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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ERIC SANCHEZ on behalf of himself, all others similarly situated, and on behalf of the general public,

Plaintiff,

v.

J & L INSULATION, INC.; and DOES 1-100,

Defendant.

Case No. 37-2024-00019764-CU-OE-CTL

[Consolidated with Case No. 37-2024-00029776-CU-OE-CTL]

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

Date: September 12, 2025
Time: 9:00 a.m.
Dept.: C-60

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I. INTRODUCTION

Plaintiff Eric Sancez ("Plaintiff"), on behalf of himself and the approximately 50-member putative class, respectfully request that this Court preliminarily approve the Joint Stipulation and Settlement Agreement[1] ("Settlement Agreement") entered into between Plaintiff and Defendant J & L Insulation, Inc. ("Defendant") (Plaintiff and Defendant are collectively referred to as the "Parties"). The Parties' Settlement Agreement seeks to resolve claims raised against Defendant in this matter in exchange for a non-reversionary $150,000 Gross Settlement Amount ("GSA"). The proposed class is comprised of all current and former non-exempt employees of Defendant who worked within the State of California during the Class Period ("Class Members"). The Class Period is the time period beginning on April 26, 2020 to June 20, 2025.

It is requested that the Court grant preliminary approval, as, when analyzing the strengths and vulnerabilities of the class claims along-side Defendant's potential liability exposure, this proposed settlement of $150,000 – **which is estimated to pay class members an average settlement share of approximately $1,400.00**[2] – is well within the range of reasonableness. Moreover, the proposed Agreement satisfies all of the criteria for preliminary approval under Rule 3.769 of the California Rules of Court.

As the following sections show, Class Counsel are convinced that the proposed settlement is in the best interests of the Class based on the negotiations and a detailed knowledge of the issues present in this action. The length and risks of trial and perils of litigation that affect the value of the claims were all carefully weighed. In addition, the defenses asserted by Defendant, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals, were also carefully considered by Class Counsel in arriving at the proposed settlement, including the very real possibility that due to Defendant's financial condition, it would be financially insolvent before a judgment could be collected on. The Settlement Agreement was the product of an all-day mediation with well-regarded and experienced mediator Kevin Barnes and was the product of non-collusive, arm's-length negotiations by informed counsel

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

[2] $70,000.00 estimated Net Settlement Amount / 50 class members = $1,400.00 average share.

and parties. The settlement is fair, reasonable, and adequate to all. Accordingly, Plaintiff seeks: (1) preliminary approval of the terms of the Settlement Agreement; (2) provisional certification of the Class; (3) appointment of Plaintiff as Class Representative; (4) appointment of Mara Law Firm, PC as Class Counsel; (5) approval of the Parties' proposed notice of class action settlement[3] (referred to herein as the "Class Notice" or "Notice") and method of notifying the Class about the settlement; and (6) set a hearing date for final approval for January 16, 2026.

II. FACTUAL/PROCEDURAL BACKGROUND

Defendant provides insulation installation and removal services for both residential and commercial construction projects. In order to carry out their business, Defendant employs non-exempt employees, like Plaintiff. Mara Dec. ¶ 9.

On April 18, 2024, Plaintiff sent notice to the LWDA of his intent to pursue various wage and hour claims against Defendant on behalf of similarly situated aggrieved employees. Shortly thereafter, Plaintiff filed a putative class action complaint on April 26, 2024, against Defendant in the San Diego County Superior Court, Case No. 37-2024-00019764-CU-OE-CTL, alleging causes of action for: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (6) Failure to Pay All Wages Due at the Time of Termination of Employment; and (7) Violation of Unfair Competition Law. Plaintiff also filed a separate action alleging near identical violations of the California Labor Code and seeking civil penalties under the PAGA on June 24, 2024, against Defendant in the San Diego County Superior Court, Case No. 37-2024-00029776-CU-OE-CTL. The Parties later agreed to consolidate both cases, with 37-2024-00019764-CU-OE-CTL designated as the lead case. Mara Dec. ¶ 10.

Defendant denies the allegations of the actions in their entirety, denies any liability or wrongdoing of any kind associated with the claims alleged in these actions, and further denies that, for any purpose other than settling these actions, this matter is appropriate for class treatment. Defendant further contends that it has complied with all applicable California laws, the California Labor Code, the applicable California Wage Order(s), and the Unfair Competition Law. Defendant

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

finally contends that, if this matter were to be litigated further, it would have strong defenses to oppose class certification and succeed on the merits of Plaintiff's causes of action. Mara Dec. ¶ 11.

