MELMED LAW GROUP P.C.
Jonathan Melmed (SBN 290218)
jm@melmedlaw.com
Kyle D. Smith (SBN 280489)
ks@melmedlaw.com
Rachel Jo (SBN 358235)
rj@melmedlaw.com
1801 Century Park East, Suite 850
Los Angeles, California 90067
Phone: (310) 824-3828
Fax: (310) 862-6851

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA

ALEXI GONZALEZ, an individual, on behalf of himself, the State of California, as a private attorney general, and on behalf of all others similarly situated,

Plaintiff,

v.

DUGAN DRYWALL, INC., a California Corporation; and DOES 1 TO 50,

Defendants.

Case Number: 24CV02406

Plaintiff's Notice of Motion and Motion for Preliminary Approval of Class Action and PAGA Settlement

Hearing Date: June 10, 2026
Hearing Time: 3:00 p.m.
Dept.: 17
Judge: Hon. Jane Gaskell

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 10, 2026, at 3:00 p.m., or as soon thereafter as the matter may be heard, in Department 17 of the Sonoma County Superior Court for the State of California, located at the Civil and Family Law Courthouse, 3035 Cleveland Avenue, Suite 200, Santa Rosa, before the Honorable Jane Gaskell, Plaintiff Alexi Gonzalez ("Plaintiff"), on behalf of himself, the State of California, as a private attorney general, and on behalf of all others similarly situated, will and hereby does move this court for entry of an order:

1. Preliminarily certifying the settlement class for purposes of settlement pursuant to California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769;

2. Preliminarily appointing Plaintiff as class representative for purposes of settlement;

3. Preliminarily appointing Jonathan Melmed, Kyle D. Smith, and Rachel Jo of Melmed Law Group P.C. as class counsel for purposes of settlement;

4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the parties' *Settlement Agreement and Release of Class Action* (the "Settlement Agreement"), including payment by Defendant Dugan Drywall, Inc. ("Defendant") of the non-reversionary gross settlement amount of $150,000.00 ("Gross Settlement Amount");

5. Preliminarily approving payment of reasonable attorneys' fees from the Gross Settlement Amount in an amount not to exceed one-third of the Gross Settlement Amount (i.e., up to $50,000.00), plus necessary litigation costs not to exceed $15,000.00;

6. Preliminarily approving a class representative service payment in an amount of up to $7,500.00 for Alexi Gonzalez from the Gross Settlement Amount to compensate him for the responsibilities, time, effort, and risks involved in coming forward on behalf of the proposed class;

7. Preliminarily approving the allocation of $15,000.00 for penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., $11,250.00) shall be paid to the California Labor and Workforce Development Agency ("LWDA") from the Gross Settlement Amount, with the remaining 25% (i.e., $3,750.00) payable to the aggrieved employees;

8. Appointing Phoenix Settlement Administrators (the "Settlement Administrator") as the settlement administrator to handle the notice and administration process and preliminarily approving settlement administration costs estimated to be $8,995.00;

9. Approving the proposed class notice and ordering it be disseminated to the class members as provided in the Settlement Agreement;

10. Directing the Settlement Administrator to mail the class notice to the proposed class;

11. Approving the proposed deadlines for the notice and administration process as reflected in this motion and in the Settlement Agreement;

12. Setting a date for a final fairness hearing to determine, following dissemination of the proposed class notice packet, whether to grant final approval of the settlement; and

13. Granting Plaintiff leave to file the overlength brief included with this motion, due to the complex nature of this motion.

Pursuant to California Rules of Court, Rule 3.769(d) and (e), this motion is made on the grounds that the proposed Settlement Agreement satisfies all criteria for preliminary approval and falls well within the range of reasonableness. The Settlement Agreement was reached through informed, arm's length bargaining between experienced attorneys with the assistance of an experienced neutral, and Plaintiff and Plaintiff's counsel will fairly and adequately represent the Class.

This motion is based on this Notice of Motion and Motion for Preliminary Approval of Class Action Settlement; the Memorandum of Points and Authorities in support thereof; the declaration of Plaintiff's counsel Kyle D. Smith; the declaration of Plaintiff; the Settlement Agreement; the proposed class notice; the proposed order granting preliminary approval of the Settlement Agreement and setting a settlement fairness hearing; the other records, pleadings, and papers filed in this action; and upon such other evidence or argument as may be presented to the court at the hearing of this motion.

Dated: May 14, 2026

MELMED LAW GROUP P.C.

KYLE D. SMITH
Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

REGULATIONS

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion seeks preliminary approval of a wage-and-hour class action and PAGA settlement between Plaintiff Alexi Gonzalez ("Plaintiff") and Defendant Dugan Drywall, Inc. ("Defendant") (collectively, the "Parties") for the Gross Settlement Amount of $150,000.00. A true and correct copy of the *Settlement Agreement and Release of Class Action* (the "Settlement Agreement"), is attached as **Exhibit A** to the concurrently filed *Declaration of Kyle D. Smith in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement* ("Declaration of Kyle D. Smith" or "Smith Decl."). The Settlement Agreement, in its entirety, is incorporated herein by reference.

Under the Settlement Agreement, the Gross Settlement Amount is to be distributed to approximately 405 individuals defined as: *all individuals who are or were employed by Defendant as non-exempt employees in California during the Class Period*. The "Class Period" for these purposes is defined as the period from April 8, 2020, through August 31, 2025. These employees are referred to herein individually as the "Class Members" or collectively as the "Class." (Settlement Agreement, at pp. 4, 11.)

