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Attorneys for Plaintiff Raymond Herrera

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

RAYMOND HERRERA, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiff,

vs.

GOODFELLOW BROS. CALIFORNIA, LLC, a California limited liability company; GOODFELLOW BROS. LLC, a Washington limited liability company; and DOES 1 through 100, inclusive,

Defendants.

Case No. 24CV081417

Honorable Karin Schwartz
Department 20

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

[Declaration of Proposed Class Counsel (Ryan Slinger); Declaration of Proposed Class Representative (Raymond Herrera); and [Proposed] Order filed concurrently herewith]

Reservation ID:	357370616165
Hearing Date:	February 26, 2026
Hearing Time:	3:00 p.m.
Department:	20
Complaint Filed:	June 26, 2024
Trial Date:	None Set

TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 26, 2026, at 3:00 p.m. or as soon thereafter as the matter may be heard before the Honorable Karin Schwartz in Department 20 of the Superior Court of California for the County of Alameda, located at 1225 Fallon Street, Oakland, California 94612, Plaintiff Raymond Herrera ("Plaintiff" or "Class Representative") will, and hereby does, move for an order:

- Granting leave to file the [Proposed] First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. which is attached as "**EXHIBIT B**" to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement;
- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 2**" to the Declaration of Ryan Slinger in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement;
- Certifying the proposed Class for settlement purposes;
- Appointing Plaintiff Raymond Herrera as Class Representative;
- Appointing Arby Aiwazian, Yasmin Hosseini, Ryan Slinger, and Alborz Javaheri of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("Class Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement, and directing the mailing thereof in accordance with the Settlement Agreement;
- Approving Phoenix Settlement Administrators as the Settlement Administrator; and
- Scheduling a hearing to consider final approval of the Settlement.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which require approval by the Court of the settlement of a putative class action, and Rule 3.1113(e),

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which allows the Court to preliminarily certify a class for settlement purposes, and permits the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declaration of Proposed Class Counsel (Ryan Slinger) and Proposed Class Representative (Raymond Herrera) in support thereof, as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: February 2, 2026

LAWYERS *for* JUSTICE, PC

By: Ryan Slinger
____
Ryan Slinger
Alborz Javaheri
Attorneys for Plaintiff Raymond Herrera

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Raymond Herrera ("Plaintiff" or "Class Representative") seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants Goodfellow Bros. California, LLC and Goodfellow Bros. LLC (together, the "Defendants"), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the "Parties") have agreed to settle the lawsuits for a Gross Settlement Amount of $337,500.00.[1]

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendants do not oppose:

> All current and former hourly-paid or non-exempt employees and all current and former salaried dispatchers, or persons who held similar job titles and/or performed similar job duties to Plaintiff and were alleged to have been misclassified as "exempt", who worked for any of the Defendants within the State of California and held non-unionized positions at any time during the Class Period ("Class" or "Class Members").[2]

Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement ("Participating Class Member") will receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"). The net payment of each Participating Class Member's Individual Settlement Share ("Individual Settlement Payment") will be distributed to Participating Class Members on a pro rata basis based on the number of weeks each Participating Class Member worked for Defendants as a non-union hourly-paid or non-exempt employee and/or salaried dispatchers, or as a person who held similar job titles and/or performed similar

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[1] Settlement Agreement, attached as **"EXHIBIT 2"** to Declaration of Ryan Slinger ("Slinger Decl."), § 1.20. Should the qualifying Workweeks worked by Class Members during the Class Period increase beyond 10% of 4,891 (i.e., beyond 5,380 Workweeks), then Defendants have the option to either: (1) agree to increase the Gross Settlement Amount on a proportional basis above 10% (i.e., if there is an 11% increase in the number of Workweeks during the Class Period, Defendants would agree to increase the Gross Settlement Amount by 1%); or (2) elect to end the Class Period and PAGA Period as of the day before accrual of 5,380 Workweeks worked by the Class Members during the Class Period ("Alternate End Date"). *See id.*, ¶ 8.

[2] *Id.*, ¶ 1.5. "Class Period" means the period from June 26, 2021 through the date of preliminary approval, or if applicable, the Alternate End Date. *See id.*, ¶ 1.10.

