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SUPERIOR COURT STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

JUAN CARLOS RODRIGUEZ, an individual,

Plaintiff(s),

v.

PER DIEM, LLC, a California LLC, PD TRANSBAY, LLC, a California LLC, DARREN MATTE, an individual, NAOMI COMSTOCK, an individual, CHRISTOPHER RIVERA, an individual, DOES 1-20, inclusive,

Defendant(s).

Case No.: CGC-24-612769

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

Date:	August 12, 2026
Time:	10:00 a.m.
Judge:	Hon. Ethan P. Schulman
Dept.:	304
Complaint Filed:	June 24, 2024
Trial Date:	Not Set

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff JUAN CARLOS RODRIGUEZ ("Plaintiff"), on behalf of himself and all similarly situated current and former non-exempt employees of Defendants PER DIEM, LLC and PD TRANSBAY, LLC d/b/a PER DIEM (collectively, "Per Diem" or the "Entity Defendants"), respectfully moves for preliminary approval of a proposed class action and PAGA settlement.

This case arises from alleged systematic wage violations by Per Diem affecting its front-of-house and back-of-house hourly employees, as well alleged unlawful tip pool diversion by members of Per Diem's management. Plaintiff alleges Per Diem also denied employees the opportunity to take compliant meal and rest breaks, altered time-clock entries to conceal those violations, and failed to pay all wages owed at separation. Plaintiff further alleges that when he filed his class action lawsuit, Defendants required all employees to sign new arbitration agreements under threat of termination—and fired those who refused, including Plaintiff.

After this Court consolidated the Class Action (Case No. CGC-24-612769) and PAGA action (Case No. CGC-24-615825), the parties exchanged informal discovery and participated in a full-day mediation on April 29, 2025, before experienced mediator Arthur Eidelhoch, Esq. As a result of arm's-length negotiations, the parties reached a settlement providing a non-reversionary Gross Settlement Amount ("GSA") of **$160,000**.

The proposed settlement is fair, reasonable, and adequate under California Code of Civil Procedure section 382 and the factors articulated in *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480. It provides immediate, meaningful relief to class members while avoiding the substantial costs and risks of continued litigation. Plaintiff respectfully requests that the Court grant preliminary approval, certify the settlement class, approve the notice plan, and set a Final Approval Hearing.

II. PROCEDURAL AND LITIGATION HISTORY

Plaintiff Juan Carlos Rodriguez worked as a server and bartender at Per Diem's Transit

Center and Financial District locations from approximately October 2023 to March 2024.

On February 28, 2024, Plaintiff filed a class action complaint against Per Diem, LLC, PD Transbay, LLC, Darren Matte (owner), Naomi Comstock, and Christopher Rivera in San Francisco County Superior Court. On April 16, 2024, Plaintiff filed the operative First Amended Class Action Complaint ("FAC") alleging nine causes of action: (1) failure to pay overtime; (2) failure to pay minimum wages; (3) failure to provide meal breaks; (4) failure to provide rest breaks; (5) failure to provide accurate wage statements; (6) conversion (unlawful tip diversion); (7) failure to timely pay wages during employment; (8) failure to pay all wages on discharge; and (9) violation of the Unfair Competition Law. (*See* Decl. Lewis at **Exhibit A**.)

Plaintiff further alleges that on March 15, 2024—approximately two weeks after Plaintiff filed suit—Entity Defendants terminated Plaintiff's employment when he declined to sign a new employee handbook and arbitration agreement with a class action waiver. *(See* Decl. Lewis at **Exhibit A**, FAC ¶¶ 39–42; Decl. Rodriguez at ¶ 7.)

On April 16, 2024, Plaintiff filed a notice with the Labor and Workforce Development Agency ("LWDA") pursuant to the Private Attorneys General Act ("PAGA"), asserting violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 256, 351, 510, 512, 1194, 1197.1, and applicable IWC Wage Orders. (*See* Decl. Lewis at **Exhibit D**.)