Plaintiff also represents a group of approximately 210 aggrieved employees on behalf of the State of California as a private attorney general pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698 through 2699.6 ("PAGA"). The "Aggrieved Employees," for these purposes, are defined as: *all individuals who are or were employed by Defendant as non-exempt employees in California during the PAGA Period.* The "PAGA Period" for these purposes is defined as the period from April 8, 2023, through August 31, 2025. (Settlement Agreement, at p. 8.)

The Settlement Agreement is a non-reversionary settlement, meaning that none of the Gross Settlement Amount will revert to Defendant. (Settlement Agreement, at p. 15.) Class Members are not required to submit a claim form to receive their settlement share. (Settlement Agreement, at p. 21.) Subject to court approval, the "Net Settlement Amount" of at least **$57,255.00**, will be distributed to Class Members who do not request exclusion from the settlement and the Aggrieved Employees, less applicable taxes.

Gross Settlement Amount	$150,000.00
Attorneys' Fees	(up to $50,000.00)
Litigation Costs	(up to $15,000.00)
Settlement Administration Costs	(up to $8,995.00)
Service Award to Plaintiff	(up to $7,500.00)
PAGA Payment to LWDA	($11,250.00)
Net Settlement Amount	**$57,255.00**

II. BACKGROUND

A. THE PARTIES

Defendant Dugan Drywall, Inc. is a California corporation and contractor engaged in the business of drywall and interior plastering services, including demolition, installation, taping, floating, and texturing of drywall. Defendant employed non-exempt workers in California during the Class Period and PAGA Period. (Smith Decl., ¶ 18.) Plaintiff Alexi Gonzalez worked for Defendant in California as an hourly, non-exempt laborer, from 2021, through approximately 2023. Plaintiff alleges that Defendant's employees—including Plaintiff, the Class Members, and the Aggrieved Employees—experienced various violations of California's wage-and-hour laws. (Smith Decl., ¶ 19.)

B. PROCEDURAL SUMMARY

On April 8, 2024, Plaintiff submitted a letter to the California Labor and Workforce Development Agency ("LWDA") to notify the LWDA, pursuant to PAGA, of Plaintiff's intent to seek civil penalties against Defendant for violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and others that may be applicable; and California Industrial Welfare Commission ("IWC") Wage Order 4-2001 (the "Applicable Wage Order"). (Cal. Code Regs., tit. 8, §§ 11040, 11160; Smith Decl., ¶ 20.) The letter attached Plaintiff's original complaint, and incorporated the original complaint by reference, and thus sought penalties for claims identical to those alleged in the case. For the Court's reference, a copy of Plaintiff's letter to the LWDA is attached as **Exhibit B** to the concurrently filed Declaration of Kyle

D. Smith.

On April 8, 2024, Plaintiff commenced this action by filing a class action complaint alleging causes of action against Defendant for **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order; **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Order; **(4)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order; **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; and **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210). (Smith Decl., ¶ 21.)

On June 12, 2024, Plaintiff filed a first amended complaint alleging causes of action against Defendant for those described in the original Complaint and adding one cause of action for penalties based on the foregoing pursuant to PAGA. (Lab. Code, §§ 2698–2699.6). The first amended complaint is the operative complaint in the action (the "Operative Complaint"). (Smith Decl., ¶ 22.)

Thereafter, the Parties agreed to attend a private mediation with Chad Anderton. Prior to the mediation, Plaintiff's counsel conducted significant informal discovery. Discovery, investigation, and prosecution has included, among other things, numerous telephonic conferences with Plaintiff; inspection and analysis of hundreds of pages of documents, including Defendant's relevant policies, paperwork, payroll records, and timesheets, and other information produced by Plaintiff and Defendant; analysis of work-related data from the Class Members and Aggrieved Employees; an analysis of the legal positions taken by Defendant; investigation into the viability of class treatment of the claims asserted in the action; analysis of potential class-wide damages, including information sufficient to understand Defendant's potential defenses to Plaintiff's claims; research of the applicable law with respect to the claims asserted in the Operative Complaint and the potential defenses thereto; and assembling and analyzing of data for calculating damages. (Smith Decl., ¶ 23.)

Among other key pieces of information, Plaintiff's counsel requested in its informal discovery letter the wage statements and time records for a statistically significant sample size of Class Members during the Class Period. In response, Defendant produced a collection of handwritten timesheets bearing various dates throughout 2022 and 2023, along with payroll records and summaries covering all putative Class Members with payroll history during the Class Period. Although Plaintiff identified certain recordkeeping deficiencies in the data produced, Plaintiff's counsel determined that the records nonetheless reflected greater than a 50% sample size of the Class Members and were sufficient to permit a meaningful, good-faith analysis of the claims and a productive mediation. Based on the records produced, Plaintiff retained an expert who carefully crafted an assumptions-based damages model for each of the categories of alleged claims for which the data would reflect violations. (Smith Decl., ¶ 24.)

On June 12, 2025, the Parties participated in a full-day mediation with Chad Anderton who is a full-time mediator with extensive experience in California wage-and-hour class action lawsuits. (Smith Decl., ¶ 25.) The mediation negotiations were contentious and unsuccessful at first. However, the Parties participated in a continued mediation with Chad Anderton on July 22, 2025, and were able to reach the broad terms of an agreement. After further negotiation, the Parties executed the longform Settlement Agreement, now before the Court for approval. (Smith Decl., ¶ 25.)

Plaintiff now seeks the Court's preliminary approval of the Settlement Agreement.

