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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF STANISLAUS**

MARK DOYON, individually and on behalf of others similarly situated, and on behalf of other aggrieved employees pursuant to the Private Attorneys General Act,

Plaintiff,

vs.

QD ELECTRICAL SERVICES, INC., a California corporation; JEFFREY LEWIS, an individual; and DOES 1 through 50, inclusive,

Defendants.

Case No. CV-24-002017

**NOTICE OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM IN SUPPORT THEREOF**

Hearing Information:

Date: February 23, 2027
Time: 8:30 a.m.
Dept.: 24

*[Filed concurrently with: (1) Declaration of Devin Rauchwerger; (2) Declaration of Plaintiff Mark Doyon; (3) Declaration of Jodey Lawrence, and (4) [Proposed] Order]*

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE THAT** on February 23, 2027, at 8:30 a.m., or as soon thereafter as this matter may be heard by the Court in Department 24 of the Superior Court of California, County of Stanislaus, at City Towers Courthouse, 801 10th Street, 4th Floor, Modesto, California 95354, Plaintiff Mark Doyon, on behalf of himself and the proposed Settlement Class, will and hereby does move for an Order:

1) Preliminarily approving the proposed class action and PAGA Settlement in the above-captioned case;
2) Preliminarily certifying the Settlement Class for settlement purposes;
3) Preliminarily approving the appointment of Plaintiff as Class Representative;
4) Preliminarily approving the appointment of Domb & Rauchwerger LLP as Class Counsel;
5) Approving the appointment of Phoenix Class Action Administration Solutions as the Settlement Administrator;
6) Approving and directing distribution of the proposed Notice to the Settlement Class; and
7) Setting a final fairness and approval hearing on a date to be determined by the Court.

This Motion is made pursuant to California Rules of Court, rule 3.769, which governs the settlement of class actions and permits the Court to conditionally certify a class for settlement purposes. The proposed settlement is fair, adequate, and reasonable and in the best interests of the settlement class as a whole, and the procedures proposed by the Parties are adequate to ensure that Class Members have the opportunity to participate in, opt out of, or object to the settlement.

Dated: October 2, 2026

Respectfully submitted,
**DOMB & RAUCHWERGER LLP**

By: _____
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## TABLE OF CONTENTS


I. INTRODUCTION ..... 7

II. BACKGROUND AND PROCEDURAL HISTORY ..... 8

A. The Pleadings & Nature of The Action ..... 8

B. Discovery Taken by The Parties ..... 9

C. Mediation With Jeffrey Owensby, Esq. ..... 9

III. LEGAL ANALYSIS OF SETTLEMENT ..... 10

A. Two-Step Settlement Process ..... 10

B. The Settlement Warrants Preliminary Approval Because It Is Fair And Reasonable. ..... 10

C. Due To The Risks Of Continued Litigation, The Settlement Is Fair And In The Best Interests Of The Class. ..... 11

D. The *Kullar* Requirements ..... 12

1. Failure to Pay Minimum and/or Overtime Wages. ..... 13

2. Failure to Provide Meal & Rest Periods (Lab. Code §§ 204, 223 226.7, 512 and 1198) ..... 13

3. Failure to Reimburse Necessary Business Expenses (Lab. Code § 2802) ..... 15

4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226 (a)) ..... 15

5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203) ..... 16

6. Civil Penalties pursuant to the Private Attorney General Act of 2004 ("PAGA") (Lab. Code § 2698 *et seq*.) ..... 17

7. Unfair Competition (Bus & Prof. Code § 17200 *et. seq.*) ..... 18

8. Total Damages ..... 18

IV. CLASS CERTIFICATION ANALYSIS ..... 19

A. The Class Is Properly Certified For Settlement Purposes. ..... 19

1. The Proposed Class is Numerous and Ascertainable.....19
2. The Community of Interest Requirement Is Also Satisfied.....20
B. Class Counsel Has Extensive Experience In Class Actions And Similar Cases. .....20
C. The Class Representative Is Adequate.....21
D. The Proposed Enhancement Payment to Plaintiff Is Reasonable. .....21
E. Settlement Administration Costs are Reasonable. .....22
V. THE PROPOSED SETTLEMENT .....22
A. The Settlement Class & Released Claims.....22
B. The Settlement Payment .....23
C. Settlement Payment Distribution Plan.....23
1. Calculating Participating Class Members' Individual Settlement Payments.....24
2. Calculating PAGA Settlement Members' Individual PAGA Payments.....25
3. Distributions To Settlement Class .....25
D. Notice To The Class Members .....25
VI. CONCLUSION.....26

## TABLE OF AUTHORITIES

**Cases**


*Amaral v. Cintas* (2008)163 Cal.App.4th 1157 ..... 17

*Bowles v. Superior Court* (1955) 44 Cal.2d 574 ..... 20

*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 528 ..... 18

*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960 ..... 26

*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380 ..... 21

*Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 ..... 18

*Cooper v. Am. Sav. & Loan Ass'n.* (1976) 55 Cal.App.3d 274 ..... 26

*Cortez v. Purolator Air Filtration Prod. Co.* (2000) 23 Cal.4th 163 ..... 18

*Dunk v. Ford Motor Co.* (1966) 48 Cal.App.4th 1794 ..... 10

*Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1 ..... 15

*Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801 ..... 18

*Green v. Obledo* (1981) 29 Cal.3d 126 ..... 10

*Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017 ..... 20

*Hicks v. Toys 'R' Us–Delaware, Inc.* (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915 ..... 18

*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380 ..... 11

*Korea Supply v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1148 ..... 18

