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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SONOMA

GOLDAMEIR CLEMENTE, an individual on behalf of himself and all others similarly situated, Plaintiff, vs. WEST COUNTY HEALTH CENTERS, INC., a California non-profit corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: 24CV033568 <u>CLASS ACTION</u> <u>Assigned for All Purposes To:</u> Hon. Patrick Broderick Courtroom: 16 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** *[filed concurrently with Plaintiff's Notice of Motion and Motion; Declaration of Enoch J. Kim; Declaration of Julie Green; Declaration of Declaration of Goldameir Clemente and [Proposed] Order]* Date: Time: Dept.: 16 Original Complaint Filed: June 13, 2024 First Amended Complaint Filed: January 22, 2025

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I. INTRODUCTION

Plaintiff Goldameir Clemente ("Plaintiff") filed a First Amended Complaint in this Court ("Action") against Defendant West County Health Centers, Inc. ("Defendant") (Plaintiff and Defendant together referred to as the "Parties"). Plaintiff alleged claims for failure to pay all wages due and owing (including off-the-clock work, and overtime), failure to provide meal and rest breaks, failure to reimburse necessary business expenses, failure to furnish accurate wage statements, failure to timely pay wages including final wages, and largely derivative claims under the Unfair Competition Law ("UCL") and the Private Attorneys General Act ("PAGA").

After engaging in substantial investigation and extensive negotiations with the assistance of a respected mediator, Lonnie Giamela, the Parties agreed to settle all claims alleged in the Action on a class-wide, non-reversionary basis for $650,475.00, inclusive of all fees and costs. The Parties' Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") defines the class as "all persons employed by Defendant in California and classified as a non-exempt, hourly employee who worked for Defendant during the Class Period," which is the period from June 13, 2020, through October 31, 2025 ("Class" or "Class Members"). All of the approximately 393 Class Members will receive a settlement payment unless they opt out of the Class Settlement.

The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Class. Consequently, Plaintiff, with the consent of Defendant, hereby move this Court for an order: (1) granting preliminary approval of the proposed class action settlement, as embodied in the Settlement Agreement filed concurrently herewith; (2) approving the Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice") to be sent to Class Members; and (3) setting a hearing for final approval of the class action settlement.

II. STATUS OF THE LITIGATION

A. Procedural History

On June 13, 2024, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime under Labor Code §510; (3)Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a); (6) Failure to Timely Pay All Final Wages (Lab. Code § 203; (7) Failure to Timely Pay All Wages During Employment (Lab. Code § 204); (8) Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5; (9) Failure to Indemnify (Lab. Code. § 2802); and (10) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq*.). (Declaration of Enoch J. Kim "Kim Decl." ¶ 10.)

On June 13, 2024, Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice. (LWDA-CM-1033818-24) (Kim Decl., ¶ 10.) (*Id.*) on January 22, 2025, Plaintiff filed his First Amended Complaint, adding a claim for Civil Penalties under Labor Code § 2698, *et seq*. ("Operative Complaint"). (*Id.*)

B. Investigation

Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto. (Kim Decl., ¶ 17.) This required thorough discussions and interviews between Class Counsel and Plaintiff, as well as preliminary research into the various legal issues involved in the case. (*Id.*) After conducting their initial investigation, Class Counsel determined that Plaintiff's claims were well-suited for class and representative action adjudication owing to what appeared to be a common course of conduct affecting a similarly situated group of employees. (*Id.*)

After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including: (1) conducting both formal and informal discovery and meeting and conferring with defense counsel about the same; (2) hiring an expert to review and analyze a sampling of time and pay records; (3) researching the applicable law and potential defenses; (4) constructing damage models based on interpretations of California law; and (5) reviewing information provided by Defendant at mediation. (Kim Decl., ¶ 18.)

