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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

KATHERINE VERGARA POLANCO, an individual and on behalf of all others similarly situated; Plaintiff, vs. ESCALETTE, LLC, a California corporation; and DOES 1 through 50, Defendants.	Case No.: 30-2024-01407947-CU-OE-CXC [Assigned for All Purposes to: Hon. William Claster, Dept. CX101] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** (Filed concurrently with Supporting Declarations and [Proposed] Order) DATE: March 27, 2026 TIME: 9:00 a.m. DEPT: CX101 Reservation ID: 74782880 Action Filed: June 18, 2024 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 March 27, 2026 at 9:00 a.m. in Department CX101 of the Civil Complex Center, Orange Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff Katherine Vergara Polanco ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;

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

> All current and former non-exempt employees who worked for Defendant Escalette ("Defendant") within the State of California during the Class Period of June 18, 2020 to November 24, 2025.

3. Preliminary appointment of Plaintiff as Class Representative for settlement purposes;

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

5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a Class Representative Service Payment to Plaintiff, civil penalties payable to the LWDA, settlement administration costs, and attorneys' 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, Plaintiff Katherine Vergara Polanco, 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: February 23, 2026

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ______________________________

William C. Sung
Tiffany L. Luu
Joseph C. Ramli
Attorneys for Plaintiff Katherine Vergara Polanco

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Katherine Vergara Polanco ("Plaintiff") brought this wage and hour class and representative action on behalf of a Class of all current and former non-exempt employees of Defendant Escalette ("Defendant") in California at any time during the Class Period of June 18, 2020 through November 24, 2025. The primary issues in this case pertain to Defendant's alleged failure to pay wages due to unlawful rounding and automatic meal period deduction practices and meal and rest period violations. Plaintiff contended Defendant is also liable for inaccurate wage statement penalties, waiting time penalties, and civil penalties under the California Private Attorneys General Act ("PAGA"). Plaintiff now requests 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 $543,586.77 to approximately 250 Class Members.

After deducting administration costs, Plaintiff's requested Class Representative Service Payment, the amount set aside as PAGA Penalties, and requested Class Counsel Fees Payment and Litigation Expense Payment, the Net Settlement Amount of approximately **$294,741.18** 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 Penalties 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 250 Class Members, and **the average payment to participating Class Members is projected to be approximately $1,178.96**. 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 Plaintiff faced, the risks and costs of further litigation, and the tangible monetary benefits to be received by the Class. For the reasons discussed herein,

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[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.

Plaintiff respectfully requests 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 high-end OEM plumbing fixtures and fittings manufacturing facility in Costa Mesa, California. Declaration of William C. Sung ("Sung Decl."), ¶ 9. Defendant Escalette, LLC ("Defendant") employed Plaintiff as a non-exempt employee from approximately November 4, 2022 to approximately April 4, 2024 as an assembler. Declaration of Katherine Vergara Polanco ("Polanco Decl."), ¶ 2.

On June 18, 2024, Plaintiff 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, June 18, 2024, Plaintiff filed the Class Action Complaint, alleging (1) Minimum Wage Violations; (2) Overtime Wage Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Penalties; (6) Waiting Time Penalties; and (7) Unfair Competition. Sung Decl., ¶ 11. On August 21, 2024, Plaintiff filed the First Amended Complaint ("Complaint") adding a PAGA cause of action. *Ibid*. As part of the Settlement, filed the operative Second Amended Complaint on October 27, 2025, adding a cause of action for Failure to Reimburse Necessary Business Expenses. *Ibid*, **Exh. 3** (Second Amended Complaint).

B. PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES

1. Unpaid Wages Due

Plaintiff alleged that Defendant unlawfully rounded Class Members' time punches to the nearest quarter-hour and automatically deducted 30 minutes of compensable hours worked for meal periods during part of the Class Period. Sung Decl., ¶ 13. Plaintiff contended that Defendant's rounding and automatic meal period deduction practices resulted in unpaid wages including overtime. *Ibid*; *see Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638, 644, *review granted* 304 Cal.Rptr.3d 82 (reversing summary judgment in favor of Home Depot's nearest-quarter-hour rounding practice even though the plaintiff did not lose time due to rounding).

