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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN BERNARDINO**

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| Coordination Proceeding<br>Special Title (Rule 3.550)<br><br>BARSTOW POST ACUTE WAGE AND HOUR CASES<br><br>Included actions:<br><br>BANKS, ET AL. V. BARSTOW POST ACUTE LLC (San Bernardino Superior Court Case No. CIVSB2416717)<br><br>NELSON V. BARSTOW POST ACUTE LLC (Orange County Superior Court Case No. 30-2024-01423982) | Case No.: JCCP5387<br><br>[Assigned for All Purposes to:<br>Hon. David E. Driscoll, Dept. S22]<br><br>**PLAINTIFFS LAFLORIE BANKS, SHATAAE POATES, AND CARMEN PRADO REYES' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT IN *BANKS* ACTION; MEMORANDUM OF POINTS AND AUTHORITIES**<br><br>(Filed concurrently with Supporting Declarations and [Proposed] Order)<br><br>DATE: October 6, 2026<br>TIME: 8:30 a.m.<br>DEPT: S22<br><br>Action Filed: May 13, 2024<br>Trial Date: Not Set |

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on October 6, 2026 at 8:30 a.m. in Department S22 of the San Bernardino Superior Court, San Bernardino Justice Center, located at 247 W. Third Street, San Bernardino, CA 92415, Plaintiffs LaFlorie Banks, Shataae Poates, and Carmen Prado Reyes ("Plaintiffs"), individually and on behalf of a class of similarly situated individuals, will and hereby move this Court for:

1. Preliminary approval of the proposed class action settlement of the action included in this Coordination Proceeding: *LaForie Banks, et al. v. Barstow Post Acute LLC*, Case No. CIVSB2416717 (the "Action");

2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Class defined as follows:

> All current and former non-exempt employees who worked for Defendant Barstow Post Acute LLC within the State of California during the Class Period of August 16, 2022 to April 11, 2026.

3. Preliminary appointment of Plaintiffs as Class Representatives;

4. Preliminary appointment of William C. Sung, Tiffany L. Luu, and Joseph C. Ramli of Justice for Workers, P.C. as Class Counsel;

5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a Class Representative Service Payments to Plaintiffs, civil penalties payable to the LWDA, settlement administration costs, and attorney's fees and costs to Class Counsel;

6. Appointment of Apex Class Action LLC as the third-party Administrator for mailing notices and administering the Settlement; and

7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Class as provided in the Settlement Agreement.

This Motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the supporting declarations of William C. Sung, LaFlorie Banks, Shataae Poates, Carmen Prado Reyes, and Kimberly Sutherland of Apex Class Action LLC, and the exhibits attached thereto; the pleadings, and other papers filed in this Action; and on any further oral or documentary evidence or argument presented at the time of the hearing.

DATED: July 23, 2026

Respectfully submitted,

**JUSTICE FOR WORKERS, P.C.**

By: ______________________________

William C. Sung
Tiffany L. Luu
Joseph C. Ramli
Attorneys for Plaintiffs LAFLORIE BANKS, SHATAAE POATES, and CARMEN PRADO REYES

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Plaintiffs LaFlorie Banks, Shataae Poates, and Carmen Prado Reyes (collectively, "Plaintiffs") brought this wage and hour class and representative action on behalf of a Class of all current and former non-exempt employees who worked for Defendant Barstow Post Acute LLC ("Defendant") within the State of California during the Class Period of August 16, 2022 to April 11, 2026. The primary issues in this case pertain to Defendant's alleged failure to pay all wages due, meal and rest period violations, and cellphone reimbursement issues. Plaintiffs contend Defendant is also liable for inaccurate wage statement penalties, waiting time penalties, and civil penalties under the California Private Attorney's General Act ("PAGA"). Plaintiffs now request that this Court preliminarily approve this non-reversionary, common-fund class action settlement[1], in which Defendant has agreed to pay the Gross Settlement Amount of Four Hundred Ninety Thousand Dollars and Zero Cents ($490,000.00) to approximately 325 Class Members.

After deducting administration costs, Plaintiffs' requested Class Representative Service Payments, the amount set aside as PAGA Payment, and requested Class Counsel Fees Payment and Litigation Expense Payment, the Net Settlement Amount of approximately $215,776.67 will be distributed to all Class Members who do not opt out of the Settlement based on the proportionate number of Workweeks worked by each Class Member during the Class Period. Employees with standing for PAGA Payment will receive additional consideration for their release of PAGA claims.

