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KYLE COLUMBUS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

KYLE COLUMBUS, an individual on behalf of himself, all others similarly situated, and all other aggrieved employees,

Plaintiff.

v.

TUSIMPLE, INC., a California Corporation, TUSIMPLE HOLDINGS, INC., a Delaware Corporation, CHENG LU, an individual, CREATEAI HOLDINGS, INC., a Delaware Corporation, CREATEAI, INC., a California Corporation, and DOES 2-20, inclusive,

Defendants.

CASE NO.: 37-2024-00005314-CU-OE-CTL

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Dep't: C-74
Judge: Hon. Blaine K. Bowman

Date: June 5, 2026
Time: 8:30 AM

Complaint Filed: February 5, 2024

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I. INTRODUCTION

Plaintiff Kyle Columbus seeks approval of a non-reversionary, direct-mail class and representative action settlement of wage-and-hour claims against Defendants TuSimple, Inc. ("TuSimple"); TuSimple Holdings, Inc.; ("TuSimple Holdings"); Cheng Lu ("Lu"); CreateAI Holdings, Inc. ("CreateAI Holdings"); and CreateAI, Inc. ("CreateAI") (collectively "Defendants"). Subject to Court approval, Plaintiff and Defendants (collectively referred to as the "Parties") have agreed to a class-wide, non-reversionary settlement of this Action on behalf of all persons who were (a) employed by Defendants in California at any point between January 1, 2023, through the date of preliminary approval; (b) eligible to participate in the bonus retention plan described in the 2023 Total Rewards letters issued to the Class; and (c) did not receive their full cash bonus for 2023; as outlined in the Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Agreement").[1] The Parties have reached the proposed settlement after an in-depth investigation and analysis into the facts and legal issues raised in this Action. At all times, the Parties' negotiations were adversarial, non-collusive, and at arm's length.

Plaintiffs now move for an order provisionally certifying a settlement class and granting preliminary approval of the Settlement. Plaintiff's Counsel submits that the proposed settlement is patently fair and reasonable for several reasons. This settlement provides meaningful monetary compensation to all class members, including those who already have received and cashed settlement checks through a separate settlement program.

Accordingly, Plaintiffs respectfully request that this Court (1) grant preliminary approval of the proposed settlement; (2) appoint Atticus Administration ("Atticus" or the "Settlement Administrator") as the Settlement Administrator; (3) provisionally certify the Settlement Class for settlement purposes only; (4) order the mailing of the proposed Notice of Proposed Class Action Settlement and Final Approval Hearing and the Class Member Information Sheets (collectively,

[1] The Settlement Agreement is attached to as Exhibit 1 to the declaration of Stacey Mouton that is filed and served concurrently herewith. This Motion incorporates by reference the definitions in the Settlement Agreement. To the extent the terms are defined in the Settlement Agreement, all defined terms contained herein shall have the same meaning as set forth in the Settlement Agreement.

the "Class Notice Packets") to the Settlement Class; (5) appoint Plaintiff as the Class Representative; (6) Stacey Mouton of Mouton Law as Class Counsel; and (7) schedule a final approval/fairness hearing.

II. <u>SUMMARY OF LITIGATION</u>

A. <u>Identity Of The Parties</u>

Plaintiff Kyle Columbus is a former employee of TuSimple, Inc., who served as a Senior Strategic Partnership Manager – OEM beginning February 16, 2021. TuSimple terminated his employment effective February 2, 2024, as part of the company's wind-down of U.S. operations. The Defendants are five related parties. TuSimple, Inc., is a California corporation headquartered in San Diego. TuSimple Holdings, Inc., is a Delaware corporation headquartered in San Diego and, Plaintiff alleges, the alter ego of TuSimple, Inc. CreateAI Holdings, Inc., is a Delaware corporation, and CreateAI, Inc., is a California corporation; both are headquartered in San Diego and are alleged to be alter egos of the other entity Defendants. Cheng Lu is the former President and Chief Executive Officer of TuSimple, Inc., current Chief Executive Officer of CreateAI, Inc., and is sued in that capacity—and, alternatively, in his individual capacity—under California Labor Code § 558.1.

B. <u>Brief Procedural History</u>

In or around June 2023, Defendants issued 2023 Total Rewards letters to several members of its workforce, including Plaintiff, establishing a Bonus Retention Program for that year. (SAC ¶¶ 16, 18.) Each letter promised the recipient a 2023 bonus consisting of a time-based component and an individual performance-based component, payable in two installments—the first in December 2023 and the second in March 2024. (*Id.* ¶ 18.) The letters further provided a pro-rata share of any promised payment in the event of restructuring. (*Id.*). In late 2023, TuSimple announced that it would wind down its U.S. operations, and on December 4, 2023, Plaintiff and other Bonus Retention Program participants received WARN notices informing them their employment would terminate in early 2024. (*Id.* ¶ 20.) TuSimple made the first installment payment, but then informed participants that "only the December installment (through the 15th) will be paid." (*Id.* ¶ 22; Columbus Decl., ¶ 4, Ex. C.)

