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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

JACK MARTIN, an individual, on his own
behalf and on behalf of all others similarly
situated,

Plaintiffs,

vs.

FRED BROWN'S RECOVERY SERVICES,
INC., a California non-profit corporation; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 24STCV09746

**NOTICE OF MOTION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL**

Judge: Hon. Laura A. Seigle
Date: July 21, 2026
Time: 9:00 AM
Dept.: 17

Complaint Filed: April 17, 2024

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1 **NOTICE IS HEREBY GIVEN** that, on July 21, 2026 at 9:00 AM in Department 17 of
2 the Los Angeles Superior Court before the Honorable Laura A. Seigle, pursuant to California
3 Code of Civil Procedure §382, Plaintiff Jack Martin (“Plaintiff”), on behalf of himself and all
4 others similarly situated, will and does hereby move this Court for entry of an Order:

- 5 1. Preliminarily certifying the class for purposes of settlement only;
- 6 2. Preliminarily appointing Plaintiff as Class Representative for purposes of
7 settlement only;
- 8 3. Preliminarily appointing Kevin Lipeles, Esq. and Thomas Schelly, Esq., of Lipeles
9 Law Group, APC, as Class Counsel for purposes of settlement only;
- 10 4. Preliminarily approving the settlement as fair, adequate, and reasonable, based
11 upon the terms set forth in the parties’ Class Action and PAGA Settlement Agreement
12 (“Settlement Agreement”) and Class Notice, including payment by Fred Brown’s Recovery
13 Services, Inc., (“Defendant”) of the Gross Settlement Amount of \$300,000.00;
- 14 5. Preliminarily approving a Class Representative Service Payment of \$7,500 to
15 Plaintiff in recognition of his service to the Settlement Class;
- 16 6. Preliminarily approving Plaintiff’s Counsel’s request for up to \$105,000.00 (35%)
17 of the Gross Settlement Amount as attorneys’ fees;
- 18 7. Preliminarily approving Plaintiff’s Counsel’s request for actual costs from the
19 Gross Settlement Amount in an amount up to \$12,000.00;
- 20 8. Appointing Phoenix Class Action Administration Solutions (“Phoenix”) as the
21 third-party Settlement Administrator for mailing notices and for claims administration, approving
22 that a maximum of \$8,000.00 be deducted from the Gross Settlement Amount for the costs of
23 administration, and approving that the fees and costs of the Settlement Administrator will be paid
24 from the Gross Settlement Amount; and
- 25 9. Approving the proposed Class Notice and ordering it be disseminated to the Class
26 as provided in the Settlement Agreement.

26 This motion is based upon this Notice of Motion and Motion; the Memorandum of Points
27 and Authorities in Support thereof; the declarations of Kevin Lipeles, Esq., Jack Martin and Jodey
28 Lawrence in Support thereof; the Settlement Agreement; the proposed Order; the other records,

1 pleadings, and papers filed in this action; and upon such other documentary and verbal evidence or
2 argument as may be presented to the Court at the hearing of this motion.

3
4 Dated: May 21, 2026

Respectfully submitted,

5 LIPELES LAW GROUP, APC

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8 By:



9 Kevin Lipeles, Esq.
10 Thomas Schelly, Esq.
11 Attorneys for Plaintiff and the Settlement Class
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1 **I. INTRODUCTION**

2 Plaintiff Jack Martin (“Plaintiff”), on behalf of himself and the putative Settlement Class¹
3 requests that this Court preliminarily approve the parties’ proposed Settlement Agreement,²
4 entered into by Plaintiff and Fred Brown’s Recovery Services, Inc., (“Defendant”) in April 2026.
5 Defendant does not oppose Plaintiff’s instant Motion.³ The proposed Settlement Agreement
6 satisfies all of the criteria for preliminary settlement approval under California Code of Civil
7 Procedure §382, and falls well within the range of reasonableness. Accordingly, Plaintiff requests
8 that the Court grant preliminary approval of the proposed Settlement, approve the proposed notice
9 plan, and schedule a final approval hearing, all of which is described in detail below.

10 The Settlement Agreement seeks to fully release and discharge Defendant from the claims
11 brought against it in the above-captioned matter (the “Action”⁴) and all related penalties. In
12 exchange, Defendant will pay the Settlement Class up to \$300,000.00 (“Gross Settlement
13 Amount”) with no reversion to Defendant.

14 The Settlement Agreement and Notice distribution plan were the products of non-
15 collusive, arm’s-length negotiations by informed counsel and parties. The settlement is fair,
16 reasonable and adequate to all. Accordingly, Plaintiff seeks: (1) preliminary approval of the
17 Settlement Agreement; (2) provisional certification of the Settlement Class; (3) appointment of
18 Plaintiff as Class Representative; (4) appointment of Kevin Lipeles, Esq. and Thomas Schelly,
19 Esq. as Class Counsel; (5) approval of the parties’ proposed form and method of notifying Class

20 _____
21 ¹ The proposed Settlement Class is defined as: all individuals whom Defendant classified as non-exempt employees
and who worked for Defendant in California at any time from April 17, 2020 to October 24, 2025.

22 ² The Settlement Agreement is attached as Exhibit A to the Declaration of Kevin Lipeles (“Lipeles Decl.” filed
23 herewith). The proposed Class Notice is attached as Attachments A and B to the Settlement Agreement.

24 ³ Defendant vigorously denies liability or wrongdoing with respect to its wage and hour policies and practices.
25 Defendant reserves its right to assert any and all defenses to the claims asserted by Plaintiff and the putative class.
Further, Defendant joins in this motion to preliminarily approve of the settlement of a lawsuit that was filed as a class
26 action, but specifically denies that a settlement was necessary as a result of any action or inaction by Defendant.
Defendant agrees to resolve the claims asserted by Plaintiff on a class basis to avoid incurring additional substantial
27 costs beyond those which have already been incurred as well as the delay and risks that would be presented by further
prosecution of the litigation. The proposed settlement includes a non-admissions clause and Defendant has at all times
28 maintained that its wage and hour policies and practices are fully lawful. Hence, Defendant does not join in the
substance of the representations made by Plaintiff in this motion and specifically denies the negative characterizations
of Defendant's conduct as well as Plaintiff's interpretation of certain legal authorities. Defendant, therefore, also
reserves its right to clarify any aspect of the motion that it believes needs to be addressed.

⁴ All capitalized terms have the same meaning as in the Settlement Agreement.

Members of the Settlement Agreement; (6) an order scheduling the hearing date for Final Approval of the Class Settlement; and (7) entry of a preliminary approval Order.

II. FACTUAL SUMMARY

A. Claims

Plaintiff alleges claims for failing to pay daily overtime in excess of eight hours per work day, minimum wages and failing to authorize and permit meal and rest breaks. These extensive alleged Labor Code violations also resulted in Defendant issuing inaccurate itemized wage statements to Class Members and failing to pay wages due upon termination of employment to Class Members who are former employees. Additionally, Plaintiff alleges claims for failing to reimburse business expenses and failing to allow inspection of employment records.

Plaintiff contends that the foregoing also violated Cal. Bus. & Prof. Code §17200, *et seq.* Plaintiff also alleged that Defendant was liable for PAGA penalties pursuant to California Labor Code §2699.

Defendant vigorously denies each of Plaintiff's allegations, and contends that they maintained compliant wage and hour practices and policies.

B. Procedural History

On April 17, 2024, Plaintiff Jack Martin filed his Original Class Action Complaint in the Superior Court of California, Los Angeles County, on behalf of himself and others similarly situated for certain present and former employees of Defendant for: (1) failure to pay overtime (Cal. Labor Code §§ 510, 1198); (2) failure to pay minimum wages (Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1, 1198); (3) failure to pay for meal periods not provided (Cal. Labor Code §§ 226.7, 512); (4) failure to pay for rest periods not provided (Cal. Labor Code §226.7); (5) failure to maintain records and provide accurate itemized wage statements (Cal. Labor Code § 226); (6) failure to pay wages due upon termination (Cal. Labor Code §§ 201-203); (7) failure to reimburse business expenses (Cal. Labor Code § 2802); (8) failure to allow inspection of employment records (Cal. Labor Code § 1198.5); and (9) unfair/unlawful business practices (Cal. Bus. and Prof. Code §§ 17200 *et seq.*)

On June 26, 2024, Plaintiff filed his First Amended Class Action Complaint ("FAC") in the Los Angeles Superior Court, adding a claim pursuant to the Private Attorney General Act of 2004,

1 Cal. Lab. Code §§2699, *et seq.*

2 **C. Marshalling of Evidence**

3 Through informal discovery, Plaintiff's counsel has diligently pursued an investigation of
4 the putative Class Members' claims, including: (1) detailed examination and analysis of a 25%
5 sample of employee payroll and time records; (2) review of relevant data regarding the size of the
6 putative class; (3) detailed examination of data related to Defendant's PAGA exposure; and (4)
7 research with respect to the applicable law and the potential defenses thereto. Lipeles Decl., ¶8.