*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116 ..... 12

*Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 ..... 18

*Morales v. Stevco, Inc.* (E.D. Cal. 2011) 2011 WL 5511767, at *11 ..... 12

*Mouchati v. Bonnie Plants, Inc.* (C.D. Cal. Mar. 6, 2014) No. EDCV 14-00037-VAP (SPx), 2014 U.S. Dist. LEXIS 60855, at *8-9 ..... 16

*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399 ..... 12

*Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal.5th 93 ..... 15

*Novoa v. Charter Communs., Ltd. Liab. Co.* (E.D. Cal. 2015) 100 F.Supp.3d 1013 ..... 16

*Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797 ..... 26

*Renken v. Compton City School Dist.* (1962) 207 Cal.App.2d 106 ..... 19

*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926 ..... 20
*Ryan v. Cal. Interscholastic Fed'n – San Diego Section* (2001) 94 Cal.App. 1048 ..... 26
*Sarkisov v. Stonemor Partners* (N.D. Cal. Apr. 3, 2014) *L.P.*, No. C 13-04834 WHA, 2014 U.S. Dist. LEXIS 47021, at *2 ..... 16
*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319 ..... 19, 20
*Singer v. Becton, Dickinson & Co., Med.-Safe Sys.* (S.D. Cal. July 23, 2008) No. 08cv821 IEG (BLM), 2008 U.S. Dist. LEXIS 56326, at *4-5 ..... 16
*Taylor v. W. Marine Prods.* (N.D. Cal. Sep. 19, 2014) No. C 13-04916 WHA, 2014 U.S. Dist. LEXIS 133728, at *7 ..... 16
*Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112 ..... 17
*Toure v. Amerigroup Corp.* (E.D. N.Y. 2012) 2012 WL 1432302, at *1 ..... 12
*Vasquez v. Superior Court* (1971) 4 Cal.3d 800 ..... 10

**Statutes**

Bus & Prof. Code § 17200 ..... 18
Code Civ. Proc. § 382 ..... 19
Lab. Code § 2698 ..... 17, 23
Lab. Code § 2699 ..... 17, 18, 23
Lab. Code § 558 ..... 17

**Rules**

Cal. Rules of Court, rule 3.769 ..... 10, 26
Fed. Rules Civ.Proc. 23(e) ..... 10

**Treatises**

Manual of Complex Litigation, Second § 30.44, at 229 ..... 11

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Plaintiff Mark Doyon ("Plaintiff") and Defendant QD Electrical Services, Inc., ("Defendant") have reached a proposed class action and PAGA settlement. Plaintiff and Defendant (collectively, the "Parties") submit the Class Action and PAGA Settlement Agreement (the "Settlement" or "Settlement Agreement") to the Court for its preliminary approval. The Settlement Agreement ("SA") is attached to the Declaration of Devin Rauchwerger ("Rauchwerger Decl." ¶ 2) as **Exhibit 1**.[1]

The Settlement provides for a non-reversionary Gross Settlement Amount of $260,000.00, which includes a credit of $48,142.17 for amounts previously paid by Defendant to certain Class Members, subject to proof. Defendant will separately pay any employer payroll taxes owed on the wage portions of the Individual Class Payments. From the Gross Settlement Amount, the Parties will seek approval of deductions of up to $91,000.00 for Class Counsel Fees, up to $8,500.00 for Class Counsel Litigation Expenses, up to $7,500.00 for the Class Representative Service Payment, up to $4,750.00 for Settlement Administration Expenses, and $20,000.00 for PAGA Penalties. Of the $20,000.00 allocated to PAGA Penalties, $15,000.00 (75%) will be paid to the LWDA and $5,000.00 (25%) will be distributed to Aggrieved Employees as Individual PAGA Payments.

Defendant estimates that there are approximately 88 Class Members who collectively worked approximately 5,750 workweeks during the Class Period from March 13, 2020 to August 19, 2025 and approximately 57 Aggrieved Employees who collectively worked approximately 2,900 pay periods during the PAGA Period from March 13, 2023 to August 19, 2025. Individual Class Payments will be distributed to Participating Class Members on a pro rata basis according to their respective workweeks during the Class Period, while Individual PAGA Payments will be distributed to Aggrieved Employees on a pro rata basis according to their respective PAGA pay periods.

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[1] For ease of reference and consistency, defined terms from the Settlement Agreement are utilized below.

The Settlement occurred as a result of extensive arm's-length negotiations by experienced counsel after sufficient discovery and investigation into the facts, including a full-day mediation conducted on September 16, 2024, with Jeffrey Owensby, Esq. of Judicate West, an experienced mediator of wage-and-hour class actions. The Parties ultimately reached the Settlement following the mediation and subsequent negotiations. As detailed below, the Settlement is fair, reasonable, and in the best interests of the Settlement Class.

## II. BACKGROUND AND PROCEDURAL HISTORY

### A. The Pleadings & Nature of The Action

Defendant QD Electrical Services, Inc. provides electrical contractor services. (Rauchwerger Decl. ¶ 3.) Plaintiff worked for Defendant as an Electrical Foreman from approximately March 2022 through September 2023. (Rauchwerger Decl. ¶ 3; Declaration of Mark Doyon ("Doyon Decl.") ¶ 3.)

On March 13, 2024, Plaintiff filed a class action complaint in the Stanislaus County Superior Court, alleging nine causes of action for: (1) unpaid overtime; (2) unpaid meal period premiums; (3) unpaid rest period premiums; (4) unpaid minimum wages; (5) final wages not timely paid; (6) wages not timely paid during employment; (7) failure to provide accurate wage statements; (8) failure to reimburse necessary business expenses; and (9) violation of Business and Professions Code section 17200 et seq. (Rauchwerger Decl. ¶ 4.)

On March 13, 2024, Plaintiff submitted a letter to the California Labor and Workforce Development Agency ("LWDA") alleging violations of the California Labor Code for which Plaintiff intended to seek civil penalties under the Private Attorneys General Act ("PAGA"). (Rauchwerger Decl. ¶ 5.)