On June 24, 2024, Plaintiff filed a related PAGA representative action (Case No. CGC-24-615825). (*See* Decl. Lewis at **Exhibit B**.) On September 24, 2024, the Court consolidated the Class Action and PAGA Action into one proceeding and deemed it complex. The consolidated action is Case No. CGC-24-612769.

III. INVESTIGATION AND DISCOVERY CONDUCTED

Prior to and following the filing of this action, Plaintiff's counsel conducted a thorough investigation of the facts and claims at issue. Counsel reviewed Entity Defendants' tip pool records, including Toast point-of-service system screenshots spanning multiple locations and dates from 2022 through early 2024, demonstrating management's participation in the tip pool. *(See* Decl. Lewis at ¶ 9; *id.* at **Exhibit E**.)

Entity Defendants also provided payroll and time-keeping data that permitted Plaintiff's counsel to assess damages arising from the alleged time-shaving practices, meal break and rest break violations, and related wage statement deficiencies. Based on this data exchange and informal discovery, and with the assistance of a damages model, Plaintiff prepared a preliminary damages analysis that served as the basis for mediation. (*See* Decl. Lewis at ¶ 10.)

The parties also exchanged information regarding the class size and composition. Entity Defendants provided payroll records reflecting that approximately 127 putative class members worked at the relevant locations during the class period. (*See* Decl. Lewis at ¶ 11.) Of those 127 putative class members, approximately 48 have received Prior Release Payments as part of Entity Defendants' "Pick-Up-Stix" campaign, reducing (or in some cases eliminating) their share of the Net Settlement Amount.

IV. NEGOTIATION AND PROPOSED SETTLEMENT

A. Arm's-Length Negotiations

The parties engaged in arm's-length mediation on April 29, 2025, before Arthur Eidelhoch, Esq., an experienced mediator specializing in employment class actions. Prior to the mediation, the parties exchanged substantial informal discovery, including payroll records, tip pool data, and time-keeping records, enabling a meaningful assessment of liability and damages. After a full day of mediation and post-mediation negotiations, the parties reached the settlement presently before the Court. (*See* Decl. Lewis at ¶ 12.)

B. Terms of Settlement

The complete terms of the settlement are set forth in the Settlement Agreement, attached hereto as **Exhibit C**. The material terms are summarized below.

1. Settlement Class Definition.

For settlement purposes only, the parties agree to certification of the following settlement class: all current and former non-exempt employees of the Entity Defendants who were employed by the Entity Defendants in the State of California at any time from February 28, 2020 to February 15, 2025, inclusive ((the "Class Members" or "Settlement Class"). The PAGA

period covers the period between April 16, 2023 and February 15, 2025. (See Decl. Lewis at **Exhibit C**, §§ 1.4, 1.8, 1.11, 1.36.)

2. Gross Settlement Amount.

Entity Defendants agree to pay a non-reversionary Gross Settlement Amount ("GSA") of **$160,000.** to resolve all class and PAGA claims. The GSA encompasses Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses, Class Representative Service Payment, and the Administrator's Expenses.. No portion of the GSA reverts to Entity Defendants. *(See* Decl. Lewis at **Exhibit C**, §§ 1.21, 3.1.)

3. PAGA Payment.

Of the GSA, $5,000 is allocated as the "PAGA Penalties." Consistent with Labor Code section 2699(i), 75% of the PAGA Penalties ($3,750) will be paid to the LWDA, and the remaining 25% ($1,250) will be distributed to the PAGA Employees on a pro-rata basis as Individual PAGA Payments. *(See* Decl. Lewis at **Exhibit C**, § 1.35.)

4. Class Representative Service Payment.

Subject to Court approval, Plaintiff Juan Carlos Rodriguez will receive a Class Representative Service Payment of $5,000 in recognition of the services he rendered to the Class and the risks he assumed in prosecuting this action. (*See* Decl. Lewis at ¶ 17; *id.* at **Exhibit C**, § 3.2.1.)

