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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

EDDIE LOPEZ, individually, ANTHONY GONZALEZ, individually and on behalf of all others similarly situated, the State of California, and other aggrieved persons, *Plaintiff*, v. BRIO WATER TECHNOLOGY, INC., a California corporation; and DOES 1 through 10, inclusive, *Defendants*.	Class Case No.: 24STCV05176 Assigned to Hon. William F. Highberger, Dept. 10 Complaint filed: February 29, 2024 FAC filed: June 28, 2024 SAC filed: April 9, 2026 Trial date: Not set **CLASS & REPRESENTATIVE ACTION** **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** PRELIMINARY APPROVAL HEARING Date: June 30, 2026 Time: 10:30 a.m. Dept: 10

TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 30, 2026 at 10:30 a.m., in Department 10 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq*., Plaintiffs Eddie Lopez and Anthony Gonzalez ("Plaintiffs" or "Named Plaintiffs") will move the Court for an Order granting preliminary approval of the proposed $410,000.00 (the "Gross Settlement Amount") Joint Stipulation of Class Action and PAGA Settlement and Release (the "Settlement" or "Settlement Agreement") between Plaintiffs and Defendant Brio Water Technology, Inc. ("Defendant," and together with Named Plaintiffs, the "Parties") to resolve the wage and hour class action and Private Attorneys General Act ("PAGA") (Cal. Lab. Code §§ 2699, *et seq.*) representative action between Plaintiffs, on behalf of the "Class Members" (defined as: "all persons who are employed or have been employed by Defendant in the State of California as a hourly-paid or non-exempt employee during the period of time beginning on February 29, 2020, and up to and including the date the Court grants preliminary approval of the Long Form Settlement Agreement, subject to paragraph 91[1] [of the Settlement Agreement]" (the "Class Period")), and Defendant (the "Action"). Plaintiffs further move the Court for an Order:

1. Granting preliminary approval of the Settlement Agreement;
2. Certifying the class for settlement purposes;
3. Approving the proposed class notice (the "Class Notice") and the plan for distribution of the Class Notice;
4. Appointing Plaintiffs Eddie Lopez and Anthony Gonzalez as Named Plaintiffs for settlement purposes;
5. Appointing Plaintiffs' Counsel, Benjamin H. Haber, Daniel J. Kramer, Chase Stern, Alan Wilcox, and Conor Gomez of Wilshire Law Firm, PLC ("WLF") as "Class Counsel" for settlement purposes;

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[1] The Parties anticipate providing a concrete date for the end of the class period and PAGA period before the hearing on the motion for preliminary approval by way of a revised proposed order on the motion if possible.

6. Appointing Apex Class Action Administration as the "Settlement Administrator"; and

7. Scheduling a final approval hearing.

The motion will be based upon this notice, the attached memorandum of points and authorities, the Declarations of Conor J.D. Gomez (the "Class Counsel Declaration"), Eddie Lopez and Anthony Gonzalez, filed concurrently herewith, the records and files in the Action, and any other further evidence or argument that the Court may properly receive at or before the hearing (the "Motion").

Respectfully submitted,

Dated: April 9, 2026

WILSHIRE LAW FIRM, PLC

By: ______________________________

Benjamin H. Haber
Daniel J. Kramer
Chase Stern
Alan Wilcox
Conor Gomez

Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Eddie Lopez and Anthony Gonzalez seek preliminary approval of a proposed Settlement Agreement entered into between Plaintiffs (on behalf of the Class) and Defendant. The Settlement Agreement will provide substantial monetary payments to approximately 250 Class Members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arms-length and were facilitated by an experienced class action mediator. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties reached the Settlement on February 25, 2026. Accordingly, Plaintiffs request that the Court preliminarily approve the proposed Settlement, certify the Class, approve the proposed Class Notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

Plaintiffs allege that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. (Class Counsel Decl. ¶ 3.) Specifically, Plaintiffs alleges that Defendant failed to pay for all hours worked, failed to provide employees with legally compliant meal and rest periods, failed to timely pay final wages, failed to provide accurate wage statements and Defendant failed to reimburse business expenses. (*Id*.)