Defendant, for its part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (Kim Decl., ¶ 19.) After Class Counsel analyzed the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

C. Settlement Efforts

Prior to mediation, Plaintiff obtained, through informal discovery, time and pay data for Class Members and the Aggrieved Employees along with Defendant's handbook, policies, and procedures in effect during the Class Period. (Kim Decl., ¶ 20.) Plaintiff retained an expert who analyzed the relevant data and produced a damage analysis report. (*Id.*) Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in Dunk v. Foot Locker Retail, Inc. (1996) 48 Cal.App.4th 1794, 1801 and Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129-130 ("Dunk/Kullar"). (*Id.*)

On October 15, 2025, the Parties participated in an all-day mediation presided over by Lonnie Giamela, which led to this Agreement to settle the Action. (Kim Decl., ¶ 21.) During mediation, Plaintiff's and Defendant's counsel discussed all aspects of the case, including the risks of litigation and the risks to both parties of proceeding with a motion for class certification as well as the law relating to unpaid wages, meal periods, rest periods, wage statements, and final pay. (*Id.*) As a result of the mediation, the Parties agreed to settle the lawsuit according to the terms set forth in the Settlement Agreement. *(Id.*)

From Class Counsel's review of the strengths and weaknesses of the case and the risks and delays posed by further litigation, Class Counsel believes that the Settlement is fair and reasonable. (Kim Decl., ¶ 22.) Further, and based on the settlement negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating class actions and wage and hour cases, the Settlement Agreement was the product of a non-collusive settlement process in which the Parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the lawsuit. (*Id.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay $650,475.00 as the Gross Settlement Amount on a non-reversionary basis. (Kim Decl., ¶ 23; Exh.

1, §3.1.) The Settlement Agreement defines the "Class" as "all persons employed by Defendant in California and classified as a nonexempt, hourly employee who worked for Defendant during the Class Period," which is the period from June 13, 2020, through October 31, 2025. (Kim Decl., ¶ 24, Exh. 1 §§ 1.5 and 1.12.) "Aggrieved Employees" are defined as "a person classified as non-exempt, hourly employee allegedly while working for Defendant in California during the PAGA Period," which is the period from June 13, 2023 to October 31, 2025. (Kim Decl., ¶ 24, Exh. 1 §§ 1.4 and 1.31.)

The "Net Settlement Amount," available for distribution to Class Members, shall be the Gross Settlement Amount, less Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (Kim Decl., ¶ 25, Exh. 1, §1.28.). These amounts are detailed as follows:

- Class Counsel Fees Payment of one-third of the Gross Settlement Amount, which is currently estimated to be $216,825.00.00 and Class Counsel Litigation Expenses Payment of actual and reasonable litigation costs and expenses not to exceed $30,000.00; (Kim Decl., ¶ 25; Exh. 1, §3.2.2);
- Administration Expenses Payment of not more than $8,750.00 to CPT Group, Inc. ("CPT Group") to serve as the Administrator; (Kim Decl., ¶ 25; Exh. 1, §3.2.3);
- Class Representative Service Payment of $7,500.00 to Plaintiff; and (Kim Decl., ¶ 25; Exh. 1, §3.2.1);
- PAGA Penalties in the amount of $30,000.00 for civil penalties under PAGA, with 75% ($22,500.00) paid to the LWDA for the LWDA PAGA Payment and 25% ($7,500.00) paid to Aggrieved Employees for their Individual PAGA Payments. (Kim Decl., ¶ 25; Exh. 1, §3.2.5.)

Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes. (Kim Decl., ¶ 23; Exh. 1, § 3.1.)

The "Individual Class Payment" is the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the

Class Period. (Kim Decl., ¶ 26; Exh. 1, §1.23.) The "Individual PAGA Payment" is the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period. (Kim Decl., ¶ 27; Exh. 1, §3.2.5.1.)

Defendant will pay their employer-side payroll tax obligations on the Wage Portion of the Individual Class Payments in addition to the Gross Settlement Amount. (Kim Decl., ¶ 28; Exh. 1, §3.1.) 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"), and are subject to tax withholding and will be reported on an IRS W-2 Form. (Kim Decl., ¶ 29; Exh. 1, § 3.2.4.1.) The remaining 80% will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). (Kim Decl., ¶ 28; Exh. 1, § 3.2.4.1.)