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job duties to Plaintiff and were alleged to have been misclassified as "exempt," within the State of California during the Class Period ("Workweeks").[3]

The Settlement, upon final approval by the Court and funding of the Gross Settlement Amount, will operate to resolve the Released Class Claims of Plaintiff and Participating Class Members and the Released PAGA Claims of Plaintiff, Aggrieved Employees and the State of California.[4]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants are a heavy-civil contractor with operations in Hawaii, Oregon, California and Washington. Defendants provide professional services in earthwork, excavation, site preparation, blasting, crushing, grading and paving, underground utilities, structural concrete, and more. Plaintiff is a former employee of Defendants.

On April 19, 2024, Plaintiff provided written notice by certified mail to the LWDA and Defendants of the specific provisions of the California Labor Code that were alleged to be violated ("PAGA Notice").[5]

On June 26, 2024, Plaintiff filed the Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code §2698, *et seq.* in the Superior Court for the County of Alameda, thereby commencing the above-captioned lawsuit.[6]

On August 28, 2024, Defendants filed their Answer to Plaintiff's Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code §2698, *et seq*.[7]

On August 28, 2024, Defendants removed the Action to the United States District Court for the Northern District of California.[8]

On September 27, 2024, Plaintiff filed the Motion to Remand, to which Defendants filed their opposition on October 11, 2024, to which Plaintiff filed their reply on October 18, 2024.[9]

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[3] Settlement Agreement, ¶¶ 1.22, 1.23, 1.36, and 1.47.
[4] *Id.*, at ¶¶ 5.2 and 5.3. See *id.* at ¶ 5.2 for the full scope of the "Released Class Claims" *id.* at ¶ 5.3 for the full scope of the "Released PAGA Claims," and *id.* at ¶ 1.42 for the definition of the "Released Parties."
[5] Slinger Decl., ¶ 2, Exh. 1.
[6] *Id.*, ¶ 3.
[7] *Id.*, ¶ 4.
[8] *Id.*, ¶ 5.
[9] *Id.*, ¶ 6.

On May 6, 2025, the Court granted Plaintiff's Motion to Remand the Action to Alameda County Superior Court.[10]

Plaintiff will file a First Amended Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Lab. Code § 2698, *Et Seq*. ("Operative Complaint"), thereby adding claims for: (1) failure to pay overtime wages pursuant to California Labor Code sections 510, and 1198 and the IWC Wage Orders; (2) failure to provide meal periods and associated premiums pursuant to California Labor Code sections 226.7 and 512 and the IWC Wage Orders; (3) failure to provide rest periods and associated premiums pursuant to California Labor Code sections 226.7 and the IWC Wage Orders; (4) failure to pay wages, including, *inter alia*, unpaid minimum wages, vacation wages, regular wages, reporting time pay, and sick time pay, owed pursuant to California Labor Code sections 227.3, 246, 1194, 1197, and 1197.1 and the IWC Wage Orders; (5) failure to pay all wages owed at termination pursuant to California Labor Code sections 201 and 202 and the IWC Wage Orders; (6) failure to timely pay wages during employment pursuant to California Labor Code section 204 and the IWC Wage Orders; (7) failure to furnish accurate itemized wage statements pursuant to California Labor Code section 226 and the IWC Wage Orders; (8) failure to keep complete or accurate payroll records pursuant to California Labor Code section 1174(d) and the IWC Wage Orders; (9) failure to reimburse all necessary business expenses pursuant to California Labor Code sections 2800 and 2802 and the IWC Wage Orders; and (10) violations of California Business & Professions Code sections 17200, *et seq*.[11]

Plaintiff's core allegations are that Defendants have violated California wage and hour law, including but not limited to laws set forth in the California Labor Code, by engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and Aggrieved Employees of, *inter alia*, failing to pay all overtime and minimum wages, at all or at the correct rate of pay, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to

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[10] Slinger Decl., ¶ 8.
[11] *Id.*, ¶ 9.

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provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq*., and conduct giving rise to civil penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, *et seq*.). Plaintiff contends that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees and costs.[12]

The Parties have actively litigated the Action since it was commenced on June 26, 2024. On April 16, 2025, the Parties participated in an all-day mediation presided over by the Honorable Peter Wilson (Ret.) ("Mediator").[13] Through continued settlement negotiations, the Parties reached a resolution, which led to this Agreement to settle the Action in its entirety.[14]

III. REQUEST FOR LEAVE TO FILE TO AMENDED COMPLAINT

To effectuate the terms of the Settlement Agreement and intent of the Parties, the Parties agree that leave should be granted for Plaintiff to amend the complaint, by filing the [Proposed] First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq*. ("First Amended Complaint" or "Operative Complaint"). The First Amended Complaint will add all class claims and causes of action negotiated during mediation and falling within the definitions of "Released Class Claims."[15] As such, Plaintiff respectfully requests leave to file the First Amended Complaint (i.e., Operative Complaint), attached as "**EXHIBIT B**" to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement, so that the Operative Complaint formally fleshes out the allegations that have been investigated, litigated, mediated, and ultimately settled by the Parties and so that the terms of the Settlement may be effectuated.