Based on these allegations, on February 29, 2024, Plaintiff Lopez filed a putative wage and hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code § 226.7); (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Labor Code § 226); (7) failure to indemnify employees for expenditures (Labor Code § 2802); and (8) unfair business practices (Business and Professions Code §§

17200, *et seq.*). (Class Counsel Decl., at ¶ 4.) Plaintiff Lopez sent a notice to Defendant and the California Labor & Workforce Development Agency ("LWDA") alleging similar wage and hour violations pursuant to the PAGA on March 26, 2024. (*Id.*) On June 28, 2024, Plaintiff Lopez filed a First Amended Class and Representative Complaint against Defendant for civil penalties under PAGA. (*Id.*) On April 9, 2026, Plaintiff Lopez filed Second Amended Complaint adding Anthony Gonzalez as a named Plaintiff (the "Operative Complaint"). (*Id.*) Defendant denies the allegations brought by Plaintiffs against it.

B. <u>Discovery and Investigation</u>

Following the filing of the Action, the Parties exchanged documents and information before going to mediation. (Class Counsel Decl., at ¶ 5.) Defendant produced a sample of time and pay records for Class Members. Defendant also provided documents of its wage and hour policies and practices during the Class Period, and information regarding the total number of current and former employees in its informal discovery responses. (*Id.*)

After reviewing documents regarding Defendant's wage and hour policies and practices and analyzing Defendant's timekeeping and payroll records, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. (Class Counsel Decl., at ¶ 6.) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the Action. (*Id.*) Class Counsel reviewed these records and prepared a damage analysis prior to mediation. (*Id.*) This extensive investigation and discovery allowed Class Counsel to act intelligently and effectively in negotiating the Settlement.

C. <u>Settlement Negotiations</u>

On August 28, 2025, the Parties participated in private mediation with experienced class action mediator Jill R. Sperber, Esq. (Class Counsel Decl., at ¶ 7.) The mediation was conducted via Zoom. (*Id.*) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the Action, but the Parties were also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties agreed to settle the Action, the material terms of which are encompassed within the Settlement. (*Id.* at ¶ 8, Ex. 1, Settlement Agreement.)

Class Counsel has conducted a thorough investigation into the facts of this Action. (Class Counsel Decl., at ¶ 14.) Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, just, reasonable, and adequate and is in the best interests of the Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. (*Id.*)

Indeed, the Gross Settlement Amount represents approximately **80%** of the **realistic maximum recovery** of $511,330.54. (Class Counsel Decl., at ¶ 23.) Although Class Counsel estimated that Defendant's maximum potential liability for all claims was approximately $2.8 million, when the risk of prevailing at certification and trial are factored into the equation, Class Counsel believes that Defendant's realistic exposure was $511,330.54, meaning the Settlement achieves a significant recovery. (*Id.* at ¶¶ 14-27.) Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 23.) Indeed, because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.*)

D. <u>Key Terms of the Proposed Settlement</u>

The Settlement's key terms include:

1. <u>Class Period</u>: "means the period of time beginning on February 29, 2020, and up to and including the date the Court grants preliminary approval of the Long Form Settlement Agreement, subject to paragraph 91." (Settlement, § 6.)

2. <u>Settlement Class or Settlement Class Members:</u> "means all Class Member who do not submit a timely Request for Exclusion." (Settlement, § 10.)

3. <u>PAGA Period</u>: "means the period of time beginning on April 25, 2023, and up to and including the date the Court grants preliminary approval of this Settlement Agreement." (Settlement, § 7.)

4. PAGA Recipient or PAGA Recipients: "means all persons who are employed or have been employed by Defendant in the state of California as a hourly-paid or non-exempt employee during the PAGA Period." (Settlement, § 9.)

5. Gross Settlement Amount: "means the amount of Four Hundred Ten Thousand Dollars and Zero Cents ($410,000.00) that Defendant will pay if the Court approves this Settlement Agreement and the Effective Date occurs. The GSA will fund: (a) the Net Settlement Amount, (b) the PAGA Settlement Fund, the award of Attorney's Fees, (d) the award of Attorney's Costs, (e) the Representative Enhancement Awards, and (f) the Settlement Administration Costs." (Settlement, § 11.)

6. Uncashed Checks: "Any uncashed settlement checks after One Hundred and Eighty (180) days shall revert to the Office of the Controller's Unclaimed Property Fund in the name of the Settlement Class Member or PAGA Recipient who did not cash his/her individual settlement payment check. If the Court does not approve of such, the Parties will agree upon a *cy pres* recipient within the meaning of CCP §384." (Settlement, § 89.)