Class Members will receive the Class Notice via first class mail (after the Settlement Administrator conducts a national change of address search). (Kim Decl., ¶ 30; Exh. 1, §7.4.2.) If the Class Notice is returned as non-deliverable and a new address is obtained by way of a returned Class Notice, then the Settlement Administrator will promptly forward the original Class Notice to the updated address via first-class regular U.S. mail, indicating on the original packet the date of such re-mailing. (Kim Decl., ¶ 30; Exh. 1, § 7.4.3.) Class Members will have an opportunity to dispute the Workweeks and PAGA Pay Period information provided in their Class Notice and produce evidence to support their contentions. (Kim Decl., ¶ 31; Exh. 1, § 7.6) The Settlement Administrator shall decide the dispute and must encourage the Class Member disputing their credited workweeks to produce supporting documentation in order to resolve the dispute. (*Id.*)

Class Members wishing to opt out from the Settlement Agreement must send a signed written request for exclusion to the Settlement Administrator within 60 days from the initial mailing of the Class Notice. (Kim Decl., ¶ 32; Exh. 1, §1.43.) Participating Class Members will also have the opportunity to object to the Settlement Agreement by serving a copy of the objection to the Settlement Administrator within 60 days after the mailing of the Class Notice. (*Id.*; Exh. 1, §7.7.2.)

The Parties have also selected CPT Group, Inc. ("CPT Group") to handle the notice and administration of the Settlement. (Kim Decl., Exh. 1, § 7.1.) CPT Group has procedures in place to protect the security of class data, adequate insurance in the event of a data breach or defalcation of funds, and is qualified to administer the Settlement. (Decl. of Julie Green in Support of Plaintiff's Motion for Preliminary Approval) The procedures for mailing notice and processing exclusions and objections as well as distribution of the Net Settlement Amount are detailed in the Settlement Agreement. (Kim Decl., Exh. 1, §§ 7, 7.1-7.8.6.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at 473-75.) The decision to certify a class is a procedural one, and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

To certify a settlement class, the Court must find the two primary requirements for maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-defined community of interest in the questions of law and fact involving the parties to be represented. (*See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab Company* (1967) 67 Cal. 2d 695, 704.) These criteria are met here for the reasons set forth below.

A. There Is A Numerous and Ascertainable Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class and the means available for identifying class members. (*See Vasquez, supra,* 4 Cal. 3d at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271.) Class members are "ascertainable" where they may be readily identified without unreasonable expense or time. *See Rose v. City of Hayward*, 126 Cal. App. 3d 926, 932 (1981) (finding that "class members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records).

Plaintiff contends, and Defendant does not dispute for settlement purposes only, this requirement and the requirement of numerosity is met. Class Members are "all persons employed by Defendant in California and classified as a non-exempt, hourly employee who worked for Defendant during the Class Period," which is the period from June 13, 2020, through October 31, 2025. (Kim Decl., ¶ 79(a).) Documents and information exchanged between the Parties reflect a class of approximately 393 Class Members. (Kim Decl., ¶ 79(a).) The Class Members have already been identified by reference to Defendant's payroll and personnel records. (Kim Decl., ¶ 79(b).)

Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

B. There Is A Well-Defined Community of Interest

A community of interest is established by the predominance of common issues of law and fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

> [D]oes not depend upon an identical recovery, and the fact that each member of the class must prove his separate claim to a portion of any recovery by the class is only one factor to be considered ... The mere fact that separate transactions are involved does not of itself preclude a finding of the requisite community of interest so long as every member of the alleged class would not be required to litigate numerous and substantial questions to determine his individual right to recover subsequent to the rendering of any class judgment which determined in plaintiff' favor whatever questions were common to the class.

Id. at 809.

Plaintiff contends, and Defendant does not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof. (Kim Decl., ¶ 79(e).) Because Plaintiff has alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." (*See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing In Re NASDAQ Market-Makers Antitrust Litigation, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This inference "'eliminates the need for each class member to prove individually the consequences of the defendants' actions to him or her.'" (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).)