III. SUMMARY OF THE CLAIMS, DEFENSES, AND EXPOSURE

Plaintiff alleges several categories of wage and hour violations on behalf of the Class Members and Aggrieved Employees. Most importantly, Plaintiff has alleged that Defendant frequently required the Class Members to perform off-the-clock work and failed to provide the Class Members with compliant, off-duty meal periods. (Smith Decl., ¶ 26.) Defendant has persistently denied all liability of any kind associated with the claims and allegations and further denied that the Class Members and Aggrieved Employees are entitled to any relief. Defendant also denies that these allegations are appropriate for class or representative treatment for any purpose other than the settlement. Defendant maintains, among other things, that it has complied with California laws in all respects. (Smith Decl., ¶ 27.) These claims, defenses, and potential damages are summarized in more detail below.

A. MINIMUM WAGE AND OVERTIME ALLEGATIONS

Labor Code section 1197 requires employees to be paid at least the minimum wage fixed by the IWC, and any payment of less than the minimum wage is unlawful. (See also Cal. Code Regs., tit. 8, §§ 11040, 11160, subd. 4(B); Lab. Code, § 1198.) Similarly, Labor Code section 1194 entitles "any employee receiving less than the legal minimum wage . . . to recover in a civil action the unpaid balance of the full amount of this minimum wage." (See also Lab. Code, §§ 1185 [giving the Applicable Wage Order the force of law], 1198 [same].) These minimum wage standards apply to each hour that employees work. Therefore, an employer's failure to pay for any particular time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

Here, Plaintiff alleged that Defendant periodically required Plaintiff and the Class Members to begin working prior to their scheduled shift start times and to continue working after their scheduled shift end times. However, Plaintiff and the Class Members' supervisors only recorded the hours that the employees were scheduled to work rather than record the actual time worked—arguably resulting in both minimum wage and overtime violations under Labor Code sections 510 and 1197. (Smith Decl., ¶ 29.) Plaintiff further argued that Defendant required Plaintiff and the Class Members to return to work before their thirty-minute unpaid meal period had elapsed. (Smith Decl., ¶ 29.) Plaintiff estimated he and the Class Members performed an average of 10 minutes per week of off-the-clock work, or 1079.33 total hours over the Class Period. An estimated 80% of this time, Plaintiff contended, should have been paid at an overtime rate. (Smith Decl., ¶ 29.) Defendant countered that it paid Plaintiff and the Class Members for all hours worked based on timesheets submitted to Defendant. Defendant was unaware of any work performed off the clock. (Smith Decl., ¶ 30.)

Based on the informal discovery produced and the allegations in the case and Plaintiff's expert analysis, Plaintiff estimated that Defendant's alleged maximum exposure to be approximately **$33,243.53**, excluding considerations of interest, penalties, and attorneys' fees. (Smith Decl., ¶ 31.)

B. MEAL AND REST PERIOD ALLEGATIONS

Employers are required to provide their nonexempt employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of work. (Lab. Code, § 512, subd. (a).) Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a).) Similarly, under Labor Code section 226.7 and the Applicable Wage Order, employers are required to provide their non-exempt employees with compensated, duty-free rest periods of not less than ten minutes for every major fraction of four hours worked.

Labor Code section 226.7 provides that employers must pay their employees one additional hour of pay at the employee's regular rate for each workday that a "meal or rest or recovery period is not provided." (Lab. Code, § 226.7, subd. (c).) The "regular rate" for these purposes is synonymous with the "regular rate" in the overtime context, which means that it must include "adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any nonhourly compensation the employee has earned." (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 869; *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.)

Plaintiff alleged that, due to the demands of their jobs, Defendant periodically required Plaintiff and the Class Members to remain on duty during their meal periods. Plaintiff further alleged that Defendant often interrupted Plaintiff and the Class Members with work duties during their recorded meal periods and that, at times, Plaintiff and the Class Members were not permitted to take a meal period at all due to the demands of the job, with no corresponding meal period premium being paid. (Smith Decl., ¶ 32.) With respect to rest periods, Plaintiff alleged that Defendant failed to authorize or permit Plaintiff and the Class Members to take duty-free rest periods of not less than ten minutes for every major fraction of four hours worked. Plaintiff alleged that Defendant frequently interrupted or shortened rest periods and required Plaintiff and the Class Members to continue working, and that Plaintiff sometimes received no rest periods at all, with no corresponding rest period premium being paid. (Smith Decl., ¶ 32.)

Defendant disputed these allegations and argued that employees were free to take duty-free meal periods and had the ability to leave job sites to do so. Defendant argued that the nature of the work (drywall installation) was not the type of high-intensity environment that would require or pressure employees to work through their meal periods, and that any meal period missed, shortened, or interrupted was the result of the individual employee's own choice rather than any policy or practice of Defendant. With respect to rest periods, Defendant similarly argued that employees were authorized and permitted to take duty-free rest periods, with the only practical distinction being that, given the ten-minute duration of a rest period, employees were not necessarily expected to leave the job site during that time. (Smith Decl., ¶ 33.)

In addition, Defendant argued that Plaintiff's meal and rest period claims were highly individualized, such that Plaintiff would not be able to obtain class certification. The "reasons that employees fail to take [meal and rest] breaks can be manifold: the employees could have forgotten, wanted to finish assignments, were not hungry, did not want to leave the premises, wanted to leave early or, possibly, were manipulating their timecards." (*Sultan v. Medtronic, Inc.* (C.D. Cal., July 23, 2012, No. CV 11-4132-MWF PLAX) 2012 WL 3042212, at *2; see also *Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th 639, 654–655.) Thus, even if Plaintiff succeeded in arguing that Defendant did not sufficiently provide the Class Members with meal periods, the resulting inquiries were arguably entirely individual and would overwhelm any class-wide questions. (Smith Decl., ¶ 34.) Separate mini-trials would arguably have to determine both *liability* (i.e., whether Defendant prevented a particular employee from taking meal breaks they knew they were entitled to take) and *damages* (i.e., how often Defendant prevented a particular employee from taking a meal break). (Smith Decl., ¶ 34.)

