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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

DANIEL MITCHELL, individually and on behalf of all current and former similarly situated employees in the State of California, Plaintiffs, v. THOVAN HOSPITALITY, LLC; AGNES RESTAURANT & CHEESRY; THOMAS KALB, an individual; VANESSA TILAKA, an individual; ALLAN LIAO, an individual; and DOES 1 to 50, inclusive, Defendants.	CASE NO.: 30-2024-01377755-CU-OE-CXC ASSIGNED FOR ALL PURPOSES TO: Hon. Layne H. Melzer Dept.: CX-103 **Reservation Number: 74560426** Date: August 14, 2025 Time: 2:00 p.m. Dept.: CX-103 **MEMORANDUM OF POINTS AND AUTHORITIES ISO PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AND FOR PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff, DANIEL MITCHELL ("Plaintiff" or "Class Representative"), on behalf of himself and all others similarly situated (collectively referred to as "Plaintiffs") and defendant THOVAN HOSPITALITY, LLC; AGNES RESTAURANT & CHEESRY; THOMAS KALB; VANESSA TILAKA; ALLAN LIAO ("Defendants") (Defendant and Plaintiffs are collectively referred to as the "Parties") hereby apply for preliminary approval of the proposed class and PAGA settlement upon the terms and conditions set forth in the Joint Stipulation Regarding Class Action And PAGA Settlement And Release ("Agreement"), a true and correct copy of which is attached hereto as **Exhibit "1"** to the Declaration of Natalie Mirzayan[1] ("Mirzayan Decl.") and incorporated by reference.

On February 6, 2024, Plaintiff sent notice to Defendants and the State of California LWDA of his intent to pursue a PAGA claim, premised on the following theories (1) Failure to Pay Minimum and Overtime Wages; (2) Unlawful Taking of Employee Tips and/or Gratuities; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks; (5) Failure to Provide Paid Sick Leave; (6) Failure to Provide Requisite Wage Notice Pursuant to Labor Code section 2810.5; (7) Failure to Provide Wage Statements; (8) Failure to Pay All Wages Upon Termination; (9) Failure to Pay All Wages During Employment, and (10) Failure to Keep Accurate Payroll Records. Mirzayan Decl., ¶ 4.

On February 7, 2024, Plaintiff filed a Class Action Complaint (the "class action") in Orange County Superior Court purporting to assert claims on behalf of himself and all of Agnes' current and former non-exempt California employees during the relevant statute of limitations periods for (1) Failure to Pay Minimum; (2) Failure to Overtime Wages; (2) Failure to Pay Split Shift Premiums; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks; (5) Failure to Provide Wage Statements; (6) Failure to Pay All Wages Upon Termination; (7) Conversion; (8) Injunctive Relief; and (9) Violation of California Business & Professions Code section 17200 (Unfair Competition). Mirzayan Decl., ¶ 5.

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[1] Mirzayan Decl., ¶ 3.

On April 17, 2024, Plaintiff amended his Complaint to add an additional cause of action under PAGA for Penalties, Pursuant to Labor Code § 2698 *et seq.* The FAC is the operative complaint in the Action (the "Operative Complaint.")] Mirzayan Decl., ¶ 6.

Defendants deny the allegations in the Operative Complaint; deny any failure to comply with the laws identified in in the Operative Complaint; deny any and all liability for the causes of action alleged; deny that they engaged in any unlawful, unfair or fraudulent business practices or wrongful conduct; and they deny that it engaged in any conduct that would subject them to any penalties under PAGA as alleged in the Operative Complaint.

Class Counsel for Plaintiff obtained substantial payroll and other data related to Class Members for mediation purposes, through informal discovery. Class Counsel obtained Defendant's employee handbook, policies and procedures, total number of class members during the class period, and their hourly rates. Plaintiff also employed an expert to prepare calculations of the amount of damages to the Class Members. Mirzayan Decl., ¶ 7. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*"). Furthermore, counsel for the Plaintiff has investigated the law as applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the potential damages claimed by Plaintiff.

Counsel for the respective Parties engaged in extensive discussions about the strengths and weaknesses of the claims and defenses. Plaintiff and Defendant undertook extensive mediation efforts, including attending all day mediation on January 27, 2025, the Parties participated in an all-day mediation presided over by mediator Tagore Subramaniam, which led to this Agreement to settle the Action. Mirzayan Decl., ¶ 8.

The Court has not granted class certification. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement. Mirzayan Decl., ¶ 9.

The Parties concluded there was significant benefit associated with settling the Action. Specifically, the Parties concluded, after taking into account the sharply disputed factual and legal issues involved in this Action, the substantial cost and risks of further prosecuting this matter, and the substantial benefits to be received pursuant to the compromise and settlement of the Action as set forth in the Agreement, that settlement on the terms set forth herein is in the best interest of Plaintiff, the proposed Class, and Defendants, and is fair and reasonable.