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[12] Slinger Decl., ¶ 18.
[13] *Id*., ¶ 7.
[14] *Ibid*.
[15] *Ibid*.

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IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount of $337,500.00 to resolve the Action.[16] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Attorneys' Fees in an amount not to exceed 40% of the Gross Settlement Amount (i.e., $135,000.00 if the Gross Settlement Amount remains $337,500.00) and litigation costs and expenses in an amount not to exceed $20,000.00 ("Attorneys' Fees and Costs") to Class Counsel; (2) Settlement Administration Costs, which are currently estimated not to exceed $7,000.00 to the Settlement Administrator ("Settlement Administration Costs"); (3) PAGA Penalty Amount of $33,750.00 ("PAGA Penalty Amount"); and (4) payment in the amount of up to $10,000.00 to Plaintiff ("Service Payment").[17] The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration process.[18]

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member's share of the available Net Settlement Amount ("Individual Settlement Share"), in accordance with the Settlement Agreement on a *pro rata* per Workweeks basis, which will be adjusted after Final Approval to reflect the total Workweeks worked by Participating Class Member.[19] The Parties have agreed that the Settlement Administrator will determine each Aggrieved Employee's *pro rata* share of the 25% share of the PAGA Penalty Amount, in accordance with the Settlement Agreement on a *pro rata* per PAGA Pay Periods basis.[20]

The Parties agree, for purposes of this Settlement, that Individual Settlement Shares will be allocated 20% to wages subject to withholdings and 80% to interest, damages, liquidated damages, restitution, and statutory penalties.[21] The Settlement Administrator will withhold the

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[16] Settlement Agreement, ¶¶ 1.20, 3.1, and 8.
[17] *Id.*, ¶¶ 1.27 & 3.2.1-3.2.4.
[18] *Id.*, ¶ 1.46.
[19] *Id.*, ¶ 3.2.5.
[20] *Id.*, ¶ 3.2.6.
[21] *Id.*, ¶ 3.2.7.

employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share, and issue checks to Participating Class Members for their Individual Settlement Payments. Each Individual PAGA Payment will be allocated as 100% penalties and will not be subjected to withholdings.[22] Defendants will provide the funds for any employer-side taxes related to the Individual Settlement Shares.[23]

Individual Settlement Payment and Individual PAGA Payment checks will be negotiable for one hundred eighty (180) calendar days from the date of their issuance, and thereafter, shall be canceled.[24] Thereafter, funds from uncashed Individual Settlement Payment and/or Individual PAGA Payment checks shall be transmitted to the California Controller's Unclaimed Property Fund in the name of each Class Member and/or Aggrieved Employee to whom the checks were issued.[25]

Any Class Member may request to be excluded from the Class Settlement by mailing a Request for Exclusion postmarked on or before the date that is sixty (60) calendar days from the date of the initial mailing of the Class Notice by the Settlement Administrator ("Response Deadline").[26] The Response Deadline will be extended fifteen (15) calendar days for Class Notices that are remailed.[27] Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[28]

Only Class Members who have not submitted a Request for Exclusion (i.e., Participating Class Members) may object to the Class Settlement by submitting an Objection, to the Settlement Administrator prior to the Response Deadline or by presenting their objection orally at the Final Approval hearing, regardless of whether they submitted a written objection.[29]

In order to dispute the number of Workweeks and/or PAGA Pay Periods attributable to an individual Class Member and/or Aggrieved Employee, that Class Member and/or Aggrieved

[22] Settlement Agreement ¶ 3.2.7.
[23] *Id.*, ¶¶ 1.20 & 3.1.
[24] *Id.,* ¶ 4.4.1.
[25] *Id.,* ¶ 4.4.3.
[26] Settlement Agreement, ¶ 1.44.
[27] *Ibid.*
[28] *Id.,* ¶ 7.5.1.
[29] *Id.,* ¶¶ 1.29 & 7.7.

