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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF NAPA

SEFERINO GARCIA, an individual, on behalf of himself, the State of California, as a private attorney general, and on behalf of all others similarly situated, Plaintiff, v. DHR CONSTRUCTION, INC., a California Corporation; and DOES 1 TO 50, Defendants.	Case Number: 24CV000295 **Plaintiff's Notice of Motion and Motion for Preliminary Approval of Class Action and PAGA Settlement** Hearing Date: June 5, 2025 Hearing Time: 8:30 a.m. Dept: ______________ Complaint Filed: February 28, 2024 Trial Date: None Set

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that that on June 5, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard, in the Napa County Superior Court for the State of California, located at the Historic Courthouse, 825 Brown Street, Napa California 94559, Plaintiff Seferino Garcia ("Plaintiff"), on behalf of himself, the State of California, as a private attorneys general, and on behalf of all others similarly situated, will and hereby does move this court for entry of an order:

1. Preliminarily certifying the settlement class for purposes of settlement pursuant to California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769;

2. Preliminarily appointing Plaintiff as class representative for purposes of settlement;

3. Preliminarily appointing Jonathan Melmed, Kyle D. Smith, and Rachel Jo of Melmed Law Group P.C. as class counsel for purposes of settlement;

4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the parties' *Settlement Agreement and Release of Class Action and Representative Action* (the "Initial Agreement") and *Amendment to Settlement Agreement and Release of Class Action and Representative Claims* (the "Amendment") (the Initial Agreement and the Amendment are hereafter referred to together as the "Settlement Agreement"), including payment by Defendant DHR Construction, Inc. ("Defendant") of the non-reversionary gross settlement amount of $262,500.00 ("Gross Settlement Amount");

5. Preliminarily approving payment of reasonable attorneys' fees from the Gross Settlement Amount in an amount not to exceed one-third of the Gross Settlement Amount (i.e., up to $87,500.00), plus necessary litigation costs not to exceed $13,000.00;

6. Preliminarily approving a class representative service payment in an amount of up to $7,500.00 for Seferino Garcia from the Gross Settlement Amount to compensate him for the responsibilities, time, effort, and risks involved in coming forward on behalf of the proposed class;

7. Preliminarily approving the allocation of $15,000.00 for penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., $11,250.00) shall

be paid to the California Labor and Workforce Development Agency ("LWDA") from the Gross Settlement Amount, with the remaining 25% (i.e., $3,750.00) payable to the aggrieved employees;

8. Appointing Phoenix Settlement Administrators (the "Settlement Administrator") as the settlement administrator to handle the notice and administration process and preliminarily approving settlement administration costs estimated to be $6,500.00;

9. Approving the proposed class notice and ordering it be disseminated to the class members as provided in the Settlement Agreement;

10. Directing the Settlement Administrator to mail the class notice to the proposed class;

11. Approving the proposed deadlines for the notice and administration process as reflected in this motion and in the Settlement Agreement; and

12. Setting a date for a final fairness hearing to determine, following dissemination of the proposed class notice packet, whether to grant final approval of the settlement.

This motion is based on this Notice of Motion and Motion for Preliminary Approval of Class Action Settlement; the Memorandum of Points and Authorities in support thereof; the declaration of Plaintiff's counsel Jonathan Melmed; the declaration of Plaintiff; the Settlement Agreement; the proposed class notice; the proposed order granting preliminary approval of the Settlement Agreement and setting a settlement fairness hearing; the other records, pleadings, and papers filed in this action; and upon such other evidence or argument as may be presented to the court at the hearing of this motion.

Because this motion seeks, in part, preliminary certification of a class, the papers herein are filed in compliance with Rule 3.764, subdivision (c)(1), of the California Rules of Court, which permit a memorandum in support of the motion of up to 20 pages.

Dated: April 30, 2025

MELMED LAW GROUP P.C.

KYLE D. SMITH
Attorney for Plaintiff, the Putative Class, and the Aggrieved Employees

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I. INTRODUCTION

This motion seeks preliminary approval of a wage-and-hour class action and PAGA settlement between Plaintiff Seferino Garcia ("Plaintiff") and Defendant DHR Construction, Inc. ("Defendant") (collectively, the "Parties") for the Gross Settlement Amount of $262,500.00. A true and correct copy of the *Settlement Agreement and Release of Class Action and Representative Action* (the "Initial Agreement") is attached as **Exhibit A** to the concurrently filed *Declaration of Jonathan Melmed in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement* ("Declaration of Jonathan Melmed" or "Melmed Decl."). A true and correct copy of the *Amendment to Settlement Agreement and Release of Class Action and Representative Claims* (the "Amendment") is attached to the Declaration of Jonathan Melmed as **Exhibit B**. The Initial Agreement and the Amendment are hereafter referred to together as the "Settlement Agreement." The Settlement Agreement, in its entirety, is incorporated herein by reference.

