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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

DAVID HERNANDEZ, on behalf of himself and others similarly situated, Plaintiff, vs. MITCHELL LEWIS & STAVER CO.; and DOES 1 to 100, inclusive, Defendants.	Case No.: VCU307083 **CLASS ACTION** [*Assigned for all purposes to the Hon. Bret Hillman, Dept. 2*] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [*Filed concurrently with the Declaration of Eve Howe in Support; and [Proposed] Order*] Hearing Information: Date: December 16, 2025 Time: 8:30 a.m. Dept.: 2

TO THE HONORABLE COURT, ALL PARTIES, AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on December 16, 2025, at 8:30 a.m., or as soon thereafter as the matter can be heard in Department 2 of the Tulare County Superior Court, Visalia Courthouse, located at 221 S. Mooney Blvd., Visalia, CA 93291, Plaintiff David Hernandez ("Plaintiff") will move for an order granting preliminary approval of the proposed class action settlement on the terms and conditions set forth in the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement Agreement") between Plaintiff and Defendant Mitchell Lewis & Staver Co. ("Defendant"), a copy of which is attached to the Declaration of Eve Howe ("Howe Dec.") as **Exhibit "1."** Plaintiff will further move that the Order specifically encompass the following:

1. Certify a class for settlement purposes only;
2. Appoint the Plaintiff as Class Representative for settlement purposes only;
3. Appoint Joseph Lavi, Vincent C. Granberry, Win Pham, and Eve Howe of Lavi & Ebrahimian, LLP as Class Counsel;
4. Approve the Class Notice in the form attached as **Exhibit "A"** to the Settlement;
5. Set a Final Approval and Settlement Fairness Hearing on a date that is approximately 120 days after the Court grants preliminary approval of the Settlement.

Dated: November 3, 2025

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: *__/s/ Eve Howe__*
Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Win Pham, Esq.
Eve Howe, Esq.
Attorneys for Plaintiff David Hernandez, on behalf of himself and others similarly situated

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff David Hernandez ("Plaintiff") respectfully submits this memorandum of points and authorities in support of his motion for preliminary approval of the proposed class action settlement with Defendant Mitchell Lewis & Staver Co. ("Defendant") (Plaintiff and Defendant are collectively hereinafter referred to as "the Parties"). Plaintiff seeks entry of a proposed order granting preliminary approval of the class settlement which: (1) preliminarily approves the proposed settlement of the class action; (2) approves the form and method for providing notice and directs that notice be given to members of the settlement class; (3) preliminarily certifies the settlement class for settlement purpose; and (4) schedules a final approval hearing date.

As consideration for this Settlement, Defendant shall pay a sum equal to Two Hundred Eighty-Five Thousand Dollars and Zero Cents ($285,000.00) (the "Gross Settlement Amount") to fund the non-reversionary, no claims made settlement of this class action. (Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement Agreement")), § 1.22 attached as **Exhibit "1"** to Declaration of Eve Howe ("Howe Dec."). The Gross Settlement Amount is inclusive of Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses, Class Representative Service Payment, and the Administration Expenses as provided by this Settlement. (*Id.*)

II. SUMMARY OF LITIGATION

A. The Parties

The named Plaintiff worked as an hourly-paid, non-exempt employee for Defendant and seeks to represent approximately 52 persons employed by Defendant in California and classified as hourly, non-exempt employees who worked for Defendant during the Class Period (hereinafter "Class" or "Class Members"). (Howe Dec. ¶3.)

B. The Complaint and Allegations

This is a proposed employee wage and hour class action case. On March 18, 2024, Plaintiff filed a wage and hour class action complaint against Defendant in Tulare County Superior Court, alleging causes of action for (1) Failure to Pay Wages for All Hours Worked at Minimum Wage; (2)

Failure to Pay Overtime Wages for Daily Overtime Worked; (3) Failure to Authorize and Permit Meal Periods; (4) Failure to Authorize or Permit Rest Periods; (5) Failure to Indemnify Employees for Employment-Related Losses/Expenditures; (6) Failure to Provide Complete and Accurate Wage Statements; (7) Failure to Timely Pay All Earned Wages and Final Paychecks Due at Time of Separation of Employment; and (8) Unfair Business Practices (the "Class Action"). (Howe Dec. ¶4.)

Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice on March 18, 2024. Subsequently, on May 23, 2024, Plaintiff filed a representative action complaint against Defendant in Tulare County Superior Court, alleging a cause of action for civil penalties under PAGA (the "PAGA Action"). (Howe Dec. ¶5.)