III. LITIGATION HISTORY/PARTIES CONTENTIONS

a. Discovery and Investigation

Through discovery, Plaintiff sought numerous documents and substantial amounts of data that were needed to evaluate the case. These documents included requests for time and wage records for the Class, employee handbooks, policies, and practices in place during the class period, as well as data surrounding the number of current and former employees. Mara Dec. ¶ 12.

This discovery, in conjunction with the Parties' meet and confer efforts, resulted in the production of hundreds of documents, including Defendant's employee handbook, policies, and practices, and a sampling of wage and time records for Plaintiff and Class Members. Using the time and wage records for the Class provided and the data surrounding the number of current and former employees, Plaintiff was able to establish a potential exposure model in preparation for mediation. Mara Dec. ¶ 13.

b. The Parties' Staunchly Conflicting Positions

i. Unpaid Wages

Based upon the discovery conducted, Plaintiff contends – and Defendant denies – that Defendant fails to pay all wages owed to employees. Under California law, employees must be paid for all "hours worked," as that phrase is defined in the Industrial Welfare Commission Wage Orders and interpreted by California law. Hours worked is defined in Wage Order 4-2001 as "the time during which an employee is subject to the control of an employer, and includes the time the employee is suffered or permitted to work, whether or not required to do so." Wage Order 4-2001, Subd. 2(K); *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833. Under this standard, "it is only necessary that the worker be subject to the control of the employer in order to be entitled to compensation." *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 584. Per Labor Code § 1197, these "hours worked" must be compensated at no less than the applicable minimum wage.

Pursuant to Labor Code § 226.2, employees who are compensated on a piece-rate basis must be compensated for rest periods, recovery periods, and other nonproductive time separate from any piece-rate compensation.

Plaintiff alleges that Defendant violates Labor Code § 226.2 by failing to compensate its employees for all nonproductive time worked during a shift separate from the piece-rate compensation they earn. Specifically, Defendant does not have employees clock in and out during their shifts, and as a result, maintains no semblance of time records that accurately reflect any of the hours worked by the employees, let alone their nonproductive time. Despite all the tools available to track an employee's time worked, Defendant opts to pay its employees' nonproductive hours based on pure guesswork, resulting in the systematic underpayment of wages owed to employees. Mara Dec. ¶ 14.

Defendant disputes these allegations and argues that it compensates its employees in compliance with California law. Defendant points out that Labor Code § 226.2 explicitly allows for an employer to pay an employee's nonproductive hours using either actual time records or the employer's reasonable estimates, extinguishing any liability for this claim entirely. Defendant further argues that it will be able to defeat class certification because Plaintiff would have to ask every employee how many hours they thought they were underpaid for every shift they worked in order to determine whether there was a uniform practice of underpayment, causing individualized issues to predominate and making it impossible for the Court to manage this claim at trial. Mara Dec. ¶ 15.

ii. Meal and Rest Periods

Plaintiff further contends that Defendant fails to provide Class Members with lawful meal and rest periods. The California Supreme Court succinctly described the mandate to provide meal periods: "Employers must afford employees uninterrupted half-hour periods in which they are relieved of any duty or employer control and are free to come and go as they please." *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037 ("*Brinker*"). In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260 ("*Augustus*"), the California Supreme Court ruled that these standards applicable to providing meal periods were equally applicable in the context for the mandate of 10 minute rest periods. Failure to provide a lawful meal or rest period shall result in the employer paying "the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided." Cal. Lab. Code § 226.7(c).

As Defendant pays employees on a piece rate basis, they are able to earn increased compensation for how much work they complete throughout the day. If an employee were to actually stop working in order to take a meal or rest period, they would be effectively hamstringing their own compensation for the day and earning less money. As a result, Plaintiff alleges that Defendant has unlawfully incentivized employees to work through their meal and rest periods, prioritizing its own profits over health and safety of its employees. Mara Dec. ¶ 16.