By this **unopposed Motion**, made pursuant to Rule 3.769 of the California Rules of Court, Plaintiffs seek an Order:

1) Granting Preliminary Approval of the proposed Class Action Settlement in this Action;

2) Certification of the Class for Settlement purposes only, defined as follows:

> All current and former non-exempt employees of Defendants in California who worked for Defendants during the Class Period.

3) Granting Preliminary Approval of the proposed PAGA Settlement in this action on behalf of all "Aggrieved Employees", defined as follows:

> All current and former non-exempt employees of Defendants in California who worked for Defendants during the PAGA Period.

4) Preliminary approval of a non-revisionary settlement payment by Thovan Hospitality, LLC dba Agens Restaurant and Cheesery, Vanessa Tilaka and Thomas Kalb, or all Defendants, other than Allan Liao ("Payor") in the amount of Two Hundred Forty Thousand Dollars ($240,000.00) to resolve all claims, and costs relating to the Settlement, inclusive of all Net Settlement Payments to the Class (including PAGA payments), the enhancement award to Plaintiff, costs to the Administrator, costs awarded to Class Counsel (Natalie Mirzayan of Mirzayan Law, APLC), a portion of Class Counsel Fees (estimated to be $96,000), and payment of PAGA penalties to the LWDA. Payor will separately pay for any required employer payroll taxes and an additional amount to cover additional Class Counsel Fees approved by the Court pursuant to the terms of the Agreement.

5) Preliminary approval of Plaintiff Daniel Mitchell as Class Representative;

6) Preliminary approval of Natalie Mirzayan of Mirzayan Law, APLC as Class Counsel;

7) Preliminary approval of the form and manner of the Notice to the Class;

8) Preliminary approval of the appointment of Apex Class Action Administration ("Apex") as the Administrator and preliminary approval of the costs of administration of the Settlement for an amount estimated not to exceed $8,500.00 to be paid from the Common Settlement Fund ("Administration Expenses");

9) Preliminary approval of the Class Representative Service Payment to Class Representative, $10,000.00 in the light of his commitment as Class Representative (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member) to be paid from the Common Settlement Fund ("Class Representative Service Payment");

10) Preliminary approval of the application by Class Counsel to the Court seeking an award of attorneys' fees not to exceed Ninety-Six Thousand Dollars ($96,000.00), which is 40% of the Gross Settlement Amount, and Litigation Expenses as supported by invoices to be paid from the Common Settlement Fund;

11) Preliminary approval of the payment of $20,000.00 (Twenty Thousand Dollars) from the Common Settlement Fund to fully settle and resolve all PAGA penalty claims. Fifteen-Thousand dollars ($15,000.00), representing seventy-five percent (75%), to be paid to the Labor and Workforce Development Agency ("LWDA") of the State of California, and the remaining $5,000.00, which represents twenty-five percent (25%), to be distributed to Aggrieved Employees on a pro-rata basis based on the total number of PAGA Period Workweeks.

12) Establishing a schedule for the Class Notice to Class Members; and

13) Setting a Final Approval hearing date.

Based on the information produced pursuant to both formal and informal discovery, and Class Counsel's own independent investigation and evaluation, Class Counsel believes that the proposed settlement is fair, reasonable, and adequate under the circumstances, and it is in the best interest of the Class. In the light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, the likely difficulties with class certification, and numerous potential appellate issues, Plaintiffs and Defendant chose to settle their dispute.

For the reasons set forth below, this Court should certify the Class for settlement purposes, grant Preliminary Approval, and order that the Notice be issued as requested.

II. THE PROPOSED SETTLEMENT

Subject to Court approval pursuant to California Code of Civil Procedure §382 and California *Rules of Court* 3.769, *et seq.,* Plaintiffs and Defendant have agreed to settle the Action by agreement upon the terms and conditions and for the consideration set forth in the Agreement, a copy of which is attached hereto as Exhibit "1" and incorporated by reference. A summary of the terms of the settlement are as follows:

i) The Parties stipulate, for purposes of this settlement only, to certification of a class defined as:

> All current and former non-exempt employees of Defendants in California who worked for Defendants during the Class Period.

ii) The Parties also stipulate, for purposes of this settlement only, that the Court should approve a PAGA settlement on behalf of all "Aggrieved Employees" defined as:

> All current and former non-exempt employees of Defendants in California who worked for Defendants during the PAGA Period.

iii) Defendant will make a non-revisionary settlement payment in the amount of $240,000.00 (Two Hundred and Forty Thousand Dollars to resolve all claims, and costs relating to the Settlement. (1) 40% of the Common Settlement Fund (estimated to be $96,000.00) will be allocated towards the payment of the Class Counsel Fees as awarded by the Court; (2) $10,000.00 to Class Representative; (3) $8,500.00 in reasonable costs incurred by the Administrator to administer the Settlement; (4) $20,000.00 as payment of PAGA penalties, of which 75% or $15,000.00 will be paid to the Labor and Workforce Development Agency ("LWDA") of the State of California; (5) Litigation Expenses as supported by invoices; and (6) the Net Settlement Amount, including Net Settlement Payments and Individual PAGA Payments to Participating Class Members. Additionally, all Employer Taxes due on the wage potion of the settlement, will be separately paid by Legends.

iv) Legends shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Legend's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date;

v) Class Members will be paid their proportionate share based on the total number of Workweeks worked during the Class Period and, as applicable, the PAGA Period.