5. Class Counsel Fees Payment and Litigation Expenses Payment.

The Settlement Agreement provides that Plaintiff's counsel may apply to the Court for Class Counsel Fees Payment of up to one third of the GSA, or $53,333. Plaintiff's counsel intends to seek 33% of the GSA—$52,800—which is within the range routinely approved in California wage-and-hour class action settlements of this type. *(See* Decl. Lewis at ¶ 18; *id.* at **Exhibit C**, § 3.2.2; *Laffitte*, 1 Cal.5th at 503.)

Plaintiff's counsel will also seek reimbursement of Litigation Expenses Payment in the

amount of $9,799.27. *(See* Decl. Lewis at **Exhibit C**, § 3.2.2; **Exhibit G**.)

6. Settlement Administration Expenses.

The parties have agreed to retain ILYM Group, Inc. as the Settlement Administrator. The Administration Expenses Payment is not to exceed $5,450.00, which will be paid from the GSA. *(See* Decl. Lewis at **Exhibit C**, § 3.2.3; **Exhibit H**.)

7. Net Settlement Amount and Distribution.

After deduction of Individual PAGA Payments, the LWDA PAGA Payment ($5,000), the Class Representative Service Payment ($5,000), Class Counsel Fees Payment ($52,800), Class Counsel Litigation Expenses Payment ($9,799.27), and Administration Expenses Payment (up to $5,450.00), the remaining Net Settlement Amount will be distributed to Settlement Class Members on a pro-rata basis according to the number of workweeks each class member worked during the class period, excluding any workweeks covered by Prior Release Payments made by Entity Defendants to individual Settlement Class Members. Settlement Class Members will not be required to submit claims—all who do not timely opt out will receive a payment. *(See* Decl. Lewis at **Exhibit C**, §§ 1.22, 1.28, 1.40, 3.2.4.)

8. Release.

In exchange for the settlement consideration, Settlement Class Members who do not opt out will release all wage-and-hour claims arising during the class period that were alleged or could have been alleged based on the facts in the operative complaint, including claims under California Labor Code sections 201–204, 210, 226, 226.7, 256, 351, 510, 512, 558, 558.1, 1194, 1197.1 , and applicable IWC Wage Orders, as well as derivative UCL claims. The PAGA release covers civil penalties for all Labor Code violations alleged in the PAGA Notice during the PAGA Period. *(See* Decl. Lewis at **Exhibit C**, § 6.3.)

V. ARGUMENT

A. The Court Should Approve the Proposed Settlement

California courts evaluate proposed class settlements by asking whether the settlement is

"fair, adequate, and reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800. Courts consider factors including: the strength of the plaintiff's case, the risk, expense, complexity, and duration of further litigation, the risk of maintaining class status through trial, the amount offered in settlement, the extent of discovery completed, the experience and views of counsel, and the reaction of class members. *Id.*

There is a "presumption of fairness" when the settlement: (1) is reached through arm's-length negotiation; (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. *Dunk*, 48 Cal.App.4th at 1802. All four conditions are satisfied here.

The Court should be aware Plaintiff has separately entered into a settlement agreement with Defendants with respect to his individual claims including retaliation and wrongful termination. Plaintiff's counsel will be prepared to discuss the individual settlement at the Motion hearing. (*See* Decl. Lewis at ¶ 6.) An individual settlement of claims "will not preclude [the named plaintiff] from further prosecuting the action on behalf of the remaining members of the class." (*Meyer v. Sprint Spectrum L.*P. (2009) 45 Cal.4th 634, 642; see also *La Sala v. American Sav. & Loan Assn*. (1971) 5 Cal.3d 864, 873.)

