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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

ROGELIO ALVAREZ, **Plaintiff,** **vs.** **WATERMILL EXPRESS, LLC, a corporation; and DOES 1-100, inclusive,** **Defendants.**	**Case No.: 24CU001044C** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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I. INTRODUCTION

Plaintiff Rogelio Alvarez ("Plaintiff") respectfully requests preliminary approval of the Parties Settlement Agreement and Stipulation to Resolve Class and PAGA Claims (the "Settlement" or the "Settlement Agreement")[1]. Plaintiff's claims in this case are focused on Defendant Watermill Express, LLC's ("Defendant") alleged failures to pay minimum wage, overtime wages, provide meal/rest breaks and associated premiums, reimburse business expenses, provide notice of available paid sick leave and/or properly calculate and pay paid sick leave at the correct rate, properly calculate and pay vacation pay, provide accurate wage statements, maintain accurate timekeeping, payroll, and employment records, and to timely pay wages. Defendant denies these allegations and denies that it engaged in any wrongdoing or has any liability. The Settlement releases Defendant from the claims alleged for the Gross Settlement Amount ("GSA") of $200,000.

The Settlement was reached through arms-length negotiations by informed counsel following extensive investigation of the asserted claims and relevant law, as well as the exchange of informal discovery. The Settlement provides significant benefits to the Class Members and the GSA includes payments to Class Members, Class Counsel's fees and costs, settlement administration costs, payment to the Labor Workforce and Development Agency ("LWDA"), and a reasonable Enhancement Payment to Plaintiff for his services. Once appropriate deductions have been made from the GSA, class members are expected to *actually recover* an average of more than **$854**. Additionally, the LWDA will receive $13,000 for PAGA penalties. Finally, Defendant has updated its policies, practices and procedures to ensure full compliance with the law going forward. As set forth below, the Settlement reflects a fair, adequate, and reasonable compromise of the disputed claims in this action.

Plaintiff respectfully requests that the Court: (1) grant preliminary approval of the Settlement; (2) certify the Class for settlement purposes only; (3) appoint Robert J. Wassermann and Jenny D.

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[1] Capitalized terms herein shall have the same meaning as in the Parties Settlement Agreement And Stipulation To Resolve Class Action and PAGA Claims ("Settlement Agreement", "Settlement", or "SA"), a copy of which is attached as **Exhibit 1** to the Declaration of Robert J. Wassermann ("RJW Dec.") filed concurrently herewith.

Baysinger of Mayall Hurley P.C. as Class Counsel; (4) appoint Plaintiff as Class Representative; (5) approve the proposed Class Notice; (6) appoint CPT Group, Inc. as the third party administrator; and (7) schedule a final fairness hearing for final approval of the settlement.

II. FACTUAL BACKGROUND

A. Plaintiff's Claims Against Defendant

Defendant operates self-serve drive-up refill stations that sell fresh water and ice. Plaintiff was employed by Defendant as a technician from approximately October 2021 until March 2024. Plaintiff alleges that Defendant failed to 1) pay Class Members for all hours worked, 2) include commissions, non-discretionary bonuses, and other items of compensation in Class Members' regular rate of pay for purposes of overtime, meal/rest break premiums and sick leave, 3) provide compliant meal and rest periods, 4) timely pay wages, 5) provide accurate itemized wage statements, 6) provide notice of available paid sick leave and properly pay paid sick leave, and 7) maintain accurate timekeeping, payroll, and employment records, 8) pay vacation pay, and 9) reimburse Class Members for business expenses (the "Class Claims"). As a result of these alleged violations, Plaintiff also alleged Defendant engaged in unfair business practices and violated the Private Attorneys General Act ("PAGA").

B. Procedural History

Plaintiff sent written notice to Defendant and the LWDA on April 30, 2024. On July 12th, Plaintiff filed this Class Action in the San Diego County Superior Court. Defendant filed its Answer on August 30, 2024. RJW Dec. ¶ 3-8.

