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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JALON STANLEY, as an individual and on behalf of all others similarly situated, Plaintiff, vs. NORTH STAR EMERGENCY SERVICES INC.; and DOES 1 through 50, inclusive, Defendants.	Case No.: 24CV082930 **PLAINTIFFS’ NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Date: May 19, 2026 Time: 2:30 P.M. Dept.: 21 **Reservation No.: 924738831245** Action Filed: July 10, 2024 Trial Date: None Set

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 19, 2026, at 2:30 P.M., or as soon thereafter as the matter may be heard, before the Honorable Somnath Raj Chatterjee, judge presiding, in Department 21 of the above referenced Court, located at 1225 Fallon Street, Oakland, California 94612, Plaintiffs Jalon Stanley and Roman Jones (collectively, "Plaintiffs") will and hereby do move this Court for the following relief with respect to the Joint Stipulation of Class Action and PAGA Settlement and Release of Claims ("Stipulation for Settlement" or "Agreement") entered into by Plaintiffs and Defendant North Star Emergency Services, Inc. ("Defendant") (together with Plaintiffs, the "Parties"):

1. That the Court approve the Stipulation of Settlement referenced above;

2. That the Court conditionally certify the following Class for settlement purposes only:

> all persons who work or worked for Defendant as non-exempt, hourly paid employees in the State of California at any time from July 10, 2020, through December 29, 2025.

3. That Plaintiffs Jalon Stanley and Roman Jones be appointed as Class Representatives and Larry W. Lee, Kristen M. Agnew, Max W. Gavron, and Kwanporn "Mai" Tulyathan of Diversity Law Group, P.C.; William L. Marder of Polaris Law Group; Mehrdad Bokhour of Bokhour Law Group, P.C.; and Joshua S. Falakassa of Falakassa Law, P.C. be appointed as Class Counsel;

4. That the Court preliminarily approve the Settlement Agreement and the Gross Settlement Amount of at least Two Million Nine Hundred Twenty Thousand Dollars ($2,920,000.00); however, in the event Defendant elects to utilize the two-part payment plan referenced in Paragraph 38 of the Settlement Agreement and discussed below, the Gross Settlement Amount shall be the adjusted amount of Two Million Nine Hundred Seventy Thousand Dollars ($2,970,000.00);

5. That the Court finds on a preliminary basis that the Agreement appears to be within the range of reasonableness of a settlement, including the amount allocated to PAGA

penalties, Service Awards to Plaintiffs, Attorneys' Fees and Costs to Class Counsel, Settlement Administration Costs, and the allocation of payments to Class Members, that could ultimately be given final approval by this Court;

6. That the Court approve the mailing of the proposed "Notice Packet" to be sent to Class Members;

7. That the Court appoint Phoenix Settlement Administrators as the Settlement Administrator; and

8. That the Court schedule the matter for a Final Fairness and Final Approval hearing.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify a class for settlement purposes.

The basis for this Motion, filed without any opposition from Defendant, is that the proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to participate in, opt-out of, or object to the settlement.

This Motion will be based on the attached Memorandum of Points and Authorities, the Agreement and the proposed Notice Packet, and the supporting Declarations of Larry W. Lee, Kristen M. Agnew, Max W. Gavron, Kwanporn "Mai" Tulyathan, William L. Marder, Mehrdad Bokhour, Joshua S. Falakassa, Plaintiff Jalon Stanley, and Plaintiff Roman Jones, upon the oral arguments of counsel (should there be any), and on the complete records and file herein.

DATED: April 27, 2026

DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP
BOKHOUR LAW GROUP, P.C.
FALAKASSA LAW, P.C.

By: ______________________
Max W. Gavron
Attorneys for Plaintiffs and the Class

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I. INTRODUCTION

Plaintiffs Jalon Stanley and Roman Jones (together, "Plaintiffs") seek preliminary approval of a proposed $2,920,000.00[1] non-reversionary class action settlement with Defendant North Star Emergency Services Inc. ("Defendant"). The Gross Settlement Amount is inclusive of payments to Settlement Class Members, Attorneys' Fees and Costs, Service Awards to Plaintiffs for their services as class representatives, PAGA Settlement Amount, and Settlement Administration Costs as provided by this settlement. The settlement will provide substantial monetary payments to approximately 3,153 Class Members. And, as set forth more fully below, the proposed settlement satisfies all the criteria for settlement approval under California law. The settlement was reached after extensive investigation and litigation, including mediations and negotiations.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The *Stanley* Action

On or about June 18, 2024, Plaintiff Jalon Stanley ("Stanley") filed a notice with the California Labor and Workforce Development Agency ("LWDA"), alleging that Defendant violated Labor Code §§ 201-203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1, pursuant to Labor Code § 2699. Declaration of Max W. Gavron ("Gavron Decl.") ¶ 2.

On July 10, 2024, Stanley filed a putative class action lawsuit against Defendant in the Superior Court of California, County of Alameda, *Jalon Stanley v North Star Emergency*

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[1] As discussed more fully below, the Settlement Agreement provides Defendant an option to fund the Settlement in two lump sums. Settlement Agreement ¶ 38. If Defendant elects the two-part payment plan, the Gross Settlement Amount shall be increased by Fifty Thousand Dollars ($50,000.00), to an adjusted Gross Settlement Amount of Two Million Nine Hundred Seventy Thousand Dollars ($2,970,000.00). Defendant will then deposit an initial amount of at least One Million Four Hundred Sixty Dollars ($1,460,000.00) into the Qualified Settlement Fund established by the Settlement Administrator within forty-five (45) days of the Effective Date. Defendant may opt to deposit a greater initial sum at its convenience. Defendant will then deposit the second payment of the remainder of the adjusted Gross Settlement Amount, estimated to be One Million Five Hundred Ten Thousand Dollars ($1,510,000.00), no later than January 31, 2027.

Services Inc., Case No. 24CV082930 (the "*Stanley* Action" or "Action"). Gavron Decl. ¶ 3. Stanley subsequently filed a First Amended Complaint on August 20, 2024, alleging a single cause of action for violation of Labor Code § 2698, *et seq*., the Private Attorneys General Act, predicated on underlying violations of Labor Code §§ 201-203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1. *Id*. ¶ 3.