Significantly, all Class Members will automatically receive a payment unless they affirmatively opt-out. There are approximately 325 Class Members, and **the average payment to participating Class Members is projected to be approximately $663.93**. This is an excellent result for Class Members, who will be releasing only those claims alleged or which could have been alleged in the Action. The proposed Settlement is within the range of possible approval in light of the significant legal and factual obstacles that Plaintiffs faced, the risks and costs of further

[1] The Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Agreement") is attached to the Declaration of William C. Sung as **Exhibit 1**. The proposed Class Notice is attached to the Agreement as **Exhibit A**. All defined terms in this motion have the same definition as that in the Agreement.

litigation, and the tangible monetary benefits to be received by the Class. For the reasons discussed herein, Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement.

## II. SUMMARY OF THE LITIGATION

### A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

Defendant owns and operates a skilled nursing facility called Mountain View Post-Acute in Barstow, California. Declaration of William C. Sung ("Sung Decl."), ¶ 9. Defendant employed Plaintiff Banks as an hourly-paid, non-exempt employee from approximately January 2024 to August 2024 as a nurse, employed Plaintiff Poates as an hourly-paid, non-exempt employee from approximately January 2024 to July 2024 as a CNA and RNA, and employed Plaintiff Reyes as an hourly-paid, non-exempt employee from approximately July 2023 to July 2024 as a CNA. Declaration of LaFlorie Banks ("Banks Decl."), ¶ 2; Declaration of Shataae Poates ("Poates Decl."), ¶ 2; Declaration of Carmen Prado Reyes ("Reyes Decl."), ¶ 2.

On May 13, 2024, Plaintiff Banks sent a notice letter under PAGA to the Labor and Workforce Development Agency ("LWDA") and gave notice to Defendant. Sung Decl., ¶ 10, **Exh. 2** (PAGA Notice). On the same day, May 13, 2024, Plaintiff Banks filed a Class Action Complaint against Defendant for (1) Minimum Wage Violations; (2) Overtime Wage Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Failure to Reimburse Necessary Business Expenses; and (8) Unfair Competition. *Ibid*. On March 29, 2024, Plaintiff Paiz filed the First Amended Complaint adding a cause of action for Civil Penalties Under PAGA against Defendant. *Ibid*.

On July 17, 2024, Plaintiff Banks sent an amended PAGA notice letter to the LWDA adding Plaintiff Poates as a second named aggrieved employee. Sung Decl., ¶ 11, **Exh. 3** (Amended PAGA Notice). On the same day, July 17, 2024, Plaintiff Banks filed the First Amended Complaint adding Plaintiff Poates as a second named Plaintiff and added a Ninth Cause of Action for Civil Penalties under the PAGA. *Ibid.* Then on August 20, 2024, Plaintiffs Banks and Poates sent a second amended PAGA notice letter to the LWDA adding Plaintiff Reyes as a third named aggrieved employees. Sung Decl., ¶ 12, **Exh. 4** (Second Amended PAGA Notice).

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On October 10, 2024, Defendant filed a Petition to Compel Arbitration and Stay Proceedings ("Motion to Compel Arbitration"), seeking to compel Plaintiffs Banks and Poates to arbitrate their individual claims, dismissal class claims without prejudice, and stay representative PAGA claims. Sung Decl., ¶ 13. Plaintiffs Banks and Poates opposed the Motion to Compel Arbitration in part of the ground that Defendant lacked standing to enforce the arbitration agreement because it is not a non-signatory to the agreement. *Ibid.* On February 11, 2025, the Court denied the Motion to Compel Arbitration, finding that Defendant did in fact lack standing as a non-signatory to the agreement. *Id.*, **Exh. 5** (Order Denying Motion to Compel Arbitration).

After the parties agreed to this Settlement and with Court's leave, on April 15, 2026, Plaintiffs Banks and Poates filed the Second Amended Complaint ("Operative Complaint") adding Plaintiff Reyes as a third named Plaintiff. Sung Decl., ¶ 14, **Exh. 6** (Operative Complaint).

### B. PLAINTIFFS' CLAIMS AND DEFENDANT'S DEFENSES

#### 1. Unpaid Wages Due to Regular Rate of Pay Violations

Regular rate of pay, which can change from pay period to pay period, includes 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." *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554; *see also Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 (meal and rest period premiums to be paid at regular rate of pay); Lab. Code § 246(l)(1) (paid sick leave to be paid at the regular rate of pay or at a rate based on a 90-day lookback of compensation earned). Here, Plaintiffs contended that Defendant failed to pay overtime wages, paid sick leave wages, and meal period premiums at the regular rate by failing to factor in three types of incentive into the regular rate: Bonus, CV-19 Bonus, and CV19-Bonus. Sung Decl., ¶ 15. In response, Defendant argued that, to the extent any such bonuses even applied (which Defendant did not concede), they would have been discretionary bonuses where the amounts are not measured by or dependent on hours worked, production, or efficiency and need not be factored into the regular rate. *Ibid; see* 29 C.F.R. § 778.200(a). Furthermore, Defendant argued very little liability could have accrued from this issue and that a class cannot be certified and any damages must be significantly limited because the vast majority of Class Members signed enforceable arbitration agreements with class action waivers that did not have the signatory issue that resulted the Court denying the Motion to Compel Arbitration. Sung Decl., ¶ 15.