Plaintiff subsequently commenced this Action on February 5, 2024, by filing his original Complaint in the Superior Court for the County of San Diego. On July 8, 2025, Plaintiff filed an amendment naming Doe 1 as CreateAI Holdings, Inc. On May 12, 2026, Plaintiff filed a Second Amended Complaint adding CreateAI, Inc., as a Defendant; the Second Amended Complaint is the Operative Complaint in the Action.

The Operative Complaint asserts nine causes of action: (1) failure to pay owed wages in violation of Labor Code § 201 et seq.; (2) unlawful recoupment and withholding of wages under Labor Code § 221 et seq.; (3) failure to provide accurate itemized wage statements under Labor Code § 226; (4) breach of contract; (5) promissory estoppel; (6) breach of the implied covenant of good faith and fair dealing; (7) misrepresentation; (8) unfair business practices under Business and Professions Code § 17200 et seq.; and (9) representative civil penalties under PAGA. (SAC at ¶¶ 36–95.)

Plaintiff also satisfied PAGA's pre-suit notice requirements. He submitted an initial notice on February 5, 2024, an amended notice on March 5, 2025, and a further amended notice on April 29, 2026—collectively, the "PAGA Notice." The LWDA did not provide notice within 65 days of any filing that it intended to investigate the alleged violations, and Plaintiff thus exhausted his administrative remedies.

C. <u>Settlement Efforts & Negotiations</u>

Before negotiating settlement, Plaintiff conducted both formal and informal discovery and obtained documents sufficient to evaluate the strengths and weaknesses of the claims and the appropriate value of the case. Mouton Decl., ¶ 14, Ex. 1, § 2.4. That investigation was sufficient to satisfy the criteria for court approval under *Dunk v. Ford Motor Co.* 48 Cal.App.4th 1794, 1801 (1996), and *Kullar v. Foot Locker Retail, Inc.* 168 Cal.App.4th 116, 129–130 (2008).

As an initial matter, that investigation surfaced a significant litigation-risk factor that informed the Parties' settlement discussions. In connection with the wind-down of Defendants'

U.S. operations, Defendants offered separation agreements to participants in the 2023 Bonus Retention Program. Each agreement contained a broad general release of "all claims" related to the employee's employment, expressly including claims for "unpaid bonuses or other compensation," claims under the California Labor Code, claims under the California Labor Code Private Attorneys General Act, claims under Business and Professions Code § 17200, and claims for breach of contract and breach of the implied covenant of good faith and fair dealing, together with a Civil Code § 1542 waiver. From the undersigned's review of records produced in discovery, all but two of the roughly 100 putative Class Members executed those agreements—Plaintiff and his co-worker Stephen Horton. (Mouton Decl., ¶ 15.)

Plaintiff nevertheless has substantial arguments that the separation-agreement releases would not bar recovery on the unpaid-bonus claims at issue in this Action, including under Labor Code § 206.5, which prohibits requiring the execution of a release of wages due as a condition of payment. The enforceability of those releases, however, would have presented a threshold dispute affecting recovery for most Class Members. That risk, together with the prospect that Defendants would wind up their U.S. operations and relocate before any judgment could be enforced, materially shaped the value of the case at mediation.

On July 3, 2025, the Parties participated in a full-day mediation before Jonathan A. Andrews of Signature Resolution. (Agreement ¶ 2.3.) Although the mediation did not result in an immediate resolution, Mr. Andrews subsequently submitted a mediator's proposal, which both Parties accepted. (*Id.*) Following acceptance of the mediator's proposal, the Parties negotiated and finalized the terms of the Class Action and PAGA Settlement Agreement, which was fully executed on May 7, 2026.

D. <u>Summary Of Settlement Terms</u>

1. Size Of Class & Aggrieved Employee Population

Based on a review of its records to date, Defendants estimate there are 108 putative Class Members and Aggrieved Employees. Mouton Decl., ¶ 10, Ex. 1, § 4.1.

2. **Monetary Terms**

The Parties have agreed to settle this case for a total of $600,000 (Gross Settlement Amount). (Mouton Decl., ¶ 11, Ex. 1, § 3.1.) With this Court's approval, the Administrator will make and deduct the following payments from the Gross Settlement Amount:

