. Amount of Settlement

The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint for a non-reversionary Gross Settlement Amount of Six Hundred and Fifty Thousand Dollars ($650,000), exclusive of employer-side payroll taxes. (Blanchard Decl., ¶ 17; Settlement Agreement, ¶ 1.22).

C. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. (Blanchard Decl., ¶ 17; Settlement Agreement, ¶ 1.22). The Gross Settlement Amount includes: (1) Class Counsel Fee Payment in the amount of thirty-five percent (35%) of the Gross Settlement Amount (i.e., $227,500); (2) Class Counsel's actual litigation costs and expenses, not to exceed Forty Thousand Dollars ($40,000); (3) Administration Expenses Payment, not to exceed Ten Thousand Nine Hundred Dollars. ($10,900); (4) Class Representative Service Payments in the amount of Seven Thousand Five Hundred Dollars to each of the two Plaintiffs (for a total of $15,000.00); and (5)

PAGA Penalties of Fifty Thousand Dollars ($50,000). (Blanchard Decl., ¶ 17; Settlement Agreement, ¶¶ 1.22, 3.2). After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount that will be available for Class Members is currently estimated to be Three Hundred and Six Thousand, Six Hundred Dollars ($306,600). (Blanchard Decl., ¶ 17). Additionally, 25% of the PAGA Penalties, which is $12,500 out of $50,000 will be fully distributed to "all current and former hourly paid and/or non-exempt employees who worked for Bay Photo Lab, Inc. in the State of California during the PAGA Period" ("Aggrieved Employee(s)"). (Blanchard Decl., ¶ 17; Settlement Agreement, ¶1.4,). The "PAGA Period" is defined as the period from January 17, 2023 to January 1, 2025 (or the date 32,500 Class Workweeks are met, if it is a shorter period). (Blanchard Decl., ¶ 17; Settlement Agreement, ¶ 1.31).

The Net Settlement Amount will be distributed and paid to all Class Members who do not submit a timely and valid Request for Exclusion ("Participating Class Member(s)") on a *pro rata* basis based on the number of weeks each Class Member worked for Bay Photo Lab, Inc. as an hourly paid and/or non-exempt employee in California for at least one day during the Class Period ("Workweeks"). (Blanchard Decl., ¶ 19; Settlement Agreement, ¶ 1.45). The *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement ("Individual Class Payment") will be calculated by the Administrator, in accordance with the Settlement Agreement. (Blanchard Decl., ¶ 19; Settlement Agreement, ¶ 1.23).

The PAGA Penalties will be distributed and paid to all Aggrieved Employees on a *pro rata* basis based on the number of pay periods each Aggrieved Employee worked for Defendants as an hourly paid and/or non-exempt employee in California for at least one day during the PAGA Period ("PAGA Pay Periods"). (Blanchard Decl., ¶ 20; Settlement Agreement, ¶ 1.30). The *pro rata* share of the PAGA Penalties that an Aggrieved Employee may be eligible to receive under the PAGA Settlement ("Individual PAGA Payment") will be calculated by the Administrator, in accordance with the Settlement Agreement. (Blanchard Decl., ¶ 20; Settlement Agreement, ¶ 1.24).

Each Individual Class Payment will be allocated as one-third (1/3) wages and two-thirds (2/3) interest and penalties (Blanchard Decl., ¶ 21; Settlement Agreement, ¶ 3.2.4.1). The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties and interest will be reported on an IRS Form 1099 (if applicable) by the Administrator. (Blanchard Decl., ¶ 21; Settlement Agreement, ¶ 3.2.4.1). The Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Class Payment, and issue checks to Participating Class Members for their net payment of their Individual Class Payment. (Blanchard Decl., ¶ 21; Settlement Agreement, ¶¶ 3.2.4.1 and 7.2). The employer's share of taxes and contributions in connection with the wages portion of Individual Settlement Shares will be paid by Defendant separately and in addition to the Gross Settlement Amount. (Blanchard Decl., ¶ 21; Settlement Agreement, ¶ 4.2). Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Administrator. (Blanchard Decl., ¶ 21; Settlement Agreement, ¶ 3.2.4.2).

