MELMED LAW GROUP P.C.
Jonathan Melmed (SBN 290218)
jm@melmedlaw.com
Kyle D. Smith (SBN 280489)
ks@melmedlaw.com
Jaqueline Antillon (SBN 358092)
ja@melmedlaw.com
1801 Century Park East, Suite 850
Los Angeles, California 90067
Phone: (310) 824-3828
Fax: (310) 862-6851

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JOSEPH MCCABE, 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.

ACTION FAMILY COUNSELING-SCV, INC., a California Corporation; ACTION FAMILY COUNSELING, INC., a California Corporation; ACTION FAMILY COUNSELING-BAKERSFIELD, INC., a California Corporation; and DOES 1 TO 50,

Defendants.

Case Number: 24STCV03092

Plaintiffs' Notice of Motion and Motion for Preliminary Approval of Class Action Settlement

Complaints Filed: February 5, 2024
July 31, 2025
Trial Date: None Set
Dept.: 1
Judge: Hon. Theresa M. Traber

Hearing Date: November 19, 2026
Hearing Time: 10:30 a.m.

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 19, 2026, at 10:30 a.m., or as soon thereafter as the matter may be heard, in Department 1 of the Los Angeles County Superior Court for the State of California, located at the Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, before the Honorable Theresa M. Traber, Plaintiff Joseph McCabe (the named plaintiff in this action) and Plaintiff Anthony McCabe (the named plaintiff in *McCabe v. Action Family Counseling- SCV, Inc., et al.* (L.A. Cnty. Sup. Ct., No. 25STCV22676) (together, "Plaintiffs"), on behalf of themselves, the State of California, Plaintiff Joseph McCabe as a private attorney general, and on behalf of all others similarly situated, will and hereby do 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 Joseph McCabe and Anthony McCabe as class representatives for purposes of settlement;

3. Preliminarily appointing Jonathan Melmed, Kyle D. Smith, and Jaqueline Antillon 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* (the "Settlement Agreement"), including payment by Defendants Action Family Counseling-SCV, Inc., Action Family Counseling, Inc., and Action Family Counseling-Bakersfield, Inc. ("Defendants") of the non-reversionary gross settlement amount of $75,000.00 ("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 $25,000.00), plus necessary litigation costs not to exceed $13,591.32;

6. Preliminarily approving class representative service payments in an amount of up to $7,500.00 each for Joseph McCabe and Anthony McCabe from the Gross Settlement Amount to compensate them for the responsibilities, time, effort, and risks involved in coming forward on behalf of the proposed class;

7. Preliminarily approving the allocation of $7,500.00 for penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., $5,625.00) shall be paid to the California Labor and Workforce Development Agency ("LWDA") from the Gross Settlement Amount, with the remaining 25% (i.e., $1,875.00) payable to the aggrieved employees;

8. Appointing Apex Class Action, LLC (the "Settlement Administrator") as the settlement administrator to handle the notice and administration process and preliminarily approving settlement administration costs estimated to be $4,490.00;

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;

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; and

13. Granting Plaintiffs leave to file the overlength brief included with this motion.

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 Plaintiffs' counsel Kyle D. Smith; the declaration of Plaintiffs; 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.

Dated: July 3, 2026

MELMED LAW GROUP P.C.

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

REGULATIONS

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion seeks preliminary approval of a wage-and-hour class action settlement between Plaintiffs Joseph McCabe and Anthony McCabe ("Plaintiffs") and Defendants Action Family Counseling-SCV, Inc., Action Family Counseling, Inc., and Action Family Counseling-Bakersfield, Inc. ("Defendants") (collectively, the "Parties") for the Gross Settlement Amount of $75,000.00 to be distributed to approximately 108 individuals defined as:

> *All individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period.*

These employees are referred to herein individually as the "Class Members" or collectively as the "Class." The "Class Period" for these purposes is defined as the period from February 5, 2020, through January 6, 2026. A true and correct copy of the *Settlement Agreement and Release of Class Action* (the "Settlement Agreement"), is attached as **Exhibit A** to the concurrently filed *Declaration of Kyle D. Smith in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement* ("Declaration of Kyle D. Smith" or "Smith Decl."). The Settlement Agreement, in its entirety, is incorporated herein by reference.

Plaintiffs also represent a group of approximately 64 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 "PAGA Period" for these purposes is defined as the period from February 5, 2023, through January 6, 2026. The "Aggrieved Employees," for these purposes, are defined as:

> *All individuals who are or were employed by Defendants as non-exempt employees in California during the PAGA Period.*

The Settlement Agreement resolves two actions—the present action and the action filed by Plaintiff Anthony McCabe in the matter of *McCabe v. Action Family Counseling- SCV, Inc., et al.* (L.A. Cnty. Sup. Ct., No. 25STCV22676). It is a non-reversionary settlement, meaning that none of the Gross Settlement Amount will revert to Defendants. (Settlement Agreement, at p. 6–7.) Class Members are not required to submit a claim form to receive their settlement share. (Settlement Agreement, at p. 21.) The applicable employer-side payroll taxes are to be paid by Defendants outside the Gross Settlement Amount. (Settlement Agreement, at p. 7.)

Because the settlement is fair and reasonable, was negotiated at arm's length between counsel following extensive investigation, discovery, and a detailed exposure analysis, it should be preliminarily approved. (Smith Decl., ¶ 8.) Subject to court approval, the "Net Settlement Amount" of at least **$11,293.68**, will be distributed to Class Members who do not request exclusion from the settlement and the Aggrieved Employees.