On May 17, 2024, Plaintiff filed a First Amended Class and Representative Action Complaint, which added a tenth cause of action for violation of Labor Code section 2699 under PAGA. (Rauchwerger Decl. ¶ 6.) The First Amended Complaint is the operative complaint. (*Id.*)

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**B. Discovery Taken by The Parties**

At the outset of the case, Plaintiff propounded written discovery concerning the composition of the Class and the underlying allegations, and Defendant served responses to that discovery. (Rauchwerger Decl. ¶ 7.) The Parties thereafter agreed to limit further formal discovery while they pursued mediation. (*Id.*)

Prior to mediation, the Parties also engaged in extensive informal discovery. (Rauchwerger Decl. ¶ 7.) Class Counsel requested and received class data and other information necessary to evaluate the claims and potential exposure, including the number of Class Members and Aggrieved Employees, the number of workweeks worked during the Class Period, the number of pay periods during the PAGA Period, applicable meal and rest period policies and practices, timekeeping policies and practices, expense reimbursement policies and practices, and other documents relevant to the claims asserted in this action. (*Id.*)

Defendant produced hundreds of pages of relevant documents and provided Plaintiff with a sampling of Class Members' time and payroll records. (Rauchwerger Decl. ¶ 7.) Class Counsel analyzed those records in preparation for mediation and used them to evaluate, among other things, Plaintiff's claims concerning Defendant's timekeeping practices and alleged meal-period violations. (*Id.*)

The Parties also engaged in informal conferences and exchanged additional information, class data, and their respective theories concerning the claims and defenses. (Rauchwerger Decl. ¶ 8.) Following this discovery and investigation, the Parties participated in a full-day mediation on September 16, 2024, and each side submitted a detailed mediation brief addressing its respective position concerning the claims, defenses, and potential exposure. (*Id.*)

**C. Mediation With Jeffrey Owensby, Esq.**

On September 16, 2024, the Parties participated in a full-day mediation with Jeffrey Owensby, Esq. of Judicate West. (Rauchwerger Decl. ¶ 9.) Mr. Owensby was selected by the Parties based on his experience mediating wage-and-hour class actions. (*Id.*) The mediation involved lengthy, arm's-length negotiations concerning the claims, defenses, and potential exposure in this action. (*Id.*) The case did not settle at mediation and the parties continued to

litigate the case and engage in negotiations, which ultimately resulted in the settlement agreement herein presented to the Court. (*Id.*)

## III. LEGAL ANALYSIS OF SETTLEMENT

### A. Two-Step Settlement Process

Any settlement of class litigation must be reviewed and approved by the Court. (Cal. Rules of Court, rule 3.769; Fed. Rules Civ. Proc. 23(e).[2]) This is done in two steps: (1) a preliminary review by the trial court, and (2) a final review after notice has been distributed to the Settlement Class informing them of the terms of the settlement and allowing them to exclude themselves from and/or object to the settlement.

### B. The Settlement Warrants Preliminary Approval Because It Is Fair And Reasonable.

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial Court. (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 234-35; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794.) Pursuant to California Rules of Court, rule 3.769(d), parties also may, at the preliminary approval stage, request that the Court provisionally approve certification of the class conditional upon final approval of the settlement. "[P]re-certification settlements are routinely approved if found to be fair and reasonable." (*Wershba v. Apple Computer, supra,* at 240.) A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. No one factor should be determinative, but rather all factors should be considered. These criteria have been summarized as follows:

> "If the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement."

[2] The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

Manual of Complex Litigation, Second § 30.44, at 229.

Moreover, a proposed settlement is presumptively fair and reasonable where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389 (citations omitted).)

Here, as discussed above and further below, the Settlement was reached following arm's-length negotiations after Class Counsel obtained and analyzed sufficient information and discovery to evaluate the strengths and weaknesses of the claims and the risks of continued litigation. The Settlement was negotiated by experienced class action counsel and is the product of serious and informed negotiations. (Rauchwerger Decl. ¶ 10.) Furthermore, there is no reason to suspect that the amount of class members objecting will be high. (*Id.*)

**C. Due To The Risks Of Continued Litigation, The Settlement Is Fair And In The Best Interests Of The Class.**

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel believe that the settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, adequate, and is in the best interest of the Class in light of all known risks, facts and circumstances. (Rauchwerger Decl. ¶ 11.) These risks include the risks and expense associated with continued litigation; the uncertainty inherent in contested class certification; Defendant's defenses to Plaintiff's claims, including challenges concerning whether the alleged violations could be established on a classwide basis; the fact that Defendant had its current employees sign arbitration agreements, thus potentially eliminating a significant portion of the class members who would be unable to participate in the class action portion of the case, the fact that Defendant obtained individual Pick Up Stix release agreements from the majority of the class members, the possibility of obtaining less relief, or no relief, following further litigation; and the potential reduction of PAGA penalties. (*Id.*)

Finally, the Settlement was reached after lengthy negotiations, exchange of information, and a full day mediation with Jeffrey Owensby, Esq., who has mediated numerous wage-and-

hour class actions, and clearly qualifies to oversee serious and informed negotiations conducted by the Parties. (See *Toure v. Amerigroup Corp.* (E.D. N.Y. 2012) 2012 WL 1432302, at *1 ["The assistance of an experienced mediator, Linda Singer, Esq., reinforces that the Settlement Agreement is non-collusive"]; *Morales v. Stevco, Inc.* (E.D. Cal. 2011) 2011 WL 5511767, at *11 [concluding that the class action settlement was not collusive because "[t]he parties utilized an impartial mediator, and the matter was 'resolved by means of a mediator's proposal.'"].)

