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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DANIEL MCCABE, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

SUMMIT ELECTRICAL, INC., a California Corporation; and DOES 1 through 100,

Defendants.

Case No. 37-2024-00012319-CU-OE-CTL

[*Assigned to Hon. Gregory W. Pollack Department C-71*]

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT

Date:	October 24, 2025
Time:	9:30 a.m.
Dept.:	C-71
Action Filed:	March 15, 2024
Trial Date:	None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on October 24, 2025, at 9:30 a.m. in Department C-71 of the above-entitled Court, located at 330 W. Broadway, San Diego, CA 92101, Plaintiff Daniel McCabe, individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed Settlement of this lawsuit;
2. Pursuant to California Code of Civil Procedure § 382, provisional certification of the Settlement Class defined as follows:

> **Settlement Class** – all current and former non-exempt and/or hourly-paid employees who worked for Defendant Summit Electrical, Inc. in the State of California at any time from March 15, 2020 to June 26, 2025 ("Class Action Period").

3. Preliminary appointment of Plaintiff Daniel McCabe as Class Representative;
4. Preliminary appointment of Fletcher W. Schmidt, Paul K. Haines, Andrew J. Rowbotham, and Susan J. Perez of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award amounts for the Class Representative Service Payment, Settlement Administrator costs, payment to the California Labor and Workforce Development Agency for its 75% share of Private Attorneys General Act civil penalties, and attorneys' fees and costs to Class Counsel;
6. Appointment of Apex Class Action LLC ("Apex") as the third-party Settlement Administrator to mail notices; and
7. Approval of the proposed Notice of Class Action Settlement and Notice of Settlement Award (the "Settlement Notice") and entry of the Proposed Order instructing the Settlement Notice to be disseminated to the proposed Settlement Class as provided in the Settlement.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the declarations of Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham, Susan J. Perez, Plaintiff Daniel McCabe, and Sean Hartranft of Apex, together with the exhibits attached thereto, the pleadings and other papers filed in this action, and any further oral or documentary evidence or argument presented at the hearing.

Dated: October 2, 2025

Respectfully Submitted,
HAINES LAW GROUP, APC

By: ______________________________
Andrew J. Rowbotham
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Daniel McCabe ("Plaintiff") filed this putative class action (the "Action") on behalf of all current and former non-exempt and/or hourly-paid employees who worked for Defendant Summit Electrical, Inc. ("Defendant") in the State of California at any time from March 15, 2020 to June 26, 2025 ("Class Action Period"). Plaintiff and Defendant are referred to collectively as the "Parties."

Through this Motion, Plaintiff respectfully requests that this Court preliminarily approve the non-reversionary class and PAGA action settlement ("Settlement"),[1] which will fully resolve the Action. Based on data received from Defendant, there are approximately 188 potential Class Action Members who worked during the Class Action Period. Defendant will pay a Gross Settlement Amount ("GSA") of $500,000.00. After court-approved deductions for Plaintiff's Service Payment, Settlement Administrator costs, the Private Attorneys General Act ("PAGA") Payment, and attorneys' fees and costs to Class Counsel, the remaining Net Settlement Amount ("NSA") of approximately $251,583.33 will be distributed to the Class Action Members. The highest Individual Class Action Payment is estimated to be $3,008.06 and the average Individual Class Action Payment is estimated to be $1,338.21.

In addition to the NSA, all current and former non-exempt and/or hourly-paid employees who worked for Defendant in the State of California at any time from March 18, 2023 to June 26, 2025 ("PAGA Period"), (the "PAGA Members"), will receive $6,250.00 (25%) of the $25,000.00 set aside for PAGA civil penalties. According to Defendant's data, there are approximately 129 PAGA Members. The highest Individual PAGA Payment is estimated to be $84.98, and the average Individual PAGA Payment is estimated to be $48.45.

Class Action Members and PAGA Members do not need to file a claim form to receive their share of the Settlement. All Class Action Members who do not opt out will automatically

[1] The Class Action and PAGA Action Settlement Agreement ("Settlement Agreement") is attached to the Declaration of Andrew J. Rowbotham as **Exhibit 1** and the proposed Notice of Class Action Settlement and Notice of Settlement Award ("Settlement Notice") is attached as **Exhibit A** to the Settlement Agreement.

receive an Individual Class Action Payment. PAGA Members cannot opt out and will automatically receive their share of the Individual PAGA Payment. This represents a fair and reasonable result for Class Action Members, who will release only those claims asserted, or that could have been asserted, based on the facts alleged in the operative First Amended Complaint ("FAC"). Similarly, PAGA Members will release only PAGA claims alleged in Plaintiff's operative FAC or in Plaintiff's pre-filing letter dated March 18, 2024.[2]