The Settlement Agreement is a non-reversionary and non-claims made settlement. (Blanchard Decl., ¶ 22; Settlement Agreement, ¶ 3.1). The Net Settlement Amount will be fully distributed to Participating Class Members and the PAGA Penalties will be fully distributed to the LWDA and Aggrieved Employees, in accordance with the Settlement Agreement. (Blanchard Decl., ¶ 22; Settlement Agreement, ¶ 3.2.5). No money will revert to Defendant. (Blanchard Decl., ¶ 22; Settlement Agreement, ¶ 3.1).

Each Individual Class Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. (Blanchard Decl., ¶ 23; Settlement Agreement, ¶¶ 4.3.1, 4.3.3). Any funds associated with such canceled checks will be distributed by the Administrator to the State of California's Unclaimed Property Division in the name of the Settlement Class Member and/or Aggrieved Employee. (Blanchard Decl., ¶ 23; Settlement Agreement, ¶ 4.3.3).

D. Released Claims

Upon the Effective Date and full funding of the Gross Settlement Amount and employer payroll taxes, Plaintiffs and all Participating Class Members will be deemed to have released the Released Parties of all released class claims, as detailed in the Settlement Agreement. (Settlement Agreement, ¶ 5.3).

Upon the Effective Date and full funding of the Gross Settlement Amount and employer payroll taxes, Plaintiffs, the State of California with respect to all Aggrieved Employees, and all Aggrieved Employees will be deemed to have released th Released Parties of all released PAGA claims, as detailed in the Settlement Agreement. (Settlement Agreement, ¶ 5.4).

Released class claims are all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Class Action Complaint and ascertained in the course of the Action for unpaid wages (including premiums) or other compensation allegedly owed, or for damages, penalties, restitution, interest, liquidated damages, attorneys' fees, or costs, or any other recovery including under the California Labor Code and corresponding provisions of the California Code of Regulations, Title 8 and IWC Wage Orders, including, e.g., (1) Violation of Cal. Lab. Code §§ 1194, 1197, 1197.1 and 1194.2 (Unpaid Minimum Wages); (2) Violation of Cal. Lab. Code §§ 510, 1198, and 1194 (Unpaid Overtime); (3) Violation of Cal. Lab. Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (4) Violation of Cal. Lab. Code § 226.7 (Unpaid Rest Period Premiums); (5) Violation of Cal. Lab. Code §§ 204 and 210 (Wages Not Timely Paid During Employment); (6) Violation of Cal. Lab. Code § 226(a) (Failure to Provide Accurate Wage Statements); (7) Violation of Cal. Lab. Code §§ 201, 202, and 203 (Untimely Final Wages); (8) Violation of Cal. Lab. Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses); and (9) Violation of Cal. Business & Professions Code §§ 17200, et seq. Except as set forth in Section 5.4 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation or claims based on facts occurring outside the Class Period. (Settlement Agreement, ¶ 5.3).

Released PAGA claims are all claims for PAGA penalties under Labor Code section 2698 et seq. that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative PAGA Complaint, the PAGA Notice, and ascertained in the course of the Action, including, e.g., under Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2800, 2802, and all applicable IWC Wage Orders. The express purpose of this Agreement and the Judgment to be entered by the Court following approval of this settlement is to forever bar Plaintiffs, the LWDA, and any other individual or entity acting on behalf of or purporting to act on behalf of the LWDA (including all Aggrieved Employees) from asserting any of the PAGA Released Claims in any future litigation. It is the intent of the Parties that, to the greatest extent provided by law, including under the holding of Arias v. Superior Court, 46 Cal. 4th 969, 986 (2009), the ability of Plaintiffs, the State of California or any Aggrieved Employee to bring a PAGA claim on behalf of the LWDA based on the PAGA Released Claims for the PAGA Period is completely and forever foreclosed. All Aggrieved Employees, including Non-Participating Class Members, are to be bound by the PAGA portion of this Settlement upon its approval by the Court, regardless of whether he or she negotiates (i.e. cashes or deposits) his or her Individual PAGA Payment. (Settlement Agreement, ¶ 5.4)

"Released Parties" means Defendants, their subsidiaries, and affiliates, and each of their and former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, agents, reinsurers, and any individual or entity which could be jointly liable with Defendants. (*Id*., ¶ 1.41).