Under the Settlement Agreement, the Gross Settlement Amount is to be distributed to approximately 190 individuals defined as: *All individuals who are or were employed by Defendant as non-exempt employees in California during the period from February 28, 2020, through August 26, 2024* (the "Class Period"). (Settlement Agreement, at pp. 5, 10.) These employees are referred to herein individually as the "Class Members" or collectively as the "Class."

Plaintiff also represents a group of approximately 107 aggrieved employees on behalf of the State of California as a private attorney general pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698 through 2699.6 ("PAGA"). The definition of the "Aggrieved Employees" for these purposes is identical to that of the Class Members, except that the applicable "PAGA Period" is defined as the period from February 28, 2023, through August 26, 2024. (Settlement Agreement, at p. 8.)

The Settlement Agreement is a non-reversionary settlement, meaning that none of the Gross Settlement Amount will revert to Defendant. (Settlement Agreement, at p. 14; Melmed Decl., ¶ 7.) Class Members are not required to submit a claim form to receive their settlement share. (Settlement Agreement, at p. 20, Melmed Decl., ¶ 7.) Subject to court approval, the "Net Settlement Amount" of at least **$136,750.00**, will be distributed to Class Members who do not request exclusion from the settlement and the Aggrieved Employees, less applicable taxes.

Gross Settlement Amount	**$262,500.00**
Attorneys' Fees	(up to $87,500.00)
Litigation Costs	(up to $13,000.00)
Settlement Administration Costs	(up to $6,500.00)
Service Award to Plaintiff	(up to $7,500.00)
PAGA Payment to LWDA	($11,250.00)
Net Settlement Amount	**$136,750.00**

Because the settlement is fair and reasonable, was negotiated at arm's length between counsel following extensive investigation and discovery, was reached after participation in a full-day mediation, it should be preliminarily approved.

II. BACKGROUND

A. THE PARTIES

13. Defendant DHR Construction, Inc. is a for-profit California Corporation that operates a golf course construction business based in American Canyon, California. Plaintiff Seferino Garcia worked for Defendant in California as a welder and mechanical assistant from approximately February 13, 2023, to September 1, 2023. Plaintiff alleges that Defendant's employees experienced various violations of California's wage-and-hour laws. (Melmed Decl., ¶¶ 17–18.)

B. PROCEDURAL SUMMARY

On February 28, 2024, Plaintiff submitted a letter to the California Labor and Workforce Development Agency ("LWDA") to notify the LWDA, pursuant to PAGA, of Plaintiff's intent to seek civil penalties against Defendant for violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; and California Industrial Welfare Commission ("IWC") Wage Orders 4-2001 and/or 16-2001 (the "Applicable Wage Orders"). (Cal. Code of Regs., tit. 8, §§

11040, 11160; Melmed Decl., ¶ 19.) The letter attached Plaintiff's original complaint, and incorporated the original complaint by reference, and thus sought penalties for claims identical to those alleged in the case. For the Court's reference, a copy of Plaintiff's letter to the LWDA is attached as **Exhibit C** to the concurrently filed Declaration of Jonathan Melmed.

On February 28, 2024, Plaintiff commenced this action by filing a class action complaint alleging causes of action against Defendant for **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Orders; **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Orders; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Orders; **(4)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Orders; **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; and **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210). (Melmed Decl., ¶ 20.)

On May 3, 2024, Plaintiff filed a first amended complaint alleging causes of action against Defendant for those described in the original Complaint and adding one cause of action for penalties based on the foregoing pursuant to PAGA. (Lab. Code, §§ 2698–2699.6.) The first amended complaint is the operative complaint in the action (the "Operative Complaint"). (Melmed Decl., ¶ 21.)

Thereafter, the Parties agreed to attend a private mediation with Kim Deck. Prior to the mediation, Plaintiff's counsel conducted significant informal discovery. Discovery, investigation, and prosecution has included, among other things, numerous telephonic conferences with Plaintiff; inspection and analysis of thousands of pages of documents, including Defendant's relevant policies and employee handbook, and other information produced by Plaintiff and Defendant; analysis of work-related data from a sample of Class Members and Aggrieved Employees; an analysis of the legal positions taken by Defendant; investigation into the viability of class treatment of the claims asserted in the action; analysis of potential class-wide damages, including information sufficient to understand Defendant's potential defenses to Plaintiff's claims; research of the applicable law with respect to the claims asserted in the Operative Complaint and the potential defenses thereto; and assembling and analyzing of data for calculating damages. (Melmed Decl., ¶ 22.)

Among other key pieces of information, Plaintiff's counsel requested in its informal discovery letter the wage statements and time records for a statistically significant sample size of Class Members during the Class Period. The Parties agreed on, and Defendant produced, a large volume of data which Plaintiff's counsel determined would provide a statistically significant sample size with a high-degree of confidence for Plaintiff's expert's statistical analysis. This sampling included payroll records and timesheets for the Class Members' shifts during the Class Period. From these records, Plaintiff's expert was able to carefully craft a damages model for each of the categories of alleged claims for which the data would reflect violations. (Melmed Decl., ¶ 23.)