7. Release by Settlement Class Members: "Upon the Effective Date, Named Plaintiffs and all Settlement Class Members release the Released Parties from the Released Claims during the Class Period. Settlement Class Members will not sue or otherwise make a claim against any of the Released Parties that seeks recovery for any of the Released Claims during the Class Period. It is the intent of the Parties that the Settlement Approval Order entered by the Court shall have full res judicata effect and be final and binding upon Settlement Class Members regarding the Released Claims during the Class Period. It is the intent of the Parties that the Settlement Approval Order entered by the Court shall have full *res judicata* effect and be final and binding upon Settlement Class Members regarding the Released Claims during the Class Period." (Settlement, § 50.)

8. Release by PAGA Recipients: "Upon the Effective Date, Named Plaintiffs, on behalf of themselves, the State of California, and all PAGA Recipients and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns and any other representative, proxy, or agent thereof, releases the Released Parties from the Released PAGA Claims during the PAGA Period. PAGA Recipients will not sue or otherwise make a claim

against any of the Released Parties that seeks recovery for any of the Released Claims during the PAGA Period. It is the intent of the Parties that the Settlement Approval Order entered by the Court shall have full res judicata effect and be final and binding upon PAGA Recipients regarding the Released Claims during the PAGA Period. It is the intent of the Parties that the Settlement Approval Order entered by the Court shall have full *res judicata* effect and be final and binding upon Settlement Class Members regarding the Released Claims during the PAGA Period." (Settlement, § 49.)

9. No Reversion: "No portion of the GSA shall revert to Defendant." (Settlement, § 89.)

10. PAGA Settlement Fund: "means the amount of $41,000 which shall be deducted from the Gross Settlement Amount and allocated to penalties pursuant to the Private Attorneys General Act and which will be distributed as follows: 75% to the Labor and Workforce Development Agency ("LWDA") and 25% to PAGA Recipients. (Settlement, § 12.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Class Counsel Decl., ¶ 9.)

11. Net Settlement Amount: "means the Gross Settlement Amount minus (a) the Aggrieved Employee Settlement Fund, (b) the LWDA Payment, (c) the award of Attorney's Fees to Class Counsel, (d) the award of Attorney's Costs to Class Counsel, (e) the Representative Enhancement Awards to Named Plaintiffs, and (f) the Settlement Administration Costs." (Settlement, § 24.)

12. Calculation of Individual Class Payments: "All Settlement Class Members will receive an Individual Class Payment. The amount of each Settlement Class Members' Individual Class Payment will be calculated based on the total number of workweeks each Settlement Class Member worked as a non-exempt hourly employee in California during the Class Period. The Class Period Workweek Value will be calculated by the Settlement Administrator once the Net Settlement Fund is determined based on the amounts approved by the Court for the Attorney's Fees, Attorney's Costs, the Representative Enhancement Awards, and Settlement Administration Costs. To establish the Class Period Workweek Value, the Settlement Administrator will first

determine the Total Class Period Workweeks for all Settlement Class Members from the Class List. The Class Period Workweek Value will be the quotient of the Net Settlement Fund divided by the Total Class Period Workweeks. The Individual Class Payment to each Settlement Class Member will be determined by multiplying the Class Period Workweek Value and the Settlement Class Member's total number of workweeks worked as a non-exempt hourly employee in California during the Class Period." (Settlement, § 82.(a)-(e).)

13. Calculation of Individual PAGA Payments: "All PAGA Recipients will receive an Individual PAGA Payment. The amount of each PAGA Recipient's Individual PAGA Payment will be calculated based on the total number of pay periods each PAGA Recipient worked as a non-exempt hourly employee in California during the PAGA Period. To establish the PAGA Period Pay Period Value, the Settlement Administrator will first determine the Total PAGA Period Workweeks for all PAGA Recipients from the Class List. The PAGA Period Pay Period Value will be the quotient of the PAGA Settlement Fund divided by the Total PAGA Period Pay Period. The Individual PAGA Payment to each PAGA Recipient will be determined by multiplying the PAGA Period Pay Period Value and the PAGA Recipient's total number of pay periods worked as a non-exempt hourly employee in California during the PAGA Period. (Settlement, § 83.(a)-(e).)