8 **1. Documents**

9 The parties engaged in informal discovery in preparation for a private mediation. Lipeles
10 Decl., ¶7. Defendant provided information concerning the total number of Class Members (223),
11 the number of workweeks and the average hourly rate, Defendant's Employee Handbook, and a
12 25% sampling of time and payroll records, among other documents. *Id.*

13 **2. Data and Damages Model**

14 As part of informal discovery prior to mediation, Defendant culled its documents relating to
15 its wage and hour policies and practices. To estimate the class-wide damages associated with
16 Plaintiff's and the Class's claims, Plaintiff's counsel examined and analyzed the above-described
17 voluminous documents. From the data received from Defendant, Plaintiff constructed a damages
18 model based on Defendant's exposure. Lipeles Decl., ¶15. Certain calculations are extrapolated to
19 the Class since the analysis data was based on a 25% sample. The sample is statistically reliable
20 because it is representative of the Class and is of sufficient size. As a result, the calculations are
21 multiplied by 4. *Id.*

22 **a. Overtime/Minimum Wage Claims**⁵

23 Plaintiff assumed 50 minutes of overtime per shift due to off the clock work. Defendant
24 maintained that their policies did not allow off the clock work. However, Plaintiff and Class
25 members worked off the clock. The average wage rate for all employees during the Class Period
26 was \$22.26 per hour.

27 The total number of unpaid off the clock time in the statutory period is 1,380 regular hours
28

⁵ Damages relating to the minimum wage claim are subsumed within the calculations for overtime wages.

1 and 12,456 overtime hours. Thus, the total amount of overtime/minimum wages owed equaled
2 \$446,625 as of October 24, 2025, calculated as follows: $1,380 \text{ regular hours} * \$22.26 + 12,456$
3 $\text{overtime hours} * \$22.26 * 1.5 = \$446,625$. The total damages extrapolated to the Class, excluding
4 interest and penalties, are \$1,786,500 ($\$446,625 * 4$). Lipeles Decl., ¶15a.

5
6 **b. Meal Break Claim**

7 Meal break violations (missed, shortened and/or late), were calculated and quantified based
8 on the actual observed violations. The data was converted and both shift durations and break
9 durations were calculated. Employing the “5/10 rule⁶”, each shift was analyzed to determine
10 whether a meal break was taken and whether that break was short, missed or late. There were
11 2,237 shifts with violations during the statutory period. The total amount of damages based on the
12 number of shifts with violations in the 25% sample was \$49,796 ($2,237 * \$22.26$).

13 Lipeles Decl., ¶15b.

14 Further, Plaintiff assumed that 30% of meal breaks were interrupted. The average wage rate
15 for all employees during the Class Period was \$22.26 per hour. The total number of meal break
16 interruptions was 15,481. Meal break interruptions were calculated as follows: $15,481 * 30\% = 4,644$
17 interruptions. Thus, the total damages for interrupted meal breaks based on the 25% sample was
18 \$103,375.00 ($4,644 * \$22.26$). Lipeles Decl., ¶15b.

19 Defendant contended that they have a valid meal break policy, that they authorized and
20 permitted meal breaks and paid for missed meal breaks. *Id.*

21 According to Plaintiff’s damages model, Defendant’s exposure for meal period violations
22 extrapolated to the Class, amounted to approximately \$199,184 ($\$49,796 * 4$). Defendant’s
23 exposure for meal period interruptions extrapolated to the Class, excluding interest and penalties,
24 amounted to approximately \$413,500 ($\$103,375 * 4$). The total amount of damages for both meal
25 break violations and interruptions, excluding interest and penalties, amounted to approximately
26 \$612,684.00. *Id.*

27
28

The “5/10 rule” refers to the assumption of no meal break waiver, meaning a shift is eligible for a first meal break at 5 hours and a second meal break at 10 hours.

1 **c. Rest Break Claim**

2 Regarding rest break violations, Plaintiff assumed a violation rate of 100% and one missed
3 rest break per shift greater than 3.5 hours. The average wage rate for all employees during the Class
4 Period was \$22.26 per hour. The total estimated number of rest break violations in the 25% sample
5 was 16,394 shifts. Defendant contended that it had a valid rest break policy and that it authorized
6 and permitted rest breaks. Lipeles Decl., ¶15c.

7 According to Plaintiff's damages model, Defendant's exposure for non-complaint rest
8 periods, excluding interest, amounted to approximately \$346,930 (16,394 * \$22.26). *Id.* When
9 extrapolated to the Class, Defendant's estimated exposure for non-complaint rest periods,
10 excluding interest and penalties, amounted to approximately \$1,459,720 (\$346,930 * 4). *Id.*

11 **d. Failure to Provide Accurate Wage Statements Claim**

12 Concerning the wage statement claim,⁷ the putative class was comprised of approximately
13 164 current employees during the one-year statutory period. There were 24 pay periods per year.
14 Defendant maintained that it provided accurate wage statements to its employees. The value of
15 Plaintiff's wage statement claim was \$385,400, calculated as follows: Current employees (164, at
16 the time of mediation) * \$2,350 (\$50.00 (initial violation) + \$100 (subsequent violations)) =
17 \$385,400. Lipeles Decl., ¶15d.

18 **e. Failure to Pay Wages on Termination Claim**

19 Concerning waiting time penalties, the putative class is comprised of approximately 118
20 former employees during the statutory period. Plaintiff assumed 30 days per employee at 7.84
21 hours per day, \$22.26 average rate of pay and 118 former employees each year were in the Section
22 203 subclass. The potential value of the waiting time penalty claim⁸ for the Class Members who
23 are former employees of Defendant is \$617,795, calculated as follows: 118 employees * 7.84
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25
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27 ⁷ Labor Code §226(e) provides that an employee is entitled to recover \$50 for the initial pay period in which a violation
28 of Labor Code §226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of
costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally fails to
provide accurate itemized statements to the employee causing the employee to suffer injury. The wage statement
violation claim is derivative of Plaintiff's other claims and depends on the actual number of violations found to exist.

⁸ Under Labor Code 203(a), Plaintiff and the Class are entitled to one day's wages for each day he or she was not
timely paid, not to exceed 30 days' wages.

hours per day * \$22.26 * 30 days = \$617,795.00. Lipeles Decl., ¶15e.

f. Expense Reimbursement Claim

Plaintiff assumed there was \$9.28⁹ of unreimbursed cell phone business expenses per week. There were 19,153 Workweeks in the Class Period through October 24, 2025.

According to Plaintiff's damages model, Defendant's exposure for unreimbursed cell phone business expenses, excluding interest, amounted to approximately \$177,740.00 (19,153 * \$9.28). Lipeles Decl., ¶15f.

Plaintiff assumed there were 10 miles of unreimbursed vehicle use per week. The total for unreimbursed mileage was \$40,696.00 (6,074 workweeks * 10¹⁰ * \$0.67¹¹). According to Plaintiff's damages model, Defendant's exposure for unreimbursed mileage extrapolated to the Class, excluding interest and penalties, amounted to approximately \$162,784.00 (\$40,696 * 4). *Id.* According to Plaintiff's damages model, Defendant's exposure for both cell phone and vehicle use excluding interest, amounted to approximately \$340,524.00. Lipeles Decl., ¶15f.

g. Damages Model

The Damages Model manifested the following conclusions concerning Defendant's exposure, excluding interest:

<u>ALLEGATION</u>	<u>MAXIMUM POTENTIAL RECOVERY</u>	<u>REALISTIC RECOVERY</u>
Overtime/Minimum Wage Claims	\$1,786,500.00	For the reasons stated in section IV.A.1 <i>infra</i> , the value of this claim is discounted by 75% leading to potential realistic exposure of \$466,625.
Rest Break Claim	\$1,459,720.00	For the reasons stated in section IV.A.1 <i>infra</i> , the value of this claim is discounted by 65% leading to potential realistic

⁹ Cell phone reimbursement cost: <http://www.insights.samsung.com/2022/05/16/how-much-should-you-compensate-byod-employees-for-mobile-expenses-3/>

¹⁰ Average Employee Commute Distance: <https://www.zippia.com/advice/average-commute-time-statistics/>

¹¹ Employee Commute Reimbursement Cost: <https://www.irs.gov/tax-professionals/standard-mileage-rates>

		exposure of \$510,902.00.
Meal Break Claim (violations and interruptions)	\$612,684.00	For the reasons stated in section IV.A.1 <i>infra</i> , the value of this claim is discounted by 65% leading to potential realistic exposure of \$214,439.40.
Failure to Issue Accurate Itemized Wage Statement Claim	\$385,400.00	For the reasons stated in section IV.A.1 <i>infra</i> , the value of this claim is discounted by 50% leading to potential realistic exposure of \$192,700.00.
Failure to Pay Wages on Termination Claim	\$617,795.00	For the reasons stated in section IV.A.1 <i>infra</i> , the value of this claim is discounted by 50% leading to potential realistic exposure of \$308,897.50.
Failure to Reimburse Business Expenses Claim	\$340,524.00	For the reasons stated in section IV.A.1 <i>infra</i> , the value of this claim is discounted by 50% leading to potential realistic exposure of \$170,262.00.
Total, excluding interest	\$5,202,823.00	\$1,836,825.90

Lipeles Decl., ¶15g.