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The settlement of a class action requires court approval. (*See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996)). "In general, questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds)).

The review and approval of a proposed class action settlement involves a two-step process. (*See* Cal. Rules of Court, Rule 3.769(c)). First, counsel submit the proposed terms of the settlement and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the range of a fair settlement to justify providing notice of the proposed settlement to class members. After notice is provided to the class, the Court must conduct a second inquiry into whether the proposed settlement is fair, reasonable, and adequate. (Ibid).

The initial evaluation of the settlement at the preliminary approval step "is not a fairness hearing." (*Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980)). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed settlement is within the range of possible approval and, as a result, "whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing." 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. (*See In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006)).

Preliminary approval does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to object or exclude themselves from the settlement. (*See* Cal. Rules of Court, Rule 3.769(g)). In considering a potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. (*See Officers for Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982)).

V. THE SETTLEMENT IS PRESUMED FAIR

A. The Settlement Was Reached as a Result of Arm's-Length Bargaining

California courts recognize that "a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining." (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties' settlement negotiations were at all times made at arm's-length and were adversarial. (Blanchard Decl., ¶ 24). The Settlement was reached following a full day of mediation with a highly respected mediator with substantial experience mediating wage and hour cases. (Ibid). At all times, Plaintiffs were willing and prepared to litigate this matter through class certification and trial if the Parties had been unable to reach a favorable resolution.

B. Sufficient Investigation and Discovery by Experienced Class Counsel

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation, Defendants produced a random sampling of putative class members' time and pay records as well as Defendants' relevant wage and hour policies, and information regarding the total number of putative class members, the number of current versus former employees, the total workweeks worked by the putative class members, and the average rate of pay for the putative class members. (Blanchard Decl., ¶ 25).

This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and weaknesses of the claims and the potential class-wide damages. (*Id.*, ¶ 26). Based on information exchanged, the Parties extensively briefed issues regarding class certification and liability and provided their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective positions. (*Id*., ¶ 27). Additionally, settlement negotiations were conducted by highly capable and experienced counsel. (Blanchard Decl., ¶¶ 1-9). Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court must 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, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).

Here, the reasonableness of the Settlement is underscored by the fact that Defendants have legal and factual grounds for defending the Actions. Based upon Class Counsel's experience litigating similar complex matters, Plaintiffs reasonably expected a vigorous and lengthy defense to both class certification and the merits of the Actions absent a settlement.

1. Class Counsel's Analysis of the Maximum Available Liability and Damages

Class Counsel analyzed all available data and estimated Defendant's maximum potential exposure to be approximately $9,343,399, assuming the litigation was successful at trial on all claims at issue and every employee had a violation for each claim on every shift worked. (Blanchard Decl., ¶ 28). This maximum potential analysis was then reduced based on the challenges facing the likelihood of obtaining class certification, prevailing at trial, and other attendant risks. (Ibid). This estimate is based off an estimated maximum liability for all claims at issue and the total aggregate workweeks during the relevant time period, less interest, and based on the analysis of the data which was extrapolated out for all class members across the entire putative class period, which included: $214,736 for meal period violations (less meal period premiums paid); $4,616,257 for rest period violations at a 100% violation rate; $1,051,441 for unpaid off-the-clock work for 1 hour per workweek of off-the-clock work; $40,806 for unpaid overtime wages; $399,750 for unreimbursed business expenses; $1,324,209 for waiting time penalties; and $843,300 for wage statement penalties. (Ibid). Plaintiffs further estimated that Defendants faced an additional exposure of $943,900 in potential, non-stacked (i.e., one penalty, per employee, per pay period during the PAGA statutory period) PAGA penalties. (Ibid). Together with the PAGA penalties, Defendants' maximum potential exposure totaled $9,343,399 in damages. (Ibid).

