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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO**

MARICHU JEFFRIES, on behalf of herself,
all others similarly situated, and on behalf of
the general public,

Plaintiff,

v.

THE MEADOWS AT COUNTRY PLACE,
LLC; and DOES 1-100,

Defendants.

Case No.: 24CV005325

[Consolidated with Case No. 24CV009992]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL APPROVAL
HEARING DATE**

Date: June 6, 2025

Time: 9:00 a.m.

Dept.: 23

Reservation No.: A-05325-001

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I. INTRODUCTION

Plaintiff Luis Ramirez (“Plaintiff”), on behalf of himself and the approximately 57-member putative class, respectfully request that this Court preliminarily approve the Joint Stipulation and Settlement Agreement¹ (“Settlement Agreement”) entered into between Plaintiff and Defendant Argus Professional Storage Management, LLC (“Defendant”) (Plaintiff and Defendant are collectively referred to as the “Parties”). The Parties’ Settlement Agreement seeks to resolve claims raised against Defendant in this matter in exchange for a non-reversionary \$273,500 Gross Settlement Amount (“GSA”). The proposed class is comprised of current and former hourly non-exempt employees who worked for Defendant in California during the Class Period (“Class Members”). The Class Period is the time period beginning on from March 17, 2023, through March 15, 2025.

It is requested that the Court grant preliminary approval, as, when analyzing the strengths and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this proposed settlement of \$273,500 – **which is estimated to pay class members an average settlement share of approximately \$2,163.74²** – is well within the range of reasonableness. Moreover, the proposed Agreement satisfies all of the criteria for preliminary approval under Rule 3.769 of the California Rules of Court.

As the following sections show, Class Counsel are convinced that the proposed settlement is in the best interests of the Class based on the negotiations and a detailed knowledge of the issues present in this action. The length and risks of trial and perils of litigation that affect the value of the claims were all carefully weighed. In addition, the defenses asserted by Defendant, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals, were also carefully considered by Class Counsel in arriving at the proposed settlement. The Settlement Agreement was the product of an all-day mediation with well-regarded and experienced mediator Brandon McKelvey and was the product of non-collusive, arm’s-length negotiations by informed counsel and parties. The settlement is fair, reasonable, and

¹ The Settlement Agreement is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as **Exhibit 1**.

² \$123,333.34 NSA / 57 class members = \$2,163.74 average payout per Class Member. Based upon the approximately 4,954 workweeks at the time of settlement, Class Members are estimated to receive approximately \$24.89 per workweek (\$123,333.34 NSA / 4,954 workweeks = \$24.89).

adequate to all. Accordingly, Plaintiff seeks: (1) preliminary approval of the terms of the Settlement Agreement; (2) provisional certification of the Class; (3) appointment of Plaintiff as Class Representative; (4) appointment of Mara Law Firm, PC as Class Counsel; (5) approval of the Parties' proposed notice of class action settlement³ (referred to herein as the "Class Notice" or "Notice") and method of notifying the Class about the settlement; and (6) set a hearing date for final approval.

II. FACTUAL/PROCEDURAL BACKGROUND

Defendant operates as a third-party management company, assisting its customers in running and managing self-storage operations in California. In order to carry out its business, Defendant employs hourly non-exempt employees, like Plaintiff. Mara Dec. ¶ 9.

Plaintiff filed a class action complaint on March 20, 2024, in Sacramento County Superior Court (Case No. 24CV005325). The Class Action alleges the following causes of action against Defendant: 1) Failure to Pay All Straight Time Wages; 2) Failure to Pay Overtime Wages; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Rest Periods; 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; 6) Failure to Pay all Wages Due at the Time of Termination of Employment; (7) Failure to Reimburse/Illegal Deductions; and 8) Violation of Unfair Competition Law, on behalf of Plaintiff and those similarly situated. Mara Dec. ¶ 10.

On March 14, 2024, Plaintiff sent notice to the LWDA of his intent to pursue various wage and hour claims against Defendant on behalf of similarly situated aggrieved employees.⁴ Shortly thereafter, a representative action pursuant to the California Labor Code Private Attorneys General Act of 2004 ("PAGA") complaint against Defendant was filed by Plaintiff (as an agent of the LWDA) in the Superior Court of California, County of Sacramento on May 21, 2024 (Case No. 24CV009992). The PAGA Action sought civil penalties under the PAGA in relation to the following alleged violations suffered by allegedly similar aggrieved employees: 1) Failure to Pay All Straight, Regular Rate Wages for All Work Performed; 2) Failure to Pay All Overtime Wages; 3) Failure to Provide Meal Periods; 4) Failure to Provide Rest Periods; 5) Failure to Pay Wages Due at Termination and During Employment; 6) Knowing and Intentional Failure to Comply with Itemized Employee Wage

³ The Class Notice is attached to the Settlement Agreement as **Exhibit A**.

⁴ Plaintiff's notice to the LWDA dated March 14, 2024 is attached to the Mara Dec. as **Exhibit 3**.

1 Statements; 7) Failure to Employees Two Times Per Month; and 8) Failure to Reimburse Business
2 Expenses Incurred in Discharging Duties. Mara Dec. ¶ 11.

3 On or around January 10, 2025, the Court ordered the Class Action and PAGA Action
4 consolidated. The Court designated the Class Action, Case No. 24CV005325, as the lead case. Mara
5 Dec. ¶ 12.

6 Defendant denies the allegations of the action in its entirety, deny any liability or wrongdoing
7 of any kind associated with the claims alleged in this action, and further deny that, for any purpose
8 other than settling this action, this matter is appropriate for class treatment. Defendant further contends
9 that they have complied with all applicable California laws, the California Labor Code, the applicable
10 California Wage Order(s), and the Unfair Competition Law. Defendant finally contends that, if this
11 matter were to be litigated further, they would have strong defenses to oppose class certification and
12 succeed on the merits of Plaintiff's causes of action. Mara Dec. ¶ 13.

13 **III. THE TERMS OF THE PROPOSED SETTLEMENT**

14 Under the terms of the proposed settlement, Defendant will create a settlement fund of
15 \$273,500.

16 **a. Deductions From the Settlement**

17 The Parties have agreed (subject to and contingent upon the Court's approval) that this action
18 be settled and compromised for the non-reversionary total sum of \$273,500, which includes, subject
19 to Court approval: (a) attorneys' fees of up to \$91,166.66 (one-third of the GSA) to compensate Class
20 Counsel for work already performed and all work remaining to be performed in documenting the
21 settlement, administrating the settlement, and securing Court approval; (b) litigation expenses
22 estimated not to exceed, \$15,000;⁵ (c) an enhancement payment to the named class representative,
23 Luis Ramirez, in a sum not to exceed \$7,500 in consideration for agreeing to a general release of her
24 claims against Defendant which is broader than that of other class members, and in recognition of their
25 efforts in prosecuting their actions; (d) claims administration fees and expenses to Apex Class Action

26 _____
27 ⁵ These will be tabulated and presented to the Court at final approval. Plaintiff will only seek the
28 amount of actual expenses incurred during the litigation of this case. Should the actual expenses exceed
\$15,000, Plaintiff will only seek reimbursement of costs up to \$15,000. Prior to filing this motion,
Class Counsel had incurred \$12,669.13 in litigation expenses, and estimates incurring approximately
\$190.00 in future costs. *See* "Costs Summary" attached to the Mara Dec. as **Exhibit 2**.