Gross Settlement Amount	**$75,000.00**
Attorneys' Fees	(up to $25,000.00)
Litigation Costs	(up to $13,591.32)
Settlement Administration Costs	(up to $4,490.00)
Service Award to Class Representatives	(up to $7,500.00 each) (up to $15,000.00 total)
PAGA Payment to LWDA	($5,625.00)
Net Settlement Amount	**$11,293.68**

This settlement is an excellent result considering the number of Class Members affected. Because the Settlement is well within the zone of reasonableness, Plaintiffs request entry of an order: **(1)** preliminarily certifying the Settlement Class under California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769(c), for settlement purposes and preliminarily approving the settlement; **(2)** preliminarily appointing Joseph McCabe and Anthony McCabe as class representatives for purposes of settlement; **(3)** preliminarily appointing Plaintiffs' counsel as class counsel for the purposes of settlement; **(4)** preliminarily approving the settlement as fair, adequate, and reasonable; **(5)** preliminarily approving the proposed deductions from the Gross Settlement Amount, including the proposed allocation of PAGA penalties, the attorneys' fees, litigation costs, service award to the Class Representatives, and administration costs; **(6)** approving the proposed class notice attached as

Exhibit 1 to the Settlement Agreement ("Class Notice"), to be distributed to Class Members pursuant to the Settlement Agreement; **(7)** appointing Apex Class Action, LLC to administer the settlement ("Settlement Administrator") and directing the Settlement Administrator to distribute the Class Notice; and **(8)** scheduling a hearing for final approval after the completion of the settlement notice process.

II. <u>BACKGROUND</u>

A. THE PARTIES

Defendants Action Family Counseling-SCV, Inc., Action Family Counseling, Inc., and Action Family Counseling-Bakersfield, Inc. are related California corporations that hold themselves out to the public as "Action Family Counseling" and provide drug-rehabilitation and counseling services in California. Defendants maintain facilities in California, including in the Santa Clarita Valley and in Bakersfield, each of which employed non-exempt employees—the Class Members and the Aggrieved Employees—during the Class Period and the PAGA Period. (Smith Decl., ¶ 21.) Defendants employed approximately 108 non-exempt employees in California during the Class Period who collectively worked approximately 2,776 workweeks, and approximately 64 Aggrieved Employees during the PAGA Period who worked approximately 663 pay periods. (Smith Decl., ¶¶ 5–6; Settlement Agreement, at pp. 8, 10.)

Plaintiff Joseph McCabe was employed by Defendants in California as an hourly, non-exempt drug and alcohol counselor during the Class Period and PAGA Period. (Smith Decl., ¶ 22.) His job duties included administering medications, completing paperwork, and assisting with the care of residents and general duties around the facility. Plaintiff's employment with Defendants began on or about August 1, 2022, and ended on or about December 1, 2023. (Smith Decl., ¶ 22.) Anthony McCabe, the named Plaintiff in the related action and a proposed Class Representative, was likewise employed by Defendants in California as an hourly, non-exempt drug and alcohol counselor. Likewise, his job duties included administering medications, completing paperwork, and assisting with the care of residents. Plaintiff Anthony McCabe's employment with Defendants ended on or about May 26, 2024. (Smith Decl., ¶ 23.)

Plaintiffs allege that Defendants' employees—including Plaintiffs, the Class Members, and the Aggrieved Employees (collectively, the "Employees")—experienced various violations of California's wage-and-hour laws. (Smith Decl., ¶ 24.)

B. PROCEDURAL SUMMARY

On or about February 1, 2024, Plaintiff Joseph McCabe 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 Defendants 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, 5-2001, and/or 15-2001 (the "Applicable Wage Orders"). (Cal. Code of Regs., tit. 8, §§ 11040, 11050, 11150; Smith Decl., ¶ 25.) The letter attached Plaintiff Joseph McCabe'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 B** to the concurrently filed Declaration of Kyle D. Smith.

On February 5, 2024, Plaintiff Joseph McCabe commenced this action by filing a class action complaint alleging causes of action against Defendants 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 earned and unpaid 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 accurate itemized wage statements in violation of Labor Code sections 226 and 226.3; **(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). (Smith Decl., ¶ 26.)

On April 15, 2024, Plaintiff Joseph McCabe filed a first amended complaint adding one cause of action for civil penalties based on the foregoing pursuant to PAGA. (Lab. Code, §§ 2698–2699.6; Smith Decl., ¶ 27.)

On August 20, 2024, Plaintiff Joseph McCabe filed the operative second amended complaint, which added factual allegations that Defendants operated as alter egos and joint employers of one another (the "Operative Complaint"). (Smith Decl., ¶ 28.)

On July 31, 2025, Plaintiff Anthony McCabe filed a class action complaint alleging causes of action against Defendants 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 pay timely wages during employment in violation of Labor Code sections 204, 210; **(6)** failure to pay all wages earned and unpaid at separation in violation of Labor Code sections 201, 202, and 203; **(7)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; and **(8)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210). (Smith Decl., ¶ 29.)

On October 30, 2024, the Court held an initial status conference in the Joseph McCabe matter and lifted the stay on discovery regarding class certification and joint employer liability. The Parties thereafter exchanged discovery and completed the *Belaire-West* notice process, after which Defendants produced supplemental class data and records. Class Counsel conducted significant discovery, investigation, and prosecution, including, among other things, numerous telephonic conferences with Plaintiffs; inspection and analysis of hundreds of pages of documents; analysis of work-related data from a sample of Class Members and Aggrieved Employees; an analysis of the legal positions taken by Defendants; 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 Defendants' potential defenses to Plaintiffs' 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 data in order to calculate damages. (Smith Decl., ¶ 30.)

Among other key pieces of information, Class Counsel obtained and analyzed a statistically significant sample of the time and pay records of Class Members during the Class Period, which Plaintiffs' expert used to perform a statistical analysis of Defendants' potential exposure. This sample included payroll records and timesheets for the Class Members' shifts during the Class Period. From these records, Plaintiffs' expert was able to carefully craft a damages model for the alleged claims for which the data would reflect violations. (Smith Decl., ¶ 31.)

On November 3, 2025, Class Counsel served Defendants with a detailed written exposure analysis. Following arm's-length negotiations conducted directly through counsel, the Parties reached an agreement on or about January 8, 2026, and thereafter executed the longform Settlement Agreement now before the Court for approval. (Smith Decl., ¶ 32.)

Plaintiffs now seek the Court's preliminary approval of the Settlement Agreement.

III. <u>SUMMARY OF THE CLAIMS, DEFENSES, AND EXPOSURE</u>

Plaintiffs allege several categories of wage and hour violations on behalf of the Employees. Plaintiffs' primary claims stem from Defendants' alleged failure to provide compliant meal and rest periods and to pay the associated premiums, and the failure to pay all wages owed (including regular rate violations), together with the derivative claims for waiting-time penalties, inaccurate wage statements, unreimbursed business expenses, and PAGA penalties. (Smith Decl., ¶ 33.)