In October 2024, Plaintiff served 17 Form Interrogatories – Employment Law, 31 special interrogatories, 9 requests for admission, and 37 requests for production of documents on Defendant regarding, pertinently, the size and scope of the Class, and Defendant's policies, practices, and procedures. Thereafter, in or around February 2025, the Parties began meeting and conferring regarding the size and scope of the class and the possibility of a negotiated resolution that would save the Parties the significant costs associated with the litigation of complex wage and hour class actions. RJW Dec. ¶ 9-10.

Beginning in March 2025, Defendant produced documents and data illustrating the total number Class Members (110) and the total number of pay periods (4,086) during the Class Period. Defendant also produced Plaintiff's complete time and payroll records as well as the time and payroll records of more than 90% of the Class Members for the entire Class Period. Defendant's production consisted of more than 21,000 lines of data, each of which itself contained numerous subparts. RJW Dec. ¶ 11.

C. <u>The Settlement</u>

1. <u>Settlement Negotiations</u>

During discovery it was determined the Class was relatively modest in size, consisting of just 110 people. Given its modest size, in February 2025, the Parties elected to attempt direct negotiations in an effort to avoid a costly mediation and maximize the ultimate recovery for the Class. Over the next several months, the Parties engaged in protracted, arms-length settlement negotiations. These negotiations involved numerous conference calls, countless emails and Plaintiff required Defendant to verify the accuracy of certain data points on several occasions. On November 10, 2025, the Parties reached an agreement in principle to resolve the Class Action. On February 4, 2026, after 3 further months of negotiations, the Parties agreed to and executed an MOU. RJW Dec. ¶ 12, 13, and 15.

On January 26, 2026, Plaintiff submitted an amended LWDA letter clarifying that Defendant was also alleged to have failed to maintain accurate records and to properly pay sick and vacation pay. On April 23, 2026, Plaintiff filed the operative first amended complaint. RJW Dec. ¶ 14, 16.

On May 11, 2026, after several more months of negotiations, the Parties executed the Settlement Agreement. There was no fraud or collusion during the Parties' settlement negotiations, all of which were adversarial and conducted at arms' length. RJW Dec. ¶ 17-19.

Defendant denies any wrongdoing and believes that it has meritorious defenses, but has concluded further defense of this action would be lengthy and expensive. Plaintiff and Class Counsel have considered the uncertainty and risk involved in further litigation, including the difficulties and potential delays in seeking class certification and Defendant's defenses. Based upon these considerations, Plaintiff and Class Counsel have determined that the Settlement is fair, adequate, and reasonable, and is in the best interests of the class. RJW Dec. ¶ 47-48.

2. Settlement Terms

The Settlement was reached on a class and PAGA basis. The Class is defined as "all non-exempt employees who worked for [Defendant] in California at any time during the Class Period". The Class Period runs from July 12, 2020, through the date the Court grants preliminary approval of the Settlement. SA ¶ 4 and 7, respectively.

In exchange for release of the Class Released Claims and PAGA Released Claims, Defendant has agreed to pay the Gross Settlement Amount (GSA") of $200,000 on an all-in, non-reversionary basis. The Settlement includes the following: (1) Class Counsel's fees of up to $70,000; (2) Class Counsel's litigation costs of not more than $3,500; (3) an Enhancement Award for Plaintiff's service to the Class of up to $5,000; (4) $20,000 to the LWDA and the Aggrieved Employees; and (5) settlement administration costs of up to $7,500. SA ¶ 15, 3, 12, 21 and 48b, respectively. After deduction of these amounts, a total of $94,000 is expected to remain, proving an impressive average recovery of more than $854 for each and every Participating Class Member. RJW Dec. ¶ 47. Class members will not be required to return a claim form. Aggrieved employees will also receive and average payment of more than $75. RJW Dec. ¶ 53.