This proposed Settlement is well within the range of possible approval in light of Defendant's precarious financial condition, the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the substantial monetary benefits to the Class Action Members. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

Defendant operates as a commercial electrical subcontractor in San Diego, California. *See* Declaration of Andrew J. Rowbotham ("Rowbotham Decl."), ¶ 13. Defendant employed Plaintiff as a non-exempt "Electrical Contractor" from approximately September 2021 to June 2023. *Id*.; *See* Declaration of Daniel McCabe ("McCabe Decl."), ¶ 2. Plaintiff's job duties included reviewing blueprint layouts of job sites, running electrical wires, hanging lights, working on roofs, and other electrical work. *Id*. Like all Class Action Members, Plaintiff was subject to Defendant's wage and hour policies and practices. *See* Rowbotham Decl., ¶ 13.

On March 15, 2024, Plaintiff filed the initial complaint in this action, alleging numerous violations of the Labor Code. *See* Rowbotham Decl., ¶ 14. On May 23, 2024, Plaintiff filed the operative FAC, adding a cause of action for civil penalties under PAGA based on the underlying Labor Code violations alleged in the initial complaint and Plaintiff's March 18, 2024 letter to the LWDA. *Id*.

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[2] Plaintiff's pre-filing letter to the California Labor and Workforce Development Agency ("LWDA") is attached to the Declaration of Andrew J. Rowbotham as **Exhibit 2**. Concurrently with the filing of this Motion, Plaintiff also provided notice to the LWDA of the Settlement along with the approval paperwork. The LWDA submission confirmation is attached to the Declaration of Andrew J. Rowbotham as **Exhibit 3**.

On April 1, 2025, the Parties participated in a mediation session with mediator Abe Melamed, Esq. *See* Rowbotham Decl., ¶ 15. In connection with mediation, Defendant provided Plaintiff with an approximate 25% sample of handwritten timekeeping and payroll records for employees who worked during the Class Action Period. *Id*. Defendant also provided classwide data points and the employee handbook in effect during the Class Action Period. *Id*. Plaintiff's counsel then analyzed these records to construct a comprehensive damages model to calculate the likely exposure that Defendant faced on each claim. *Id*.

During mediation, the Parties exchanged divergent views on Defendant's liability, exposure valuations, legal positions, financial condition, and the likelihood of class certification. *See* Rowbotham Decl., ¶ 16. The Parties did not reach a settlement at the conclusion of the mediation. *Id*. However, with Mr. Melamed's assistance, the Parties continued settlement discussions. *Id*. Defendant also produced confidential financial records to support its assertions regarding its financial condition. *Id*. After completing the review, Mr. Melamed made a mediator's proposal, which the Parties accepted. The proposal accounted for Defendant's financial ability to pay and the necessity of a payment plan to ensure Defendant could meet its obligations throughout the payment timeline. That proposal was memorialized in the long-form Settlement Agreement now before this Court for preliminary approval. *Id.*

A. <u>PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES</u>

1. <u>Unpaid Wages – Timekeeping and Off-the-Clock Violations</u>

Plaintiff asserts that Defendant maintained unlawful timekeeping practices that failed to compensate Plaintiff and the Class Action Members their earned wages. *See* Rowbotham Decl., ¶ 17. First, Plaintiff alleges Defendant maintained strict overtime policies that did not permit employees to report time in excess of 8 hours per workday or 40 hours per workweek. *Id*. Plaintiff further alleges Defendant required employees to arrive at jobsites about ten minutes before their scheduled shift to prepare their work area, and to remain at least ten minutes after their scheduled shift to clean their work area, thereby failing to pay employees for time they were subject to Defendant's control. *Id*. Second, Plaintiff alleges that Defendant's supervisors frequently interrupted Plaintiff and other Class Action Members during unpaid meal periods with work-related issues, which triggers liability for unpaid minimum and overtime wages in addition to meal period violations. *Id.*; *see Kaanaana v. Barrett Business Services, Inc.* (2018) 29 Cal.App.5th 778, 808 (holding that working through a purported meal period entitles employees minimum wages and meal period premiums).

In response, Defendant maintains its timekeeping policies and practices comply with California law and that it properly compensates Class Action Members for all hours worked. *See* Rowbotham Decl., ¶ 18. Defendant denies requiring employees to work outside of scheduled shift times or during meal periods. *Id.* In fact, Defendant's written handbook policies prohibit employees from working outside of their scheduled shift hours. *Id.* Finally, Defendant contends this claim is not suitable for class treatment because it requires individualized inquiries into whether any employee was required to work off the clock, and the amount of time spent off the clock on any given day. *Id.* Defendant argues this is especially difficult since employees reported to different worksites and off-the-clock time is inherently unrecorded, resulting in an unmanageable series of mini-trials. *Id.*