1 LLC (hereinafter “Apex”), estimated not to exceed approximately \$6,500;⁶ and (e) PAGA payment of
2 \$30,000 allocated to Plaintiff’s PAGA claims.

3 **b. Calculation of the Settlement Payments to Participating Class Members**

4 After all Court-approved deductions from the GSA, it is estimated that \$123,333.34 (“Net
5 Settlement Amount” or “NSA”), less all applicable employee payroll taxes⁷, will be distributed to each
6 Participating Class Member.⁸ Subject to the terms and conditions of the settlement, the Settlement
7 Administrator will calculate and issue Individual Class Settlement Shares based on the following
8 formula:

9 Each Participating Class Member will receive a proportionate share of the Net
10 Settlement Amount that is equal to (i) the number of weeks he or she worked for
11 Defendant, based on the Class Data provided by Defendant, divided by (ii) the total
12 number of weeks worked by all Participating Class Members during the Class Period
13 based on the same Class Data, which is then multiplied by the Net Settlement Amount.
14 One day worked in a given week for Defendant will be credited as a work week for
15 purposes of this calculation. Therefore, the value of each Class Member’s Individual
16 Settlement Share ties directly to the amount of weeks that he or she worked for
17 Defendant in California. **Exhibit 1** attached to the Mara Dec. at Section III (59)(A)(i).

18 Furthermore, the Settlement allocates \$30,000 in consideration for the settlement of Plaintiff’s
19 PAGA claims, which is to be distributed separately from the NSA. Settlement Class Members who
20 performed work for Defendant from March 17, 2023, through March 15, 2025 (“PAGA Period”) are
21 also deemed “Aggrieved Employees” and able to recover their share of the civil penalties under the
22 settlement. 75% of this \$30,000, or \$22,500, will be paid to the LWDA, while the remaining 25%, or
23 \$7,500, will be distributed to the Aggrieved Employees. The Settlement Administrator will calculate
24 and issue Individual PAGA Settlement Shares based on pay periods, similar to the class payments, but
25 only for the PAGA Period of March 17, 2023, through March 15, 2025. **Exhibit 1** attached to the Mara
26 Dec. at Section III (60)(A)(i).

24 ⁶ Apex will present to the Court a declaration in conjunction with the final approval motion outlining
25 the costs of the settlement administration process. If the settlement administration costs are lower than
26 the amount allocated in the Settlement Agreement, the difference will be added to the Net Settlement
27 Amount for distribution to Participating Class Members.

27 ⁷ The employer’s share of payroll taxes due on the portion of the Individual Settlement Payments that
28 is allocated to wages shall be paid by Defendant separately and in addition to the GSA. **Exhibit 1**
attached to the Mara Dec. at Section I (19).

⁸ Participating Class Members are Class Members who do not submit a valid and timely request to
exclude themselves from this Settlement. **Exhibit 1** attached to the Mara Dec. at Section I (34).

1 The precise number of compensable weeks worked per class member will not be known until
2 the administrator tabulates them, following preliminary approval. Under no circumstances will any
3 portion of the \$273,500 settlement revert to Defendant and one hundred percent (100%) of the NSA
4 is available for Class Members to claim.

5 The Individual Class Settlement Shares will be divided into a “wage portion” to compensate
6 Participating Class Members for alleged unpaid wages and a “non-wage portion” to compensate
7 Participating Class Members for alleged interest and penalties. Participating Class Members’
8 individual settlement shares will be apportioned as 20% wages, 40% penalties, and 40% interest. The
9 Individual PAGA Settlement Shares will be apportioned as one-hundred percent (100%) penalties.

10 **c. Notice to the Class**

11 Upon entry of the order of the Court granting preliminary approval of this Agreement,
12 Defendant shall provide the Settlement Administrator with a list in Excel spreadsheet format
13 containing the name and last known address, telephone number, and social security number of each
14 Class Member within ten (10) business days for purposes of mailing the Notice of Class Action
15 Settlement to the Settlement Class members. Upon receipt of the class data, the Settlement
16 Administrator will perform a search based on the National Change of Address Database to update and
17 correct any known or identifiable address changes. Within ten (10) business days of receipt of the
18 class data, the Settlement Administrator shall mail copies of the Notice of Class Action Settlement to
19 all Class Members via regular First-Class U.S. Mail. Class Members shall have sixty (60) days after
20 the Class Notices are mailed to respond by submitting a challenge to the number of workweeks
21 attributed to them, submitting an objection, or requesting to be excluded from the Settlement
22 Agreement.

23 If a Class Notice is returned because of an incorrect address, within five (5) business days from
24 receipt of the returned notice, the Settlement Administrator will conduct a search for a more current
25 address for the Class Member and re-mail the notice. The Settlement Administrator will use the
26 National Change of Address Database and skip traces to attempt to find the current address. Class
27 Members to whom notices are re-mailed after having been returned to the Settlement Administrator
28 shall have an additional fifteen (15) calendar days beyond the Response Deadline to dispute the

number of work weeks worked, opt out of the Settlement, or object to the Settlement.

d. Distribution of Funds

No later than ten (10) business days after the Effective Final Settlement Date⁹, Defendant shall provide the GSA to the Settlement Administrator to fund the Settlement and the employer's share of payroll taxes due on the portion of the Individual Settlement Payments that is allocated to wages. Not later than ten (10) business days after receiving the funds from Defendant, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to be Paid to Aggrieved Employees; (3) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (5) the Administration Costs, as approved by the Court; (6) the LWDA Payment to the LWDA; and (7) Defendant's portion of payroll taxes as the Class Members' current or former employer.

Class Members must cash or deposit their Individual Settlement Payment checks within one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within one hundred and eighty (180) calendar days after mailing, the Settlement Administrator will transmit the funds to the California State Controller – Unclaimed Property Division, with the identity of the Participating Class Member to whom the funds belong. The funds shall be held by the California State Controller – Unclaimed Property Division in the name of the Participating Class Member.

e. Release of Claims

On the date in which Defendant funds the settlement, the Class Representative and the Class Members will release the Released Class Claims:

All claims alleged or that reasonably could have been alleged based on a reasonable interpretation of the facts alleged in the Class Action. All Released Class Claims are limited to the Class Period. **Exhibit 1** attached to the Mara Dec. at Section I (37).