On June 11, 2025, Plaintiff and Defendant participated in an all-day mediation presided over by David Phillips, Esq., which led to this Settlement to settle the Action. Following mediation, Plaintiff filed a First Amended Complaint in the Class Action on October 7, 2025, adding in Plaintiff's causes of action under PAGA as alleged in the PAGA Action (the "Operative Complaint"). The PAGA Action was subsequently dismissed on October 22, 2025. (Howe Dec. ¶6.)

Defendant has at all times denied the claims and maintained that it enforced its meal and rest break and payroll policies and procedures in compliance with California law; provided the class members their required meal and rest breaks; and paid all wages due to Plaintiff and the class members. Defendant strongly contends the case cannot be maintained as any kind of class or representative action, arguing that to the extent class members missed breaks or worked "off the clock," said non-compliant breaks and off-the-clock work was against company policy, and intermittent or infrequent evidence of such violations would be purely anecdotal. Thus, Defendant contends that individual issues predominate and class certification would be inappropriate. (Howe Dec. ¶7.)

C. The Exchange of Detailed Informal Discovery and Legal Analysis by the Parties' Counsel

As a critical part of settlement negotiations, the Parties engaged in extensive informal discovery exchange where Plaintiff's counsel reviewed and analyzed the following: time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiff to fully understand the nature and scope of the allegations in the Complaint, including approximately 94% of time and wage records which were analyzed by Plaintiff's counsel and Plaintiff's expert witness. (Howe Dec. ¶8.)

Counsel for the Parties have investigated the law as applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the potential damages claimed by Plaintiff, and have had multiple conference calls and email exchanges between Plaintiff's counsel and Defendant's counsel. (Howe Dec. ¶9.)

Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's compelling defenses thereto, and the difficulties in establishing damages for the Class Members. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate and reasonable settlement, and is in the best interests of the Class Members. (Howe Dec. ¶10.)

III. THE SETTLEMENT

The settlement contemplates (i) entry of an Order preliminarily approving the settlement and approving certification of a provisional settlement class, contingent upon final approval of the settlement; and (ii) entry of an Order granting final approval of the settlement and judgment.

Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the Lawsuit by agreement upon the terms and conditions and for the consideration set forth in the Settlement, a copy of which is attached to the Declaration of Eve Howe as **Exhibit "1**." A summary of the key terms of the Settlement is as follows:

1. "Class" means a person employed by Defendant in California and classified as an

hourly, non-exempt employee who worked for Defendant during the Class Period. (Settlement, §1.5.)

2. "Class Period" means the period from March 18, 2020, to September 8, 2025. (Settlement, §1.12.)

3. "Aggrieved Employee" means a person employed by Defendant in California and classified as an hourly, non-exempt employee who worked for Defendant during the PAGA Period. (Settlement, §1.4.)

4. "PAGA Period" means the period from March 18, 2023 to September 8, 2025. (Settlement, §1.33.)

5. "Gross Settlement Amount" means Two Hundred Eight Five Thousand Dollars and Zero Cents ($285,000.00), which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administration Expenses Payment. (Settlement, §1.22.)

6. Escalator Clause: Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 52 Class Members and 6,162 Total Workweeks during the Class Period and (2) there were 39 Aggrieved Employees who worked 1,056 PAGA Pay Periods during the PAGA Period. In the event that the total number of work weeks or number of the pay periods exceeds either of the stated numbers by more than 10%, the settlement amount will be increased proportionately based on the amount the actual number of work weeks or pay periods exceeds the stated numbers, whichever percentage increase is greater (e.g., if the actual number of work weeks exceeds 6,162 by 11% [6,840], then the settlement amount shall be increased by 1%). Defendant may elect to end the Class Period or PAGA Period prior to the end dates stated in Paragraphs 1.12 and 1.33 above in order to not exceed the 10% buffer, provided that Defendant may not set the end of the Class Period or PAGA Period to before the date of mediation. (Settlement, §8.)

7. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than Nine Thousand Dollars and Zero Cents ($9,000.00) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. (Settlement, §3.2.1.)

8. To Class Counsel: A Class Counsel Fees Payment of not more than One-Third of the Gross Settlement Amount, which is currently estimated to be Ninety-Five Thousand

Dollars and Zero Cents ($95,000.00), and a Class Counsel Litigation Expenses Payment of actual, reasonable costs. Defendant shall not oppose requests for Class Counsel Fees Payment of not more than One-Third of the Gross Settlement Amount and for a Class Counsel Litigation Expenses Payment which does not exceed Thirty Thousand Dollars and Zero Cents ($30,000.00). In the event that the Escalator Clause described in Paragraph 8 herein is triggered and the Gross Settlement Amount is increased, the amount of Class Counsel Fees Payment will increase in order to remain One-Third of the Gross Settlement Amount. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099-MISC Form(s). (Settlement, §3.2.2.)