2. <u>Meal Period Violations</u>

Plaintiff asserts that Defendant is also liable for meal period premium wages due to its failure to provide uninterrupted, 30-minute meal periods commencing before the end of the fifth hour of work and second meal periods on shifts over 10.0 hours. *See* Rowbotham Decl., ¶ 19; *see also Kaanaana, supra,* 29 Cal.App.5th at 799. Specifically, Plaintiff asserts that Defendant maintained facially unlawful meal period policies that failed to state the timing of meal periods. *Id.* Moreover, Plaintiff alleges Defendant required employees to record purported meal periods at exactly the fifth hour of work even if no meal period was actually provided. *Id.* Plaintiff further alleges that even when Defendant's records reflect accurate meal periods, Defendant failed to provide timely meal periods whenever they began at exactly the fifth hour of work, because employees were required to report to jobsites at least ten minutes early to prepare their work area. *Id.* Lastly, Plaintiff claims Defendant's supervisors frequently interrupted meal periods to require employees to unload material deliveries at jobsites, thereby failing to provide uninterrupted 30-minute meal periods. *Id.*

Defendant argues it maintained lawful meal period policies and practices throughout the Class Action Period, that it provided meal periods consistent with those policies, and that it is only required to "provide" the opportunity to take meal periods, not "ensure" they are taken. *See* Rowbotham Decl., ¶ 20; *see Brinker Restaurant Corp. v. Superior Court* (2012) 54 Cal.4th 1004, 1038 (rejecting "ensure" standard and holding employers only have to "provide" employees the opportunity to take meal periods). Specifically, Defendant asserts that even if its written meal period policy was not explicit as to the timing of meal periods, employees were verbally notified that meal periods would be provided before the end of the fifth hour of work and before the tenth hour on shifts in excess of 10.0 hours. *See* Rowbotham Decl., ¶ 20. Moreover, Defendant maintains that its time records show substantial compliance with timely meal periods. *Id*. Defendant further maintains that any meal period violations reflected in timekeeping records were the result of employee choice, not Defendant's policies, thereby precluding liability. *Id*. Defendant also contends that employees validly waived second meal periods on shifts over 10 hours. *Id*. Defendant argues individualized inquiries will be required to determine why meal periods were late, short, or missed, whether a valid waiver existed, and whether a premium was paid on each shift, thereby precluding class certification of this claim. *Id*.

3. <u>Rest Period Violations</u>

Plaintiff alleges that Defendant failed to authorize and permit all Class Action Members to take all lawful rest periods to which they were entitled. *See* Rowbotham Decl., ¶ 21. Specifically, Plaintiff asserts that Defendant maintained a practice of allowing only a single 20-minute rest period during the workday, regardless of shift length, thereby foregoing the "preferred" rest period schedule in violation of California law. *Id*.; *see Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1036 (holding that employers must make a good faith effort to implement the "preferred" rest period schedule – rest breaks before and after the meal period – and may only deviate when practical considerations render the preferred scheduled infeasible).

Defendant asserts it does not maintain a written rest period policy or practice requiring employees to take only a single 20-minute rest period per shift, that employees were free to take rest periods at the time of their choosing, and that this claim will fail on the merits. *See*

Rowbotham Decl., ¶ 22. Defendant also asserts that this claim is unmanageable and not suited for class certification because it requires individualized inquiries into whether each employee was authorized and permitted to take a lawful rest period and on which days. *Id.* Defendant argues Plaintiff cannot substantiate this claim with common documentary evidence, since rest periods are not required to be recorded, resulting in an unmanageable series of mini-trials. *Id*.

4. <u>Regular Rate Miscalculation – Overtime and Sick Pay Wages</u>

Plaintiff asserts that Defendant paid Class Action Members non-discretionary semi-annual bonuses in June and December as an incentive, but failed to include the value of these bonuses when calculating the employees' regular rates of pay for overtime and sick pay. *See* Rowbotham Decl., ¶ 23; *see* Labor Code § 510(a).

Defendant contends that this additional compensation was discretionary. *See* Rowbotham Decl., ¶ 24. Defendant asserts that this claim is unmanageable because it requires individualized inquiries into each bonus payment to determine how the bonus was earned, whether each employee met the terms, whether Defendant communicated the criteria to employees, and whether any underpayment of overtime or sick pay resulted. *Id.* Defendant further argues these inquiries will result in an unmanageable series of mini-trials. *Id.* Additionally, even if sick pay was underpaid, Defendant argues that Labor Code § 246(l)(1) does not provide a standalone cause of action. *Id.*

5. <u>Failure to Reimburse Necessary Business Expenses</u>

Plaintiff alleges that Defendant required Class Action Members to use their personal cellular phones to communicate with supervisors, coworkers, and clients for work-related purposes, but failed to reimburse them for this necessary business expense. *See* Rowbotham Decl., ¶ 25; *see* Labor Code § 2802; *see also Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144 (holding that an employer must reimburse a reasonable portion of an employee's cell phone bill when its use is necessary for the job).