3. Notice to Class Members and Right to Opt-Out or Object to Settlement

Following preliminary approval of the settlement, and in accordance with California Rule of Court 3.769(f), the Class Notice will be mailed by first-class mail to each Class Member.[2] The Class Notice includes information on the claims asserted, the material settlement terms, the right to object, or to opt out and the timing and manner to do either. Class Members will have 45 calendar days from the mailing of the Class Notice to object or request exclusion from the settlement. The Class Notice will also inform the class of the date, place, and time of the final approval hearing. Before mailing the Class Notice, the Settlement Administrator will conduct a search of all Class Members' addresses using the National Change

[2] The Class Notice is attached as Exhibit A to the Settlement Agreement. RJW Dec. ¶ 18, Exhibit 1.

of Address database. Furthermore, it will undertake skip tracing in an effort to locate Class Members whose Class Notices are returned as undeliverable. SA ¶ 19, 51.

III. <u>LEGAL ARGUMENT</u>

A. <u>Standard for Preliminary Settlement Approval</u>

To prevent fraud, collusion, or unfairness to the class, settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1800-01, as modified (Sept. 30, 1996) (citations omitted); Cal. Rules of Court 3.769(c), 3.770(a).) When "the court grants preliminary approval, it must set a final approval hearing, and provide for notice . . . to the class." (*Luckey v. Superior Court* (2014) 228 Cal. App. 4th 81, 93, review denied; see Cal. Rule of Court 3.769(e).)

The preliminary approval stage "is not a fairness hearing." (*Armstrong v. Bd. of Sch. Directors of Defendants of Milwaukee* (7th Cir. 1980) 616 F.2d 305, 314 (overruled on other grounds by *Felzen v. Andreas* (7th Cir. 1998) 134 F.3d 873). At the preliminary approval stage, the court "limits its inquiry to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." (*In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723, (internal citations omitted*); 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1145.)

A class action settlement is presumed to be fair 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." (*Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52 [citing *Dunk*, 48 Cal. App. 4th at 1802]; *In re Microsoft I-V Cases*, 135 Cal. App. 4th at 723; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1146.) Where there is no extrinsic evidence of fraud collusion, the court should assume that negotiations were conducted in good faith. (Newberg on Class Actions § 11.51 (3d ed. 1992); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal. App. 4th 734, 748, (denying objector's request for discovery where there was no evidence of collusion between the parties during negotiations); *In re Cellphone Termination Fee Cases* (2009) 180 Cal. App. 4th 1110, 1122-23 [citing Cho, 177 Cal. App. 4th at 748].)

Here, when measured against the above standards, the Settlement satisfies the requirements for preliminary approval, because it is well within the range of possible approval, reached after extensive and thorough evaluation of the claims, and there are no grounds to doubt its fairness.

B. <u>The Proposed Settlement Satisfies the Standards for Preliminary Approval</u>

In *Kullar v Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, the California Appellate Court held that a presumption of fairness exists when: (1) the settlement is reached through arms-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.

The Court also confirmed that the trial court should give considerable weight to the competency and integrity of counsel in assuring itself that a settlement represents an arm's-length transaction entered without self-dealing or other potential misconduct. (*Id*. at 129.) Here, all four Kullar elements are met.

1. <u>The Settlement is the Result of Arms-Length Bargaining</u>

The Parties engaged in months of protracted settlement negotiations after significant investigation, research and analysis of the Class Claims as well as informal discovery. Negotiations were rigorous and conducted at arm's length. The was no fraud or collusion. Rather, the settlement is the product of informed negotiations by experienced counsel. The settlement is a fair, adequate, and reasonable resolution of the claims at issue. RJW Dec. ¶ 3-19, 47-49.