Defendants have persistently denied all liability of any kind associated with the claims and allegations, and further denied that the Employees are entitled to any relief. Defendants also deny that these allegations are appropriate for class or representative treatment for any purpose other than the settlement. Defendants maintain, among other things, that they have complied with California laws in all respects. (Smith Decl., ¶ 34.)

A summary of the legal and factual basis for each claim, the applicable defenses, and the potential damages are summarized in more detail below. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133; *Munoz v. BCI CocaCola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

A. MEAL PERIOD ALLEGATIONS

Employers are required to provide their nonexempt employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of work. (Lab. Code, § 512, subd. (a).) Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a).)

Labor Code section 226.7 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 "regular rate" for these purposes is synonymous with the "regular rate" in the overtime context, which means that it must include "adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any nonhourly compensation the employee has earned." (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 869; *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.)

Here, Plaintiffs alleged that Defendants committed both documented and on-duty meal period violations. First, the data show that Defendants consistently failed to provide timely, thirty-minute meal periods within the first five hours of work. According to Plaintiffs' expert, 7.9% of all meal periods were taken after the fifth hour of work and were therefore late. (Smith Decl., ¶ 35.) Second, 45.1% of all shifts longer than six hours contained no first meal period. Third, 88.9% of all shifts longer than twelve hours contained no second meal period. Fourth, 19.1% of all recorded meal periods were shorter than thirty minutes. *Id.* These violations appear on the face of the time records Defendants themselves produced. Moreover, 69.3% of all shifts between five and six hours, and 99.4% of all shifts between ten and twelve hours, included no meal period at all. In total, Plaintiffs' expert determined that 8.4% of all shifts worked involved a meal period violation for which no meal period premium was paid. *Id.*

Separately, Plaintiffs' expert determined that 62.1% of all recorded meal periods were exactly thirty minutes long. (Smith Decl., ¶ 36.) While not conclusive, this data strongly suggests that

Defendants engaged in a widespread pattern and practice of fabricating time records to falsely report compliant meal periods and thereby avoid paying meal period premiums.

Plaintiffs alleged additional on-duty meal period violations. Plaintiffs report that they were not permitted to leave the premises during their meal periods; although they would often clock out and cease performing duties, they were nevertheless required to remain on Defendants' premises and on call throughout their meals. Plaintiffs report that nothing in the nature of the work required the Class Members to remain on premises. (Smith Decl., ¶ 37.) In fact, Plaintiffs report that they were instructed to leave the premises to run errands, such as picking up prescriptions, and thus were permitted to leave the facility unattended to perform work functions. *Id*.

Defendants denied these allegations and maintained that their meal period practices were compliant. In fact, to Defendants' credit, Plaintiffs' expert noted that Defendants paid a significant number of meal period premiums, accounting for approximately 81.9% of all unique meal period violations. (Smith Decl., ¶ 38.) Defendants may have further argued that voluntary meal period waivers covered all shifts between ten and twelve hours, and that Plaintiffs' on-duty meal period allegations rested solely on Plaintiffs' limited testimony and lacked sufficient evidentiary support. (Smith Decl., ¶ 38.)

Based on these allegations, Plaintiffs' expert determined that Defendants owe approximately $147,613.43 in premiums for unique meal period violations, consisting of $29,309.00 for documented meal period violations and $118,304.43 for on-duty meal period violations. (Smith Decl., ¶ 39.) After ascribing a 75% discount due to the very real risks that this Court would find Defendants' policies to be compliant, and the difficult testimonial nature of a significant portion of this claim, Plaintiffs estimated Defendants' realistic exposure to be approximately **$36,903.36**. (Smith Decl., ¶ 40.)

The exposure associated with Plaintiffs' minimum wage cause of action is encompassed within this meal period analysis. That claim arises from the same allegations that Class Members worked through unpaid, on-duty meal periods, and its value is therefore subsumed within the meal period exposure above rather than separately modeled. (Smith Decl., ¶ 40.)

B. REST PERIOD ALLEGATIONS

Under Labor Code section 226.7 and the Applicable Wage Order, 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. 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 "regular rate" for these purposes is synonymous with the "regular rate" in the overtime context, which means that it must include "adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any nonhourly compensation the employee has earned." (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 869; *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.) The California Supreme Court has held that, during required 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.)

Here, Plaintiffs alleged that the Class Members routinely worked their shifts alone and were unable to be relieved of all duty. Plaintiffs report that they were often unable to take 10-minute rest periods because they were working alone and a staff member was required to be present at all times. It was only when another person was scheduled with Plaintiffs that they would be permitted to take an off-duty 10-minute rest period. (Smith Decl., ¶ 41.) Plaintiffs further report that rest periods were normally cut short. (Smith Decl., ¶ 41.)

Defendants denied these allegations and may have argued that they promulgated a code-compliant meal and rest period policy that the Class Members may have voluntarily chosen to waive. In fact, 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 Defendants 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, Defendants argued that they proactively enforced its policy and that the Class Members were given uniform breaks for many non-exempt employees. (Smith Decl., ¶ 42.)

Based on the informal discovery produced and the allegations in the case, Plaintiffs estimated that there were approximately 11,088 shifts worked by the Class Members that exceeded 3.5 hours in length—making them rest period eligible. Plaintiffs assumed a violation rate of 25% and a base hourly rate of $20.13, Defendants' exposure on this claim is approximately $55,800.36. (Smith Decl., ¶ 43.) Plaintiffs discounted this maximum exposure substantially to reflect the risk that the Court would find Plaintiffs' assumption unsupportable at class certification or trial and agree with Defendants' defenses, as well as the concern that this claim was purely testimonial and likely difficult to prove. After ascribing an 80% discount, Plaintiffs estimated Defendants' realistic exposure to be approximately **$11,160.07.** (Smith Decl., ¶ 44.)

C. REGULAR RATE ALLEGATIONS

Labor Code section 510 requires employers to pay overtime to employees at either one and one-half times their regular rate of pay or twice their regular rate of pay, depending on the number of hours worked. The "regular rate of pay" for these purposes is not the same as the employee's base hourly rate, but rather it must include "adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any nonhourly compensation the employee has earned." (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.)