To Class Members:	Approximately **<u>$349,376.16</u>** is to be distributed to the Settlement Class Members as follows: *First,* the total amount of bonuses promised in each Class Member's Bonus Retention Program letter will be added together to determine the "Gross Bonus Sum;" *Second,* the bonuses paid to each Class Member pursuant to the Bonus Retention Program will be subtracted from the total bonus promised in that class member's Bonus Retention Program letter to determine the "Individual Net Bonus Owed;" *Third,* the Individual Net Bonus Owed will be divided by the Gross Bonus Sum to determine each Class Member's Pro-Rata Multiplier; *and* *Fourth,* each Class Member's Pro-Rata Multiplier will be multiplied by the Net Settlement Amount.
To Plaintiff:	**<u>$15,000</u>** will be allocated to Plaintiff Kyle Columbus as a service award. This amount is to fairly compensate him for his service to the class and the litigation over the last several years. *Id.*, § 3.2.1. An additional individual Severance Payment of **<u>$16,123.84</u>**, minus applicable withholdings—an amount Plaintiff contends he is owed pursuant to the terms of the Bonus Retention Program, which he asserts promised him a bonus "in addition to any other restructuring related programs []i.e., severance." *Id.*, § 3.2.1. This payment is necessary to place Plaintiff in parity with the other Class Members. As discussed above, all but two participants in the 2023 Bonus Retention Program—Plaintiff and Mr. Horton[2]—accepted separation agreements from Defendants in connection with the wind-down of U.S. operations, each of which included severance consideration roughly equivalent to four weeks of base pay. Plaintiff declined that severance to pursue the claims that benefit the Class. Without the individual Severance Payment, Plaintiff would be the only Bonus Retention Program participant to walk away from this litigation without the severance payment his colleagues received—a result that would penalize him for serving as the named Plaintiff and for preserving the claims that gave rise to this Settlement.

[2] Mr. Horton is also negotiating a separate severance package to be paid in addition to his Individual Class Payment. (Mouton Decl., ¶¶ 22).

To Class Counsel:	**<u>$200,000</u>** (one-third of Gross Settlement Amount) will be paid to Class Counsel. *Id.*, § 3.2.2. No more than **<u>$5,000</u>** will also be allocated to Class Counsel for expenses.[3] *Id.*
To The Administrator:	No more than **<u>$9,500</u>** will be paid to the settlement administrator, except for a showing of good cause and as approved by the Court. *Id.*, § 3.2.3
To the LWDA/Aggrieved Employees:	**<u>$5,000</u>** will be allocated for the settlement of PAGA claims, to be distributed as follows: $3,750 (*i.e.* 75% of the $5,000 amount allocated to settle PAGA claims) will be paid to the LWDA. *Id.*, § 3.2.5 $1,250 (*i.e.* 25% of the $5,000 amount allocated to settle PAGA claims) will be paid to the Aggrieved Employees pro-rata, based on the number of PAGA Pay Periods worked by each Aggrieved Employee. *Id.*, § 3.2.5

Settlement class members will have 90 days to cash their checks. *Id.*, § 4.4.1. The Settlement Administration will transmit the funds for any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date to the California Controller's Unclaimed Property Fund in the name of the Class Member; thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). *Id.*, § 4.4.3.

3. Scope Of Applicable Releases

All Participating Class Members will release Defendants from "all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint." *Id.*, § 5.2. The Class Period runs from January 1, 2023, through the date the Court Grants preliminary approval of this Settlement. *Id.*, § 1.13. However, the scope of that release is functionally narrower than the Class Period suggests. Each cause of action in the Operative Complaint arises from a single course of conduct: Defendants' issuance of the 2023 Bonus Plan on June 16, 2023, and their subsequent refusal to the entirety of the bonus promised therein. (Compl. ¶¶ 15–20.) As a practical matter, then, the only individuals with claims that "were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint" are those who received a 2023 Bonus Plan and were not paid the full amount promised.

[3] While the Agreement permits up to $20,000 in expenses, the undersigned's records indicate only $4,393.81 accrued thus far. She will thus limit her max allocation to $5,000.

Plaintiff will—on behalf of the State of California, the LWDA, and the Aggrieved Employees—release Defendants from "any and all claims for civil penalties that were alleged in the PAGA Notice for the duration of the PAGA Period." *Id.*, § 5.3. The PAGA Period runs from March 21, 2024, through the date the Court Grants preliminary approval of this Settlement. *Id.*, § 1.34. However, as with the Class Members, the universe of "Aggrieved Employees" whose PAGA claims are released is limited to those who received a 2023 Bonus Plan and were not paid the full amount promised.

Finally—in consideration of his Service Payment, Class Member Payment, Severance Payment, and the other terms and conditions of the Settlement—Plaintiff will also release Defendants from "any and all of his known and unknown claims." *Id.*, § 5.1. This release will include a waiver of provisions, rights, and benefits (if any) of California Civil Code section 1542. *Id.*, § 5.1.1.