2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments

While Plaintiffs believes that Defendants faced significant exposure, substantial barriers to a recovery existed. Defendants contended that Plaintiffs' claims are not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. (Blanchard Decl., ¶ 31; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011)). While Plaintiffs and Class Counsel disagree with Defendants' predictions, they also recognize that there is a significant risk that the Court may deny class certification. (Blanchard Decl., ¶ 31; *see also*, *Findings of the Study of California Class Action Litigation*, 2000-2006, available at http://www.courts.ca.gov/documents/class-action-lit-study.pdf (finding that only 21.4% of all class actions were certified either as part of a settlement or as part of a contested certification motion)).

For example, Plaintiffs' meal period claims, which were based on Defendants' alleged failure to provide lawful meal periods, have been increasingly difficult to certify in recent years. (Blanchard Decl., ¶ 32; *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiffs' theory of liability for meal period violations was based on allegations that Defendants had failed to implement their policies and that their practices failed to allow Class Members to take meal breaks in the manner required under California law. (Blanchard Decl., ¶ 32; *See Bradley v. Networkers Int'l, LLC,* 211 Cal.App.4th 1129, 1150 (2012) (holding that "the lack of a meal/rest break policy and uniform failure to authorize such breaks are matters of common proof.")). Defendants contended that their policies and practices at all times during the Class Period were lawful. (Blanchard Decl., ¶ 32). Defendants further argued that the rate of purported meal period violations reflected in the data would require individualized inquiry and that such inquiry would prohibit a class from being certified. (Ibid). Class Counsel also had to consider the risk that the Court would find validity in an individualized proof defense to certification of Plaintiffs meal period claim. (Ibid).

Additionally, a large portion of Defendants' overall liability lies in Plaintiffs' rest period allegations. (*Id*., ¶ 33). As with the meal period allegations, Defendants contended that they had a lawful written rest period policy, provided compliant rest breaks, and relieved Class Members of all duties as required under California law. (Ibid). Additionally, this claim was even more uncertain given the difficulties associated with proving the alleged rest period violations, as Defendants were not required to record these breaks. (Ibid). Given the lack of records demonstrating rest period violations, there were legitimate concerns Plaintiffs would not be able to certify these claims or prove substantial damages with requisite certainty, which made the estimated value of this claim subject to much challenge. (Ibid).

Plaintiffs also faced challenges certifying and proving liability for their minimum wage and overtime claims. (*Id*., ¶ 34). These claims were largely based on unrecorded, off-the-clock work performed by the Class Members both before and after their shifts and during purported meal and rest periods. (Ibid). However, the individualized nature of why this work was performed and the individualized nature of damages presented substantial concerns regarding the manageability of the case and the risk the Court could find these issues prevented certification, and the estimated damages for this claim were based on an assumption that all Class Members worked off the clock for at least one hour per week. (Ibid).

Plaintiffs also contended that Defendants failed to reimburse Plaintiffs and the other Class Members for necessary business-related expenses, such as the usage of personal cell phones for work-related purposes. Defendants contended that they had a policy and practice of reimbursing employees for necessary business-related expenses. Defendants further contended that, with respect to the alleged expenses for which Plaintiffs and the other Class Members never requested reimbursement from Defendants, they did not know and had no reason to know that alleged business-related expenses had been incurred. Defendants further contended that the reason why a Class Member undertook certain expenses, while not others, and failed to receive reimbursement for certain expenses while not others, would raise individual issues that could not be certified.

There are also substantial risks associated with Plaintiffs' waiting time penalties and wage statement claims. (*Id*., ¶ 35). First, these claims were derivative of Plaintiffs' claims for unpaid meal period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages, and if certification was denied on those underlying claims, these derivative claims for penalties would also likely fail. (Ibid). Further, even if Plaintiffs prevailed on their underlying claims, they would still be required to demonstrate that Defendants' violations of California Labor Code section 203 were *willful* violations. (Blanchard Decl., ¶ 35; *See, e.g*., *Choate v. Celite Corp*., 215 Cal App. 4th 1460, 1468 (2013) (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding of willfulness")). Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them rather than a pure calculation of damages after liability is proven. (Blanchard Decl. ¶ 35; *Jaimez v. DAIOHS USA, Inc*., 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp*., 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which comprised a substantial portion of Defendant's estimated liability, were therefore uncertain. (Blanchard Decl., ¶ 35).