Here, Plaintiffs alleged that Defendants' data shows regular rate exposure arising from the pay codes "MISC," "OTHER," and "BONUS," which Plaintiffs contend constitute non-discretionary wage payments that should have been included in Class Members' regular rate of pay. (Smith Decl., ¶ 45.) If true, Plaintiffs' expert determined that Defendants underpaid the Aggrieved Employees approximately $810 due to regular rate violations. *Id.*

Defendants denied these allegations and argued that these additional forms of compensation were non-discretionary payments promised to employees who worked on holidays; accordingly, the payment codes did not reflect non-discretionary wage payments but rather separate, unrelated forms of additional compensation. (Smith Decl., ¶ 46.) In the alternative, Defendants may have further argued that these payments were discretionary, such that no adjustment to the Class Members' regular rate of pay was required. (Smith Decl., ¶ 46.) Finally, Defendants may have argued that even if any underpayment occurred, the amount is immaterial.

Based on the discovery produced, Plaintiffs' expert determined that this practice resulted in approximately **$810** in underpayments to the Aggrieved Employees due to regular rate violations. (Smith Decl., ¶ 47.)

D. 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). Plaintiffs alleged that, by virtue of the allegations that Defendants failed to provide the Class Members with compliant meal and rest periods, pay meal and rest premiums, and pay all wages owed as described above, Defendants had likewise failed to provide the Employees with compliant wage statements reflecting their gross wages earned and their net wages earned. (Smith Decl., ¶ 48.)

As with Plaintiffs' other claims, Defendants argued that the Employees were fully compensated and that such violations were rare and nominal in value, if they occurred at all. Defendants thus concluded that Plaintiffs could not claim wage statement penalties because there were no wage statement violations. (Smith Decl., ¶ 49.)

In terms of Defendants' exposure for this claim, Plaintiffs calculated that approximately 64 employees worked a total of 663 pay periods with violations during the applicable statutory period for this claim. (Smith Decl., ¶ 50.) Applying the statutory penalty rates—fifty dollars ($50.00) per employee for the initial violation and one hundred dollars ($100.00) per employee for each subsequent violation per pay period (Lab. Code, § 226, subd. (e)(1))—Plaintiffs determined that Defendants' maximum exposure for this claim was $63,100.00 ((64 × $50.00) + (599 × $100.00)). Plaintiffs then ascribed a 90% discount based on the very real risks that: (1) this court might find that Defendants' alleged wage statement errors were not made knowingly and intentionally such that the penalties would not be triggered, (2) this court might find that Defendants' alleged wage statement errors caused little or no injury to the Class Members, or (3) that this court might find that there were no errors made on the wage statements. (Smith Decl., ¶ 51.) Plaintiffs calculated that Defendants' realistic exposure for this claim was **$6,310.00.** (Smith Decl., ¶ 51.)

E. RECORDKEEPING ALLEGATIONS

Labor Code section 226, subdivision (a), requires employers to keep an accurate record of, among other things, all hours worked by employees, their gross wages earned, and all applicable hourly rates in effect during the pay period. Labor Code section 226.3 provides that "in addition to any other penalty provided by law" employers who fail to keep the records required by Labor Code section 226, subdivision (a), are subject to a civil penalty of $250 per employee per violation in an "initial citation" and $1,000 per employee for each violation "in a subsequent citation." (Lab. Code, § 226.3.)

Likewise, Labor Code section 1174, subdivision (d), requires every employer to keep these records for at least three years. Labor Code section 1174.5 provides for a civil penalty of $500 for any employer who willfully fails to maintain the records required by Labor Code section 1174. These penalties are recoverable through PAGA. (Lab. Code, § 2699.5 [listing violations of Labor Code section 1174, subdivision (d), as an applicable PAGA claim]; *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 680 [claims under Labor Code section 226.3 recoverable through PAGA].)

Plaintiffs alleged that Defendants failed to maintain accurate and complete employment records in violation of Labor Code sections 1174 and 1174.5. Specifically, Plaintiffs contend that Defendants' extensive fabrication of meal period records gives rise to significant recordkeeping violations, as the meal period entries appear synthetic and do not reflect the time Class Members actually worked. (Smith Decl., ¶ 52.) Defendants denied these allegations and argued that their timekeeping systems are not synthetic and satisfy all applicable recordkeeping requirements. (Smith Decl., ¶ 52.) Plaintiffs' exposure here is subsumed within the PAGA analysis below.

F. WAITING TIME PENALTY ALLEGATIONS

Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty workdays. (See *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

Plaintiffs argued that there are both derivative and non-derivative waiting time violations here. Plaintiffs' expert identified non-derivative waiting time penalty violations, specifically, that Defendants never issued any off-cycle checks and check dates generally only occur on the normal bi-weekly schedule. Thus, employees who quit or have been terminated only receive their final pay on the date of the next pay period. Plaintiff Anthony McCabe, for example, worked his final shift on May 26, 2024, but was not paid his final wages until June 4, 2024. Likewise, Plaintiff Joseph McCabe was terminated on December 1, 2023, but was not issued his final paycheck until December 15, 2023. Accordingly, Plaintiffs believe there are both derivative and non-derivative waiting time violations here. (Smith Decl., ¶¶ 53–54.)

From the discovery produced by Defendants, approximately 81 of the 108 Class Members 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: 81 employees × 30 days × 7.9 hours average per day × average rate of pay of $20.13 per hour (or $386,435.61). However, after ascribing a discount of 90% because the claim is derivative of the underlying claims which may also fail to be certified or win on the merits, and given Defendants' available lack-of-willfulness defense, Plaintiffs estimated Defendants' realistic exposure for this claim to be approximately **$38,643.56**. (Smith Decl., ¶¶ 55–56.)

G. 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].)

Importantly, an employer may not simply place the burden on employees to request reimbursement for their expenses. Employers have a "duty to exercise due diligence and take any and all reasonable steps to ensure that the employee is paid" for their reimbursable expenses. (*Stuart v. RadioShack Corp.* (N.D. Cal. 2009) 641 F.Supp.2d 901, 904.) This duty creates an obligation on the part of employers to determine the scope and extent of reimbursable expenses when the employer has reason to know that such expenses are being incurred.