2. <u>There Has Been Sufficient Investigation and Discovery to Allow Plaintiff and the Court to Act Intelligently and Evaluate the Settlement</u>

Prior to reaching agreement to settle the Class and PAGA claims, the Parties engaged in months of litigation as well as informal discovery whereby Defendant provided Plaintiff with documents and data illustrating the size and scope of the class, relevant policies and procedures, and the time and payroll records of more than 90% of the Class. Class Counsel also performed independent and thorough investigation and analysis of the wage and hour claims asserted. During this time the Parties also engaged in further informal information exchange. This included, but was not limited to, Defendant's provision of updated information regarding the size and composition of the Class as well the number of pay periods at issue. Class Counsel's investigation and analysis permitted them to develop a damages model illustrating Defendant's potential exposure for use in negotiations. Class Counsel also carefully evaluated Defendant's defenses to the claims and to certification itself. RJW Dec. ¶ 3-19, 22-49.

3. <u>Plaintiff and His Counsel Support the Proposed Settlement and Counsel Is Experienced in Similar Litigation</u>

Plaintiff and Class Counsel fully support the settlement. Class Counsel have considerable experience prosecuting wage and hour class actions, having been approved as class counsel and co-class counsel in numerous matters. Moreover, Plaintiff and Class Counsel are prepared to litigate Plaintiff's claims through trial and any appellate proceeding. However, because of the interest in avoiding the risks and expenses associated with protracted and risk-laden litigation, and the substantial monetary benefit the Settlement confers upon the Class, Plaintiff and Class Counsel have determined the Settlement is in the best interest of the Class. RJW Dec. ¶ 47-48, 63-66.

4. <u>There is No Known Opposition to the Settlement</u>

There is no known opposition to the settlement and there are no pending cases filed against Defendant alleging the same claims as this present matter regarding the same group of class members. Further, PAGA claims do not belong to all alleged aggrieved employees; they belong to the State and a particular individual who is deputized to litigate on behalf of the LWDA. (*Arias v. Superior Court*, (2009) 46 Cal.4th 969, 980-981.) Thus, the LWDA is the real party in interest in this case, and it alone has the ability to express its views on the adequacy of the Settlement. (*See Iskanian v. CLS Transp. L.A., LLC*, 59 Cal. 4th 348, 382 (2014) ["The government entity on whose behalf the plaintiff files suit is always the real party in interest in [a PAGA] suit."].) Plaintiff's counsel will submit the Settlement and this motion to the LWDA once it is filed. RJW Dec. ¶ 57; Exhibit 2. Further, the Class Notice will apprise Class Members of their rights under the Settlement.

5. <u>The Proposed Settlement is Fair and Reasonable Given the Substantial Benefits to the Class Members and the Risks and Expense of Complex and Protracted Litigation</u>

The Settlement confers substantial monetary benefit on Class Members. Defendant has agreed to pay $200,000, which will be distributed to Participating Class Members, less the fees and costs of the

Settlement Administrator and Class Counsel, the PAGA Payment, and the Enhancement Payment to Plaintiff. Class Members employed during the PAGA Period will receive a pro rata distribution of 35% of the PAGA Payment. Even after appropriate deductions have been made from the Gross Settlement Amount, Participating Class Members are expected to recover an average of $854. RJW Dec. ¶ 47. Additionally, the LWDA will receive $13,000 for PAGA penalties and an additional $7,000 will be distributed to Aggrieved Employees.

This concrete and substantial benefit compares favorably to the uncertainty of continued litigation over contested issues. (*See Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal. App. 4th 399, 410-11.) *Kullar* requires information be presented to the Court, acting as a fiduciary for the absent class members "... to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation. . ." (*Kullar*, 168 Cal. App. 4th at 129.)