On August 26, 2024, the Parties participated in a full-day mediation with Kim Deck who is a full-time mediator with extensive experience in California wage and hour class action lawsuits. The mediation negotiations were contentious, but the Parties were eventually able to reach the broad terms of an agreement. After further negotiation, the Parties executed the longform Initial Agreement, and later the Amendment, now before the Court for approval. (Melmed Decl., ¶¶ 24–25.)

Plaintiff now seeks the Court's preliminary approval of the Settlement Agreement.

III. SUMMARY OF THE CLAIMS, DEFENSES, AND EXPOSURE

Plaintiff alleged several categories of wage and hour violations on behalf of the Class Members and Aggrieved Employees. Plaintiff's claims stem from several categories of illegal employment practices. Most importantly, Plaintiff alleged that Defendant rounded employee's timecards to the nearest hour, did not provide complaint meal periods, did not authorize or permit compliant rest periods, and failed to reimburse business expenses. (Melmed Decl., ¶ 26.) Defendant has persistently denied all liability of any kind associated with the claims and allegations, and further denied that the Plaintiff, the Class Members, or the Aggrieved Employees are entitled to any relief. Defendant also denies that these allegations are appropriate for class or representative treatment for any purpose other than the settlement. Defendant maintains, among other things, that it has complied with California laws in all respects. (Melmed Decl., ¶ 27.) These claims, defenses, and potential damages are summarized in more detail below.

A. MINIMUM WAGE AND OVERTIME ALLEGATIONS

Labor Code section 1197 requires employees to be paid at least the minimum wage fixed by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section 1194 entitles "any employee receiving less than the legal minimum wage . . . to recover in a civil action the unpaid balance of the full amount of this minimum wage." (See also Lab. Code, §§ 1185 [giving the Applicable Wage Orders the force of law], 1198 [same].) These minimum wage standards apply to each hour that employees work. Therefore, an employer's failure to pay for any particular time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

Here, Plaintiff alleged the Class Members' hours were unlawfully rounded to the nearest hour (or sometimes half-hour) resulting in time worked time off-the-clock. Specifically, Plaintiff alleged that the Class Members' time records were all hand-written by the Class Members' supervisors, rather than the Class Members themselves, and reflected scheduled time, rather than actual time worked. Plaintiff further alleged that the Class Members would be disciplined for arriving late, so the Class Members routinely started work early, but this time was never reflected on their timesheets. (Melmed Decl., ¶ 29.)

Plaintiff further alleged that Defendant's failure to properly pay for all hours worked will also create liability under Labor Code section 510 for unpaid overtime wages for those employees whose tracked hours were greater than or equal to 8 hours in a single day or 40 hours in a workweek (which was most of them). Plaintiff alleged that the Class Members' untracked time would have increased the amount of overtime pay to which they otherwise would have been entitled. (Melmed Decl., ¶ 30.)

Defendant asserted that the employees recorded all hours worked, without completing any additional off-the-clock work, and that their pay was based precisely on this recorded time.

Specifically, Defendant argued that it promulgated a code-compliant handbook that required all hours to be accurately tracked and that the Class Members were given the opportunity to review and sign off on their timesheets each pay period. Defendant therefore argued that Plaintiff would be unable to establish liability at class certification, summary judgment, or trial. (Melmed Decl., ¶ 31.)

Based on the informal discovery produced and the allegations in the case, Plaintiff's expert determined that Defendant's potential exposure for these claims was approximately **$146,865**, excluding considerations of interest or penalties. (Melmed Decl., ¶ 32.)

B. MEAL AND REST PERIOD ALLEGATIONS

Under Labor Code section 226.7 and the Applicable Wage Orders, employers are required to provide their non-exempt employees with compensated, duty-free rest periods of not less than ten minutes for every major fraction of four hours worked. Employers are also required to provide their nonexempt employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of work, and a second meal period for any employee who works more than ten hours per day. (Lab. Code, § 512, subd. (a).) Labor Code section 226.7 also provides that employers must pay their employees one additional hour of pay at the employee's regular rate for each workday that a "meal or rest or recovery period is not provided." (Lab. Code, § 226.7, subd. (c).) The California Supreme Court has held that, during required meal rest periods, "employers must relieve their employees of all duties and relinquish any control over how employees spend their break time." (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.)

Plaintiff alleged that Defendant failed to authorize or permit Plaintiff and the Class Members to take duty-free meal rest periods. Specifically, Plaintiff alleged that due to the demands of the job, Plaintiff and the Class Members were regularly required to forgo their rest periods entirely and were disciplined if they took breaks. Plaintiff further alleged that he never received a rest break during his employment with Defendant. Additionally, Defendant's supervisors would regularly watch the cameras and discipline any employee who took a breaks. Finally, Plaintiff alleged that he and the other Class Members routinely worked through their meal periods—which was often tracked. Despite these occurrences, the Class Members were never provided with meal or rest period premiums. (Melmed Decl., ¶ 33.)