Plaintiffs allege that Defendants required Class Members to use their personal cell phones for work—including by receiving frequent work-related calls—and failed to reimburse them for that phone use. (Smith Decl., ¶ 57.) Further, Plaintiff Joseph McCabe contends that he regularly used his own vehicle to transport clients to medical appointments or to pick up prescriptions, as company vehicles were often inoperable, yet he was never compensated for gas or mileage. On several occasions, Plaintiff Joseph McCabe had to pay out-of-pocket for client expenses, such as meals or movie tickets, due to the company credit card being declined. (Smith Decl., ¶ 58.) Accordingly, Plaintiffs received no reimbursement for their cell phone use, mileage, or other miscellaneous business expenses. Defendants deny these allegations and may have argued that, according to Plaintiff Joseph McCabe's own testimony, company vehicles were provided, even if occasionally inoperable, and that these allegations rest solely on Plaintiffs' limited testimony and lack sufficient evidentiary support. (Smith Decl., ¶ 59.)

Assuming approximately $7.50 for the cost of a typical cell phone data plan, and 2,776 workweeks across the class, Defendants' class-wide exposure is approximately $20,820.00. (Smith Decl., ¶ 60.) However, after ascribing a discount of 90% because the claim rests solely on Plaintiffs' limited testimony, Plaintiffs estimated Defendants' realistic exposure for this claim to be approximately **$2,082.00**. (Smith Decl., ¶ 61.)

H. PAGA ALLEGATIONS

Under former[1] 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.

[1] Of note, the initial complaint filed by Plaintiff Joseph McCabe was brought under and subject to the former provisions of PAGA, prior to the legislative changes in mid-2024. (Lab. Code, § 2699, subd. (v).)

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).) Plaintiffs alleged that, because of the violations described above, Defendants were liable for these penalties for each applicable pay period during the applicable PAGA Period. (Smith Decl., ¶ 62.)

In ascertaining Defendants' exposure for this claim, Plaintiffs considered several important cases. First, courts to consider the issue 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.) (Smith Decl., ¶ 63.)

Second, given the nature of the allegations and Defendants' efforts at good faith compliance with the Labor code, there is a likelihood that a further reduction of the penalty to $5 per pay period as approved in *Carrington* would apply. (Smith Decl., ¶ 64; Carrington v. Starbucks Corp., supra, 30 Cal.App.5th at p. 529.) Thus, even if Plaintiffs were able to recover some PAGA penalties on behalf of other aggrieved employees, courts frequently use their discretion under former Labor Code section 2699, subdivision (e)(2), to significantly reduce PAGA penalties where such penalties would be unjust, arbitrary, and improper. (Smith Decl., ¶ 64.)

Here, there were approximately 663 pay periods within the applicable PAGA Period worked by 64 Aggrieved Employees. Applying PAGA's penalties—unstacked at the initial violation rate—would yield a maximum exposure for Defendants of $66,300.00 (Smith Decl., ¶ 65.) However, considering Defendants' defenses to the PAGA claim, Plaintiffs ascribed the very real risk of a court reducing the amount of awarded PAGA penalties, especially considering that the PAGA penalties themselves rival the amount of wages actually owed. (Smith Decl., ¶ 66.) For that reason, Plaintiffs followed a modified *Carrington* approach and ascribed a settlement value of $15.00 per pay period for a total realistic exposure of **$9,945.00**. (Smith Decl., ¶ 66.)

IV. SUMMARY OF THE PROPOSED SETTLEMENT

Under the terms of the Settlement Agreement, Defendants will be released of all claims asserted in the Complaint in exchange for Defendants' agreement to pay a non-reversionary settlement Gross Settlement Amount of $75,000.00. (See generally, Settlement Agreement.)

A. REASONABLENESS OF THE GROSS SETTLEMENT AMOUNT

Plaintiffs have applied appropriate discounts on the maximum exposure as calculated above (approximately $740,879.40) to come to Defendants' realistic, risk-adjusted exposure of **$105,853.99**. (Smith Decl., ¶¶ 67–68.) As explained above, the issues in this case were hotly contested—both legally and factually. (Smith Decl., ¶ 69.) While Plaintiffs continue to believe in the merits of the case, Defendants vigorously denied liability and argued that they fully complied with California's wage-and-hour laws, asserting defenses that—if credited—would substantially reduce or defeat recovery, including good-faith defenses to the penalty claims, the risk that the meal and rest-period claims would be discounted, and the fact that Defendants paid meal-period premiums for approximately 81.9% of the documented meal-period violations. (Smith Decl., ¶ 69.) Weighing these risks against the substantial benefit of a prompt, certain, and non-reversionary recovery, the Gross Settlement Amount of $75,000.00 falls within the range of reasonableness and represents a fair compromise of the claims. (Smith Decl., ¶ 70.) If preliminary approval is granted, Plaintiffs will have recovered **70.85%** of the estimated reasonable settlement value for the Class Members in this case—a fair compromise of the claims, by any measure. (*Ibid.*)

This amount was reached only after the case was thoroughly investigated by Plaintiffs' Counsel. (Smith Decl., ¶ 71.) As explained above, Plaintiffs' counsel obtained and analyzed a statistically significant sample of the time and pay records of Class Members, including payroll records and timesheets for the Class Members' shifts during the Class Period. (Smith Decl., ¶ 71.) Plaintiffs' counsel also conducted a detailed examination of Defendants' relevant policies to inform counsel's analysis of Defendants' potential exposure. (Smith Decl., ¶ 71.) From these records, Plaintiffs' expert was able to carefully craft a damages model for each of the categories of alleged claims for which the data would reflect violations. (Smith Decl., ¶ 71.) In total, Plaintiffs' counsel and Plaintiffs' expert reviewed hundreds of pages of documents prior to agreeing to settle the case. (Smith Decl., ¶ 30.)

These documents, along with the other investigations 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, Plaintiffs' counsel have concluded that the Gross Settlement Amount represents an excellent result for the Class. (Smith Decl., ¶ 72.)