4. Settlement Administration

The Parties have agreed, subject to Court approval, to appoint Atticus Administration as the Settlement Administrator. *Id.*, § 7.1; (Bridley Decl., ¶¶ 5–7). Pursuant to the terms of the Settlement Agreement, Atticus will be responsible for determining each Class Member's Individual Settlement Share according to the terms of the Settlement Agreement; preparing, printing, and mailing the Class Notice to all Class Members; promptly notifying Class Counsel and Defendants' counsel of any requests for exclusion or objections; preparing and distributing checks to Participating Class Members, the LWDA, and Aggrieved Employees in accordance with the terms of the Settlement Agreement; and providing necessary declarations and reports, along with other duties, as necessary to carry out the terms of the settlement. *Id*. at, §§ 7.1–7.8. Atticus has agreed to cap its fee at $9,500. *Id.*, § 3.2.3

5. Providing Class Notice

All Class Members will be mailed a Class Notice. *Id.*, § 7.4.2; Mouton Decl., ¶ 19, Ex. 2. Each includes information regarding the nature of the litigation; a summary of the terms of the Settlement Agreement; the definition of the Settlement Class; the estimated cost for administration of the settlement; information regarding the Settlement Payments to be paid from the Gross Settlement Amount; the Class Member's estimated Individual Settlement Share; the formula for calculating Individual Settlement Shares; the dates of the Class Period; instructions for requesting exclusion from or objecting to the settlement, as well as the deadlines by which Class Members must postmark such requests or objections; the date, time and location of the Final Approval/Fairness Hearing; and the claims to be released by Participating Class Members. Counsel for the Parties have agreed to the language of the Class Notice.

The Settlement Agreement provides for the Settlement Administrator to mail the Class Notice to all Class Members via regular First-Class U.S. Mail within 14 calendar days of receiving the Class Member Data from Defendant. Mouton Decl., ¶ 19, Ex. 1, § 7.4.2. For Class Notices that are returned as non-deliverable on or before the Opt-Out Period, the Settlement Administrator will take all reasonable steps, such as by performing skip-tracing and other reasonable searches, to determine the correct address. *Id.*, § 7.4.3.

Additionally, per the Settlement Agreement, the Administrator "will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment." *Id.*, § 7.8.1

6. **Exclusions, Objections, And Challenges**

Under the terms of the Settlement Agreement, Class Members will have the opportunity to exclude themselves from the settlement by timely submitting a valid Opt-Out Notice to the Settlement Administrator. *Id.*, § 7.5. The Opt-Out Notice must "reasonably communicate[] the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number." *Id.*, § 7.5.1. "To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline"—which is no later than "45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed)." *Id.*

Additionally, the Settlement Agreement permits Class Members who do not request exclusion from the settlement to object to the settlement by timely submitting a valid written Notice of Objection to the Settlement Administrator. *Id.*, § 7.7. "Participating Class Members may send written objections to the Administrator, by fax, email, or mail," provided they do so "not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed)." *Id.*, § 7.7.2. Alternatively, "Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing." *Id.*

Finally, the Agreement also permits Class Members to "challenge the payment calculated in the Class Notice." *Id.*, § 7.6. They may do so "by communicating" their challenge to "the Administrator via fax, email, or mail" within "45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed)." *Id.* The Administrator "must encourage the challenging Class Member to submit supporting documentation" and, absent such documentation, "is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data." *Id.* "The Administrator's determination of each Class Member's allocation shall be final and not appealable or otherwise susceptible to challenge." *Id*

III. ***DUNK/KULLAR* ANALYSIS**

This Court "has a fiduciary responsibility as guardians of the rights of the absentee class members" to ensure a settlement if fair, adequate, and reasonable. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129 (2008) (quotation omitted). And there is an initial presumption of fairness "where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).

However, even with that presumption, this Court cannot determine the adequacy of a settlement unless it is “provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” *Kullar*, 168 Cal. App. 4th, at 133; *see also Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal. App. 4th 399, 409 (2010) (explaining that, while a court does not need an “explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims” to determine adequacy, it does “require[] a record which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation’”) (citation omitted). Plaintiff thus provides the information below so this Court can fulfill its fiduciary responsibilities and evaluate whether the settlement is a reasonable compromise of disputed claims.

A. Summary Of The Case

Plaintiff’s claims all arise from a single course of conduct: Defendants’ issuance of the 2023 Bonus Retention Program in June 2023 and their subsequent refusal to pay the full amount of all installments promised in that Program. The Operative Complaint asserts nine causes of action, but each is grounded in one of three core theories of liability: (1) that the 2023 Bonus was an earned, non-discretionary wage that Defendants were obligated to pay; (2) that Defendants’ representations regarding the 2023 Bonus gave rise to enforceable contract and quasi-contract obligations; and (3) various derivative claims. Defendants deny each of these theories, as explored further below.

1. The 2023 Bonus as an Earned, Non-Discretionary Wage (First, Second, Ninth Causes of Action)

a. Plaintiff’s Position.

Plaintiff contends that the 2023 Bonus Retention Program created a binding obligation to pay the full bonus to each participant who satisfied the time-based and performance-based components. Each 2023 Total Rewards letter promised the recipient a bonus consisting of a time-based component and an individual performance-based component, payable in two installments.

(SAC ¶ 18.) Under both federal and California authority, those promises rendered the 2023 Bonus non-discretionary because, when "an employer announces to his employees in [one month] that he intends to pay them a bonus in [several months later], he has thereby abandoned his discretion regarding the fact of payment by promising a bonus to his employees." 29 C.F.R. § 778.211(b); *see also Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 863 (2021).