In response, Defendant argues it provided walkie-talkies to employees for communications during the workday, limiting any need to use personal cellular phones. *See* Rowbotham Decl., ¶ 26. Defendant contends that any personal cellular phone use was a result of employee choice. *Id.* Defendant also maintains that this claim is not suitable for class certification because individual issues would predominate in determining which, if any, employees used their personal cellular phones instead of the walkie-talkies provided by Defendant, resulting in an unmanageable series of mini-trials. *Id.*

6. <u>Wage Statement Penalties, Waiting Time Penalties, and PAGA Penalties</u>

As a result of these alleged substantive violations, Plaintiff contends that Defendant is liable for derivative wage statement penalties, waiting time penalties, and civil penalties under PAGA. *See* Rowbotham Decl., ¶ 27.

Defendant argues that the alleged wage statement violations were not "knowing and intentional," and that Plaintiff cannot show he "suffer[ed] injury," as required by Labor Code § 226(e) for imposition of penalties. *See* Rowbotham Decl., ¶ 28; *see Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, 1201. Defendant further contends that it possesses strong good-faith defenses to Plaintiff's underlying claims, thereby precluding recovery of waiting time penalties, which are available only for the "willful" failure to pay wages. *See* 8 Cal. Code Regs. § 13520. Defendant also maintains that, given its good-faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if Defendant were found liable for Plaintiff's underlying claims. *See* Rowbotham Decl., ¶ 28.

III. <u>THE PROPOSED SETTLEMENT</u>

A. <u>ESSENTIAL TERMS OF THE SETTLEMENT</u>

If the Court preliminarily approves the Settlement, Defendant will pay a Gross Settlement Amount of $500,000.00. *See* Settlement §§ 1.9, 3.1. The Settlement is non-reversionary, and Class Action Members will automatically receive their Individual Class Action Payments, and PAGA Members will automatically receive their Individual PAGA Payments, without a claim form. *Id.*, § 3.1.

Defendant will fund the Gross Settlement Amount in three equal installments of $166,666.67, over three years from the date of the Court's judgment granting final approval of the Settlement. *See* Settlement §§ 3.1, 4.3. Defendant will fund the first installment within 12 months of the Court's judgment granting final approval, and each subsequent installment will be paid within 12 months of the prior payment.[3] *Id.*

The monetary terms of the Settlement are further broken down as follows:

Gross Settlement Amount:	**$500,000.00**
Minus attorneys' fees (one-third):	$166,666.67
Minus attorneys' costs (up to):	$40,000.00
Minus Class Representative Service Payment:	$10,000.00
Minus PAGA Settlement Amount:	$25,000.00
Minus Settlement Administrator costs:	$6,750.00
Net Settlement Amount:	**$251,583.33**

1. <u>The Settlement Provides for Reasonable Monetary Payments</u>

After deducting court-approved attorneys' fees and costs, the Class Representative Service Payment, settlement administration costs, and the PAGA Settlement Amount, the remaining NSA of approximately $251,583.33 will be distributed to the Class Action Members. *See* Settlement §§ 1.15, 3.2.1-3.2.3, 3.2.5. 10% of each Individual Class Action Payment will be classified as wages and 90% will be classified as interest and penalties. *Id.*, § 3.2.4.2. 100% of payments to PAGA Members for PAGA civil penalties will be classified as penalties. *Id.*, § 3.2.5.2.

Defendant's records indicate there are approximately 188 Class Action Members who worked during the Class Action Period. *See* Rowbotham Decl., ¶ 29. Based on the NSA allocations, Class Action Members will receive, on average, $1,338.21. *Id.* Class Action Members will receive a Settlement Notice providing an opportunity to opt out, dispute, or object to the Settlement, with at least 60 days to review the Notice without delaying approval. *See* Settlement § 1.35, Exhibit A. Individuals who do not opt out of the Settlement will be bound by its terms and will release all claims that were asserted or could have been asserted based on the facts alleged in the Action or Plaintiff's letter to the LWDA. *Id.*, §§ 5.2-5.3.