On May 20, 2025, Stanley filed an amended notice with the LWDA, alleging an additional violation by Defendant of Labor Code § 226, for failure to identify accurate dates of the payroll period. Gavron Decl. ¶ 4. Stanley filed a Second Amended Complaint on August 1, 2025, to include the PAGA claim asserted in his amended notice to the LWDA. *Id*. ¶ 4.

B. The *Jones* Action

On or about November 14, 2024, Plaintiff Roman Jones ("Jones") filed a notice with the LWDA, alleging that Defendant violated Labor Code §§ 201-203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1, pursuant to Labor Code § 2699. Gavron Decl. ¶ 5.

On December 3, 2024, Jones filed a putative class action lawsuit against Defendant in the Superior Court of California, County of Alameda, entitled *Roman Jones v North Star Emergency Services, Inc.*, Superior Court of California, County of Alameda Case No. 24CV101999 (the "*Jones* Action"). *Id*. ¶ 6.

Jones subsequently filed a First Amended Complaint on September 4, 2025, alleging class and representative action claims for: (1) failure to pay all overtime wages; (2) meal period violations; (3) rest period violations; (4) failure to pay all sick time; (5) failure to timely pay wages; (6) wage statement violations; (7) failure to reimburse necessary business expenses; (8) unfair competition; and (9) PAGA penalties. *Id*. ¶ 7.

C. Summary of Investigation and Discovery and Mediation

Class Counsel investigated the facts surrounding the claims in the *Stanley* Action and *Jones* Action before filing the lawsuit and conducted informal discovery during the course of litigating and prosecuting this case. Gavron Decl. ¶ 8.

The Parties agreed to participate in private mediation. Gavron Decl. ¶ 9. In advance of the mediation, Defendant produced time and payroll data informally, which allowed Plaintiffs to further investigate and evaluate the claims. *Id*. ¶ 9. The data produced by Defendant included, but was not limited to: (1) the estimated number of putative class and PAGA members; (2) the estimated number of putative class and PAGA members who separated employment during the liability period; (3) employee handbooks and relevant policies; and (4) the number of workweeks and pay periods during the liability period. Based upon this information with the assistance of an expert consultant, counsel for Plaintiffs conducted a full damage analysis. *Id.*

On May 15, 2025, the Parties participated in a global mediation of the *Stanley* Action and the *Jones* Action with experienced professional mediator Christopher E. Panetta. *Id*. ¶ 10. Despite thorough arm's length negotiations, the Parties were unable to reach an agreement to resolve the *Stanley* Action and *Jones* Action. *Id*. Litigation continued in each matter. *Id*.

On October 30, 2025, the Parties participated in a second mediation with neutral Christopher E. Panetta. *Id*. ¶ 11. After extended negotiations, the Parties reached an agreement in principle to resolve the *Stanley* Action and *Jones* Action. The terms of the agreement were memorialized in a confidential Memorandum of Understanding. *Id*.

D. The Consolidated Action and Third Amended Complaint

Pursuant to the Settlement Agreement and negotiations leading up to it, Plaintiffs submitted a Joint Stipulation to Consolidate Cases and Grant Leave to File Third Amended Complaint in Lead Case for Settlement Purposes, which requested leave to file the Third Amended Complaint ("TAC"). Gavron Decl. ¶ 12. The TAC includes the claims of the *Stanley* Action and *Jones* Action. *Id.*

III. SUMMARY OF THE CURRENT SETTLEMENT

The material terms of the settlement are described below and set forth in detail in the Joint Stipulation of Class Action and PAGA Settlement and Release of Claims ("Stipulation of Settlement" or "Agreement"). A true and correct copy of the Agreement is attached to the Declaration of Max W. Gavron as **Exhibit A**.

A. The Class Definition

The settlement seeks to release the claims of "all persons who work or worked for Defendant as non-exempt, hourly paid employees in the State of California at any time from July

10, 2020, through December 29, 2025" (the "Class" or "Class Members"). Agreement ¶ 4. Defendant estimates that there are approximately 3,153 unique individuals comprising the Class. *Id.* ¶ 14.

B. The Gross Settlement Amount & Optional Payment Plan

The settlement provides for the gross settlement amount ("Gross Settlement Amount") of a minimum of Two Million Nine Hundred Twenty Thousand Dollars ($2,920,000.00). Agreement ¶ 14. The settlement allocates $150,000.00 of the Gross Settlement Amount for PAGA penalties (the "PAGA Settlement Amount"). *See id.* ¶ 21. Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Settlement Amount, *i.e.*, the sum of $112,500.00, will be paid to the California Labor and Workforce Development Agency. *Id.* The remaining twenty-five percent (25%) of the PAGA Settlement Amount, *i.e.*, the sum of $37,500.00, will be distributed to the Aggrieved Employees. *Id*.

As explained in the Settlement Agreement and Class Notice, the Settlement Agreement provides Defendant an option to fund the Settlement in two lump sums. Settlement Agreement ¶ 38. If Defendant elects the two-part payment plan, the Gross Settlement Amount shall be increased by Fifty Thousand Dollars ($50,000.00), to an adjusted Gross Settlement Amount of Two Million Nine Hundred Seventy Thousand Dollars ($2,970,000.00). Defendant will then deposit an initial amount of at least One Million Four Hundred Sixty Dollars ($1,460,000.00) into the Qualified Settlement Fund established by the Settlement Administrator within forty-five (45) days of the Effective Date. Defendant may opt to deposit a greater initial sum at its convenience. Defendant will then deposit the second payment of the remainder of the adjusted Gross Settlement Amount, estimated to be One Million Five Hundred Ten Thousand Dollars ($1,510,000.00), no later than January 31, 2027. Defendant will make its election no later than 15 calendar days prior to the deadline for Plaintiffs to file their motion for Final Approval, so that Plaintiffs may inform the Court of Defendant's election. *Id.* The two-part payment plan is subject to Court approval. Should the Court reject the proposed two-part payment plan, then Defendant shall fund the Gross Settlement Fund in its entirety within 45 days of the Effective Date. Similarly, should Defendant choose to fund the Settlement in one lump sum, then payment shall be due forty-five days after the Effective Date. *Id.*

C. The Calculation of the Individual Settlement Payment

The balance of the Gross Settlement Amount remaining after deduction of the approved Service Awards to Plaintiffs, Attorneys' Fees and Costs, Settlement Administration Costs, and PAGA Settlement Amount ("Net Settlement Amount") will be available for distribution to Class Members who do not opt out of the settlement ("Settlement Class Members"). Agreement ¶¶ 17, 35. The Parties currently estimate that the Net Settlement Amount will be $1,713,166.67.[2] Gavron Decl. ¶ 17.