9. "Administrator" means Apex Class Action Administration, the neutral entity the Parties have agreed to appoint to administer the Settlement. (Settlement, §1.2.)

10. <u>To the Administrator</u>: An Administration Expenses Payment not to exceed Ten Thousand Dollars and Zero Cents ($10,000.00) except for a showing of good cause and as approved by the Court. To the extent the Administrator's expenses are less or the Court approves payment less than $10,000.00, the Administrator will retain the remainder in the Net Settlement Amount. (Settlement, §3.2.3)

11. <u>To the LWDA and Aggrieved Employees</u>: PAGA Penalties in the amount of Ten Thousand Dollars and Zero Cents ($10,000.00) to be paid from the Gross Settlement Amount, with 75% ($7,500.00) allocated to the LWDA PAGA Payment and 25% ($2,500.00) allocated to the Individual PAGA Payments. (Settlement, §3.2.5)

12. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. (Settlement, §1.29.)

13. <u>To Each Participating Class Member</u>: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Settlement, §3.2.4)

14. <u>Tax Allocation of Individual Class Payments</u>: 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 40% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for penalties, and the

remaining 40% will be allocated to settlement of claims for interest (the "Non-Wage Portions"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. (Settlement §3.2.4.1)

15. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. (Settlement, §4.3.1)

16. Release by Participating Class Members: All Participating Class Members are deemed to release the Released Parties from all claims that were alleged, or reasonably could have been alleged, during the Class Period based on facts stated in the Operative Complaint and the Action. Except as set forth in Section 5.2 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability insurance, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (Settlement, §5.1.)

17. "Response Deadline" means 60 calendar days after the Administrator mails Notice to Class Members and Aggrieved Employees, and is the last date on which Class Members may (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail Objection(s) to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator will have an additional 14 calendar days beyond the Response Deadline. (Settlement, § 1.44.)

18. Request for Exclusion (Opt-Outs): Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates 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. To be valid, a Request for Exclusion must be timely faxed,

emailed, or postmarked by the Response Deadline. (Settlement, 7.5.1.)

19. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney at their own expense to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed). (Settlement, §7.7.2.)

IV. ANALYSIS

A. Class Action Settlements Are Subject To Review And Approval Under The California Rules of Court

Rule 3.769 of the California Rules of Court requires court approval for class action settlements. "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. Rules of Court, rule 3.769(g).) Courts act within their discretion in approving settlements which are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

B. This Settlement Is Fair, Reasonable, And Adequate

The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the *range of reasonableness* and, therefore, whether notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4th Ed.) §11:25.) Courts have broad powers to determine whether a proposed settlement is fair under the circumstances of the case. (*Wershba, supra,* 91 Cal.App.4th at 234-35; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) In evaluating preliminary approval, courts must consider several relevant factors, including "the strength of the Plaintiffs' 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, [and] the experience and views of counsel...." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th

1794, 1801.) "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." (*Wershba, supra,* 91 Cal.App.4th at 245.) Furthermore, courts must give "proper deference to the private consensual decision of the parties" because "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

A proposed class action settlement is presumed fair under the following circumstances: (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation, and (4) the percentage of objections is small. (*Dunk v. Ford Motor Co., supra,* 48 Cal.App.4th at 1802.) The Declaration of Class Counsel Eve Howe demonstrates that the proposed settlement was the product of serious, informed, and non-collusive negotiations and demonstrates counsel's extensive experience in both employment law as well as class action litigation.

1. The Settlement is the result of serious, informed, and non-collusive negotiations.

The Settlement was reached as a result of arm's-length negotiations facilitated by a highly regarded and experienced wage and hour mediator, David Phillips, Esq. and analysis by Plaintiff's counsel and expert witness. (Howe Dec. ¶¶8-20.) While Plaintiff believes in the merits of his case, he also recognizes the inherent risks of litigation and understands the benefit of the Class receiving settlement funds immediately as opposed to risking an unfavorable decision on class certification, summary judgment, at trial and/or the damages awarded, and/or on an appeal that can take several more years to litigate. (*Id.*)

2. The extent of the information provided through formal and informal discovery and the stage of the proceedings support the Settlement.