**2. Unpaid Wages Due to Off-the-Clock Work**

Plaintiffs alleged that Plaintiffs and other non-exempt employees often worked off the clock without pay due to interruptions to their meal breaks. Sung Decl., ¶ 16. In response, Defendant argued it maintained compliant policies that prohibit working off the clock and that Defendant's pay statistics evidence superior compliance with its policies and practices requiring all employees to receive wages for all hours worked. *Ibid.* Defendant's 25% payroll sampling evidence that Defendant paid 2,955 overtime hours totaling $109,023, 646 double time hours totaling $30,086, and 999 meal period premiums totaling $25,919. *Ibid.* Thus in addition to denying this claim, Defendant contended that Plaintiffs' off-the-clock work claim is individualized and not suited for class certification since there is no evidence of a common policy or practice forcing Class Members to work off the clock and numerous individual inquiries would be needed to assess which Class Members, if any, worked off the clock, how often, the reasons why a particular Class Member worked off the clock, and whether Defendant knew or should have known that Class Members worked off the clock for the imposition of classwide liability. *Ibid*; *see, e.g., Troester v. Starbucks Corporation* (C.D. Cal., Jan. 27, 2020, No. CV1207677CJCPJWX) 2020 WL 553572, at *9 (denying certification of off-the-clock work claim because of individualized inquiries); *Williams v. Superior Court* (2013) 221 Cal.App.4th 1353, 1369, as modified (Dec. 24, 2013) (liability for off-the-clock work is based on the "know or should have known" standard). Defendant further argued its arbitration agreement and class action waiver defense. Sung Decl., ¶ 16.

**3. Meal Period Violations**

Plaintiffs claimed that they and other employees were frequently unable to take compliant meal periods. Sung Decl., ¶ 17. Defendant countered that Defendant maintained compliant meal period policies and practices throughout the Class Period and always provided compliant meal periods in line with those policies. *Ibid; see Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040-1041 (holding employers need only "provide" meal periods to employees and are not obligated to "police" meal periods). Defendant pointed to the fact that the sampling payroll records showed numerous meal period premiums paid to employees as evidence of Defendant's superior meal period compliance practices (Plaintiff's expert found Defendant paid approximately 999 meal period premiums totaling $25,919). Sung Decl., ¶ 17. As such, Defendant maintained Plaintiffs' meal period claim is not suited for class certification since individual inquiries would be needed to assess which employees, if any, took non-compliant meal periods, how many meal periods were non-compliant, and the reasons why a particular employee did not take a meal period on a particular shift and a meal period premium was not paid. *Ibid.* Defendant further argued its arbitration agreement and class action waiver defense. *Ibid.*

**4. Rest Period Violations**

Plaintiffs claimed that they and other employees were often unable to take compliant rest periods because of operation needs. Sung Decl., ¶ 18. Defendant countered that Defendant maintained compliant rest period policies and practices and provided compliant rest periods in line with those policies. *Ibid.* Thus, Defendant maintained Plaintiffs' rest period claim is not suited for class certification since individual inquiries would be needed to assess which employees, if any, took non-compliant rest periods, how many rest periods were non-compliant, and the reasons why a particular employee did not take a rest period. *Ibid.* Defendant further argued its arbitration agreement and class action waiver defense. *Ibid.*

**5. Failure to Reimburse Necessary Business Expenses**

Plaintiff alleged they were required to use their personal cellphones for work-related announcements and communications, such as meeting times, if they needed help, assigning tasks, and concerns regarding patients. Sung Decl., ¶ 19. Defendant countered that Plaintiffs used their personal cellphones out of their convenience, and further that Defendant's guidelines specifically prohibited use of cell phones in the facility. *Ibid.* Defendant further maintained that Plaintiffs reimbursement claim is not suited for class certification since individual inquiries would be needed to assess which employees, if any, used their personal cellphones for work, why they used their cellphones and whether cellphone usage was required or out of their own convenience. *Ibid.* Defendant further argued its arbitration agreement and class action waiver defense. *Ibid.*

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**6. Waiting Time and Wage Statement Penalties**

As a result of the unpaid wages and meal and rest period premiums described above, Plaintiffs contended that Defendant failed to comply with its final pay obligations set forth in Labor Code §§ 201 to 203 to former employees and failed to issue accurate itemized wage statements to Class Members as set forth in Labor Code § 226(a). Sung Decl., ¶ 20. Thus, Plaintiffs' claims for waiting time and wage statement penalties are derivative of the underlying claims. *Ibid.*