III. THE CLASS ACTION SETTLEMENT APPROVAL PROCEDURE

No action brought on behalf of a class may be settled, compromised, or dismissed without the approval of the Court. See, Cal. Rules of Court, Rule 3.769(a). There are three steps to the Court's settlement approval process:

> "(1) Preliminary Approval of the proposed Settlement at an informal hearing;
> (2) Dissemination of Notice of the Settlement to all affected Class Members; and,
> (3) A "Formal Fairness Hearing," or Final Settlement Approval Hearing, at which Class Members may be heard regarding the Settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the Settlement is presented."

This three-step settlement approval process is prescribed by the *Manual for Complex Litigation* prepared by the Federal Judicial Center; is widely followed in the federal circuits; and has also been adopted by California courts. *See, Manual for Complex Litigation*, fourth § 21.63 (2004); *see also*, *Bell v. American Title Ins. co.* (1991) 226 Cal.App.3d 1589, 1599-1602 (outlining the Class Action settlement-approval process). Specifically, the *Manual for Complex Litigation, fourth* provides at §§ 21.632-21.633:

> Review of a proposed class action settlement generally involves two hearings. First, counsel submits the proposed terms of settlement and the judge makes a preliminary fairness evaluation. In some cases, this initial evaluation can be made on the basis of information already known, supplemented as necessary by briefs, motions, or informal presentations by parties. If the case is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined.
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> Once the judge is satisfied as to the certifiability of the class and the results of the initial inquiry into the fairness, reasonableness, and adequacy of the settlement, notice of a formal Rule 23(e) fairness hearing is given to the class members.

Under this standard, a trial court's preliminary approval of a Class Action settlement is simply a conditional finding that on its face, the compromise appears to be within a range of acceptable agreements. As *Newberg on Class Actions* comments:

> The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing. *Newberg on Class Actions*, Settlement of Class Actions, §11 :26, p. 39 (4 th Ed., 2002).

This Court will also ultimately determine the reasonableness of any attorneys' fees, the repayment of costs advanced by Class Counsels, the Enhancement Award and the costs of the Settlement Administrator. These matters are solely within the discretion of the Court, who must issue its determination after reviewing the appropriate applications made by Class Counsels. The Court must also factor objections raised by Class Members (the criteria for approval of final settlement are set forth at *Newberg* commencing at § 11.41).

Lastly, in addition to the distribution of notice, if the Court has not yet certified the action as a class action when a settlement or compromise is reached, the court must certify the class, according to the standards set forth in Cal. Rules of Court, Rule 3.769(d). The Plaintiffs requests that this Court take the initial steps of certifying the Class for Settlement purposes and making a judicial determination that the Class satisfies all prerequisites for certification.

IV. THE PRESUMPTION OF FAIRNESS

Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. The Settlement is entitled to a presumption of fairness because: (l) it is the product of arm's length bargaining between the Parties' respective counsel; (2) the Parties have investigated the claims, defenses, and potential damages in this case; and (3) Class Counsel is experienced in complex and class action litigation, including matters involving violations of California wage and hour laws. Therefore, there is an entitlement to a presumption of fairness. *See*, *7-Eleven Owners For Fair Franchising v. The Southland Corp*., (2000) 85 Cal.App.4th 4 1 135, 1 146; *Dunk v. Ford Motor co*. (1996) 48 Cal.App.4th 1794, 1802.

In short, there is a presumption that the negotiations were conducted in good faith. *Newberg on Class Actions,* §11.51, *In re Chicken Anti-Trus-Litigation (*N.D. Ga. 1980) 560 F. Supp. 857,962; *Pridd v. Edelman* (6th Cir. 1989) 883 F. 2d 438,447; *Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.* (7th Cir. 1987) 834 F. 2d 677,682.

Courts do not substitute their judgment for that of the proponents. *Hammon v. Bany* (D.D.C. 1990) 752 F. Sup. 1087; Steinberg v. Carey *(S.D.* N.Y. 1979), 470 F. Supp. 471; *In re Armored Car Anti-Trust Litigation* (N.D. Ga. 1979) 472 F. Supp. 2111357; *Sommers v. Abraham Lincoln Federal Savings & Loan Association* (E.D. Pa. 1978) 79 F.R.D. 571.