Defendant claims that it informs each and every employee that they are entitled to take meal and rest periods when they work shifts of qualifying length, that they are not under Defendant's control or command during meal and rest periods, and that they can use this time to do whatever they choose. Defendant argues that this satisfies its obligations under California law and points out that an employer is not obligated to police employees to ensure they do not work during their breaks. Defendant further contends it has spoken to numerous employees who say they were able to take compliant meal and rest periods, which refutes Plaintiff's claim, creates a myriad of individualized issues that would predominate over any common ones, and renders any classwide trial unmanageable. Based on the foregoing, Defendant contends that Plaintiff's meal and rest period claims cannot be certified and will not succeed on the merits. Mara Dec. ¶ 17.

iii. Wage Statements

In addition, Plaintiff contends that Defendant fails to provide employees lawful wage statements. California Labor Code section 226(a) provides employers must furnish an accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece rate units earned and applicable piece rate if the employee is paid on a piece rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee. Plaintiff contends that Defendant's wage statements fail to accurately provide the employee with their "total hours worked," the "applicable hourly rates in effect during the pay period and corresponding number of hours worked at each rate," nor the "number of piece rate units earned and applicable piece rate." As a result, it is impossible for an employee to determine if they are being paid correctly from the wage statement alone. Mara Dec. ¶ 18.

Defendant argues that its wage statements are compliant with California law and that employees have no issues determining if their pay is accurate. In fact, Defendant requires employees sign off on their timecards when they receive their paychecks at the end of the pay period to verify that they are being paid correctly. Additionally, Defendant claims that Plaintiff would not only need to ask every employee if they were unable to determine how they were being paid, but also have every employee identify each wage statement they received that is purportedly confusing and allegedly unlawful. Therefore, Defendant contends that Plaintiff's wage statement claim cannot be certified for classwide adjudication. Mara Dec. ¶ 19.

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

c. The Parties Agreed to Attend Mediation

The Parties agreed to attend mediation with mediator Kevin Barnes on April 21, 2025. After a full day of mediation, the Parties were able to reach a classwide settlement. Since then, the Parties have met and conferred regarding all the terms of the settlement and finalized their agreement in the Parties' Settlement Agreement. The Parties seek preliminary approval of the Settlement Agreement in the instant motion. Mara Dec. ¶ 20; **Exhibit 1**.

d. The Terms of the Proposed Settlement

Under the terms of the proposed settlement, Defendant will create a settlement fund of $150,000.

i. Deductions From the Settlement

The Parties have agreed (subject to and contingent upon the Court's approval) that this action be settled and compromised for the non-reversionary total sum of $150,000, which includes, subject to Court approval: (a) attorneys' fees of up to $50,000 (one-third of the GSA) to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administrating the settlement, and securing Court approval; (b) litigation expenses estimated not to exceed, $13,000;[4] (c) an enhancement payment to the named class representative, Eric Sanchez, in a sum not to exceed $10,000 in consideration for agreeing to a general release of his claims against Defendant which is broader than that of other class members, and in recognition of their efforts in prosecuting their actions; (d) claims administration fees and expenses to Apex Class Action LLC (hereinafter "Apex"), estimated not to exceed approximately $5,000;[5] and (e) PAGA payment of $2,000 allocated to Plaintiff's PAGA claims.

ii. Calculation of the Settlement Payments to Participating Class Members

After all Court-approved deductions from the GSA, it is estimated that $70,000 ("Net Settlement Amount" or "NSA"), less all applicable employee payroll taxes[6], will be distributed to each Participating Class Member.[7] Subject to the terms and conditions of the settlement, the Settlement Administrator will calculate and issue Individual Class Settlement Shares based on the following formula:

> Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant, based on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members during the Class Period based on the same Class Data, which is then multiplied by the Net Settlement Amount. One day worked in a given week for Defendant will be credited as a work week for purposes of this calculation. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked for Defendant in California. **Exhibit 1** attached to the Mara Dec. at Section III (57)(A)(i).

Furthermore, the Settlement allocates $2,000 in consideration for the settlement of Plaintiff's PAGA claims, which is to be distributed separately from the NSA. Settlement Class Members who performed work for Defendant from April 20, 2023 to June 20, 2025 ("PAGA Period") are also

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[4] These will be tabulated and presented to the Court at final approval. Plaintiff will only seek the amount of actual expenses incurred during the litigation of this case. Should the actual expenses exceed $13,000, Plaintiff will only seek reimbursement of costs up to $13,000.