B. SETTLEMENT CONSIDERATION AND ALLOCATION

The Gross Settlement Amount includes: **(1)** the fees and expenses of the Settlement Administrator, currently estimated to not exceed $4,490.00; **(2)** Plaintiffs' counsel's attorney fees not to exceed one-third of the Gross Settlement Amount, i.e., $25,000.00; **(3)** litigation expenses and costs not to exceed $13,591.32; **(4)** a service award to the Class Representatives of up to $7,500.00 each—$15,000.00 total; and **(5)** payment to the LWDA of $5,625.00 for its 75% share of the settlement for civil penalties pursuant to PAGA. (Settlement Agreement, at p. 23.)

After all Court-approved deductions from the Gross Settlement Amount, the Net Settlement Amount, which consist of at least $11,293.68, will be distributed to all Class Members who do not request exclusion from the settlement and the Aggrieved Employees. (Settlement Agreement, at pp. 7, 23.) Applicable employer-side payroll taxes will be paid by Defendants outside and separate from the Gross Settlement Amount. (Settlement Agreement, at p. 7.)

C. THE RELEASE

Under the Settlement Agreement, the "Released Claims" shall mean those claims arising out of or related to the allegations set forth in the Complaint and/or PAGA notice to the LWDA, which arose during the Class Period, including claims 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; (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); (11) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698–2699.6); and (12) all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing. (Settlement Agreement, at pp. 8-9.) A true and correct copy of Plaintiff's PAGA letter to the LWDA in this case is attached as **Exhibit B** the concurrently filed Declaration of Kyle D. Smith. (Smith Decl., ¶ 24.) These releases will become effective on the Effective Date—i.e., after the Court enters a final order and judgment granting final approval of the Settlement and the time for any appeal has elapsed. (Settlement Agreement, at pp. 5-6.)

D. 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. 15.) Defendants will provide the Settlement Administrator with any information reasonably necessary to perform the calculation of number of workweeks for each Class Member, and any other reasonably required information the Settlement Administrator requests to perform the calculations required under this Settlement Agreement. (Settlement Agreement, at p. 23.) If there are any timely submitted requests for exclusion, the settlement administrator will proportionately increase the Individual Settlement Payments for each participating Class Member so that the amount actually distributed to participating Class Members equals 100% of the Net Settlement Amount. (Settlement Agreement, Exh. 1, at p. 6.)

If the amounts allocated to attorney's fees, litigation costs, service awards, or the Settlement Administrator are approved at a lesser amount than provided in the Settlement Agreement, the Net Settlement Amount shall be recalculated to reflect the actual Class Attorney Fees and Expenses awarded. (Settlement Agreement, at pp. 17-18.) 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 p. 24.)

E. SELECTION OF THE SETTLEMENT ADMINISTRATOR

Plaintiffs, through counsel, have obtained bids from several settlement administration companies for the settlement administration of this case. Of those, Apex Class Action, LLC presented the lowest qualified bid. (Smith Decl., ¶ 73; 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. 19.)

F. NOTICE PROCEDURES

Within 14 days of the Court granting preliminary approval of the Settlement Agreement, Defendants shall provide the Settlement Administrator with an updated list of Class Members and Aggrieved Employees containing names, social security numbers, dates of employment, last-known addresses, and phone numbers (the "Class Data"). (Settlement Agreement, at p. 20.)

The Settlement Agreement further provides that the Class Data—which includes Class Members' Social Security numbers—will be provided directly and only to the Settlement Administrator, will be marked "Confidential – Settlement Administrator's Eyes Only," and will not be copied to Class Counsel. (Settlement Agreement, at p. 20.) This provision is in the best interests of the Class because it limits the dissemination of Class Members' sensitive personal identifying information to the neutral Settlement Administrator, whose duties run to the Class. It does not impede Class Counsel's ability to discharge their fiduciary duties: Class Counsel obtained and analyzed class-wide time and payroll data through discovery and the *Belaire-West* notice process in order to value the claims, and the Settlement Administrator is required to provide Class Counsel with weekly summary reports, date-stamped copies of all Opt Out requests and objections, a Declaration of Due Diligence and Proof of Mailing, and a pre-hearing summary report. (Settlement Agreement, at pp. 19, 21.)

Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement Administrator shall determine the number of workweeks worked by each Class Member, populate the data for each Class Member accordingly, and send each Class Member the Class Notice via first-class, United States mail. (Settlement Agreement, at p. 20.) The Class Notice will be substantially the form as the one attached as **Exhibit 1** to Settlement Agreement. The release language of the Class Notice matches the release language of the Settlement Agreement. (Compare Settlement Agreement, Exh. 1, at p. 7, with Settlement Agreement, at p. 8.) Plaintiffs' counsel has reviewed the Settlement Agreement and Class Notice to ensure they are consistent. (Smith Decl., ¶ 8.)

The Class Notice informs Class Members that they may review the Court's website for the most current information regarding the final approval and fairness hearing and may contact Class Counsel for more information about the final approval and fairness hearing. (Settlement Agreement, Exh. 1, at p. 10.)

Additionally, the Class Notice will inform each Class Member of his or her estimated share of the settlement, as well as an easily understood statement alerting the Class Members that, unless they elect to opt out of the Settlement Agreement, the Class Member is releasing and waiving all "Released Claims" (as that term is defined in the Settlement Agreement and explained in the Class Notice). (Settlement Agreement, Exh. 1, at pp. 7-9.)

The Class Notice will also inform the Class Members of their right to object to the Settlement Agreement. (Settlement Agreement, at p. 22.) Any Class Member who wishes to object to the Class Settlement may submit a written objection to the Settlement Administrator no later than 45 days following the date on which the Settlement Administrator first mails the Class Notice to the Class Members ("Response Deadline"). (Settlement Agreement, at p. 22.) Alternatively, Class Members may also object to the Settlement Agreement by appearing at the final approval hearing, either on their own or through an attorney. (Settlement Agreement, at p. 22; Settlement Agreement, Exh. 1, at p. 9.)

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. 21.) 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 the Response Deadline. (Settlement Agreement, at p. 21.)

If any Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Members, and a second Class Notice will be sent to any new or different address obtained. (Settlement Agreement, at p. 21.)