Based on a review of the informal discovery, Plaintiff estimates a meal period violation occurred approximately once per week. Applying the average base hourly rate of $22.00 with a total of 6,476 workweeks, Plaintiff estimated Defendant's maximum exposure for the meal period claim to be approximately $142,472 (6,476 workweeks x $22.00 x 1 violation per week), excluding considerations of derivative penalties. Plaintiff similarly estimates a once-per-week violation rate for rest period violations, resulting in an estimated maximum exposure of $142,472 (6,476 workweeks x $22.00 x 1 violation per week) for the rest period claim, for a combined exposure of approximately $284,944.

Plaintiff then discounted this amount by 55% due to the very real risks that this Court would agree with Defendant's defenses—including that meal and rest periods were duty-free and that any non-compliance was the product of individual employee choice rather than any policy or practice of Defendant—and Plaintiff's anticipated difficulties in achieving class certification given the individualized nature of the inquiries required to establish both liability and damages. Plaintiff estimates Defendant's realistic exposure for this claim to be approximately **$128,224.80**. (Smith Decl., ¶ 36.)

C. DERIVATIVE ALLEGATIONS

From the allegations described above, Plaintiff alleged several categories of derivative penalties. First, Plaintiff alleged that Defendant violated Labor Code sections 226, subdivision (a), 226.3, and 1174, subdivision (d), by failing to keep an accurate record of the hours worked by the Class Members, their gross wages earned, and all applicable hourly rates in effect during the pay period. Second, Plaintiff alleged that Defendant violated Labor Code sections 204 and 210 by failing to timely pay all wages to the Class Members due to the unpaid wages described above. Third, Plaintiff alleged that Defendant owed all formerly-employed Class Members waiting time penalties under Labor Code section 203 due to the unpaid wages described above. Fourth, Plaintiff alleged that, by virtue of the allegations that Defendant failed to properly pay the Class Members their wages as described above, Defendant had likewise failed to provide the Class Members with compliant wage statements reflecting their gross wages earned and their net wages earned. Plaintiff therefore alleged that Defendant owed the Class Members wage statement penalties under Labor Code section 226, subdivision (e). (Smith Decl., ¶ 37.)

Defendant denied liability for each of these derivative claims. First, Defendant argued that the Class Members were fully compensated and that such violations were rare and nominal in value, if they occurred at all. Defendant thus concluded that Plaintiff could not claim wage statement penalties because there were no wage statement violations. (Smith Decl., ¶ 38.) Second, Defendant argued that its payments to the Class Members were made in good faith such that no penalties could be awarded. Third, Defendant argued that purely derivative wage statement claims could not support a cause of action for penalties. Rather, the plaintiff must establish injury from the inaccuracy and independent inaccuracies different from underpayments or derivative claims. Defendant argued that Plaintiff would be unable to prove "injury" for purposes of recovering penalties. (Smith Decl., ¶ 38.)

In ascertaining Defendant's realistic exposure, Plaintiff discounted the amounts attributable to penalties under Labor Code sections 1174 and 1174.5 because, under the language of 1174.5, those penalties arguably represent *de minimis* one-time penalties per employee (rather than repeated per-pay-period penalties) and because of the very real risk that Defendant would successfully argue that its payroll records were, in fact, accurate and complete, as they reflected the true amount of payroll wages issued to the Class Members. (Smith Decl., ¶ 39.)

Plaintiff further discounted the amounts attributable to penalties under Labor Code section 226.3—which arguably apply only where Defendant has issued no wage statement at all—based on the risk that Defendant's good faith argument would prevail, and that Courts have opted to impose the base PAGA penalties (accounted for in the "PAGA Penalties" section below) in lieu of the heightened penalties under 226.3. (*Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355 [heightened penalties under 226.3, rather than default PAGA penalties, apply only where the employer fails altogether to provide wage statements or keep required records]; Smith Decl., ¶ 40.) Instead, for this category of penalties, Plaintiff elected to focus on Plaintiff's default PAGA claims as the operative derivative penalty award.

Defendant could also argue that Labor Code sections 204 and 210 are statutes aimed at the improper scheduling of wages. Because Defendant's wage payment schedule was correct, and because the wages Defendant believed were owed were in fact paid on time, no penalty under Labor Code section 210 should therefore be imposed. (Smith Decl., ¶ 41.) Thus, considering Defendant's strong defenses, and to avoid duplicative penalties being placed on Defendant, Plaintiff entirely discounted these damages for settlement purposes. (Smith Decl., ¶ 41.)

Regarding Plaintiff's Labor Code section 203 claim, Defendant argued that because the underlying wage claims lack merit, no waiting time penalties can attach as a derivative claim and further argued that any failure to pay was not willful. "[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203." (Cal. Code Regs., tit. 8, § 13520.) In consideration of Defendant's good faith disputes as Defendant believed it was compliant with California labor laws and paid its employees for all time recorded, Plaintiff discounted these damages for settlement purposes. (Smith Decl., ¶ 42.)

Although the recent amendments to PAGA do not apply to this case, courts have followed the principle that a plaintiff should not recover duplicative penalties for the same underlying conduct. (See *Vieyara-Flores v. Sika Corp.* (C.D. Cal., June 10, 2019, No. EDCV 19-606 JVS (KKx)) 2019 WL 2436998, at *4 [declining to consider amounts resulting in double recovery]; *Sanchez v. Martinez* (2020) 54 Cal.App.5th 535, 546 [rule against double recovery].) Thus, Plaintiff determined, for settlement purposes, that consideration of these categories of purely-derivative, double-recovery type of penalties was unlikely to assist in the settlement discussions or a realistic increase in recovery for the Class Members. (Smith Decl., ¶ 43.)