However, Defendant vigorously denied that its practices resulted in unpaid wages. Sung Decl., ¶ 13. First, Defendant contended that Class Members worked in a manufacturing facility where production operations started at the same time at the beginning of shift, ceased and restarted at the same time during lunch breaks, and ceased at the same time at the end of shift. *Ibid.* Therefore, Class Members were permitted to take timely and off-duty meal periods. *Ibid.* Defendant further argued that it did not implement any practice to systemically deduct meal periods from employees. *Ibid.* Defendant further argued its rounding policies/practices were lawful, since it was both neutral on its face and resulted, over time, in employees being paid for all hours worked. *Ibid*. Defendant also contended that multiple Courts of Appeal have found rounding mechanisms to be lawful under similar circumstances. *Ibid; see, e.g., Ferra v. Loews Hollywood Hotel, LLC* (2019) 40 Cal.App.5th 1239, 1254; *AHMC Healthcare, Inc. v. Superior Court* (2018) 24 Cal.App.5th 1014, 1028. Additionally, Defendant argued that any potential damages are limited as Defendant ceased both practices in 2024. Sung Decl., ¶ 13. Defendant argued Plaintiff would be unable to certify a class because of numerous individualized inquiries as to whether Class Members were in fact underpaid, or potentially overpaid, for each workday in question. *Ibid.* Finally, as to all claims, Defendant argued that the LWDA conducted its own investigation, including reviewing records and interviewing approximately multiple Class Members, and found no wrongdoing on the part of Defendant. *Ibid.*

2. Meal Period Violations

Plaintiff claimed that she and other employees were not provided with compliant meal periods because of operational needs and Defendant failed to keep accurate records of their meal breaks due to the alleged meal period automatic deduction practice. Sung Decl., ¶ 14. Defendant countered that it 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 further argued that Class Members worked in a manufacturing facility where production operations ceased and restarted at the same time during lunch breaks, and therefore, Class Member were provided with compliant meal period regardless of what time records might show and any deviation was due to Class Members’ own volition. Sung Decl., ¶ 14. As such, Defendant maintained

Plaintiff's 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.*

3. Rest Period Violations

Plaintiff claims that Class Members were not provided with a third rest break when they worked more than 10 hours in a shift. Sung Decl., ¶ 15. Defendant counters that they have maintained compliant rest period policies and practices and provided compliant rest periods in line with those policies. *Ibid.* Defendant further maintained Plaintiff's 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 on a particular shift. *Ibid.*

4. Failure to Reimburse Business Expenses

Plaintiff alleged that Plaintiff and other employees had to use their personal cellphones to communicate for work without reimbursement of cellphone expenses. Sung Decl., ¶ 16. In response, Defendant argued that Class Members worked in a factory and had no reason to use their personal cellphones. *Ibid.* To the extent they used their personal cellphones, it was out of their own convenience and not a reimbursable expense. *Ibid.*

5. Waiting Time and Wage Statement Penalties

As a result of the alleged unpaid wages and meal and rest period premium wages described above, Plaintiff 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., ¶ 15. Thus, these claims for waiting time and wage statement penalties are derivative of the underlying claims. *Ibid.*

In response, Defendant argued that it possessed strong, good faith defenses to Plaintiff's 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., ¶ 15. 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 asserted that Plaintiff's waiting time and wage statement penalty exposure was inflated as not every employee experienced the alleged Labor Code violations. *Ibid.*

6. PAGA Civil Penalties

Plaintiff further contended that, as a result of the foregoing Labor Code violations, Defendant is liable for civil penalties under the PAGA. Sung Decl., ¶ 17. Since Plaintiff's PAGA claims are derivative of Plaintiff's underlying wage claims, Defendant asserted 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 its 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 Plaintiff's claims. Sung Decl., ¶ 17; *see* Lab. Code § 2699(e)(2) (pre-2024 amendment); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties by over 82% in part because employer "not aware" of violations); *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