2. <u>Attorneys' Fees, Costs, and Class Representative Service Payment</u>

As part of the Settlement, Plaintiff will apply for a service payment of $10,000.00 at the

[3] The Settlement permits payment to Class Counsel after each installment, with Court approval, before the final installment is made. *See* Settlement § 3.1. Class Counsel elects to be paid after the third installment, at the same time as the Individual Class Action Payments and Individual PAGA Payments to Class Action Members and PAGA Members.

time of final approval for his service to the Settlement Class and his general release of all claims (known or unknown) against Defendant. *See* Settlement §§ 3.2.1, 5.1-5.1.1; *see In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94("[I]ncentive awards…are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action"). Plaintiff's requested service payment recognizes the significant benefits conferred on the Class Action Members due to the time and effort he expended on behalf of the Settlement Class. Specifically, Plaintiff helped procure the Settlement by searching for and providing documents to his attorneys, discussing factual information regarding the claims, assisting counsel in preparing for mediation, making himself available the entire day of mediation to answer questions posed by the mediator, discussing the status of the case and the settlement agreement with his attorneys, and otherwise moving the case toward resolution. *See* McCabe Decl., ¶ 6; *see* Rowbotham Decl., ¶ 30. Additionally, Plaintiff undertook significant risks by agreeing to serve as the named plaintiff (as potential employers can now search his name and see that he previously sued an employer) and by agreeing to a general release of all claims subject to a waiver of California Civil Code § 1542. *See* Rowbotham Decl., ¶ 30.

Class Counsel will also apply for an attorneys' fee award of $166,666.67 (one-third of the GSA) and up to $40,000.00 in verified costs. *See* Settlement, § 3.2.2. Plaintiff submits that the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel incurred substantial attorneys' fees by conducting pre-filing investigation, analyzing Plaintiff's claims, performing legal research, reviewing documents and data produced by Defendant, building a damages model, preparing for and attending mediation, negotiating and drafting the long-form Settlement Agreement, preparing this motion for preliminary approval, and otherwise litigating the case.[4] *See* Rowbotham Decl., ¶ 31. Class Counsel will also expend future time attending the hearing on

[4] Class Counsel utilized the expert services of Dr. J. Michael DuMond, Ph.D., of Berkeley Research Group and his staff to perform an exposure analysis based on Defendant's documents produced for mediation. Class Counsel is submitting a copy of Dr. DuMond's invoices in support of this motion. Rowbotham Decl., ¶ 32, **Exhibit 4**.

this Motion, overseeing the Notice process, drafting the final approval motion and supporting documents, and attending the final approval hearing, among other tasks. *Id*.

Both California and federal courts have recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. *See Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506 ("the percentage of fund method survives in California class action cases…"). Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 *Newberg on Class Actions* § 14.6 (4th Ed. 2013) ("No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.").

Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement (one-third) in light of the substantial risks and the significant work undertaken, the extremely positive results obtained for the class, and the efficiency with which the Parties conducted the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at final approval of the Settlement.

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions the settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337; *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product of fraud or collusion between the negotiating parties. *See e.g.*, *Hanlon*, *supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arm's length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

1. Standard for Preliminary Approval

To make a fairness determination, the Court should consider several factors, including "the strength of 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 factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224. As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

a. Strength of Plaintiff's Case

Class Counsel carefully vetted the claims, reviewed a significant number of handwritten timekeeping and payroll records and relevant policy documents, and analyzed that data to create a damages model for Defendant's liability. *See* Rowbotham Decl., ¶¶ 15, 17-29, 33. While Plaintiff continues to believe his claims are meritorious, he acknowledges that there were substantial risks and uncertainties associated with obtaining class certification and prevailing at trial, especially considering Defendant's precarious financial condition. *Id*. As explained in Section II, Defendant raised numerous defenses on both the merits and certification. Although Plaintiff was prepared to litigate these claims through trial, success was not guaranteed. This factor therefore supports preliminary approval.

b. Risk, Expense, Complexity, and Duration of Further Litigation

This Settlement was reached after a significant informal exchange of classwide timekeeping and payroll records and other relevant information for mediation purposes. *See* Rowbotham Decl., ¶ 33. Absent settlement, the Parties would need to spend substantial time and resources to engage in formal written and deposition discovery and prepare the case for class certification, summary judgment or adjudication, and ultimately trial.

c. <u>Risk of Maintaining Class Action Status</u>

Prior to reaching the Settlement, Plaintiff had not yet filed his motion for class certification. Given Defendant's arguments and defenses, there was a legitimate risk that the Court could deny certification of one or more of Plaintiff's claims, preventing the matter from proceeding on a classwide basis. Thus, this factor supports preliminary approval of the Settlement.

d. <u>Amount Offered in Settlement Given Realistic Value of Claims</u>

This proposed Settlement provides a fair and reasonable monetary recovery for the Class Action Members in the face of disputed claims. After analyzing the data provided by Defendant before mediation, Plaintiff prepared a classwide exposure analysis and forecasted the Settlement Class's expected recovery for each claim as follows:

<u>Unpaid Wages - Pre and Post Shift / Meal Periods:</u> **$71,267**

Plaintiff's data analysis shows that Class Action Members worked a combined 22,486 workweeks during the Class Action Period. *See* Rowbotham Decl., ¶ 34. Plaintiff estimates that Class Action Members spent about one hour per workweek (12 minutes per workday) performing off-the-clock work. *Id*. Because most shifts were scheduled and paid at exactly 8 hours, Plaintiff calculated exposure at the average overtime rate of $50.71, based on an average hourly rate of $33.81. *Id*. Using these figures, Plaintiff calculated Defendant's maximum potential exposure at approximately $1,140,265 (1 hour per workweek x 22,486 workweeks x $50.71 overtime rate). *Id*.