The Individual Settlement Payments payable to each Settlement Class Member will be based on the total number of work weeks in which the employee performed at least one day of work during the applicable time period. Agreement ¶ 45. The Individual Settlement Payments shall be allocated as follows: 10% to the settlement of wage claims and 90% to the settlement of claims for interest and statutory penalties. *Id.* ¶ 68.

Based on the approximate number of Class Members (3,153), each Class Member will be entitled to recover on raw average, up to $543.34 each.[3] Gavron Decl. ¶ 25. The amount any particular Class Member will be entitled to recover will be greater or less than this average depending on the number of weeks he or she worked, with some entitled to receive more, and others less. Agreement ¶ 45. This is fair, as it strives to allocate greater penalties to individual employees who experienced a higher number of alleged violations. Gavron Decl. ¶ 25.

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[2] Plaintiffs calculate the remaining estimates assuming that Defendant will elect to make one lump sum payment for a lower amount ($2,920,000.00). This is the conservative position because if Defendant elects the two-part payment plan additional money will be available for distribution to the class and thus the potential payment to each individual class member will also increase. Gavron Decl. ¶ 17.

[3] Class Members do not need to do anything should they wish to receive their share of the settlement funds. This substantially decreases the amount of burden each Class Member must bear in order to receive his/her settlement share. If a Class Member does not wish to take part in this settlement and be bound by the release of the class claims, he/she must submit a Request for Exclusion. Such obligations are thoroughly identified in the Notice Packet. *See* Agreement, Ex. A.

D. Individual PAGA Payments to Aggrieved Employees

Class Members who also meet the criteria of aggrieved employees will receive Individual PAGA Payments as a result of the settlement of Plaintiffs' PAGA claims. Aggrieved Employees are defined as "all persons who worked for Defendant as non-exempt, hourly paid employees in the State of California at any time from June 18, 2023, through December 29, 2025." Agreement ¶ 2.

Twenty-five percent (25%) of the PAGA Settlement Amount, *i.e*., the sum of $37,500.00, is allocated for payment to the Aggrieved Employees. *Id.* ¶¶ 21, 43. The Individual PAGA Payment payable to each Aggrieved Employee will be based on the total number of work weeks in which the employee performed at least one day of work for Defendant. *Id*. ¶¶ 43, 46. The Individual PAGA Payments shall be allocated as follows: 100% to the settlement of penalties. *Id.* ¶ 68.

E. The Settlement is Non-Reversionary

This is a non-reversionary settlement. The entirety of the Gross Settlement Amount will be fully paid out. Agreement ¶ 39. Settlement Class Members will have 180 days from the mailing of the settlement payment to cash the check. *Id.* ¶ 66. After the expiration of 180 days, the funds represented by uncashed settlement checks will be remitted to the Unclaimed Property Fund maintained by the State of California Controller's Office in the name of the Settlement Class Member and/or Aggrieved Employee. *Id*.

F. Attorneys' Fees and Reimbursement of Litigation Costs

As part of the settlement, Defendant does not object to Class Counsel's request for attorneys' fees up to one-third of the Gross Settlement Amount, *i.e.*, the sum of $973,333.33,[4] plus up to $40,000.00 for reimbursement of litigation costs, subject to the Court finally approving this Settlement. Agreement ¶ 40.

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[4] The Settlement Agreement contemplates the attorneys' fees provision to increase based on a percentage of the Gross Settlement Amount if Defendant exercises the option to pay in two payments. Settlement Agreement ¶ 3.

G. Service Awards to Plaintiffs

Pursuant to the terms of the Stipulation of Settlement, and without opposition from Defendant, Plaintiffs are entitled to request a Service Award. Agreement ¶ 32. Specifically, Plaintiffs request payment of the following amounts: $10,000.00 to Jalon Stanley; and $10,000.00 to Roman Jones. *Id.* Both Plaintiffs and Class Counsel expressly acknowledge that the Court has final discretion in the Service Award. *Id.*

H. Settlement Administration Costs

Finally, the settlement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. Agreement ¶ 34. The Parties have received a quote from Phoenix Settlement Administrators for a fee of approximately $23,500.00. *Id*. Any portion of the Settlement Administration Costs not used or approved by the Court shall be added to the Net Settlement Amount. *Id.*

I. Scope of the Settlement Class Members' and Aggrieved Employees' Release

The scope of the release, as listed below, is identified in the Stipulation of Settlement at Section 26, as well as in the Notice Packet that will be sent to Class Members. Upon the Effective Date, Plaintiffs and all Settlement Class Members will release the following:

> any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action of any nature under any state, federal or local law arising out the facts alleged or which could have reasonably been alleged based on the facts in the complaints and amended complaints in the Action, including without limitation, California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 2802, California Industrial Commission Wage Orders, and Business and Professions Code § 17200 *et seq*.

Agreement ¶¶ 27, 58.a. As shown, the scope of the release is narrow and is limited to the claims asserted in the complaints and amended complaints in the Action. Gavron Decl. ¶ 30.

The scope of the release for Aggrieved Employees is equally limited to the allegations of the complaints and amended complaints in the Action. Agreement ¶ 28, Ex. B; Gavron Decl. ¶ 31.