In this case, the settlement was reached after factual and legal research, discovery, preparation of damage analysis, and mediation with experienced class action mediator and a former judge. The settlement that has been reached, subject to this Court's approval, is the product of tremendous effort, and expense by the parties and their counsel. The settlement amount is, of course, a compromise figure. However, counsel for Plaintiffs and Defendant are satisfied that this figure is reasonable in light of the risks and expense of continued litigation. Mirzayan Decl., ¶ 11.

V. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON OBJECTIVE EVIDENCE

A. The Settlement Was Negotiated at Arm's Length and Not Collusive

The settlement that has been reached, subject to this Court's approval, is the product of substantial effort by the parties and their counsel. The settlement was reached after extensive factual and legal investigation and research, numerous discussions, exchanges of documents, correspondence, extensive mediation, review of pleadings, evidence and rulings in similar actions litigated elsewhere in the state, and review of similar cases in the same industry elsewhere in the country. The settlement amount is, of course, a compromise figure. It considered, risks related to liability, damages, and all the defenses asserted by Defendant.

Plaintiff asserts that the wage and hour claims and the claims for resulting penalties would be certified. Plaintiff's counsel reviewed documents produced by Defendant, including but not limited to, employee handbooks, sampling of available time and payroll records, etc. and based thereon reasonably believed that Plaintiff would have a significant chance of certifying the class.

On the other hand, Defendants have argued Plaintiff cannot meet the requirements of class certification. Defendants strongly believe that their policies and procedures are fully compliant with California law such that there would be no basis for certifying a class action based on the claims alleged. While Plaintiff believes in his chance of success certifying the claims, Plaintiff recognizes the potential risk, expense and complexity posed by further litigation. Litigating Plaintiff claims in this Litigation, claims that involve numerous Class Members during the Class Period, would require substantial additional preparation and discovery and ultimately would involve the deposition and presentation of numerous witnesses (including expert witnesses), as well as the consideration, preparation and analysis of expert reports. Therefore, should litigation have progressed any further there would have been significant expense incurred by each side.

Plaintiff and Defendants have very strong positions on liability in this case. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in Plaintiff's Operative Complaint, and further deny that, for any purpose other than that of settling this lawsuit, this action is appropriate for class treatment. In light of the sharply contested legal and factual issues, the risks of continued litigation, and substantial benefits to Class Members under the Settlement, the terms and conditions of this class settlement are fair and reasonable to all sides.

B. The Settlement Is Well Within Range of Reasonableness

Prior to the Settlement, Plaintiffs' counsel investigated the claims alleged by Plaintiff, conducted legal research, and engaged in extensive informal discovery. Defendants produced written policies and a sample of data consisting of payroll records. Plaintiffs' statistical expert Sean Chasworth at Phillips Fractor and Company, analyzed this information enabling Class Counsel to evaluate the potential liability and damages for the Class Members. Based upon this information, Class Counsel was able to act intelligently and effectively in negotiating the proposed Settlement. Additionally, Defendants produced the business tax records reflecting its inability to pay any settlement in one lump sum. As a result, a payment plan was negotiated. Mirzayan Decl., ¶ 12.

Plaintiff and Class Counsel remain confident of the merits of Plaintiff's claims. However, Plaintiff and Class Counsel considered several factors in reaching the decision to settle at this point in the litigation. Class Counsel has calculated the total damages and interest of the Class Members as follows:

<u>Claims Related To Unpaid Wages (Off the Clock Time):</u> Plaintiff's claims for failure to pay wages for all hours worked as alleged in the Operative Complaint, were as a result of Defendant's alleged failure to pay Plaintiff and the Class for wages for off-the-clock work because Defendants required employees to arrive ample of time before their shifts to get dressed, settled, and ready for their shifts and did not allow them to clock-in without prior authorization from the manager. Defendants' policies thereby resulted in an aggregate loss of wages to employees. Based on available records provided by Defendants, Plaintiff's economic expert estimates the value for the unpaid wages to be $148,999.65 (based on 12 minutes of unpaid time per workday). (Mirzayan Decl. ¶ 13.)

However, Defendant contends that Plaintiff and the Class members were properly paid for all hours worked and that the alleged "off-the-clock" work was not the result of any policy or practice of the company, but instead was purely an individualized claim, such that Plaintiff would not be able to certify a class based on this claim.

<u>Claims Related to Meal Break Violations:</u> Plaintiffs allege that they would have been entitled to recover meal period premiums for Defendant's failure to provide Class Members with compliant meal breaks. Plaintiffs' statistical experts calculated the meal break damages to be approximately $178,025.02. (Mirzayan Decl., ¶14.)

However, Defendants dispute the statistical analysis prepared by Plaintiff and also assert that their meal period policies were compliant with California law and that they did not prevent employees from taking their timely meal periods. Accordingly, Defendants contend that any analysis of alleged missed meal periods would require an individualized inquiry of each employee to determine whether there was any meal period liability that would then require payment of the meal period premiums, such that class certification would not be proper for these claims. *See Brinker Restaurant Corp. v. Super. Ct.*, 53 Cal. 4th 1004 (2012).