In response, Defendant argued that Defendant possessed strong, good faith defenses to Plaintiffs' underlying claims and these claims cannot meet the willfulness standard in Labor Code § 203 or the knowing and intentional standard in Labor Code § 226(e). Sung Decl., ¶ 20. Notably, Defendant relied on the California Supreme Court decision in *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065, which held that an employer's good-faith defenses precludes a "willfulness" finding under Labor Code § 203 and a "knowing and intentional" finding under Labor Code § 226(e) for the imposition of statutory penalties. *Ibid.* Defendant further argued its arbitration agreement and class action waiver defense. *Ibid.*

**7. PAGA Civil Penalties**

Plaintiffs contended that, as a result of the foregoing Labor Code violations, Defendant is liable for civil penalties under the PAGA. Sung Decl., ¶ 21. Since Plaintiffs' PAGA claims are derivative of Plaintiffs' underlying wage claims, Defendant asserted that the PAGA claim would fail with those claims. *Ibid*; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant further maintained that, given Defendant's good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiffs' claims. Sung Decl., ¶ 21; *see* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming PAGA civil penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

**C. DISCOVERY AND MEDIATION**.

In connection with mediation, the Parties engaged in extensive informal discovery. Sung

Decl., ¶ 22. Defendant produced (1) a class list with employee ID numbers, dates of employment, hourly rate, and job position; (2) a 25% sampling of time and payroll records of Class Members; (3) Defendant's employee handbook; and (4) Plaintiffs' personnel records. *Ibid.*

In preparation for mediation, Class Counsel engaged an expert data scientist with prior wage and hour class action litigation experience, AttorneyTalk, to conduct a comprehensive analysis and extrapolation of the payroll and timekeeping data produced by Defendant to create a detailed exposure analysis for all claims at issue. Sung Decl., ¶ 23. This discovery and analysis allowed the Parties to assess the merits and value of Plaintiffs' claims, the chances of certification of Plaintiffs' claims, and Defendant's potential defenses. *Ibid.*

On February 11, 2026, the Parties participated in a full-day mediation with Gig Kyriacou, Esq. a well-respected wage and hour class action mediator. Sung Decl., ¶ 24. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs' claims, and the legal basis for the claims and defenses. *Ibid.* The Parties reached a tentative class and PAGA settlement at the mediation. *Ibid*. The Parties then finalized the terms of the Settlement and executed Agreement now before the Court. *Ibid*; *see* Sung Decl., ¶ 8, **Exh. 1** (Agreement).

## III. THE PROPOSED SETTLEMENT

### A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Defendant will pay a Gross Settlement Amount of $490,000.00. Agreement, § 1.22 (Exh. 1 to Sung Decl.). Significantly, this Settlement is non-reversionary, and no Class Member will have to submit a claim form to receive an Individual Settlement Payment. Agreement, § 3.1. Each Class Member will automatically receive an Individual Settlement Payment unless they affirmatively opt out of the Settlement. Agreement, § 7.5. The monetary terms of the Settlement are summarized below:

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|---|---|
| Gross Settlement Amount: | $490,000.00 |
| Minus Court-approved attorneys' fees: | $163,333.33 |
| Minus Court-approved verified costs (up to): | $25,000.00 |
| Minus Court-approved Service Payments: | $30,000.00 |
| Minus estimated settlement administration costs: | $7,890.00 |
| Minus amount set aside as PAGA Payment: | $48,000.00 |
| **Net Settlement Amount:** | **$215,776.67** |

Sung Decl., ¶ 25.

The Class Period starts on August 16, 2022 because, according to Defendant, it took over operations of the facility from another entity, Lifecare Centers of America, on August 16, 2022. Sung Decl., ¶ 26.

**1. The Settlement Provides for Reasonable Monetary Payments**

After deducting amounts for the Court-approved attorneys' fees and costs, Class Representative Service Payments to Plaintiffs, the amount set aside as PAGA Payment, and settlement administration costs, the Settlement requires Defendant to pay a Net Settlement Amount of at least $215,776.67 to all Class Members who do not timely opt-out. Agreement, § 3.2. The Net Settlement Amount shall be distributed to participating Class Members as Individual Class Payment, calculated 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. Agreement, § 3.2.4. Additionally, $12,000.00 of the Gross Settlement Amount has been designated as Individual PAGA Payments to Aggrieved Employees and shall be distributed to Aggrieved Employees (including those who submit a valid and timely Request for Exclusion from the class action settlement) who were employed during the PAGA Period proportionally based on the number of Pay Periods worked during the PAGA Period. Agreement, §§ 3.2.5, 7.5.4. In addition to the Gross Settlement Amount, Defendant is obligated to pay the employer's share of payroll taxes on Individual Class Payments allocated to settlement of wage claims. Agreement, § 3.1.