The following chart shows the amount of PAGA penalties, assuming that PAGA penalties can be “stacked” for a given pay period:¹²

Number of Pay Periods in PAGA Period	5,263	
Number of Pay Periods in PAGA Period – Overtime/Minimum Wage	5,263	
Number of Pay Periods in PAGA Period – Meal Breaks	1,470	
Number of Pay Periods in PAGA Period – Rest Breaks	5,263	
Number of Pay Periods in PAGA Period – Wage Statements	5,263	

¹² While the old PAGA statute applies to this case, under Labor Code §2699(h)(3)(i) as amended, stacking is prohibited. Even prior to the amendment of Labor Code §2699(h)(3)(i), courts generally did not allow penalties to be stacked.¹² Plaintiff’s Counsel is not aware of any published California appellate court decisions that have held that plaintiffs may “stack” PAGA penalties, and many federal courts have not allowed stacking. *See, e.g., Hamilton v. Juul Labs*, 20-cv-03710-EMC, at *14 (N.D. Cal. Nov. 16, 2021); *see also Snow v. United Parcel Services, Inc.*, 2020 WL 1638250, *3 (C.D. Cal April 1, 2020) (“[P]laintiffs may only recover a set of civil penalties for each type of violation.”); *Smith v. Lux Retail North America*, 2013 WL 2932243, *4 (N.D. Cal. June 13, 2013) (“Another necessary but equally flawed assumption undergirding the Luxottica calculation is the stacking of penalties . . . no actual holding in any judicial decision has ever blessed such stacking.”); *Salazar v. PODS Enterprise, LLC*, 2019 WL 2023726, *6 (C.D. Cal. May 8, 2019) (“[I]t is possible (although highly unlikely) that plaintiff could recover PAGA penalties for each separate type of Labor Code violation.”).

Number of Pay Periods in PAGA Period – Reimbursements of Business Expenses	5,263	
Number of Pay Periods in PAGA Period – Failure to Timely Pay Wages	5,263	
PAGA Penalty for Unpaid Overtime/Minimum Wages	\$526,300	\$100/\$100
PAGA for Waiting Time (86 former employees in PAGA Period)	\$8,600	\$100/\$0
PAGA for Meal Breaks	\$147,000	\$100/\$100
PAGA for Rest Breaks	\$526,300	\$100/\$100
PAGA for Wage Statements	\$526,300	\$100/\$100
PAGA for Reimbursements	\$526,300	\$100/\$100
Total PAGA penalties	\$2,260,800.00	

Assuming PAGA penalties should not be stacked (since even under the old PAGA statute most courts did not allow stacking), the maximum recoverable PAGA penalties is \$526,300.00. Lipeles Decl., ¶15g.

D. Settlement Negotiations

On October 24, 2025, the parties virtually attended via Zoom an all-day mediation with mediator Robert A. Parris, Esq. Lipeles Decl., ¶17. Kevin Lipeles, Esq., and Jasmine Badawi, Esq. of Lipeles Law Group, APC, attended on behalf of Plaintiff. Plaintiff also remotely attended the mediation. *Id.* Maia Mdinradze, Esq. of Jackson Lewis, attended on behalf of Defendant. *Id.*

After a full day of negotiations, the parties agreed to settle for \$300,000.00 with no claims process and **no reversion** to Defendant of any settlement monies remaining after all Settlement Class Members are paid.¹³ Lipeles Decl., ¶¶ 18, 20; Exhibit A thereto (the parties' Settlement Agreement), §2.1.

E. Summary of Settlement Terms

Under the terms of the Settlement Agreement, Defendant is discharged of all claims asserted in the Action¹⁴ in exchange for paying the Gross Settlement Amount of \$300,000.00.¹⁵ The following amounts will be subtracted, subject to court approval: Plaintiff's Class Representative Service Payment of up to \$7,500, Class Counsel Fees Payment up to \$105,000.00, Class Counsel Litigation Expenses Payment to Plaintiff's Counsel in an amount up to \$12,000,

¹³ The parties continued to negotiate until their finalized Settlement Agreement was fully executed in April 2026. Lipeles Decl., ¶20.

¹⁴ Settlement Agreement, §4.

¹⁵ Settlement Agreement, §2.1.

1 PAGA Payment in the amount of \$30,000 (allocated as 75% to the LWDA in the amount of
2 \$22,500 and allocated as 25% to the Aggrieved Employees in the amount of \$7,500), the
3 Administration Costs up to \$8,000.00. The employer's portion of the payroll taxes attributed to the
4 wage portion of Individual Class Payments to Class Members will be paid by Defendant outside of
5 and in addition to the Gross Settlement Amount.¹⁶ The Net Settlement Amount ("NSA") is the
6 remainder, *i.e.*, approximately \$137,500.00, which shall be available for distribution to Class
7 Members in its entirety.¹⁷

8 The average Estimated Amount per class member is \$616.59.¹⁸ Settlement Class Members
9 are not required to submit a claim form in order to receive an Individual Class Payment.¹⁹

10 To calculate Individual Class Payments, the Settlement Administrator, using the Employee
11 Data, will calculate the total workweeks for all Participating Class Members. An Individual Class
12 Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Class
13 Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying
14 the result by each Participating Class Member's Class Workweeks.²⁰

15 Because Aggrieved Employees cannot opt out of the PAGA claims, each Aggrieved
16 Employee, whether or not a Participating Class Member, shall also receive his or her Individual
17 PAGA Payment. The Settlement Administrator will calculate each Individual PAGA Payment by (a)
18 dividing the Net PAGA Payment by the total number of PAGA Pay Periods worked by all PAGA
19 Members during the PAGA Period; and (b) multiplying the result by each PAGA Members' PAGA
20 Pay Periods.²¹

21
22 For tax purposes, Individual Class Payments shall be allocated and treated as follows:
23 twenty-five percent (25%) of each Individual Class Payment will be allocated to settlement of wage
24 claims and subject to withholdings and taxes, seventy-five percent (75%) will be allocated to
25 penalties and interest, and not subject to withholding.²² Each Individual PAGA Payment shall be
26

27 ¹⁶ Settlement Agreement, §2.1.

28 ¹⁷ Settlement Agreement, §1.29.

¹⁸ \$137,500.00 (NSA)/223 (putative class members) = \$616.59 (average award per class member).

¹⁹ Settlement Agreement, §2.1.

²⁰ Settlement Agreement, §2.2.5.

²¹ Settlement Agreement, §2.2.6.

²² Settlement Agreement, §2.2.5.