This action involves, *inter alia*, a determination about Defendant's alleged failure to pay all wages due and owing (including off-the-clock work, and overtime), failure to provide meal and rest breaks, failure to reimburse necessary business expenses, failure to furnish accurate wage statements, failure to timely pay wages during employment and after termination, and largely derivative claims under the UCL and PAGA. (Kim Decl., ¶ 79(e)). Plaintiff contends these practices affected Class Members in the same way. (*Id.*)

C. The Named Plaintiff's Claims Are Typical

A class representative's claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative class members, and if their claims rest on the same legal theories. The class representative's claims must be "typical" but not necessarily identical to the claims of other class members. It is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class representative must have identical interests with the class members.") Thus it is not necessary that the class representative should have personally incurred all of the damages suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

Plaintiff contends, and Defendant does not dispute for settlement purposes only, that Plaintiff's claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Kim Decl., ¶ 79(c).) Plaintiff was employed by Defendant during the Class Period and subject to the allegedly unlawful meal and rest break policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiff is a member of the Class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay all wages, whether Defendant failed to provide meal and rest periods, etc.) which would arise if this were an individual action brought by Plaintiff, apply to the other Class Members as well. (*Id.*) Thus, the claims of Plaintiff are typical of the claims of the Class. (*Id.*)

D. Adequacy of Class Counsel and Class Representative

Class Counsel are experienced in class actions, have represented their clients and the Class zealously and have no conflicts of interest. (Kim Decl., ¶¶ 3-9, 79(d).) The Class Representative's interests are aligned with those of Class Members, he has suffered the same injuries as Class Members, and has no conflicts of interest. (*Id.*) Therefore, Class Counsel and the Class Representative are adequate.

E. Predominance and Superiority

Individual issues do not predominate over those common to the class. (Kim Decl., ¶ 79 (f).) The class action mechanism is superior to individualized actions because Class Members have little incentive to bring claims that are small. (*Id.*)

V. THE TWO-STEP APPROVAL PROCESS

Any settlement of class action litigation must be reviewed and approved by the Court. This is accomplished in two steps: (1) An early (preliminary) review by the trial court, and (2) a detailed review after the notice has been distributed to the class members for their comments or objections. In this regard, the Manual for Complex Litigation (Second) explains:

> A two-step process is followed when considering class settlements… If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representative or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

(*Manual for Complex Litigation (Second)* (1985) at § 30.44.) The preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. (*See, e.g., Newberg*, § 11.25; *North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.) Thus, the preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements.

Settlements to resolve PAGA claims also require court approval. (Labor Code § 2699(l)(2).) There is no articulated standard for approving PAGA settlements. PAGA settlements for as little as $0 have been approved. (*See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated $0 to PAGA claim).) Courts have also approved settlements for $20,000 or less. (*See, e.g., Hicks v. Toys 'R' Us–Delaware, Inc.,* (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving $5,000 PAGA payment in $4 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1 (approving PAGA payment of $7,500 in $6.9 million settlement); *Williams v. Brinderson Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 ($10,000 PAGA settlement in $300,000 settlement).)

A review of the preliminary approval criteria demonstrates a substantial basis for granting the instant Motion and proceeding to a final settlement approval hearing.

VI. THE SETTLEMENT IS FAIR AND ADEQUATE

As a matter of public policy, courts both encourage the use of the class action device and favor settlement over continued litigation. (*See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434 ("Courts have long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system."); *Class Plaintiff v. City of Seattle* (1992) 955 F.2d 1268, 1276 ("[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned.").)

Moreover, courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents, particularly when settlement has been reached by experienced counsel familiar with the litigation. (*Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.)

In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out several factors that should be analyzed in determining if a class action settlement should be approved. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

The Settlement here satisfies each of these factors. Class Counsel conducted extensive formal and informal discovery before entering into meaningful settlement negotiations in this matter, including a detailed analysis of Defendant's sampling of time and pay records as well as Plaintiff's wage statements. (Kim Decl., ¶¶ 17-21.) This discovery permitted Class Counsel to fairly evaluate the strengths of the case and the risks associated with ongoing litigation. Class Counsel is very experienced in the handling of wage and hour class actions and supports this Settlement. (Kim Decl., ¶¶ 3-9.)