Munoz clarified that a *Kullar* showing does not require the parties to submit an illusory prediction of the outer reaches of exposure without taking into account the actual risks of certification, decertification, dispositive motions, and trial. *Kullar* does not require an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims provided there is a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz*, 186 Cal.App.4th at 409.) The *Munoz* court found the record before the trial court sufficient, having included the number of class members, payroll data, as well as variances in duties and rest and meal period experience, and the companion action alleging less than $5,000,000 in damages. This information constituted "an adequate basis from which to garner a reasonably adequate understanding of the amount that is in controversy within the meaning of *Kullar*." (*Id.*)

Here, Class Counsel has reviewed the documents and data produced by Defendant and estimated Defendant's maximum liability to be at most $1,163,905.06 — of which $243,900 are penalties under the PAGA. The Class Members' maximum damages are estimated to be $920,005.06 of which just $139,218.90 are allegedly underpaid wages for work performed (the remaining $780,786.16 consists entirely of statutory penalties and premiums). The portion of the Gross Settlement Amount attributable to the Class Claims constitutes just over 20% of the Class Members's maximum damages and more than 58.67% of what the Class might realistically expect to obtain if they were victorious. RJW Dec. ¶ 23-33.

Moreover, the risks associated with proceeding to trial are significant and cannot be overlooked. Indeed, the issue of class certification had not yet been presented. Moreover, Defendant asserts numerous meritorious defenses including that individual issues predominate as to whether class members were not paid all wages owed, were not reimbursed for work-related expenses, were denied meal or rest periods, and to what extent. Further, Defendant also argues it appropriately paid its employees minimum, overtime and sick wages in compliance with applicable wage-and-hour laws, that it provided compliant meal and rest breaks, and that it reimbursed all work-related expenses. Defendant additionally argues that it had compliant policies at all times. If Defendant were to defeat certification, the Class would recover nothing as a result of this litigation. Class certification is a major hurdle. (*See Munoz*, 186 Cal. App. 4th at 411 [uncertainty of class treatment was significant question supporting the decision to settle].) Completing certification briefing would be expensive and both sides risk an unfavorable ruling. RJW Dec. ¶ 32-49.

Moreover, Courts have discretion to reduce PAGA penalties. (Labor Code § 2699(e)(2).) It is within a court's discretion to significantly reduce PAGA penalties even when there is a finding that a violation occurred. (*See Carrington v. Starbucks*, (2018) 30 Cal. App. 5th 504.) In theory, the Court could reduce the award by 99% or more. (*Id.*) Based on the significant benefits to the class and equally significant potential risks to proceeding, Plaintiff believes the Settlement is in the best interest of the class.

C. <u>The Court Should Certify a Settlement Class</u>

Prior to obtaining certification, the parties to a class action may appropriately negotiate a proposed settlement, subject to court approval. See *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 240. To facilitate the resolution, the parties may stipulate that a defined class (or classes) be conditionally certified for settlement purposes only. Cal. R. Court 3.769(d); *Hernandez v. Vitamin Shoppe Industries, Inc.* (2009) 174 Cal.App.4th 1441, 1456-1457. This Court must review the propriety of certification and independently determine the standards for class-wide treatment exist.

California courts have broad discretion to certify a class for purposes of settlement. *Luckey v. Sup. Ct.* (2014) 228 Cal.App.4th 81, 93-94; *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1807 n. 19 (class certification in settlement cases is subject to a "lesser standard of scrutiny"). Provisional and conditional certification is appropriate where there is an ascertainable class and a well-defined community of interest among the members; 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." Code Civ. Proc. § 382; *Richmond v. Dart Industries* (1981) 29 Cal.3d 462, 470; see *also Daar v. Yellow Cab Co*. (1967) 67 Cal.2d 695, 704. The practical purpose of provisional/conditional certification is to facilitate notice to class members of the terms of a proposed settlement, their rights thereunder, and the date and time of the final approval hearing.

To be certified, a settlement class must meet the following criteria: (1) the individuals in the class are so numerous that joinder would be impractical; (2) there is a commonality of interest between the plaintiff and the members of the class; (3) plaintiff's claims are typical of the claims of the class members; and (4) plaintiff and their counsel will fully and adequately represent the interests of the class members. Code. Civ. Proc. § 382; *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326-27; Fed. R. Civ. P. 23.[3] All of the prerequisites to certification are met here.