1 treated as 100% penalties.²³

2 Individual Class Payment checks issued to Participating Class Members and Aggrieved
3 Employees shall remain valid and negotiable for one hundred and eighty (180) calendar days from
4 the date of issuance. In the event an Individual Class Payment check has not been cashed within
5 one hundred and eighty (180) days, all such checks shall be cancelled and funds associated with
6 such cancelled checks, shall be remitted to the State of California's Unclaimed Property Division in
7 the name of the Covered Employee for who the funds are designated.²⁴

8 **F. Administration of Notice, Objections, and Claims**

9 The actual costs of administration, estimated at up to \$8,000.00, will be deducted from the
10 Settlement Amount (Settlement Agreement §1.4). The Parties have agreed that Phoenix Class
11 Action Administration Solutions ("Phoenix") shall serve as the Settlement Administrator. Within
12 fifteen (15) days after the entry of the Preliminary Approval Order, Defendant will provide the
13 Settlement Administrator with the Employee Data.²⁵ Within fourteen (14) calendar days after
14 receiving the Employee Data from Defendant, Phoenix will mail all Class Members the Class
15 Notice. The Class Notice²⁶ (Attachments A and B to the Settlement Agreement) shall contain,
16 *inter alia*, the employee ending dates of employment, the number of Workweeks/PAGA Pay
17 Periods during the Class Period/PAGA Period, and the estimated amount of his or her Individual
18 Class Payment/Individual PAGA Payment if he or she does not request to be excluded from the
19 Settlement. The Settlement Administrator shall use the Employee Data to determine the dates of
20 employment, calculate the number of Workweeks/PAGA Pay Periods and calculate the estimated
21 Individual Class Payment/Individual PAGA Payment for each Settlement Class Member.

22 Settlement Class Members will not be required to submit a claim form and shall
23 automatically receive an Individual Class Payment unless they submit a valid Request for
24 Exclusion.²⁷ Plaintiff negotiated this term to eliminate any potential fear of retaliation from Class
25 Members, for participating in the settlement.²⁸ The proposed Class Notice is attached to the

26 ²³ Settlement Agreement, §2.2.6.

27 ²⁴ Settlement Agreement, §3.3.3.

28 ²⁵ Settlement Agreement, §3.1.

²⁶ The Class Notice will be in English and Spanish. Settlement Agreement, § 1.9.

²⁷ Settlement Agreement, §2.1.

²⁸ Neither Plaintiff nor his counsel believe that Defendant will retaliate against Class Members for participating in the lawsuit. However, Plaintiff's counsel has found the fear of retaliation to be a common, albeit often unfounded, fear among Class Members in virtually every case.

1 Settlement Agreement as Attachments A and B.

2 The Class Notice informs each Settlement Class Member of his or her right to object to the
3 settlement. Settlement Class Members who wish to object to the Settlement must object in writing,
4 stating the grounds of objection, signed by the objecting Class Member or his or her attorney, along
5 with all supporting papers, sent to the Administrator no later than sixty (60) calendar days after the
6 initial mailing of the Class Notice.²⁹

7 **G. Procedure for Requesting Exclusion or Opting Out of Settlement**

8 Class Members who wish to exclude themselves from the Settlement Agreement must sign
9 and mail a written Request for Exclusion opting out of the Settlement Class postmarked no later
10 than sixty (60) calendar days after the Class Notice is first mailed out.³⁰ (Settlement Agreement §
11 6.5). All Class Members who do not submit a valid Request for Exclusion shall be bound by all the
12 terms of the Settlement Agreement and any Final Judgment entered by the Court if the Court grants
13 final approval of the settlement.

14 **H. Mailing of Individual Class Payments**

15 Settlement Class Members will automatically receive an Individual Class Payment unless
16 they submit a valid Request for Exclusion. Within sixty (60) days after the Effective Date or
17 October 24, 2026, whichever is later, Defendant shall fully fund the Gross Settlement Amount
18 (including any increase to the Gross Settlement Amount pursuant to the Escalator Clause) plus
19 Defendant's share of employer-side payroll taxes and sending it to the Settlement Administrator.
20 Distribution to Settlement Class Members shall be within fourteen (14) calendar days of the
21 Defendant's funding of the Gross Settlement Amount.³¹ Defendant will pay Class Counsel Fees
22 Payment and Class Counsel Litigation Expenses Payment within fourteen (14) calendar days of
23 Defendant's full funding of the Gross Settlement Amount.³² Additionally, within fourteen (14)
24 calendar days of Defendant's full funding of the Gross Settlement Amount, the Settlement
25

26 _____
27 ²⁹ Settlement Agreement, § 6.7.

28 ³⁰ Settlement Agreement, §6.5.1. However, those Settlement Class Members who receive a re-mailed Class Notice shall have their response period extended fourteen (14) calendar days from the original response period. Settlement Agreement, § 6.5.1.

³¹ Settlement Agreement, § 3.3.

³² Settlement Agreement, § 2.2.2. Additionally, any portion of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment not awarded to Plaintiff's Counsel will be available for distribution to Settlement Class Members as part of the NSA. *Id.*

1 Administrator will pay the Class Representative Service Payment to the Named Plaintiff.³³

2 **III. CLASS ACTION SETTLEMENT APPROVAL PROCEDURE**

3 Any settlement of class litigation must be reviewed and approved by the presiding court,
4 Cal. R. Ct. 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial
5 court; and (2) a subsequent (final) review after the notice has been distributed to the Class
6 Members for their comments and/or objections. The Preliminary Approval Hearing and Final
7 Approval Hearing coincide with these two required steps. The present motion seeks preliminary
8 approval and the setting of a Final Approval Hearing.

9 The first step, preliminary approval, proceeds as follows:

10
11 When the parties to an action reach a monetary settlement, they will usually
12 prepare and execute a joint stipulation of settlement, which is submitted to the
13 court for preliminary approval. The stipulation should set forth the central terms
14 of the agreement, including but not limited to, the amount of the settlement, form
of payment, manner of determining the effective date of settlement and any recapture
clause.

15 Rubinstein, Conte & Newberg, *Newberg on Class Actions*, §§ 11.24-11.26 (4th Ed. 2002)
16 (“*Newberg*”).

17 California courts favor settlement. *Stambaugh v. Superior Court (Pacific Gas and Electric*
18 *Company)*, 62 Cal. App. 3d 231, 236 (1976). Courts have broad powers to determine whether a
19 proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court (County*
20 *of Marin)*, 89 Cal. App. 3d 434, 438 (1979).

21 Here, the parties have executed and hereby submit the Settlement Agreement, which sets
22 forth all material terms. “Where the settlement terms are fair and reasonable, the settlement is
23 presumptively valid, subject only to objections that may be raised at a final hearing.” *Newberg*,
24 § 11.26. California courts have certified classes in cases similar to the present Class in which
25 Plaintiff’s Counsel was appointed Class Counsel.³⁴

26 The schedule setting forth a proposed sequence for the relevant dates and deadlines is
27 outlined in the Proposed Order filed herewith. Having appropriately presented the materials and
28 information necessary for preliminary approval, the parties request that the Final Approval Hearing

³³ Settlement Agreement, §2.2.1. Additionally, any portion of the Class Representative Service Payment not awarded to the Class Representative will be available for distribution to Settlement Class Members as part of the NSA. *Id.*

³⁴ See Lipeles Decl., ¶39.

1 be conducted as soon as the Court's calendar may accommodate.

2 **IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

3 The law favors settlement, particularly in class actions and other complex cases where
4 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
5 *See Newberg* § 11:41 (and cases cited therein); *Class Plaintiff v. City of Seattle*, 955 F.2d 1268,
6 1276 (1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also Potter v.*
7 *Pac. Coast Lumber Co.*, 37 Cal. 2d 592, 602 (1951). In evaluating class action settlements, the
8 court has broad powers to determine whether a proposed settlement is fair under the circumstances
9 of the case. *Wershba v. Apple Computers, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *Mallick v.*
10 *Superior Court (County of Marin)*, 89 Cal. App. 3d 434, 438 (1979). The purpose of the
11 preliminary evaluation of class action settlements is to determine only whether the proposed
12 settlement is within the range of possible approval, also described as the "range of reasonableness,"
13 and thus whether notice to the class of the settlement's terms and conditions and the scheduling of
14 a formal fairness hearing are worthwhile. *See Wershba*, 91 Cal. App. 4th at 234-235; *North County*
15 *Contractor's Ass'n, Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-1090 (1994); *In re*
16 *Traffic Exec Ass'n*, 627 F.2d 631, 633-634 (2nd Cir. 1980); *Newberg*, § 11:25-26.

17 The *Manual for Complex Litigation*, Fourth (Fed. Judicial Center 2004 ("Manual")),
18 § 21.632 characterizes the preliminary approval stage as an "initial evaluation" of the fairness of
19 the proposed settlement made by the court on the basis of written submissions and informal
20 presentation from the settling parties. To make a fairness determination, courts must consider
21 several factors, including "the strength of the Plaintiff's case, the risk, expense and complexity and
22 likely duration of further litigation, the risk of maintaining class action status through trial, the
23 amount offered in settlement, the extent of the discovery completed and the stage of the
24 proceedings, [and] the experience and views of counsel. ..." *Dunk v. Ford Motor Co.*, 48 Cal. App.
25 4th 1794, 1801 (1996) "The list of factors is not exclusive and the court is free to engage in a
26 balancing and weighing of factors depending on the circumstances of each case." *See Wershba*, 91
27 Cal. App. 4th at 245.