A. The Strength of Plaintiff's Case.

Plaintiff alleges that Defendant failed to pay Class Members all wages due and owing (including off-the-clock work, and overtime), failed to provide meal and rest breaks, failed to reimburse necessary business expenses, failed to furnish accurate wage statements, failed to timely pay wages including final wages, and largely derivative claims under the Unfair Competition Law ("UCL"). (Kim Decl., ¶ 10.) Plaintiff seeks related violations of California's Business & Professions Code, and penalties pursuant to Labor Code § 2699 *et seq.* (*Id.*)

Class Counsel felt confident that the claims in this case would be certified given that Defendant's policies were applicable to all Class Members and unlawful. (Kim Decl., ¶¶ 33-60.) Defendant contended, however, that its policies complied with California law and denied Plaintiff's allegations.

B. The Risks Associated with the Merits.

Plaintiff alleged that Defendant failed to pay Plaintiff and Class Members proper minimum wages and overtime for all hours worked at proper rates of pay. (Kim Decl., ¶ 37.) Specifically, Plaintiff alleges that Plaintiff and Class Members were required to work off-the-clock by performing their ordinary work duties before clocking in and after clocking out. (*Id.*) Furthermore, Plaintiff and Class Members earned performance-based non-discretionary bonuses, in addition to their hourly pay. (*Id.*) Plaintiff alleges that Defendant failed to include all forms of remuneration in the regular rate of pay used to calculate and pay overtime. (*Id.*)

Defendant contended that it paid for all reported hours worked, that they instructed Class Members to record all hours worked, that any off-the-clock work performed was without Defendant's knowledge and de minimis, and that it paid proper minimum and overtime wages. (Kim Decl., ¶ 38.) Defendant argued that any bonuses paid to Class Members were discretionary in nature and not includable in the regular rate of pay calculation. (*Id.*) Defendant argued that given its written policies and practices, any unrecorded hours were likely subject to individualized inquiry and unlikely to be certified. (*Id.*) Given the difficulty in certifying this claim, Class Counsel had to apply a significant discount to damages based on this theory. (*Id.*)

Plaintiff argued that Defendant had a common practice and policy of denying Plaintiff and Class Members the opportunity to take compliant meal periods and failed to pay premium wages at applicable regular rates of pay in lieu thereof. (Kim Decl., ¶ 41.) Specifically, Plaintiff alleged that Plaintiff and Class Members' meal periods were systematically interrupted due to understaffing and heavy workloads. (*Id.*)

Defendant disagreed with Class Counsel's interpretation of the law and facts. Defendant contended that Class Members were given a reasonable opportunity to take their meal periods, and in fact received their meal periods most of the time. (Kim Decl., ¶ 42.) Defendant argued it has a high meal period compliance rate and paid meal period premiums when meal periods were not provided. (*Id.*) Given Defendant's defenses and potential hurdles facing certification of this claim, Class Counsel had to apply a significant discount on this theory. (*Id.*)

Plaintiff also contended that the same argument applied to rest breaks. (Kim Decl., ¶¶ 44.) Plaintiff contended that Defendant did not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction thereof, and failed to pay Plaintiff and Class Members additional premium wages for the rest periods that were not provided. (Kim Dec., ¶ 44.) Specifically, Plaintiff alleged that Defendant unlawfully prohibited Plaintiff and Class Members from leaving the work premises during rest periods. (*Id.*)

Defendant maintained that it did provide the reasonable opportunity for Class Members to take duty-free rest breaks. (Kim Decl., ¶ 45.) Defendant also pointed out that, unlike meal periods, rest breaks need not be recorded, so any rest break violations would likely be difficult to prove at trial and difficult to certify. (*Id.*) Defendant disputes all allegations that breaks were not received. (*Id.*) As these considerations would likely depress the damages *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts to the rest-break claim. (*Id.*)

Plaintiff also alleged that Plaintiff and Class Members incurred necessary expenditures in the performance of their job duties for Defendant, including being required to utilize their personal cell phones and data plans for work purposes, but were not reimbursed for these necessary work-related expenses. (Kim Decl., ¶ 54.) However, given Defendant's reimbursement policy and the potential for the need for individualized inquires making class certification of this claim difficult, Class Counsel applied significant and appropriate discounts. (Kim Decl., ¶ 55.)