D. PAGA ALLEGATIONS

Plaintiff's PAGA notice to the LWDA was sent on April 8, 2024. Likewise, Plaintiff's original complaint was also filed on April 8, 2024. Accordingly, the amendment to PAGA—which applies to cases where the PAGA notice was sent to the LWDA and the civil complaint was filed on or after June 19, 2024—does not apply here, as mentioned above. Under former Labor Code section 2699, subdivision (f)(2), and section 2699.5, employers that violate certain provisions of the Labor Code are subject to penalties according to the following formula:

1. $100.00 for the initial violation per employee per pay period; and
2. $200.00 for each subsequent violation per employee per pay period.

These penalties must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees. (Lab. Code, § 2699, subd. (i).) Plaintiff alleged that, because of the violations described above, Defendant was liable for these penalties for each applicable pay period during the applicable PAGA Period. (Smith Decl., ¶ 44.)

In ascertaining Defendant's exposure for this claim, Plaintiff considered several important cases. First, courts to consider the issue have refused to "stack" PAGA penalties, severely limiting the recoverable PAGA penalties. (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [approving PAGA penalty reduction to $5 per pay period]; accord *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809.) Second, Defendant argued that Plaintiff is not entitled to recover PAGA penalties at the subsequent violation rate of $200 per pay period. (Smith Decl., ¶ 45.) California's appellate courts have held that "[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware [of the violation]" and therefore, until a Court or the Commissioner issues a finding of a violation, the initial $100 violation rate applies for each pay period in which the alleged violation occurred. (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209.) Defendant further argued that, given the nature of the allegations and Defendant's efforts at good faith compliance with the Labor code, there is a likelihood that a further reduction of the penalty to $5 per pay period as approved in *Carrington* would apply. (Smith Decl., ¶ 45; *Carrington v. Starbucks Corp.*, *supra*, 30 Cal.App.5th at p. 529.)

Here, there were approximately 2,878 pay periods within the applicable PAGA period with an estimated per-pay-period violation rate of 25% (resulting in an estimated 720 pay periods with realistic violations). (Smith Decl., ¶ 46.) Considering Defendant's defenses to the PAGA claim, Plaintiff faced the risk that a court would reduce the amount of awarded PAGA penalties, especially considering that PAGA penalties themselves rival the amount of wages actually owed. Accordingly, Plaintiff followed the approach slightly higher than that in *Carrington* and ascribed a settlement value of $25 per pay period for a total realistic settlement value of **$18,000.00**. (Smith Decl., ¶ 46; see also *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529.)

IV. SUMMARY OF THE PROPOSED SETTLEMENT

Under the terms of the Settlement Agreement, Defendant will be released of all claims asserted in the Complaint in exchange for Defendant's agreement to pay a non-reversionary settlement Gross Settlement Amount of $150,000.00. (See generally, Settlement Agreement.)

A. REASONABLENESS OF THE GROSS SETTLEMENT AMOUNT

Plaintiff has applied appropriate discounts on the maximum settlement value as calculated above to come to Defendant's realistic exposure of $179,468.33. As explained above, the issues in this case were hotly contested—both legally and factually. While Plaintiff continues to believe in the merits of the case, Defendant argued that it fully complied with California's wage and hour laws, and thus faced minimal exposure, if any. Therefore, the Gross Settlement Amount of $150,000.00 is an excellent result and within the zone of reasonableness for all parties. If preliminary approval is granted, Plaintiff will have recovered **83.58%** of the estimated settlement value for the Class Members in this case—a fair compromise of the claims, by any measure. (Smith Decl., ¶ 47.)

The documents produced by Defendant, along with the other investigation and discovery described above, were sufficient to allow counsel to act intelligently in reaching the Settlement Agreement and determining that the Gross Settlement Amount was adequate. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Indeed, after a thorough review of all available evidence in the case, Plaintiff's counsel have concluded that the Gross Settlement Amount represents an excellent result for the Class. (Smith Decl., ¶ 50.)

B. SETTLEMENT CONSIDERATION AND ALLOCATION

The Gross Settlement Amount includes: **(1)** the fees and expenses of the Settlement Administrator, currently estimated to not exceed $8,995.00; **(2)** Plaintiff's counsel's attorney fees not to exceed one-third of the Gross Settlement Amount, i.e., $50,000.00; **(3)** litigation expenses and costs not to exceed $15,000.00; **(4)** a service award to the named Plaintiff of up to $7,500.00; and **(5)** payment to the LWDA of $11,250.00 for its 75% share of the settlement for civil penalties pursuant to PAGA. (Settlement Agreement, at pp. 23–24.)

After all Court-approved deductions from the Gross Settlement Amount, the Net Settlement Amount, which consists of at least $57,255.00, will be distributed to all Class Members who do not request exclusion from the settlement and the Aggrieved Employees. (Settlement Agreement, at pp. 4, 7, 24.) Applicable employer-side payroll taxes will be paid by Defendant outside and separate from the Gross Settlement Amount. (Settlement Agreement, at p. 6.)

C. THE RELEASE

Under the Settlement Agreement, the "Released Claims" are divided into two categories: **(1)** the released claims for the purposes of the class action portion of the Settlement Agreement, and **(2)** the released claims for the purposes of the PAGA portion of the Settlement Agreement. (Settlement Agreement, at p. 9.) The Released Claims for the purposes of the class action portion of the Settlement Agreement include all claims arising out of or related to the allegations set forth in the Operative Complaint. (Settlement Agreement, at p. 9.) The Released Claims for the purposes of the PAGA portion of the Settlement Agreement include all claims for civil penalties pursuant to PAGA that Plaintiff asserted in Plaintiff's PAGA notice to the LWDA and in the Operative Complaint. (Settlement Agreement, at p. 8.) A true and correct copy of Plaintiff's PAGA letter to the LWDA in this case is attached as **Exhibit B** to the concurrently filed Declaration of Kyle D. Smith. (Smith Decl., ¶ 20.)