On the date in which Defendant funds the settlement, Plaintiff, or such other designee who has

⁹ "Effective Final Settlement Date" of the Settlement means when the final approval of the settlement can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the court grants final approval of the settlement, the date the court enters judgment granting final approval of the settlement.

properly exhausted administrative requirements, acting in the capacity of a representative of the State of California, and on behalf of the group of Aggrieved Employees, will release the Released PAGA Claims:

[A]ny and all claims for civil penalties that could have been asserted by the Labor Commissioner against Defendant under the PAGA during the PAGA Period, Cal. Lab. Code § 2698, *et seq.* to the extent such claims are predicated on claims alleged or reasonably could have been alleged based on a reasonable interpretation of the facts in the PAGA Action and Plaintiff's notice to the LWDA. All Released PAGA Claims are limited to the PAGA Period. **Exhibit 1** attached to the Mara Dec. at Section I (38).

In addition, Plaintiff agreed to a general release of his claims against Defendant. *See Exhibit 1* attached to the Mara Dec. at Section III (66).

IV. PROVISIONAL CLASS CERTIFICATION SHOULD BE GRANTED

Under California law, a class action is appropriate when the class is ascertainable and there is "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." Cal. Civ. P. Code § 382. State law requirements under California Code of Civil Procedure § 382 for class certification follow federal law according to Rule 23 of the Federal Rule of Civil Procedure: numerosity, typicality of the class representatives' claims, adequacy of representation, predominance of common issues, and superiority. Fed. R. Civ. P. 23(a); *see also Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted that while a court must certify a class for settlement purposes if a class has not already been certified, "it is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19.

Plaintiff contends, and Defendant does not dispute for settlement purposes only, each of these elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38. Plaintiff seeks approval of the following Class for settlement purposes only: All current and former non-exempt hourly employees who worked for Defendant in California from March 17, 2023, through March 15, 2025.

a. The Proposed Settlement Class is Ascertainable

Plaintiff contends that the proposed Settlement Class is ascertainable because of all of the class

1 members have worked for Defendant and have been identified through Defendant’s own records, such
2 as employee and payroll files. *See Rose v City of Hayward* (1981) 126 Cal.App.3d 926,932 (finding
3 that “Class Members are ‘ascertainable’ where they may be readily identified without unreasonable
4 expense or time by reference to official records.”); *Sevidal v. Target Corp.* (2010) 189 Cal.App.4th
5 905, 919 (“[c]lass members are ‘ascertainable’ where they may be readily identified without
6 unreasonable expense or time by reference to official [or business] records.”). Thus, the
7 ascertainability requirement is met.

8 **b. The Proposed Settlement Class is Sufficiently Numerous**

9 The numerosity requirement is met if the class is so large that joinder of all members would be
10 impracticable. *Gay v. Waiters’ & Dairy Lunchmen’s Union* (N.D. Cal. 1980) 489 F. Supp. 282, *aff’d*
11 (9th Cir. 1982) 694 F.2d 531. “There is no set number required to maintain a class action, and the
12 statutory test is whether a class is so numerous that ‘it is impracticable to bring them all before the
13 court.’” *Henderson v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1223
14 (reversing superior court ruling that nine class members was too few); *Bowles v. Superior Court* (1995)
15 44 Cal.2d 574 (upholding a class of ten members). “The numerosity requirement is more readily met
16 when a class contains employees suing their present employer . . . This is because class members may
17 be unwilling to sue their employer individually out of fear of retaliation.” *Romero v. Producers Dairy*
18 *Foods* (E.D. Cal. 2006) 235 F.R.D. 474, 485. As explained by the California Supreme Court, “fear of
19 retaliation for individual suits against an employer is a justification for class certification in the arena
20 of employment litigation, even when it is otherwise questionable that the numerosity requirements
21 were satisfied . . . It needs no argument to show that fear of economic retaliation might often operate
22 to induce aggrieved employees quietly to accept substandard conditions.” *Gentry v. Superior Court*
23 (2007) 42 Cal.4th 443, 460 (citation omitted), *overruled on other grounds in Iskanian v. CLS Transp.*
24 *Los Angeles, LLC* (2014) 59 Cal.4th 348.

25 Here, Defendant’s records show that the proposed Settlement Class has approximately fifty-
26 seven (57) members. Plaintiff contends that joinder of all Class Members is impracticable and,
27 therefore, a class wide proceeding is preferable. *See Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017,
28 1030 (noting that there is no set minimum to meet the numerosity prerequisite, but that a class of as

1 few as 28 is acceptable.). In fact, a class of ten (10) has been certified as a class action. *Id.*, citing
2 *Bowles v. Superior Court* (1995) 44 Cal.2d 574. Several federal cases on this issue have held that
3 classes of over forty (40) individuals are numerous enough to meet the numerosity requirement. *See*
4 *Ikonen v. Hartz Mountain Corp.* (S.D. Cal. 1988) 122 F.R.D. 258, 262. Accordingly, the Class that is
5 comprised of approximately fifty-seven (57) members is sufficient to satisfy the numerosity
6 requirement.

7 **c. The Commonality Requirement is Met**

8 The commonality requirement is met if there are questions of law and fact common to the class.
9 *Hanlon, supra*, 150 F.3d at 1019 (“The existence of shared legal issues with divergent factual
10 predicates is sufficient, as it a common core of salient facts coupled with disparate legal remedies
11 within the class.”). “Predominance is a comparative concept, and ‘the necessity for class members to
12 individually establish eligibility and damages does not mean individual fact questions predominate.’”
13 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334. Commonality exists if there
14 is a predominant common legal question regarding how an employer’s policies impact its employees.
15 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1536 (2008) (“[T]he common legal
16 question remains the overall impact of Diva’s policies on its drives.”). Whether Plaintiff is likely to
17 prevail on his theory of recovery is irrelevant at the certification stage since the question is “essentially
18 a procedural one that does not ask whether an action is legally or factually meritorious.” *Linder v.*
19 *Thrifty Oil Co.* (2003) 23 Cal.4th 429, 439-440.

20 Here, Plaintiff contends that the proposed Class Members’ claims all stem from the same
21 allegedly unlawful policies and practices, which were addressed previously in this motion. Plaintiff
22 seeks the same legal remedies under state law on behalf of themselves and all Class Members. As
23 liability as to all Class Members is predicated on the same policies and practices, which Plaintiff
24 alleges violates California law, the commonality requirement has been satisfied.