C. The Risks Associated with Paystub Violations and Waiting Time Penalties.

In order to establish liability for these penalties, Plaintiff would first have to establish liability for the underlying claims. Plaintiff would then have to establish that Defendant's conduct was willful and knowing. (Labor Code §§ 203, 226(e).)

With waiting time penalties, there is always the risk that the trier of fact would not have held that Defendant's actions were done "willfully." A good faith belief in a legal defense can preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleges that Defendant failed to pay for all hours worked and premiums for non-compliant meal breaks due to the underreporting of hours and off the clock work. Plaintiff contends the Class Members are entitled to these wages and premiums, which they allege were not paid at the time of their termination or resignation. If Plaintiff is successful on their claims, the penalties pursuant to Labor Code § 203 shall attach. Defendant, however, contend they provided employees with the reasonable opportunity to take meal breaks, asked Class Members to confirm the accuracy of their time records, and therefore had good-faith defenses under *Brinker* and its progeny. Defendant likewise contends that it properly paid all hours worked by its employees. Based upon Defendant's potential success in establishing both that a good faith dispute existed with regard to unpaid wages, and Defendant endeavored in good faith to supply accurate wage statements, Defendant argues the claims for paystub violations and waiting time penalties have little or no value. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage statements that accurately report wages paid to employees do not violate Labor Code § 226, even if it is later determined that employer did not properly pay all wages due). As such, there was risk associated with wage statement and waiting time penalties that Class Counsel had to consider. (Kim Decl., ¶¶ 47-53.)

D. The Risks Associated with the PAGA Penalties.

Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount by the Labor Code section relating to the underlying alleged Labor Code violation, that amount shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the maximum civil penalty. (*Id.* ["…a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."]); *See, e.g., Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev. denied* (2018), (recognizing court's ability to reduce PAGA penalties). Courts have held that situations similar to the current one (e.g. injuryless violations, technical errors, and substantial compliance) should lead to reductions in penalties. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1134-1135 (2012) (holding that reduction was justified when employer "attempted to comply with the law"); *Fleming v. Covdien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011) (reducing PAGA penalties more than 80% – from $2.8 million to $500,000 – when "employees suffered no injury" employers were "not aware" of the violation and "took prompt steps to correct all violations once notified"). Additionally, the amended PAGA statute (applicable here) applies mandatory discounts of up to 85% when a defendant establishes that it took "all reasonable steps" to comply with Labor Code obligations. (Labor Code § 2699(g)). Defendant argued that due to its lawful and compliant policies, trainings, and audits, it would be entitled to PAGA's mandatory discounts. (Kim Decl., ¶ 58.)

Plaintiff discounted potential penalties under this claim given this authority, and for reasons already discussed. The PAGA claims are premised on the same underlying unpaid wages, meal and rest break, wage statement, and waiting time claims, and thus subject to the same disputes and defenses. There is also a dispute as to whether violations in later pay periods trigger the $200 penalty under PAGA as a "subsequent violation." (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1203 (2008).) As such, there is a fair amount of risk associated with PAGA claims makes the settlement's proposed PAGA payment of $20,000 appropriate. (Kim Decl., ¶¶ 56-59.)

E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.

Given the risks outlined above, the issues in this case were complex and the risk for Plaintiff and Class Members associated with this litigation was significant. (Kim Decl., ¶¶ 63-66.) A class trial would have required the retention of expensive expert witnesses, the accrual of extensive litigation costs, and the parties would have had to spend a substantial amount of time litigating this matter. (*Id.*)

Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay for Class Members who will have already waited considerable time for resolution in this matter.

F. The Risk of Maintaining Class Action Status Through Trial.

In class actions, decertification is always a possibility. There is always a risk that a trial of this magnitude can become unmanageable. (Kim Decl., ¶ 63-66.) Given cases like *Duran v. U.S. Bank Nat. Assn.*, 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples in class actions, decertification is a real risk that Class Counsel must take into account.