D. SETTLEMENT ALLOCATION FORMULA

Individual payments to the Class Members from the class-portion of the settlement will be calculated and apportioned based on the number of weeks worked as an eligible Class Member in California by the participating Class Member during the Class Period (the "Individual Settlement Payments"). (Settlement Agreement, at p. 24.) Specific calculations of Individual Settlement Payments will be determined by: **(a)** dividing the Net Settlement Amount by the total number of workweeks worked by all participating Class Members during the Class Period, and **(b)** multiplying the result by each participating Class Member's workweeks. (Settlement Agreement, at p. 24.) If there are any timely submitted requests for exclusion, the settlement administrator will proportionately increase the Individual Settlement Payments for each participating Class Member so that the amount actually distributed to participating Class Members equals 100% of the Net Settlement Amount. (Settlement Agreement, at p. 24.)

Individual payments to the Aggrieved Employees from the PAGA-portion of the settlement (i.e., the portion not being sent to the LWDA), will be calculated by: **(a)** dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (i.e., $3,750.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period, and **(b)** multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (Settlement Agreement, at p. 25.)

E. SELECTION OF THE SETTLEMENT ADMINISTRATOR

Plaintiff, through counsel, has obtained bids from several settlement administration companies for the settlement administration of this case. Of those, Phoenix Settlement Administrators presented the lowest qualified bid. Accordingly, the Parties propose to use Phoenix Settlement Administrators as the settlement administrator. (Smith Decl., ¶ 52; Settlement Agreement, at p. 11.) The settlement administrator will be responsible for processing the settlement payments and providing notice to the Class Members as outlined in the Settlement Agreement. (Settlement Agreement, at pp. 18–28.)

F. NOTICE PROCEDURES

Within 14 days of the Court granting preliminary approval of the Settlement Agreement, Defendant shall provide the Settlement Administrator with the Class Data, in the form of a Microsoft Excel spreadsheet, containing each Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods (the "Class Data"). (Settlement Agreement, at pp. 20–21.)

Within 28 days of the Court granting preliminary approval of the Settlement Agreement, the Settlement Administrator shall send the Class Notice by bulk first class mail, forwarding requested, to the Class Members at the addresses identified through the process described above. (Settlement Agreement, at p. 21.)

The Class Notice will inform each Class Member of his or her estimated share of the settlement, as well as an easily understood statement alerting the Class Members that, unless they elect to opt out of the Settlement Agreement, the Class Member is releasing and waiving all "Released Claims" (as that term is defined in the Settlement Agreement and explained in the Class Notice). (Settlement Agreement, Exh. 1.) The Class Notice will also inform the Class Members of their right to object to the Settlement Agreement. (Settlement Agreement, Exh. 1.) Any Class Member who wishes to object to the Class Settlement may submit a written objection to the Settlement Administrator no later than 45 days following the date on which the Settlement Administrator first mails the Class Notice to the Class Members ("Response Deadline"). (Settlement Agreement, at pp. 10, 23.) Alternatively, Class Members may also object to the Settlement Agreement by appearing at the final approval hearing, either on their own or through an attorney. (Settlement Agreement, at p. 23; Settlement Agreement, Exh. 1.)

Class Members who do not timely request exclusion from the Settlement Agreement will be deemed to be a participating Class Member without having to submit a claim form or take any other action. (Settlement Agreement, at p. 21.) To request exclusion from the Settlement Agreement, the Class Member must submit a written request for exclusion from the Settlement Agreement to the Settlement Administrator ("Request for Exclusion"), postmarked no later than the Response Deadline. (Settlement Agreement, at pp. 21–22.)

If any Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Members, and a second Class Notice will be sent to any new or different address obtained. (Settlement Agreement, at p. 22.) Class Members to whom the Class Notice is re-mailed are given an extension of up to 14 calendar days for disputes, objections, or to request exclusion. (Settlement Agreement, at p. 22.)

G. TIMING OF SETTLEMENT DISBURSEMENTS

Defendant will deposit the Gross Settlement Amount in six installments as follows:

1. $25,000 shall be paid due May 1, 2026;
2. $25,000 shall be paid due July 15, 2026;
3. $25,000 shall be paid due October 1, 2026;
4. $25,000 shall be paid due December 15, 2026;
5. $25,000 shall be paid due March 1, 2027; and
6. $25,000 shall be paid due May 15, 2027. (Settlement Agreement, at p. 19.)

By May 15, 2027, the settlement will be fully funded. The Settlement Administrator will then distribute the Individual Settlement Payments no later than 14 days after the Gross Settlement Amount is fully funded by Defendant. (Settlement Agreement, at p. 26.)

H. *CY PRES* DISTRIBUTION

Class Members will have 180 days to cash their settlement checks. (Settlement Agreement, at p. 27.) If a Class Member fails to cash their check by the deadline, then the Settlement Administrator shall distribute such funds to the California State Controller for deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. (Settlement Agreement, at p. 27.) Because all funds and interest under the Settlement Agreement are to be completely distributed to the class participants, or to the Unclaimed Property Fund in the name of the individual whose check was uncashed, the Parties agree that this disposition results in no “unpaid residue” under Code of Civil Procedure Section 384. (Settlement Agreement, at p. 27.)