1. The Settlement Was the Product of Arm's-Length Negotiations

The settlement was reached only after the parties engaged in a full day of mediation before Arthur Eidelhoch, Esq., a highly experienced class action mediator, followed by post-mediation negotiations. (See Decl. Lewis at ¶ 12.) Prior to mediation, the parties exchanged substantial data—including tip pool records, payroll data, and time-keeping records—that enabled a meaningful assessment of the claims and damages. (*Id*., ¶ 12.) The involvement of a neutral mediator strongly supports a presumption of non-collusion. *In re Bluetooth Headset Products Liab. Litig*. (9th Cir. 2011) 654 F.3d 935, 948.

2. The Litigation Risks Support the Settlement

Continued litigation presents substantial risks. Although Plaintiff believes his claims are meritorious, Defendants have vigorously contested liability. Entity Defendants deny that

managers' participation in the tip pool was unlawful, dispute the extent of any time-shaving, and contend that meal and rest break policies were compliant. *(See* Decl. Lewis at **Exhibit C**, Recital E.)

Plaintiff also faces certification risks. Entity Defendants would likely argue that individual issues—particularly regarding which employees were denied breaks on which shifts—predominate. Even if class certification were granted, there is risk that the class would not survive a decertification motion. The settlement eliminates these risks and provides certain, immediate relief. *(See* Decl. Lewis at ¶ 29.)

An additional and practical risk factor bearing on the settlement value is the financial condition of Entity Defendants. Counsel for Defendants represented that the business has limited assets and threatened that the business would simply shut down if faced with a large judgment. This raised legitimate concerns regarding collectability — even a favorable judgment would be of diminished practical value if Entity Defendants lacked the financial resources to satisfy it. The existence of a negotiated, non-reversionary settlement fund guarantees class members a real recovery rather than a paper judgment that may prove uncollectible. *(See* Decl. Lewis at ¶ 32.)

3. The Complexity, Expense, and Duration of Continued Litigation

Class actions are inherently complex, expensive, and time-consuming. Absent settlement, this case would require substantial additional litigation—including completion of formal class discovery, briefing and hearing of a class certification motion, merits discovery, expert discovery, dispositive motions, trial, and likely appeals. The expense of such proceedings would consume a significant portion of any recovery. (See Decl. Lewis at ¶ 30.) The settlement avoids these burdens and delivers recovery now.

4. The Amount Offered in Settlement Is Reasonable

The GSA of $160,000 represents a meaningful recovery for the Settlement Class in light of the litigation risks described above. Plaintiff's counsel prepared a damages model estimating potential exposure of approximately $282,470 in class damages based on a sampling of class member time records and witness interviews to evaluate potential violation rates. The GSA of

$160,000 represents approximately 56.6% of the maximum estimated class exposure, and the estimated Net Settlement Amount of $81,950.73 represents approximately 29.1% of the maximum estimated class exposure. These percentages are consistent with settlements approved in comparable California wage-and-hour cases.

Courts have consistently approved settlements representing a fraction of maximum exposure where, as here, there is uncertainty as to liability and significant risk that damages would be lower at trial. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250 ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not mean the settlement is not fair and reasonable."); *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133 (approving settlement providing a fraction of maximum damages given litigation risks).

5. The Stage of Proceedings and Discovery Completed

Although this case resolved prior to formal discovery, Plaintiff's counsel engaged in substantial informal discovery and investigation prior to mediation. Counsel reviewed tip pool records, payroll data, and time-keeping records produced by Entity Defendants, conducted witness interviews, and constructed a damages model for all alleged violations. *(See* Decl. Lewis at ¶ 24; *id.* at **Exhibit E**.) This was sufficient to evaluate the merits and the appropriateness of the settlement.

6. Plaintiff's Counsel's Experience In Similar Litigation

Plaintiff's counsel has experience in class actions and wage and hour litigation. (*See* Decl. Lewis at ¶¶ 34-36.) Plaintiff's counsel practices exclusively employment litigation representing employees. Counsel has litigated well over 100 cases. (Id. at ¶ 35.) This includes taking five of these cases to trial, and countless others to the eve of trial before resolution was reached. (*Id*.) A substantial number of the cases litigated by counsel have involved wage and hour disputes involving the same issues in this case, including failure to pay overtime, minimum wage, meal and rest premiums and other penalties based on violation of these statutes. (*Id*.)