Plaintiff engaged in pre-certification discovery by propounding written precertification discovery and provided a draft *Belaire West* notice to Defendant, and noticed the deposition of Defendant's Person Most Qualified. Sung Decl., ¶ 19. In connection with mediation, the Parties engaged in extensive informal discovery. Sung Decl., ¶ 20. Defendant produced (1) Class and PAGA statistics, including the number of Class Members, formerly employed Class Members, Aggrieved Employees, Class Workweeks, and PAGA Pay Periods; (2) a random 25% sampling of time and payroll records of Class Members; and (3) Defendant's employee handbooks and standalone policy documents. *Ibid.*

Plaintiff submits that the 25% sampling of Class Members' time and payroll records is statistically significant and reliable. Sung Decl., ¶ 21. The timekeeping data and payroll data produced for mediation were generated from uniform timekeeping and payroll systems, which allowed Plaintiff's counsel to extrapolate his and his expert's findings with confidence. *Ibid.* Class Members worked in similar job positions and were subject to the same wage and hour policies and procedures. *Ibid.* Given these circumstances, the experiences of a subset of employees–the sampling–can be probative as to the experiences of all Class Members. *See e.g., Tyson Foods, Inc. v. Bouaphakeo* (2016) 136 S.Ct. 1036 (holding that statistical evidence was admissible to prove liability and damages across a class, thereby allowing it to support class certification); *Lubin v. The Wackenhut Corp*. (2016) 5 Cal.App.5th 926, 938 (following *Tyson* and finding that a sampling of class records is probative as to the experience of the entire class).

In preparation for mediation, Plaintiff's counsel worked with an expert data analyst and conducted 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., ¶ 22. This discovery and analysis allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and Defendant's potential defenses. *Ibid.*

On July 27, 2025, the Parties participated in a full-day in-person mediation with Daniel Turner, Esq. a well-respected wage and hour class action mediator. Sung Decl., ¶ 23. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses, but did not reach a resolution. *Ibid.* Thereafter, the Parties continued to negotiate with each other and accepted a mediator's proposal on September 29, 2025, which led to this Agreement to settle the Action. *Ibid*. The Parties then finalized the terms of the Settlement and executed Agreement now before the Court. *Ibid*; *see* Sung Decl., ¶ 23, **Exhibit 1** (Agreement).

III. <u>THE PROPOSED SETTLEMENT</u>

A. ESSENTIAL TERMS OF THE SETTLEMENT

The Agreement defines the Class Period as the period from June 18, 2020 through the date the number of Workweeks worked by Class Member reaches up to 29,717 Workweeks and further provides an Escalator Clause that provides Defendant with the option to either: (1) de-escalate the settlement so that the Class Period ends on the date that the Workweeks count totals no more than 29,717 and the PAGA Period will end on the same date as the Class Period; or (2) permit the Gross Settlement Amount to be increased proportionally by the Workweeks in excess of 29,717. Agreement, §§ 1.12, 1.22, 8. Here, Defendant has elected to cut off the Class Period on November 24, 2025 with 29,804 Workweeks and increase the Gross Settlement Amount by $1,591.41 to **$543,586.77**. Sung Decl., ¶ 24.

The 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:

Gross Settlement Amount:	$543,586.77
Minus Court-approved attorneys' fees (33 1/3%):	$181,195.59
Minus Court-approved verified costs (up to):	$20,000.00
Minus Court-approved Service Payment:	$10,000.00
Minus estimated settlement administration costs:	$7,650.00
Minus amount set aside as PAGA penalties:	$30,000.00
Net Settlement Amount:	$294,741.18
Plus 25% "PAGA Penalties" to Class:	$7,500.00
Total Amount Paid to Class Members:	**$302,241.18**

Sung Decl., ¶ 25.

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys' fees and costs, Class Representative Service Payment to Plaintiff, the amount set aside as PAGA Penalties, and settlement administration costs, the Settlement requires Defendant to pay a Net Settlement Amount of at least **$294,741.18** to all Class Members who do not timely opt-out. Agreement, §§ 1.28, 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, $7,500.00 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.