14. Tax Allocation: As to the Individual Class Payments: "Each Individual Class Payment will be allocated as follows: Ten percent (10%) as wages (to be reported on an IRS Form W-2), and ninety percent (90%) as interest and penalties (to be reported on an IRS Form 1099). The employers share of payroll taxes will be paid by Defendant separately from and in addition to the Gross Settlement Amount." (Settlement, § 84.) As to the Individual PAGA Payments: "One hundred percent (100%) of each Individual PAGA Payment shall be allocated to miscellaneous income for which an IRS Form 1099 will issue, if required by law." (Settlement, § 85.)

15. Representative Enhancement Award: "means such compensation as the Court may award to Named Plaintiffs for their efforts during the Action, which shall not exceed $10,000.00, each. The Representative Enhancement Awards will be funded by the GSA and shall be in addition to any Individual Class Payment and any Individual PAGA Payment issued to Named Plaintiffs." (Settlement, § 15.)

16. Attorneys' Fees: "means such attorneys' fees as the Court may award to Class Counsel for the eservices they have rendered and will render to the Class Members and PAGA Recipients in the Action, and which shall not exceed $136,666.67." (Settlement, § 13.)

17. Attorneys' Costs: "means such litigation costs as the Court may award to Class Counsel for the costs they have incurred and will incur in the investigation, litigation, and resolution of the Action, and in administration of the Settlement, and which shall not exceed $25,000.00." (Settlement, § 14.)

18. Settlement Administrator: "means the third-party settlement administrator agreed upon by the Parties and appointed by the Court for the purposes of administering the Settlement." (Settlement, § 36.)

19. Settlement Administration Costs: "means the amount from the GSA which shall be allocated, subject to the Court's approval, to the Settlement Administrator for services rendered in administering the settlement of the Action, or $6,690.00. (Settlement, § 16.)

20. Notice of Proposed Class Action Settlement: The Class Notice sets forth in plain terms, a statement of the Action, the terms of the Settlement Agreement, the approximate amount of the Class Counsel Fees, Class Counsel Costs, and Class Representative Service Award being sought, and an explanation of how the Settlement allocations are calculated. (Settlement, Ex. A, Class Notice.) Class Members will be notified by first-class U.S. mail of the Settlement. (Settlement, § 63.) The Settlement Administrator will undertake its best efforts to ensure that the Class Notice is provided to the current addresses of Class Members, including conducting a national change of address search and re-mailing the Class Notice to updated addresses. (*Id.* at §§ 62-63.; Class Counsel Decl., Ex. 2 [Apex Class Action Administration Bid].)

III. DISCUSSION

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This Court has wide discretion to determine whether the proposed Settlement is fair. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.)

A. <u>A Presumption of Fairness Exists Over The Settlement</u>

Fairness is presumed when: (1) the settlement is reached through arm's-length bargaining; (2) investigation is 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* at p. 1800.)

1. The Settlement Is the Product of Arm's-Length Negotiations

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered. No evidence to the contrary has been offered here; thus, there is a presumption that the negotiations were conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.)

The Settlement was reached following extensive negotiations following one day of mediation with experienced employment mediator, Jill R. Sperber, Esq. (Class Counsel Decl., ¶ 7.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached an agreement. (*Id.* at ¶ 8.)

2. The Parties Conducted Sufficient Investigation

Prior to reaching this Settlement, Class Counsel conducted informal discovery concerning the claims set forth in the Action, such as a sample of Class Member timekeeping and payroll records, Defendant's policies and procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well as information regarding the number of putative Class Members and the mix of current versus former employees, the wage rates in effect, and the amount of meal and rest period premium wages paid to Class Members. (Class Counsel Decl., at ¶¶ 5-6.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the Action. (*Id.*) Thus, Plaintiff and Class Counsel were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

3. Class Counsel Has Extensive Experience in Class Action Litigation

The settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel have a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage and hour class action litigation. (Class Counsel Decl., at ¶¶ 37-50.) Although Plaintiff and Class Counsel were prepared to litigate the claims alleged in the Action, they believe the proposed Settlement is in the best interests of the Class.