As described herein, the Parties investigated and evaluated the factual strengths and weaknesses of this case before reaching the proposed Settlement and engaged in sufficient investigation and discovery, as referenced above, to support the Settlement. (*Id.*) Accordingly, the proposed Settlement was reached following probative factual evaluation of Defendant's relevant policies and procedures and review, compilation, and analysis by Plaintiff's counsel and Plaintiff's counsel's expert of the following: (1) the total number of current and former putative class members and aggrieved employees who worked during the relevant time periods; (2) the total number of workweeks at issue during the relevant time periods; (3) the total number of pay periods at issue during the relevant time periods; (4) the average hourly rate for the putative class members; and (5) other relevant information. Further, the Plaintiff's counsel had multiple discussions, calls, and emails with the Defendant's counsel about the disputed factual and legal issues involved in this case, the risks attending further prosecution, including risks related to a contested motion for class certification, and the substantial benefits to be received pursuant to a compromise and settlement of the case as set forth in the Agreement. As such, settlement on the terms agreed to is in the best interest of Plaintiff and the settlement class. (*Id.*)

Thus, the Settlement came only after the case was fully investigated by counsel, as set forth above. This litigation, therefore, has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

3. Plaintiff's counsel are experienced in similar litigation.

Experienced counsel, operating at arms-length, have weighed the strengths of the case and examined all of the issues and risks of litigation and endorse the proposed settlement. The view of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp., supra,* 485 F.Supp. at 617.)

Both Plaintiff's and Defendant's counsel are experienced in employment, wage and hour and class action matters. Lavi & Ebrahimian LLP is a well-regarded firm that handles employment matters almost exclusively. (Howe Dec. ¶21.) Joseph Lavi of Lavi & Ebrahimian, LLP has been approved in class counsel in numerous actions and has been named a Southern California Super Lawyer the area of Plaintiff's employment litigation - class action from 2011-2025. (*Id*.) Defendant's counsel, Kathleen Hartman of Callahan, Thompson, Sherman & Caudill, LLP are extremely well-regarded and respected as employment defense counsel. Counsel on both sides share the view – endorsed by an experienced wage and hour class action mediator – that this is a fair and reasonable settlement in light of the complexities of the case, the state of the law and uncertainties of class certification and litigation, and the benefit the settlement confers on the class. (Howe Dec. ¶¶8-20.) Given the risks inherent in litigation, in class certification proceedings, and in the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of the class. (*Id.*)

4. The Settlement is fair and reasonable based on the strengths of Plaintiff's case and the risks and costs of further litigation

Plaintiff and his counsel have concluded it was reasonable to enter into the proposed Settlement. Defendant has vigorously contested and continues to contest liability for the claims asserted in the action. Although Defendant believes that class certification would be unlikely on such claims, it nevertheless agreed to attempt resolution of the case through extensive informal discovery and mediation to avoid the expense, distraction and uncertainty of protracted litigation.

There are significant legal uncertainties associated with cases such as this as they can be factually complex and require protracted litigation to resolve. A settlement is not judged solely against what might have been recovered had plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba,* 91 Cal.App.4th at 246 & 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, "[c]ompromise 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" (*Wershba*, 91 Cal.App.4th at 250.)

5. The Proposed Settlement is a Reasonable Compromise of Claims

To evaluate a settlement, the trial court must receive "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 v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) However, the record need not contain an explicit statement of the maximum theoretical recovery:

> "Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims—a number which appears nowhere in the record of this case. But *Kullar* does not, as Greenwell claims, require any such explicit statement of value; it requires a record which allows "an understanding of the amount that is in controversy and the realistic ranges of outcomes of the litigation."

(*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

Based on the information informally produced by Defendant, Defendant estimates there are approximately 52 Class Members who collectively worked a total of 6,162 Workweeks during the Class Period, and 39 Aggrieved Employees who worked a total of 1,056 PAGA Pay Periods during the PAGA Period. These workers received an average regular rate of pay of $24.13/hour. (Howe Dec. ¶11.) Based on Class Counsel's and Plaintiff's analysis of the data, the maximum exposure for Plaintiff's claims were as follows:

With regard to failure to pay wages for all hours worked at minimum wage and overtime, Plaintiff alleges that employees did not receive all minimum wages due to Defendant's policies, practices, and/or procedures including, but not limited to: requiring Plaintiff and similarly situated employees to set up an ADP account and complete an ADP account profile in order to use the ADP application to clock in and out for shifts and meal breaks. Additionally, Plaintiff's expert analyzed rounding violations by Defendant and found that Plaintiff and similarly situated employees were underpaid an average of approximately five minutes per shift due to unfavorable rounding. Finally, Plaintiff found that the average shift length was at least 8 hours, and so any unpaid time would have been paid at the overtime rate of pay. Assuming approximately six minutes per shift unpaid due to the above, Plaintiff estimated there were approximately **$111,516.80** in damages for unpaid minimum and overtime wages. [Calculated as follows: 6,162 workweeks x 5 shifts per workweek x 0.1 hours unpaid per shift x $24.13/hr avg. regular rate of pay x 1.5 overtime multiplier = $111,516.80]. (Howe Dec. ¶12.)