**D. The *Kullar* Requirements**

In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Court of Appeals explained that, although "not exhaustive," a determination of whether a settlement is "fair, adequate and reasonable" should take into account the strength of a plaintiff's case, the risk, expense, complexity and the likely duration of further litigation. (*Id*. at 127-128.) Subsequently, in *Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, the Court of Appeals clarified:

> "[Appellant] 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 [Appellant] 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 range of outcomes of the litigation."
>
> (*Id.* at 409 (quoting *Kullar*, 168 Cal.App.4th at 120))

Here, the potential damages for the causes of action asserted in the Action along with the relative risks, complexities, and expenses are detailed below. The key data points upon which Plaintiff and Class Counsel relied in evaluating the claims and Settlement include the following:

- Approximate Class Size: 88 Class Members;
- Total Workweeks during the Class Period: approximately 5,750;
- Approximate number of Aggrieved Employees: 57;
- Total PAGA Pay Periods during the PAGA Period: approximately 2,900; and
- Average Regular Rate: $36.80 per hour.

(Rauchwerger Decl. ¶ 12.)

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However, 63 Class Members signed Pick Up Stix agreements and received individual settlement payments, which means the recoverable damages could be significantly less than what the data points currently suggest, which Plaintiff's counsel took into account when agreeing to the Gross Settlement Amount of $260,000. (Rauchwerger Decl. ¶ 13.)

**1. Failure to Pay Minimum and/or Overtime Wages.**

Plaintiff alleges that he and the other putative class members are owed compensation for work they performed off-the-clock and were never paid for as a result of Defendant's timekeeping policies, which always showed that employees started and stopped at the exact same time. (Rauchwerger Decl. ¶ 14.)

To determine Defendant's reasonable exposure to the Class for the off-the-clock allegations, Class Counsel assumed Class Members performed approximately 25 minutes of uncompensated work per workweek at an overtime rate of $55.20 per hour ($36.80 x 1.5). (Rauchwerger Decl. ¶ 14.). Defendant's potential exposure based on approximately 5,750 workweeks is $132,250.00. (*Id.*) However, as noted above, this amount could be significantly reduced based on the Pick Up Stix and arbitration agreements. (*Id.*)

The risks related to proving Plaintiff's off-the-clock minimum wage and overtime claims are significant. Defendant's time records frequently reflect uniform or rounded start and stop times, making it difficult to determine from the records alone the precise amount of off-the-clock work, if any, performed by each Class Member. (Rauchwerger Decl. ¶ 14.) Defendant could therefore argue that determining whether, and to what extent, individual Class Members performed uncompensated work would require individualized inquiries, creating risks with respect to both class certification and the ultimate merits of these claims. (*Id.*)

**2. Failure to Provide Meal & Rest Periods (Lab. Code §§ 204, 223 226.7, 512 and 1198)**

Plaintiff contends that he and the Class Members routinely did not receive lawful and compliant meal periods, nor were they paid meal period premiums when a meal period was missed, short or delayed. (Rauchwerger Decl. ¶ 15.) Furthermore, Plaintiff contends that Defendant's written meal and rest break policies were not in compliance with all of the

requirements under California law. (*Id.*) An employee is generally entitled to one additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal or rest period is not provided. The potential exposure for these claims depends on the frequency of the alleged violations.

Based on the sample data provided by Defendant, Plaintiffs' counsel was able to determine that approximately 85% of the shifts were eligible for meal breaks, and that of the shifts eligible for meal breaks, 65.46% had facial violations. (Rauchwerger Decl. ¶ 15.) In order to determine the potential exposure for meal break violations, Plaintiff's counsel multiplied the total number of workweeks by 5 to get the number of potential shifts (28,750), then multiplied that amount by the percentage of shifts eligible for meal breaks (28,750 x 85% = 24,437.50), then multiplied the number of eligible meal break shifts by the violation rate (24,437.5 x 65.46% = 15,996.79) and then multiplied the total number of expected violations by the hourly rate (15,996.79 x $36.80), which leads to total potential exposure for the meal break claim of $588,681.87. (*Id.*) Similar to above, this claim would likely be dramatically reduced given the number of Class members who signed Pick Up Stix and arbitration agreements. (*Id.*)

Rest-period premiums were calculated in the same fashion as meal-period premiums by assuming the same violation rate as rest breaks. (Rauchwerger Decl. ¶ 16.) The only difference is that Plaintiff's counsel did not reduce the number of eligible shifts since presumably all shifts would be eligible for at least one rest break. (*Id.*) As such, Defendant's potential exposure was calculated by taking the total shifts (28,750) and multiplying that number by the violation rate of 65.46%, which equals 18,819.75 violations, multiplied by the hourly rate ($36.80), which leads to potential exposure of $692,566.80. (*Id.*) Similar to the other claims, this number would likely be significantly reduced given the number of Class Members who signed Pick Up Stix and arbitration agreements. (*Id.*)

There are also unique risks associated with proving the rest-period claims. Employers are not required to record rest periods, and rest periods are paid. Thus, unlike meal periods, time records generally do not establish whether a particular Class Member received a compliant rest period on a particular workday. Plaintiff therefore may need to rely on representative testimony

or other evidence to establish the frequency of alleged rest-period violations on a classwide basis. The use of representative or statistical evidence presents additional class certification, trial-management, and due-process considerations. (See *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 31 [explaining "[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling."].)