<u>Rest Break Violations:</u> Plaintiffs also allege that they would have been entitled to recover rest break premiums for Defendant's failure to provide Class Members with compliant rest breaks.

Plaintiffs statistical experts calculated the rest break damages to be approximately $161,068.55. (Mirzayan Decl., ¶ 15.)

However, as with the alleged meal period violations, Defendants assert that they authorized and permitted their employees to take timely rest breaks. Accordingly, Defendants contend the rest break claims would require an individualized inquiry of each employee to determine whether there was any rest break liability, such that class certification would not be proper for these claims.

Wage Statement Penalties: Plaintiff alleges that employees would have been entitled to recover penalties for Defendants' failure to issue compliant wage statements under California Labor Code §226(e). As a result of Defendants' alleged failure to provide compliant wage statements each pay period, each aggrieved employee could recover up to a maximum of a $4,000.00 aggregate penalty pursuant to Labor Code §226(e), depending on the number of pay periods she or he was issued a non-compliant wage statement. Prior to mediation, Plaintiff's statistical expert calculated wage statement penalties to be approximately $234,100.00. Mirzayan Decl., ¶ 16. However, Defendants contend that these alleged wage statement claims were not the result of a "knowing and intentional failure" by Defendants to comply with section 226(a) as required by Labor Code §226(e), and that the employees did not suffer injury for purposes of recovering penalties as required under Labor Code §226(e)(2)(B)(i) and (ii).

Waiting Time Penalties: Plaintiff also alleges that he would have been entitled to recover "waiting time penalties" for Defendants' failure to issue all earned wages immediately upon termination or within 72 hours of resignation under California Labor Code §§ 201, 202 and 203. These penalties are derivative of the wage and hour claims. As a result of Defendants' failure to pay all earned wages immediately upon termination or within 72 hours of resignation, Plaintiff alleges that each former aggrieved employee could recover up to a maximum of a 30-day penalty. Prior to mediation, Plaintiff's statistical expert calculated waiting time penalties to be approximately $822,066.66. *Id* at ¶ 17. Defendants, however, contend that the alleged failure to timely pay final wages was derivative of the claims that are in dispute, such that there was not a willful showing that the employer knew of its obligation and intentionally refused to act. *Baker v. American Horticulture Supply, Inc.* (2010) 186 Cal.App.4th 1059, 1076.

PAGA Penalties: If Plaintiffs proceed to trial and ***assuming*** that he can prove Defendants' violation of each of the Labor Codes as alleged in the Operative Complaint, then Plaintiff's statistical expert estimates PAGA penalties prior to mediation to be approximately $3,156,800.00. *Id* at ¶ 18 However, not only this is based on assumption of proving violation for each and every Labor Code alleged in the Operative Complaint, but the Court is authorized to exercise discretion to assess civil penalties and may award a lesser amount than the maximum civil penalty amount if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory. *See,* California Labor Code § 2699(e). Defendants, of course, contend that they complied with their legal requirements under the Labor Code such that there is no underlying liability, and thus no basis to award PAGA penalties.

Plaintiff's counsel obtained a non-reversionary settlement of $240,000.00. Class Counsel considers this to be an excellent settlement for class members, when taking into account all issues and risks related to liability and class certification, Defendants' ability to pay after reviewing tax records, and also considering the case law regarding fair, reasonable, and adequate settlements. *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 111139 ["Compromise is inherent and necessary in the settlement process... even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest in avoiding litigation."]; *Officers for Justice v. Civil Service Comm'n* (9th 1982) 688 F.2d 615,628 ["It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not. .. render the settlement inadequate or unfair."].

C. The Requested Service Award to Plaintiff Is Reasonable and Routinely Awarded

Plaintiff seeks $10,000.00 in the light of his commitment as a Class Representative. Class Representatives are routinely entitled to an enhancement award for their services as a class representative. The Defendants do not oppose the requested service award to the Plaintiff.

Mirzayan Decl., ¶ 19. The typical service award in wage and hour class actions ranges from approximately $10,000 to $40,000, although some awards are higher.

Courts have long acknowledged that active litigants are entitled to be compensated for bearing the risk and time to represent others. *Bell v Farmers Ins. Exch*. (2004) 115 Cal.App.4th 715, 725 (upholding enhancement award to named plaintiffs of their efforts in bringing class case).

The Service Award sought here is justified by the Class Representative's level of participation in this lawsuit. Class Representative assisted in the investigation, gathered wage information, contacted witnesses regarding class claims, and helped analyze documents, and were very valuable participant in the strategy for and success of the action. The plaintiff risked intrusive discovery and the payment of employer costs. In short, Class Representative was active and motivated and risked quite a bit for the benefit of their fellow employees. As such, the requested Service Award to the Class Representative is fair and reasonable in light of the circumstances.