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J. Notice to Class Members

Should the Court grant the instant motion, Defendant will provide the Settlement Administrator with a list containing each Class Member's full name, most recent mailing address, telephone number, Social Security number, dates of employment, the number of work weeks worked during the Class Period, the number of pay periods worked during the PAGA Period, and any other information needed to calculate the Individual Settlement Payments and Individual PAGA Payments. Agreement ¶ 6. Within fifteen (15) calendar days of receipt of the Class Members' contact information from Defendant, the Settlement Administrator will mail the Notice Packet to Class Members. *Id*. ¶ 51. Prior to mailing the Notice Packet to Class Members, the Settlement Administrator shall perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. *Id.* ¶ 52. Any Notice Packet returned to the Settlement Administrator as non-deliverable on or before the opt-out deadline shall be sent via regular first-class U.S. mail to the forwarding address affixed thereto. *Id*. If no forwarding address is provided, the Settlement Administrator shall perform a skip trace or other search to locate the most current address and resend the Notice Packet. *Id*.

As set forth in the Notice Packet, Class Members will be allowed to opt out of or object to the settlement within 30 days of the initial mailing of the Notice Packet. Agreement ¶¶ 31, 55, 60.

IV. TWO-STEP APPROVAL PROCESS

Any settlement of a class action lawsuit must be reviewed and approved by the court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the class members for their comment or objections.

Preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing." Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th ed. 2002).

The procedures for the parties' submission of a proposed settlement for preliminary approval by the court also are discussed in *4 Newberg on Class Actions*:

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

Id. § 11.24.

Here, the Parties have reached such an agreement and have submitted to this Court in connection with this Motion a copy of the Stipulation of Settlement fully setting forth the agreement reached among the Parties. *See* Gavron Decl. ¶ 13, Ex. A. The settlement sets forth all terms of the agreement reached by the Parties, which include, among other things, the method for calculating the Settlement Class Members' Individual Settlement Payments.

V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE SETTLEMENT

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996). In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include the strength of plaintiff's 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, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008).

In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. *Kullar*, 168 Cal. App. 4th. at 133. The record need not contain an explicit statement of the maximum theoretical recovery. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 408-09 (2010).

A. The Settlement Was Reached Through Arm's Length Negotiations Between Experienced Wage and Hour Attorneys

As demonstrated in Section II *supra*, the settlement is a result of arm's length negotiations. The Parties attended two full-day mediations with experienced wage and hour mediator, Christopher E. Panetta. During the mediations, the Parties spoke at length about the strengths and weaknesses of each side's claims and defenses, whether the claims could be certified, and the scope of Defendant's liability. With the assistance of Mr. Panetta, the Parties reached an agreement for a global resolution of the Action for a non-reversionary fund of at least $2,920,000.00.

B. The Parties Engaged in Significant Investigation and Discovery

Plaintiffs engaged in extensive investigation and informal discovery regarding the merits of the claim and Defendant's defenses. Gavron Decl. ¶ 8. Additionally, in advance of the mediation, Defendant produced extensive time and payroll data for putative class members, written policy documents, countless meet and confer calls addressing the claims and defenses, and participated in two separate mediation efforts. *Id*. ¶ 9. Using the information garnered, Class Counsel conducted a full damages and penalty analysis. *Id*.

C. The Strengths and Weaknesses of the Class and Representative PAGA Claims

For the reasons set forth below, the settlement affords fair relief to the Settlement Class, while avoiding significant legal and factual battles, especially at class certification and trial, that otherwise may have prevented the Settlement Class from obtaining any recovery at all. Gavron Decl. ¶ 55. Thus, although Class Counsel believes the claims are meritorious, they are experienced and realistic, and understand that the outcome of a trial, and the outcome of any appeals that would inevitably follow if the class and/or aggrieved employees prevailed at trial, are inherently uncertain in terms of both outcome and duration. Gavron Decl. ¶ 55; Declaration of Larry W. Lee ("Lee Decl.") ¶ 4; Declaration of Kristen M. Agnew ("Agnew Decl.") ¶ 2;

Declaration of Kwanporn "Mai" Tulyathan ("Tulyathan Decl.") ¶ 7; Declaration of William L. Marder ("Marder Decl.") ¶ 2-4; Declaration of Mehrdad Bokhour ("Bokhour Decl.") ¶ 10; Declaration of Joshua S. Falakassa ("Falakassa Decl.") ¶ 11. Plaintiffs address the relative strengths and weaknesses of the claims below. Importantly, Defendant contended that an arbitration agreement barred class claims altogether, which would have provided a complete defense to the putative class action claims if successful.

1. The Strengths and Weaknesses of the Overtime (and other) Regular Rate Claims

Plaintiffs allege that Defendant miscalculated employees' overtime rates of pay by failing to include all forms of compensation, such as bonuses and shift differential pay. Gavron Decl. ¶ 32. Defendant argued that these claims were inherently limited in scope as they would only impact those pay periods/workweeks where an employee earned overtime, meal or rest period premiums, or sick pay **and** additional non-discretionary remuneration. Each of these claims were subject to similar defenses. First, Defendant would have argued that some of the additional remuneration identified was discretionary in nature and thus did not need to be included in the regular rate of pay calculation for overtime, meal/rest period premiums, or sick pay. Plaintiffs, of course, contended otherwise.

Pursuant to California law, employers must include all non-discretionary items of pay, including incentive pay and/or bonuses, into the regular rate of compensation or pay. (Cal. Division of Labor Standards Enforcement ("DLSE") Enforcement Policies and Interpretation Manual §§ 49.1, 49.2.4 (June 2002); *Marin v. Costco Wholesale Corp.*, 169 Cal. App. 4th 804, 807 (2008), as modified on denial of reh'g (Jan. 21, 2009) ("Where a bonus payment is considered a part of the regular rate at which an employee is employed, it must be included in computing his regular hourly rate of pay and overtime compensation."). Defendant argued that it properly calculated overtime by using the rate in effect method, as opposed to a weighted average. *See* 29 CFR § 778.419 (approving of rate in effect method under Fair Labor Standards Act). Plaintiffs argued that the weighted average method of calculation would have benefitted employees such that it was improper to use the rate in effect calculation to the detriment of the employees. While not controlling, one appellate decision, *Levanoff v. Dragas Management Corp.* (2021) 65 Cal.App.5th 1079, briefly upheld the rate-in-effect method; that decision was depublished and thus carries no precedential value. (Cal. Rules of Court, rule 8.1115(a).) Even *Levanoff* turned on a finding that the rate-in-effect method in that specific case paid employees more than the weighted-average method underscoring the same principle that where the method results in less pay, it is impermissible. Here, Plaintiff argued that the rate in effect method was impermissible because it worked to the detriment of employees, whereas Defendant argued the opposite. Defendant also argued that it maintained facially compliant overtime policies that instructed that employees be paid for all overtime hours worked.