Additionally, Plaintiff's counsel has experience litigating wage and hour class actions

and has been appointed as class counsel in wage and hour class and/or PAGA actions. (*Id*. at ¶ 36.) Thus, Plaintiff's counsel is qualified to evaluate the class claims, value of settlement versus moving for certification and going to trial, and the viability of possible affirmative defenses. (*Id*. at ¶¶ 36.) Based on Plaintiff counsel's extensive experience litigating and trying cases involving the same claims here, he believes that the settlement is fair and reasonable in light of the complexities of the case, the uncertainties of class certification and litigation, and the secured benefit to the class. (*Id*. at ¶ 36)

7. The Risks Taken On By Plaintiff

Enhancement or service payments to named plaintiffs are "fairly typical in class action cases" and serve "to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694. In *Ingram*, the court approved enhancement payments of $300,000 to each named plaintiff. *Id.*; *see also Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294 (approving a $50,000 enhancement payment).

Here, Plaintiff's participation justifies an enhancement of $5,000 in recognition of his involvement in all phases of the litigation from initial claims investigation, development of the case theory, and participation in mediation, and the risks he took in filing suit. *(See* Decl. Lewis at ¶ 50.) Plaintiff brought this action knowing there would be a delay in any payment as the litigation progressed, rather than proceeding on individual claims before the California Labor Commissioner. *(Id*.) Payment of $5,000 is appropriate given the risk, assistance, and time required in bringing this case to resolution. *(Id*.)

8. Awarding Attorneys' Fees and Costs as Percentage of the Common Fund Is Reasonable and Customarily Approved by the Courts

California state and federal courts have recognized that when a litigant's efforts create or preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally among all the beneficiaries to compensate those who created the fund. (*See Boeing Co. v. Van Gernert* (1980) 444 U.S. 472, 477–478 ("A lawyer who recovers a common

fund for the benefit of persons other than … her client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375; *Waters v. Intern. Precious Metals Corp.* (11th Cir. 1999) 190 F.3d 1291; *see also Serrano v. Priest* (1977) 20 Cal.3d 25, 34–35; *Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal.5th 480, 506.) The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027.) California state courts have approved use of a percentage of the fund to calculate reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable sum of money. *See Dunk, supra*, 48 Cal.App.4th at 1808.

The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be shifted with some exactitude to those benefitting. (*See Paul, Johnson, Alston & Hunt v. Graulty* (9th Cir. 1989) 886 F.2d 268, 271.) These criteria are "easily met" when "each member of a certified class has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered on her behalf." (*Id.* at 271.) Under the three factors set forth in *Paul, Johnson, Alston & Hunt*, the common fund doctrine applies in this case as there is a sufficiently identifiable class of beneficiaries (e.g., the Class), the benefits can be accurately traced to the settlement that Plaintiff and Plaintiff's counsel negotiated on behalf of the class, and the fee can be shifted with exactitude to those benefitting as the fee request is a specific, lump-sum percentage of the common fund.

Historically, attorneys' fee awards in common fund cases in general range from 20% to 50% of the fund, depending on the circumstances of the case. (*See Newberg on Class Actions* (3rd Ed., 1992) § 14.03 (finding 50% to be the upper limit).) Awards ranging between 30% and 40% of the fund are generally approved as reasonable in wage and hour settlements below $10 million:

More particularly, courts may award attorneys' fees in the 30–40% range in wage and

hour class actions that result in recovery of a common fund under $10 million. *See Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 491–492 (citing to five recent wage and hour class actions where federal district courts approved attorney fee awards ranging from 30 to 33%); *Singer v. Becton Dickenson and Co.* (S.D. Cal. 2010) 2010 WL 2196104, *8 (approving attorney fee award of 33.33% of the common fund and holding that award was similar to awards in three other wage and hour class action cases where fees ranged from 33% to 40%); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. 2007) 2007 WL 3492841. (*Martin v. AmeriPride Services, Inc.* (S.D. Cal. 2011) 2011 WL 2313604, at *1.)