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

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

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

deemed “Aggrieved Employees” and able to recover their share of the civil penalties under the settlement. 75% of this $2,000, or $1,500, will be paid to the LWDA, while the remaining 25%, or $500, will be distributed to the Aggrieved Employees. The Settlement Administrator will calculate and issue Individual PAGA Settlement Shares based on pay periods, similar to the class payments, but only for the PAGA Period of April 20, 2023 to June 20, 2025. **Exhibit 1** attached to the Mara Dec. at Section III (58)(A)(i).

The precise number of compensable weeks worked per class member will not be known until the administrator tabulates them, following preliminary approval. Under no circumstances will any portion of the $150,000 settlement revert to Defendant and one hundred percent (100%) of the NSA is available for Class Members to claim.

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

iii. Notice to the Class

Upon entry of the order of the Court granting preliminary approval of this Agreement, Defendant shall provide the Settlement Administrator with a list in Excel spreadsheet format containing the name and last known address, social security number, and the number workweeks / pay periods for each Class Member within ten (10) business days for purposes of mailing the Notice of Class Action Settlement to the Settlement Class members. Upon receipt of the class data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. Within ten (10) business days of receipt of the class data, the Settlement Administrator shall mail copies of the Notice of Class Action Settlement to all Class Members via regular First-Class U.S. Mail. Class Members shall have thirty (30) days after the Class Notices are mailed to respond by submitting a challenge to the number of workweeks attributed to them, submitting an objection, or requesting to be excluded from the

Settlement Agreement.

iv. Distribution of Funds

No later than ten (10) business days after the Effective Final Settlement Date[8], Defendant shall provide the GSA to the Settlement Administrator to fund the Settlement and the employer's share of payroll taxes due on the portion of the Individual Settlement Payments that is allocated to wages. Not later than ten (10) business days after receiving the funds from Defendant, the Settlement Administrator shall disburse: (1) the Individual Settlement Shares to each Class Member; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; (5) the PAGA Payment to the LWDA and to Aggrieved Employees, as approved by the Court; and (6) Defendant's portion of payroll taxes as the Class Members' current or former employer.

Class Members must cash or deposit their Individual Settlement Payment checks within one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within one hundred and eighty (180) calendar days after mailing, the Settlement Administrator will transmit the funds to the State of California Controller's Office under the Unclaimed Property Statutes in the name of the Class Member.

v. Release of Claims

As of the Effective Final Settlement Date, the Class Representative and the Class Members will release the Released Class Claims:

> All claims alleged or that could have been alleged based on the facts and circumstances alleged in the Class Action Complaint, including but not limited to claims under California Labor Code sections 201, 202, 203, 204, 218, 218.5, 222, 223, 224, 226, 226.2, 226.3, 226.7, 246, 248.2, 248.6, 510, 512, 515, 558, 1194, 1194.2, 1197; IWC Wage Order No. 4-2001 related to the alleged Labor Code violations; California Code of Regulations, Title 8, sections 11110 and 3395; and California Business and Professions Code sections 17200-17208; and any claim for attorneys' fees and costs related to the above-referenced claims. All Released Class Claims are limited to the Class Period. **Exhibit 1** attached to the Mara Dec. at Section I (37).

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

As of the Effective Final Settlement Date, the Class Representative and the Aggrieved Employees will release the Released PAGA Claims:

> All claims asserted in the PAGA Action Complaint and Plaintiff's PAGA notice to the LWDA or that could have been alleged based on the facts and circumstances alleged in the PAGA Action Complaint and Plaintiff's PAGA notice to the LWDA, including but not limited to claims under California Labor Code sections 201, 202, 203, 204, 222, 223, 224, 226, 226.2, 226.3, 226.7, 246, 510, 512, 515, 558, 1194, 1197, 1197.1, 1199, 2698, 2699; IWC Wage Order No. 4-2001 related to the alleged Labor Code violations; and California Code of Regulations section 11070. All Released PAGA Claims are limited to the PAGA Period. **Exhibit 1** attached to the Mara Dec. at Section I (38).

In addition, Plaintiff agreed to a general release of his claims against Defendant. *See* **Exhibit 1** attached to the Mara Dec. at Section III (64). At final approval, Class Counsel will seek approval of this Enhancement Payment to the named Plaintiff in the sum of $10,000. As will be detailed at final approval, the requested enhancement is reasonable in light of the broad general release Plaintiff is giving to Defendant in exchange for the $10,000 payment.