There are approximately 18,971 Workweeks and the per-workweek value of the Net Settlement Amount is $11.37. Sung Decl., ¶ 27. There are approximately 325 Class Members. *Ibid*. The average Individual Class Payment from the Net Settlement Amount is projected to be approximately $663.93, the highest payment is estimated at $2,161.07, and the lowest payment is estimate at $11.37. *Ibid.* There are approximately 8,805 PAGA Pay Periods and the per-pay period value of $12,000.00 PAGA Penalties allocated to Aggrieved Employees is $1.36. Sung Decl., ¶ 28. There are approximately 289 Aggrieved Employees. *Ibid.* The average Individual PAGA Payment is projected to be approximately $25.83, the highest payment is estimated at $103.58, and the lowest payment is estimated at $1.36. *Ibid.*

Class Members will have 45 calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. Agreement, §§ 1.43, 7.5, 7.7.

Effective on the date when Defendant fully funds the Gross Settlement Amount and employer taxes, Participating Class Members will release Released Parties from all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint, arising during the Class Period; and all Aggrieved Employees are deemed to release Released Parties from all causes of action and claims for civil penalties under the California Private Attorneys General Act of 2004 that were alleged or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint and PAGA Notice, arising during the PAGA Period. Agreement, §§ 1.41, 5, 5.2, 5.3. Defendant shall fund the Gross Settlement Amount in two equal installments: 30 days after the Effective Date and 60 days after the Effective Date. Agreement, §§ 1.18, 4.3.

**2. Attorneys' Fees and Costs, Service Payment, and PAGA Payment**

Plaintiffs will apply for a Class Representative Service Payments at the time of seeking final approval of the proposed class action settlement in the amount of $10,000 each for Plaintiffs' service to the Class. Agreement, § 3.2.1. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiffs' requested Service Payments are intended to recognize the time and effort Plaintiffs expended on behalf of the Class, including providing substantial information and documents to Class Counsel, discussing the claims at issue in the litigation, actively participating in the prosecution of Plaintiffs' claims, as well as the risks Plaintiffs undertook by agreeing to serve as the named plaintiff in this case. *See* Banks Decl., ¶¶ 4-6; Poates Decl., ¶¶ 4-6; Reyes Decl., ¶¶ 4-6.

Class Counsel will also apply for an attorneys' fees award of 33 1/3% of the Gross Settlement Amount, which is equivalent to $163,333.33, and up to $25,000 in verified costs reimbursement. Agreement, § 3.2.2. The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Sung Decl., ¶ 29. Class Counsel have incurred substantial attorneys' fees and costs conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research, opposing Defendant's Motion to Compel Arbitration, conducting informal discovery, working with an expert data scientist to analyze Class Members' time and payroll records and create a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Agreement, preparing this Motion, and otherwise litigating the case. *Ibid.* Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Class Notice process and fielding questions from Class Members, preparing the Final Approval papers, and attending the Final Approval hearing. *Ibid.*

California courts recognize that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of a settlement. *See, e.g., Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of 33 1/3% of the Gross Settlement Amount is well within the range of reasonableness and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013). Class Counsel submit that their request for attorneys' fees is reasonable when viewed as an overall percentage of the Settlement and in light of the substantial risks and significant work undertaken, the results obtained, and the efficiency with which the litigation has been conducted. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified costs upon seeking Final Approval.

Additionally, the parties have agreed to designate 48,000.00 of the Gross Settlement Amount as PAGA civil penalties, of which $36,000 (75%) will be paid to the LWDA, with the remaining $12,000 (25%) for distribution to the Aggrieved Employees pursuant to Labor Code § 2699. Agreement, § 3.2.5. Plaintiffs submit this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC* (N.D. Cal. 2011) Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (approving PAGA payment of $7,500 to LWDA out of $6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal. 2013) Case No. C11-03609 HRL, 2013 WL 3541217 (approving PAGA payment of $7,500 to LWDA out of $1.25 million common-fund settlement).