According to Defendant, there are approximately 250 Class Members. Sung Decl., ¶ 26. Therefore, the average Individual Class Payment from the Net Settlement Amount is projected to be approximately **$1,178.96**. *Ibid.* There are also approximately 165 Aggrieved Employees who will each receive an average of approximately **$45.45.58** as Individual PAGA Payments, assuming a pro-rata division of the amount allocated to payment of individual PAGA penalties. *Ibid.* Class Members will have 45 calendar days from the mailing of the Class Notice to opt-out or object to the Class Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. Agreement, §§ 1.42, 7.5, 7.7.

Effective on the date when Defendant fully fund the Gross Settlement Amount and employe payroll taxes, Participating Class Members will release all claims that were alleged, 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 all claims for civil penalties 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, §§ 5, 5.2, 5.3. Defendant shall fund the Gross Settlement Amount and its share of payroll taxes no later than 14 days after the Effective Date (i.e., the date the Court enters a Judgment on its Order Granting Final Approval and the Judgment is final). Agreement, §§ 1.18, 4.3.

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

Plaintiff will apply for Class Representative Service Payment at the time of seeking final approval of the proposed class action settlement in the amount of $10,000.00 for Plaintiff's 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. Plaintiff's requested Service Payment is intended to recognize the time and effort Plaintiff expended on behalf of the Class, including participating in the LWDA's investigation of her PAGA claims and being interviewed by an investigator from the LWDA, providing substantial information and documents to Class Counsel, discussing the claims at issue in the litigation, actively participating in the prosecution of Plaintiff's claims, as well as the risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case. *See* Polanco 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 $181,195.59, and up to $20,000.00 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., ¶ 27. Class Counsel have incurred substantial attorneys' fees and costs conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, cooperating with the LWDA's investigation, propounding written discovery, conducting informal discovery, working with an expert data analyst to analyze Class Members' time and payroll records, creating 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, with the average around one-third of the total recovery. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013); *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."). 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 $30,000.00 of the Gross Settlement Amount as PAGA civil penalties, of which $22,500.00 (75%) will be paid to the LWDA, with the remaining $7,500.00 (25%) for distribution to the Aggrieved Employees pursuant to Labor Code § 2699(i) (pre-July 1, 2024 PAGA amendment). Agreement, § 3.2.5. Plaintiff submits 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. <u>LEGAL ARGUMENT</u>

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.

1. The Strength of Plaintiff's Case and Risk, Expense, Complexity, and Duration of Further Litigation

Although Plaintiff maintained that Plaintiff's claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described above, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. Thus, while Plaintiff was 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., ¶ 28. 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 Plaintiff 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.*

Plaintiff has not yet filed a motion for class certification, and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. 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. Sung Decl., ¶ 29. 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. Plaintiff 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 Plaintiff's exposure analysis are discussed below:

<u>Unpaid Wages Due to Rounding and Meal Period Automatic Deduction</u>. Plaintiff contended that Defendant failed to pay all wages due to Class Members due to its unlawful rounding and meal period automatic deduction practices. Sung Decl., ¶ 30. Plaintiff's expert data analyst found that, as a result of Defendant's rounding and meal period automatic deduction practices, which stopped in August 2024 and June 2024 respectively, out of 20,593 shifts in the sampling, Class Member lost time in 75.92% of shifts totaling 1,817.77 hours but only gained time in 15.32% of shifts totaling 135.65 hours and on average lost 0.40 hour per workweek. *Ibid.* At an average hourly rate of $17.52 and 1.5x overtime multiplier, extrapolated to 27,016 workweeks, Plaintiff estimated Defendant's maximum exposure for unpaid wage is $286,858.13. *Ibid.*

As discussed above, Defendant offered a plethora of defenses, including that Class Members worked in a manufacturing facility where production operations started at the same time at the beginning of shift, ceased and restarted at the same time during lunch breaks, and ceased at the same time at the end of shift; there was no unpaid wages; and a class cannot be certified due to numerous individualized inquiries. *Ibid.* Thus, Plaintiff discounted Defendant's maximum exposure by 25% to account for the risk of non-certification and an additional 50% to account for Defendant's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated realistic recovery of approximately **$107,571.80**. *Ibid.*