4. The Percentage of Objectors Is Small

This factor cannot yet be determined unless and until the Court preliminarily approves the Motion and the Class Notice. This factor will be properly addressed in Class Counsel's Motion for Final Approval of Class Action Settlement, should this Court grant the instant Motion.

B. <u>The Settlement Is Fair, Just, Reasonable, and Adequate</u>

In considering whether a settlement is fair, just, reasonable, and adequate the trial court should consider relevant factors, which may include the strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, … and the reaction of the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 128.) Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.)

As discussed below, Class Counsel has provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed Settlement is fair, just, adequate, and reasonable.

1. Plaintiffs Strengths and Risks of Continued Litigation

Based on Plaintiffs' discovery and investigation, Class Counsel reached the conclusion that Defendant had a policy and practice of: requiring its employees to work "off-the-clock" prior to clocking in for the workday, during meal periods, and after clocking out for the workday, time which it did not pay for; not providing its employees with California compliant meal and rest periods, which it did not pay appropriate premiums for; and failing to reimburse its employees for business-related expenses. Defendant denies these claims. (Class Counsel Decl., ¶ 16.)

While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as to each cause of action. (Class Counsel Decl., ¶ 24.) Plaintiffs recognize that proving the amount of wages due to each class member would be an expensive, time-consuming, and uncertain proposition. (*Id*.) Although the Parties had engaged in significant amount of investigation, informal discovery and Class-wide data analysis, the Parties had not yet completed formal written discovery. (Class Counsel Decl., ¶ 25.) Plaintiffs intended to depose corporate officers and managers of Defendant. (*Id*.) Moreover, preparation for a class certification and a trial remained for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiffs and/or adverse summary judgment ruling. (*Id*.) Had the Court certified any claims, Defendant could not move to decertify the claims. (*Id*.) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id*.) This Settlement avoids the risks and the accompanying expense of further litigation. (*Id*.)

Balancing the strengths of Plaintiffs' claims against the risks of continued litigation of the Action, Plaintiff and Class Counsel determined that the proposed Settlement was in the best interests of the Class.

2. The Gross Settlement Amount Is Reasonable

In order to approve a class action settlement, the Court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. (*Kullar*, at 133.) The fact that a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require "an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims", but instead, only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."].)

A settlement is not judged against what might plaintiff recover had he prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 ["Compromise is inherent and necessary in the settlement process . . . even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation."].)

The proposed Gross Settlement Amount represents a substantial recovery when compared to Plaintiffs' reasonably forecasted recovery. (Class Counsel Decl. at ¶¶ 14-27.) Because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the Settlement is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed, each Class Member is eligible to receive an average net benefit of approximately $722.57.*** (*Id.* at ¶ 27.)

C. The Proposed Attorneys' Fees and Costs Are Reasonable

Under the Settlement, subject to the Court's approval, Defendant agrees to pay Class Counsel the Attorneys' Fees and Attorneys' Costs. These amounts are disclosed to all Class Members in the proposed Class Notice and are reasonable.

1. Class Counsel Request an Award of the Class Counsel Fees Based on the "Common Fund" Method

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in creating a common fund. The California Supreme Court held that "when a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34, quoting *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

Class Counsel seeks approval of the Class Counsel Fees based on the "percentage of recovery/common fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc*. (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*Id.* at p. 110.)

The California Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc*. (2016) 1 Cal.5th 480 that, "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Id*. at p. 503.) The court explained: "The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts." (*Id*. [internal citations omitted].)

2. The Requested Fee Award Is in Line with Typical Cases

According to a leading treatise on class actions, "[n]o general rule can be articulated on what is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (*See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03.) Attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million].)

Here, Class Counsel equal to 1/3 of the Gross Settlement Amount, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Accordingly, Plaintiffs respectfully requests that the Court approve the attorneys' fees as negotiated by the Parties and requested herein.

3. This Matter Involves A "Fee-Shifting" Provision of the Labor Code

Labor Code § 1194 (a) provides for the recovery of "minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Under this section, Plaintiff would be permitted to recover their actual attorneys' fees, even if those fees were larger than the total Class recovery at the conclusion of this Action should it proceed. The Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Class Counsel for their decision to assume risk by taking on this Action. In fact, prosecution of this Action involved significant financial risk for Class Counsel. (Class Counsel Decl., ¶¶ 35-36.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once Class Counsel undertook this Action on behalf of the Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class ahead of all other concerns.