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

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

Courts routinely approve service payments, or incentive awards, to compensate named plaintiffs for the services they provide and the risks they incur during class litigation. See *In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers Ins.*

Exch. (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives); Manual § 21.62 n.971 (noting that service payments are warranted). Based on the foregoing, the $10,000 payment to the named Class Representative is fair, appropriate and justified as part of the overall settlement.

IV. ARGUMENT

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

Rule 3.769 requires court approval for class action settlements.[9] "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (California Rules of Court, Rule 3.769(g)) Rule 3.769 further requires a noticed motion for preliminary approval of class settlements:

> (a) A settlement or compromise of an entire class action, or a cause of action in a class action, or as to a party, requires the approval of the court after hearing.
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> . . .
>
> (c) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

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

b. The Settlement is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure § 382, the Court must find that a proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is

[9] The California Supreme Court also has authorized California's trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As the following shows, all of these elements – with the exception of the percentage of objectors, which cannot be anticipated at this stage of the litigation – bearing on the fairness of the proposed settlement are present here and the Court's grant of preliminary approval is therefore requested.

i. The Settlement was Reached as a Result of Arm's Length Negotiations

The settlement was reached as a result of arm's-length negotiations. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. At the mediation and the following negotiations through the mediator, Counsel for the Parties conducted extensive arm's length settlement negotiations until the settlement was reached. The terms of the settlement are memorialized in the Settlement Agreement which is attached to the Declaration of David Mara, Esq. as **Exhibit 1**.

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

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

iii. Counsel for Both Parties are Experienced in Similar Litigation

Both Plaintiff's Counsel and Defendant's Counsel are experienced in wage and hour employment law and class actions. Plaintiff's Counsel has significant experience in litigating unpaid wages, unprovided meal and rest periods, misclassification, overtime, and expense reimbursement class actions. Plaintiff's Counsel has prosecuted numerous wage and hour class action cases on behalf of employees for California Labor Code violations and thus are experienced and qualified to evaluate the class claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. Mara Dec. ¶¶ 2-8. Indeed, Mara Law Firm, PC was class counsel in

Hohnbaum et al. v. Brinker Restaurant Corp et al., which is the subject case in the landmark decision of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Mara Dec. ¶ 4. This experience instructed Plaintiff's Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed settlement. Defendant's Counsel has experience representing companies and regularly deals with wage and hour litigation matters. Accordingly, both Parties' Counsel are experienced in wage and hour employment law and class actions.[10]

iv. The Proposed Settlement is a Reasonable Compromise of Claims

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

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

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

The proposed settlement was only possible following significant discovery, an evaluation of

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

Defendant's relevant policies and procedures, and Plaintiff's independent investigation. This permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. The discovery conducted resulted in Plaintiff's central theories of liability, which are predicated on Plaintiff's claims that Defendant failed to pay employees for all time worked, failed to provide meal and rest periods, and failed to provide accurate wage statements. As explained above, Defendant maintains that the discovery conducted and documents produced demonstrates that it would succeed at both class certification and on the merits.

Although, Plaintiff believes this case is suitable for certification on the claimed bases that there are company-wide policies and practices that Plaintiff contends violate California law and uniformly affect the class members, Defendant's counter-arguments and affirmative defenses raise uncertainties with respect to both class certification and success on the merits. As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions, with respect to certification of wage and hour claims.[11] While remaining confident in the strengths of his claims, all of these factors led Plaintiff to discount the following maximum potential damage claims.

2. Exposure and the Risks for Each Claim

In addition to being able to discover the strengths and vulnerabilities associated with Plaintiff's claims, Defendant provided Plaintiff with information and data points which Plaintiff used to establish a representative damage model, as explained below. Mara Dec. ¶ 21.

A. Unpaid Wages

Plaintiff claims that Defendant does not pay Class Members for all time worked. Specifically, Plaintiff alleges that Defendant fails to compensate Class Members for all nonproductive time worked during a shift separate from the piece-rate compensation they earn. Defendant pays Class Members nonproductive hours based on pure guesswork, resulting in the systematic underpayment of wages

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

owed to employees. As a result, this practice shorts these employees of approximately one hour's worth of pay every shift they work. Accordingly, Defendant's ***maximum*** exposure under Plaintiff's unpaid wages claim is $172,112 (Approximately 9,835 shifts x $17.50 average hourly rate = $172,112). Mara Dec. ¶ 22.