1. The Proposed Class is Ascertainable and Joinder Would be Impractical.

"Whether a class is ascertainable is determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal. App. 4th 836, 849.) Here, the proposed class consists of approximately 110 individuals who are or were employed by Defendant during the Class Period. SA ¶ 4; RJW Dec. ¶ 11. This definition provides "common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." (*Aguirre v. Amscan Holdings*, Inc. (2015) 234 Cal. App. 4th 1290, 1300, reh'g denied, review denied (June 17, 2015); *Bartold v. Glendale Fed. Bank* (2000) 81 Cal. App. 4th 816, 828, overturned on other grounds.)

[3] California courts use FRCP 23 and cases applying it for guidance on 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, federal case law will be cited.

The identity of each Class Member is ascertainable because all Class Members worked for Defendant during the Class Period and can be easily identified through Defendant's records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 (Joinder of 80 Class Members is impractical).

2. The Commonality Requirement is met.

The commonality requirement is met if questions of law and fact common to the class predominate and the theory of recovery is "amenable to class treatment." *Sav-On Drug Stores*, 34 Cal.4th p. 327; *Brinker Restaurant Corp. v. Sup. Ct*., (2012) 53 Cal.4th 1004, 1033. The claims of Plaintiff and the Class Members all flow from the same facts and claims. Specifically, Plaintiff and Class Members were exposed to Defendant's alleged failures to pay minimum and overtime wages, provide meal/rest breaks and associated premiums, reimburse business expenses, properly calculate and pay redeemed sick leave, provide accurate wage statements, and pay all wages on separation. Factually, the policies and practices alleged to underscore these claims apply uniformly and liability can be determined by facts, and applicable law, common to all Class Member.

There is similarly no question that resolving the claims of Class Members through this single action is superior to individual litigation. The value of each individual claim is relatively insignificant and is likely not nearly enough to incentivize individual action. *Wolin v. Jaguar Land Rover N.A., LLC* (9th Cir. 2010) 617 F.3d 1168, 1175-1176. It is expected that individual claims are worth a few hundred to few thousand dollars each, and such amounts are not likely to motivate individual prosecution. Class treatment is, by far, the superior procedure in this case. Class treatment provides the best, most cognizable avenue for Class Members to secure fair, adequate, and reasonable recovery.

3. The Typicality Requirement is Met.

The typicality requirement is met if the named representative's claims are typical of those of the class, though "they need not be substantially identical." *Hanlon v. Chrysler Corp*. (9th Cir. 1998) 150 F.3d 1011, 1020; *Sav-On Drug Stores, Inc*., 34 Cal.4th p. 326. Plaintiff's claims are typical of the claims of every Class Member because they arise from the same factual bases and uniform application of policies and practices, and are based upon the same legal theories. *Wehner v. Syntex Corp*. (N.D. Cal. 1987) 117 F.R.D. 641, 644. For example, Plaintiff alleges Defendant failed to pay he and the other

Class Members all minimum and overtime wages because it had a standard practice of not compensating workers for all time worked. Similarly, Plaintiff contends Defendant miscalculated the regular rate of pay, and thus underpaid for overtime, meal/rest break premiums, and redeemed sick wages, because it failed to include "all remuneration" and other non-discretionary bonuses. Plaintiff's theory with respect to meal/rest period violations was that Defendant failed to provide full and timely off-duty meal and rest periods because of the volume of work expected to be completed and the travel between jobs necessary. These issues, Plaintiff contended, created derivative wage statement and record keeping violations. Plaintiff's reimbursement claim is founded on allegations that cell phone use was necessary and that employees were required to launder their uniforms, but that no reimbursements were made. Plaintiff further alleges that Defendant's failure to provide all compensation owed to him and the other Class Members, including vacation pay, resulted in derivative claims for failure to timely pay all wages. These purported wage and hour violations were suffered on a class wide basis because of Defendant's uniform policies and practices. For these same reasons, Plaintiff's claims are typical of the Class as he suffered the purported wage and hour violations alleged in this matter. Importantly, were Plaintiff not serving as the Class Representative, he would unquestionably be a Class Member. On these facts, typicality is satisfied.