I. TAX TREATMENT

The Settlement Agreement provides that 20% of each individual settlement payment from the class-portion of the Settlement Agreement shall constitute wages (for which each participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining 80% shall constitute interest, reimbursement, and penalties (for which each participating Class Member will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at pp. 16–17.)

All payments under the PAGA-portion of the Settlement Agreement shall be treated as payments owing for penalties and interest (for which each Aggrieved Employee will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at p. 17.)

Defendant will separately and additionally pay its share of employer payroll taxes on the sum allocated to wages. (Settlement Agreement, at p. 17.)

V. THE CLASS SHOULD BE PRELIMINARILY CERTIFIED

A. THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CONSIDERATION IS APPROPRIATE

California Rules of Court, rule 3.769, subdivision (d), provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19.) Since no trial is anticipated in a class-based settlement, the case management issues inherent in determining if the class should be certified need not be confronted, and the Court's fairness review of the settlement focuses on protecting the interests of the non-representative class members. (*Ibid.*; see also *Officers for Justice v. Civil Service Com'n of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 633; *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620 [117 S.Ct. 2231, 2248] ["Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."].)

As discussed below, for settlement purposes only, the Parties ask this court to conditionally certify the Class, as defined above, under section 382 of the Code of Civil Procedure.

B. THE PROPOSED CLASS IS NUMEROUS AND ASCERTAINABLE

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. (See Code Civ. Proc., § 382.) A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. (See *Medrazo v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 101.) Defendant has represented that the proposed Class consists of approximately 405 Class Members ascertained through Defendant's records. As such, the numerosity requirement is met.

C. MEMBERS OF THE PROPOSED CLASS SHARE A WELL-DEFINED COMMUNITY OF INTEREST

1. Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. (See *Arenas v. El Torito Restaurants, Inc.* (2010) 183 Cal.App.4th 723 [citing *Washington Mutual Bank, FA v. Superior Court* (2001) 24 Cal.4th 906, 913].) The commonality element is satisfied here because common legal and factual questions exist, such as **(a)** whether individuals working for Defendant were subject to unlawful wage-and-hour policies and/or practices under the California Labor Code; **(b)** whether these violations triggered derivative claims for penalties; and **(c)** whether Defendant's violations were knowing or willful.

2. Typicality

Typicality focuses on: **(1)** whether other members of the proposed class have the same or similar injury to the named plaintiff(s), **(2)** whether the action is based on conduct which is not unique to the named plaintiff(s), and **(3)** whether other class members have been injured by the same course of conduct. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502; *Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375.) Here, Plaintiff's claims are typical of the Class Members because he was subject to Defendant's policies and practices described above in Plaintiff's analysis of the claims and defenses, which were consistently applied class-wide to all non-exempt employees. (Declaration of Alexi Gonzalez in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Gonzalez Decl."), ¶ 4.)

3. Adequacy of Representation

A proposed class representative must establish that they will adequately represent the proposed class. (See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.) Plaintiff is adequate as a class representative because he is a member of the Class, experienced the same wage and hour practices as the rest of the Class, is committed to representing the interests of the Class, has no interests that are adverse to members of the Class, and understands and accepts his duty to represent the best interests of the Class. Plaintiff is committed to the Class and is adequate to represent the interests of the Class in this litigation. (Gonzalez Decl., ¶ 5.)

Plaintiff also provided counsel with information that was crucial to initiating the action and preparing the mediation brief, discussed settlement strategy with counsel, and provided valuable information about the Class Members and their experiences working for Defendant. (Smith Decl., ¶ 68; Gonzalez Decl., ¶¶ 6–8.)

Adequacy may be established by the fact that counsel are experienced practitioners. (See *Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162.) Plaintiff is represented by counsel experienced in the litigation of wage and hour class actions, who have no interests adverse to Plaintiff or the Class, who vigorously prosecuted this action, and who have the financial resources to handle this case. (Smith Decl., ¶¶ 8–16.)

4. Superiority

Certification of the Class for settlement purposes is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. Class certification is also superior to litigation of numerous individual claims because most of the claims are too small to litigate individually.

5. Predominance

The common issues here, concerning the uniform deficiencies to Defendant's wage-and-hour policies and practices raise predominating factual and legal issues supporting certification of a settlement class.

VI. <u>PRELIMINARY APPROVAL SHOULD BE GRANTED</u>

A. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, AND NON-COLLUSIVE NEGOTIATIONS

The Settlement Agreement was negotiated at arm's length between counsel using a professional and well-respected third-party neutral. (Smith Decl., ¶ 53.) Counsel for both parties were thoroughly familiar with the complex legal and factual questions at issue in this litigation. (Smith Decl., ¶ 53.) The Settlement Agreement is a product of intensive negotiations, supported by investigation and direct exchanges of information through informal discovery, during the course of settlement negotiations, including a full-day mediation. (Smith Decl., ¶ 53.)

B. THE DISCOVERY AND INVESTIGATIONS WERE EXTENSIVE

Counsel for the Parties spent months prior to the mediation developing the factual record for this case, engaging in informal discovery and exchanges of documents and information, and drafting detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and weaknesses of their respective positions at the mediation and during subsequent settlement negotiations. (Smith Decl., ¶ 56.)

C. THE RISKS INHERENT IN CONTINUED LITIGATION ARE GREAT

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court should also consider "[t]he strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, [and] the risk of maintaining class action status." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) As described above, Defendant had strong defenses to Plaintiff's claims, which create a real possibility that the claims might not be certified or might fail on the merits. (Smith Decl., ¶ 60.) Proceeding with litigation would impose a significant risk of no recovery as well as ongoing, substantial additional expenditures of time and resources. If settlement were not achieved, continued litigation of the claims would take a substantial amount of time and possibly confer no benefit on Class Members. By contrast, the settlement will yield a prompt, certain, and substantial recovery for the Class Members, which also benefits the Parties and the Court. In considering these risks, the choice was overwhelmingly in favor of settlement. (Smith Decl., ¶ 61.)