Such Class Members shall have an additional fourteen (14) days from the date of the mailing of the second Class Notice in which to Opt Out, object, or dispute the information provided in the Share Form if the Response Deadline would have otherwise passed prior to fourteen (14) days from the date of the mailing of the second Class Notice. (Settlement Agreement, at p. 21.)

G. TIMING OF SETTLEMENT DISBURSEMENTS

Defendants will deposit the Gross Settlement Amount in a lump sum payment, plus the employer-side payroll taxes, with the Settlement Administrator by December 15, 2026, as provided in the Settlement Agreement (Defendants may fund earlier). (Settlement Agreement, at p. 18.) At that time, the settlement will be fully funded. The Settlement Administrator will then distribute the Individual Settlement Payments within 14 days of the Effective Date. (Settlement Agreement, at p. 25.) The Settlement Agreement further provides that the Court-approved attorneys' fees and litigation costs, the service awards, and the LWDA's share of the PAGA Payment are likewise to be distributed no later than fourteen (14) days after the Effective Date. (Settlement Agreement, at p. 25.)

H. *CY PRES* DISTRIBUTION

Class Members will have 180 days to cash their settlement checks. (Settlement Agreement, at p. 26.) If a Class Member fails to cash his/her check by the deadline, then the Settlement Administrator shall distribute such funds to the California State Controller for deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. (Settlement Agreement, at p. 26.)

Because all funds and interest under the Settlement Agreement are to be completely distributed to the class participants, or to the Unclaimed Property Fund in the name of the individual whose check was uncashed, 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.)

I. 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 penalties and interest (for which each participating Class Member will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at p. 16.) This allocation reflects the composition of the claims set forth in the exposure analysis above. A substantial majority of Defendants' exposure is attributable to penalty and interest-based claims rather than to unpaid wages: one of the largest components is approximately $38,643.56 in waiting-time penalties. (Smith Decl., ¶¶ 55–56, 67–68.) The wage-based claims, by contrast, are subject to significant proof and extrapolation risks and were heavily discounted in negotiations. Allocating 20% of each class-portion payment to wages and the remaining 80% to penalties and interest is therefore a fair and reasonable approximation of the relative value of the wage and penalty-based claims.

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.)

Defendants will separately and additionally pay their share of employer payroll taxes on the sum allocated to wages. (Settlement Agreement, at p. 16.)

V. <u>THE CLASS SHOULD BE PRELIMINARILY CERTIFIED</u>

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 class-based settlement, the case management issues inherent in determining if the class should be certified need not be confronted, and the Court's fairness review of the settlement focuses on protecting 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 [117 S.Ct. 2231, 2248] ["Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."].)

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

B. THE PROPOSED CLASS IS NUMEROUS 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.) Defendants have represented that the proposed Class consists of approximately 108 Class Members ascertained through Defendants' records. As such, the numerosity requirement is 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 [citing *Washington Mutual Bank, FA v. Superior Court* (2001) 24 Cal.4th 906, 913].) The commonality element is satisfied here because common legal and factual questions exist, such as **(a)** whether individuals working for Defendants 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 Defendants' 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, Plaintiffs' claims are typical of the Class Members because they were subject to Defendants' policies and practices described above in Plaintiffs' analysis of the claims and defenses, which were consistently applied class-wide to all Employees. (Declaration of Joseph McCabe in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Joseph McCabe Decl."), ¶ 4; (Declaration of Anthony McCabe in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Anthony McCabe 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.) Plaintiffs are adequate as a class representatives because they are members of the Class, experienced the same wage and hour practices as the rest of the Class, are committed to representing the interests of the Class, have no interests that are adverse to members of the Class, and understand and accept their duty to represent the best interests of the Class. Plaintiffs are committed to the Class and are adequate to represent the interests of the Class in this litigation. (Joseph McCabe Decl., ¶ 5; Anthony McCabe Decl., ¶ 5.)

Plaintiffs also provided counsel with information that was crucial to initiating the action and preparing the exposure analysis, discussed settlement strategy with counsel, and provided valuable information about the Class Members and their experiences working for Defendants. (Smith Decl., ¶ 85; Joseph McCabe Decl., ¶¶ 6–7; Anthony McCabe Decl., ¶¶ 6–7.)

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.) Plaintiffs are represented by counsel experienced in the litigation of wage and hour class actions, who have no interests adverse to Plaintiffs or the Class, who vigorously prosecuted this action, and who have the financial resources to handle this case. (Smith Decl., ¶¶ 10, 18–20.)

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 Defendants' 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 RESULT OF SERIOUS, INFORMED, AND NON-COLLUSIVE NEGOTIATIONS

The Settlement Agreement was negotiated at arm's length between experienced counsel for both Parties, each of whom was thoroughly familiar with the complex legal and factual questions at issue in this litigation. (Smith Decl., ¶ 74.) The Settlement Agreement is a product of intensive negotiations, supported by investigation and direct exchanges of information through discovery, including Class Counsel's service of a detailed written exposure analysis on Defendants; the Parties did not utilize a private mediator and instead negotiated the resolution directly through counsel. (Smith Decl., ¶ 74.) Although Plaintiffs and their 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. (Smith Decl., ¶ 75.) The resulting Settlement Agreement was based on calculations, risk assessment, and non-collusive negotiation. (Smith Decl., ¶ 75.) It takes the risks identified above and others into account in arriving at the non-reversionary Gross Settlement Amount. (Smith Decl., ¶ 75.)

B. THE DISCOVERY AND INVESTIGATIONS WERE EXTENSIVE

Counsel for the Parties spent months developing the factual record for this case, engaging in discovery and exchanges of documents and information, and preparing a detailed written exposure analysis, all of which ensured that both sides were fully informed about the strengths and weaknesses of their respective positions during the settlement negotiations. (Smith Decl., ¶ 76.) Following arm's-length negotiations conducted directly through counsel, the Parties reached a resolution of the case on a class and representative basis. (Smith Decl., ¶ 76.)