Defendant disputes liability, maintains that it paid for all time worked, and argues the claim is unmanageable because it requires individualized inquiries into whether and how much off-the-clock work occurred. *See* Rowbotham Decl., ¶ 35. Plaintiff therefore discounted the maximum exposure by 75% for the risk of non-certification, and by an additional 75% for risk of losing on the merits and overexposure in Plaintiff's data analysis, to arrive at a reasonable exposure of $71,267. *Id*.

<u>Meal Period Violations</u>: **$121,165**

Plaintiff's data analysis shows that Class Action Members worked a total of 112,430 shifts in excess of 5.0 hours during the Class Action Period. *See* Rowbotham Decl., ¶ 36. Plaintiff's data further shows that 51% these shifts contained an unlawful first or second meal period, whether late, short, or missed. *Id*. Accordingly, Plaintiff calculated Defendant's maximum exposure for this claim at $1,938,642 (112,430 shifts x 51% violation rate x $33.81 average rate).

Defendant asserts, however, that Plaintiff's damages calculations are overstated and that the meal period claim is not suitable for class certification because individual inquiries would be required to assess whether each employee was provided a timely meal period, resulting in an unmanageable series of mini-trials. *See* Rowbotham Decl., ¶ 37. Given these defenses, Plaintiff discounted the maximum exposure by 75% for the risk of non-certification, and by an additional 75% for risk of losing on the merits, to arrive at a reasonable exposure of $121,165. *Id*.

<u>Rest Period Violations</u>: **$475,157**

Plaintiff asserts that Class Action Members were not authorized and permitted to take lawful rest periods at least once per workday because Defendant's policy allowed only one 20-minute rest period. *See* Rowbotham Decl., ¶ 38. Based on this theory, Plaintiff calculated Defendant's maximum potential exposure at $3,801,258 (22,486 workweeks x 5 rest period premiums x $33.81 average rate).

However, Defendant argues it authorized and permitted rest periods in accordance with California law. *See* Rowbotham Decl., ¶ 39. Defendant also asserts that this claim is unmanageable and not suitable for class certification because it requires individualized inquiries into whether each employee was authorized and permitted to take a lawful rest period and on which days. *Id.* Defendant further argues that rest periods are not recorded, resulting in an unmanageable series of mini-trials. *Id*. Given these defenses, Plaintiff discounted the maximum exposure by 50% for the risk of non-certification, and 75% risk of losing on the merits to arrive at an estimated exposure of $475,157. *Id*.

<u>Regular Rate Miscalculation – Overtime and Sick Pay Wages</u>: **$5,917**

Plaintiff's expert determined the Class Action Members were underpaid an aggregate amount of $10,519 in overtime and sick pay wages due to Defendant's failure to include the value of these bonuses in the regular rate of pay. *See* Rowbotham Decl., ¶ 40.

Defendant asserts that each of the bonuses at issue was non-discretionary and that this claim is unmanageable because it requires individualized inquiries into each specific bonus to determine whether it was in fact non-discretionary, resulting in a series of mini-trials. *See* Rowbotham Decl., ¶ 41. Given these potential defenses, Plaintiff discounted the maximum exposure by 25% for the risk of non-certification and 25% for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of $5,917. *Id*.

<u>Failure to Reimburse Violations</u>: **$9,730**

Plaintiff also asserts the Class Action Members were required to use their personal cellular phones for work purposes and that $10 per month represents a reasonable percentage of an employee's cell phone bill. *See* Rowbotham Decl., ¶ 42. Therefore, Plaintiff calculated Defendant's maximum potential exposure on this claim at $51,895 (22,486 workweeks ÷ 4.333 weeks per month x $10 monthly expense). *Id*.

Defendant argues it provided walkie talkies, thus employees were never required to use their own cellular phone or work purposes. *See* Rowbotham Decl., ¶ 43. Defendant further maintains that this claim is not suitable for class certification because individual issues would predominate in determining which employees used their personal phones, resulting in an unmanageable series of mini-trials. *Id*. Therefore, Plaintiff discounted the maximum potential exposure by 75% for the risk of non-certification and 25% for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of $9,730. *Id*.

<u>Wage Statement Violations</u>: **$47,000**

Based on the data provided by Defendant for mediation, 188 employees received 8,679 wage statements during the 1-year time period associated with wage statement penalties. *See* Rowbotham Decl., ¶ 44. Plaintiff therefore calculated Defendant's maximum wage statement exposure at $752,000 (188 employees x $4,000 maximum penalty per employee). *Id*.