Defendant argued it promulgated a code-compliant meal and rest period policy that the Class Members were obligated to comply with. In *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, the California Supreme Court held an employer is required only to "provide" breaks, but is not required (and, in this context, simply cannot as a practical matter) to ensure that they are taken. Given that Defendant had a policy of offering the employees meal and rest periods, any breaks that might appear noncompliant were presumably voluntarily waived by the employees. Nevertheless, Defendant argued that it proactively enforced its policy and that the Class Members were given uniform breaks for many non-exempt employees. Defendant argued that it even provided rest periods longer than statutorily required (i.e., 15 minutes instead of just 10). (Melmed Decl., ¶ 34.)

Based on the informal discovery produced and the allegations in the case, Plaintiff estimated that Defendant's alleged exposure for its failure to provide compliant breaks was approximately $587,472.00 based primarily on Plaintiff's allegations missed meal periods due to difficulties obtaining substantiating evidence in support of Plaintiff's rest period claims. Plaintiff discounted this amount by 75% due to the fact that the Class Members often signed off on their time sheets, making this claim very difficult to prove, and the very real risks that this Court would agree with Defendant's good faith defenses. Plaintiff estimated Defendant's realistic exposure for this claim to be approximately **$146,868**. (Melmed Decl., ¶ 35.)

C. REIMBURSEMENT ALLEGATIONS

Labor Code section 2802 provides that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." The purpose of this section is to "prevent employers from passing along their operating expenses onto their employees." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.) The duty to reimburse extends to the use of equipment the employee may already own and would be required to pay for anyway. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144 [employer must reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone].)

Plaintiff alleged that the Class Members were required to use their personal cell phones for work-related purposes. For example, Plaintiff alleged he was required to use his personal cell phone to communicate with supervisors and coworkers to meet business needs. Plaintiff further alleged that he was never reimbursed for mileage to and from job sites. Plaintiff noted several occasions where he would arrive to work at 5:00 a.m., receive job site instructions, and then drive two hours or more to job sites in his personal vehicle without any reimbursement. (Melmed Decl., ¶ 36.)

Defendant argued that it has a compliant reimbursement policy and that employees must submit an expense report to Defendant to be approved for reimbursement. To the extent the Class Members failed to request reimbursement for these expenses, Defendant was arguably not liable for this claim. (See, e.g., *Potts v. Sirius XM Radio Inc.* (C.D. Cal., Mar. 7, 2023, No. CV 21-9755-DMG (KSX)) 2023 WL 2628234, at *3 [employer only liable to reimburse business expenses of which it had knowledge].) Defendant further argued that personal cell phone use is typically an unnecessary expense for its employees and that it supplies employees with company phones for business calls and communications. (Melmed Decl., ¶ 37.)

In consideration of Defendant's good faith defenses, Plaintiff estimated that Defendant's exposure for this claim was approximately $5.00 per workweek, totaling **$47,720**. (Melmed Decl., ¶ 38.)

D. DERIVATIVE WAITING TIME PENALTY ALLEGATIONS

Plaintiff alleged that, because of the violations described above, several derivative causes of action arise. First, Plaintiff sought recovery for waiting time penalties under Labor Code section 203. As with Plaintiff's other claims, Defendant argued that the employees were fully compensated and that such violations were rare and nominal in value, if they occurred at all. Defendant thus concluded that it is unlikely that Plaintiff will establish waiting time penalties because the employees had been fully and timely compensated upon discharge. (Melmed Decl., ¶ 39.)

Plaintiff estimated 88 Employees terminated their employment during the waiting time date range. Thus, the maximum value of the waiting time penalty claim was therefore derived from the following formula: 88 employees × 30 days × 8 hours × average rate of pay of $24.00 per hour (or $506,880.00). However, after ascribing an 90% discount due to the very real risks that this Court would agree with Defendant's good faith defense and because the claim is derivative of the underlying claims which may also fail to be certified or win on the merits, Plaintiff estimated Defendant's realistic exposure for this claim to be approximately **$50,688**. (Melmed Decl., ¶ 40.)

E. DERIVATIVE WAGE STATEMENT ALLEGATIONS

Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement. Employers that knowingly and intentionally fail to provide their employees with accurate, itemized wage statements may be subject to penalties under Labor Code section 226, subdivision (e). Plaintiff alleged that, by virtue of the allegations that Defendant failed to properly pay the employees their wages as described above, Defendant had likewise failed to provide the employees with compliant wage statements reflecting their gross wages earned and their net wages earned. (Melmed Decl., ¶ 41.)