25 **d. The Typicality Requirement is Met**

26 The typicality requirement is met if the claims of the named representative are typical of those
27 of the class, though, “they need not be substantially identical.” *Hanlon, supra*, 150 F.3d at 1020;
28 *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. Plaintiffs contend that their claims are typical of

1 the Class Members' claims because they arise from the same factual basis and are based on the same
2 legal theory as those applicable to the Class Members. *See Wehner v. Syntex Corp.* (N.D. Cal. 1987)
3 117 F.R.D. 641, 644. Each Class Member is challenging the same policies and practices. Plaintiff
4 alleges that Defendant's policies applied to all Class Members. Factual differences may exist between
5 Plaintiff's and the Class Members so long as the claims arise from the same events or course of conduct
6 and are based on the same legal theories. *Hanlon, supra*, 150 F. 3d at 1020; *see also Wehner, supra*,
7 117 F.R.D. at 644; *Newberg on Class Actions*, 4th ed. § 3:15, p.335 [When it is alleged that the same
8 unlawful conduct was directed at or affected both the named plaintiff and the class sought to be
9 represented, the typicality requirement is usually met irrespective of varying fact patterns which
10 underlie individual claims.] As such, the typicality requirement is satisfied.

11 **e. The Adequacy Requirement is Met**

12 The adequacy requirement is met if Plaintiff has no interests adverse to the interests of the
13 proposed Class Members and is committed to vigorously prosecuting the case on behalf of the class.
14 *Hanlon, supra*, 150 F.3d at 1020; *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51.
15 Plaintiff contends those standards are met here. Plaintiff does not have any conflicts of interest with
16 the Class. He has been and continues to be committed to vigorously prosecuting this case. If any Class
17 Member wishes to opt-out of the Settlement, he or she may do so. Therefore, there is no conflict of
18 interest between Plaintiff and the Class Members.

19 **f. Notice to Class Members Complies with California Rule of Court 3.769(f)**

20 California Rule of Court 3.769(f), provides:

21 If the court has certified the action as a class action, notice of the final approval hearing
22 must be given to class members in the manner specified by the court. The notice must
23 contain an explanation of the proposed settlement and procedures for class members to
24 follow in filing written objections to it and in arranging to appear at the settlement
hearing and state any objections to the proposed settlement.

25 The proposed Class Notice meets all of these requirements. The proposed Class Notice advises
26 the class of their rights to participate in the settlement, how to and when to object to or request
27 exclusion from the settlement, and the date, time, and location of the final approval hearing. The
28 proposed Class Notice is attached as **Exhibit A** to the Settlement Agreement.

1 **V. INVESTIGATION, CLAIMS, AND MEDIATION**

2 **a. Discovery and Investigation**

3 Through discovery, Plaintiff sought numerous documents and substantial amounts of data that
4 were needed to evaluate the case. These documents included requests for time and wage records for
5 the Class, employee handbooks, policies, and practices in place during the class period, as well as data
6 surrounding the number of current and former employees. Mara Dec. ¶ 14.

7 This discovery, in conjunction with the Parties’ meet and confer efforts, resulted in the
8 production of a number documents, including Defendant’s employee policies and practices, and a
9 sampling of wage and time records for Plaintiff and Class Members. Using the time and wage records
10 for the Class provided and the data surrounding the number of current and former employees, Plaintiff
11 was able to establish a potential exposure model in preparation for mediation. Mara Dec. ¶ 15.

12 **b. The Parties’ Staunchly Conflicting Positions**

13 **i. Meal Periods**

14 Based upon the discovery conducted, Plaintiff contends – and Defendant denies – that
15 Defendant fails to provide Class Members with lawful meal periods. Under California Labor Code §
16 512(a), “[a]n employer may not employ an employee for a work period of more than five hours per
17 day without providing the employee with a meal period of not less than 30 minutes” Cal. Lab.
18 Code § 512(a). An employer “satisfies this obligation [to provide meal periods] if it relieves its
19 employees of all duty, relinquishes control over their activities and permits them a reasonable
20 opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from
21 doing so.” *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040.

22 The California Supreme Court in *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58 has
23 determined that “[i]f an employer's records show no meal period for a given shift over five hours, a
24 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
25 provided.” *Donohue*, 11 Cal.5th at 74 (citing *Brinker*, 53 Cal.4th at 1052–1053 (conc. opn. of
26 Werdegar, J.)). This presumption does not “only [apply] to records showing missed meal periods,” as
27 “the presumption applies to records showing short and delayed meal periods as well.” *Id.* at 76.

28 Plaintiff contends that, here, the time records Defendant maintains for class members evidence

1 a significant amount of non-compliant meal periods. In these shifts, under *Donohue*, Plaintiff contends
2 that it is presumed that meal period violations occurred, and argues that Defendant will be unable to
3 provide sufficient evidence to rebut this presumption. Mara Dec. ¶ 16.

4 Defendant argues its meal period policy is facially lawful, that it provides employees with meal
5 periods in compliance with California law, and that Defendant would be able to provide declarations
6 from employees stating that they were able to take compliant meal periods without any interference
7 from Defendant. As such, any records reflecting non-complaint meal periods would be insufficient to
8 demonstrate any purported violations, and Defendant would be able rebut the presumption under
9 *Donohue v. AMN Services, LLC* for meal periods and defeat Plaintiff's claim both at class certification
10 and on the merits. Mara Dec. ¶ 17.

11 **ii. Rest Periods**

12 Plaintiff further contends that Defendant fails to provide employees with lawful rest periods.
13 Per the California Supreme Court in *Brinker*, the IWC wage order's requirements for providing a meal
14 period is satisfied if the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the
15 premises, and (3) is relieved of all duty for the entire period. *Brinker*, 53 Cal.4th at 1036 (citing DLSE
16 Opn. Letter No. 1988.01.05 (Jan. 5, 1988) p. 1; DLSE Opn. Letter No. 1996.07.12 (July 12, 1996) p.
17 1). In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme Court
18 determined that an employer's obligation for rest periods follow that of the requirements for meal
19 periods laid out by *Brinker*:

20 It would be difficult to cast aside section 226.7's parallel treatment
21 of meal periods and rest periods and conclude that employers had completely
22 distinct obligations when providing meal and rest periods. What makes sense
23 instead is to infer that employers' responsibilities are the same for meal and
24 rest periods—an inference that also reflects the protective purpose of both.
25 *Augustus*, 2 Cal.5th 257, 265. Thus, as an employer must permit the employee to leave premises for
26 meal periods, they must do the same for rest periods.

27 Plaintiff contends that Defendant does not have a written rest period policy and that Defendant
28 unlawfully forces employees to combine their rest periods with their first meal period, providing them
with a single one-hour meal period. The IWC Wage Orders require employers to provide rest periods
separately "in the middle of each work period," and combining them with meal periods simply because

1 it is “advantageous to the employer” violates California law. *See Rodriguez v. E.M.E., Inc.* (2016) 246
2 Cal.App.4th 1027, 1040-1041. Mara Dec. ¶ 18.

3 Defendant argues that despite having no written rest period policy, which Defendant notes is
4 *not* a requirement under California law, Defendant informs each and every employee that they are
5 entitled to take a 10 minute rest periods for every four hours worked or major fraction thereof, that
6 they are not under Defendant’s control and command during rest periods, and that they can use this
7 time to do whatever they choose. Defendant further claims it has spoken to numerous employees who
8 say they were able to take compliant rest periods, which both refutes Plaintiff’s claim and creates
9 individualized issues that would predominate and any trial would be rendered unmanageable. Based
10 on the foregoing, Defendant contends that Plaintiff’s rest period claims cannot be certified and will
11 not succeed on the merits. Mara Dec. ¶ 19.