4. The Experience, Reputation and Ability of Class Counsel Support the Requested Fee Award

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possess considerable expertise in litigating class actions. (Class Counsel Decl., ¶¶ 37-50.) Class Counsel has been involved as lead counsel or co-counsel in several class actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, Class Counsel's requested fee award is supported here.

Class Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. Based on these and other factors, Class Counsel has frequently received fee awards of this percentage from the gross recovery for the class. Therefore, the requested Class Counsel Fees are reasonable and fair.

D. <u>The PAGA Settlement Fund is Reasonable</u>

Where settlements negotiate a good faith amount for the PAGA Settlement Fund and "there is no indication that this amount was the result of self-interest at the expense of other" class members, such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9.) Courts have approved amounts for PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement. (*Id.* [approving a PAGA payment of 0.3%, or $1,500]; *see also Jack v. Hartford Fire Ins. Co.* (S.D. Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v. Fed. Express Corp*. (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement].)

Here, the LWDA Payment is larger than many other PAGA settlement amounts approved by the courts where seemingly nominal amounts were allocated for such claims. (*See, e.g., Zubia v. Shamrock Foods Co*. (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431, at *14 [approving a PAGA settlement of 0.1%]; *Hopson, supra*, 2008 WL 3385452, at *1 [approving a PAGA settlement of 0.3% or $1,500]; *Garcia v. Gordon Trucking, Inc*. (E.D. Cal. Oct. 31, 2012) No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA settlement of 0.27%].) The Parties negotiated the PAGA Settlement Fund, $41,000 which shall be deducted from the Gross Settlement Amount and allocated to penalties pursuant to the Private Attorneys General Act and which will be distributed as follows: 75% to the Labor and Workforce Development Agency ("LWDA") and 25% to PAGA Recipients. (Settlement, § 12.) The PAGA Settlement Fund equates to approximately 10% of the Gross Settlement Amount, which far exceeds amounts that are routinely approved. The Parties negotiated to allocate 10% of the Settlement to PAGA Settlement Fund in good faith and this amount is reasonable considering that the maximum PAGA penalties were estimated at $255,900.00 (which assumed $100 per pay period). (Class Counsel Decl., ¶ 22.)

E. <u>The Representative Enhancement Awards to Named Plaintiffs Are Reasonable</u>

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz, supra,* 86 Cal.App.4th at p. 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958-59.)

Service awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in California Labor Code § 90.5, which provides, "it is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions . . . ." Nonetheless, the California Supreme Court has noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

Under the Settlement Agreement, subject to the Court's approval, Defendant agreed to pay the Representative Enhancement Awards in the amount of $10,000.00 to each Plaintiff ($20,000.00

total). This amount is also in exchange for Plaintiffs' general release of all claims against Defendant. Courts routinely approve service awards of $10,000.00 for plaintiffs represented by counsel. (*See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) 2021 WL 3673845, *3 ["The Court concludes a $10,000 incentive award is appropriate."]; *Suarez v. Bank of America, National Association* (N.D. Cal., Jan. 11, 2024, No. 18-CV-01202-LB) 2024 WL 150721, at *4 ["The court approves awards of $10,000 for each class representative."].)

A **2006** study examining the average incentive award given to class action plaintiffs from **1993 to 2002** found that the "average award per class representative was $15,992 and the median award per class representative was $4,357." (Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev. 1303, 1308.) That same study found that named plaintiffs in employment discrimination class actions received an average award of $69,850 and a median award of $31,081, while named plaintiffs in other employment class actions received an average award of $12,121 and a median award of $13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in employment cases reflected the "courts' wish to make representative plaintiffs whole by compensating them for the high costs of their service to the class, including risks of stigmatization or retaliation on the job." (*Id.* at p. 1308.)