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Employee must submit a written letter to the Settlement Administrator, and include copies of any supporting evidence they may have.[30]

V. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002). Preliminary approval of a settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage. Cal. R. Ct. 3.769(g).

In considering a potential class settlement, a court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg,* § 11.25.

VI. THE COURT SHOULD PRELIMINARY APPROVE THE SETTLEMENT

The trial court has broad discretion to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk,* 48 Cal.App.4th at 1800. To make this fairness determination, courts must consider several relevant factors, including "the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of

[30] Settlement Agreement., ¶¶ 1.48, and 7.6.

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discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Dunk*, 48 Cal.App.4th at 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 224, 245. Furthermore, courts give "proper deference to the private consensual decision of the parties." *Hanlon*, 150 F.3d at 1027 (citation omitted).

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Id.*; *Dunk*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

A. The Settlement Resulted from Arm's-Length Negotiations Based Upon Extensive Investigation and Discovery.

The Parties have actively litigated the Action since it commenced on June 26, 2024. Both sides investigated the veracity, strength, and scope of the claims throughout the case, and Class Counsel was actively preparing the matter for class certification and trial.[31]

Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data from Plaintiff, Defendant, and other sources.[32] Class Counsel served multiple sets of formal written discovery requests onto both Defendants (specifically, Form Interrogatories—General (Set One), Special Interrogatories (Sets One & Two), and Requests for Production of Documents (Set One)). Additionally, Class Counsel noticed the depositions of both Defendants' Person Most Knowledgeable designees regarding

[31] Slinger Decl., ¶¶ 26, and 27.
[32] *Id.*, ¶ 27.

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Job Descriptions and Organizational Structure.[33] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff's employment records, a sampling of Plaintiff's and other Class Members' time data and pay records, multiple iterations of Defendants' Employee Handbook, internal memoranda, job descriptions, employee onboarding and personnel files, Defendants' operations and employment practices, forms, procedures, and policies, among other information and documents.[34] Class Counsel had the opportunity to interview Plaintiff and others to gather facts and to identify potential witnesses.[35] In addition, Class Counsel has extensive experience in California wage-and-hour class actions.[36]

The Parties engaged in extensive settlement negotiations and participated in a full-day mediation conducted by Honorable Peter Wilson (Ret.), a well-respected mediator experienced in mediating complex labor and employment matters.[37] Prior to and during the mediation and settlement negotiations, the Parties exchanged extensive information and engaged in discussions regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, including the risks of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, regular rate, meal and rest periods, PAGA representative claims, and wage-and-hour enforcement; the evidence produced and analyzed; and the possibility of appeals.[38] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[39] Arriving at a settlement that was acceptable to both Parties was not easy. Both sides felt strongly about their ability to prevail at certification and at trial.[40] After conducting investigations, formal and informal discovery, extensive settlement negotiations, the Parties have agreed that the matter

[33] Slinger Decl., ¶ 27.
[34] Slinger Decl., ¶ 27.
[35] *Ibid*.
[36] *Id*., ¶ 20.
[37] *Id*., ¶ 7.
[38] *Id*., ¶ 26.
[39] *Ibid*.
[40] *Id*., ¶ 27.

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is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.[41]

B. <u>The Settlement Is Fair, Reasonable, and Adequate.</u>

The Settlement represents a fair, adequate, and reasonable resolution of the matter.[42] The Settlement was calculated using the information and data uncovered during litigation, case investigation, and the formal and informal exchange of information.[43] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.[44] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[45]

Assuming that the Attorneys' Fees and Costs, Service Payment, PAGA Penalty Amount, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be $131,750.00.[46] Additionally, 25% of the PAGA Penalty Amount (i.e., Aggrieved Employee Amount), which is $8,437.50 out of $33,750.00, will be distributed to the Aggrieved Employees. The entire Net Settlement Amount will be fully paid out to the Participating Class Member, in accordance with the Settlement Agreement.

The amount of each Participating Class Member's Individual Settlement Share and each Aggrieved Employee's Individual PAGA Payment will be calculated based on their Workweeks and/or PAGA Pay Periods during the Class Period and PAGA Period, respectively.[47] "An allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. Here, the

[41] Slinger Decl., ¶ 26.
[42] Slinger Decl., ¶¶ 26, 28, 30, and 37.
[43] *Id.*, ¶¶ 26, and 27.
[44] Slinger Decl., ¶ 26.
[45] *Id.,* ¶¶ 12, 14, & 23.
[46] *Id.,* ¶ 11.
[47] Settlement Agreement, ¶¶ 3.2.5, and & 3.2.6.