28 Furthermore, courts must give "proper deference to the private consensual agreement of the
parties," since "the court's intrusion upon what is otherwise a private consensual agreement

1 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a
2 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
3 between, the negotiating parties, and that the settlement, taken as a whole, is fair reasonable and
4 adequate to all concerned.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1027 (9th Cir. 1998) (internal
5 quotes and citation omitted). Once the judge is satisfied with the results of the initial inquiry into
6 the fairness, reasonableness, and adequacy of the settlement, the court should direct that the Class
7 Members be given notice of a formal fairness hearing, at which arguments and evidence may be
8 presented in support of, and in opposition to, the settlement. *See Manual*, § 21.633.

9 **A. The Proposed Settlement Is Fair to the Class**

10 The terms of the settlement recognize the strength of the case. The proposed settlement is
11 reasonable, in light of the strength of Plaintiff’s case and the risks of litigation. *Clark v. American*
12 *Residential Services, LLC*, (2009), 175 Cal. App. 4th 785, 799. Under *Clark* “the trial court is
13 obliged, at a minimum, to determine whether a legitimate controversy exists on a legal point, if that
14 legal point significantly affects the valuation of the case for settlement purposes.” *Id.* at 803.
15 However, the trial court is not required to reach any ultimate legal or factual conclusions. *Id.* A
16 settlement is not judged against what might have been recovered had a plaintiff prevailed at trial,
17 nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.
18 *Wershba*, 91 Cal. App. 4th at 224 (holding that “[c]ompromise is inherent and necessary in the
19 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
20 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement
21 because the public interest may indeed be served by a voluntary settlement in which each side gives
22 ground in the interest of avoiding litigation”). Settlement agreements are realistically assessed.
23 *Stambaugh*, 62 Cal. App. 3d at 236; *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989) (“The
24 fact that a plaintiff might have received more if the case had been fully litigated is no reason not to
25 approve the settlement.”).

26 The Settlement Agreement in this case confers a substantial benefit on the Settlement Class.
27 Pursuant to the terms of the Settlement Agreement, Defendant will pay \$300,000 in exchange for a
28 full discharge of Plaintiff’s and Settlement Class Members’ releases of claims. Once all the
adequate deductions have been made from the Settlement Amount, the amount available for

1 distribution to Plaintiff and the Settlement Class is approximately \$140,000.00.

2 Plaintiff has evaluated the strengths of the class claims, and assessed the range of potential
3 outcomes of the litigation. In addition to disputing the merits of Plaintiff's claims, Defendant
4 would strongly challenge any request for class certification. Plaintiff believed that this case was
5 suitable for class certification. However, Plaintiff also realized that there is always a significant
6 risk associated with class certification proceedings. In light of the uncertainties of protracted
7 litigation, the Gross Settlement Amount reflects an excellent recovery for the Class Members.
8 Lipeles Decl., ¶ 26.

9 **1. Plaintiff Faced Significant Risk**

10 Pursuit of the Action through trial would impose significant risks on the outcome of
11 Plaintiff's claims. Plaintiff estimates that his likelihood of proving all his underlying claims is low
12 and thus his likelihood of recovering the potential undiscounted amount or anything close to that
13 amount is very unlikely. With respect to the claims asserted on behalf of the Class in this case,
14 there are significant risks that support the reduced compromise amount. These risks include, but are
15 not limited to the following:

16 (i) The risk that Plaintiff would be unable to establish liability for allegedly unpaid
17 minimum and overtime wages. *See Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal.4th 1, 39 & fn. 33
18 (2014) ("*Duran*"), citing *Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014)
19 (dismissing certified off-the-clock claims based on proof at trial). Defendant contends that it is
20 their policy and practice to pay all wages for all time worked and that employees were not
21 allowed to engage in off the clock work. Further, Defendant maintains that they instructed
22 employees to record all time worked. Thus, not getting certified was a risk which Plaintiff
23 considered during the negotiations. As a result, Plaintiff believes that the overtime/minimum
24 wage claims should be discounted by 75%, resulting in a realistic value of \$466,625.

25 (ii) The risk that Plaintiff would not be able to prove liability for alleged failure to
26 provide compliant meal periods and rest breaks; or that to establish liability for the failure to
27 provide compliant meal periods and rest breaks would require an individualized inquiry that
28 would present trial manageability issues and perhaps lead to inconsistent testimony. Defendant
adamantly contends that it implemented a policy for when nonexempt employees were to take

1 meal/rest breaks. Defendant maintains that it provided its non-exempt employees with legally-
2 compliant meal/rest periods. Defendant argued that they have no obligation to ensure that
3 meal/rest breaks are taken. Further, Defendant maintained that individual issues predominate.
4 Defendant argued that courts routinely decline to certify meal/rest break classes. *See, e.g.,*
5 *Wilson v. TE Connectivity Networks, Inc.*, 2017 WL 1758048, *7 (N.D. Cal. Feb. 9, 2017
6 (denying certification of break classes and noting “courts consistently [find that] individualized
7 issues predominate in meal and rest break claims”). Thus, there was a high risk that the Court
8 would deny certification of the meal/rest break claims. As a result, Plaintiff believes that the
9 meal break claim should be discounted by 65%, resulting in a realistic value of \$214,439.40 and
10 the rest break claim should also be discounted by 65%, resulting in a realistic value of
11 \$510,902.00.

12 (iii) Plaintiff must establish willfulness with respect to his waiting time penalties claim
13 under Labor Code Section 203 as well as a knowing and intentional violation under Labor Code
14 Section 226 for wage statement penalties. It should be noted that there is currently a split of
15 authority as to whether such penalties can be obtained. *See e.g., Singletary v. Teavana Corporation*,
16 2014 WL 1760884, *4 (N.D. Cal. 2014) (noting that “the law in this area is murky at best” and
17 holding that section 203 penalties are not applicable to meal and rest break claims). Plaintiff might
18 not prevail in showing that Defendant acted with the requisite intent necessary for the alleged claims
19 for penalties under Labor Code sections 203 and 226. Specifically, section 203 requires that a
20 plaintiff show the employer committed a “willful” violation of the law in withholding wages. “A
21 good faith dispute that any wages are due will preclude imposition of waiting time penalties under
22 Section 203.” 8 Cal. Code Regs. § 13520. Similarly, penalties pursuant to section 226 require a
23 “knowing and intentional” violation. Defendant contends that they would present several good faith
24 defenses that would preclude a finding of willfulness under sections 203 and 226. As a result,
25 Plaintiff believes that the sections 203 and 226 claims should be discounted by 50%. The realistic
26 value of the section 203 claim is \$308,897.50 and the realistic value of the section 226 claim is
27 \$192,700.00.
28

(iv) Plaintiff claims that Class Members were not reimbursed for their business

1 expenses such as cell phone and vehicle use. Defendant maintained that employees were not
2 required to use their personal cell phones and vehicles. As a result, those expenses are not
3 recoverable. However, Plaintiff contends that he and Class Members used their cell phones to
4 speak with clients and were required to keep them on during their meal/rest breaks. Further,
5 Plaintiff and Class members were required to drive their personal vehicles to clients' locations.
6 Thus, there was a significant risk that the Court would deny the expense reimbursement claim. As
7 a result, Plaintiff believes that the reimbursement claim should be discounted by 50%, resulting in a
8 realistic value of \$170,762.00.

9 (v) The risk that any civil penalties award under PAGA could be reduced by the Court
10 in its discretion, which would materially impact the recovery by the PAGA-Eligible Employees.
11 *See* Labor Code section 2699(e)(1).

12 (vi) The risk that lengthy appellate litigation could ensue, with associated litigation risk
13 and costs, further enhances the value of a confirmed settlement as opposed to unpredictable
14 litigation.

15 (vii) Although the PAGA penalties recoverable amount to \$526,300, that amount is not
16 likely to bear fruit in this case. Most significantly, the ultimate decision as to the amount of
17 penalties is always up to the discretion of the Court. *See* Labor Code § 2699(a), (e)(2), (f). Since
18 only 35% of any PAGA recovery reaches the PAGA claimants (with the balance going to the
19 state), the strength of Plaintiff's potential PAGA claims and the potentially limited recovery was a
20 factor considered during settlement negotiations. Here, the amount allocated to PAGA penalties is
21 fair, reasonable and adequate in view of PAGA's purposes to remediate labor law violations and
22 deter future ones in accordance with *Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56.