D. The Proposed Class Counsel' Fees and Costs Are Reasonable and Routinely Awarded

Class Counsel seeks an attorneys' fees award of $96,000.00, (40%) which will be paid from the Common Settlement Fund. Class Counsel also seeks Litigation Expenses as supported by the invoices submitted. Mirzayan Decl., ¶ 20.

A. Class Counsel Fees Based On 40% of the Common Settlement Fund Is Reasonable.

The requested fee falls well within the historical range of attorney's fee awards under the common fund theory, which is generally from 20% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis. This case was litigated, investigated, and extensive research, and negotiation was conducted purely on contingency basis. *Id.* At ¶ 21.

Both California and federal courts have recognized that an appropriate method for awarding attorney's fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (recognizing both the "percentage of recovery" and "lodestar/ multiplier" methods); *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.

The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent,* supra, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d 1611162, at 167, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." The reasons for applying the common fund doctrine include: " ... fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." *Id.*

The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. *Id*. at 1378-79. The Ninth Circuit now routinely uses the percentage of the common fund approach to determine the award of attorney's fees. (E.g., *In re Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79 (approving attorney's fee of 33 1/3%).

Plaintiff's counsel's request for fees of approximately 40% of the Gross Settlement Amount is within the range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *Newberg on Class Actions,* supra, §14.03; *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F. Supp. 1373, 1378.)

According to *Newberg on Class Actions:* "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." *Newberg on Class Actions,* §14.03.

Class Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with this class action on a pure contingency basis. Mirzayan Decl., ¶ 22.

Based on past experience in wage and hour class action litigation, it is safe to state that Class Counsel is very likely to be called upon, after the Notice Packet has been sent, to expend substantial amounts of additional time to help Class Members understand the terms of the proposed settlement, and to assist Class Members in the preparation and documentation of their claims. It is also likely that, even after final approval of the settlement has been granted, Class Counsel will be called upon to expend additional amounts of time in the presentation and resolution of contests and disputes relating to Class Members' claims under the terms of the proposed settlement, as to the amounts of individual claims and perhaps other individual issues.

The Court should preliminarily approve the requested attorneys' fees and costs, which are justified by the outstanding results achieved, the complexity of the issues, the difficulty of the case, and the great risk undertaken by Class Counsel. The requested attorneys' fees will not be opposed by Defendant and are well within established guidelines.

E. The Proposed Class Notice is Adequate and Includes All Required Components

Attached to the Agreement as Exhibit "A" is the proposed Court Approved Notice Of Class Action Settlement And Hearing Date For Final Court Approval ("Class Notice") to be distributed to the class members. Mirzayan Decl., ¶ 23. A notice of settlement of a class action "must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." California *Rules of Court* 3.769(f).

Under Cal. Rules of Court, Rule 3.766(d) the notice must include the following: (1) A brief explanation of the case, including the basic contentions or denials of the parties; (2) A statement that the court will exclude the member from the class if the member so requests by a specified date; (3) A procedure for the member to follow in requesting exclusion from the class; (4) A statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. The court has broad discretion in deciding whether to approve the proposed class notice. *Wershba,* 91 Cal.App.4th at 252.

Here, the Class Notice contains all the required components. Specifically, it includes: (1) the definition of the Class, (2) a description of the substantive issues and proceedings to date; (3) a neutral description of the Settlement; (4) the amounts of Class Counsel Fees and Litigation Expenses; (5) information regarding the right to opt out of the Settlement, the procedure for doing so and the date by which such action must be taken; (6) information regarding the right to challenge one's number of work weeks, the procedure for doing so and the date by which such action must be taken; (7) information regarding the right to exclude oneself from the Settlement, the procedure for doing so and the date by which such action must be taken; (8) information regarding the right to file an objection regarding the Settlement, the procedure for doing so and the date by which such action must be taken; (9) the consequences of remaining a member of the Settlement Class, including the fact that one will be bound by the judgment; (10) the date, time and place of the final approval hearing; (11) the identity of the Class Representatives; and (12) the identity and contact information of Class Counsel and the Administrator. Mirzayan Decl., ¶ 24.

Further, the method of notice, is more than adequate, in that the Class Notice will be mailed to Class Members at their last known address and there are procedures in place to make reasonable efforts to locate Class Members who no longer live at their last known address. Mirzayan Decl., ¶ 25.

The parties have agreed to use Apex, an experienced settlement administrator, to administer the settlement. The Administration Expenses will be paid out of the Gross Settlement Amount. A true and correct copy of the Administration Expenses submitted by Apex is attached as Exhibit “2” to Mirzayan Decl., ¶ 26. It is requested that the Court appoint Apex, to serve as the Administrator.

The parties respectfully request that this Court approve the above-referenced documents and dissemination of the Class Notice to the Class Members, consistent with the manner and timing as set forth in the Agreement.