Plaintiff's request of thirty-three percent (33%) of the settlement sum for attorneys' fees is within established rates for fee awards in class settlements pursuant to the common fund doctrine. (*See In re Activision Sec. Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1379.) To determine whether a percentage is reasonable, a court should consider: (1) the percentage that would likely be negotiated between parties in a similar case; (2) the percentage applied in other class actions; (3) the quality of class counsel; (4) the size of the award; and (5) whether there are any objections by class members. (*See In re Heritage Bond Litigation* (C.D. Cal. 2005) 2005 WL 1594403, at *3 ("the absence of objections or disapproval by class members to class counsel's fee request further supports finding the fee request reasonable").)

These factors support Plaintiff's request for reasonable attorneys' fees. (*See* Decl. Lewis at ¶ 18, 21, 37.) The typical percentage negotiated between parties' ranges from thirty-three to forty-five percent (33% to 45%) in individual litigation depending on the complexity of the case. (*Id.*.) In class action litigation, the typical percentage negotiated between parties' ranges from thirty to forty percent (30% to 40%) based on the same factors. (*Id.*.) Plaintiff's request of 33% falls within these typical fee arrangements. (*Id.*.) The quality of counsel and the results achieved in this settlement also support the fee request when compared to other settlements courts have considered as good results. (*Id.*; *see also Gardner v. GC Services, LP* (S.D. Cal. 2010) 2010 WL 2721271, at *1 ("the results achieved in this case were very favorable. Class members are provided with immediate monetary relief, with an average award of around several hundred dollars and a minimum award of $50").)

9. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award

Some California and federal courts have acknowledged the utility of a lodestar "cross-check" when reviewing class counsel fee requests, despite recognized limitations.[1] (*Lealao v. Beneficial California, Inc*. (2000) 82 Cal.App.4th 19, 46–47.) Using this method, the court first ascertains class counsel's total "lodestar" amount by multiplying the number of hours reasonably expended by each attorney or legal staff member by their hourly rates, and then enhances or reduces this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty or difficulty of the case, its contingent nature, and the degree of success achieved. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-96; *Press v. Lucky Stores, Inc*. (1983) 34 Cal.3d 311, 322; *Lealao, supra,* 82 Cal.App.4th at 43 [court has discretion to use a multiplier to ensure that the "fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation"].)

Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251 (multiplier of 2+ approved); *Sternwest Corp v. Ash* (1986) 183 Cal.App.3d 74, 75 (remanded for a lodestar enhancement of "two, three, four or otherwise"); *see also Wershba*, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher.")

Plaintiff's counsel is seeking fees of 33% of the Gross Settlement Amount, or $52,800. These requested fees are only 34.6% of the lodestar of $152,445, representing a significant downward multiplier to the lodestar and further confirming the reasonableness of the fees requested. (See Decl. Lewis at ¶¶ 18, 39-43).

10. The Proposed Notice Procedures Comply With Class Members' Due Process Rights

Due process requires the best notice practicable under the circumstances. (*See Briseno v. ConAgra Foods, Inc.* (9th Cir. 2017) 844 F.3d 1121, 1129.) The content of the notice is

[1] In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and capable of manipulation. In addition, the lodestar creates inherent incentive to prolong the litigation until sufficient hours have been expended. Herr, David F., *Manual for Complex Litigation,* § 14.121 (1988); *See also In re Activision* (N.D. Cal 1989) 723 F.Supp 1373.

sufficient if it "generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard," which includes information regarding "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members…." (*Churchill Village L.L.C. v. Gen. Elec.* (9th Cir. 2004) 361 F.3d 566, 575, quoting *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1352; Fed. R. Civ. Proc. 23 (c)(2)(B).)