**3. Failure to Reimburse Necessary Business Expenses (Lab. Code § 2802)**

Plaintiff asserts a cause of action for failure to reimburse necessary business expenses under Labor Code section 2802. Based on Class Counsel's investigation, Plaintiff also does not believe there are significant provable damages associated with the business-expense reimbursement claim because the investigation did not reveal that Class Members generally incurred unreimbursed business expenses in performing their job duties. (Rauchwerger Decl. ¶ 17.) Accordingly, Plaintiff has not assigned any independent damages value to this claim for purposes of evaluating the Settlement. (*Id.*)

**4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226 (a))**

Plaintiff contends that due to working off the clock and lack of premium pay for noncompliant meal/rest periods and/or accurate calculation and payment of wages, the Class Members' wage statements were not accurate. (See *Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal.5th 93, 117 (Because premium pay for missed meal and rest breaks under Lab. Code § 226.7 compensated employees for the work performed during a break period and therefore constituted wages within the meaning of Lab. Code, §§ 200, subd. (a), 203, 226, penalties are available for an employer's alleged failure to timely pay or report such payments.).) (Rauchwerger Decl. ¶ 18.) Pursuant to Labor Code section 226(e), statutory damages are "fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000)." As proving actual damages for each employee on a class-

wide basis is unlikely, this claim would likely be subject to a one-year statutory period.[3]

Plaintiff contends that each paystub failed to include complete itemizations for monies owed, including overtime, the number of hours the Class Members worked and the appropriate hourly rates, and the meal and rest break premiums owed to the Class Members. (Rauchwerger Decl. ¶ 19.) There were approximately 57 employees who worked 2,900 pay periods during the one year statute of limitations. (*Id.*) Assuming the first 57 pay periods were compensated at a rate of $50 per pay period, and the remaining 2,843 pay periods were compensated at a rate of $100 per pay period, this would equal total potential penalties of $287,150. (*Id.*) Similar to the other claims, the penalty would likely be greatly reduced taking into account the Pick Up Stix and arbitration agreements. (*Id.*)

Some hurdles to obtaining class certification would apply to this claim. Defendant also contends that the wage statements were accurate in all material respects and that Labor Code section 226 requires "a knowing and intentional failure by an employer to comply with subdivision (a)." (*See* Lab. Code § 226(e); *see also* Lab. Code § 226(e)(3) (For purposes of this subdivision, a "knowing and intentional failure" does not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake.")) In this regard, Defendant contends that any failure to include information on wage statements was an inadvertent or isolated mistake. (Rauchwerger Decl. ¶ 19.)

**5. <u>Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203)</u>**

An employer who willfully fails to pay any wages due to a terminated employee at the time of their termination or within 72 hours for employees who quit, may be assessed a waiting time penalty pursuant to California Labor Code section 203. The waiting time penalty is an amount equal to the employee's daily rate of pay for each day the wages remain unpaid, up to a

[3] "Courts that have recognized that two limitations periods apply to Section 226 have uniformly found that the $50 and $100 figures recoverable under Section 226(e)(1) are penalties, subject to a one-year limitation period." (*Novoa v. Charter Communs., Ltd. Liab. Co.* (E.D. Cal. 2015) 100 F.Supp.3d 1013, 1025.) (citing *Taylor v. W. Marine Prods.* (N.D. Cal. Sep. 19, 2014) No. C 13-04916 WHA, 2014 U.S. Dist. LEXIS 133728, at *7; *Sarkisov v. Stonemor Partners* (N.D. Cal. Apr. 3, 2014) *L.P.*, No. C 13-04834 WHA, 2014 U.S. Dist. LEXIS 47021, at *2; *Mouchati v. Bonnie Plants, Inc.* (C.D. Cal. Mar. 6, 2014) No. EDCV 14-00037-VAP (SPx), 2014 U.S. Dist. LEXIS 60855, at *8-9; *Singer v. Becton, Dickinson & Co., Med.-Safe Sys.* (S.D. Cal. July 23, 2008) No. 08cv821 IEG (BLM), 2008 U.S. Dist. LEXIS 56326, at *4-5.

maximum of 30 calendar days. The class data provided at the time of mediation showed there were 38 former employees within the three-year statute of limitations period. Based on the average hourly rate of $36.80 per hour, waiting time penalties equate to approximately $335,616.00 ($36.80 x 8 hours per day x 30 days x 38 former employees). (Rauchwerger Decl. ¶ 20.) However, to prevail under Section 203, Plaintiff must establish not only the underlying violations addressed above and that the wages were paid late, but also that Defendant's failure to timely pay such wages was willful. (Lab. Code § 203(a).) A good faith belief in a legal defense precludes any finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54.) Furthermore, the penalty amount would likely be significantly reduced given the Pick Up Stix and arbitration agreements. (Rauchwerger Decl. ¶ 20.)

**6. Civil Penalties pursuant to the Private Attorney General Act of 2004 ("PAGA") (Lab. Code § 2698 *et seq*.)**

PAGA penalties for unpaid minimum wages and meal period violations are $100 per pay period for each initial violation and $200 per pay period for any subsequent violation. (Lab. Code § 2699(f)(2).) Courts have held that there is no "subsequent violation" until an employer has been notified by the Labor Commissioner or a court that its practices are in violation of the law. (*Amaral v. Cintas* (2008) 163 Cal.App.4th 1157). A Court also may award a lesser amount "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Lab. Code § 2699 (e)(2).) The statute of limitations under PAGA is one year.

There are approximately 57 employees who fell within the one-year statutory period, with approximately 2,900 PAGA Pay Periods. (Rauchwerger Decl. ¶ 21.) Assuming that no penalty "stacking" will apply (i.e. the imposition of multiple penalties per pay period) and that the Court will use the violation rate of $100 per pay period, potential PAGA penalties equal $290,000. (*Id*.) Plaintiff's PAGA claims are also predicated on the violations described above, and thus subject to the same disputes and defenses. (*Id.*) Additionally, PAGA states that a court has discretion to award a lesser amount than the maximum penalty. (Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award);

*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 528-529 (affirming the trial court's PAGA penalty award of $5 per violation). These uncertainties increased the risks related to the PAGA cause of action.