Defendant contends that employees cannot show they "suffer[ed] injury" as required by Labor Code § 226(e). *See* Rowbotham Decl., ¶ 45. Considering this defense and the difficulty of proving that violations were "knowing and intentional," Plaintiff discounted the value of this claim by 75% for the risk of non-certification of the underlying claims and discounted 75% for a risk of being unsuccessful on the merits, for an estimated exposure of $47,000. *Id*.

Waiting Time Penalties: **$65,422**

Based on the data provided by Defendant for mediation, 129 employees separated their employment with Defendant during the 3-year time period associated with waiting time penalties. *See* Rowbotham Decl., ¶ 46. Plaintiff therefore calculated Defendant's maximum waiting time penalty exposure at $1,046,757 (129 former employees x $33.81 average hourly rate x 8 hours per day x 30 days). *Id*.

Defendant contends it attempted to pay its employees all final wages owed in good faith upon their separation, therefore precluding a finding of wilfulness which is necessary to obtain waiting time penalties under 8 Cal. Code Regs. § 13520. *See* Rowbotham Decl., ¶ 47. Additionally, because this claim is derivative of Plaintiff's underlying wage claims, Defendant argues the waiting time penalty claim will fail if the underlying claims fail. *Id.* Plaintiff discounted the value of this claim by 75% for the risk of non-certification of the underlying claims, and 75% for a risk of being unsuccessful on the merits (including a failure to establish wilfulness), for an estimated recovery on this claim of $65,422. *Id*.

PAGA Penalties: **$21,698**

Plaintiff calculates Defendant's maximum PAGA exposure at $867,900 (8,679 pay periods at $100 per violation). *See* Rowbotham Decl., ¶ 48; *see Amaral, supra,* 163 Cal.App.4th at 1207. However, these penalties derived from the underlying wage and hour violations discussed above, which Defendant disputes. *See* Rowbotham Decl., ¶ 48; *see e.g.*, *Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Plaintiff also recognizes that the Court has discretion to reduce any award of PAGA penalties where it views them as duplicative. *See Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 529 (affirming reduction of PAGA penalties to $5 per initial violation). Plaintiff therefore discounted the maximum figure by 75% for the risk of the scope of the PAGA claim being narrowed due to manageability concerns of the underlying claims and an additional 90% to account for the likelihood of this Court reducing penalties, to arrive at an estimated exposure of $21,698. *See* Rowbotham Decl., ¶ 48.

Using these estimated figures for each of the claims described above, Plaintiff predicts that a projected potential recovery for the Settlement Class would be approximately $817,356. *See* Rowbotham Decl., ¶ 49. The Gross Settlement Amount of $500,000 represents approximately 61.17% of Plaintiff's projected potential recovery, while avoiding the further expense and risk of proceeding towards class certification and trial. *Id*. Considering Defendant's precarious financial condition, the risk of non-certification, failure to prevail on the merits, and the Court's power to reduce civil penalties, the proposed Settlement falls well within the realm of being fair, reasonable, and adequate. *See e.g.*, *Altamirano v. Shaw Industries, Inc*, (N.D. Cal. 2015) 2015 WL 4512372, at *9 (preliminarily approving a 15% "modest fraction of the hypothetical maximum recovery"). Preliminary approval is appropriate since the Settlement will provide significant monetary relief to Class Action Members without the uncertainty, delay, and additional expense of further litigation.

e. <u>Experience and Views of Counsel</u>

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent and experienced counsel who possess extensive experience litigating wage and hour class actions from both the plaintiff and defense side and have been appointed as class counsel in numerous cases alleging similar claims. *See* Rowbotham Decl., ¶¶ 2-8. Class Counsel conducted an extensive review of Defendant's records produced for mediation as well as relevant policies in effect during the Class Action Period. *Id.*, ¶ 29. Class Counsel also drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id*. The Settlement was also reached with the input and assistance of Abe Melamed, Esq., a wage and hour class action mediator. *Id.*, ¶ 29. This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

2. Preliminary Approval Standard is Met

At this stage, the Court can grant preliminary approval of the Settlement and direct that the Settlement Notice be given if the proposed Settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and (3) has no obvious deficiencies. *See* Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 *Newberg on Class Actions* § 11:24-25 (4th Ed. 2013).

a. Settlement is Within the Range of Possible Approval

The proposed Settlement reflects an excellent recovery for the Class Action Members in light of the significant risks of litigation. The proposed Settlement will provide substantial compensation for contested claims and derivative penalties, and the estimated average payment of $1,338.21 greatly exceeds the average payment achieved in other wage and hour class action settlements. *See e.g., Schiller v. David's Bridal, Inc*., Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. June 11, 2012) ($198.70 gross recovery per class member considered substantial recovery). Plaintiff submits that the proposed Settlement is within the range of possible approval, such that notice should be provided to the Class Action Members so they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Class Action Members have had the opportunity to opt-out or object.