12 **iii. Unpaid Wages**

13 Plaintiff contends that Defendant failed to pay employees for all time worked. Employees must
14 be paid for all “hours worked,” as is defined in the Wage Orders and interpreted by California courts.
15 Hours worked is defined in Wage Order 4-2001 as “the time during which an employee is subject to
16 the control of an employer, and includes all the time the employee is suffered or permitted to work,
17 whether or not required to do so.” Wage Order 4-2001, Subd. 2(K); *see also Mendiola v. CPS Security*
18 *Solutions, Inc.*, 60 Cal. 4th 833 (2015).

19 Here, Defendant has employees clock in via a computer system. Employees are required to visit
20 a website and attempt to log in. This entire process takes several minutes, and Plaintiff contends that
21 this time is compensable under California law. Mara Dec. ¶ 20.

22 Defendant argues that beyond the limited accusations of Plaintiff, there is no evidence that
23 employees performed *any* work-related tasks for which they were not compensated, and that
24 Defendant has uniform practices and policies *forbidding* employees from working off the clock.
25 Defendant claims that Plaintiff’s “investigation” is wholly inaccurate, and that employees are
26 instructed to clock in before performing any work related tasks, and that they are trained on how to
27 accurately log their time so that they can be paid for all time worked. Defendant further argues that
28 the Court would have to ask each employee if this purported unlawful practice existed, and that

1 individualized issues would predominate as a result, rendering the matter unsuitable for class
2 certification. Mara Dec. ¶ 21.

3 **iv. Reimbursement**

4 Plaintiff further contends that Defendant fails to reimburse employees for business expenses.
5 Under Labor Code § 2802, Plaintiff argues that Defendant is required to reimburse Plaintiff and
6 employees for a portion of their personal cell phone bills. Labor Code § 2802(a) reads:

7 An employer shall indemnify his or her employee for all necessary expenditures or
8 losses incurred by the employee in direct consequence of the discharge of his or her
9 duties, or of his or her obedience to the directions of the employer, even though
10 unlawful, unless the employee, at the time of obeying the directions, believed them
11 to be unlawful.

12 Plaintiff argues that employees must use their personal cell phones to clock in for their shifts. As such,
13 Defendant is liable for a reasonable percentage of their cell phone bills under § 2802. Mara Dec. ¶ 22.

14 Defendant contends that it has never required employees to use their personal cell phone for
15 business purposes. Defendant further contends if employees decide to use their personal cell phones
16 for business purposes, that it was solely that employee's choice, and not the result of any purported
17 mandate by Defendant. Mara Dec. ¶ 23.

18 As evidenced above, the Parties took staunchly conflicting positions with respect to Plaintiff's
19 claims.

20 **c. The Parties Agreed to Attend Mediation**

21 The Parties agreed to attend mediation with mediator Brandon McKelvey on January 7, 2025.
22 After a full day of mediation, a mediator's proposal was issued, which the Parties ultimately accepted.
23 Since then, the Parties have met and conferred regarding all the terms of the settlement and finalized
24 their agreement in the Parties' Settlement Agreement. The Parties seek preliminary approval of the
25 Settlement Agreement in the instant motion. Mara Dec. ¶ 24; **Exhibit 1**.

26 **VI. THE SETTLEMENT MEETS THE STANDARDS FOR APPROVAL**

27 **a. Class Action Settlements are Subject to Court Review and Approval Under the**
28 **California Rules of Court**

Rule 3.769 requires court approval for class action settlements.¹⁰ "Before final approval, the

¹⁰ The California Supreme Court also 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)

1 court must conduct an inquiry into the fairness of the proposed settlement.” (California Rules of Court,
2 Rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary approval of class
3 settlements:

4 (a) A settlement or compromise of an entire class action, or a cause of action in a
5 class action, or as to a party, requires the approval of the court after hearing.

6 ...
7 (c) Any party to a settlement agreement may serve and file a written notice of
8 motion for preliminary approval of the settlement. The settlement agreement
9 and proposed notice to class members must be filed with the motion, and the
10 proposed order must be lodged with the motion.

11 Courts act within their discretion in approving settlements that are fair, not collusive, and take into
12 account “all the normal perils of litigation as well as the additional uncertainties inherent in complex
13 class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167, 179, cert. den.
14 sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.

15 **b. The Settlement is Fair, Reasonable, and Adequate**

16 In deciding whether to approve a proposed class action settlement under Code of Civil
17 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.”
18 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is
19 **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-length
20 negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act
21 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
22 small. *Dunk v. Ford Motor Co., supra*, at 1802. As the following shows, all of these elements – with
23 the exception of the percentage of objectors, which cannot be anticipated at this stage of the litigation
24 – bearing on the fairness of the proposed settlement are present here and the Court’s grant of
25 preliminary approval is therefore requested.

26 **i. The Settlement was Reached as a Result of Arm’s Length Negotiations**

27 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
28 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
29 nature. At the mediation and the following negotiations through the mediator, Counsel for the Parties

30 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, the
31 Parties cite Federal Rule 23 and federal case law in addition to California law.

1 conducted extensive arm's length settlement negotiations until the settlement was reached. The terms
2 of the settlement are memorialized in the Settlement Agreement which is attached to the Declaration
3 of David Mara, Esq. as **Exhibit 1**.

4 **ii. The Settlement is the Result of Thorough Investigation and Discovery**

5 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before
6 reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to
7 support the settlement. The settlement was only possible following discovery and evaluation of
8 Defendant's policies and procedures, as well as the data produced for the putative class, which
9 permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages.
10 This litigation has reached the stage where "the Parties certainly have a clear view of the strengths and
11 weaknesses of their cases" sufficient to support the settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979)
12 485 F. Supp. 610, 617.

13 **iii. Counsel for Both Parties are Experienced in Similar Litigation**

14 Both Plaintiff's Counsel and Defendant's Counsel are experienced in wage and hour
15 employment law and class actions. Plaintiff's Counsel has significant experience in litigating unpaid
16 wages, unprovided meal and rest periods, misclassification, overtime, and expense reimbursement
17 class actions. Plaintiff's Counsel has prosecuted numerous wage and hour class action cases on behalf
18 of employees for California Labor Code violations and thus are experienced and qualified to evaluate
19 the class claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the
20 viability of the defenses. Mara Dec. ¶¶ 2-8. Indeed, Mara Law Firm, PC was class counsel in
21 *Hohnbaum et al. v. Brinker Restaurant Corp et al.*, which is the subject case in the landmark decision
22 of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Mara Dec. ¶ 4. This experience
23 instructed Plaintiff's Counsel on the risks and uncertainties of further litigation and guided their
24 determination to endorse the proposed settlement. Defendant's Counsel has experience representing
25 companies and regularly deals with wage and hour litigation matters. Accordingly, both Parties'
26 Counsel are experienced in wage and hour employment law and class actions.¹¹

27 _____
28 ¹¹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class
Notice has been provided to the class and they have had an opportunity to respond. This information
will be provided to the Court in conjunction with the final approval motion.