<u>Meal Period Violations</u>: Plaintiff contended that Class Members were sometimes unable to take meal breaks because of operational needs. Sung Decl., ¶ 31. Defendant's payroll records did not show any payment of meal period premiums. *Ibid.* Plaintiff's counsel's expert data analyst

found, of 20,593 shifts analyzed, approximately 60% of shifts demonstrated a facially non-compliant meal period (i.e., missed, short, and/or late first and/or second meal period). *Ibid.* At an average hourly rate of $17.52 and extrapolated to 27,016 workweeks, Plaintiff estimates Defendant's maximum exposure for meal period violations to be approximately $2,106,082.28. *Ibid.*

As discussed above, Defendant countered that Class Members worked in a manufacturing facility where production operations ceased and restarted at the same time during lunch breaks, and therefore, Class Member were provided with compliant meal period regardless of what time records might show and any deviation was due to Class Members' own volition. *Ibid*. As such, Defendant maintained Plaintiff's 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*. Thus, Plaintiff discounted Defendant's maximum exposure by 50% to account for the risk of non-certification and an additional 70% to account for Defendant's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated realistic recovery of approximately **$315,912.34**. *Ibid.*

<u>Rest Period Violations</u>: Plaintiff contended that Class Members not provided with third rest periods when they worked more than 10 hours in a shift. Sung Decl., ¶ 32. Plaintiff's expert data analyst found approximately 7.51% of shifts in the sampling were over 10 hours in length. *Ibid.* At an average hourly rate of $17.52 and extrapolated to 27,016 workweeks, Plaintiff estimates Defendant's maximum exposure for rest period violations to be approximately $263,643.74. *Ibid.*

As discussed above, Defendant countered that any rest period claim is not suitable for class certification it has compliant policies and practices regarding rest periods and that a class cannot be certified due to individualized issues. *Ibid*. Thus, Plaintiff discounted Defendant's maximum exposure by 25% to account for the risk of non-certification and an additional 50% to account for Defendant's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated total of approximately $98,866.40. *Ibid.*

Unreimbursed Business Expenses: Plaintiff alleged that she and other employees had to use their personal cellphones to communicate for work without reimbursement of cellphone expenses. Sung Decl., ¶ 33. Estimating a $10 reimbursement rate per workweek and extrapolated to 27,016 workweeks, Plaintiff estimated Defendant's maximum exposure for unreimbursed business expenses be approximately $270,160.00. *Ibid.* As discussed above, Defendant argued that Class Members worked in a factory and had no reason to use their personal cellphones, and to the extent they used their personal cellphones, it was out of their own convenience and not a reimbursable expense. *Ibid*. Thus, Plaintiff discounted Defendant's maximum exposure by 50% to account for the risk of non-certification and an additional 70% to account for Defendant's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated total of approximately $40,524.00. *Ibid.*

Waiting Time Penalties: As a result of the unpaid wages and meal and rest period premiums described above, Plaintiff contended that Defendant failed to comply with their final pay obligations set forth in Labor Code §§ 201 to 203 to former employees. Sung Decl., ¶ 34. At 98 formerly employed Class Members, an average hourly rate of $17.52, and average shift length of 8.22 hours, Plaintiff estimates Defendant's maximum exposure for waiting time penalties to be approximately $414,924.47. *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; Plaintiff's waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations; and because the waiting time claim is derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Defendant's defenses, both as to class certification and on the merits, as to the underlying claims. *Ibid.* Thus, Plaintiff discounted Defendant's maximum exposure by 25% to account for the risk of non-certification and an additional 75% to account for Defendant's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated realistic recovery of approximately **$77,798.34**. *Ibid.*

Wage Statement Penalties: Plaintiff alleged that Defendant is liable for wage statement penalties as a result of unpaid wages and meal and rest period premiums. Sung Decl., ¶ 35. 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). Plaintiff's expert data analyst found approximately 63.75% of pay periods in the sampling during the limitations period had an unpaid wage, meal period premium, and/or rest period premium violation. *Ibid.* At $50 for the initial pay period and $100 for each subsequent pay period, Plaintiff estimated Defendant's maximum exposure for wage statement penalties to be $383,233.13. *Ibid.*