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allocation is reasonably related to the number of Workweeks and/or PAGA Pay Periods worked for Defendants during the relevant period and should be approved.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, Aggrieved Employees, and the State of California.[48] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, and have experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg,* §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

VII. CERTIFICATION OF THE CLASS IS APPROPRIATE

The requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[49] California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the Plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

A. The Class Is Ascertainable and Sufficiently Numerous.

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed Plaintiff by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed Class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435; *see also Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40

[48] Slinger Decl., ¶¶ 26, 28, 30, and 37.
[49] Settlement Agreement, ¶ 2.9.

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individuals satisfies the numerosity requirement as joinder is not practical at that point). The Class here is estimated to be approximately 88 individuals, which is sufficiently numerous.[50] Further, all Class Members can and will be identified by Defendants to the Settlement Administrator through a review of Defendants' employment records regarding hourly-paid or non-exempt employees and all current and former salaried dispatchers, or persons who held similar job titles and/or performed similar job duties to Plaintiff and were alleged to have been misclassified as "exempt", who worked for any of the Defendants within the State of California and held non-unionized positions at any time during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

B. <u>The Share a Well-Defined Community of Interest.</u>

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) Class Representative with claims or defenses typical of the class; and (3) Class Representative who can adequately represent the class." *Sav-On*, *supra*, 34 Cal.4th at 326. "[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims*." *Capitol People First v. Dep't of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts focus on the Defendants' internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated Plaintiff renders class certification appropriate." *Id.* (citing *Sav-On*, 34 Cal.4th at 333).

Here, common issues of law and fact predominate as to each of the claims alleged and asserted in the Action. Based on the documents and information obtained through formal and informal discovery and exchange of information in the case, Plaintiff contends that Class Members performed similar job duties and were subject to uniform operations and employment policies, practices, and procedures during the Class Period, including payroll and recordkeeping practices.[51] As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue. Plaintiff maintains

[50] Slinger Decl., ¶ 17.
[51] Slinger Decl., ¶ 18.

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that the outcome of this litigation would be determined by Defendants' alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt employees and all current and former salaried dispatchers, or persons who held similar job titles and/or performed similar job duties to Plaintiff and were alleged to have been misclassified as "exempt", who worked for any of the Defendants within the State of California and held non-unionized positions at any time during the Class Period.

As a member of the Class who were subject to these same policies, practices, and procedures, Plaintiff's claims are typical of the Class. Moreover, Plaintiff has no interests adverse to the Class. Plaintiff has taken steps to initiate and maintain this action and to ensure that it comes to a fair and reasonable resolution.[52] Importantly, Plaintiff has retained a law firm well-versed in wage and hour class actions, which has at all times represented the best interests of Plaintiff and the Class.[53]

Accordingly, the proposed Class shares a community of interest, and the Court should certify the Class for settlement purposes only.

VIII. <u>APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS' FEES AND COSTS</u>

Class Counsel has litigated the matter for over 1 year and was actively preparing the matter for class certification and trial.[54] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel reviewed a volume of documents and data[55] and also interviewed and obtained information from Plaintiff and other percipient witnesses, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings and the production of documents and data prior to mediation.[56] Counsel for the Parties also undertook

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[52] Declaration of Raymond Herrera in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Herrera Decl."), ¶ 4.
[53] Slinger Decl., ¶ 20.
[54] *Id.*, ¶¶ 26, 27, and 28.
[55] Slinger Decl., ¶ 27, and 30.
[56] *Ibid*.

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extensive settlement discussions, which included participating in mediation.[57]

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[58]

The Settlement establishes a Gross Settlement Amount of $337,500.00, and provides for Class Counsel to apply to the Court consisting of attorneys' fees in an amount not to exceed 40% of the Gross Settlement Amount (i.e., $135,000.00 if the Gross Settlement Amount remains $337,500.00) and reimbursement of actual costs and expenses in an amount up to $20,000.00.[59] The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, Aggrieved Employees, and the State of California, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members that an award of the Attorneys' Fees and Costs will be sought, and the amount allocated toward the Attorneys' Fees and Costs by the Settlement.[60]

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should

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[57] Slinger Decl., ¶ 12.
[58] *Id.*, ¶ 20.
[59] Settlement Agreement, ¶¶ 1.20, 3.1, 3.2.2, and 8.
[60] *Id.*, Exh. A.