With regard to failure to authorize or permit meal periods, Plaintiff alleges that employees were not provided legally compliant meal periods due to Defendant's policies, practices, and/or procedures including, but not limited to, requiring employees to monitor a cell phone during meal periods. Further, Plaintiff's expert found that approximately 17.6% of examined shifts included a meal break violation. Assuming a provable violation for at least these shifts, Plaintiff estimated there was a maximum of approximately **$130,846.37** in damages for meal break violations. [Calculated as follows: 6,162 workweeks x 5 shifts per week x $24.13/hr average regular rate of pay x 0.176 = $130,846.37]. (Howe Dec. ¶13.)

With regard to failure to authorize or permit rest periods, Plaintiff alleges that employees were not provided legally compliant rest periods due to Defendant's policies, practices, and/or procedures including, but not limited to, requiring employees to monitor a cell phone during rest periods. However, due to the difficulty of proving such violations given the absence of clock data for rest breaks, as well as substantial factual disputes involved, Plaintiff assumed a minimal value to these claims relative to the other claims examined. (Howe Dec. ¶14.)

With regard to failure to indemnify employees for employment-related expenses, Plaintiff alleges that employees were not properly reimbursed for the data and cellular expenses that Defendant required Plaintiff and similarly situated employees to incur as a result of being required to use their cell phones to download and maintain the ADP application to clock in and out. Assuming a cost of approximately $5 per workweek, Plaintiff estimates there was a maximum of approximately **$30,810.00** in damages for indemnification violations. [Calculated as follows: 6,162 workweeks x $5 per workweek indemnification = $30,810.00]. (Howe Dec. ¶15.)

With regard to failure to provide complete and accurate wage statements in violation of Labor Code Section 226, with 52 employees, and a maximum penalty of $4,000 per employee, the total amount would be **$208,000.00**. [Calculated as follows: 52 employees X $4,000 maximum penalty = $208,000.00]. (Howe Dec. ¶16.)

With regard to failure to provide employees a continuation of their wages from the day their unpaid wages were due, until paid, up to a maximum of 30 days, with 28 former employees times an average hourly regular rate of pay of $24.13, Plaintiff estimates there was a maximum of approximately **$162,153.60** in damages. [Calculated as follows: 28 former employees X $24.13/hr average regular rate of pay X 8 hours per day X 30 days = $162,153.60]. (Howe Dec. ¶17.)

As such, Plaintiff's maximum potential recovery in this matter, excluding PAGA penalties, would amount to approximately $643,326.77. The settlement reached in this matter was $285,000.00 or approximately 44.3% of potential exposure. (Howe Dec. ¶18.)

Regarding the PAGA penalty exposure analysis, according to the data informally produced by Defendant in this case, during the relevant PAGA period (from March 8, 2023 to September 8, 2025) there are approximately 1,056 PAGA Pay Periods for approximately 39 aggrieved employees. (Howe Dec. ¶19.)

Regarding the PAGA penalty exposure analysis, as an initial matter, in wage and hour class action cases that settle, which are the overwhelming majority of such cases, very little of the total settlement is paid to PAGA penalties in order to maximize payments to class members. *See, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (no abuse of discretion to approve class action settlement allocating $0 to PAGA claims); *Ceja-Corona v. CVS Pharm., Inc*., 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 (E.D. Cal. Jan. 14, 2015) (preliminarily approving $10,000 in PAGA penalties out of a total settlement amount of $900,000), report and recommendation adopted, 2015 U.S. Dist. LEXIS 25730, 2015 WL 925598 (E.D. Cal. Mar. 3, 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (preliminarily approving $10,000 in PAGA penalties out of a total settlement amount of $1,250,000); *Franco v. Ruiz Food Prods*., 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 (E.D. Cal. Nov. 27, 2012) (granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $2,500,000); *Garcia v. Gordon Trucking, Inc*., 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012) (granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $3,700,000); *Chu v. Wells Fargo Invs., LLC*, 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1 al. Feb. 16, 2011) (granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $6,900,000). In these settlements, the parties generally maximize statutory penalties and minimize PAGA penalties. *See, e.g., Franco*, 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *2, *14 (approving a $10,000 PAGA award out of a total settlement amount of $2,500,000).