1 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

2 An understanding of the amount in controversy is an important factor into whether the
3 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of the
4 claims and the risks of the particular litigation.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168
5 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
6 Cal.App.4th 399, 409. The most important factor in this regard is “the strength of the case for plaintiffs
7 on the merits, balanced against the amount offered in settlement.” *Id.*

8 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to “decide
9 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the
10 attorneys.” *Kullar, supra*, 168 Cal.App.4th at 133. Finally, *Kullar* does not require an explicit
11 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,
12 provided there is a record which allows “an understanding of the amount that is in controversy and the
13 realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 409. Put differently, “as the
14 court does when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the
15 court must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.”
16 *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38
17 Cal.3d 488, 499-500. As the following subsections show, the Parties’ investigation and discovery
18 revealed plenty of reasons to discount claims and agree to this settlement.

19 **1. The Settlement is Fair and Reasonable Based on the Strengths of**
20 **Plaintiff’s Case and the Risks and Costs of Further Litigation**

21 The proposed settlement was only possible following significant discovery, an evaluation of
22 Defendant’s relevant policies and procedures, and Plaintiff’s independent investigation. This
23 permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. The
24 discovery conducted resulted in Plaintiff’s central theories of liability, which are predicated on
25 Plaintiff’s claims that Defendant failed to pay hourly employees for all time worked, failed to provide
26 meal periods, failed to provide rest periods, and failed to reimburse business expenses. As explained
27 above, Defendant maintains that the discovery produced demonstrates that it would succeed at both
28 class certification and on the merits.

 Although, Plaintiff believes this case is suitable for certification on the claimed bases that there

1 are company-wide policies and practices that Plaintiff contends violate California law and uniformly
2 affect the class members, Defendant's counter-arguments and affirmative defenses raise uncertainties
3 with respect to both class certification and success on the merits. As the California Supreme Court
4 ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the
5 trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions, with
6 respect to certification of wage and hour claims.¹² While remaining confident in the strengths of their
7 claims, all of these factors led Plaintiff to discount the following maximum potential damage claims.

8 **2. Exposure and the Risks for Each Claim**

9 In addition to being able to discover the strengths and vulnerabilities associated with Plaintiff's
10 claims, Defendant provided Plaintiff with information and data points which Plaintiff used to establish
11 a representative damage model, as explained below. Mara Dec. ¶ 25.

12 **A. Meal Periods**

13 Plaintiff argues that Defendant fails to provide Class Members with duty-free 30-minute meal
14 periods before the fifth hour of work in compliance with California law. Approximately 20.37% of
15 employee shifts over five (5) hours in length in the time records provided by Defendant indicate an
16 instance where Defendant failed to provide a meal period in compliance with California law, whether
17 it be an untimely meal period, a short meal period, or the failure to provide a meal period at all. Under
18 *Donohue*, these are presumed to be meal period violations for which Defendant must compensate
19 Class Members. Accordingly, Defendant's **maximum** exposure under Plaintiff's meal period claim is
20 \$79,365 (Approximately 4,397 shifts with presumed meal period violations x \$18.05 average hourly
21 rate = \$79,365). Mara Dec. ¶ 26.

22 Plaintiff had to discount the maximum exposure of these claims to account for the viability of
23 Defendant's counter arguments. Defendant argues that its meal period policy is facially lawful, that it
24 provides employees with meal periods in compliance with California law, and that Defendant would

25 ¹² See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of class
26 claiming misclassification and ordering summary adjudication in favor of employees), *review granted*,
27 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON*
28 *Solutions, Inc.* (2007) 148 Cal. App. 4th 1440 (affirming decertification of class claiming
misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal. App. 4th 121 (reversing denial of
certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal. App. 4th 1422 (affirming denial of
certification).

1 be able to provide declarations from employees stating that they were able to take these meal periods
2 without any interference from Defendant. Defendant claims this evidence would be more than
3 sufficient to rebut the presumption under *Donohue*, both at class certification and on the merits of the
4 claim. Mara Dec. ¶ 27.

5 **B. Rest Periods**

6 Plaintiff also contends that Defendant has failed to provide Class Members with lawful rest
7 periods. Plaintiff argues that Defendant unlawfully forces Class Members to combine their rest periods
8 with their meal periods. Accordingly, Defendant's **maximum** exposure under Plaintiff's rest period
9 claim is \$389,627 (Approximately 21,586 shifts x \$18.05 average hourly rate = \$389,627). Mara Dec.
10 ¶ 28.

11 Plaintiff had to discount the maximum exposure of these claims to account for the viability of
12 Defendant's counter arguments. Defendant argues that despite it has no written rest period policy,
13 which Defendant notes is *not* a requirement under California law, Defendant informs each and every
14 employee that they are entitled to take 10 minute rest periods for every four hours worked or major
15 fraction thereof, that they are not under Defendant's control and command during rest periods, and
16 that they can use this time to do whatever they choose. Defendant further claims it has spoken to
17 numerous employees who say they were able to take compliant rest periods, which both refutes
18 Plaintiff's claim and creates individualized issues that would predominate and any trial would be
19 rendered unmanageable. Mara Dec. ¶ 29.

20 **C. Unpaid Wages**

21 In addition, Plaintiff claims that Defendant does not pay Class Members for all time worked.
22 Plaintiff alleges that it takes Class Members approximately five (5) minutes to clock in at the start of
23 their shifts, and that they are not paid for this time. If Plaintiff were to prevail on this claim, Plaintiff
24 and the Class Members would be entitled to the following **maximum** potential damages: \$32,875
25 (21,586 shifts x \$18.05 average hourly rate x 5 minutes = \$32,875). Mara Dec. ¶ 30.

26 Further, if Plaintiff were to prevail on his unpaid wages claim, she may also be entitled to
27 waiting time penalties. Plaintiff calculates the potential **maximum** exposure under the waiting time
28 penalties cause of action as \$155,952 (36 former employees x 30 days x 8 hours x \$18.05 average

1 hourly rate = \$155,952). Mara Dec. ¶ 31.

2 Additionally, if Plaintiff were to prevail on her unpaid wages claim, she may also be entitled
3 to wage statement penalties. Plaintiff calculates the potential *maximum* exposure under the wage
4 statement cause of action as \$84,000 (\$4,000 maximum penalty x 21 current employees = \$84,000).
5 Mara Dec. ¶ 32.