G. The Amount Offered in Settlement.

There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive, and arms-length negotiations between the parties with an experienced mediator. In order to determine the approximate potential damages which would be owed to each of the Class Members, Class Counsel analyzed the time records for Plaintiff and Defendant provided Class Counsel with records for a sampling of Class Members. By analyzing this information, Class Counsel was able to estimate the full value of the case if Plaintiff were to prevail at trial. (Kim Decl., ¶¶ 17-22.)

Based on the data provided, Class Counsel estimated the realistic exposure on the primary claims in this case as follows: unpaid minimum and overtime wage claims at **$149,108.00**, meal period claim at **$134,310.90**, rest period claim at **$192,478.65**, wage statement claim at **$66,125.00**, waiting time penalties at **$141,715.30**, unreimbursed business expenses claim at **$31,628.00,** and on PAGA at **$67,180.00,** for a total realistic maximum exposure of **$782,545.85**. (Kim Decl., ¶ 35.)

The Gross Settlement Amount of $650,475.00 represents a recovery for the Class of approximately 83.1% of the total realistic exposure Plaintiff estimated that Defendant could face on the primary claims in this case. (Kim Decl., ¶ 62.) Plaintiff and Class Counsel submit that this is an excellent result in the face of uncertainty and the prospects of protracted and contested litigation through class certification, summary judgment, and trial, and particularly in light of all of the factors described above. (*Id*.)

Class Counsel believes that the settlement is fair and reasonable and serves the best interests of Class Members. Although the recommendations of counsel proposing the class settlement are not conclusive, the Court can properly take the recommendations into account, particularly if counsel has been involved in litigation for some period of time, appear to be competent, and have experience with this type of litigation, and significant discovery has been completed. *See Newberg,* §11.47.

VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND REASONABLE

It is appropriate to provide a relatively modest additional incentive payment to the class representative. See *Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901

F.Supp. 294.

Plaintiff is entitled to a reasonable service payment for his efforts and initiative in bringing and helping to prosecute this class action. (Kim Decl., ¶ 74.) Plaintiff spent significant time better apprising himself of his rights, deciding whether remedial action should be taken, how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing the case and the law. (*Id.*) In the end, Plaintiff decided to vindicate not only their own rights but also those of their co-workers by filing a class action lawsuit. (*Id.*)

The courage it took to stand up to Defendant by filing and litigating this action in this way should not be underestimated. (Kim Decl., ¶ 75.) By suing Defendant, Plaintiff increased the risk of retaliation by prospective employers. (*Id.*) But Plaintiff did not allow his fear of the potential repercussions of being a class representative deter them from acting for the benefit of Class Members. (Kim Decl., ¶ 76.) To the contrary, Plaintiff has been intimately involved in this case since its inception. (*Id.*) He has devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation. (*Id.*) Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel on numerous occasions to discuss every aspect of their case. (*Id.*) Plaintiff provided Class Counsel with information about Defendant and about the industry generally, reviewed documents, identified witnesses, consulted Class Counsel throughout the litigation repeatedly and at length, participated in the mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the Settlement Agreement. (*Id.*)

In sum, Plaintiff has diligently, adequately, and fairly represented Class Members, and have not placed their interests above any member of the putative class. (Kim Decl., ¶ 77.) This sort of payment to a class representative has been a common feature of settlements negotiated by Class Counsel and has been routinely approved by trial courts. (*Id.*)

The Settlement allocates an incentive award in the amount of $7,500.00 to the Class Representative. (Kim Decl., ¶ 25.) This amount is a far cry from the $50,000.00 of enhancement awards to the two named plaintiffs approved by the trial court in *Clark. See Clark Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th at 807. Although Class Counsel appreciate that the Court has a duty to ensure that class representatives are not overcompensated at the expense of the class, modest incentive awards in employment class actions, such as the one here, are necessary not only to compensate class representatives for the time they spend in the case, but also, and more importantly, to encourage aggrieved employees to challenge questionable employment practices notwithstanding the very real consequences they may face.

In light of the foregoing, Class Counsel believes that the incentive award in the amount of $7,500.00 to Class Representative is fair and reasonable. (Kim Decl., ¶ 78.)

VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS.