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"ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Id.* at 50.

The California Supreme Court has confirmed the propriety of calculating and awarding attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others. *Laffitte*, *supra*, 1 Cal.5th 480 at 486 & 506. The Court has taken the position that while "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[,]" and "[t]he percentage of fund method survives in California." *Id*. (internal quotation marks omitted).

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg,* § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the $7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve class action attorneys' fee awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[61]

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's Motion for Final Approval of the Settlement and application for the Attorneys' Fees and Costs at the Final Approval Hearing. Considering

[61] Slinger Decl., ¶ 12.

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the work performed and the risks incurred, the attorneys' fees provided for by the Settlement are well within the range of reasonableness for preliminary approval.

IX. THE PROPOSED CLASS NOTICE IS ADEQUATE

California statutory authority and case law vests the Court with broad discretion in fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it "present[s] a fair recital of the subject matter and proposed terms" of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

"Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, submit a Request for Exclusion from the Class Settlement, and/or dispute regarding Workweeks and/or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.[62] The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[63] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[64] The proposed Class Notice also apprises the Class Members and Aggrieved Employees of, *inter alia*, how their Individual Settlement Share and if applicable, their Individual PAGA Payment is calculated and the number of Workweeks and/or PAGA Pay Periods credited to them.[65] The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg,* at § 8.39.

Thus, the proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960. Accordingly, the Court should approve the proposed Class Notice.

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[62] Settlement Agreement, Exh. A.
[63] *Ibid*.
[64] *Ibid*.
[65] Settlement Agreement, Exh. A.

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X. APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix Settlement Administrators as the Settlement Administrator. Within fourteen (14) calendar days of receipt of the Class Data, the Settlement Administrator will perform an NCOA check and will mail the Class Notice to each Class Member and Aggrieved Employee.[66] The Settlement Administrator will skip-trace returned Class Notice and re-mail the Class Notice to the new addresses within three business days.[67] In the case of a re-mailed Class Notice, the Response Deadline will be the later of sixty (60) calendar days after initial mailing or fifteen (15) calendar days from re-mailing.[68] The Administrator will receive and process Requests for Exclusion, Objections, and Workweeks Disputes.[69] In addition, the Settlement Administrator will be responsible for printing, distributing, and tracking Class Notices and other documents for the Settlement; calculating and distributing payments due under the Settlement; issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances; providing necessary reports and declarations; and other duties and responsibilities to process the Settlement and as requested by the Parties.[70] The Settlement Administration Costs is currently estimated to be $7,000.00 and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[71] Accordingly, Plaintiff respectfully request that the Court appoint Phoenix Settlement Administrators as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members and Aggrieved Employee in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

XI. CLASS REPRESENTATIVE SERVICE PAYMENT

Plaintiff respectfully request that the Court appoint him as the Class Representative and preliminarily approve the Service Payment in an amount up to $10,000.00.[72] It is within the

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[66] Settlement Agreement, ¶ 7.4.2.
[67] *Id.*, ¶ 7.4.3.
[68] Settlement Agreement, ¶¶ 1.44, and 7.4.4.
[69] *Id.*, ¶¶ 7.5.1, 7.6, & 7.7.1
[70] *Id.,* ¶7.8.
[71] Settlement Agreement, ¶ 3.2.3.
[72] Settlement Agreement, ¶ 3.2.1.

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Court's discretion to award payment to a Class Representative for his efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299. The factors that courts may consider in determining whether to make an Service Payment include: (1) the risk to the Class Representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the Class Representative; (3) the amount of time and effort spent by the Class Representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the Class Representative as a result of the litigation. *Id*.

The Service Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[73] Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.[74] Accordingly, it is appropriate and just for Plaintiff to receive $10,000.00 for his services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to their Individual Settlement Payment and/or Individual PAGA Payment.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully request that the Court grant Preliminary Approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC as Class Counsel; appoint Plaintiff Raymond Herrera as Class Representative; appoint Phoenix Settlement Administrators as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Service Payment, PAGA Penalty Amount, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the

[73] Slinger Decl., ¶ 19; Declaration of Raymond Herrera in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Herrera Decl."), ¶ 4.
[74] Slinger Decl., ¶ 19; Herrera Decl., ¶¶ 3-6.

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Settlement Agreement; and to schedule a Final Approval Hearing to take place in approximately 6 months.

Dated: February 2, 2026

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