23 (viii) Moreover, Plaintiff faced the risk of a potentially prolonged and expensive trial.
24 *Lipeles Decl.*, ¶¶ 22.

25 Each of these factors bore heavily on the negotiations leading to the Settlement. The total
26 estimated discounted potential liability is \$1,863,825.90. The \$300,000 settlement is 16% of the risk-
27 adjusted exposure in this case, a fair result when considering Defendant's significant defenses, and
28 warranting this Court's approval. In view of these risks, the Settlement reflects a fair, adequate, and
reasonable compromise amount for these claims and warrants approval. Indeed, while the risks

1 listed herein are far from exhaustive, they show that the Settlement is fair, adequate, and reasonable
2 in view of them. Lipeles Decl., ¶¶ 22, 26, 35.

3 Where, as here, the settlement affords the Class Members prompt, substantial relief, while
4 avoiding legal and factual hurdles that otherwise may have prevented the Class from obtaining any
5 recovery at all, or at least after a very significant delay, the reasonableness of the settlement is
6 clear. Because the Settlement Agreement provides immediate and substantial relief, without the
7 attendant risks and delay of continued litigation, it warrants the Court's preliminary approval.
8

9 **B. The Proposed Settlement Is the Result of Arm's-Length Negotiation**

10 Plaintiff's counsel conducted an extensive investigation, including reviewing voluminous
11 documentary evidence and obtaining employee sworn statements. The parties negotiated in good
12 faith and at arm's-length on several occasions over many months before reaching an agreement.
13 Thus, Class Counsel negotiated the proposed Settlement with ample knowledge of the strengths
14 and weaknesses of this case, the amounts necessary to compensate Settlement Class Members for
15 their damages, and the benefits of the proposed Settlement under the circumstances of this case. In
16 addition, Class Counsel and Defense Counsel, are experienced class action litigation and
17 employment attorneys, and have used their experience and expertise in fashioning a proposed
18 Settlement that is acceptable to both parties. *See* Lipeles Decl., ¶¶ 25, 36-37.

19 The settlement terms also indicate that the Settlement is fair to the Class. Defendant has
20 legal and factual grounds for defending this action. Among other things, Defendant denies the
21 allegations asserted in the Action and continues to assert defenses to such claims. Defendant further
22 contends that at all relevant times it had valid wage and hour policies and that they properly paid
23 Plaintiff and Class members. Notwithstanding these arguments, the Settlement commits Defendant
24 to pay a total of \$300,000.00, of which approximately \$140,000 will go to compensate the
25 Settlement Class Members for their damages, which Class Counsel believes is a fair and adequate
26 amount given the litigation risks and delays inherent in further litigation and appeals. *See* Lipeles
27 Decl., ¶¶ 26, 35.
28

Accordingly, preliminary approval of the Settlement is appropriate, and Plaintiff requests
that the Court order that Class Notice be disseminated to the Class, and that a final approval

1 hearing be scheduled.

2 **C. The Proposed Settlement Is the Result of Arm's-Length Negotiation**

3 Plaintiff's counsel conducted an extensive investigation, including reviewing voluminous
4 documentary evidence and obtaining employee sworn statements. The parties negotiated in good
5 faith and at arm's-length on several occasions over many months before reaching an agreement.
6 Thus, Class Counsel negotiated the proposed Settlement with ample knowledge of the strengths
7 and weaknesses of this case, the amounts necessary to compensate Settlement Class Members for
8 their damages, and the benefits of the proposed Settlement under the circumstances of this case. In
9 addition, Class Counsel and Defense Counsel, are experienced class action litigation and
10 employment attorneys, and have used their experience and expertise in fashioning a proposed
11 Settlement that is acceptable to both parties. *See* Lipeles Decl., ¶¶ 36-37.

12 The settlement terms also indicate that the Settlement is fair to the Class. Defendant has
13 legal and factual grounds for defending this action. Among other things, Defendant denies the
14 allegations asserted in the Action and continues to assert defenses to such claims. Defendant further
15 contends that at all relevant times it had valid wage and hour policies and that they properly paid
16 Plaintiff and Class members. Notwithstanding these arguments, the Settlement commits Defendant
17 to pay a total of \$300,000.00, of which approximately \$140,000 will go to compensate the
18 Settlement Class Members for their damages, which Class Counsel believes is a fair and adequate
19 amount given the litigation risks and delays inherent in further litigation and appeals. *See* Lipeles
20 Decl., ¶¶ 25-26, 35.

21 Accordingly, preliminary approval of the Settlement is appropriate, and Plaintiff requests
22 that the Court order that Class Notice be disseminated to the Class, and that a final approval
23 hearing be scheduled.

24 **D. Provisional Certification of the Settlement Class Under the Lesser Standard of**
25 **Scrutiny for Settlement-Only Certification Is Appropriate**

26 "[P]re-certification settlements are routinely approved if found to be fair and reasonable."
27 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App 4th 224, 240; *accord Dunk*, 48 Cal. App. 4th
28 at 1803 (although the settlement was reached before any "adversary certification," the court was
satisfied that it was "fair, adequate and reasonable."); *see also, In re Baldwin-United Corp.* 105

1 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts have employed this practice in the name of
2 judicial efficiency in order to facilitate apparently beneficial settlement proposals.”).

3 The strength of the findings made by a judge at a preliminary hearing or
4 conference concerning a tentative settlement proposal . . . may be set out in
5 conditional orders granting tentative approval to the various items submitted to
6 the court. Three basic rulings are often conditionally entered at this preliminary
7 hearing. These conditional rulings may approve a temporary settlement class,
8 the proposed settlement, and the class counsel’s application for fees and
9 expenses.

10 4 *Newberg on Class Actions*, at §11.26.

11 The standard for class certification in the settlement context is a significantly lower
12 threshold than in a contested proceeding or a trial context:

13 The two basic purposes for the Rule 23 certification requirements, as they
14 relate to questions of a nationwide class are: (1) to keep the lawsuit
15 manageable for trial; and (2) to protect the interests of the nonrepresentative
16 members. The first purpose is inapposite in the settlement context, and the
17 second, as it relates to commonality of issues, *only makes a difference if the*
18 *nonrepresentative class members would do much better by litigating on their*
19 *own or in their own jurisdiction.* The second category concerns are protected
20 by the trial court's fairness review of the settlement.

21 *Dunk*, 48 Cal. App. 4th at 1807, n. 19, (emphasis added). The reason for this is that no trial is
22 anticipated in the settlement context, so any case management issues inherent in determining if the
23 class should be certified need not be confronted. *Amchem Products, Inc. v. Windsor* 521 U.S. 591
24 (1987)

25 The very liberal standard expressed in *Dunk* is plainly satisfied here. The requirements for
26 class certification in the settlement context – ascertainability, numerosity, predominance of
27 common questions of law and fact, typicality, and adequacy – are all met. It certainly cannot be
28 said that the Settlement Class members would do “much better by litigating on their own”. *Dunk*,
48 Cal. App. 4th at 1807, n. 19. The proposed Settlement Class should be conditionally certified as
requested.

1. Numerosity and Ascertainability.

Numerosity is met if a proposed class is so large that joinder of all members would be
impracticable. *See* Code Civ. Proc. § 382. No set number of class members is required to maintain a

1 class action. *Hebbard v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030. The California Supreme Court
2 has upheld a class of as few as ten members. *Bowles v. Super. Ct. (Nickel, Jr.)* (1955) 44 Cal.2d 574,
3 577-81. A proposed settlement class is ascertainable if the class members can be objectively
4 identified and given notice of the litigation without unreasonable time or expense. *Medrazo v.*
5 *Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). Here, the settlement class consists of
6 223 current and former employees of Defendant in California from April 17, 2020 through October
7 24, 2025, who have already been identified. Lipeles Decl., ¶ 28.

8 **2. Well-Defined Community of Interest.**

9 **a. Commonality.**

10 To justify certification, the class proponent must show that questions of law or fact common
11 to the class predominate over the questions affecting the individual members. *See Arenas v.*
12 *El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010). While the parties dispute whether a class
13 would be appropriate if the litigation were to continue, they agree, for the purposes of this
14 settlement only, that the Class is subject to common compensation policies and challenges to those
15 policies that are certifiable for settlement purposes. *See e.g., Bluford*, 216 Cal. App. 4th at 872-73
16 (certifiable issues were raised by claim that the employer's per mile piece-rate system did not
17 compensate drivers for their statutory rest break time).