4. The Adequacy Requirement is Met

The adequacy requirement is met if the named representative and counsel have no interests adverse to those of the Class Members and are committed to vigorously prosecuting the case on behalf of the class. *Hanlon*, 150 F. 3d 1020; *McGhee v. Bank of Am*. (1976) 60 Cal.App.3d 442, 450-51. Plaintiff's interests in prosecuting this case and obtaining the most beneficial recovery possible fully comport with the interests of the Class. There are no conflicts between Plaintiff and the other Class Members, and he is a member of the Class he seeks to represent. *Hanlon*, 150. F 3d 1021.[4] In

[4] While Plaintiff possessed individual discrimination and retaliation claims unique from those held by the Class and resolved separately from the Class Claims, such fact does not render him an inadequate representative. *Roberts v. Electrolux Home Products, Inc.*, 2014 WL 4568632 *9 (C.D. Cal. 2014) (noting that individual settlement amounts paid to named class representatives for unique harms suffered did not undermine adequacy); *Campbell v. Best Buy Stores, L.P.*,

addition, Plaintiff and Class Counsel have demonstrated their commitment to prosecuting this lawsuit on behalf of the Class. Such is reflected by Class Counsel's experience and the cognizable benefits they have and will confer upon Class Members, including securing the GSA. RJW Dec. ¶ 58-66.

D. <u>The Court Should Approve the Proposed Notice</u>

Rule of Court 3.769(f) requires notice of the final approval hearing to be provided to class members in the manner specified by the court. "The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (*See Litwin v. iRenew Bio Energy Solutions, LLC* (2014) 226 Cal. App. 4th 877, 883.) Notice should provide each class member sufficient information to decide whether to accept the benefit he would receive under the settlement, or to opt out and pursue his own claim. (*Chavez v. Netflix, Inc*. (2008) 162 Cal. App. 4th 43, 56.). The Class Notice meets this standard: it reasonably informs all Class Members of the nature and status of the litigation and the important terms of the Settlement. Specifically, the notice provides each Class Member with an estimate of the value of their share of the Settlement, outlines the scope of claims being released, explains their right to object to the Settlement, and informs them of their right to opt out of the Settlement. In short, the Class Notice provides Class Members with ample information to allow an informed decision about whether to participate.

The proposed manner of Class Notice and timetable for further proceedings are also reasonable. Under the proposed schedule, notice will be sent via first-class U.S. mail to all class members no later than 31 days after the Court grants preliminarily approval. Class Members will then

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2015 WL 12744268 * 5 (C.D. Cal. 2015). Foundationally, adequacy does not preclude a class representative from having interests unique to or different from other Class Members; only *adverse* interests are prohibited. *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137, 168 (9th Cir. 2004). It is routinely recognized that a representative's pursuit and settlement of separate individual claims is not inherently incompatible with his/her adequate representation of class interests. *Roberts*, 2014 WL 4568632 * 9. There is nothing inappropriate about Plaintiff's individual settlement. The individual claims arise out of circumstances unique to Plaintiff that are *not* suitable for class treatment. Plaintiff negotiated his individual claim separately from the Settlement, and the Parties did not finalize their agreement to settle the Class claims until more than a month *after* they had finalized the resolution of the individual claims. Plaintiff and Class Counsel made concerted efforts to ensure that the two matters remained separate and that nothing about the resolution of Plaintiff's individual settlement adversely impacted the Settlement of the Class and PAGA Claims. RJW Dec. at ¶ 7; Searle Dec. ¶ 9-11, 17. The terms of the individual settlement are confidential, however, the Parties will disclose them in camera if the court requires.

have 45 days from the mailing date of Class Notice to opt-out or file a written request to be excluded from the settlement. This is more than sufficient time. (*See Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1375 [31 day period for written objections]; *Williams v. Costco Wholesale Corp.* (S.D. Cal. July 7, 2010), 2010 U.S. Dist. LEXIS 67731 at *4-5 [30-day opt-out period].) Following the end of this time period, Plaintiff will file a motion for final approval of the Settlement.