Class Counsel also recognized that, even if Plaintiffs prevailed at class certification, proving the amount of wages due to Class Members would be an expensive, time-consuming, and uncertain proposition. (*Id*., ¶ 36). In order to prove liability and damages, Class Counsel will need to request and analyze thousands of pages of documents, obtain the Class Members' contact information, contact them, and obtain their declarations at great expense. (Ibid). Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. (Ibid). On the other hand, Defendants would likely be able to obtain the cooperation of their employees. (Ibid). Moreover, even if Plaintiffs prevailed at class certification and trial, possible appeals would substantially delay any recovery by the Class. (Ibid).

Therefore, taking into account how each of the above risks potentially effected Plaintiffs' ability to first obtain class certification, and then prove the underlying violations, plus the cost and delay in recovering the alleged potential damages, Class Counsel discounted Defendants' estimated liability based on the challenges facing his ability to succeed on class certification by 80% to $1,866,879. (Blanchard Decl., ¶ 37). The merits-based risk factors further reduced Defendants' estimated liability by an additional 65%. (Ibid). This resulted in an adjusted estimated liability of $660,408. (Ibid). In light thereof, the settlement amount of $650,000 is a significant settlement. (Ibid).

Class Counsel also contemplated the risks of proceeding with the PAGA claim and potential liability Defendants could face from this claim as part of the global resolution. (*Id.*, ¶ 38). Existing case law makes PAGA claims subject to the same defenses and risks as Plaintiff's underlying wage claims. (Blanchard Decl., ¶ 38; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiff's other claims fail as a matter of law, so does her PAGA claim")). Class Counsel also anticipated that even if successful on the merits at trial, the imposition of cumulative civil penalties based on the alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory, and that Defendants would argue that they made a good faith attempt to comply with their legal obligations warranting a reduction in penalties. (Blanchard Decl., ¶ 38).[1] Class Counsel also anticipated Defendants would argue that the violations per pay period were low, warranting an additional reduction in civil penalties. (Ibid). Finally, Class Counsel was also mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended to facilitate enforcement of California's labor laws by financing state activities and educating and deterring non-compliance. (Ibid).

Therefore, after considering this multitude of factors, Plaintiffs and Class Counsel concluded that it was in the best interest of the State of California and the Aggrieved Employees to enter into the Settlement, and to allocate Fifty Thousand Dollars ($50,000) of the Gross Settlement Amount towards the PAGA claim, which represents approximately 7.7% of the Gross Settlement Amount. (*Id.*, ¶ 39). This percentage of the settlement is well within the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. (Blanchard

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[1] See, e.g., *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) ("duplicative effect" of penalties is a factor in favor of "reducing ...the PAGA penalty"); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez v. McDonalds Restaurants of California, Inc.*, 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties arising out of the same conduct); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (approving reduction in penalties from $50 per pay period to $5 per pay period based on good faith attempts to comply with obligations and minimal violations).

Decl., ¶ 39). Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as reasonable by courts. (Ibid). Moreover, the overall relief obtained by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California's labor laws, provide funds to the state, and deter future non-compliance by the employer. (Ibid).

The Settlement is in the best interest of the Class Members, the Aggrieved Employees, and the State of California and is within the accepted range of recoveries for this type of litigation given the inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further litigation. (*Id*., ¶ 40).

VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

Code of Civil Procedure Section 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class action is superior to other methods. (*See Dunk*, 48 Cal.App.4th at 1806). Plaintiffs contend that the Actions, which are based upon Defendants' wage and hour policies and practices, satisfies the class certification requirements under California Code of Civil Procedure section 382. Defendants deny Plaintiffs' allegations, but for purposes of the Settlement only, Defendants have stipulated to certification of the Class.