18 **b. Typicality.**

19 Typicality means merely that the class representative is similarly situated to the members of
20 the class, not that his claims are identical. *Classen v. Weller* 145 Cal. App. 3d 27, 45-46 (1983). It
21 suffices if the class representative's claims arise from the same event or course of conduct that gives
22 rise to the class claims, and are premised upon the same legal theories. *Id.* Here, for purposes of
23 settlement, the parties agree that Plaintiff asserts claims regarding Defendant's wage and hour
24 compensation practices that are at the core of the action. Lipeles Decl., ¶ 5. Like Class Members,
25 Plaintiff was an hourly non-exempt employee of Defendant in California. Declaration of Jack Martin in
26 Support of Plaintiff's Motion for Preliminary Approval ("Martin Decl."), ¶ 3. Plaintiff testifies and alleges
27 that he and Class members were not paid overtime, minimum wages, were not provided with compliant
28 meal periods and rest breaks, were not reimbursed their business expenses, did not receive accurate wage

1 statements and did not receive all wages owed on termination of employment. Martin Decl. ¶ 4; FAC.
2 ¶¶ 26-46. Accordingly, Plaintiff pursues claims typical of the class he seeks to represent.

3 **c. Adequacy of representation.**

4 The proposed class representative must establish that he or she will adequately represent the
5 proposed class. *See Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009).
6 Adequacy may be established by the fact that counsel are experienced. *See Local Joint Exec. Bd.*
7 *of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001).
8 Here, Plaintiff alleges, and Defendant does not dispute for purposes of settlement, that Plaintiff and
9 the Class are represented by counsel with extensive experience in wage-and-hour litigation and that
10 Plaintiff is an adequate class representative. Lipeles Decl., ¶¶ 36-37.

12 **E. An Award of Class Counsel Fees Payment, Class Counsel Litigation Expenses**
13 **Payment, and Payment for the Class Representative Service Payment from the**
14 **Settlement Fund Are Justified in this Case.**

15 The proposed Settlement provides that Plaintiff will request, and Defendant will not oppose,
16 an award to Class Counsel in an amount not to exceed \$105,000.00 in attorneys' fees (35% of the
17 Gross Settlement Amount), actual costs up to \$12,000, Class Representative Service Payment of
18 \$7,500 to the Named Plaintiff in recognition of his time, effort, and risk as Class Representative,
19 PAGA penalty payment in the amount of \$30,000, and up to \$8,000 in claims administration costs.
20 The foregoing awards amount to \$162,500 and Plaintiff therefore requests that the Court approve a
21 total deduction of \$162,500 from the \$300,000.00 Gross Settlement Amount. Viewing the
22 participation, service and risk payment as an additional cost of litigation, in combination with the
23 allocation for attorneys' fees, expenses and costs, this total deduction of \$162,500 is within the
24 range of attorneys' fees, expenses and costs awarded in similar cases. *See Lipeles Decl.*, at ¶ 27.
25 The participation payment to Plaintiff is also justified as a Class Representative Service Payment,
26 which courts regularly award in class action litigation.
27
28

1 **1. The Proposed Class Counsel Fees Payment and Class Counsel Litigation Expenses**
2 **Payment Requested Are Reasonable, Fair and Appropriate Under the Common**
3 **Fund Doctrine and Should be Preliminarily Approved.**

4 Plaintiff seeks preliminary approval of his request for reasonable attorneys’ fees in an
5 amount up to \$105,000 and actual expenses and costs up to \$12,000.00.³⁵ As discussed in more
6 detail below, this fee award is reasonable under the common fund approach in determining
7 reasonable attorneys’ fees.

8 An attorneys’ fees award is justified where the legal action has produced its benefits by way
9 of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987). California
10 law provides that when a party is entitled to statutory fees, he must be compensated for all time
11 reasonably spent seeking to accomplish the desired litigation result. *See Serrano v. Unruh*, 32
12 Cal.3d 621, 624 (1982). Courts in and out of California have long recognized the equitable
13 “common fund” doctrine under which attorneys that create a common fund or benefit for a group of
14 persons may be awarded their fees and costs out of the fund. “[W]hen a number of persons are
15 entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the
16 benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be
17 awarded attorneys’ fees out of the fund.” *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977), *see also*
18 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] lawyer who recovers a common fund...
19 is entitled to reasonable attorneys’ fees from the fund as a whole”).

20 In addition to spreading the litigation costs among all beneficiaries, awards of common fund
21 fees are essential to furthering the important societal goal of attracting competent counsel to handle
22 these often complex contingency cases, “who will be more willing to undertake and diligently
23 prosecute proper litigation for the protection or recovery of the fund if assured that [they] will be
24 promptly and directly compensated should [their] efforts be successful.” *Melendres v. City of Los*
25 *Angeles*, 45 Cal. App. 3d 267, 273 (1975) (quoting *Estate of Stauffer*, 53 Cal.2d 124, 132 (1959).
26 In California, trial courts have inherent equitable power to award attorneys’ fees on a common fund

27
28

³⁵ Prior to the expiration of the period of time allotted for class members to make objections to the settlement, Plaintiff will file a motion and brief for fees and costs (to be heard at the same time as the Final Fairness Hearing) so that class members will be able, if they elect to do so, to review the fees motion prior to making objections or filing a claim. The motion and brief for fees and costs will include, *inter alia*, an itemized listing of all costs incurred in litigating this case. *See Lipeles Decl.*, ¶41.

1 basis when counsel's efforts "have resulted in the preservation or recovery of a certain or easily
2 calculable sum of money." *Serrano*, 20 Cal.3d 25 at 35; *see also Bank of America Nat'l Trust &*
3 *Sav. Ass'n v. Cory*, 164 Cal. App. 3d 66, 89 (1985); *Melendres*, 45 Cal. App. 3d 267, 277 (trial
4 courts' "broad discretion" in awarding common fund fees is well-established).

5 The traditional method for calculating a common fund fee is to award a percentage of the
6 total fund. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 900 and 916 (1984); *Six (6) Mexican Workers*
7 *v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Lealao v. Beneficial California,*
8 *Inc.*, 82 Cal. App. 4th 19, 26 (2000); *Melendres*, 45 Cal. App. 3d at 278. Indeed, California courts
9 have regularly approved payments of attorneys' fees amounting to 35% or more of the common
10 fund in similar class actions.

11 California state and federal courts have regularly approved payments of attorneys' fees
12 amounting to as much as 35% or more of the common fund in similar wage and hour class actions
13 alleging missed meal and/or rest periods. *See, e.g., Morales v. Southland Sod Farms Operations, Inc.*,
14 No. 56-2017-00496912, 2018 WL 6928228, *2 (Cal. Super. Oct. 10, 2018) (granting final approval in a
15 wage and hour action and awarding 35% in attorneys' fees); *Erickson v. Q.S.P., Inc.*, No. BC469830,
16 2013 WL 4369736, *5, (Cal. Super. July 9, 2013) (granting final approval in a wage and hour action
17 and finding that 35% in attorneys' fees was reasonable); *Cabrera v. Advantage Sale & Marketing, LLC*,
18 No. BC485259, 2013 WL 1182822, (Cal. Sup. Mar. 12, 2013) (granting final approval for failure to
19 afford meal/rest breaks and awarding 35% in attorneys' fees). Where, as here, the common fund is
20 relatively small, class action commentators have noted that courts typically award 30-50% of the
21 common fund as attorneys' fees. *See Newberg* at §14.6.

22 Finally, several other factors support the requested attorneys' fees. Plaintiff and his counsel
23 brought this class action to prevent Defendant from continuing to commit the alleged violations of
24 California law regarding wage and hour violations alleged in the FAC. Plaintiff's Counsel handled
25 this case on a contingency basis and the case involved significant risks of non-payment of
26 attorneys' fees and non-recovery of litigation expenses if class certification was not granted and/or
27 if Plaintiff's Counsel did not settle or prevail. For these reasons, a costs award and common fund
28 fee of 35% of the settlement fund (*i.e.*, a total of up to \$117,000.00) is fair, reasonable and
appropriate. Furthermore, because Plaintiff's requested attorneys' fees of 35% of the common fund

1 is reasonable and falls within the range of approved percentages in similar common fund class
2 action cases, Plaintiff's request for fees of 35% of the common fund should be granted.

3 **2. The Proposed Payment to the Class Representative for His Service to the Class**
4 **Is Reasonable, Routinely Awarded, and Should be Preliminarily Approved.**

5 The proposed payment of \$7,500 to the Named Plaintiff³⁶ is intended to recognize the
6 critical role he played in this case and the time, effort and risk undertaken in helping secure the
7 result obtained on behalf of the Class. *See Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726
8 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing class case);
9 Manual §21.62 n. 973 (noting service awards are warranted).