Plaintiff recognizes that PAGA claims generally settle for a mere fraction of multiple "stacked" PAGA penalties as is described above, but more typically resolve for a reasonable fraction of the unstacked PAGA exposure. Here, since the claims for minimum wages, overtime wages, meal periods, rest periods, indemnification, wage statements, and failure to timely pay all unpaid wages following separation of employment are all premised at least partially on the same factual basis (i.e. hourly non-exempt employees who were required to use their phones to clock in and out), stacking these penalties could arguably be overly punitive. Instead, seeking only penalties for minimum wages to account for the off the clock work results in far more reasonable and less punitive penalties that eliminate the "stacked" penalties for each Labor Code section violated as a result of the same conduct. As a result, Defendant could argue Plaintiff and the aggrieved employees may only be able to recover penalties under Plaintiff's minimum wage claim. Thus, if Defendant is correct on the "stacking" issue, the maximum theoretical penalties would be substantially less under Defendant's view of the law.

Second, Plaintiff's calculation also assumes that Plaintiff's PAGA claims could be tried in a manageable manner that comports with due process, which Defendant vigorously disputes.

Third, the Court has discretion under PAGA to reduce the amount of any penalties awarded for equitable reasons.

Fourth, Defendant would argue that PAGA penalties would be limited in any event. As discussed in detail above, Defendant denies any liability. Moreover, Defendant would argue that even if Plaintiff prevailed, the recoverable penalties under PAGA are minimal. Indeed, courts that have considered the issue have refused to "stack" PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty reduction to $5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809. Moreover, Defendant would argue that even if the Plaintiff was able to establish any violation of the Labor Code, the PAGA penalties assessed for these violations will be computed at the $50 rate, as opposed to the $100 per pay period rate at maximum, and there is a likelihood that a further reduction of the penalty to $5 per pay period as approved in *Carrington* would apply given Defendant's compliance with the Labor Code as discussed above.

Thus, Plaintiff anticipates that Defendant would argue that the Court should assess only the initial $50 violation rate for each pay period (i.e. at $50 per pay period x 1,056 PAGA Pay Periods at issue), therefore it is likely Defendant's maximum exposure is actually only $52,800.00. Defendant likely would also argue that this Court should use the *Carrington* valuation as a ceiling for assessing PAGA penalties (i.e., at $5 per pay period x 1,056 PAGA Pay Periods at issue) and that $5,280.00 was its true "worst case scenario" exposure.

In sum, the settlement in the instant case provides for a gross fund value of $285,000.00 with a PAGA allocation of $10,000 with 75% ($7,500.00) payable to the LWDA and 25% ($2,500.00) distributed to the Aggrieved Employees which falls squarely within the range of reasonableness for PAGA allocations outlined in the case law above.

Defendant has however maintained significant defenses to the above claims as follows: Regarding Plaintiff's claims for unpaid minimum and overtime wages, Defendant would likely argue that properly paid all minimum wages and overtime wages owed at the proper rate. With respect to Plaintiff's claims regarding meal and rest breaks, Defendant would likely contend that the Defendant afforded the opportunity to take required meal and rest breaks to Plaintiff and the putative class members and that any failure to take the required meal and rest breaks was due to the individual choices of employees. Defendant would likely argue that it had compliant meal and rest period policies and issued those to all Class Members. Additionally, Defendant could contend any alleged wage statement violations could not be shown to be "knowing and intentional" given its good-faith defenses, and that Plaintiff cannot show she or other employees "suffer[ed] injury," as required by Labor Code § 226(e). Defendant would likely argue that wage statements always accurately reflected hours worked and amounts paid to employees. Defendant could also argue that wage statement penalties are not recoverable at all for alleged meal and rest period violations, that no violations occurred, that Class Members suffered no "injury," and that any alleged violations were not "knowing and intentional." Based on the foregoing, Defendant could argue that Plaintiff and Class Members were paid out upon separation of employment for all wages owed, and that Defendant believed, in good faith, that it was properly paying all wages to separating employees. For these reasons, Defendant could conclude that Plaintiff would not likely prevail on their claims. (Howe Dec. ¶20.)

If Plaintiff continued litigating this matter, the class members could potentially receive **nothing** if the court agreed with Defendant's position or if Defendant was able to defeat certification based on the individual inquiries that would be required regarding Plaintiff's off the clock claims and meal and rest break claims. Furthermore, even if the Court agreed with Plaintiff, Plaintiff still had to prove Defendant faced exposure under Plaintiff's derivative claims and acted intentionally and *willfully* in order to receive the additional penalties under Labor Code Sections 203, 204, and 226. As such, Plaintiff's decision to settle this matter was in the best interest of the Class Members.

This is a fair and reasonable result. Other substantial benefits also include that it is a non-reversionary, non-claims made settlement, which distributes the Net Settlement Amount on a pro rata basis based on the number of Workweeks each Participating Class Member worked for Defendant during the Class Period. (Settlement, §3.2.4.) The 25% portion of the PAGA Penalties allocated to Aggrieved Employees will be distributed to each Aggrieved Employee who worked during the PAGA Period based on their individual number of Pay Periods during the PAGA Period. (Settlement, §3.2.5.1.) Settlement Class Members will have no less than one hundred eighty (180) days to cash their checks. Any funds not distributed after the expiration of the Individual Class Payment checks shall escheat to the California Controller's Unclaimed Property Fund to in the name of the Class Member. (Settlement, § 4.3.3.)