VI. THE PROPOSED CLASS MEETS THE REQUIREMENTS FOR PROVISIONAL CERTIFICATION

In California, there are two certification prerequisites: (1) the existence of an "ascertainable class," and (2) "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 704, 811 (citation omitted). In addition, as set forth above, California courts utilize the procedures prescribed by the Federal Rules of Civil Procedure in class actions filed in California. *Schneider v. Vem1ard* (1986) 183 Cal.App.3d 1340, 1345-46; *Daar,* 67 Cal.2d at 695; *Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800. *California Civil Code* §178l(b) provides:

> The court shall permit the suit to be maintained on behalf of all members to the represented class if all of the following conditions exist: (1) It is impracticable to bring all members of the class before the court. (2) The questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members. (3) The claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class. (4) The representative plaintiffs will fairly and adequately protect the interests of the class.

Each of the criteria for class certification is clearly satisfied herein.

1. Numerosity – California law requires the class to be so numerous that utilization of the class action procedure will inure to the benefit of the judicial system. *Richmond v. Dart Indust., Inc.,* (1981) 29 Cal. 3d 462, 470. The Defendants identified potential class members from their time and payroll records and upon final preliminary approval has agreed to provide the class list to Apex. Defendants identified approximately 289 Class Members in this Action. This number exceeds the minimum number of individuals required to meet the numerosity requirement.

2. Commonality – California law also requires that "questions of law or fact common to the class [be] substantially similar and predominate over the questions affecting the individual members." Common issues predominate when they would be "the principle issues in any individual

action, both in terms of time to be expended in their proof and of their importance." *Vasquez* 4 Cal.3d at 810. Common questions need only be "sufficiently pervasive to permit adjudication in a class action rather in a multiplicity of suits." *Id*. Commonality is easily satisfied if there is one issue common to the class members. *Hanlon v. Chrysler Crop*. (9th Cir. 1988) 150 F.3d 1011, 1019.

Here, common issues, without limitation, include Defendant's failure to pay all hours worked; (ii) failure to provide meal periods or compensation in lieu thereof in violation of Labor Code sections 226.7, 512; (iii) failure to authorize and permit rest breaks or compensation in lieu thereof in violation of Labor Code section 226.7); (iv) failure to provide complete, accurate wage statements in violation of Labor Code Sections 226(a); (v) failure to pay wages timely at time of termination or resignation in violation Labor Code Sections 201-203; and (vi) failure to pay all wages timely during employment in violation of Labor Code sections 201.3. Because there are common issues, this requirement is satisfied for purposes of settlement.

3. Typicality - Typicality requires only that the named plaintiff's interest in the action be significantly similar to those of other class members. *Richmond* 29 Cal.3d at 47-75. A representative plaintiff's claims are typical if they arise from the same event, practice, or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theories. *Miller v. Woods* (1983) 16 Cal.App.3d 862, 874. Indeed, when the same underlying conduct affects the named plaintiff and the class sought to be represented, the typicality requirement is met irrespective of any varying fact patterns that may underlie individual claims. *Daniels v. Centennial Group, Inc.* (1993) 16 Cal.App.4th 467,473 - named plaintiff's interest must only be significantly similar to other class members.

In this case, the Plaintiff's claims are precisely the same as those of the class they seek to represent: like other members of the Class, they were employed by Defendants during the relevant time period, performed similar duties for Defendants, and Defendants' policies were uniformly applied to their employees. As the court in *B.W.I. Custom Kitchen v. Owens-Illinois Inc.* (1987) 191 Cal.App.3d 1341, explained:

> [I]t has never been the law in California that the class representative must have ***identical*** interests with the class members. The only requirements are that common

> questions of law and fact ***predominate*** and that the class representative be ***similarly*** situated. *Id*. at 1347 (citation omitted, emphasis in original).

Accordingly, Plaintiff's claims are typical of those of the Class Members.

4. Adequacy of Representation - To maintain a class action, the representative plaintiff must adequately protect the interests of the class. California *Civil Code* §l 781(b)(4). Adequacy of representation consists of two components. First, there must be no disabling conflicts of interest between the class representatives and the class. Second, the class representatives must be represented by counsel who are competent and experienced in the kind of litigation to be undertaken. *McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442,450.

(i) No Disabling Conflict of Interest Exist Between the Class Representatives and the Class

No conflicts, disabling or otherwise, exist between the Class Representatives and Class Members because the Plaintiff has allegedly been damaged by the same alleged conduct and have the incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery. Indeed, the Class Representative stands in the same shoes as the Class Members with the same incentive to maximize the overall recovery. *Richmond* 29 Cal.3d at 473; *Harrison v. Bd. of Supervisors* (1975) 44 Cal.App.3d 852, 863.