Class Counsel represents that Plaintiffs devoted a great deal of time and work assisting Class Counsel litigate the Action, and Plaintiff Lopez communicated with Class Counsel during the mediation and the preparation leading up to mediation. (*See generally* Plaintiffs' declarations; Class Counsel Decl., ¶¶ 28-32.) The Representative Enhancement Award is reasonable particularly in light of the substantial benefits Plaintiffs generated for all Class Members and as compared to similarly situated plaintiffs in other employment class and representative actions. (*Id.*)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

A. Legal Standard

The proposed Class is well suited for class certification. All of the claims derive from a core set of alleged violations of California's wage and hour laws and regulations. For the reasons set forth more fully below, for purposes of settlement only, the Class satisfies the prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." (Code Civ. Proc., § 382). There are three requirements to section 382: Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is ***superior*** to other methods. (*In re Tobacco II Cases*, (2009) 46 Cal.App.4th 298, 313.)

The California Supreme Court has looked to Federal Rule of Civil Procedure 23 to further explain that the community-of-interest requirement itself embodies three factors: "(1) predominant 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." (*Richmond v. Dart Indus., Inc*. (1981) 29 Cal. 3d 462, 470.)

California law and policy favor the fullest and most flexible use of the class action device. (*Id.* at pp. 469-73.) Indeed, "Courts long have acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system." (*Linder v. Thrifty Oil Co*. (2000) 23 Cal. 4th 429, 434.) Any doubt as to the appropriateness of class treatment should be resolved in favor of certification. (*Richmond*, *supra,* 29 Cal.3d at pp. 473-75.)

B. Plaintiffs Maintain That the Criteria for Class Certification Are Satisfied for Settlement Purposes.

1. The Class is Ascertainable and Numerous

A class is ascertainable if a plaintiffs supply a reasonable means of identifying potential class members and the class is defined in terms of objective characteristics and common facts sufficient to allow a class member to identify himself or herself as having a right to recover based on that description. (*ABM Industries Overtime Cases*, (2017) 19 Cal.App.5th 277, 303.) Courts also consider the size or numerosity of the class when determining whether or not it is ascertainable. (*Id.* at 302).

a) *Class Definition*

When defining a class, the terminology used must convey "sufficient meaning to enables persons hearing to determine whether they are members of the class" and if the proposed class definition offers an objective way to identify those who will be bound by the results of the litigation. (*Id.* at 302-303.) Courts have routinely certified classes defined using language to that here. (*Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 227; *see also Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1019, defining several subclasses such as employees "who worked one or more work periods in excess of three and a half hours without receiving a paid 10 minute break" and those "who worked 'off-the-clock' or without pay.")

Here, the Class definition (as stated above) is objective as it is limited in scope to a specific time frame (during the Class Period) and is limited to the potential class members' employment classification (hourly-paid or non-exempt employees). Further, there are common facts that exist here (such as those employees who worked without pay, were not given proper meal or rest periods, etc.) that are encapsulated by the causes of action alleged in the Action. This definition therefore provides sufficiently clear information to allow current and former employees to readily and reasonably determine whether or not they are a putative Class Member in this Action based upon this definition. (*ABM* at 304, stating "As long as the potential class members may be identified without unreasonable expense or time and given notice of the litigation, and the proposed class definition offers an objective means of identifying the persons who will be bound by the results of the litigation, the ascertainability requirement is met.") Thus, the proposed Class that Plaintiffs seek to represent is easily ascertainable and includes approximately former and current 250 employees of Defendant.

b) *Numerosity*

"The requirement of Code of Civil Procedure section 382 that there be 'many' parties to a class action suit is indefinite and has been construed liberally." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.) "Where a question is of common interest to 'many' persons, an action may be maintained as a class action even where the parties are numerous and it is in fact practicable to join them all." (*Id.*) "No set number is required as a matter of law for the maintenance of a class action." (*Id.*) "Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an action for removal of the trustees." (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) If even as little as 10 persons can constitute a class, then certainly the 250 Class Members here satisfy the numerosity requirement.

2. There is a Well-Defined Community of Interest in the Questions of Law and Fact

The community-of-interest requirement itself embodies three factors: "(1) predominant 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." (*Richmond* at 470.)

a) There are Many Common Issues of Law and Fact Which Predominate

The Court should grant conditional Class certification for settlement purposes here on the grounds that questions of law and fact common to all Class and subclass predominate over any individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp*. (1987) 191 Cal.App.3d 605.)