Pursuant to California Labor Code section 2699(l), the Settlement Agreement has been provided to the Labor and Workforce Development Agency and a proof of service is also attached as **Exhibit 2** to the Declaration of Devin Rauchwerger. (Rauchwerger Decl. ¶ 22.) The amount to be paid to the LWDA ($15,000.00 of the $20,000.00 total PAGA allocation) comports with PAGA settlement amounts approved by other courts.[4]

**7. Unfair Competition (Bus & Prof. Code § 17200 *et. seq.*)**

Though a plaintiff may assert a UCL claim for purported wage violations, remedies are still limited to restitution and injunctive relief. (See *Korea Supply v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1148-51; see also *Cortez v. Purolator Air Filtration Prod. Co.* (2000) 23 Cal.4th 163, 173.) In wage-and-hour class actions, a UCL claim typically has little to no independent value and is instead pled for the purposes of extending the statute of limitations on unpaid wage claims to four years. The unfair competition law's (UCL) four-year limitations period, rather than the shorter periods of limitation applicable to contractual or statutory wage claims, governs a UCL action based on failure to pay wages because the UCL provides that "any" action on "any" UCL cause of action is subject to the four-year period of limitations. (*Cortez v. Purolator Air Filtration Prod. Co.* (2000) 23 Cal.4th 163, 178.)

**8. Total Damages**

Based on the above estimates, the total amount of possible damages that the Class could be awarded at trial, including PAGA penalties, is approximately $2,108,764.67, which takes into account 25% of the PAGA amount that would be attributed to Aggrieved Employees. (Rauchwerger Decl. ¶ 23.) However, after taking

[4] *See Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of $7,500 to LWDA out of $6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of $7,500 to LWDA out of $1.25 million common fund settlement); *Hicks v. Toys 'R' Us–Delaware, Inc.* (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving $5,000 PAGA payment in a case involving $4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801 at *14 (approving PAGA penalties of $10,000 as part of $2.5 million settlement).

into account the strengths and weaknesses of each claim, the unique risks associated therewith, the general risks associated with litigating the case, and the significant additional costs and expenses that would be incurred by both sides in litigating the Action through class certification, trial, and appeals, Class Counsel's assessment of this case is that payment of $260,000.00 is an excellent result that provides the Class with certain recovery over a relatively short period of time with significant savings in costs. (*Id.*)

## IV. CLASS CERTIFICATION ANALYSIS

### A. The Class Is Properly Certified For Settlement Purposes.

Plaintiff seeks certification of this action for settlement purposes under California Code of Civil Procedure section 382. The California Supreme Court has summarized that:

> "Code of Civil Procedure section 382 authorizes class actions when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court. The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. The "community of interest" requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class."

(*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (internal citations omitted)).

While Defendant reserves all rights to dispute Plaintiff's ability to satisfy any of these requirements, the Parties agree that for purposes of settlement, Defendant will not raise such a dispute. (Rauchwerger Decl. ¶ 24.) Therefore, the proposed Settlement Class should be certified for purposes of settlement.

#### 1. The Proposed Class is Numerous and Ascertainable

The class consists of approximately 88 members with specifically identifiable information. (SA § 4.1) The requirement of Code of Civil Procedure section 382 that there be "many" parties to a class action suit is indefinite and has been construed liberally. (*Renken v. Compton City School Dist.* (1962) 207 Cal.App.2d 106, 113.) No set number is required as a matter of law for the maintenance of a class action. (*Hebbard v. Colgrove* (1972) 28 Cal.App.3d

1017, 1030; See also *Bowles v. Superior Court* (1955) 44 Cal.2d 574 (class with 10 members sufficiently numerous); see also *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 (class of 48 members satisfies the numerosity requirement).) Class members are "ascertainable" where they may be readily identified without unreasonable expense or time by reference to official records. (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932.) Here, the class is sufficiently numerous because there are approximately 88 employees in the Class, and there is a common interest to many persons as this claim will confer significant benefits to those persons. (Rauchwerger Decl. ¶ 25.) Furthermore, it would be impracticable to bring all of them before the Court on an individual basis. (*Id.*) Moreover, the Class is readily ascertainable as Defendant is in possession of contact information for its current and former employees via regularly maintained employment records. (*Id.*)

**2. <u>The Community of Interest Requirement Is Also Satisfied.</u>**

"The 'community of interest' requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) Here, the common questions of law and fact clearly exist, as the underlying dispute involves Defendant's employment policies and practices which affected all the employees in the proposed Class. (Rauchwerger Decl. ¶ 25.) Plaintiff is typical of the class he seeks to represent because Plaintiff worked for Defendant, contends that the alleged violations occurred as a result of a common policy affecting all the putative Class Members and contends that he had a similar experience to each of the Class Members because they were all subjected to common policies and practices by Defendant. (Doyon Decl. ¶¶ 3-4.)

**B. <u>Class Counsel Has Extensive Experience In Class Actions And Similar Cases.</u>**

Class Counsel has extensive experience in similar cases and believe that the proposed Settlement is adequate, reasonable, fair, and in the best interests of all class members. (Rauchwerger Decl. ¶¶ 26-27.)

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**C. The Class Representative Is Adequate.**

Plaintiff Doyon is an adequate Class Representative who has similar, co-extensive interests with the proposed Class Members. (Rauchwerger Decl. ¶ 28.) Plaintiff has remained intricately involved in this lawsuit and has understood his responsibilities with respect to the class. (Doyon Decl. ¶ 5.) Plaintiff understood from the beginning that he had a duty to look out for the best interests of the Class, and he understood that by taking on this case, he was agreeing to take on significant responsibility, which could include having to be deposed and provide extensive information to respond to discovery requests, as well as potentially testifying at trial. (*Id.*) Plaintiff has taken his responsibility as Class Representative seriously and learned the laws as they relate to the payment of wages, requirements for meal and rest periods, and other issues related to this Action. (Doyon Decl. ¶ 6.) Moreover, Plaintiff is unaware of any conflicts between his own interests and goals and the interests and goals of anyone else in the Class. (Doyon Decl. ¶ 7.)