In the present case, the proposed Notice of Settlement includes all required information to reasonably inform Class Members about the Agreement, its terms, how to participate, how to exclude oneself, how to submit an objection, and Class Members' estimated individual share. (*See* Decl. Lewis at **Exhibit F**.) The notice procedure enlists an exhaustive, reasonable process to ensure Class Members receive notice of the settlement. Class Members' last known mailing addresses will be processed through the United States Postal Service's National Change of Address database to update and confirm their current mailing addresses. (*See* Decl. Lewis at **Exhibit C**, § 4.4.1. Any Class Member mailings returned as undeliverable will be subject to further investigation. The Agreement and preliminary approval filings will also be available on a web address maintained by the Claims Administrator. These measures reasonably ensure Class Members will receive notice of the Settlement.

B. The PAGA Settlement Should Be Approved

Under PAGA, civil penalties may be settled with court approval upon a showing that the settlement is "fair and reasonable in light of the facts and circumstances." *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. The Court must "ensure that any negotiated resolution is consistent with the public policies underlying PAGA." *Id.*

The PAGA settlement here satisfies this standard. The $5,000 PAGA allocation is approximately 3.13% of the Gross Settlement Amount of $160,000 and approximately 1.23% of

maximum potential PAGA penalties of $407,245 under Plaintiff's counsel's most favorable estimate. This represents a reasonable compromise in light of the significant difficulties of proving each alleged Labor Code violation on a workweek-by-workweek basis for all aggrieved employees, the cost and risk of PAGA litigation through trial, and Entity Defendants' ability to pay. Courts reviewing class and PAGA settlements have approved comparable PAGA allocations in similar wage-and-hour settlements. *See, e.g., Davis v. Cox Commc'ns California, LLC* (S.D. Cal. 2017) 2017 WL 1496407, at *1 (preliminarily approving $4,000 PAGA allocation in $275,000 settlement); *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. 2011) 2011 WL 4899942, at *6 (approving $3,000 PAGA allocation in $1,200,000 settlement); *Singer v. Becton Dickinson & Co.* (S.D. Cal. 2010) 2010 WL 2196104, at *2 (approving $3,000 PAGA allocation in $1,000,000 settlement); *Hopson v. Hanesbrands Inc.* (N.D. Cal. 2009) 2009 WL 928133, at *9 (approving $1,500 PAGA allocation in $1,026,000 settlement); *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. 2012) 2012 WL 5364575, at *7 (approving $10,000 PAGA allocation in a $3,700,000 settlement); *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. 2011) 2011 WL 672645 at *1 (approving PAGA settlement payment of $7,500 to the LWDA out of $6.9 million common-fund settlement.). *(See also* Decl. Lewis at ¶ 27.)

Consistent with Labor Code section 2699(i), 75% of the PAGA allocation ($3,750) will be paid to the LWDA and 25% ($1,250) will be distributed pro rata to aggrieved employees. Plaintiff will provide the Court with the required PAGA settlement notice to the LWDA pursuant to Labor Code section 2699(l)(2) . *(See* Decl. Lewis at **Exhibit H**.)

C. Provisional Certification of the Class Is Appropriate

Class certification is appropriate when (1) the class is ascertainable and (2) there is "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." (*Dunk, supra*, 48 Cal.App.4th at 1806.) The "community of interest" element "embodies three factors: (1) common questions of law or fact predominate; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Id*.) Here, the parties agree that, for the purposes of

settlement, these prerequisites are met. (*See* Decl. Lewis at **Exhibit A**.).