Plaintiffs' expert analyzed the time and pay data provided by Defendant in advance of the mediation and determined that if the Court were to accept Plaintiffs' legal theory as correct, the underpayment could be as high as ~$1.4 million for alleged underpayment of overtime wages related to the regular rate of pay. Generally, Defendant argued that any underpayment of overtime outside of the regular rate claim would be subject to complete defense and/or decertification because of the applicable arbitration agreement and/or because any underpayment was the result of employee individual choice.

2. The Strengths and Weaknesses of the Meal & Rest Period Claims

As explained by the California Supreme Court in *Ferra v. Loews Hollywood Hotel, LLC*, employers must pay meal and rest period premiums at the regular rate of pay. 11 Cal. 5th 858 (2021). Thus, Plaintiffs argued that because Defendant paid employees non-discretionary incentive wages such as bonuses and shift differential pay, it should have included the value of those payments in the regular rate of compensation when paying meal and rest period premiums. Gavron Decl. ¶ 35. Defendant argued many of the same defenses as it did in response to the overtime regular rate claim. Plaintiff's expert determined that the underpayment likely totaled between $21,589 to $144,533 depending on whether the value of alleged gains were included to offset the harm when evaluating the rate in effect method as opposed to the weighted average method of calculation. In either case, the underpayment of wages for the *Ferra* claim was relatively minimal, as compared to the potential penalties addressed below.

In addition to its arguments regarding the alleged *Ferra* underpayment, Defendant argued several things in its defense. Most prominently, Defendant argued that *Ferra* did not alleviate Plaintiffs of their burden to prove the underlying meal and/or rest period violation. Gavron Decl. ¶ 36. In other words, even if Plaintiffs could show that Defendant paid premiums at less than the regular rate of pay, which Defendant disputed, Plaintiffs would still have to demonstrate that Defendant did not meet its obligation under the Labor Code and *Brinker* to provide employees a meal period and rest period. *See Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) ("On the other hand, the employer is not obligated to police meal breaks and ensure no work thereafter is performed."). If Plaintiffs were able to demonstrate on a class wide basis that class members suffered at least one meal or rest period violation per work week, the damages on these claims could be as high as ~$4.08 million (183,000 workweeks x $22.29 (approximate average rate of pay)). However, for the reasons below this is likely a gross overstatement of the potential exposure on these potential class claims, which would be completely extinguished if the Court enforced the arbitration agreement.

This, Defendant argued, would result in a claim that could not be certified as a class action for several reasons. Gavron Decl. ¶ 37. First, Defendant contended that it maintained and enforced legally compliant meal period policies. Defendant also could have argued that even in instances where it paid a meal period premium, it did so without any reference or investigation regarding whether the employee was actually entitled to receive the premium. Defendant would contend that because of this policy, Plaintiffs could not use the fact that Defendant paid a premium as a basis to demonstrate liability. Defendant would argue this would require Plaintiffs to investigate and ask each putative class member the reason time records may have triggered the automatic payment of a premium. *Id.* ¶ 37.

Plaintiffs, on the other hand, argued that they could use the presumption articulated in *Donohue v. AMN Services, LLC*, 11 Cal. 5th 58, 77 (2021) to establish the underlying violations. Defendant could counter that *Donohue* allows the presumption to be rebutted, which could easily be done in this circumstance where the putative class members ranged in the thousands and Defendant had compliant policies. Gavron Decl. ¶ 38. Accordingly, while Plaintiffs were confident in this claim, the potential for certification was far from certain.

3. The Strengths and Weaknesses of the Sick Pay & Waiting Time Penalty Claim

As a separate regular rate violation, Plaintiffs allege that Defendant also underpaid sick pay earnings whenever non-discretionary incentive wages were paid within the same work week. Under the Healthy Workplaces, Healthy Families Act of 2014, Cal. Lab. Code § 245, *et seq*. ("HWHFA"), "[p]aid sick time for nonexempt employees shall be calculated in the **same manner as the regular rate of pay** for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek." Cal. Lab. Code § 226(l)(1) (emphasis added). Here, Plaintiffs allege that Defendant consistently paid sick pay at the wrong rate of pay, even during workweeks when the employee earned non-discretionary incentive wages. Gavron Decl. ¶ 39. Plaintiffs contend that they and other Class Members are owed waiting time penalties for the allegedly underpaid sick pay wages. *Id*.

Potential exposure on waiting time penalties for all theories of liability could be as high as ~$9.5 million (1,774 former employees x 30 days x 8 hours x $22.29). However, Defendant had strong defenses to imposition of these penalties.

Defendant would have argued that Plaintiffs cannot recover derivative waiting time penalties or assert a claim for sick pay wages because there is no private right of action. *See* Cal. Lab. Code § 248.5 (providing only that "the Labor Commissioner or the Attorney General may bring a civil action in a court of competent jurisdiction against the employer or other person violating this article"); *see also, e.g., Titus v. McLane Foodservices, Inc.*, 2016 WL 4797297, at *4 (E.D. Cal. Sept. 14, 2016) (the sick pay "statute provides that only the LWDA may recover civil penalties for a violation"); *Schroeder v. Envoy Air, Inc.*, 2016 WL 11520388, at *11 (C.D. Cal. Sept. 27, 2016) ("because the legislature did not clearly and unmistakably create a private right of action to enforce section 246(h), the Court concludes that there is none available"). Gavron Decl. ¶ 41. Regarding Plaintiffs' claim for waiting time penalties, some courts have held that sick pay is not "wages" entitling employees to Section 203 penalties even if underpaid. *See McPherson v. EF Intercultural Found., Inc.*, 47 Cal. App. 5th 243, 263, 260 Cal. Rptr. 3d 640, 654 (2020), review denied (July 22, 2020) ("because paid sick leave is not considered a form of "wages," employers are not required to pay employees their unused sick leave on termination -- accrued or not. (§ 246, subd. (g)(1).)").