6 Plaintiff had to discount the maximum exposure of these claims to account for the viability of
7 Defendant's counter arguments. As discussed above, Defendant contends that there is zero exposure
8 for this claim because there is no evidence that employees performed any work-related tasks for which
9 they were not compensated, and that the Court would have to ask each employee if this purported
10 unlawful practice existed, creating individualized issues unsuitable for class certification. Further, as
11 Plaintiff's claims for waiting time and wage statement penalties are derivative of his wage claims,
12 Defendant argues that they would not be liable for these either. Should the Court agree with
13 Defendant's arguments, Plaintiff and Class Members would be entitled to no recovery under these
14 causes of action. Mara Dec. ¶ 33.

15 **D. Reimbursement**

16 Furthermore, Plaintiff claims that Defendant has required Plaintiff and Class Members to incur
17 business expenses during their employment without receiving any reimbursement from Defendant.
18 Specifically, Plaintiff contends that Class Members are required to use their personal cell phones to
19 clock in for their shifts. If Plaintiff were to prevail on his reimbursement cause of action, Class
20 Members would be entitled to reimbursement for a reasonable percentage of their costs associated
21 with their personal cell phones. Therefore, the *maximum potential exposure* under this theory of
22 liability would be \$11,970 (Approximately 57 months during the relevant time period x \$10, or 10%
23 of a \$100 monthly phone bill x 21 current employees = \$11,970). Mara Dec. ¶ 34.

24 **E. PAGA**

25 Plaintiff is also seeking PAGA penalties. PAGA allows the private enforcement of certain
26 California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2)
27 provides for a standard penalty amount where a civil penalty is not otherwise specified by statute:

28 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay
period for the initial violation and two hundred dollars (\$200) for each aggrieved

1 employee per pay period for each subsequent violation.

2 Plaintiff alleges that Defendant has four (4) core violations –failure to pay all time worked, failure to
3 provide meal periods, failure to provide rest periods, and failure to reimburse business expenses – of
4 the Labor Code sections which give rise to PAGA penalties. The statute of limitations for PAGA
5 violations goes back one year. As there were approximately 868 pay periods in the statutory period at
6 the time of mediation, Plaintiff calculated Defendant’s potential maximum exposure under PAGA as
7 follows:

$$8 \quad \$100 \times 4 \text{ PAGA violations} \times 1,114 \text{ pay periods} = \$445,600$$

9 Mara Dec. ¶ 35.

10 Plaintiff’s PAGA claims are subject to the same risks on the merits as Plaintiff’s non-PAGA
11 claims. In addition, Labor Code § 2699, subdivision (e)(2) provides that “[i]n any action by an
12 aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court
13 may award a lesser amount than the maximum penalty amount specified by this part if, based on the
14 facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
15 arbitrary, oppressive, or confiscatory.” In *Thurman v. Bayshore Transit Management, Inc.*
16 (“*Thurman*”) (2012) 203 Cal. App. 4th 1112, the court determined that an award of the maximum
17 penalty allowed may be unjust in circumstances outside of when a defendant cannot afford to pay the
18 maximum amount. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112,
19 1135-1136. The *Thurman* court found that penalties may be reduced when a defendant has taken its
20 obligations to comply with the law seriously. *Id.* Defendant maintains that if the case were to continue
21 in litigation, they would be able to show that they took their obligations to comply with the law
22 seriously. As such, if Plaintiffs were able to prevail on the merits of their PAGA claims, it is likely
23 that the Court would reduce the maximum penalty allowed.

24 In addition, as the PAGA violations asserted by Plaintiff are predicated on the same unlawful
25 conduct that Plaintiff bases her other claims, Plaintiff’s PAGA claims are subject to the same risks on
26 the merits as Plaintiff’s class claims. If Plaintiff is ultimately unable to prevail on any one of his class
27 claims, his recovery under the PAGA as to that violation would also fail. The likelihood of the Court
28 reducing the PAGA damages awarded to Plaintiff and the aggrieved employees – assuming liability

1 is proven as to each of Plaintiff's claims – is also higher in this case where these same individuals will
2 also be receiving money for the same unlawful conduct under the class claims. *See Avila v. Cold*
3 *Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist.
4 LEXIS 6142 *17 (“Because the PAGA penalties sought are at least partially duplicative of penalties
5 granted by the underlying Labor Code violations, *see, e.g.,* Cal. Lab. Code §§
6 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to award
7 PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the potential PAGA
8 penalties are highly uncertain.”).

9 **3. The Settlement Amount of \$273,500 is Reasonable**

10 Not taking into account any of their defenses or arguments, Defendant's total exposure if
11 Plaintiff was successful in his core claims would be approximately \$513,837 [\$79,365 (meal period
12 exposure) + \$389,627 (rest period exposure) + \$32,875 (unpaid wages exposure) + \$11,970
13 (reimbursement exposure)]. If Plaintiff is successful in their unpaid wage claims, she may also be
14 entitled to damages for waiting time and wage statement penalties in the amount of \$155,952 and
15 \$84,000, respectively. If all of Plaintiff's claims are successful, she may also be entitled to PAGA
16 penalties in the maximum amount of \$445,600. Mara Dec. ¶ 36.

17 Based upon the risks just discussed, Plaintiff had to discount the maximum potential exposure.
18 Plaintiff also had to consider that, should the Court agree with her theories and grant certification as
19 to each of the claims, she may not be awarded the full exposure at trial. Plaintiff also had to consider
20 that the Court could agree with Defendant's arguments. The vast majority of the damages at issue
21 hinge on Plaintiff's theories of liability regarding meal periods, rest periods, and unpaid wages. Should
22 these claims fail, the derivative claims for waiting time, wage statement, and PAGA penalties would
23 also fail. All of these factors led Plaintiff to reduce the realistic potential exposure in order to gain a
24 definite monetary recovery for the class.

25 In light of the risks Plaintiff's claims faced, Plaintiff and her Counsel believe that the settlement
26 amount of \$273,500 – **with an average settlement share amount estimated at \$2,163.74** – is a
27 reasonable and fair settlement amount. This amounts to 53.23% of the total exposure of Plaintiff's
28 core claims and 22.80% of the maximum exposure. Mara Dec. ¶ 37.

A settlement is not judged **solely** against what might have been recovered, had the plaintiffs

1 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and
2 reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250; *Rebney v. Wells*
3 *Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139; “Compromise is inherent and necessary in the
4 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
5 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because
6 the public interest may indeed be served by a voluntary settlement in which each side gives ground in
7 the interest of avoiding litigation.” *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm’n*
8 (9th Cir. 1982) 688 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a
9 fraction of the potential recovery does not...render the settlement inadequate or unfair”).