A non-discretionary bonus is a "wage" within the meaning of Labor Code § 200. Defendants' refusal to pay the full amount promised therefore violated Labor Code §§ 201–204, which require timely payment of all earned wages, and Labor Code § 221, which prohibits an employer from "withhold[ing] . . . a portion of the compensation offered, promised, or paid as offered or promised." *Prachasaisoradej v. Ralphs Grocery Co., Inc.*, 42 Cal. 4th 217, 228 (2007). Plaintiff further contends that even if continued employment through each date of payment had been a condition of payment (it was not), Defendants could not manufacture a forfeiture by terminating Class Members before that date. *See Hill v. Kaiser Aetna*, 130 Cal. App. 3d 188, 196 (1982); DLSE Enforcement Policies and Interpretations Manual § 35.5 (where employee is "discharged before completion of all of the terms of the bonus agreement, and there is not valid cause, based on conduct of the employee, for the discharge, the employee may be entitled to recover at least a pro-rata share of the promised bonus").

b. **Defendants' Response.**

Defendants deny all these allegations. Defendants contend that the 2023 Bonus was discretionary and that they retained the right to modify or terminate the Program at any time. Defendants further contend that the December 20, 2023, communication was a valid exercise of that discretion, that no enforceable promise to pay the second installment was made, and that the wage-claim causes of action accordingly fail as a matter of law. Defendants additionally argue that the broad general releases executed by nearly all putative Class Members in connection with their separation agreements bar recovery of the wage claims asserted in this Action, and that Plaintiff's reliance on Labor Code § 206.5 does not defeat those releases under the circumstances.

2. Contract and Quasi-Contract Theories (Fourth, Fifth, Sixth, Seventh Causes of Action)

a. Plaintiff's Position.

Plaintiff alternatively contends that the 2023 Total Rewards letters constituted enforceable unilateral contracts. Each letter contained a "clear and unambiguous promise" to pay a specified bonus payable over several installments, together with an express pro-ration provision applicable in the event of a "restructuring event." Plaintiff and the Class accepted that offer by continuing their employment and performing throughout 2023. *See Lucian v. All States Trucking Co.*, 116 Cal. App. 3d 972, 976 (1981) (bonus plans become binding unilateral contracts once the employee begins performance). Defendants' refusal to pay all installments was a material breach. Plaintiff and the Class also justifiably relied on those promises in continuing to work for Defendants despite contemporaneous reports of Defendants' financial and legal difficulties, giving rise to promissory estoppel liability. (SAC ¶¶ 63–66.) Plaintiff further alleges that Defendants made the promises knowing they would not be honored, supporting misrepresentation liability. (Id. ¶¶ 75–80.)

b. Defendants' Response.

Defendants contend that the 2023 Total Rewards letters did not create binding contracts but rather described a discretionary program subject to modification. Defendants dispute that the letters contained the definite terms required for a binding promise and contend that, even if any promise was made, it was conditioned on continued employment through the relevant payment date. Defendants further dispute that any misrepresentation occurred, contending that the company intended to pay all installments when the Total Rewards letters were issued and that the December 2023 decision reflected legitimate business judgment considering the company's deteriorating financial position. As above, Defendants also rely on the broad general releases secured from the substantial majority of Class Members as a complete defense.

3. **Derivative Claims (Third, Eighth Causes of Action)**

a. **Plaintiff's Position.**

Plaintiff's claims for inaccurate wage statements under Labor Code § 226 and for unfair business practices under Business and Professions Code § 17200 are derivative of the wage and contract claims above. The wage statements issued to Class Members did not reflect the unpaid bonus amounts and were therefore inaccurate. (SAC ¶¶ 54–55.) The same conduct constitutes an unlawful business practice under § 17200, entitling the Class to restitution and disgorgement.

b. **Defendants' Response.**

Defendants contend that, because the underlying wage and contract claims fail, the derivative claims fail as well. Defendants further contend that any wage statement violation was not "knowing and intentional" as required for § 226 penalties, that no injury has been alleged that would support § 17200 relief beyond what is already available through the wage claims, and that the broad general releases secured from the substantial majority of Class Members serve as a complete defense in any event.

B. <u>Summary Of Investigation And Discovery Conducted</u>

The Parties exchanged formal discovery sufficient to allow Class Counsel to evaluate the strengths and weaknesses of the Class's claims and the appropriate value of the Action. (Agreement ¶ 2.4.) Following the *Belaire-West* notice process, Defendants produced over 7,000 pages of documents, including the 2023 Total Rewards letters issued to each non-objecting putative Class Member, payroll records and wage statements reflecting the bonus amounts promised and paid, the separation agreements executed by participants in the Program, and the contemporaneous communications surrounding Defendants' December 2023 decision to discontinue further bonus payments. (Mouton Decl. ¶ 6.)