10 "Courts routinely approve incentive awards to compensate named plaintiffs for the services
11 they provide and the risks they incurred during the course of the class action litigation." *Ingram v.*
12 *The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (quoting *In re S. Ohio Correctional*
13 *Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997) (approving \$303,000 payment to each class
14 representative plaintiff in employment case settling before class certification); *Martens v. Smith*
15 *Barney*, No. 96 Civ. 3779, 1998 W.L. 1661385, *4 (S.D.N.Y. 1998) and 181 F.R.D. 243, 262
16 (S.D.N.Y. 1998) (approving payments of up to \$150,000 for named plaintiffs, for a total of \$1.9
17 million in incentive payments for employment cases settling prior to class certification); *Roberts v.*
18 *Texaco*, 979 F. Supp. 185 (S.D.N.Y. 1997) (approving incentive payments up to \$85,000 for named
19 plaintiffs in employment case settling prior to class certification).

20 The factors courts use in determining the amount of incentive payments include (1) a
21 comparison between the incentive awards and the range of monetary recovery available to the
22 class; *see, e.g., Ingram*, 200 F.R.D. at 694; *Roberts v. Texaco, Inc.* 979 F. Supp. 185, 204
23 (S.D.N.Y. 1997); (2) time and effort put into the litigation; *see, e.g., Van Vranken v. Atlantic*
24 *Richfield Co.*, 901 F. Supp. 294, 299 (1995); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998);
25 (3) whether the litigation will further the public policy underlying the statutory scheme; *see, e.g.,*
26 *Roberts*, 979 F. Supp. at 201; (4) risks of retaliation; *see Roberts*, 979 F. Supp. at 202; *Cook*, 142
27 F.3d 1004, at 1016; (5) compromise of unique individual claims; *see, e.g. Women's Comm. For*
28 *Equal Employment Opportunity v. Nat'l Broad. Co.*, 76 F.R.D. 173, 180 (S.D.N.Y. 1977); and (6)

³⁶ Any portion of the Class Representative Service Payment not awarded to Plaintiff will be made available for distribution to Settlement Class Members as part of the NSA. Settlement Agreement, §2.2.1.

1 risks of an adverse attorneys' fees award; *see, e.g., Rodriguez v. West Publishing*, 563 F.3d 948,
2 958 (9th Cir. 2009) ("Incentive awards are intended to compensate class representatives for work
3 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the
4 action, and, sometimes, to recognize their willingness to act as a private attorney general.").

5 These factors support the approval of the incentive payment requested here for the Class
6 Representative. First, the requested payment of \$7,500 to the Named Plaintiff constitutes only 2.5%
7 of the Gross Settlement Amount. Second, the Named Plaintiff spent time providing invaluable
8 assistance to Class Counsel and the Class in this case, including providing factual background for
9 the Class Complaint; providing and explaining documents corroborating his allegations to Class
10 Counsel; reviewing the Complaint and other pleadings filed with the Court by Plaintiff and
11 Defendant; participating in multiple conference calls and phone calls to discuss litigation and
12 settlement strategy, and remotely attending the all-day mediation. *See* Martin Decl., ¶6. The
13 Named Plaintiff has been actively involved in this case, and has proven himself to be an invaluable
14 resource of information throughout the settlement discussions. Lipeles Decl., ¶31; Martin Decl.,
15 ¶6. Third, by bringing this action, the Named Plaintiff furthered the public policy goal of
16 encouraging compliance with the wage and hour provisions of the Labor Code. Finally, the
17 requested Class Representative Service Payment of \$7,500 to the Plaintiff falls well within the
18 range of incentive payments typically awarded to Class Representatives in such class actions.
19 Lipeles Decl., ¶31; *see e.g., Ross v. US Bank Nat'l Ass'n*, No. C 07-02951 SI, 2010 WL 3833922,
20 at *2 (N.D. Cal. Sept. 29, 2010) (approving \$20,000 enhancement awards to each of four class
21 representatives in the wage and hour class action); *Garner v. State Farm Mut. Auto. Ins. Co.*, No.
22 CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) ("Numerous
23 courts in the Ninth Circuit and elsewhere have approved incentive awards of \$20,000 or more
24 where, as here, the class representative has demonstrated a strong commitment to the class").

25 Accordingly, the requested Class Representative Service Payment of \$7,500 to the Named
26 Plaintiff is fully deserved and justified and thus should be preliminarily approved.

27 **V. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

28 **A. The Proposed Notice of Class Action Settlement Satisfies Due Process**

California statutory and case law vests the Court with broad discretion in fashioning an

appropriate notice program. *See Cal. Rules of Court* 1859(f); *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). The notice plan here entails mailing, and if necessary, re-mailing, the notice to all identified Participating Class Members based on Defendant's employment records. Defendant will provide the last known addresses for all identified Class Members. Plaintiff has proposed the services of an experienced class action settlement administration firm, Phoenix, to implement the proposed Class Notice procedures. The Class Notice is consistent with class certification notices approved by numerous state and federal courts, and is, under the circumstances of this case, the best notice practicable. Such notice satisfies all due process requirements. *See Cartt*, 50 Cal. App. 3d at 966-975.

B. The Proposed Notice of Class Action Settlement is Accurate and Informative

The proposed Class Notice, attached as Attachments A and B to the proposed Settlement Agreement, provides among other things: (1) information regarding the nature of the Action; (2) a summary of the substance of the settlement; (3) the class definition; (4) the formulae for calculating Individual Class Payments/Individual PAGA Payments; (5) the dates the Settlement Class Member was employed by Defendant during the Class Period; (6) the number of Workweeks/PAGA Pay Periods based on Defendant's business records; (7) instructions on how Settlement Class Members may submit a valid Request for Exclusion; (8) the procedure for objecting to the settlement; (9) the deadline by which Settlement Class Members must postmark an objection to the settlement; (10) notice that the Settlement Class Members will permanently forego their right to pursue any and all of their released claims against Defendant, unless they elect not to participate in the Action; and (11) notice that Settlement Class Members will automatically receive an Individual Class Payment unless they submit a valid request for exclusion.

The best practicable means of providing notice to all Class Members will be used. Notice will be mailed to all known and reasonably ascertainable Class Members, using Defendant's records. The information in those records will be updated prior to mailing, using the National Change of Address Database or its equivalent. If any Class Notices are returned as undeliverable, the Settlement Administrator will take appropriate steps, such as skip-tracing, to maximize the probability that the Class Notice will be received by all Class Members. (Settlement Agreement

1 §3.3.2).

2 The Class Notice also fulfills the requirement of neutrality in Class Notices. *See Newberg* §
3 8:39 at pp. 284, 285. The Class Notice summarizes the proceedings to date, the significant legal
4 developments since the date of the settlement, and the terms and conditions of the settlement, in a
5 coherent and informative manner. The Class Notice clearly states that the Settlement does not
6 constitute an admission of liability by Defendant and recognizes that the Court has not ruled on the
7 merits of the Action. The Class Notice also states that the final settlement approval decision has
8 yet to be made. Accordingly, the Class Notice complies with the standards of fairness,
9 completeness and neutrality required of a settlement notice disseminated under authority of the
10 Court. *Newberg* §8:21, §8:39; *Manual* § 21.312.

11 **VI. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED**

12 The last step in the settlement approval process is the formal final approval hearing, at
13 which the Court may hear all evidence and argument necessary to evaluate the proposed
14 Settlement. *See Cal. Rules of Court* 1859(b). At that hearing, proponents of the Settlement may
15 explain and describe its terms and conditions and offer argument in support of the Settlement
16 approval. Furthermore, members of the Settlement Class, or their counsel, may be heard in support
17 of or in opposition to the proposed Settlement. Class Counsel requests that the hearing be held as
18 soon as the Court's calendar may accommodate.

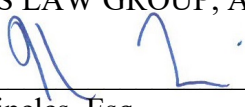
19 **VII. CONCLUSION**

20 For the reasons discussed above, Plaintiff requests that the Court enter an order of
21 preliminary approval of the class action settlement, approve the form of the proposed notice, and
22 approve the proposed schedule, including setting a date for a final approval hearing.

23
24 Dated: May 21, 2026

Respectfully submitted,

25
26 LIPELES LAW GROUP, APC

27 By: 
28 Kevin Lipeles, Esq.
Thomas Schelly, Esq.
Attorneys for Plaintiff and the Class