In addition, the parties are represented by skilled and experienced counsel with extensive backgrounds in complex litigation and experience litigating similar wage and hour class actions. (Smith Decl., ¶ 77.) The Settlement Agreement was reached after extensive investigation and research, calculations and risk evaluation, substantial exchanges of documents, and Plaintiffs' counsel's thorough factual investigation, which were sufficient to evaluate Defendants' defenses. (Smith Decl., ¶ 77.) The Settlement Agreement came only after the case was thoroughly investigated by Plaintiffs' counsel. (*Ibid*.) Plaintiffs' counsel all agree that this settlement is fair, adequate, and reasonable, and in the best interests of Class Members. (Smith Decl., ¶ 77.)

C. THE RISKS INHERENT IN CONTINUED LITIGATION ARE GREAT

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court should also consider "[t]he strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, [and] the risk of maintaining class action status." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) As described above, Defendants had strong defenses to Plaintiffs' claims, which create a real possibility that the claims might not be certified or might fail on the merits. (Smith Decl., ¶ 78.) Proceeding with litigation would impose a significant risk of no recovery as well as ongoing, substantial additional expenditures of time and resources. If settlement were not achieved, continued litigation of the claims would take a substantial amount time and possibly confer no benefit on Class Members. By contrast, the settlement will yield a prompt, certain, and substantial recovery for the Class Members, which also benefits the Parties and the Court. In considering these risks, the choice was overwhelmingly in favor of settlement. (Smith Decl., ¶¶ 78–79.)

D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS

The Settlement Agreement represents a fair compromise given the risks and uncertainties presented by continued litigation. Defendants 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, certain recovery in light of the litigation risks. (Smith Decl., ¶ 79.)

E. PLAINTIFFS' COUNSEL ARE EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION

Plaintiffs' counsel are experienced in wage-and-hour class actions. (Smith Decl., ¶ 80.) Numerous state and federal courts have certified Mr. Smith as adequate and competent class counsel in wage and hour class actions. (Smith Decl., ¶¶ 19, 80.) Mr. Smith devotes the vast majority of his law practice to plaintiff-side class and representative employment-law cases. (Smith Decl., ¶ 80.)

The Parties' counsel agree that this settlement is fair, adequate, and reasonable in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation. (Smith Decl., ¶ 81.) Given the risks inherent in litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of Class Members and should be preliminarily approved. (Smith Decl., ¶ 81.) The Settlement Agreement is also consistent with other settlements that received approval of the Courts. (Smith Decl., ¶ 81.)

Experienced counsel, operating at arm's length, have weighed the strengths and risks of the case, and endorse the proposed settlement. (Smith Decl., ¶ 82.) 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].)

F. 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 of the date on which the Court grants preliminary approval of the Settlement Agreement. (Settlement Agreement, at p. 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. 21.)

VII. <u>THE ATTORNEYS' FEE ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS FAIR</u>

In addition, at the time of final approval, Plaintiffs' counsel will request attorneys' fees of up to one-third of the Gross Settlement Amount (i.e., $25,000.00), plus reimbursement of litigation expenses and costs of up to $13,591.32. (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 California Supreme Court further clarified that trial courts "have discretion to conduct a lodestar cross check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross check and use other means to evaluate the reasonableness of a requested percentage fee." (*Ibid.*)

The requested fee of one-third of the Gross Settlement Amount is 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 of the total maximum settlement amount of $4.5 million and noting that the fee award of one-third of the total settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"]; *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% of the common fund]; *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 of common fund in a wage and hour class action, noting: "[f]ee awards in class actions average around one-third of the recovery."]; *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 of common fund].)

As part of the final approval motion, Plaintiffs' 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

Plaintiffs will request payment of a service award from the Gross Settlement Amount of up to $7,500.00 for each of the Class Representatives—Joseph McCabe and Anthony McCabe—in addition to whatever payment each is otherwise entitled to receive as a Class Member. (Smith Decl., ¶ 83; Settlement Agreement, at p. 15.) The proposed service award is reasonable compensation given the time and effort each Class Representative devoted to this case, the valuable assistance each provided to counsel, and the fact that each entered into a general release of claims that is broader than the release of the Class. (Smith Decl., ¶¶ 84–85; Settlement Agreement, at p. 30; Joseph McCabe Decl., ¶¶ 6–10; Anthony McCabe Decl., ¶¶ 6–10.)

Plaintiffs provided invaluable assistance to Plaintiffs' counsel and the Class Members in this case, including providing factual background for the operative complaint, reviewing the relevant documents, participating in phone calls with Plaintiffs' counsel, gathering highly relevant documents, and reviewing the settlement documents. (Smith Decl., ¶ 85; Joseph McCabe Decl., ¶¶ 6–9; Anthony McCabe Decl., ¶¶ 6–9.) Plaintiffs agreed to participate in this case with no guarantee of personal benefit. (*Ibid.*) Further, Plaintiffs agreed to undertake the financial risk of serving as a class representatives and exposed themselves to the risk of negative publicity by anyone who opposed this case. (*Ibid.*)

Moreover, the requested service award for Plaintiffs falls within the range of service payments typically awarded to class representatives in similar class actions. (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 **$11,250.00** service award to each of the two Class Representative in a meal break class action]; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2 [approving **$20,000.00** enhancement award to the class representative in a California wage-and-hour class action settlement]; *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving service awards in the amount of **$10,000.00** each from a $300,000.00 settlement fund in a wage/hour class action]; *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 ["the court finds Plaintiff's enhancement payments of **$15,000.00** each to be reasonable."], emphasis added; *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 [finding "requested payment of **$25,000** to each of the named Plaintiff is appropriate" in wage and hour settlement], emphasis added; *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** incentive award for each Class Representative" in wage an hour settlement], emphasis added; *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 ["Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of **$20,000** or more where, as here, the class representative has demonstrated a strong commitment to the class"], emphasis added.)

IX. <u>SUBMISSION TO THE LWDA</u>

The Settlement Agreement and this motion are concurrently being submitted to the LWDA in accordance with Labor Code section 2699, subdivision (l)(2). (Smith Decl., ¶ 86.) The proof of electronic submission is attached as **Exhibit C** to the Declaration of Kyle D. Smith.

X. <u>CONCLUSION</u>

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

Dated: July 3, 2026

MELMED LAW GROUP P.C.

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