That investigation enabled Class Counsel to identify each non-objecting individual who received a 2023 Total Rewards letter, calculate the unpaid bonus owed to each, determine which Class Members had executed separation agreements containing broad general releases, and assess the strengths and weaknesses of Defendants' likely defenses. (*Id.*) The information obtained was sufficient to satisfy *Kullar*'s requirement that counsel possess "sufficient information to make an informed decision about settlement." 168 Cal. App. 4th at 130.

C. Summary Of Settlement Negotiations

The Settlement is the product of arm's-length negotiation between experienced counsel, conducted with the assistance of a neutral mediator. On July 3, 2025, the Parties participated in a full-day mediation before Jonathan A. Andrews of Signature Resolution. Mouton Decl., ¶ 9, Ex. 1, § 2.3. Although the mediation did not result in immediate resolution, Mr. Andrews subsequently issued a mediator's proposal, which both Parties accepted. (*Id.*) Following acceptance of the mediator's proposal, the Parties spent several months negotiating and finalizing the terms of the Class Action and PAGA Settlement Agreement, which was fully executed on May 7, 2026.

D. Summary Of The Risks, Expenses, Complexity, And Duration Of Further Litigation If The Settlement Is Not Approved—Including The Risks Of Achieving And Maintaining Class Action Status.

Although Plaintiff and Class Counsel remain confident in the merits of the Class's claims, continued litigation would present several substantial risks that materially shaped the value of the case at mediation.

1. **The Separation-Agreement Releases.**

The most significant litigation risk in this Action arises from the broad general releases executed by all but two of the participants in the 2023 Bonus Retention Program. As discussed above, each separation agreement contained a release of "all claims" arising out of employment. Plaintiff has substantial arguments that those releases do not bar recovery on the wage claims at issue—principally under Labor Code § 206.5, which prohibits requiring the execution of a release "of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made," and under the general principle that an employee cannot release claims for wages owed without full payment of those wages. Nevertheless, the enforceability of the releases would present a threshold dispute as to nearly the entire class. If Defendants prevailed on that defense, class-wide recovery would be drastically curtailed—reducing the Class effectively to Plaintiff and one other employee. Even a partial victory for Defendants on this issue (*e.g.*, enforcement of the release as to non-wage claims) would significantly diminish recovery. This risk weighs heavily in favor of the present Settlement, which secures recovery for *all* Class Members regardless of whether they signed a separation agreement.

2. **Enforcement Risk.**

Defendants have largely wound down the U.S. autonomous-trucking operations that gave rise to this Action and have repositioned themselves as an AI gaming technology company. That transformation presents real risk to any future judgment. Defendants' continuing assets, revenue streams, and operating priorities are tied to a different line of business; and there is no assurance that those assets would be available to satisfy a class-wide judgment after years of contested litigation. (Mouton Decl., ¶ 16.) The Settlement eliminates that uncertainty by securing a guaranteed, fully funded, non-reversionary recovery now—a substantial benefit when measured against the prospect of pursuing collection against a restructured enterprise.

3. **Class Certification Risk.**

The Court has not yet certified a class. Plaintiff is confident certification would be granted on a contested motion: the Class shares a uniform written document (the 2023 Total Rewards letter), a uniform corporate decision (the December 20, 2023 directive that only the December installment would be paid), and a uniform injury (non-payment of the promised second installment). Defendants, however, would likely argue that individualized issues predominate as to (i) the existence and terms of any binding promise to each Class Member, (ii) reliance for purposes of promissory estoppel and misrepresentation, and (iii) the validity and scope of the separation-agreement releases. Even though Plaintiff has strong responses, certification disputes are time-consuming, expensive, and inherently uncertain. A denial of certification—or decertification before or during trial—would substantially reduce the recovery available to absent Class Members.

4. **Merits and Damages Risk.**

Even if certified, Plaintiff would still have to prove liability and damages at trial. Defendants would press the defenses described above, including that the 2023 Bonus was discretionary, that the December 2023 decision was a legitimate exercise of discretion, and that continued employment through the date of each installment was an implied condition of payment. A jury could credit those defenses in whole or in part. Layered on top of those merits defenses is the threshold release defense: as discussed above, all but two Bonus Retention Program participants executed separation agreements containing broad general releases of "all claims" related to their employment. Although Plaintiff has substantial arguments that those releases do not bar recovery on the wage claims at issue—principally under Labor Code § 206.5—a contrary ruling on that threshold question would reduce class-wide recovery to a fraction of what the Settlement provides, leaving only Plaintiff and one other Class Member with viable claims to litigate to verdict.

5. **Expense and Duration.**

If the Settlement is not approved, the Parties would face contested class certification briefing, potentially a writ challenge, summary judgment practice, trial, and likely appeals. That process would take years and consume substantial resources that, given Defendants' current posture, may not be available at the end of the road. "[N]othing is assured when litigating against commercial giants with vast litigative resources." *Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 1140 (1990). "Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004). Taken together, these risks confirm that the present Settlement is a reasonable compromise that delivers prompt, certain, and substantial relief in lieu of the considerable uncertainty of continued litigation.

E. <u>The Consideration Received For The Class And Non-Class Claims Is Fair And Reasonable</u>

1. **Class Claims**

The Settlement provides a Gross Settlement Amount of $600,000, non-reversionary, of which $595,000 is allocated to the class component and $5,000 is allocated to PAGA penalties. Mouton Decl., ¶ 11, Ex. 1, §§ 1.22, 3.2.5. After Court-approved deductions for the Class Representative Service Payment ($15,000), Plaintiff's individual Severance Payment ($16,123.84), Class Counsel Fees (up to $200,000), Class Counsel Litigation Expenses (up to $5,000), and the Administrator's expenses (up to $9,500), the resulting Net Settlement Amount of approximately $349,376.16 will be distributed to Participating Class Members on a pro-rata basis tied to each Class Member's unpaid bonus amount. (*Id.* § 3.2.4.) This allocation methodology ensures that recovery tracks each Class Member's actual loss.

The reasonableness of that recovery is best assessed against the maximum theoretical exposure on the wage claims. Based on the records reviewed in discovery, Class Counsel estimates the maximum class-wide exposure on (a) the unpaid installments at approximately $2,300,000; (b) the waiting time penalties claim at roughly $1,750,000; and (c) the wage statement claim at $5,400. (Mouton Decl., ¶ 12.) The Gross Settlement Amount of $595,000 thus represents ~14.7% of the maximum theoretical exposure, and the Net Settlement Amount of approximately $349,376.16 represents approximately ~8.6%.

That recovery percentage is well within the range routinely approved by California courts in wage-and-hour class actions, particularly given the substantial threshold defense presented by the separation-agreement releases. *See, e.g.*, *Viceral v. Mistras Grp., Inc.*, 2016 U.S. Dist. LEXIS 140759, at *23-24 (N.D. Cal. Oct. 11, 2016) (finding a "91.2% discount on the verdict value of Plaintiffs' class claims is reasonable"); *Singh v. Roadrunner Intermodal Servs., LLC*, 2018 U.S. Dist. LEXIS 89308, at *21 (E.D. Cal. May 25, 2018) (approving settlement "for approximately twelve percent of the estimated maximum damages"). If those releases were enforced, recoverable class-wide damages would drop precipitously, as only Plaintiff and one other Class

Member would retain viable claims. Measured against that risk-adjusted range, the Settlement's per-Class-Member recovery is substantial: distributed across approximately 108 Class Members on a pro-rata basis, the average Individual Class Payment is approximately $ 4,480, with Class Members who were promised larger bonuses receiving proportionally more.

2. **PAGA Claims**

Valuing the potential range of PAGA penalties presents a different challenge from estimating the class claims. Labor Code § 2699 vests courts with discretion to "award a lesser amount than the maximum civil penalty amount" if it believes, based on the facts and circumstances, "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code § 2699, subd. (e)(2). California courts regularly exercise that discretion to reduce PAGA awards substantially. In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the trial court reduced the maximum PAGA penalty by 90% after a verdict for the plaintiff, citing the employer's good-faith compliance efforts. *Id.* at 517. The Court of Appeal affirmed that reduction. *Id.* at 539.

Here, the universe of PAGA penalties is narrow. The PAGA Period runs from March 21, 2024, through the date of preliminary approval. Mouton Decl., ¶ 9, Ex. 1, § 1.30. The universe of Aggrieved Employees is limited to those Class Members employed by Defendants in California during the PAGA Period (*id*. § 1.4), and the Labor Code violations alleged in the PAGA Notic all derive from the same single course of conduct concerning the unpaid 2023 Bonus. Class Counsel estimates the maximum theoretical PAGA exposure at approximately $35,000. Mouton Decl., ¶ 13. The Parties have allocated $5,000—or roughly .84% of the Gross Settlement—towards PAGA. Given the risks noted above, and the general policies behind PAGA, there is no reason to find that unreasonable.

Indeed, other courts have consistently found lower allocations reasonable. *See, e.g.*, *Smith v. Am. Greetings Corp.*, 2016 U.S. Dist. LEXIS 66247 (N.D. Cal. May 19, 2016) (granting final approval of class action settlement allocating $37,500 of $4 million settlement (*i.e.* .9%) to PAGA); *Willner v. Manpower Inc.,* 2015 U.S. Dist. LEXIS 80697 (N.D. Cal. June 20, 2015) (granting final approval of a class settlement allocating $65,655 of $8.75 million settlement (*i.e.* .75%) to PAGA); *Chu v. Wells Fargo Investments, LLC,* 2011 U.S. Dist. LEXIS 15821 (N.D. Cal. Feb. 15, 2011) (approving $10,000 PAGA allocation in $6.9 million settlement (*i.e.* .14%)). Courts have even held that no part of the settlement must necessarily be allocated and distributed to the LWDA. *See, e.g., Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming a settlement allocating $0 of $6.4 million settlement to PAGA). Accordingly, the proposed allocation strikes a balance between the interest of all the parties, including the LWDA and general public, by penalizing the employer and providing relief to the Settlement Class Members. As such, the proposed PAGA settlement is fair, adequate, and reasonable. Plaintiffs thus respectfully request that the Court approve the proposed LWDA payment.