b. Settlement Resulted from Informed and Non-Collusive Negotiations

This proposed Settlement is entitled to an initial presumption of fairness (*see Kullar*, *supra*, 168 Cal.App.4th at 130) as it is the result of the exchange of substantial information, including handwritten timekeeping and payroll data which was analyzed by Plaintiff's counsel, arm's length negotiations by counsel; mediation before an experienced wage and hour class action mediator; and additional months of negotiating and finalizing the terms of the long-form Settlement Agreement. *See* Rowbotham Decl., ¶¶ 15-16. Thus, the proposed settlement is entitled to an initial presumption of fairness. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

c. Settlement is Devoid of Obvious Deficiencies

The Settlement will provide substantial monetary relief to Class Action Members.

Moreover, the amounts proposed for Plaintiff's Service Payment, settlement administration costs, attorneys' fees and costs to Class Counsel, and the LWDA's share of PAGA penalties are all reasonable and appropriate. Because the Settlement is devoid of obvious deficiencies, this final factor supports preliminary approval.

B. COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS

The proposed Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the individuals in the Settlement Class are so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims are typical of the claims of the absent Class Action Members; and (4) Plaintiff and his counsel will fairly and adequately represent the interests of the absent Class Action Members. *See* Cal. Code Civ. Proc. § 382.

1. Proposed Class is Ascertainable and Numerous

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement Class is defined as all current and former nonexempt employees of Defendant in California who worked at any time during the Class Action Period. According to Defendant's records, the Settlement Class consists of approximately 188 individuals, rendering it impracticable to gather all the Class Action Members and bring them before the Court. *See* Rowbotham Decl., ¶ 29. Thus, the proposed Settlement Class satisfies the numerosity requirement.

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiff's claims are predicated on uniform company policies, principally revolving around Defendant's timekeeping and meal period policies and practices. These types of claims are commonly held to be proper for class certification. *See, e.g., Brinker, supra*, 53 Cal.4th at 1032-34.

3. **Claims of the Named Plaintiff Are Typical**

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347. Here, Plaintiff's claims are typical of those of the proposed Settlement Class. Like other Class Action Members, Plaintiff was employed by Defendant in California during the Class Action Period and was impacted by the same wage and hour violations. *See* McCabe Decl., ¶ 2-5. Plaintiff was impacted by the same challenged policies that allegedly injured the Settlement Class as a whole and was subject to the same defenses raised by Defendant. Plaintiff's claims are therefore typical.

4. **Plaintiff and Class Counsel Will Adequately Represent the Class**

The adequacy of representation requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capitol People First v. Department of Developmental Services* (2007)155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiff and the Settlement Class he seeks to represent, and Plaintiff possesses claims that are in line with those of the Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding adequacy satisfied where there was no indication that the plaintiff's counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also has extensive experience in wage and hour class action litigation. *See* Rowbotham Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-11; Schmidt Decl., ¶¶ 2-9; and Perez Decl., ¶¶ 2-6.

C. **COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED SETTLEMENT NOTICE**

This Court should order distribution of the proposed Settlement Notice to the Class Action Members by first-class mail, postage prepaid, using the last known addresses provided by Defendant. This manner of notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff proposes that the Settlement be administered by Apex Class Action LLC ("Apex"), an experienced settlement administrator. *See generally* Declaration of Sean Hartranft. Class Action Members' addresses will be ascertainable through Defendant's personnel and payroll records, which Defendant will provide to Apex. *See* Settlement § 1.21. Prior to mailing the Settlement Notice packets, Apex will search for updated addresses using the National Change of Address database ("NCOA"). *Id.*, § 1.22. The content of the proposed Settlement Notice satisfies California Rule of Court 3.766(d) because it advises putative Class Action Members of the nature of the claims, the key terms of the Settlement, a timeline to opt-out or object to the Settlement and the procedure by which to do so, explains the recovery formula and expected recovery amount for each Class Action Member, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Settlement Agreement, Exhibit A (Settlement Notice). The proposed Settlement Notice will also notify Class Action Members of the final approval hearing date and provide the Settlement Class contact information for Class Counsel and advise Class Action Members that they may enter an appearance through counsel if they wish to. *Id.* This manner of notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Class Action Members.

D. COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, this Court should set a hearing for final approval of the Settlement on a date appropriately scheduled to follow the deadline by which Class Action Members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

V. CONCLUSION

For these reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the proposed order submitted concurrently herewith.

Dated: October 2, 2025

HAINES LAW GROUP, APC

By: ______________________

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