Further, if Plaintiff were to prevail on his unpaid wages claim, he may also be entitled to waiting time penalties. Plaintiff calculates the potential ***maximum*** exposure under the waiting time penalties cause of action as $168,000 (40 former employees x 30 days x 8 hours x $17.50 = $168,000). Mara Dec. ¶ 23.

Plaintiff had to discount the maximum exposure of these claims to account for the viability of Defendant's counter arguments. As discussed above, Defendant disputes these allegations and argues that its piece rate compensation plan does not violate California law, as it lawfully compensates Class Members for nonproductive work pursuant to Labor Code § 226.2. Further, as Plaintiff's claims for waiting time penalties are derivative of his wage claims, Defendant argues that they would not be liable for these either. Should the Court agree with Defendant's arguments, Plaintiff and Class Members would be entitled to no recovery under these causes of action. Mara Dec. ¶ 24.

B. Meal and Rest Periods

Plaintiff argues that Defendant fails to provide Class Members with lawful meal and rest periods. As Class Members earn less compensation and are essentially punished for stopping work to take breaks, Plaintiff alleges that Defendant has unlawfully incentivized Class Members to work through their meal and rest periods. Accordingly, Defendant's ***maximum*** exposure under Plaintiff's meal and rest period claims is $344,225 (Approximately 9,835 shifts x $17.50 average hourly rate x 2 penalties under Labor Code § 226.7 = $344,225). Mara Dec. ¶ 25.

Plaintiff had to discount the maximum exposure of these claims to account for the viability of Defendant's counter arguments. Defendant claims it adequately informs Class Members of their rights regarding meal and rest periods under California law and points out that an employer is not obligated to police employees to ensure they do not work during their breaks. With this, and the fact that it would be able to provide evidence that Class Members did, in fact, take complaint meal and rest periods, Defendant would defeat these claims at certification and on the merits. Mara Dec. ¶ 26.

C. Wage Statements

Further, Plaintiff claims that Defendant fails to provide Class Members with lawful wage statements containing all the requisite information under Labor Code § 226. As a result, it is impossible for to determine if Class Members are being paid correctly from the wage statement alone. Therefore, the ***maximum potential exposure*** under this theory of liability would be $40,000 (10 current employees x $4000 maximum statutory penalty = $40,000). Mara Dec. ¶ 27.

Plaintiff's wage statement claim is also subject to risks of obtaining certification and on the merits. Defendant argues its wage statements are compliant with California law and that Class Members have no issues determining if their pay is accurate. Additionally, Defendant claims that testimony from every Class Member would be necessary to determine if any given wage statement was unlawful, rendering this claim entirely unsuitable for class certification. Mara Dec. ¶ 28.

D. PAGA

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

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

Plaintiff alleges that Defendant has four (4) core violations –failure to pay all time worked, failure to provide meal periods, failure to provide rest periods, and failure to provide accurate wage statements – of the Labor Code sections which give rise to PAGA penalties. The statute of limitations for PAGA violations goes back one year. As there were approximately 804 pay periods in the statutory period at the time of mediation, Plaintiff calculated Defendant's potential maximum exposure under PAGA as follows:

$100 x 4 PAGA violations x 804 pay periods = $321,600

Mara Dec. ¶ 29.

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

In addition, as the PAGA violations asserted by Plaintiff are predicated on the same unlawful conduct that Plaintiff bases his other claims, Plaintiff's PAGA claims are subject to the same risks on the merits as Plaintiff's class claims. If Plaintiff is ultimately unable to prevail on any one of his class claims, his recovery under the PAGA as to that violation would also fail. The likelihood of the Court reducing the PAGA damages awarded to Plaintiff and the aggrieved employees – assuming liability is proven as to each of Plaintiff's claims – is also higher in this case where these same individuals will also be receiving money for the same unlawful conduct under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 ("Because the PAGA penalties sought are at least partially duplicative of penalties granted by the underlying Labor Code violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the potential PAGA penalties are highly uncertain.").