As discussed above, Defendant presented several defenses, most notably their assertion that because they possessed good-faith defenses to the underlying claims for unpaid wage and meal and rest period violations were not "knowing and intentional" as a matter of law and because the wage statement claim is derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Defendant's defenses, both as to class certification and on the merits, as to her underlying claims. *Ibid*. Thus, Plaintiff discounted Defendant's maximum exposure by 25% to account for the risk of non-certification and an additional 75% to account for Defendant's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated realistic recovery of approximately **$71,856.21**. *Ibid.*

<u>PAGA Penalties:</u> Plaintiff estimates a maximum total PAGA exposure of approximately $690,200.00 (6,092 pay periods during the PAGA Period x $100 "initial" penalty). Sung Decl., ¶ 36; *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., ¶ 36*; 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 asserts that the Court would drastically reduce any award of PAGA penalties as "confiscatory." Sung Decl., ¶ 36; *see also Thurman*, 203 Cal.App.4th at 1135 (affirming reduction of PAGA penalties); *Fleming*, 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiff discounted the maximum figure by 80% 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 **$138,040.00**. Sung Decl., ¶ 36.

Conclusion: Using these estimated figures for each of the claims described above, Plaintiff predicted that the potential realistic recovery for the Class would be approximately **$850,569.09**. Sung Decl., ¶ 37. The proposed Settlement of $543,586.77 represents approximately **63.91%** 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 Plaintiff's 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, Plaintiff is 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. Plaintiff's counsel conducted an in-depth review of class records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. The Settlement was also reached with the assistance of an experienced and respected wage-and-hour class action mediator. Sung Decl., ¶ 23. 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 **63.91%** 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 **$1,178.96** far exceeds average payments achieved in other wage and hour class action settlements.[2] Thus, the proposed Settlement is within the range of 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, Plaintiff 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., ¶¶ 30-37. 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 Plaintiff's Class

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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).

Representative Service Payment, 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) Plaintiff's claims are typical of the claims of absent Class Members; and (4) Plaintiff 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 individuals who were employed by Defendant as hourly, nonexempt direct-hire employees in California at any time 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 250 current and former non-exempt employees of Defendant. Sung Decl., ¶ 24. 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. Plaintiff's claims are predicated on, among other issues, Defendant's uniform policy and practice regarding provision of meal and rest periods, rounding and meal period automatic deduction, 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 Plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical of those held by the Class Members. First, Defendant directly employed Plaintiff as a non-exempt employee during the Class Period, and Plaintiff was subject to Defendant's wage and hour policies at issue in this case. Polanco Decl., ¶¶ 2-3. Second, Plaintiff was injured by the same challenged policies/practices that allegedly injured the Class as a whole: unpaid wages, meal and rest period violations, inaccurate wage statements, and derivative statutory and civil penalties. Polanco Decl., ¶ 3. Because Plaintiff has suffered the same alleged 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. Plaintiff and Plaintiff's counsel will adequately represent the Class, as there are no conflicts between Plaintiff and the proposed Class, and Plaintiff possesses claims that are in line with those of the Class. Sung Decl., ¶ 38; Polanco 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. THIS MOTION AND SUPPORTING PAPERS HAVE BEEN FILED WITH THE LWDA.

On February 23, 2026, Plaintiff's counsel served the LWDA with a copy of the fully executed Agreement including the Class Notice; the Motion for Preliminary Approval of Class Action and PAGA Settlement; the Declarations of William C. Sung, Plaintiff Katherine Vergara Polanco, and Kimberly Sutherland of Apex Class Action LLC; and the (Proposed) Order Granting Preliminary Approval of Class Action and PAGA Settlement via file upload through the LWDA's website. Sung Decl., ¶ 38, **Exh. 4** (LWDA Upload Confirmation).

V. **CONCLUSION**

Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Class for settlement purposes, enter the Proposed Order submitted concurrently herewith, and set a Final Approval Hearing for September 18, 2026 at 9:00 a.m.

DATED: February 23, 2026

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ______________________________

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