**D. The Proposed Enhancement Payment to Plaintiff Is Reasonable.**

In connection with the final approval hearing, Class Counsel will request approval of the Class Representative Enhancement Payment of $7,500.00 to Plaintiff Doyon for his service as class representative and in consideration for the broader release of claims he is providing under the Settlement Agreement. (SA §§ 3.2.1, 6.1-6.1.1.) This amount is based on the extent of Plaintiff's assistance in this lawsuit, including providing relevant information and documents to Class Counsel, answering various questions and providing additional information throughout the entirety of the case, reviewing the complaint and reviewing the settlement agreement and having related discussions. (*See*, e.g., Doyon Decl. ¶¶ 4-6.) This amount is also reasonable given that Plaintiff is providing a broader release than the Settlement Class, including a waiver under Civil Code section 1542. (Rauchwerger Decl. ¶ 28.) The requested incentive payment is well within the accepted range of awards for purposes of preliminary approval. (*See*, e.g. *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393).

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**E. Settlement Administration Costs are Reasonable.**

The parties solicited bids for settlement administration work and have agreed upon Phoenix Class Action Administration Solutions ("Phoenix"). Phoenix works in the settlement administration business, and costs of administration should not exceed $4,750.00. (Declaration of Jodey Lawrence ("Phoenix Decl.") ¶ 22.) Plaintiff respectfully requests that the Court approve the appointment of Phoenix as the Settlement Administrator. (See, e.g., Phoenix Decl. ¶¶ 5-22.)

## V. THE PROPOSED SETTLEMENT

### A. The Settlement Class & Released Claims

**Class & Class Size:** The "Class," "Class Members" or "Settlement Class" is defined as: "Class" means "all current and former non-exempt employees who worked for Defendant in California during the Class Period." (SA § 1.5.) The Parties estimate that there are approximately 88 Class Members. (SA § 4.1.) The "Class Period" means the period from March 13, 2020 through August 19, 2025. (SA § 1.12.) Class Members who do not submit a valid and timely request for exclusion from the Class Settlement are referred to as the "Participating Class Members." (SA § 1.35.)

**Release:** The scope of the release for Participating Class Members is limited to all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the operative Complaint and ascertained in the course of the Action. (SA § 6.2.) 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, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (*Id.*) The named Plaintiff has agreed to a broader release, which only applies to the named Plaintiff. (SA §§ 6.1-6.1.1.) Aggrieved Employees also release claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the operative Complaint, the PAGA Notice, and ascertained in the course of the Action. (SA § 6.3.)

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**B. The Settlement Payment**

Defendant will, through the Settlement Administrator, create a ***non-reversionary*** settlement fund in the amount of Two Hundred Sixty Thousand Dollars ($260,000.00) ("Gross Settlement Amount"). (SA § 3.1.) The settlement is allocated such that twenty percent (20%) of the recovery will be considered wages, and any employer share of payroll taxes that become due shall be paid separate and apart from the Gross Settlement Amount by Defendant. (SA §§ 3.1, 3.2.4.1.) The Escalator Clause provides that if the number of Total Workweeks during the Class Period is more than 10% greater than 5,750 (i.e., more than 6,325 Total Workweeks), Defendant has the option of increasing the Gross Settlement Amount proportionately or adjusting the end of the Class Period to a date where the Total Workweeks do not exceed 6,325. (SA § 9.) Defendant has 21 days after the Effective Date to deposit the funds with the Administrator. (SA § 4.3.)

**C. Settlement Payment Distribution Plan**

All expenses associated with the Settlement are to be paid from the Settlement's Gross Settlement Amount (SA § 3.2-3.2.5.2), including up to $91,000.00 to Class Counsel for attorneys' fees (35% of the Gross Settlement Amount), up to $8,500.00 to Class Counsel for reimbursement of litigation expenses incurred (SA § 3.2.2); Settlement Administration expenses at the quoted amount of up to $4,750.00 to be paid to the qualified Settlement Administrator Phoenix to administer the notice and process payments (SA § 3.2.3); a Class Representative Service Payment of $7,500.00 to Plaintiff Doyon for his service as the class representative and in consideration for a general release of all claims against Defendant (SA §§ 3.2.1, 6.1-6.1.1); and a PAGA Payment of $20,000.00 in resolution of any claims that have been or could have been asserted under the Private Attorney General Act of 2004 ("PAGA"), codified in California Labor Code section 2698, *et seq.*, pertaining to the allegations in the Operative Complaint and the PAGA letter sent to the LWDA. (SA § 3.2.5.)

Pursuant to California Labor Code section 2699(i), and subject to approval by the Court under California Labor Code section 2699(l), $15,000.00, or 75% of the PAGA Settlement Amount will be paid to the California Labor and Workforce Development Agency, in resolution

of the PAGA claims for the Aggrieved Employees. The remaining $5,000.00, or 25% of the PAGA Settlement Amount will be paid to the Aggrieved Employees through Individual PAGA Payments. (SA § 3.2.5-3.2.5.1.)

**1. Calculating Participating Class Members' Individual Settlement Payments**

All Participating Class Members will receive an Individual Class Payment. After deducting the amount of the fees award, the costs award, the enhancement award to Plaintiff, the Settlement Administrator expenses that are all finally approved by the Court, and the PAGA penalty amounts, the remaining "Net Settlement Amount" will be distributed to the Participating Class Members through "Individual Class Payments." (SA § 1.28.)