Defendant also would have argued that, even if there were a private right of action and any underpayment could be proven (which Defendant disputes), its payments to employees were made pursuant to a good faith belief that it was paying sick pay correctly, and as a result, Plaintiffs cannot establish that Defendant willfully failed to pay the sick pay wages at separation of employment and/or that a good faith dispute exists as to whether the allegedly underpaid sick pay amounts to wages due. *Id.* This is a legal defense that, if successful, could potentially defeat Plaintiffs' Section 203 claim. *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal. 5th 1056, 1074 (2024); *Chavez v. Converse, Inc.,* 2020 WL 1233919, at *l (N.D. Cal. 2020) (holding that an employer's failure to pay is not willful where there is uncertainty in the law or a "good faith mistaken belief that wages are not owed"). Gavron Decl. ¶ 42.

4. The Strengths and Weaknesses of the Wage Statement Claim

Plaintiffs allege a claim under Labor Code § 226(a) predicated on Defendant's alleged failure to list the correct gross and net wages earned, total hours worked, and the number of hours worked at each hourly rate of pay. Labor Code § 226(a). Plaintiffs allege that as a result of the violations above, the wage statements issued to putative class members did not comply with California law. Gavron Decl. ¶ 43. Accordingly, this claim suffers from the same weaknesses, and benefits from the same strengths, addressed above.

Plaintiffs also argued that the end day of the pay period was incorrect on wage statements issued to employees. This alleged violation arose in the context of investigating Defendant's arguments in defense of Plaintiffs' allegations that Defendant violated Labor Code § 204(d), which Plaintiffs brought under the PAGA. Labor Code § 204(d) requires wages that are paid on a weekly, bi-weekly, or semi-monthly basis, to be paid within seven calendar days of the end of the payroll period within which the wages were earned. Employees may seek penalties for violations of this requirement pursuant to Labor Code § 2699 ("PAGA"). Defendant contended that it paid employees within seven days of the close of the pay period, but that the end date of the pay period was incorrect on its paystub because of the way its payroll provider prepared the data and coded the wage statements. Accordingly, Plaintiffs amended their PAGA letters and complaints to assert this direct wage statement claim.

Plaintiffs would also face the additional burden of demonstrating that any alleged omission of information from the wage statements was a "knowing and intentional failure" by Defendant to comply with Labor Code § 226(a). *See Harris v. Vector Mktg. Corp*., 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009) (granting summary judgment in favor of employer and finding its conduct was not "knowing and intentional"); Gavron Decl. ¶ 45. Defendant also would have argued that penalties under Section 226 are subject to a similar "good faith" defense as articulated above in the context of Plaintiffs' claims for waiting time penalties. *See, e.g., Naranjo v. Spectrum Security Services, Inc.*, 15 Cal. 5th 1056, 1074 (2024); *Apodaca v. Costco Wholesale Corp.*, 2014 WL 2533427, at *3 (C.D. Cal. June 5, 2014) ("Where an employer has a good faith belief that it is not in violation of Section 226, any violation is not knowing and intentional."); *Wright v. Adventures Rolling Cross Country, Inc.*, 2013 WL 1758815, at *9 (N.D. Cal. Apr. 24, 2013) (same); *Ricaldai v. U.S. Investigations Servs.*, LLC, 878 F. Supp. 2d 1038, 1047 (N.D. Cal. 2012) (same); *Dalton v. Lee Publ'ns, Inc.*, 2011 WL 1045107, at *5 (S.D. Cal. Mar. 22, 2011) (same).

While Plaintiffs' experts calculated an exposure potentially as high as ~$4.8 million for the wage statement claim, if Defendant were successful in its good faith defense, the penalties could be reduced to zero. Considering the strengths and weaknesses of this claim also supports the proposed settlement as fair, adequate, and reasonable. Gavron Decl. ¶ 46.

5. The Strengths and Weaknesses of the Business Reimbursement Claims

On Plaintiffs' reimbursement claim, Defendant argued that employees were not required to use personal cell phones to communicate for purposes of employment. Gavron Decl. ¶ 48. While Plaintiffs contended that they were required to use their phones, Defendant argued that any decision to use their cell phones for work purposes was voluntary and/or unique to Plaintiffs and not suitable for class resolution. *Id.* ¶ 47. If successful, the potential recover on this claim could be in the range of $915,000 if Plaintiffs could prove reimbursement of approximately $5.00 per workweek for personal cellphone use.

6. The Strengths and Weaknesses of the 204 Claim

Plaintiffs allege that Defendant consistently paid wages more than seven days following the close of the pay period. Gavron Decl. ¶ 48. Labor Code § 204(d) requires wages that are paid on a weekly, bi-weekly, or semi-monthly basis, to be paid within seven calendar days of the end of the payroll period within which the wages were earned. Employees may seek penalties for violations of this requirement pursuant to Labor Code § 2699 ("PAGA").

Defendant has argued that its pay period actually closes before the end of a calendar day; however, its payroll provider would not allow it to include the same date as the start and end of a pay period on its wage statements. Defendant therefore argues that it did pay within seven days following the close of the pay period. Gavron Decl. ¶ 49.

7. The Strengths and Weaknesses of the PAGA Claims Generally

Plaintiffs also pursue representative PAGA claims. Given that the PAGA claim is derivative in nature, it faced the same obstacles. The PAGA claim also was subject to unique considerations given the Court's discretion to lower penalties. Gavron Decl. ¶ 50. If the Court were to award a single penalty at the maximum penalty per pay period, the exposure could be as high as ~$4.5 million. If the Court were to "stack" multiple penalties per pay period, the exposure could be higher; however, courts are reluctant to stack penalties where there hasn't been a prior enforcement action.