10 **c. The Requested Attorneys’ Fees Are Fair And Reasonable Calculated As A**
11 **Percentage Of The Common Fund**

12 At Final Approval, Plaintiffs’ Counsel will apply for an award of attorneys’ fees of up to
13 \$91,166.66 (one-third of the GSA). California courts have recognized an appropriate method for
14 determining an award of attorneys’ fees is based on a percentage of the total value of benefits to Class
15 Members by the settlement, also known as the “common fund” method. *Serrano v. Priest* (1977) 20
16 Cal.3d 25, 34 (*Serrano III*) 34 (“when a number of persons are entitled in common to a specific fund,
17 and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or
18 preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”);
19 *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for
20 the benefit of all parties, the trial court acts within its equitable power to prevent the other parties’
21 unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993)
22 (the percentage of the fund method for calculating attorney’s fees more accurately reflects the results
23 achieved for the putative class than the lodestar method and “establishes reasonable expectations on
24 the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which
25 avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir.
26 2005) (“The percentage-of-recovery method is generally favored in common fund cases because it
27 allows courts to award fees from the fund ‘in a manner that rewards counsel for success and penalizes
28 it for failure.’”).

The purpose of the common fund/percentage approach is to “spread litigation costs

1 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden
2 alone.” *Vincent*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court
3 stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which others
4 derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.”
5 Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California
6 Supreme Court recognized that the common fund doctrine has been applied “consistently in California
7 when an action brought by one party creates a fund in which other persons are entitled to share.” The
8 reasons for applying the common fund doctrine include: “...fairness to the successful litigant, who
9 might otherwise receive no benefit because his recovery might be consumed by the expenses;
10 correlative prevention of an unfair advantage to the others who are entitled to share in the fund and
11 who should bear their share of the burden of its recovery; encouragement of the attorney for the
12 successful litigant, who will be more willing to undertake and diligently prosecute proper litigation
13 for the protection or recovery of the fund if he is assured that he will be properly and directly
14 compensated should his efforts be successful.” *Id.*

15 Indeed, the California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that
16 using the percentage method has many advantages:

17 The recognized advantages of the percentage method - including relative ease of
18 calculation, alignment of incentives between counsel and the class, a better
19 approximation of market conditions in a contingency case, and the encouragement it
20 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
21 litigation—convince us the percentage method is a valuable tool that should not be
22 denied our trial courts.

23 *Id.* at 503 (internal citation omitted).¹³ Because there is a defined and traceable benefit to the
24 Class, the Court can base an award of attorneys’ fees using a ‘common fund’ approach.

25 **i. Requested Fee Is Within The Range Of Fees Approved In Comparable**
26 **Cases**

27 Several studies of class action fee awards have found that the median common fund fee award
28

29 ¹³ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such
30 as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold further
31 that trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . . they also
32 retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness
33 of a requested percentage fee”).

1 is approximately one-third of the total settlement fund.¹⁴ The requested fee falls in the mid-range of
2 percentage class fee awards, which generally range from 20% to 50% of a common fund, and it
3 constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming
4 litigation on a contingent basis and compensates Class Counsel for their efforts, as well as the result
5 achieved for the benefit of the Class. Numerous state and federal courts in California routinely approve
6 fee requests equal to or greater than 33% of the common fund. Indeed, courts have found that an award
7 of 33% of the common fund represents the “benchmark” in California.¹⁵ In short, Plaintiff Counsels’
8 fee request of \$91,166.66 (one-third of the GSA) is in line with awards in similar cases in California
9 and nationwide and demonstrates that Plaintiffs’ counsels’ fee request is consistent with market rates
10 and is reasonable.¹⁶

11 **d. The Requested Enhancement Payment Is Fair And Reasonable**

12 At final approval, Class Counsel will seek approval of the Class Representative Enhancement
13 Payment to the named Plaintiff in the sum of \$7,500. As will be detailed at final approval, the requested
14 enhancement is reasonable in light of the broad general release Plaintiff is giving to Defendant in
15 exchange for the \$7,500 payment.

16 In addition, this payment is further supported by the fact that plaintiffs are often subjected to
17 the stigma associated with bringing these types of lawsuits. In this age of technology, employers
18 engage in thorough background checks on their employees. As these case filings are all public record,
19 a simple “Google” search is all it would take for Plaintiff’s name to appear associated with these
20 pending lawsuits against their former employers. This could be a significant factor in any employer’s

21 _____
22 ¹⁴See, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have shown
23 that “fee awards in class actions average around one-third of the recovery.”); Reagan W. Silber and
24 Frank E. Goodrich, *Common Funds and Common Problems: Fee Objections and Class Counsel’s*
25 *Response*, 17 Rev. Litig. 525, 546 ; T. Willging, L. Hooper and R. Niemic, *Empirical Study of Class*
26 *Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules*, 90
27 (1996) (finding that attorneys’ fees in class litigation “were generally in the traditional range of
28 approximately one-third of the total settlement”).

¹⁵ *Smith v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) 10-CV-1116- IEG WMC, 2013 WL
163293, *5 (“These percentages compare favorably with both California (33%) and federal (25%)
benchmarks.”); *Dennis v. Kellogg Co.* (S.D. Cal. Nov. 14, 2013) 09-CV-1786-L WMC, 2013 WL
6055326, at *7 (“This percentage compares favorably with both California (33%) and federal (25%)
benchmarks and the requested fee compares well with a lodestar cross-check as well.”).

¹⁶ At Final Approval, Plaintiffs’ Counsel will also show that the fee request is reasonable when
calculated using the lodestar method.

1 decision to hire Plaintiff in the future.

2 Plaintiff took it upon himself to delay recovery of his individual claims by proceeding with
3 class and representative actions, with a full understanding of the risks involved. Plaintiff was fully
4 aware that class action and representative litigation would cause Defendant to incur hefty costs
5 throughout the litigation, and that if he was unsuccessful in these cases, may be liable for some, or
6 even all, of these costs. Despite this knowledge, Plaintiff pushed forward with the litigation; he was
7 always readily available by phone and fully participated every step of the way throughout the entirety
8 of this process.

9 Courts routinely approve service payments, or incentive awards, to compensate named
10 plaintiffs for the services they provide and the risks they incur during class litigation. See *In re*
11 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers Ins.*
12 *Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives);
13 Manual § 21.62 n.971 (noting that service payments are warranted). Based on the foregoing, the \$7,500
14 payment to the named Class Representative is fair, appropriate and justified as part of the overall
15 settlement.

16 VII. CONCLUSION

17 Plaintiff respectfully submits that the proposed settlement is in the best interests of the class
18 and class members, as it is fair, adequate, and reasonable, and one that should ultimately be granted
19 final approval. Under the applicable class action criteria and guidelines, the proposed settlement
20 should be preliminarily approved by the Court, the class should be conditionally certified for purposes
21 of settlement only, and the Notice of Class Action Settlement should be approved.

22
23 Respectfully Submitted,

24 MARA LAW FIRM, PC

25
26 Date: May 14, 2025

Signed: 

27 David Mara, Esq.
Matthew Crawford, Esq.
28 Attorneys for Plaintiff