Here, the employment practices at issue are: whether Defendant had legally compliant policies and practices for all hours worked, including overtime wages; whether Defendant had legally compliant policies and practices to provide employees with meal periods; whether Defendant had legally compliant policies and practices authorizing and permitting its employees to take rest periods; whether Defendant reimbursed employees for business expenses; whether payment of wages during employed was timely; whether final payment of wages was untimely and excluded unpaid wages, including meal and rest period premium wages; and whether wage statements were consequently non-compliant. Plaintiffs contend that the factual and legal issues are the same for all the identified Class Members, including Plaintiffs. Further, all Class Members suffered from, and seek redress for, the same alleged injuries.

b) *Plaintiffs' Claims Are Typical of the Claims of the Class*

The typicality requirement does not focus on the individual characteristics or circumstances of the representative plaintiffs compared to those of the remainder of the class, but rather upon the typicality of the proposed representative's claims as they relate to the defendant's conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that common questions of law and fact predominate and that the class representative be similarly situated" vis-à-vis the class.].) A representative plaintiffs' claims are typical of the class if they arise from the same event, practice or course of conduct, and if the claims rest on the same legal theories. (*Id*.) That is precisely the case here. Plaintiffs are a former employee of Defendant; as such, Plaintiffs allege that Plaintiffs were subject to the same policies and practices as other similarly situated employees. Thus, Plaintiffs' claims arise out of the same practices of Defendant and rest on the same legal theories as those of the Class. Therefore, Plaintiffs can easily meet the typicality requirement in favor of certification.

c) *Plaintiffs and Class Counsel Meet the Adequacy Requirement*

The adequacy of representation requirements is met by fulfilling two conditions: first, a named plaintiffs must be represented by counsel qualified to conduct the pending litigation; second, a named plaintiffs' interests cannot be antagonistic to those of the class. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451.)

All of these requirements are met here for settlement purposes. Plaintiffs retained Class Counsel, whom have extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Class Counsel Decl., ¶¶ 37-50.) Class Counsel unquestionably is "qualified, experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) In addition, Plaintiffs have no conflicts, and Plaintiffs have, with Class Counsel, litigated this Action and diligently reviewed the Settlement terms, showing their dedication. Plaintiffs' willingness to serve as Named Plaintiffs demonstrates Plaintiffs' serious commitment to bringing about the best results possible for the Class, thereby demonstrating Plaintiffs' interests are aligned with those of the Class and no conflict exists. (*McGhee*, *supra,* 60 Cal.App.3d at p. 451.)

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

Finally, in making its Class certification decision, the Court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation. By consolidating many potential individual actions into a single proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-situated employees with small but nevertheless meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort and expense required to prosecute individual actions. (*Gentry, supra,* 42 Cal.4th at pp. 457-62; *Leyva v. Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are essentially non-existent.

V. <u>THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND</u>

A. <u>The Proposed Class Notice Plan Satisfies Due Process</u>

Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court, Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no statutory or due process requirement that all class members receive actual notice, but in this Action, the Class Notice will be disseminated through direct U.S. first class mail to the last known address for each Class Member. As the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the class members . . .." (*Id.* at p. 974.) In this Action the Class Notice will be provided by direct mailing, which is the best possible form of notice as it provides the most reasonable chance of reaching a substantial percentage of the Class.

B. <u>The Class Notice is Accurate and Informative</u>

The proposed Class Notice is informative. It informs the Class Members of the terms of the Settlement and their right to be excluded from the Settlement. If there are Class Members who wish to object to this proposed Settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing.

The Class Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the terms and conditions of the Settlement Agreement, in an informative and coherent manner. It makes clear that the Settlement Agreement does not constitute an admission of liability by the Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits of the Action. It also states that the final settlement approval decision has yet to be made. The Class Notice thus complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

C. <u>The Proposed Class Notice of Settlement Should Be Approved</u>

The proposed Class Notice, in the form attached to the Settlement Agreement, should be approved for dissemination to the Class. The Class Notice informs the Class of the terms of the Settlement and of their rights to be excluded from the Settlement. And if there are Class Members who wish to object to the Settlement, they will have the opportunity to file their objections and be heard at the final approval hearing. Accordingly, the proposed Class Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court and should be approved.

VI. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the proposed Settlement and set a final approval hearing on or after September 4, 2026.

Respectfully submitted,

Dated: April 9, 2026

WILSHIRE LAW FIRM, PLC

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