## IV. LEGAL ARGUMENT

### A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337 (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp*. (9th Cir. 1998) 150 F.3d 1011, 1026 (Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g., Hanlo*n, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g., Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

To make a fairness determination, the Court should consider "the strength of Plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. Here, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

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**1. The Strength of Plaintiffs' Case and Risk, Expense, Complexity, and Duration of Further Litigation**

Although Plaintiffs maintain that Plaintiffs' claims are meritorious, Plaintiffs acknowledge that there were substantial risks and uncertainty in proceeding with litigation. As described above, Defendant presented multiple defenses to Plaintiffs' claims, both on the merits and with respect to class certification. Thus, while Plaintiffs are prepared to litigate these claims through class certification and ultimately trial, success was far from certain. Although the Parties engaged in significant informal discovery prior to mediation, the Parties still had significant formal discovery to complete if the Action did not resolve. Sung Decl., ¶ 30. This would have required the expenditure of substantial time and resources by both Parties that would have very likely spanned several years. *Ibid.* Even if Plaintiffs were to certify the class, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Ibid.* This Settlement avoids those risks and the accompanying expense. *Ibid.*

Plaintiffs have not yet filed a motion for class certification, and as such, the extent to which Plaintiffs' proposed classes were certifiable is somewhat speculative. Sung Decl., ¶ 31. Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Class due to a narrowing of the class definition in a Court order on a contested motion for class certification and numerous post-certification motions to compel arbitration of individual claims. *Ibid*. Thus, this factor, too, supports preliminary approval of the settlement.

**2. Amount Offered in Settlement Given Realistic Value of Claims**

The Settlement provides a positive recovery for the Class in the face of disputed claims. Plaintiffs' expert conducted a detailed analysis of alleged unpaid wages and meal and rest period premium payments owing, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiffs' exposure analysis are discussed below:

<u>Regular Rate Violations</u>. Plaintiffs' expert found Defendant's maximum damages for regular rate violations—underpaid overtime, meal period premiums, and paid sick leave wages—to be approximately $9,453.00. Sung Decl., ¶ 32. As discussed above, Defendant argued the incentives at

issue are legally excludable from the regular rate and that most class members signed enforceable arbitration agreements. *Ibid.* Thus, Plaintiffs applied a 65% risk factor against Defendant's maximum exposure to account for the risk for Defendant's defenses on certification and the merits to arrive at an estimated realistic recovery of approximately **$3,308.55**. *Ibid.*

Unpaid Wages Due to Off the Clock Work. Any instances of off-the-clock work would not be reflected in the records. Sung Decl., ¶ 33. Estimating that Class Members on average worked 15 minutes off the clock per shift, Plaintiffs' expert found Defendant's maximum exposure to be approximately $531,258.00. *Ibid.* As discussed above, Defendant advanced numerous defenses, including the amount of overtime premiums paid, its defenses against certification and on the merits, and the arbitration defense. *Ibid.* Thus, Plaintiffs applied a 65% risk factor against Defendant's maximum exposure to account for the risk for Defendant's defenses on certification and the merits to arrive at an estimated realistic recovery of approximately **$185,940.30**. *Ibid.*

Meal and Rest Period Violations. Any instances of interrupted meal periods and rest period violations would not be reflected in the records. Sung Decl., ¶ 34. Estimating a 40% violation rate (e.g., Class Members experienced two meal period and two rest period violations per week) and after applying meal period premiums paid, Plaintiffs' expert found Defendant's maximum exposure to be approximately $611,639.00 for meal periods and $645,136.00 for rest periods. *Ibid.* As discussed above, Defendant advanced numerous defenses, including the amount of meal period premiums paid, its defenses against certification and on the merits, and the arbitration defense. *Ibid.* Thus, Plaintiffs applied a 65% risk factor against Defendant's maximum exposure to account for the risk for Defendant's defenses on certification and the merits to arrive at an estimated realistic recovery of approximately **$214,073.65** for meal premiums and **$225,797.60** for rest periods. *Ibid.*

Waiting Time Penalties. As a result of the unpaid wages and meal and rest period premiums described above, Plaintiffs contended that Defendant failed to comply with its final pay obligations set forth in Labor Code §§ 201 to 203 to former employees. Sung Decl., ¶ 35. Estimating every former employee (estimated 197 formers) experienced at least one unpaid wage violation and at a penalty rate equal to 30 days' wages, Plaintiff's expert found Defendant's maximum exposure to be approximately $1,141,022.00. *Ibid.* Defendant presented several defenses, including that because they possessed good-faith defenses to the underlying wage claims, any failure to pay wages was not "willful" as a matter of law; Plaintiffs' waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations; the arbitration defense; and because the waiting time claim is derivative of Plaintiffs' underlying wage claims, Plaintiffs would need to overcome Defendant's defenses, both as to class certification and on the merits, as to the underlying claims. *Ibid.* Thus, Plaintiffs applied an 80% risk factor against Defendant's maximum exposure to account for the risk for Defendant's defenses on certification and the merits to arrive at an estimated realistic recovery of approximately **$228,204.40**. *Ibid.*