As with Plaintiff's other claims, Defendant argued that the employees were fully compensated and that such violations were rare and nominal in value, if they occurred at all. Defendant thus concluded that Plaintiff will not be able to establish a violation that impacts the wage statement for each class member/aggrieved employee for every pay period to recover the applicable PAGA penalty. (Melmed Decl., ¶ 42.)

In terms of Defendant's exposure for this claim, Plaintiff calculated that approximately 107 Class Members worked a total of approximately 2,471 pay periods during the applicable statutory period for this claim. Thus, Plaintiff determined that Defendant's maximum exposure for this claim was $241,750.00. Plaintiff then ascribed a 90% discount based on the very real risks that : **(1)** this court might find that Defendant's alleged wage statement errors were not made knowingly and intentionally such that the penalties would not be triggered, **(2)** this court might find that Defendant's alleged wage statement errors caused little or no injury to the Class Members, and **(3)** that this court might find that there were no errors made on the wage statements. Plaintiff calculated that Defendant's realistic exposure for this claim was **$24,175**. (Melmed Decl., ¶ 43.)

F. PAGA PENALTIES

Under former Labor Code section 2699, subdivision (f)(2), and section 2699.5, employers that violate certain provisions of the Labor Code are subject to penalties according to the following formula:

1. $100.00 for the initial violation per employee per pay period; and
2. $200.00 for each subsequent violation per employee per pay period.

These penalties must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees. (Lab. Code, § 2699, subd. (i).) Plaintiff alleged that, because of the violations described above, Defendant was liable for these penalties for each applicable pay period during the applicable PAGA Period. In ascertaining Defendant's exposure for this claim, Plaintiff considered that courts have refused to "stack" PAGA penalties, severely limiting the recoverable PAGA penalties. (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [approving PAGA penalty reduction to $5 per pay period]; accord *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809.) Defendant also argued that the July 2024 changes to PAGA have made it so that the subsequent violation amount of $200.00 should not apply to this case. (Melmed Decl., ¶ 56.)

Here, there were approximately 2,471 pay periods within the applicable PAGA period. Plaintiff assumed arguendo for mediation purposes that all the PAGA pay periods are "initial," leading Defendant's alleged exposure for PAGA penalties to be $100 × 2,471 (or $247,100.00) per Labor Code violation. However, considering Defendant's defenses to the PAGA claim, Plaintiff ascribed a 90% discount due to the very real risk of a court reducing the amount of awarded PAGA penalties, especially considering that the PAGA penalties themselves exceed the amount of wages actually owed. Plaintiff calculated that the Defendant's realistic exposure for this claim was **$24,710**. (Melmed Decl., ¶ 57.)

IV. SUMMARY OF THE PROPOSED SETTLEMENT

Under the Settlement Agreement, Defendant will be released of all claims set forth in the action in exchange for paying $262,500.00. (See generally, Settlement Agreement.) The Gross Settlement Amount includes: **(1)** the fees and expenses of the Settlement Administrator, currently estimated to not exceed $6,500.00; **(2)** attorneys' fees not to exceed one-third of the Gross Settlement Amount, i.e., $87,500.00; **(3)** litigation costs not to exceed $13,000.00; **(4)** service awards to the named Plaintiff of up to $7,500.00; and **(5)** payment to the LWDA for its share of the PAGA penalties in the amount of $11,250. (Settlement Agreement, at p. 22.) After all Court-approved deductions from the Gross Settlement Amount, the remaining amount (i.e., the Net Settlement Amount), which consists of at least $136,750.00, will be distributed as follows: the payment of taxes and required withholdings; a payment of $3,750 going to the Aggrieved Employees for their share of the PAGA penalties; and the remainder being distributed to all participating Class Members. (Settlement Agreement, at p. 8; Lab. Code, §

2699, subd. (i).)

A. REASONABLENESS OF THE GROSS SETTLEMENT AMOUNT

Plaintiff has applied appropriate discounts on the maximum settlement value as calculated above to come to Defendant's realistic exposure of **$441,026**. As explained above, the issues in this case were hotly contested—both legally and factually. While Plaintiff continues to believe in the merits of the case, Defendant argued that it fully complied with California's wage and hour laws, and thus faced minimal exposure, if any. Therefore, the Gross Settlement Amount of $262,500.00 is an excellent result and within the zone of reasonableness for all parties. If preliminary approval is granted, Plaintiff will have recovered **59.5%** of the estimated settlement value for the Class Members in this case—a fair compromise of the claims, by any measure. (Melmed Decl., ¶ 58.)