1. The Proposed Settlement Class Is Ascertainable and Sufficiently Numerous

The proposed settlement class is ascertainable because all putative class members can be readily identified through employee personnel and payroll files. (*See Noel v. Thrifty Payless Inc.* (2019) 7 Cal.5th 955, 980; *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1334.) The numerosity requirement is met because the Settlement Class is estimated to include approximately 127 individuals who worked at Entity Defendants' locations during the class period, making joinder of all members impracticable. (*See Gay v. Waiters' & Dairy Lunchmen's Union* (N.D. Cal. 1980) 489 F.Supp. 282, aff'd 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030 (noting no set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable).) Thus, these requirements are satisfied.

2. The Commonality, Predominance, and Typicality Requirements Are Met

The commonality requirement is met when there are questions of law or fact regarding the class as a whole. (*See Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019.) Commonality requires only that some common legal or factual questions exist; Plaintiff need not show that all issues in the litigation are identical. (*See Richmond v. Dart Ind., Inc.* (1981) 29 Cal.3d 462, 473; *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 460.) Common questions of law or fact must also predominate over individual questions and class-wide treatment of a dispute must be superior to individual litigation. (*See Richmond, supra*, 29 Cal.3d at 469.) Predominance requires a putative class be sufficiently cohesive to warrant adjudication by representation. (*See Hanlon, supra*, 150 F.3d at 1022.) The typicality requirement is met when claims of the named representative are typical of those of the class, though "they need not be substantially identical." (*Id.* at 1020; *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46–47.)

The common questions of law and fact in this case include: (1) whether Entity Defendants failed to pay and/or withheld all earned tips in violation of Labor Code section 351; (2) whether

Entity Defendants' failed to pay minimum wages and overtime; (4) whether Entity Defendants failed to provide accurate wage statements; and (5) whether Entity Defendants failed to pay all wages due and owing upon termination or seventy-two (72) hours thereafter. (*See* Decl. Lewis at **Exhibit D**.) The waiting time penalties, unfair competition, and PAGA claims are derivative of these violations. (*See* Decl. Lewis at **Exhibit C**.) Plaintiff and the Class Members seek the same remedies under state law. Under these specific circumstances, the commonality and predominance requirements are satisfied.

Regarding the typicality requirement, Plaintiff contends he suffered from the same unlawful policies, treatment, and circumstances as Class Members did, will request the same remedies, and will rely on the same methods of proof to establish liability and damages. *(Id.*.) Thus, the typicality requirement is also satisfied for settlement purposes.

3. The Adequacy Requirement Is Met

The adequacy of representation requirement is met if the named representative and counsel have no interests adverse to those of the putative class members and are committed to vigorously prosecuting the case on behalf of the class. (*See Hanlon, supra*, 150 F.3d at 1020; *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450–51.) Those standards are met here. Under the proposed settlement, Plaintiff and the Class Members will receive a pro rata share of the settlement based on the number of workweeks they worked for Entity Defendants. (*See* Decl. Lewis at **Exhibit A**.) Any Class Member who wishes to opt out of the settlement may do so.

There is no conflict of interest between Plaintiff and Class Members. (*See* Decl. Lewis at ¶ 3.) Plaintiff and Plaintiff's counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class. (*Id*.) Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by speaking with Plaintiff and reviewing substantial amounts of documents. (*Id.*) Plaintiff's counsel thereafter engaged Defendants' counsel in litigation and settlement discussions over the course of approximately 14 months. (*Id*.) Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims. (*Id*.) Because Plaintiff's counsel has vigorously pursued Plaintiff's and the Class Members' claims,

the adequacy requirement is met. (*Id*.)

VI. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court preliminarily and conditionally certify the class for settlement purposes; grant preliminary and conditional approval to the proposed settlement, including the Class Representative Service Payment, the payment to the LWDA under PAGA, and Class Counsel's application for reasonable attorneys' fees and costs; approve the Notice of Settlement, including the proposed deadlines for opting out of and objecting to the settlement; and schedule the final settlement approval hearing. A copy of Plaintiff's proposed order is being filed concurrently herewith.

DREW LEWIS, PC

Dated: July 22, 2026

By: Drew Lewis
Drew Lewis
Attorney for Plaintiff(s)