E. <u>The Class Representative Enhancement Payment is Reasonable</u>

Named plaintiffs in class action litigation are eligible for reasonable service payments. *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977. "Courts routinely approve incentive awards to compensate plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Ingram v. Coca-Cola Co*. (N.D. Ga. 2001) 200 F.R.D. 685, 694 (approving $300,000 payment to each class representative in employment action settling before certification).[5] Factors used by courts in determining the amount of the service payments include (1) a comparison between service awards and the range of monetary recovery available to the class (see *Ingram,* 200 F.R.D. at 694; (2) time and effort put into the litigation (see *Van Vranken*, 901 F. Supp. at 299); (3) whether the litigation will further the public policy underlying the statutory scheme (see Roberts, 979 F. Supp. at 201 n.23); and (4) risks of retaliation (see Roberts, 979 F. Supp. at 202).

The Settlement permits Plaintiff to request an incentive award if up to $5,000 for his service to the Class (in addition to any Individual Class Payment he is entitled to receive as a Participating Class Member). SA ¶ 12. This amount is reasonable given Plaintiff's efforts in this Action and the risks he undertook on behalf of the Class Members. Plaintiff understands the claims and theories that are being advanced, has been involved through the litigation, and has no conflicts with the Class he seeks to represent. Plaintiff has devoted many hours advancing the interests of the Class over several years. Plaintiff has done this by, among other things, spending considerable time on phone calls, in meetings and through email communications explaining the circumstances of this case to his attorneys,

[5] *Roberts v. Texaco, Inc.* (S/D.N.Y. 1997) 979 F. Supp. 185 (approving incentive payments up to $85,000 for named plaintiffs in employment action settling before certification); *Van Vranken v. Atl. Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 300 ($50,000 service payment for named plaintiff in class action).

including the events that transpired that compelled them to seek restitution, and generally assisting his attorneys in collecting the information they needed to determine the viability and strength of the case. Plaintiff has remained actively involved in the case, providing documents to his attorneys, tracking the status of the case, being available to his attorneys during the settlement negotiations, providing information to help his attorneys to resolve the case on a classwide basis, reviewing the settlement agreement, and participating as much as possible to ensure a fair result for the Class as a whole. In doing so, Plaintiff exposed himself to significant risks, including the risk being ordered to pay Defendant's attorneys' fees and costs if this action had been unsuccessful. (*See* Labor Code §§ 218.5-218.6). Plaintiff further risks being adversely affected when seeking to obtain future employment since employers who discover that prospective employees sued a former employer in a class action are less likely to hire them. RJW Dec. ¶ 58-62.

The tremendous efforts and risks that Plaintiff undertook on behalf of the Class shows that the proposed Enhancement Payment is fair, adequate, and reasonable, and warrants preliminary approval.

F. <u>Class Counsel's Fees and Costs are Reasonable and Should Be Awarded</u>

Plaintiff, in the settlement of this wage and hour class action, is entitled to payment of attorneys' fees and costs. Lab. Code §§ 218.5, 226(e) (1), 1194, and 2699(g); *Earley v. Superior* Court (2000) 79 Cal.App.4th 1420, 1427. Plaintiff will seek an award of Class Counsel's fees under the common fund doctrine. Plaintiff will seek fees of 35% of the GSA, or $70,000, and declared costs of up to $3,500. SA ¶ 3. These amounts are reasonable under the circumstances and should be preliminarily approved. Plaintiff will present detailed billing and costs records for the Court's review at final approval.

IV. <u>CONCLUSION</u>

For the foregoing reasons, the Parties respectfully request that the Court grant preliminary approval of the Settlement.

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Dated: July 17, 2026

MAYALL HURLEY, P.C.

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