The Gross Settlement Amount in the Settlement Agreement was reached only after the case was thoroughly investigated by Plaintiff's counsel. As explained above, Plaintiff's reviewed, among other key pieces of information, the records of a statistically significant sample size of the Class Members, which Plaintiff's counsel determined would provide a statistically significant sample size with a high-degree of confidence for Plaintiff's expert's statistical analysis. This sampling included payroll records and timesheets for the Class Members' shifts during the Class Period. Plaintiff's counsel also conducted a detailed examination of Defendant's relevant policies to inform Plaintiff's counsel's analysis of Defendant's potential exposure. From these records, Plaintiff's expert was able to carefully craft a damages model for each of the categories of alleged claims for which the data would reflect violations. In total, Plaintiff's counsel and Plaintiff's expert reviewed thousands of pages of documents prior to agreeing to settle the case. (Melmed Decl., ¶ 59.)

These documents, along with the other investigation and discovery described above, were sufficient to allow counsel to act intelligently in reaching the Settlement Agreement and determining that the Gross Settlement Amount was adequate. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Indeed, after a thorough review of all available evidence in the case, Plaintiff's counsel have concluded that the Gross Settlement Amount represents an excellent result for the Class. (Melmed Decl., ¶ 60.)

B. SETTLEMENT ALLOCATION FORMULA

Individual payments to the Class Members from the class-portion of the settlement will be calculated and apportioned based on the number of weeks worked as an eligible Class Member in California by the participating Class Member during the Class Period (the "Individual Settlement Payments"). (Settlement Agreement, at p. 23.) Individual payments to the Aggrieved Employees from the PAGA-portion of the settlement (i.e., the portion not being sent to the LWDA), will be calculated and apportioned based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period compared to the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. (Settlement Agreement, at pp. 23–24.)

C. SELECTION OF THE SETTLEMENT ADMINISTRATOR

Plaintiff, through counsel, has obtained bids from several settlement administration companies for the settlement administration of this case. Of those, Phoenix Settlement Administrators presented the lowest qualified bid. Accordingly, the Parties propose to use Phoenix Settlement Administrators as the settlement administrator. (Melmed Decl., ¶ 61; Settlement Agreement, at p. 10.) The settlement administrator will be responsible for processing the settlement payments and providing notice to the Class Members as outlined in the Settlement Agreement. (Settlement Agreement, at p. 18.)

D. NOTICE PROCEDURES

Within 14 days of the Court granting preliminary approval of the Settlement Agreement, Defendant shall provide the Settlement Administrator with an updated list of Class Members and Aggrieved Employees containing names, number of Class Period workweeks, number of PAGA Period pay periods, addresses, and social security numbers (the "Class Data"). (Settlement Agreement, at p. 19.)

Within 28 days following the Preliminary Approval Date, the Settlement Administrator shall send the Class Notice by bulk first class mail, forwarding requested, to the Class Members at the addresses identified through the process described above. (Settlement Agreement, at pp. 19–20.) The Class Notice will be substantially the form as the one attached as **Exhibit 1** to the Initial Agreement.

Class Members who do not timely request exclusion from the Settlement Agreement will be deemed to be a participating Class Member without having to submit a claim form or take any other action. (Settlement Agreement, at p. 20.) To request exclusion from the Settlement Agreement, the

Class Member must submit a written request for exclusion from the Settlement Agreement to the Settlement Administrator ("Request for Exclusion"), postmarked no later than 45 calendar days after the Settlement Administrator mails the Class Notice to the Class Members. (Settlement Agreement, at p. 20.)

E. *CY PRES* DISTRIBUTION

Class Members will have 180 days to cash their settlement checks. (Settlement Agreement, at p. 25.) If a Class Member fails to cash his/her check by the deadline, then the Settlement Administrator shall distribute such funds to OLE Health, a non-profit health clinic in Napa Valley that serves local residents including employees of Defendant. (Settlement Agreement, at pp. 25–26.) Because all funds and interest under the Settlement Agreement are to be completely distributed to the class participants, or to OLE Health, the Parties agree that this disposition results in no "unpaid residue" or "unclaimed or abandoned class member funds" under Code of Civil Procedure Section 384. (Settlement Agreement, at p. 26.)

F. TAX TREATMENT

The Settlement Agreement provides that 20% of each individual settlement payment from the class-portion of the Settlement Agreement shall constitute wages (for which each participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining 80% shall constitute interest, reimbursement, and penalties (for which each participating Class Member will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at pp. 15–16.)

With respect to the individual payments made under the PAGA-portion of the Settlement Agreement, all such payments shall be treated as payments owing for penalties and interest (for which each Aggrieved Employee will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at p. 16.)

Defendant's share of payroll taxes that is owed on the portion of any class participant's individual settlement amount that constitutes wages shall be paid from the net settlement amount. (Settlement Agreement, at p. 6.)

V. THE CLASS SHOULD BE PRELIMINARILY CERTIFIED

A. THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY

CONSIDERATION IS APPROPRIATE

California Rules of Court, rule 3.769, subdivision (d), provides that the court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn.19.) Since no trial is anticipated in a settlement class, the case management issues inherent in determining if a class should be certified need not be confronted, and the trial court's fairness review of the settlement protects the interests of the non-representative class members. (*Ibid.*; see also *Officers for Justice v. Civil Service Com'n of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 633; *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620 ["Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."].)