Individual Class Settlement Payments will be paid from the Net Settlement Amount and paid pursuant to the formula as follows: (i) First, using the Class Data List, the Administrator will compute the total number of workweeks of all Participating Class Members collectively during the Class Period (the "Workweek Total"); (ii) Second, the Administrator will divide the Net Settlement Amount by the Workweek Total to determine the settlement value of each eligible Workweek (the "Workweek Value"); (iii) Third, the Administrator will multiply the number of Workweeks of a Participating Class Member during the Class period by the Workweek Value to determine the Participating Class Member's Individual Class Settlement Payment. (SA § 3.2.4.) The estimated Net Settlement Amount will be approximately $128,250.00.[5] (Rauchwerger Decl. ¶ 30.) As of the date the Settlement Agreement was signed, Defendant estimated there were approximately 88 Class Members who collectively worked approximately 5,750 Workweeks during the Class Period. (SA §§ 4.1, 9.) The actual Individual Class Payments will depend upon the number of Workweeks worked by each Participating Class Member and whether the Class Member previously received an individual settlement payment from Defendant. (SA § 3.2.4.)

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[5] The estimated Net Settlement Amount of $128,250.00 is calculated by taking the $260,000.00 Gross Settlement Amount and subtracting: the requested attorneys' fees of 35% of the Gross Settlement Amount ($91,000.00), reimbursement of litigation costs (in the maximum amount of $8,500.00), a Class Representative Service Payment of $7,500.00 to Plaintiff, Settlement Administrator costs in the maximum amount of $4,750.00, and PAGA penalties of $20,000.00. (Rauchwerger Decl. ¶ 30.)

All Individual Settlement Payments will be allocated as follows: (i) Twenty Percent (20%) of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued and there will be tax withholdings on this amount; and (ii) Eighty Percent (80%) will be allocated as non-wages (penalties, interest, and expense reimbursement) for which IRS Forms 1099-MISC will be issued and there will not be tax withholdings on this amount. (SA § 3.2.4.1.) The Parties agree that the formula for allocating the Individual Settlement Payments to Participating Class Members is reasonable and that the payments provided herein are designed to provide a fair settlement to such persons, in light of the uncertainties regarding the calculation of alleged wages, penalties, interest, and expense reimbursement to each Participating Class Member. (Rauchwerger Decl. ¶ 30.)

**2. Calculating PAGA Settlement Members' Individual PAGA Payments**

Individual PAGA Payments will be calculated as a *pro rata* share of the 25% of the PAGA Penalties according to the number of PAGA Pay Periods worked during the PAGA Period. The Administrator will calculate each Individual PAGA Payment The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties $5,000.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (SA § 3.2.5.1.)

**3. Distributions To Settlement Class**

***No claim form will be required for the Individual Settlement Payment to be sent.*** (SA § 3.1.) Within fourteen (14) days after Defendant funds the Settlement, the Settlement Administrator will mail checks for all Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fee Payment, Class Counsel Litigation Expense Payment and the Class Representative Service Payment. (SA § 4.4.)

**D. Notice To The Class Members**

Attached to the Declaration of Devin Rauchwerger as **Exhibit 3** is the [Proposed] Notice of Class Action Settlement and Hearing Date For Final Court Approval. (Rauchwerger Decl. ¶

31.) To protect the rights of absent class members, the court must provide class members with the best class action settlement notice practicable. (See Cal. Rules of Court, rule 3.769(f); *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12.) The primary purpose of class notice is to provide affected parties with due process rights reasonably calculated to apprise interested parties of the pendency of the action affecting their interests and an opportunity to present their objections. (See *Ryan v. Cal. Interscholastic Fed'n – San Diego Section* (2001) 94 Cal.App.4th 1048, 1072.) The proposed Notice of Class Action Settlement and Hearing Date for Final Court Approval satisfies these requirements. The proposed Class notices ensure the Settlement Class is alerted to the terms of the Settlement and allows them to protect their rights. The proposed notice plan, calling for first-class mailed notice to all members of the Settlement Class, is consistent with notices approved by State and Federal Courts and constitutes the best notice practicable. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 966; *Cooper v. Am. Sav. & Loan Ass'n.* (1976) 55 Cal.App.3d 274, 285.)

Pursuant to the Settlement Agreement, Defendant will provide the Class Data to the Settlement Administrator no later than 21 days after the Court grants Preliminary Approval. (SA § 4.2.) The Settlement Administrator will mail the Class Notice to all Class Members no later than 14 days after receiving the Class Data and, before mailing, will update Class Member addresses using the National Change of Address database. (SA § 8.4.2.) The Response Deadline will be 45 days after the Settlement Administrator mails the Notice. (SA § 1.43.) If a Notice is returned as undeliverable, the Settlement Administrator will promptly re-mail the Notice using any forwarding address provided by the USPS or conduct a Class Member Address Search to obtain an updated address. (SA § 8.4.3.) Class Members whose Notices are re-mailed will receive an additional 14 calendar days beyond the Response Deadline to object to or request exclusion from the Settlement. (SA §§ 1.43, 8.4.4.)

## VI. CONCLUSION

For the foregoing reasons, the Parties respectfully submit that the Settlement's terms are fair, adequate, and reasonable and that it is in the best interest of the Class Members. Under the applicable class action criteria and guidelines, this Class should be conditionally certified, the

Settlement should be preliminarily approved, the Class should be notified regarding the Settlement, and the Court should schedule a final approval hearing on a date that provides sufficient time to complete the notice and administration process set forth in the Settlement Agreement.

Dated: October 2, 2026

Respectfully submitted,
**DOMB & RAUCHWERGER LLP**

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