A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is Impracticable

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. (*See Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983)). In this case, all three considerations strongly favor class certification. Here, the Class is defined as "all current and former hourly paid and/or non-exempt employees who worked for Bay Photo Lab Inc. in California during the Class Period." (Blanchard Decl., ¶ 16; Settlement Agreement, ¶ 1.9). This provides a clear and definite scope for the proposed class.

Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Courts have certified classes with as few as ten or twenty-eight class members. (*Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995); *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972)). Here, the estimated Class size of six hundred thirty (630) individuals meets the numerosity requirement.

Finally, the question of whether class members are easily identifiable turns on whether a plaintiff can establish "the existence of an ascertainable class." (*Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706 (1967)). The existence of an ascertainable class in this case can be established through Defendants' payroll records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and the Court to determine the parameters of the Class. (*See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d 605, 617 (1987)).

B. The Class Shares a Well-Defined Community of Interest

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. (*Dunk*, 48 Cal.App.4th at 1806). Here, all three requirements are easily satisfied.

The commonality criterion requires the existence of common question of law or fact and is generally established with the issues of predominance and typicality. (*See Daar*, 67 Cal.2d 695, 706). What is required is that a common question of fact or law exists which predominates over issues unique to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising from employment—is not a bar to class certification as long as they do not render class litigation unmanageable or predominate over the common issues. (*See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987)).

Here, Plaintiffs' claims present common issues of law and fact that predominate and warrant class certification. Plaintiffs allege that Defendants denied compliant meal and rest periods to employees, required employees to perform work off-the-clock, and failed to fully compensate employees for all time actually worked. These policies and practices meant that Defendants allegedly failed to pay minimum and overtime wages, and other related claims. Plaintiffs alleges that Defendants' policies and practices were uniform as to all Class Members. Thus, class treatment is appropriate.

To satisfy the typicality requirement, California law does not require that plaintiffs' claims be identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct. (*See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007)). The typicality requirement for a class representative refers to the nature of the claim or defense of the representative, and not to the specific facts from which it arose or the relief sought. (*See* Ibid).

Here, Plaintiffs allege that their claims are similar to that of the other Class Members and that Plaintiffs' claims arise out of the same alleged course of conduct giving rise to the claims of the other Class Members. Because Plaintiffs' claims are based upon the same alleged conduct and business practices as those of Class Members, the typicality requirement has been satisfied.

Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of the class." (*McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976)). Here, these considerations are satisfied. Class Counsel is well-regarded and is qualified and experienced in employment-related, class-action litigation. (Blanchard Decl., ¶¶ 1-9). Plaintiffs will vigorously, adequately, and fairly represent the interests of the Class. Plaintiffs have, at all times, throughout the course of the litigation considered the interests of the Class and understood that he must take steps to adequately represent the Class and their interests. (He Decl., ¶ 10; Velasquez Decl., ¶ 10). Because Plaintiffs' claims are typical of other Class Members and are not based on unique circumstances, there is no antagonism between the interests of Plaintiffs and the Class.

C. A Class Action is Superior to a Multiplicity of Litigation

Under the circumstances, proceeding as a class action is a superior means of resolving this dispute, as the Class Members and the Court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged violations. (*See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will come forward to prove his or her separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing)). Further, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior to individual litigation.

VII. THE REQUESTED CLASS REPRESENATIVE SERVICE PAYMENTS ARE REASONABLE

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010)). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representative, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. (*See In re Online DVD Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of $15,000 to be "fair and reasonable")).

Plaintiffs initiated this litigation on behalf of their former co-workers who will now be entitled to receive payment from the Settlement. Plaintiffs invested substantial time and effort into litigation, including their own research, reviewing documents, and extensive discussions with Class Counsel. He Decl., ¶¶ 3-5; Velasquez Decl. ¶¶ 3-5). Further, the requested amounts for Plaintiffs are also reasonable given the average award and the benefit gained by other Class Members. For these reasons, Plaintiffs request that Class Representative Service Payments of Seven Thousand Five Hundred Dollars *each* (for a total and an amount of $15,000) to Plaintiffs be preliminarily approved by the Court. (Blanchard Decl., ¶ 41; He Decl., ¶ 12; Velasquez Decl. ¶¶ 12).