The Gross Settlement Amount is reasonable in light of the risks involved in this case—including the prospect of a potential adverse summary judgment ruling, the uncertainty of class certification, defenses to the case, potential appeal, and the elements of willfulness and/or injury required for certain penalties.

Plaintiff's Counsel is convinced that the proposed Settlement is in the best interest of the class based on the negotiations and a detailed knowledge of the issues present in this action. The affirmative defenses asserted by Defendant, the prospect of a potential adverse summary judgment ruling, preemption issues, class certification issues, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals were also carefully considered by Class Counsel in agreeing to the proposed Settlement. In light of the above, the proposed Settlement is well within the "ballpark" of reasonableness and should be granted preliminary approval.

V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES

The court may make an order approving certification of a provisional settlement class after the preliminary settlement hearing. (California Rules of Court, Rule 3.769(d).) For settlement purposes, courts use a less stringent standard for certification of classes. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) "The reason for this is that no trial is anticipated in a settlement class case, so the case management issues inherent in the ascertainable class determination need not be confronted." (*Id.;* see also *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming certification of class action for settlement purposes only].) Accordingly, this Court has discretion to certify Plaintiff's class for settlement purposes only.

The requirements under California Code of Civil Procedure Section 382 are all met for the purposes of certifying this case for settlement purposes:

- Numerosity: The settlement class consists of approximately 52 Class Members. Thus, the requirement of numerosity is easily met because joinder of 52 individual plaintiffs into a single case is otherwise impracticable in light of the circumstances of this case.

- Typicality: The claims of the class representative are typical of the claims of the class members as a whole. The named Plaintiff suffered the same alleged violations (e.g. failure to pay minimum and overtime wages, failure to pay meal and rest period premium wages for non-compliant meal and rest periods, failure to indemnify for business-related losses/expenditures, failure to provide complete and accurate wage statements, and failure to pay all wages due upon separation of employment) as the class as a whole did and, thus, the claims of the named Plaintiff fairly represent the claims of the class as a whole.

- Ascertainability: The proposed "Class" is easily ascertainable based on Defendant's own payroll records.

- Adequacy: Plaintiff has proven to be an adequate class representative. He has conducted himself diligently and responsibly in representing the class in this litigation, he understands his fiduciary obligations, and he has actively participated in the prosecution of this case. (Howe Dec. ¶25; See concurrently filed Declaration of David Hernandez.) Plaintiff has spent hours in meetings and conferences with counsel to get a better understanding of his work environment and requirements. Plaintiff continues to be actively engaged in the ongoing settlement negotiations following mediation that were ultimately required to finalize settlement. (*Id.*) Further, Plaintiff does not have any interest that is adverse to the interests of the other class members. (*Id.*) Moreover, proposed class counsel is adequate to represent the class for settlement purposes and has been appointed as class counsel before by this Court as well as both State and Federal Courts. (Howe Dec. ¶21.)

- Commonality: Many common issues of law and fact unite the class. The common questions of law and fact include, but are not limited to:

  1) Whether Defendant failed to pay minimum and overtime wages;
  2) Whether Defendant failed to provide the Class Members meal periods and premium wages for missed meal periods;
  3) Whether Defendant failed to provide the Class Members rest periods and premium wages for missed rest periods;
  4) Whether Defendant failed to indemnify Class Members for reimbursable business-related expenses;
  5) Whether Defendant failed to provide the Class Members complete and accurate wage statements;
  6) Whether Class Members are entitled to waiting time penalties for Defendant's failure to pay all wages upon separation of employment; and
  7) Whether Defendant violated Business and Professions Code section 17200.

- Superiority: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Joinder of all members of the proposed class is impractical. Class treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously for settlement purposes without the unnecessary duplication of effort and expense that numerous individual actions would engender.

VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE APPROVED

The proposed Class Notice in the form attached to the Settlement as **Exhibit A**, should be approved for dissemination to the Class Members. This document informs the Class of the terms of the Settlement, of their right to receive their proportional share of the Settlement and the manner in which to do so, of their right to request exclusion or to comment upon or object to the Settlement, and of their right to appear in person or by counsel at the final approval hearing and to be heard regarding approval of the Settlement. Adequate periods of time are provided by each of these procedures. Furthermore, the date and time of the Final Approval hearing will be inserted in the Notice will identify the information upon which the Class Member's share will be calculated as well as the estimated amount he or she can expect to receive if he or she chooses to participate in the settlement.