Wage Statement Penalties. Plaintiffs alleged that Defendant is liable for wage statement penalties as a result of the unpaid wages and meal and rest period premiums. Sung Decl., ¶ 36. Those penalties are calculated as $50 for each "initial" violation and $100 for each "subsequent" violation, with a maximum of $4,000 per employee. Lab. Code § 226(e). Estimating every wage statement (approximately 8,805 pay periods) issued to Class Members were inaccurate, Plaintiffs' expert found Defendant's maximum exposure to be approximately $866,050.00. Sung Decl., ¶ 36. As discussed above, Defendant presented several defenses, including its arbitration defense and that because it possessed good-faith defenses to the underlying claims for failure to pay wages was not "knowing and intentional" as a matter of law and because the wage statement claim is derivative of Plaintiffs' underlying wage claims, Plaintiffs would need to overcome Defendant's defenses, both as to class certification and on the merits, as to his underlying claims. *Ibid.* Thus Plaintiffs applied an 80% risk factor against Defendant's maximum exposure to account for the risk for Defendant's defenses on certification and the merits to arrive at an estimated realistic recovery of approximately **$173,210.00**. *Ibid.*

Failure to Reimburse Necessary Business Expense. Estimating a $25 per month reimbursement rate, Plaintiffs' expert found Defendant's maximum exposure to be approximately $110,062.50. Sung Decl., ¶ 37. As discussed above, Defendant advanced numerous defenses, including on the merits, its defenses against certification, and the arbitration defense. *Ibid.* Thus, Plaintiffs applied a 65% risk factor against Defendant's maximum exposure to account for the risk for Defendant's defenses on certification and the merits to arrive at an estimated realistic recovery of approximately **$38,521.88**.

<u>PAGA Penalties</u>. Utilizing $100 initial violation rates and assuming that no penalty "stacking" will apply (*i.e.*, the imposition of multiple penalties per pay period), the maximum total PAGA exposure is estimated at approximately $880,500.00 (8,805 pay periods X $100). Sung Decl., ¶ 38; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from the underlying wage and hour violations discussed above, which Defendant disputes vigorously. Sung Decl., ¶ 38*; see e.g., Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Defendant also assert that the Court would drastically reduce any award of PAGA penalties as "confiscatory." Sung Decl., ¶ 38. Therefore, Plaintiffs applied an 80% risk factor against Defendant's maximum exposure to account for the risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period and to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately **$176,100.00**. *Ibid*.

<u>Conclusion</u>. Using these estimated figures for each of the claims described above, Plaintiffs predicted that the potential realistic recovery for the Class would be approximately **$1,245,156.38**. Sung Decl., ¶ 39. The proposed Settlement of $490,000.00 represents approximately **39.35%** of the reasonably forecasted recovery for the Class. *Ibid.* Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Class, which is consistent with what Class Counsel believes could have been recovered had the case proceeded through trial. *Ibid.*

### 3. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." In *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions and who have been appointed as class counsel. *See* Sung Decl., ¶¶ 2-7.

Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs' case. The Settlement was also reached with the assistance of an experienced and respected wage-and-hour class action mediator. This factor strongly supports preliminary approval of the Settlement. *See Kullar,* 168 Cal.App.4th at 130.

**4. The Preliminary Approval Standard Is Met**

At this stage, the Court can grant preliminary approval of the Settlement and direct that notice be given if the proposed Settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and (3) has no obvious deficiencies. *See* Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

The proposed Settlement reflects approximately **39.35%** of the estimated recovery the Class could reasonably expect in light of the significant litigation risks and will provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc*. (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Class Members at trial"). The average Individual Class Payment of approximately **$663.93** exceeds average payments achieved in other wage and hour class action settlements.[2] Thus, the proposed settlement is within the range of

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[2] *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average recovery of approximately $105); *Ressler v. Federated Department Stores, Inc*., Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average recovery of approximately $90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average recovery of approximately $80); *Doty v. Costco Wholesale Corp*., Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately $65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately $35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately $20); *Sorenson v. PetSmart, Inc*., Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately $60).

possible approval, such that notice should be provided to the Class Members so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Class Members have had the opportunity to opt-out or object.

The Settlement resulted from an exchange of substantial information, arm's-length negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and additional months of negotiating the long-form settlement agreement. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiffs carefully vetted the claims at issue, analyzed extensive sampling time and payroll data, and conducted a detailed damages analysis to arrive at the estimated class-wide damages figures. *See* Sung Decl., ¶¶ 32-39. Thus, this factor supports preliminary approval.