Even assuming Plaintiffs ultimately prevailed on their PAGA claims, the Court still has discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline to award PAGA penalties where "if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such reduction to be proper. *Id*. at 539. Similarly, this Court reduced the maximum PAGA penalty amount by 93% in *Parr v Golden State Overnight Delivery Service, Inc*. *Parr v Golden State Overnight Delivery Service, Inc.*, 2014 WL 11199453 (Alameda Sup. Ct. July 10, 2014). With respect to the Labor Code § 226 claim, this Court noted in assigning a $15 penalty, "[a]mong the long list of possible Labor Code violations that could support a PAGA action, this is by no means the most serious, and there is no evidence that any employee was paid less than what was due or was otherwise harmed by the form of wage statement used by [defendant]." *Id*. A 90% reduction on the PAGA penalties here would result in potentially available penalties of approximately $450,000.00. Gavron Decl. ¶ 51.

In *Magadia v. Wal-Mart Assocs., et al.*, while the trial court imposed substantial PAGA penalties upon the defendant, such amount still represented reductions of 67% and 80% of the potential PAGA penalties at issue. 2019 U.S. Dist. Lexis 91792 at *87-*100 (N.D. Cal. May 31, 2019). Moreover, this was only after the plaintiff in *Magadia* had prevailed after trial. Thereafter, the Ninth Circuit reversed the trial court's ruling eliminating the judgment altogether, which demonstrates the significant risk presented in moving forward with litigation. *Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668, 677 (9th Cir. 2021).

Based on the information provided by Defendant, Plaintiffs' counsel estimated total damages and penalties could be as high as approximately $25.2 million, if Plaintiffs were successful in certifying all of their claims and prevailing on the merits. Gavron Decl. ¶ 53. Plaintiffs' success was far from certain, given the risks addressed above and the possibility of years of appeal and reversal of judgment. Therefore, the proposed settlement of $2,920,000.00 is fair, adequate and reasonable and well within the range accepted by most courts (~11.5% of maximum exposure). *See Lesevic v. Spectraforce Techs., Inc.*, 2021 WL 1599310, at *3 (N.D. Cal. Apr. 23, 2021) (noting wage and hour class fund of $600,000 that compensated for 7% of maximum potential recovery was reasonable); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (approving wage and hour class settlement which obtained only 9.1% of projected damages); *Villegas v. J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that settlement of approximately 15% of the potential recovery was fair and reasonable); *McPhail v. First Command Fin. Planning, Inc.*, 2009 WL 839841, at *5 (S.D. Cal. Mar. 30, 2009) (approving settlement equal to approximately 7% of estimated damages); *Int'l Bhd. Of Elec. Workers Local 697 Pension Fund v. Int'l Game Tech., Inc.*, 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012) (approving settlement recovering approximately 3.5% of maximum exposure).

Although Plaintiffs believe in the merits of the alleged claims and maintain that there is no reason for reducing PAGA penalties, Plaintiffs are aware that Defendant may raise defenses to the statutory violations and further with respect to the reduction of PAGA penalties and that it could be persuasive to the Court. Gavron Decl. ¶ 54. The Gross Settlement Amount was premised with these risks and the specter of the arbitration agreement in mind. *Id*. ¶ 54.

D. The Court Should Preliminary Approve the Award of Litigation Costs and Fees

California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc*., 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc*., 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

Under California law, the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (Aug. 11, 2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). Under the percentage of the fund method, the Court's objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market will set…. The judge, in other words, is trying to mimic the market in legal services").

An award of one-third of the fund in attorneys' fees mimics the marketplace as it "is supported by the fact that typical contingency fee agreements provide that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried." *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees*, 81 Wash U. L. Q. 653, 659 n. 11 (Fall 2003)). Indeed, "empirical studies [that] show that…fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc*., 162 Cal. App. 4th 43, 66 n. 11 (2008).

The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund. 1 Cal. 5th at 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id*. at 487. As the Court held, only when the multiplier is "extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id*. at 505.

Moreover, in the *Laffitte* intermediate court decision, the court observed that "33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits." *Laffitte v. Robert Half Int'l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award representing one-third of the fund clearly falls within that range, and is consistent with other comprehensive surveys of class action settlements and fee awards. *See* Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that "[m]ost fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent"); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn. 16 (2010) (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates).

The results delivered by Class Counsel also support the requested percentage of the fund.

Here, the Parties have agreed to a payment of a maximum of one-third (1/3) of the Gross Settlement Amount, *i.e.*, the sum of the sum of $973,333.33, for payment to Class Counsel as attorneys' fees, if Defendant elects a single, lumpsum payment. The Parties have agreed to a payment of the foregoing attorney's fees and, thus, this payment should be presumed to be fair. Further, it is not uncommon for courts to award attorneys' fees as one-third of the settlement amount in wage and hour class action settlements. At the time of Final Approval, Plaintiffs' counsel will evidence to show that a payment of one-third of the recovery is justified and fair when cross-checked under the lodestar method.

Further, the Parties have agreed to reimbursement of Class Counsel's litigation costs. Class Counsel have, at their own risk, expended costs throughout litigation, including, for example, filing fees, service of process costs, mediation fees, and other litigation-related costs. Gavron Decl. ¶ 19. Based on the foregoing, the court should preliminarily approve the attorney's fees and costs being requested by the Parties.

E. The Court Should Preliminary Approve the Award of Settlement Administration Costs

The Parties have agreed to payment of a maximum of $23,500.00 to the settlement administrator, Phoenix Settlement Administrators, to send notices and to administer this settlement. Phoenix Settlement Administrators is a well-recognized class action settlement administrator. The Parties believe that the administration fee is reasonable and should be approved. Gavron Decl. ¶ 21.