VII. THE PROPOSED ATTORNEY FEES AND COSTS ARE REASONABLE

Plaintiff's Counsel seeks attorneys' fees and costs award of one-third (1/3) of the Gross Settlement Amount or Ninety-Five Thousand Dollars and Zero Cents ($95,000.00) and Class Counsel's costs not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00) for the time spent litigating this matter as well as expenses incurred in the prosecution of the action thus far. Defendant will not object to an award of attorneys' fees and costs in these amounts. The requested fee falls well within the historical range of attorneys' fee awards under the common fund theory, which is generally from 20% to 50%. The requested fee is a fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits achieved by Plaintiff's counsel for the Class Members. Plaintiff's counsel diligently litigated and investigated this case.

California courts have recognized that an appropriate method for awarding attorney's fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. (*City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15

Cal. 3d 162, 168; *see also Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253, 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26.) The basis of the common fund is fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful. (*City & County of San Francisco v. Sweet*, *supra*, 12 Cal. 4th at 111.) In *Quinn*, 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." (*Quinn v. State*, *supra*, 15 Cal. 3d at 167.) Similarly, in *Sweet*, 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." (*City & County of San Francisco v. Sweet*, *supra*, 12 Cal. 4th at 110.)

Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. (*Lealao*, *supra*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D. Cal 1989)] 723 F. Supp. 1373, 1375].) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to determine the award of attorney's fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 [approving attorney's fee of 33%].)

Plaintiff's counsel's request for fees equal to one-third of the Gross Settlement Amount is within the range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig.*, *supra*, 723 F. Supp. at 1378.) According to Professor Newberg: "No general rule can be articulated on what is a reasonable percentage of a common fund…Usually 50 per cent of the fund is the upper limit on a reasonable fee award from a common fund, in order to assure that fees do not consume a disproportionate part of the recovery obtained for the class, though somewhat larger percentages are not unprecedented." (Newberg, *supra*, §14.6.)

Class Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with this class action on a pure contingency basis. The factual and legal issues posed in this case were highly disputed, and there were also risks as to whether or not a class would be certified, leaving a large number of putative class members unlikely to receive any recovery.

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

The Court should preliminarily approve the requested attorney's fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case, and the great risk undertaken by Class Counsel. The requested attorneys' fees and costs will not be opposed by Defendant and are well within established guidelines. The Class Members will also be notified of the requested amount and have an opportunity to object to the requested fees.

VIII. THE REQUESTED SERVICE AWARD IS REASONABLE

The named Plaintiff is entitled to a Service Payment for his service as class representative and the risks associated with his role as Class Representative and named Plaintiff in this action. Plaintiff understood and continues to understand his role as Class Representative, he has protected the interests of Class Members during the pending of this matter and will continue to do so. (Howe Dec. ¶25.) Plaintiff has spent hours in meetings and conferences with counsel to get a better understanding of his work environment. (*Id*.) Even after mediation, he continued to be engaged with counsel for the months of the continued negotiations that it took to ultimately finalize a settlement as well as understanding and discussing the settlement agreement with his attorneys. (*Id*.) Further, Plaintiff does not have any interest that is adverse to the interests of the other class members. (*Id*.) Defendant will not oppose the application for an enhancement of $9,000 to Plaintiff as the Class Representative from the Gross Settlement Amount for his services to the Class in this action. Class Counsel can attest that Plaintiff devoted a proportionate amount of time and work assisting counsel in the case, communicating with counsel frequently, providing documents and information regarding his employer and employment, which led to increase in the value and ultimate success of the Settlement. (*Id*.)

IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

The Parties propose the following schedule for the fairness hearing and final proceedings:

- Not later than fifteen (15) days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (Settlement, § 4.1.)
- Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send the Class Notice to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail. (Settlement, § 7.4.2.)
- If a Class Member wishes to submit a Request for Exclusion or Objection they may do so within sixty (60) days from the date the Class Notice is mailed to them (plus an additional 14 days for Class Members whose Class Notice is re-mailed) ("Response Deadline"). (Settlement, § 7.5.1.)
- The filing date for the Motion for Final Approval of the Class Action Settlement, and Motion for Final Approval of Plaintiff's Attorneys' Fees and Costs and Service Payment to the Class Representative will be determined by the Court.
- The Final Fairness and Approval Hearing date will be determined by Court. The parties request that the Final Fairness and Approval Hearing be set approximately one hundred twenty (120) days following the Court's granting of preliminary approval of the proposed Class Action Settlement.

X. CONCLUSION

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

Dated: November 3, 2025

Respectfully submitted,
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