(ii) Class Counsel Is Experienced Class Action Attorney

Class Counsel is experienced class action attorney and achieved a favorable settlement benefiting the Class. After thorough investigation and numerous settlement discussions, the parties arrived at terms that they viewed as in the best interests of both the Class Members and the Parties.

Plaintiff's goal has been realized to have redress for the employees whose rights were violated. While Defendants deny liability, it has nonetheless agreed to settle the matter to avoid any potential expense. Should the Court refuse to grant preliminary approval of this Settlement, many of the Class Members may be denied any recourse for Defendant's alleged violations.

5. Superiority of Class Action - Also relevant to the Court's certification decision is whether a class action is the superior method of adjudication. *Schneider* 183 Cal.App.3d at 1347. The California Supreme Court has "repeatedly emphasized the importance of the class

action device for vindicating the rights of asserted by large groups of persons." *Keating v. Sup. Ct*. (1982) 31 Cal.3d at 469 (recognizing that class actions are useful for fashioning effective and inclusive group remedy). The class device is even more appropriate to adjudicate the rights of large numbers of similarly situated victims who lack the sophistication, financial wherewithal, or individual incentive to sue on their own. For example, in *Vasquez v. Sup. Ct.,* the California Supreme Court emphasized that "[i]ndividual actions by each of the defrauded consumers is often impracticable because the amount of individual recovery would be insufficient to justify bringing a separate action; thus an unscrupulous seller retains the benefits of its wrongful conduct." *Vasquez* 4 Cal.3d at 808. The Court in *Vasquez* also recognized several other benefits of class action treatment:

> A class action by consumers produces several salutary byproducts, including a therapeutic effect upon those sellers who indulge in fraudulent practices, aid to legitimate business enterprises by curtailing illegitimate competition, and avoidance to the judicial process of the burden of multiple litigation involving identical claims. *Id. State v. Levi Straus & Co.* (1986) 41 Cal.3d 460,471 - noting that consumer class actions are "an essential tool for the protection of consumers against exploitative business practices".

This case is no exception. Given the size of the potential individual recovery, it would be impracticable to bring each Class Member's claim as an individual claim.

Accordingly, the Class meets all criteria for certification and should be certified for purposes of effectuating this settlement. *Hogya v. Sup. Ct.* (1977) 75 Cal.App.3d 122 - if the action satisfies the statutory criteria, the court must certify the class; *Dunk* 48 Cal.App.4th at 1807 n. 19 - a lesser standard of scrutiny applies when evaluating these criteria for settlement purposes and courts should take settlement into account in evaluating class certification; *Amchen Products,* 2111 *Inc. v. Windsor* (1977) 521 U.S. 591, 620 - because the Court is certifying this action for settlement purposes only, it need not determine whether the class would be manageable for litigation purposes.

VII. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

Plaintiff and Defendants propose the following schedule for the settlement proceedings:

a. Defendants to produce the Class Data to the Administrator within thirty (30) days of the

Court's preliminary approval of the Settlement. The Administrator shall mail, by U.S. first class mail, the Notice Packet to Class Members within seven (7) days of receipt of the Class Data from Defendant.

b. Deadline for submitting Request for Exclusion and written objection to settlement shall be forty-five (45) calendar days from the date on which Notice Packet are mailed to Class Members.

c. No later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator to provide Class Counsel and Counsel for Defendant with a declaration attesting to completion of the notice process set forth in the Agreement, including an explanation of efforts to resend any Notice Packet returned as undeliverable and the total number of opt-outs and objections received before and after the deadline.

d. Last day to file written objections to the class settlement: forty-five (45) calendar days after the date which Notice Packet is mailed to Class Members.

e. The Parties propose that Fairness and Final Approval Hearing be scheduled for approximately 120 days following the Court's granting of preliminary approval of the class settlement.

f. Defendant shall fund the settlement with the Settlement Administrator within thirty (30) days of the Settlement Effective Date, as the term is defined in the Settlement Agreement.

g. Within seven (7) days after receipt of the Gross Settlement Amount, the Settlement Administrator will pay the PAGA penalties to the LWDA, the approved attorneys' fees and costs to Class Counsel, and the enhancement award to Plaintiffs.

h. Within seven (7) days after receipt of the Gross Settlement Amount, the Settlement Administrator shall mail the applicable Net Settlement Payments to the Participating Class Members and Individual PAGA Payments to all Class Members.

VIII. CONCLUSION

The proposed Class Settlement is fair, adequate, and reasonable. It will result in substantial payments to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arms' length negotiations conducted by counsel for respective parties who are experienced in wage and hour class action litigation. For the foregoing reasons, the Parties respectfully request that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the proposed Notice Packet submitted herewith, and set a date for final approval hearing.

Respectfully Submitted,

Dated: July 3, 2025

MIRZAYAN LAW, APLC

Natalie Mirzayan

Natalie Mirzayan
Attorney for Plaintiff Daniel Mitchell and the Putative Class