F. The Court Should Preliminarily Approve the Proposed Payment to the Class Representatives

Plaintiffs request enhancement payments for their role in acting as class representatives. Specifically, Plaintiffs request an enhancement payment of $10,000.00 to Jalon Stanley and $10,000.00 to Roman Jones. Plaintiffs met with Class Counsel on various occasions to discuss the case, provide documents and information to Class Counsel, and review the Settlement Agreement. *See* Declaration of Jalon Stanley ("Stanley Decl.") ¶ 10; Declaration of Roman Jones ("Jones Decl.") ¶¶ 9-10. Moreover, as part of their duties as class representatives, Plaintiffs provided information, evidence, and documents that resulted in this settlement. In addition to the invaluable services that Plaintiffs provided, they also took significant risks, both professionally and monetarily, in acting as Class Representatives and seeking benefits on behalf of the Class. Because the claims alleged by the class representatives involved the payment of costs to the prevailing party, Plaintiffs could have possibly faced paying the fees and costs of Defendant, had Plaintiffs not prevailed in this action. Stanley Decl. ¶ 11; Jones Decl. ¶ 14.

Given that future employers are much less likely to hire individuals who have filed suit against their prior employer, particularly cases of this nature, Plaintiffs assert that they may face prejudice in the future from other potential employers. Plaintiffs took this risk upon themselves and the whole Class benefited from these risks taken by Plaintiffs. Class Members did not have to file individual lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a public lawsuit.

Notably, courts have routinely granted approval of representative enhancements for far greater amounts than the amounts sought by Plaintiffs in this case. *See*, *e.g.*, *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of $50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of $55,000, and three incentive awards of $35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a $50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) ($50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding $25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming $25,000 incentive award to class representative in ERISA case). Here, Plaintiffs each request an enhancement of $10,000.00, which is reasonable and consistent with case law.

VI. THE PROPOSED CLASS MEETS ALL CERTIFICATION REQUIREMENTS

The parties also may, at the preliminary approval stage, request that the court provisionally approve certification of the class – conditional upon final approval of the settlement. "[P]re-certification settlements are routinely approved if found to be fair and reasonable." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *Accord Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was reached before any "adversary certification," the court was satisfied that it was "fair, adequate and reasonable"); *In re Baldwin-United Corp*., 105 F.R.D. 475, 478 (S.D.N.Y. 1984) ("many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals").[5] As further explained by Professor Newberg:

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

4 Newberg on Class Actions § 11.26.

In addition to such terms as class identification, settlement amount, and payment procedures, the settlement reached among the Parties contains a provision pursuant to which the Parties stipulate to the Court's provisional certification of the Class, but do so for the purposes of this settlement only. Agreement ¶ 89.

A. The Class is Ascertainable and Sufficiently Numerous

The Class that Plaintiffs seek to conditionally certify is ascertainable. "Class members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records." *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008); *see also Faulkinbury v. Boyd & Assocs., Inc*., 216 Cal. App. 4th 220, 240 (2013) (same). Here, members of the Class are readily identifiable. Defendant has determined that there are approximately 3,153 individuals that comprise the Class. Agreement ¶ 61. Furthermore, the Class is sufficiently numerous. Courts generally find that numerosity is satisfied if the class

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[5] In determining the fairness and reasonableness of a proposed settlement, California courts may look to federal cases for guidance. *See Wershba*, 91 Cal. App. 4th at 239-40.

includes forty or more members. *See Villalpando v. Excel Direct Inc*., 303 F.R.D. 588, 605-606 (N.D. Cal. 2014); *see also Jordan v. L.A. County*, 669 F.2d 1311, 1320 (9th Cir. 1982) (noting, in dicta, that the court "would be inclined to find the numerosity requirement…satisfied solely on the basis of [39] ascertained class members"), *vacated on other grounds*, 459 U.S. 810 (1982).

B. There are Common Questions of Law and Plaintiffs' Claims are Typical of the Class

The commonality requirement is met when there are questions of law and fact common to the class. *See Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1019 (1998) ("The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within the class"). Commonality requires only that some common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation are identical. *See Richmond v. Dart Industries, Inc*., 29 Cal. 3d 462, 473 (1981) The defendant's conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer's conduct is uniformly directed at a class of employees, as Plaintiffs contend it is here, the class wide impact of the defendant's policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co*., 193 Cal. App. 3d 411, 421 (1987).

Plaintiffs allege that Defendant, as a matter of corporate policy and procedure, failed to pay all overtime wages, meal and rest period premiums, and sick pay at the correct regular rate of pay that included all non-discretionary remuneration, timely pay wages, provide accurate itemized wage statements, and reimburse business expenses. Plaintiffs also allege that Defendant engaged in unfair business practices and that Defendant owes penalties pursuant to the PAGA. Gavron Decl. ¶¶ 3-7; Stanley Decl. ¶¶ 3-8; Jones Decl. ¶ 3. Thus, Plaintiffs submit that their claims are typical to those of the Class.

C. Plaintiffs and Class Counsel Have Adequately Represented the Settlement Class

Plaintiffs contend that the adequacy requirement is also met. "Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Bank of Am.*, 60

Cal. App. 3d 442, 450 (1976). Here, Plaintiffs do not have any interests adverse to the Class, nor have any such issues been raised or presented. Stanley Decl. ¶ 9; Jones Decl. ¶ 4. Plaintiffs have taken all necessary steps to represent the interests of the Class, by providing information and documents. Stanley Decl. ¶¶ 9-12; Jones Decl. ¶¶ 4-16. For such reasons, Plaintiffs submit that they have adequately represented the Class Members and will continue to do so.

Further, as detailed in their declarations, Class Counsel are experienced and well-qualified class action litigators who have litigated many wage and hour class actions and have each been certified as class counsel in numerous other class actions, particularly wage and hour class actions. Gavron Decl. ¶¶ 57-64; Lee Decl. ¶¶ 6-8; Agnew Decl. ¶¶ 3-7; Tulyathan Decl. ¶¶ 2-6; Marder Decl. ¶¶ 6-13; Bokhour Decl. ¶¶ 5-8; Falakassa Decl. ¶¶ 5-9. From the inception of the case, Class Counsel have solely represented the interest of the Class.

VII. NOTICE TO LWDA

Concurrent with the filing of this Motion, Plaintiffs submit the proposed settlement to the LWDA. Gavron Decl. ¶ 67.

VIII. CONCLUSION

Here, the proposed settlement is fair, adequate, and reasonable. It will result in both substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arm's length negotiations conducted by counsel for the respective Parties who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the proposed Notice Packet, and set a date for a final approval hearing.

DATED: April 27, 2026

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