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide substantial monetary relief to the Class. The amounts proposed for Class Counsel's attorneys' fees and costs, LWDA payment, and Plaintiffs' Class Representative Service Payments, are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

**B. THE COURT SHOULD CERTIFY THE CLASS**

The Class satisfies the criteria for certification of a settlement class under California law because: (1) the Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiffs' claims are typical of the claims of absent Class Members; and (4) Plaintiffs and Class Counsel will fairly and adequately represent Class Members' interest. *See* Code Civ. Proc. § 382.

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the Class is defined as "all current and former non-exempt employees who worked for Defendant within the State of California during the Class Period." Therefore, Class Members can be identified from Defendant's personnel and employment records. Defendant represents that the Class consists of approximately 325 current and former non-exempt employees. It would therefore be impracticable to bring all Class Members before the Court or for each Class Member to bring an individual lawsuit. Thus, the proposed Class satisfies numerosity. *See, e.g., Bowles v. Superior Court* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

The focus in a certification dispute is not on the merits but rather on what types of questions, "common or individual," are likely to arise in the Action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 327. Plaintiffs' claims are predicated on, among other issues, Defendant's uniform policy and practice regarding provision of meal and rest periods, regular rate of pay, timekeeping, and provision of wage statements and final wages. These types of claims are commonly held to be proper for class certification. *See e.g., Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 (certifying meal and rest period claims*); Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 324 (certifying exemption misclassification and unpaid overtime claim).

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiffs purchased the same goods as the putative class in a consumer class action). Here, Plaintiffs' claims are typical of those held by the Class Members. First, Defendant employed Plaintiffs as non-exempt employee during the Class Period, and Plaintiffs were subject to Defendant's wage and hour policies at issue in this case. *See* Banks Decl., ¶¶ 2-3; Poates Decl., ¶¶ 2-3; Reyes Decl., ¶¶ 2-3. Second, Plaintiffs were injured by the same challenged practices that allegedly injured the Class as a whole such as meal/rest period violations, regular rate violations, and derivative statutory and civil penalties. *See* Banks Decl., ¶ 3; Poates Decl., ¶ 3; Reyes Decl., ¶ 3. Because Plaintiffs suffered the same injuries as the other members of the Class, the typicality requirement is satisfied.

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 697. Plaintiffs and Class Counsel will adequately represent the Class, as there are no conflicts between Plaintiffs and the proposed Class, and Plaintiffs possesses claims that are in line with those of the Class. Sung Decl., ¶ 37; Banks Decl., ¶ 5; Poates Decl., ¶ 5; Reyes Decl., ¶ 5; *see McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation. *See* Sung Decl., ¶¶ 2-7.

### C. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS NOTICE

This Court should order distribution to the Class of the proposed Class Notice by U.S. Mail, postage prepaid using the last known mailing address information provided by Defendant. *See* Agreement, §§ 1.8, 7.4.2, **Exhibit A** (Class Notice). The Class Notice will be distributed in English and Spanish. Agreement, § 1.11. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173.

Here, the Parties have agreed that the Settlement be administered by Apex Class Action LLC ("Administrator"), an experienced class action settlement administrator. *See generally* Declaration of Kimberly Sutherland ("Administrator Decl.") and attached exhibits. Class Members' addresses will be ascertainable through Defendant's personnel and payroll records, which Defendant will provide to the Administrator within 15 days of preliminary approval of the Settlement. Agreement, § 4.2. Within 14 days of receipt of the Class Members' addresses, the Administrator will run the names of all Class Members through the National Change of Address database to update addresses and mail the Class Notice to all Class Members. Agreement, § 7.4.2. To the extent that any notices are returned, the Administrator will perform a "skip trace" to track any Class Member's current mailing address and remail the notice within 3 business days. Agreement, § 7.4.3.

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Class Members of the nature of the claims, basic contentions and denials of the parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Class Member, and advises them that they will be bound by the terms of the Agreement if they do not opt-out. *See* Agreement, **Exhibit A** (Class Notice). The proposed Class Notice will also notify Class Members of the final approval hearing date and provides the Class contact information for Class Counsel and advises Class Members that they may enter an appearance through counsel if they wish to. *Ibid.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Class Members.

### D. SERVICE OF MOVING PAPERS ON LWDA

On July 23, 2026, Class Counsel uploaded a copy of the Motion for Preliminary Approval, the fully executed Agreement, supporting declarations, and Proposed Order to the LWDA's website. Enclosed as **Exhibit 7** is a true and correct copy of the LWDA's filing confirmation

### E. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, this Court should set a hearing for Final Approval of the Settlement on a date appropriately scheduled to follow the deadline by which Class Members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

## V. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement, provisionally certify the Class, and enter the Proposed Order submitted concurrently herewith.

DATED: July 23, 2026

Respectfully submitted,

**JUSTICE FOR WORKERS, P.C.**

By: ______________________________

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