B. THE PROPOSED CLASS IS NUMBEROUS AND ASCERTAINABLE

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. (See Code Civ. Proc., § 382.) A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. (See *Medrazo v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 101.) Defendant has represented that the proposed Class consisted of approximately 190 Class Members ascertained through Defendant's records. As such, these requirements are met.

C. MEMBERS OF THE PROPOSED CLASS SHARE A WELL-DEFINED COMMUNITY OF INTEREST

1. Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. (See *Arenas v. El Torito Restaurants, Inc.* (2010) 183 Cal.App.4th 723.) The commonality element is satisfied here because common legal and factual questions exist, such as **(a)** whether individuals working for Defendant were subject to unlawful wage-and-hour policies and/or practices under the California Labor Code; **(b)** whether these violations triggered derivative claims for penalties; and **(c)** whether Defendant's violations were knowing or willful.

2. Typicality

Typicality focuses on: **(1)** whether other members of the proposed class have the same or similar injury to the named plaintiff(s), **(2)** whether the action is based on conduct which is not unique to the named plaintiff(s), and **(3)** whether other class members have been injured by the same course of conduct. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502; *Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375.) Here, Plaintiff's claims are typical of the Class Members because he was subject to Defendant's policies and practices described above in Plaintiff's analysis of the claims and defenses, which were consistently applied to class-wide to all Employees. (Declaration of Seferino Garcia in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Garcia Decl."), ¶ 4.)

3. Adequacy of Representation

A proposed class representative must establish that they will adequately represent the proposed class. (See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.) Plaintiff is adequate as a class representative because he is a member of the Class, experienced the same wage and hour practices as the rest of the Class, is committed to representing the interests of the Class, has no interests that are adverse to members of the Class, and understands and accepts his duty to represent the best interests of the Class. Plaintiff is committed to the Class and is adequate to represent the interests of the Class in this litigation. (Garcia Decl., ¶¶ 4–5.) Plaintiff also provided counsel with information that was crucial to initiating the action and preparing the mediation brief, discussed settlement strategy with counsel, and provided valuable information about the Class Members and their experiences working for Defendant. (Melmed Decl., ¶ 74; Garcia Decl., ¶¶ 6–8.)

Adequacy may be established by the fact that counsel are experienced practitioners. (See *Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162.) Plaintiff is represented by counsel experienced in the litigation of wage and hour class actions, who have no interests adverse to Plaintiff or the Class, who vigorously prosecuted this action, and who have the financial resources to handle this case. (Melmed Decl., ¶¶ 10–16.)

4. Superiority

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

5. Predominance

The common issues here, concerning the uniform deficiencies to Defendant's wage-and-hour policies and practices raise predominating factual and legal issues supporting certification of a settlement class.

VI. PRELIMINARY APPROVAL SHOULD BE GRANTED

A. THE SETTLEMENT IS THE FAIR RESULT OF SERIOUS, INFORMED, AND NON-COLLUSIVE NEGOTIATIONS

The Settlement Agreement was negotiated at arm's length between counsel using a professional and well-respected third-party neutral. (Melmed Decl., ¶ 62.) Counsel for both parties were thoroughly familiar with the complex legal and factual questions at issue in this litigation. (*Id*.) The Settlement Agreement is a product of intensive negotiations, supported by investigation and direct exchanges of information through informal discovery, during the course of settlement negotiations, including a full-day mediation. (*Id*.)

Although Plaintiff and his counsel believed the class claims had merit and there was a possibility of certifying the class and claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. (Melmed Decl., ¶ 63.) The resulting Settlement Agreement was based on calculations, risk assessment, and non-collusive negotiation. It takes the risks identified above and others into account in arriving at the non-reversionary Gross Settlement Amount. (Melmed Decl., ¶ 64.)

The Settlement Agreement represents a fair compromise given the risks and uncertainties presented by continued litigation. Defendant asserted and would have continued to assert legal and factual grounds to defend against this action, including factual and legal defenses on the merits. Moreover, continued litigation would be costly, time-consuming, and uncertain. In contrast, the

Settlement Agreement ensures timely relief and substantial recovery of the Defendant's realistic exposure. (Melmed Decl., ¶ 69.)

Experienced counsel, operating at arm's length, have weighed the strengths and risks of the case, and endorse the proposed settlement. (Melmed Decl., ¶ 72.) The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, aff'd (9th Cir. 1981) 661 F.2d 939 ["[T]he fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight."]; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 [court must take into account the experience and view of counsel].)

B. THE CLASS NOTICE PLAN CONFORMS TO ALL APPLICABLE STATUTES AND RULES

The proposed Class Notice—which the parties have already agreed to—should be approved, as it fully informs the Class Members of the nature of the lawsuit and each Class Member's rights under the terms of the Settlement Agreement and applicable law. (Settlement Agreement, Exh. 1.) The way the Class Notice is to be disseminated, as outlined above, will ensure that all of the Class Members will be properly notified of the proposed settlement.