Constitutional due process requires that class members be provided with notice sufficient to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient information to make an informed decision as to whether to accept or object to the settlement. (*Id.* at 314.) The notice must apprise the class members of the pendency of the action; reasonably convey information regarding the settlement and the class members' rights, entitlements, and obligations; and afford class members the opportunity to present their objections. (*Id.*)

The Class Notice meets constitutional standards because it provides all the information a reasonable person would need to make a fully informed decision about the settlement. It will notify all class members of the terms of the settlement, of its effect on their rights, of their options as class members (i.e., participate, object, opt out, do nothing), and of the consequences of exercising those options. (Kim Decl., ¶¶ 67-69.) Moreover, the Class Notice will specifically direct any Class Members who have questions or concerns to contact the Settlement Administrator or Class Counsel. (*Id*.)

The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California's Deskbook on the Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual notice by mail is preferred when possible and dissemination of combined certification/settlement notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.)

Here, the Class Notice will be sent via first-class mail to each Class Member. (Kim Decl., ¶¶ 30, 67.) If any Class Notices are returned undeliverable without a forwarding address, the Settlement Administrator will use the national change of address database and perform a skip trace to locate the Class Member and mail a new Class Notice to him or her at the correct address. (*Id.*) Thus, most, if not all, Class Members will likely receive the Class Notice.

Pursuant to controlling authority, the proposed Class Notice and method of distribution fully comport with due process requirements. Therefore, the Court should approve the Class Notice and direct that it be distributed as proposed herein.

IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT

Non-settling parties and third parties periodically may attempt to object to proposed class action settlements, but the right of non-settling parties to object at the final settlement approval hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class members have standing to object to a proposed settlement. "Beginning from the unassailable premise that settlements are to be encouraged, it follows that to routinely allow non-class members to inject their concerns via objection at the settlement stage would tend to frustrate this goal." (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being filed to obtain a good faith determination, no persons other than class members have standing to object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d 1330.)

X. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS REASONABLE AND SHOULD BE APPROVED.

Under the Settlement Agreement, subject to approval by this Court, Class Counsel will seek an award of fees of $216,825.00, one-third of the Gross Settlement Amount, and reasonable litigation costs and expenses incurred to prosecute this Action. (Kim Decl. ¶ 71.) The requested fees are fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-consuming litigation solely on a contingent basis. (*Id.*) Defendant will not oppose Class

Counsel's above fees and cost request. (*Id.*)

Here, Class Counsel has borne the entire risk and costs of litigation and will not receive any compensation until recovery is obtained. (Kim Decl., ¶¶ 71-73.) The Court should also consider the significant benefit obtained by Class Counsel on behalf of Class Members. Thus, the requested award for Class Counsel is reasonable.

XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY APPROVAL

The parties respectfully request this Court, as part of the preliminary approval process, to grant the following relief and make the following orders:

1. Approve the Settlement Agreement;

2. Approve the Class Notice, attached to the Settlement Agreement as Exhibit A;

3. Consider and determine that the proposed class action settlement as set forth in the Settlement Agreement preliminarily appears fair, reasonable, and adequate;

4. Enter an order conditionally certifying the action as a class action for settlement purposes only and preliminarily approving the proposed class action settlement and the Settlement Agreement;

5. Approve and appoint Natalie Haritoonian, Enoch J. Kim, and Matthew Carraher of D.Law, Inc. to serve as Class Counsel for settlement purposes;

6. Approve and appoint CPT Group, Inc. ("CPT Group") as the Settlement Administrator to handle the notice and claims procedures as set forth in the Settlement Agreement;

7. Approve the proposed settlement's allocation of funds to claims made under PAGA;

8. Order Defendant to disclose the Class Data to CPT Group pursuant to= terms of the Settlement;

9. Order that CPT Group mail the Class Notices to Class Members; and

10. Set a date for the Final Approval Hearing.

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Dated: July 13, 2026

Respectfully submitted,

D.LAW, INC.

By ______________________

Natalie Haritoonian
Enoch J. Kim
Matthew Carraher
Attorneys for Plaintiff on behalf of himself and others similarly situated