IV. CLASS CERTIFICATION

"[T]wo requirements must be met in order to sustain any class action:" (1) "there must be an ascertainable class" and (2) "a well defined community of interest." *Dunk*, 48 Cal. App. 4th at 1806; *see also* Cal. R. Court., R. 3.769(d) (establishing trial courts are empowered to certify "a provisional settlement class after the preliminary settlement hearing"). While litigation and settlement classes must both meet these same requirements, there is "a lesser standard of scrutiny for settlement cases." *Id.*, 1807 n.19; *see also Glob. Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859 (2003) ("[I]t is well established that trial courts should use different standards to determine the propriety of a settlement class" and thus "a lesser standard of scrutiny is used for settlement cases").

A. The Class Is Sufficiently Numerous And Ascertainable

A "class [is] ascertainable when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary." *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 967 (2019). That standard is easily met here. The Proposed Class is "all individuals who (a) are or previously were employed by Defendants in California during the Class Period, (b) were eligible to participate in the Bonus Retention Program, and (c) did not receive their full cash bonus for

2023." Mouton Decl., ¶ 10, Ex. 1, § 4.1. Those people are easily identified—and, indeed, have already been identified—using Defendants' payroll records. *Id.*, ¶ 10. Based on a review of those records to date, Defendants estimate there are 108 Class Members. *Id.* The proposed class is thus not only easily ascertained; it is sufficiently numerous. *See* Cal. Code Civ. Proc. § 382 ("[O]ne or more may sue or defend for the benefit of all" where "the parties are numerous, and it is impracticable to bring them all before the court").

B. <u>There Is A Well-Defined Community Of Interest</u>

"The community of interest requirement involves three factors: '(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Noel*, 7 Cal. 5th at 968. A court evaluating predominance "must determine whether the elements necessary to establish liability . . . are susceptible of common proof." *Ayala v. Antelope Valley Newspapers, Inc.*, 59 Cal. 4th 522, 533 (2014). Here, the Parties have stipulated to resolving the asserted claims on a class-wide basis, and thus to the certification of a class under Code of Civil Procedure § 382, for purposes of this settlement. Mouton Decl., ¶ 9, Ex. 1, § 12.1. That alone satisfies the "predominant questions of law or fact" prong. *See Luckey v. Superior Court*, 228 Cal. App. 4th 81, 93 n.12 (2014) (noting "class certification may be resolved by stipulation of the named parties" provided it receives court approval). All that remains is determining whether the settlement is fair, adequate, and reasonable, which is determinable on a class-wide basis.

1. **Plaintiff's Claims Are Typical Of The Rest Of The Class.**

Plaintiff's claims are typical of those of the class, and their interests in this litigation are co-extensive with the interests of the class they seek to represent. Plaintiff has submitted sworn declarations herewith testifying that they share a community of interest with the class members, namely: that he worked for Defendants, has been injured in the same manner and by the same practices as the other class members, and seeks the same relief as the other class members. Columbus Decl., ¶ 6. As Plaintiffs and the proposed Class Members all suffered "a common alleged wrong" by Defendants, typicality is established. *Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 238–39.

2. Plaintiff Is An Adequate Class Representative.

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450 (1976). That standard is met here. Plaintiff is represented by Stacey Y. Mouton of Mouton Law. While, admittedly, this will be Ms. Mouton as class counsel, she is experienced and seasoned in matters concerning employment law. Mouton Decl., ¶¶ 2–3. She has also vigorously pursued this case, issuing discovery, engaging in extensive meet-and-confer efforts, personally reviewing hundreds of pages of documents, and attending class-wide mediation. *Id.*, ¶¶ 5–6. Further, there is no evidence of the type of serious misconduct necessary to deny certification on adequacy grounds. *Cf. Alhassid v. Bank of America, N.A.* 307 F.R.D. 684, 699 (S.D. Fla. 2015); *Newberry v. Cty. of San Bernardino*, 2016 U.S. Dist. LEXIS 204221, at *24 (C.D. Cal. Jan. 27, 2016). Nor is there any evidence of conflict between counsel and the putative class. Mouton Decl., ¶ 4.

As for the Plaintiff, there is no conflict between them and the rest of the class. Plaintiff's claims are in line with those of the Class, and Plaintiff has prosecuted this case with the interests of the Class in mind. Further, he has filed a sworn declaration herewith testifying that he understands the obligations of being adequate class representatives and outlining what they have done to advance this case for the benefit of the class members. Columbus Decl., ¶¶ 13–14.

V. CONCLUSION

For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed settlement; appoint Atticus Administration as the Settlement Administrator; authorize the mailing of the proposed Class Notices, provisionally certify the Settlement Class, appoint Plaintiff as the Class Representative; appoint Stacey Mouton of Mouton Law as Class Counsel; and schedule a final approval/fairness hearing.

DATED: May 13, 2026

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