The Court has wide discretion in approving the means of providing notice, so long as the class representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of class members." (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 860, quotation marks omitted.) Here, the Parties' notice plan is that notice of the Settlement Agreement will be disseminated directly to the class members by first class mail by the settlement administrator within 28 days following the Preliminary Approval Date. (Settlement Agreement, at pp. 19–20.)

The notice plan and the Class Notice satisfy the requirements of rule 3.766 of the California Rules of Court and afford the Class Members with all due process protections required by the United States Constitution. Moreover, the contents of the Class Notice are in compliance with rule 3.766, subdivision (d), of the California Rules of Court, because the Class Notice includes, among other things: **(1)** a detailed explanation of the case, including the basic contentions or denials of the parties; **(2)** a statement that the court will exclude the member from the class if the member so requests by a specified date; **(3)** a procedure for the member to follow in requesting exclusion from the class; **(4)** a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and **(5)** a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. (Settlement Agreement, Exh. 1.) The 45-day deadline for Class Members to exclude themselves or challenge the number of workweeks worked during the Class Period is reasonable, as it provides Class Members with sufficient time to do so and, if they so choose, to seek independent legal advice in the interim. (Settlement Agreement, at p. 20.)

VII. THE ATTORNEYS' FEE ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS FAIR

In addition, at the time of final approval, Plaintiff's counsel will request attorneys' fees of up to one-third of the Gross Settlement Amount, (i.e., $87,500.00), plus reimbursement of litigation expenses and costs of up to $13,000.00. (Settlement Agreement, at p. 4.) As the California Supreme Court has made clear, one-third of the common fund is a reasonable percentage for a trial court to award as attorneys' fees in a class action where a common fund was generated as a result of the case. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [finding no abuse of discretion where trial court approved a fee request of one-third of the common fund].) The requested fees of one-third of the Gross Settlement Amount are also consistent with awards obtained in similar wage and hour class action cases approved by various courts in California. (See *Stuart v. Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645 [approving fee award of one-third]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL 2196104, at *8 [approving fee award of 33.33%]; *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841, at *4 [awarding fees of one-third]; *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW) 2008 WL 5478576, at *8 [approving attorneys' fees of one-third].)

As part of the final approval motion, Plaintiff's counsel will request approval of the attorneys' fees and costs described in this motion and in the Settlement Agreement, which will be heard at the final approval hearing. Accordingly, the Court need not decide the fees and costs at this time, but only authorize the Class Notice to inform class members that counsel will seek fees and costs up to one third of the Gross Settlement Amount in fees, plus actual litigation costs.

VIII. THE CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND APPROPRIATE

Plaintiff will request payment of a service award from the Gross Settlement Amount of up to $7,500.00 in addition to whatever payment he is otherwise entitled to receive as a Class Member. (Melmed Decl., ¶ 73; Settlement Agreement, at pp. 14–15.) The proposed service award is reasonable compensation given the time and effort that Plaintiff devoted to this case, the valuable assistance he provided to counsel, and the fact that he entered into a general release of claims that is broader than the release of the Class. (Melmed Decl., ¶ 73; Settlement Agreement, at pp. 14–15; Garcia Decl., ¶¶ 9–10.)

Plaintiff provided invaluable assistance to Plaintiff's counsel and the Class Members in this case, including providing factual background for mediation and the operative complaint, reviewing the relevant documents, participating in phone calls with Plaintiff's counsel, gathering highly relevant documents, and reviewing the settlement documents. (Melmed Decl., ¶ 74.) Plaintiff agreed to participate in this case with no guarantee of personal benefit. (*Ibid.*) Further, Plaintiff agreed to undertake the financial risk of serving as a class representative and exposed himself to the risk of negative publicity by anyone who opposed this case. (*Ibid.*)

Moreover, the requested service award for Plaintiff falls within the range of incentive payments typically awarded to class representatives in similar cases. (See, e.g., *Bond v. Ferguson Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 [approving **$11,250** service awards]; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2 [approving **$20,000** service awards]; *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving **$10,000** service awards]; *West v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 [approving **$15,000** service award]; *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 [approving **$25,000** service awards]; *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008) No. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 [approving **$25,000** service award]; *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal. Apr. 22, 2010) No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8.)

IX. SUBMISSION TO THE LWDA

The Settlement Agreement and this motion are concurrently being submitted to the LWDA in accordance with Labor Code section 2699, subdivision (l)(2). (Melmed Decl., ¶ 75.) The proof of electronic submission is attached as **Exhibit D** to the Declaration of Jonathan Melmed.

X. CONCLUSION

For these reasons, Plaintiff's motion for preliminary approval of the parties' class action settlement should be granted.

Dated: April 30, 2025

MELMED LAW GROUP P.C.

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