VIII. THE REQUESTED CLASS COUNSEL FEES PAYMENT AND CLASS COUNSEL LITIGATION EXPENSES PAYMENT ARE REASONABLE

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." (*Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 41 (2000)). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. (*Id*. at 47). In cases where class members present claims against a common fund and the defendant agrees to a percentage of the fund as part of the settlement, use of the percentage method is appropriate. (*Id.* at 32).

Here, the requested attorneys' fees of thirty-five percent (35%) of the Gross Settlement Amount (i.e., $227,500.00) is disclosed to Class Members in the proposed Class Notice. (Settlement Agreement, Exh. A). The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendants. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel's request for the reimbursement of litigation costs and expenses not to exceed Forty Thousnd Dollars ($40,000.00). (Blanchard Decl., ¶ 42). Any portions of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment that are not ultimately approved by the Court shall instead be included in the Net Settlement Amount to be distributed to Participating Class Members.

IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS

The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members. (Settlement Agreement, Exh. A). The Class Notice will include information regarding the nature of the Actions, a summary of the terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the Class Settlement and to dispute Workweeks and/or PAGA Pay Periods, and the date of the Final Approval Hearing. (Ibid). The Class Notice will list each Class Member's total Workweeks and their estimated Individual Class Payment and each Aggrieved Employee's total PAGA Pay Periods and their estimated Individual PAGA Payment. (Ibid).

Within thirty (30) calendar days after entry of the preliminary approval order, Defendants will provide a list in a formatted readable Microsoft Office Excel spreadsheet to the Administrator containing the following information for each Class Member: name; last known mailing address; Social Security number; and number of Class Period Workweeks and PAGA Pay Periods (collectively referred to as the "Class Data"). (*Id*., ¶ 1.8). Within fourteen (14) calendar days after receiving the Class Data from Defendants, the Administrator will perform a search based on the National Change of Address Database or other similar services available, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice in English and Spanish to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator. (Settlement Agreement, ¶ 7.4). The Parties have agreed to use Apex Class Action as the Administrator. (Blanchard Decl., ¶ 45; Settlement Agreement, ¶ 7.1).

In determining whether to approve a settlement of a class action, a trial court has virtually complete discretion as to the manner of giving notice to class members, and review on appeal is governed by the abuse of discretion standard. (*See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380 (2010)). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which would result in a higher likelihood of actual notice. (Blanchard Decl., ¶ 46). The original source of the mailing addresses is from Class Members, who provided the information to Defendants. (Ibid).

Class Members will have forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement Administrator to submit a Request for Exclusion, written objection, and/or Challenge to Workweeks ("Response Deadline"). (Settlement Agreement, ¶ 7.4.4).

Any Class Notice returned to the Settlement Administrator as undeliverable on or before the Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto and the Administrator will indicate the date of such re-mailing on the Class Notice. (*Id*., ¶ 7.4.3). In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended fifteen (15) calendar days from the original Response Deadline. (*Id*., ¶ 7.4.4).

Class Members will have an opportunity to dispute the number of Workweeks and/or PAGA Pay Periods which they have been credited with, as reflected in their respective Class Notices, by submitting a timely and valid letter ("Challenge to Workweeks") to the Administrator, by mail, postmarked on or before the Response Deadline. (*Id*., ¶ 7.6).

Any Class Member wishing to be excluded from the Class Settlement must submit a timely and valid letter ("Request for Exclusion") to the Administrator, by mail, postmarked on or before the Response Deadline. (*Id*., ¶ 7.5). A Request for Exclusion must contain the information required in the class notice and be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id*., ¶ 7.5). Notwithstanding the above, all Aggrieved Employees will be bound by the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion. (*Id*., ¶ 7.5.4).

To object to the Class Settlement, Settlement Class Members must submit a timely and complete written objection to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. (*Id*., ¶ 7.7). A written objection must contain the information required in the class notice and be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id*., 7.7). Settlement Class Members, individually or through counsel, may also present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a written objection.

X. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

Respectfully submitted,

Dated: June 27, 2025

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