3. The Settlement Amount of $150,000 is Reasonable

<u>Not taking into account any of their defenses or arguments</u>, Defendant's total exposure if Plaintiff was successful in his core claims would be approximately $556,337 [$344,225 (meal and rest period exposure) $172,112 (unpaid wages exposure) + $40,000 (wage statement exposure) =

$556,337]. If Plaintiff is successful in his unpaid wage claims, he may also be entitled to damages for waiting time penalties in the amount of $172,112. If all of Plaintiff's claims are successful, he may also be entitled to PAGA penalties in the maximum amount of $321,600. Mara Dec. ¶ 30.

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

Further, Defendant's financial condition raises serious issues moving forward in litigation. There is a substantial risk that Defendant may no longer be in business if it is forced to continue paying the costs and fees to litigate this matter, let alone pay any judgement owed if Plaintiff were to prevail on the merits of his claims. If this occurs, Class Members would not receive ***any*** compensation for the wage and hour violations Plaintiff alleges against Defendant.

In light of the risks Plaintiff's claims faced, Plaintiff and his Counsel believe that the settlement amount of $150,000 – **with an average settlement share amount estimated at $1,400** – is a reasonable and fair settlement amount. Mara Dec. ¶ 31.

A settlement is not judged **solely** against what might have been recovered, had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139; "Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Wershba*, *supra*, at 250; *Officers for Justice v. Civil Serv. Comm'n*

(9th Cir. 1982) 688 F.2d 615, 628 ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not…render the settlement inadequate or unfair").

c. Provisional Class Certification Should be Granted

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

Plaintiff contends, and Defendant does not dispute for settlement purposes only, each of these elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38. Plaintiff seeks approval of the following Class for settlement purposes only: All current and former non-exempt employees of Defendant who worked within the State of California at any time from April 26, 2020 to June 20, 2025.

i. The Proposed Settlement Class is Ascertainable

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

ii. The Proposed Settlement Class is Sufficiently Numerous

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

Here, Defendant's records show that the proposed Settlement Class has approximately fifty (50) members. Plaintiff contends that joinder of all Class Members is impracticable and, therefore, a class wide proceeding is preferable. *See Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030 (noting that there is no set minimum to meet the numerosity prerequisite, but that a class of as few as 28 is acceptable.). In fact, a class of ten (10) has been certified as a class action. *Id.*, citing *Bowles v. Superior Court* (1995) 44 Cal.2d 574. Several federal cases on this issue have held that classes of over forty (40) individuals are numerous enough to meet the numerosity requirement. *See Ikonen v. Hartz Mountain Corp.* (S.D. Cal. 1988) 122 F.R.D. 258, 262. Accordingly, the Class that is comprised of approximately fifty (50) members is sufficient to satisfy the numerosity requirement.

iii. The Commonality Requirement is Met

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

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

iv. The Typicality Requirement is Met

The typicality requirement is met if the claims of the named representative are typical of those of the class, though, "they need not be substantially identical." *Hanlon*, *supra*, 150 F.3d at 1020; *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. Plaintiff contends that his claims are typical of the Class Members' claims because they arise from the same factual basis and are based on the same legal theory as those applicable to the Class Members. *See Wehner v. Syntex Corp.* (N.D. Cal. 1987) 117 F.R.D. 641, 644. Each Class Member is challenging the same policies and practices. Plaintiff alleges that Defendant's policies applied to all Class Members. Factual differences may exist between Plaintiff and the Class Members so long as the claims arise from the same events or course of conduct and are based on the same legal theories. *Hanlon*, *supra*, 150 F. 3d at 1020; *see also Wehner*, *supra*, 117 F.R.D. at 644; *Newberg on Class Actions*, 4th ed. § 3:15, p.335 [When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of varying fact patterns which underlie individual claims.] As such, the typicality requirement is satisfied.

v. The Adequacy Requirement is Met

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

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

California Rule of Court 3.769(f), provides:

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

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

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V. CONCLUSION

Plaintiff respectfully submits that the proposed settlement is in the best interests of the class and class members, as it is fair, adequate, and reasonable, and one that should ultimately be granted final approval. Under the applicable class action criteria and guidelines, the proposed settlement should be preliminarily approved by the Court, the class should be conditionally certified for purposes of settlement only, and the Notice of Class Action Settlement should be approved. Plaintiff respectfully requests the Court set the Final Approval Hearing for January 16, 2026.

Respectfully Submitted,

MARA LAW FIRM, PC

Date: August 18, 2025

Signed:______________________
David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff ERIC SANCHEZ, on behalf of himself, all others similarly situated, and on behalf of the general public