D. PLAINTIFF'S COUNSEL ARE EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION

Plaintiff's counsel are experienced in wage-and-hour class actions. (Smith Decl., ¶¶ 8–16.) Numerous state and federal courts have certified Mr. Smith as adequate and competent class counsel in wage and hour class actions. (Smith Decl., ¶¶ 8–16.) Mr. Smith devotes the vast majority of his law practice to plaintiff-side class and representative employment-law cases. (Smith Decl., ¶ 63.)

Experienced counsel, operating at arm's length, have weighed the strengths and risks of the case, and endorse the proposed settlement. (Smith Decl., ¶ 65.) The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, aff'd (9th Cir. 1981) 661 F.2d 939 ["[T]he fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight."]; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 [court must take into account the experience and view of counsel].)

E. THE CLASS NOTICE PLAN CONFORMS TO ALL APPLICABLE STATUTES AND RULES

The Court has wide discretion in approving the means of providing notice, so long as the class representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of class members." (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 860, quotation marks omitted.) Here, the Parties' notice plan is that notice of the Settlement Agreement will be disseminated directly to the class members by first class mail by the settlement administrator within 28 days of the Court granting preliminary approval of the Settlement Agreement. (Settlement Agreement, at p. 21.)

The notice plan and the Class Notice satisfy the requirements of rule 3.766 of the California Rules of Court and afford the Class Members with all due process protections required by the United States Constitution. (Settlement Agreement, Exh. 1.) Moreover, the contents of the Class Notice are in compliance with rule 3.766, subdivision (d), of the California Rules of Court, because the Class Notice includes, among other things: **(1)** a detailed explanation of the case, including the basic contentions or denials of the parties; **(2)** a statement that the court will exclude the member from the class if the member so requests by a specified date; **(3)** a procedure for the member to follow in requesting exclusion from the class; **(4)** a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and **(5)** a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. (Settlement Agreement, Exh. 1.) The 45-day deadline for Class Members to exclude themselves or challenge the number of workweeks worked during the Class Period is reasonable, as it provides Class Members with sufficient time to do so and, if they so choose, to seek independent legal advice in the interim. (Settlement Agreement, at pp. 20–23.)

VII. THE ATTORNEYS' FEE ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS FAIR

In addition, at the time of final approval, Plaintiff's counsel will request attorneys' fees of up to one-third of the Gross Settlement Amount, (i.e., $50,000.00), plus reimbursement of litigation expenses and costs of up to $15,000.00. (Settlement Agreement, at p. 4.) As the California Supreme Court has made clear, one-third of the common fund is a reasonable percentage for a trial court to award as attorneys' fees in a class action where a common fund was generated as a result of the case. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [finding no abuse of discretion where trial court approved a fee request of one-third of the common fund].) As part of the final approval motion, Plaintiff's counsel will request approval of the attorneys' fees and costs described in this motion and in the Settlement Agreement, which will be heard at the final approval hearing. Accordingly, the Court need not decide the fees and costs at this time, but only authorize the Class Notice to inform class members that counsel will seek fees and costs up to one third of the Gross Settlement Amount in fees, plus actual litigation costs.

VIII. THE CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND APPROPRIATE

Plaintiff will request payment of a service award from the Gross Settlement Amount of up to $7,500.00 in addition to whatever payment he is otherwise entitled to receive as a Class Member. (Settlement Agreement, at p. 15.) The proposed service award is reasonable compensation given the time and effort that Plaintiff devoted to this case and the valuable assistance he provided to counsel. (Smith Decl., ¶ 69; Settlement Agreement, at pp. 15–16; Gonzalez Decl., ¶¶ 6–9.) Plaintiff provided invaluable assistance to Plaintiff's counsel and the Class Members in this case, including providing factual background for mediation and the Operative Complaint, reviewing the relevant documents, participating in phone calls with Plaintiff's counsel, gathering highly relevant documents, and reviewing the settlement documents. (Smith Decl., ¶ 70.) Plaintiff agreed to participate in this case with no guarantee of personal benefit. Further, Plaintiff agreed to undertake the financial risk of serving as a class representative and exposed himself to the risk of negative publicity by anyone who opposed this case. (Smith Decl., ¶ 70.)

Moreover, the requested service award for Plaintiff falls within the range of service payments typically awarded to class representatives in similar class actions. (See, e.g., *Bond v. Ferguson Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 [approving **$11,250.00** service award to each of the two class representatives in a meal break class action]; *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving service awards in the amount of **$10,000.00** each from a $300,000.00 settlement fund in a wage/hour class action]; *West v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 ["the court finds Plaintiff's enhancement payments of **$15,000.00** each to be reasonable."], emphasis added; *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal. Apr. 22, 2010) No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 ["Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of **$20,000** or more where, as here, the class representative has demonstrated a strong commitment to the class"], emphasis added.)

IX. SUBMISSION TO THE LWDA

The Settlement Agreement and this motion are concurrently being submitted to the LWDA in accordance with Labor Code section 2699, subdivision (l)(2). (Smith Decl., ¶ 71.) The proof of electronic submission is attached as **Exhibit C** to the Declaration of Kyle D. Smith.

X. CONCLUSION

For these reasons, Plaintiff's motion for preliminary approval should be granted.

Dated: May 14, 2026

MELMED LAW GROUP P.C.

KYLE D. SMITH
Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees