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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO

DOUGLAS GAMEZ, an individual, on behalf of himself, the State of California, as a private attorney general, and on behalf of all others similarly situated,

Plaintiff,

v.

DSTRONGMAN, INC., a California corporation doing business as Starbread; RODERICK MARANAN, an individual; and DOES 1 TO 50,

Defendants.

Case Number: CU24-05375

Plaintiff's Notice of Motion and Motion for Preliminary Approval of Class Action and PAGA Settlement

Hearing Date:	December 2, 2026
Hearing Time:	9:00 a.m.
Dept.:	22
Judge:	Hon. Alesia Jones
Complaint Filed:	July 17, 2024
FAC Filed:	February 3, 2025
Trial Date:	None Set

Notice: The Superior Court in and for Solano County has adopted a tentative rulings system that is described in the court's local Rule 3.9. Failure to comply with Rule 3.9 may seriously affect parties' rights in this case.

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on December 2, 2026, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 22 of the Solano County Superior Court for the State of California, located at the Old Solano Courthouse, 580 Texas Street, Fairfield, California 94533, before the Honorable Alesia Jones, Plaintiff Douglas Gamez ("Plaintiff"), on behalf of himself, the State of California, as a private attorney general, and on behalf of all others similarly situated, will and hereby does move this Court for entry of an order:

1. Preliminarily certifying the settlement class for purposes of settlement pursuant to California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769;

2. Preliminarily appointing Plaintiff as class representative for purposes of settlement;

3. Preliminarily appointing Jonathan Melmed, Kyle D. Smith, and Rachel Jo of Melmed Law Group P.C. as class counsel for purposes of settlement;

4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the parties' Settlement Agreement and Release of Class Action (the "Settlement Agreement"), including payment by Defendants Dstrongman, Inc., Roderick Maranan, and non-defendant Gorby, Inc. (collectively, "Defendants") of the non-reversionary gross settlement amount of $500,000.00 ("Gross Settlement Amount");

5. Preliminarily approving payment of reasonable attorneys' fees from the Gross Settlement Amount in an amount not to exceed one-third of the Gross Settlement Amount (i.e., up to $166,666.67), plus necessary litigation costs not to exceed $25,000.00;

6. Preliminarily approving a class representative service payment in an amount of up to $10,000.00 for Douglas Gamez from the Gross Settlement Amount to compensate him for the responsibilities, time, effort, and risks involved in coming forward on behalf of the proposed class;

7. Preliminarily approving the allocation of $50,000.00 for penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, of which 65% (i.e., $32,500.00) shall be paid to the California Labor and Workforce Development Agency ("LWDA") from the Gross Settlement Amount, with the remaining 35% (i.e., $17,500.00) payable to the aggrieved employees;

8. Appointing Apex Class Action, LLC (the "Settlement Administrator") as the settlement administrator to handle the notice and administration process and preliminarily approving settlement administration costs estimated not to exceed $4,790.00;

9. Approving the proposed class notice and share form and ordering that they be disseminated to the class members as provided in the Settlement Agreement;

10. Directing the Settlement Administrator to mail the class notice to the proposed class;

11. Approving the proposed deadlines for the notice and administration process as reflected in this motion and in the Settlement Agreement; and

12. Setting a date for a final fairness hearing to determine, following dissemination of the proposed class notice packet, whether to grant final approval of the settlement.

Pursuant to California Rules of Court, rule 3.769(d) and (e), this motion is made on the grounds that the proposed Settlement Agreement satisfies all criteria for preliminary approval and falls well within the range of reasonableness. The Settlement Agreement was reached through informed, arm's-length bargaining between experienced attorneys with the assistance of an experienced neutral, and Plaintiff and Plaintiff's counsel will fairly and adequately represent the Class.

This motion is, in part, a motion to certify a class because it asks the Court to certify a provisional settlement class. (Cal. Rules of Court, rules 3.764(a)(1), 3.769(d).) The 20-page limit for a memorandum supporting class certification therefore applies to the accompanying memorandum. (Cal. Rules of Court, rule 3.764(c)(2).)

This motion is based on this Notice of Motion and Motion for Preliminary Approval of Class Action and PAGA Settlement; the Memorandum of Points and Authorities in support thereof; the declaration of Plaintiff's counsel Kyle D. Smith; the declaration of Plaintiff; the Settlement Agreement; the proposed class notice and share form; the proposed order granting preliminary approval of the Settlement Agreement and setting a settlement fairness hearing; the other records, pleadings, and papers filed in this action; and upon such other evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: November 3, 2026

MELMED LAW GROUP P.C.



KYLE D. SMITH

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

This motion seeks preliminary approval of a wage-and-hour class action and PAGA settlement between Plaintiff Douglas Gamez ("Plaintiff") and Defendants Dstrongman, Inc., Roderick Maranan, and non-defendant Gorby, Inc. (collectively, "Defendants") (Plaintiff and Defendants are collectively referred to as the "Parties") for the Gross Settlement Amount of $500,000.00. A true and correct copy of the Settlement Agreement and Release of Class Action (the "Settlement Agreement") is attached as Exhibit 1 to the concurrently filed Declaration of Kyle D. Smith in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Declaration of Kyle D. Smith" or "Smith Decl.").

Under the Settlement Agreement, the Gross Settlement Amount is to be distributed to approximately 99 individuals defined as: all individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period. The "Class Period" for these purposes is defined as the period from July 17, 2020, through May 24, 2026. These employees are referred to herein individually as the "Class Members" or collectively as the "Class." (Settlement Agreement, at pp. 4, 10.)

Plaintiff also represents a group of approximately 30 aggrieved employees on behalf of the State of California as a private attorney general pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698 through 2699.6 ("PAGA"). The "Aggrieved Employees," for these purposes, are defined as: all individuals who are or were employed by Defendants as non-exempt employees in California during the PAGA Period. The "PAGA Period" for these purposes is defined as the period from July 17, 2023, through May 24, 2026. (Settlement Agreement, at p. 8; Smith Decl., ¶ 54.)

The Settlement Agreement is a non-reversionary settlement, and Class Members are not required to submit a claim form. (Settlement Agreement, at pp. 6, 14, 21.) Defendants will pay employer-side payroll taxes outside the Gross Settlement Amount. (Settlement Agreement, at p. 6.) Subject to court approval, the "Net Settlement Amount" of at least $261,043.33 will be distributed to the Aggrieved Employees (as to their $17,500.00 share of the PAGA penalties) and to the Class

Members who do not request exclusion from the settlement (as to the remaining $243,543.33), less applicable taxes. (Settlement Agreement, at pp. 7–8, 23.)

Gross Settlement Amount	**$500,000.00**
Attorneys' Fees	(up to $166,666.67)
Litigation Costs	(up to $25,000.00)
Settlement Administration Costs	(up to $4,790.00)
Service Award to Plaintiff	(up to $10,000.00)
PAGA Payment to LWDA	($32,500.00)
Net Settlement Amount	**$261,043.33**

Because the settlement is fair and reasonable, was negotiated at arm's length between counsel following extensive investigation and discovery, and was reached after participation in a full-day mediation, it should be preliminarily approved. (Smith Decl., ¶ 6.) The $500,000.00 Gross Settlement Amount is 82.86% of Defendants' realistic exposure. (Smith Decl., ¶ 55.) The Class meets the requirements for provisional certification, and the proposed class notice and share form attached as Exhibit 2 to the concurrently filed Declaration of Kyle D. Smith ("Class Notice" and "Share Form") inform Class Members of their rights. Plaintiff therefore asks the Court to grant preliminary approval and appoint Apex Class Action, LLC to administer the settlement ("Settlement Administrator").

II. BACKGROUND

A. THE PARTIES

Defendant Dstrongman, Inc. does business as Starbread, a bakery that prepares and sells bread and donuts. Defendants operate in California, including in Solano County, and employed non-exempt workers during the Class Period and PAGA Period. Defendants represented that the Class Members worked across multiple locations. Gorby, Inc. is an alleged joint employer of the Class Members. Although the Operative Complaint does not name Gorby, Inc., it is a party to the Settlement Agreement and is bound by its payment obligations. (Smith Decl., ¶ 18; Settlement Agreement, at pp. 3, 5, 18.) Plaintiff Douglas Gamez worked for Defendants in California as an hourly, non-exempt baker. Plaintiff

alleges that Defendants' employees—including Plaintiff, the Class Members, and the Aggrieved Employees (collectively, the "Employees")—experienced various violations of California's wage-and-hour laws. (Smith Decl., ¶¶ 19–20.)

B. PROCEDURAL SUMMARY

On July 17, 2024, Plaintiff submitted a letter to the California Labor and Workforce Development Agency ("LWDA") to notify the LWDA, pursuant to PAGA, of Plaintiff's intent to seek civil penalties against Dstrongman, Inc. and Roderick Maranan for violations of the Labor Code and California Industrial Welfare Commission Wage Orders 1-2001, 5-2001, and/or 7-2001 (the "Applicable Wage Orders"). (Cal. Code Regs., tit. 8, §§ 11010, 11050, 11070; Smith Decl., ¶ 21.) The letter attached Plaintiff's original complaint, and incorporated the original complaint by reference, and thus sought penalties for claims identical to those alleged in the case. A copy of the letter is attached as **Exhibit 3** to the concurrently filed Declaration of Kyle D. Smith.

On July 17, 2024, Plaintiff commenced this action by filing a class action complaint against Dstrongman, Inc., Roderick Maranan, and Does 1 to 50, alleging failure to pay minimum and overtime wages; failure to provide compliant meal and rest periods; failure to maintain accurate records; failure to pay timely wages during employment and at separation; failure to reimburse business expenses; failure to provide accurate wage statements; and unfair competition. (Smith Decl., ¶ 22.)

On February 3, 2025, Plaintiff filed a first amended complaint alleging the causes of action described in the original complaint and adding PAGA causes of action for willful misclassification in violation of Labor Code sections 226.8 and 2775, and for penalties based on the foregoing violations. (Lab. Code, §§ 2698–2699.6.) The first amended complaint is the operative complaint in the action (the "Operative Complaint"). (Smith Decl., ¶ 23.)

Thereafter, the Parties agreed to attend a private mediation with Louis Marlin. (Smith Decl., ¶ 24.) Prior to the mediation, Plaintiff's counsel conducted significant informal discovery, including inspection and analysis of hundreds of pages of documents and other information produced by Plaintiff and Defendants, and analysis of work-related data from a sample of Class Members and Aggrieved Employees. (Smith Decl., ¶ 24.)

Among other key pieces of information, Plaintiff's counsel reviewed a sample of records produced by Defendants, including payroll records and timesheets for the sampled Class Members' shifts from January 2022 through January 2024; Defendants' counsel represented that Defendants did not maintain additional time records after January 20, 2024. (Smith Decl., ¶ 25.) From these records, Plaintiff's expert crafted a damages model and extrapolated the results to the Class as a whole. (Smith Decl., ¶ 25.)

On August 25, 2025, the Parties participated in a full-day mediation with Louis Marlin, who is a full-time mediator with extensive experience in California wage-and-hour class action lawsuits, and reached the broad terms of an agreement. (Smith Decl., ¶ 26.) The Parties fully executed the long-form Settlement Agreement on October 15, 2026. (Smith Decl., ¶ 27.)

III. SUMMARY OF THE CLAIMS, DEFENSES, AND EXPOSURE

Plaintiff alleged that Defendants paid a substantial portion of the Class Members' wages in cash outside of payroll—effectively treating them as independent contractors for those hours—without paying overtime, providing compliant meal or rest periods, or keeping accurate records. From these violations, Plaintiff sought waiting time penalties, wage statement penalties, and PAGA penalties. (Smith Decl., ¶ 28.) Defendants have persistently denied all liability and deny that these allegations are appropriate for class or representative treatment for any purpose other than the settlement. (Smith Decl., ¶ 29.)

A. OFF-THE-CLOCK WORK AND MINIMUM WAGE ALLEGATIONS

Plaintiff alleged that Defendants did not pay the Class Members for all hours worked. (Smith Decl., ¶ 30.) Plaintiff's expert compared the time records and wage statements produced by Defendants and found that, on average, approximately 20 more hours were worked per pay period than were paid on the Class Members' wage statements—roughly one-third of the hours recorded. (Smith Decl., ¶ 30.) Plaintiff also alleged that he and the Class Members regularly performed off-the-clock work, and Plaintiff estimates that he performed approximately 30 minutes of off-the-clock work per shift. (Smith Decl., ¶ 30.)

Defendants would likely argue that the cash payments compensated the Class Members for all hours worked and that any gap between the time records and wage statements reflects the manner of

payment or incomplete data rather than unpaid wages. (Smith Decl., ¶ 31.) As to off-the-clock work, Defendants would likely contend that they did not require or know of any such work, that it was de minimis, and that Plaintiff's estimate could not be established on a class-wide basis. (Smith Decl., ¶ 31.)

Plaintiff conservatively valued this claim based only on off-the-clock work, rather than on the full gap between the timesheets and wage statements, because a substantial portion of that gap was paid in cash. (Smith Decl., ¶ 32.) Plaintiff further assumed only 15 minutes of off-the-clock work per shift—half of Plaintiff's own estimate. (Smith Decl., ¶ 32.) Extrapolating Plaintiff's expert's findings to the 7,904 workweeks in the Class Period, Plaintiff estimated that the Class Members worked approximately 32,798 shifts, which yields approximately 8,199.5 hours of unpaid time. (Smith Decl., ¶ 32.) Applying the estimated average hourly rate of $15.14, and accounting for Plaintiff's expert's finding that approximately 50.6% of this time would fall within overtime hours, Plaintiff estimated Defendants' exposure for this claim to be approximately $155,547.96, excluding interest, liquidated damages, penalties, and attorneys' fees. (Smith Decl., ¶ 32.) Plaintiff then discounted this amount by 60% due to the risks of those defenses, for realistic exposure of approximately **$62,219.18**. (Smith Decl., ¶ 32.)

B. OVERTIME ALLEGATIONS

Plaintiff alleged that Defendants never paid the Class Members overtime wages. (Smith Decl., ¶ 33.) None of the records produced by Defendants reflect any overtime payments, even though the timesheets document daily and weekly overtime hours, and Plaintiff's expert determined that approximately 35.1% of the sampled shifts exceeded eight hours. (Smith Decl., ¶ 33.) Plaintiff alleged that Defendants paid the hours not reflected on the wage statements in cash at straight-time rates to avoid paying overtime. (Smith Decl., ¶ 33.)

Defendants would likely argue that the cash payments compensated the Class Members for all hours worked, including at overtime rates, and that, because the Class Members averaged approximately 6.8 hours per shift and approximately 4.1 shifts per workweek, overtime was limited and would require individualized inquiries into each Class Member's cash payments. (Smith Decl., ¶ 34.)

Extrapolating Plaintiff's expert's findings to the 7,904 workweeks in the Class Period, Plaintiff estimated that approximately 11,510 shifts exceeded eight hours. (Smith Decl., ¶ 35.) Plaintiff conservatively assumed only one hour of overtime per such shift and valued only the unpaid half-time overtime premium ($7.57 per hour, based on the estimated average hourly rate of $15.14), for exposure of approximately $87,130.70 (11,510 shifts × 1 hour × $7.57), excluding interest and penalties. (Smith Decl., ¶ 35.) Because this claim depends on proof of the rate at which the cash payments were made, Plaintiff ascribed a 50% discount, for realistic exposure of approximately **$43,565.35**. (Smith Decl., ¶ 35.)

C. MEAL PERIOD ALLEGATIONS

Employers must provide a thirty-minute uninterrupted and duty-free meal period within the first five hours of work and a second meal period for shifts over ten hours, and must pay one additional hour of pay at the regular rate for each workday that a compliant meal period is not provided. (Lab. Code, §§ 226.7, subd. (c), 512, subd. (a); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038–1039, 1041.)

Here, Plaintiff alleged that Defendants failed to provide the Class Members with compliant, off-duty meal periods. (Smith Decl., ¶ 36.) Defendants' records do not contain a single recorded meal period: Plaintiff's expert found that 100% of the sampled shifts exceeding five hours lacked a recorded first meal period. (Smith Decl., ¶ 36.) Plaintiff further reports that his own meal periods were regularly interrupted—approximately twice per week—when he was left to cover the store by himself, resulting in meal periods of only 15 to 20 minutes. (Smith Decl., ¶ 36.)

Defendants would likely argue that they provided meal periods and were not required to police them, and that the absence of recorded meal periods reflects only that meal periods were not tracked. (Smith Decl., ¶ 37; see *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040.) Defendants could further point to Plaintiff's own account of interruptions about twice per week as evidence that the violation rate was far below 100%, and argue that the reasons for any missed meal period would require individualized inquiries. (Smith Decl., ¶ 37.)

Extrapolating Plaintiff's expert's findings to the 7,904 workweeks in the Class Period, Plaintiff estimated that approximately 28,948 shifts exceeded five hours. (Smith Decl., ¶ 38.) Although

Defendants' records reflect no recorded meal periods at all, Plaintiff conservatively assumed a 50% violation rate in light of Plaintiff's own account that some meal periods were provided. (Smith Decl., ¶ 38.) At the estimated average hourly rate of $15.14, Plaintiff estimated Defendants' exposure for this claim to be approximately $219,136.36 (28,948 shifts × 50% × $15.14), excluding interest and penalties. At the 100% rate the records reflect, this figure would be $438,272.72 (28,948 shifts × $15.14). (Smith Decl., ¶ 38.) Plaintiff then ascribed a 40% discount due to Defendants' defenses and the individualized reasons for any missed meal periods, for realistic exposure of approximately **$131,481.82**. (Smith Decl., ¶ 38.)

D. REST PERIOD ALLEGATIONS

Under Labor Code section 226.7 and the Applicable Wage Orders, employers must provide duty-free rest periods of not less than ten minutes for every major fraction of four hours worked and must pay one additional hour of pay at the regular rate for each workday that a compliant rest period is not provided. (Lab. Code, § 226.7, subd. (c); *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.)

Here, Plaintiff alleged that Defendants never provided the Class Members with rest periods until approximately June 2024. (Smith Decl., ¶ 39.) Plaintiff further alleged that Defendants paid no rest period premiums. (Smith Decl., ¶ 39.)

Defendants would likely argue that the Class Members were authorized and permitted to take rest periods and chose not to take them, and that this unrecorded claim depends on employee testimony that varied across locations, presenting serious challenges to certification and manageability. (Smith Decl., ¶ 40.) Defendants would also likely contend that any exposure ended in or around June 2024, when Plaintiff acknowledges that rest periods began to be provided. (Smith Decl., ¶ 40.)

Extrapolating Plaintiff's expert's findings to the 7,904 workweeks in the Class Period, Plaintiff estimated that approximately 32,615 shifts were at least 3.5 hours long. (Smith Decl., ¶ 41.) Plaintiff limited this claim to the portion of the Class Period before June 2024 (approximately 66.2% of the Class Period, or approximately 21,594 qualifying shifts) and conservatively assumed only one rest period premium per qualifying shift. (Smith Decl., ¶ 41.) At the estimated average hourly rate of $15.14, Plaintiff estimated Defendants' exposure for this claim to be approximately $326,933.16

(21,594 shifts × $15.14), excluding interest and penalties. (Smith Decl., ¶ 41.) Plaintiff then ascribed a 40% discount due to Defendants' defenses, the lack of documentary evidence for rest periods, and the risk that the claim would not be certified, for realistic exposure of approximately **$196,159.90**. (Smith Decl., ¶ 41.)

E. UNLAWFUL DEDUCTION ALLEGATIONS

Labor Code section 2802 requires employers to indemnify employees for necessary work-related expenditures or losses. Here, Plaintiff alleged that Defendants unlawfully deducted from the Class Members' pay the cost of bread that the Class Members dropped while performing their work. (Smith Decl., ¶ 42.) Defendants would likely argue that any such deductions were rare, were not made pursuant to any policy, and could not be established on a class-wide basis, particularly given the absence of records reflecting the deductions. (Smith Decl., ¶ 43.)

Plaintiff estimated the value of this claim by assuming deductions of $5.00 per Class Member per month across approximately 1,825 months worked during the Class Period, for a total exposure of approximately $9,125.00. (Smith Decl., ¶ 44.) Plaintiff ascribed a 50% discount due to the difficulty of proving these deductions without documentary evidence, resulting in a realistic exposure of approximately **$4,562.50**. (Smith Decl., ¶ 44.)

F. DERIVATIVE WAITING TIME PENALTY ALLEGATIONS

From the informal discovery produced by Defendants, approximately 52 Class Members separated from their employment during the applicable statutory period for this claim, for a maximum value of 52 former employees × 30 days × 6.8 hours average per day × estimated average rate of pay of $15.14 per hour (or $160,605.12). (Smith Decl., ¶ 48.) Defendants would likely argue that a good-faith dispute precludes a finding of willfulness and that this derivative claim may fail with the underlying claims. (Smith Decl., ¶ 48.) After ascribing a 75% discount for these reasons, Plaintiff estimated Defendants' realistic exposure for this claim to be approximately **$40,151.28**. (Smith Decl., ¶ 48.)

G. WAGE STATEMENT ALLEGATIONS

Employers that knowingly and intentionally fail to provide accurate, itemized wage statements may be subject to penalties. (Lab. Code, § 226, subds. (a), (e).) Plaintiff alleged that the Class Members'

wage statements failed to accurately reflect their hours worked, gross wages earned, and net wages earned, because a substantial portion of their hours and pay was omitted from the wage statements and paid in cash. (Smith Decl., ¶ 49.) Defendants would likely argue that any inaccuracies were not "knowing and intentional," as required for penalties under Labor Code section 226, subdivision (e)(1), because Defendants held a good-faith belief that they were complying with the law, and that the Class Members suffered no injury because they were paid for their time. (Smith Decl., ¶ 50.)

Plaintiff's expert calculated that approximately 30 employees worked from July 17, 2023, through August 25, 2025, the period for this claim. (Smith Decl., ¶ 51.) Because Labor Code section 226, subdivision (e)(1), caps the penalty at $4,000.00 per employee, Plaintiff determined that Defendants' maximum exposure for this claim was $120,000.00 (30 employees × $4,000.00). (Smith Decl., ¶ 51.) Plaintiff then ascribed a 75% discount based on the very real risks that this Court might find that Defendants' alleged wage statement errors were not knowing and intentional, caused little or no injury to the Class Members, or did not occur, for realistic exposure of **$30,000.00**. (Smith Decl., ¶ 51.)

H. PAGA ALLEGATIONS

PAGA provides that the civil penalty for Defendants is $100 for each aggrieved employee per pay period, except for provisions where a civil penalty is specifically provided. (Lab. Code, § 2699, subd. (f)(2)(A).) "New PAGA," for civil actions brought on or after June 19, 2024, where notice was not filed earlier, limits stacking of certain penalties and allows courts to reduce penalties where "the same conduct or omission resulted in multiple violations." (Lab. Code, § 2699, subds. (i), (v).) These penalties must be allocated 65% to the LWDA and 35% to the affected employees. (Lab. Code, § 2699, subd. (m).) Labor Code section 226.8 provides for civil penalties of $5,000 to $15,000 for each willful misclassification, and $10,000 to $25,000 for each violation where the employer has engaged in a pattern or practice of such violations. (Lab. Code, § 226.8, subds. (a)–(c).)

Plaintiff alleged that, because of the violations described above, Defendants were liable for PAGA penalties for each applicable pay period during the PAGA Period. (Smith Decl., ¶ 52.) Plaintiff further alleged that Defendants willfully misclassified the Aggrieved Employees as independent contractors for a substantial portion of their hours worked by paying them in cash, outside of payroll

and without wage statements or tax withholdings—a practice that, according to defense counsel, continued through at least August 2024—and by converting Plaintiff to "contract work" paid by the rack from June 2024 through August 2024. (Smith Decl., ¶ 52.) Plaintiff also alleged that Defendants failed to maintain accurate records of the hours worked by and wages paid to the Class Members, while Defendants would likely argue that the records they kept were sufficient. Plaintiff's calculation of exposure for this recordkeeping claim is subsumed within the PAGA analysis. (Lab. Code, §§ 226.3, 1174.5, 2699.5; Smith Decl., ¶¶ 45–46.)

In ascertaining Defendants' exposure for this claim, Plaintiff considered that courts may substantially reduce PAGA penalties, including where such penalties would be unjust, arbitrary and oppressive, or confiscatory. (Lab. Code, § 2699, subd. (e)(2); see *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming reduction to $5 per violation]; Smith Decl., ¶ 53.) As to the misclassification theory, Defendants would likely argue that the Class Members were classified and paid as hourly, non-exempt employees, and that any cash payments, at most, raise payroll and tax reporting issues. (Smith Decl., ¶ 53.) For actions in which the LWDA notice was filed on or after June 19, 2024, Labor Code section 2699, subdivisions (g)(1) and (h)(1), cap the recoverable civil penalty at fifteen percent of the penalty sought where the employer has taken all reasonable steps to comply before receiving the notice, and at thirty percent where it has done so within sixty days after. (Smith Decl., ¶ 53.) Defendants would likely argue that they took such steps, including by providing rest periods beginning in or around June 2024. (Smith Decl., ¶ 53.) Were the fifteen percent cap applied, Defendants' maximum PAGA exposure would be approximately $47,655.00—roughly half of the realistic exposure Plaintiff has assigned to this claim. (Smith Decl., ¶ 53.)

Here, Defendants reported approximately 30 Aggrieved Employees and 1,239 pay periods through the mediation. Extending that count by days through May 24, 2026, Plaintiff estimated that the Aggrieved Employees worked approximately 1,677 pay periods during the PAGA Period. (Smith Decl., ¶ 54.) Applying PAGA's default $100 penalty per pay period, unstacked, would yield exposure of $167,700.00. (Smith Decl., ¶ 54.) Plaintiff valued the misclassification penalties at the $5,000 statutory minimum for each of the approximately 30 Aggrieved Employees, or $150,000.00, for maximum PAGA exposure of $317,700.00. (Smith Decl., ¶ 54.) Plaintiff ascribed a 70% discount in

consideration of Defendants' defenses and the very real risk of a court reducing PAGA penalties, for realistic exposure of **$95,310.00**. (Smith Decl., ¶ 54.)

IV. SUMMARY OF THE PROPOSED SETTLEMENT

A. REASONABLENESS OF THE GROSS SETTLEMENT AMOUNT

The exposure figures above total $1,396,178.30, excluding interest, liquidated damages, and attorneys' fees. Those figures already reflect the assumptions stated above, including a 50% meal period violation rate and 15 minutes of off-the-clock work per shift. Plaintiff has applied appropriate discounts to those figures to come to Defendants' realistic exposure of $603,450.03. (Smith Decl., ¶ 55.) Therefore, the Gross Settlement Amount of $500,000.00 is an excellent result and within the zone of reasonableness for all parties. If preliminary approval is granted, Plaintiff will have recovered **82.86%** of Defendants' total realistic exposure in this case—a fair compromise of the claims, by any measure. (Smith Decl., ¶ 55.)

The documents and other information described above were sufficient to allow counsel to act intelligently in reaching the Settlement Agreement and determining that the Gross Settlement Amount was adequate. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802; Smith Decl., ¶¶ 56–58.)

Defendants reported 7,904 workweeks for the Class Period. If the Class Members worked more than 7,907.9 workweeks (10% above 7,189), the Gross Settlement Amount increases proportionately for each additional workweek; the current count sits 3.9 workweeks below that trigger. (Settlement Agreement, at p. 28; Smith Decl., ¶ 58.) Defendants' person most knowledgeable must also confirm under penalty of perjury that the class and PAGA data are complete and that the workweek and pay period totals are accurate. (Settlement Agreement, at pp. 20–21.) Defendants may rescind the Settlement Agreement if 10% or more of the Class Members opt out and/or object. (Settlement Agreement, at p. 23.) At the maximum requested deductions and with no opt-outs, the Class Members will receive an average of approximately $2,460.03 each, or $30.81 per workweek, and the Aggrieved Employees will receive an average PAGA share of approximately $583.33 each. (Smith Decl., ¶ 58.)

B. SETTLEMENT CONSIDERATION AND ALLOCATION

In addition to the deductions in the table above, the $50,000.00 PAGA Payment allocates $32,500.00 (65%) to the LWDA and $17,500.00 (35%) to the Aggrieved Employees. (Settlement Agreement, at pp. 3–4, 7–8, 15, 17–18, 23.)

C. THE RELEASE

Under the Settlement Agreement, the "Released Claims" are defined in a single provision that reaches both the class claims and the PAGA claims, and include those claims arising out of or related to the allegations set forth in the Operative Complaint and/or Plaintiff's PAGA notice to the LWDA that arose during the Class Period and/or PAGA Period. (Settlement Agreement, at pp. 8–9.) The release of Released Claims by the Class Participants becomes effective upon the Effective Date, as that term is defined in the Settlement Agreement. (Settlement Agreement, at pp. 5–6, 29.)

D. SETTLEMENT ALLOCATION FORMULA

Class Members will share the class portion of the settlement pro rata by weeks worked during the Class Period (the "Individual Settlement Amounts"), on a "checks cashed" basis. (Settlement Agreement, at pp. 15, 24.)

Aggrieved Employees will share the PAGA portion of the settlement pro rata by pay periods worked during the PAGA Period. (Settlement Agreement, at pp. 15–16, 24–25.) Aggrieved Employees who opt out of the class settlement remain entitled to their share of the PAGA Payment. (Settlement Agreement, at p. 22.)

E. SETTLEMENT ADMINISTRATOR AND NOTICE PROCEDURES

Plaintiff, through counsel, has obtained bids from several settlement administration companies, and Apex Class Action, LLC presented the lowest qualified bid. (Smith Decl., ¶ 60; Settlement Agreement, at p. 10.)

Within 14 days after preliminary approval, Defendants shall provide the Settlement Administrator with an updated list of Class Members and Aggrieved Employees (the "Database"). (Settlement Agreement, at pp. 19–20.)

Within 28 days after preliminary approval, the Settlement Administrator shall send each Class Member the Class Notice and Share Form, in English and Spanish, via first-class United States mail. (Settlement Agreement, at pp. 4, 20.)

The Class Notice will inform each Class Member of his or her estimated share of the settlement and the number of workweeks he or she worked during the Class Period, and that, unless the Class Member opts out, the Class Member is releasing all Released Claims against the Released Parties. (Settlement Agreement, at p. 20; Smith Decl., Exh. 2.) Class Members may dispute their workweeks, and Class Participants may submit a written objection, to the Settlement Administrator no later than 45 days after the Settlement Administrator first mails the Class Notice (the "Response Deadline"). Class Participants may also appear at the final approval hearing, in person or through an attorney. (Settlement Agreement, at pp. 10, 20, 22, 27.)

To request exclusion, a Class Member must submit a letter or postcard to the Settlement Administrator, postmarked no later than the Response Deadline. Class Members who do not timely request exclusion will participate in the settlement without having to submit a claim form. (Settlement Agreement, at p. 21.)

If a Class Notice is returned as undeliverable, the Settlement Administrator shall perform a skip trace search and re-mail it to any new address obtained, and the Class Member will have an additional 14 days from the re-mailing to opt out, object, or dispute workweeks if the Response Deadline would otherwise have passed. (Settlement Agreement, at p. 21.)

F. DISBURSEMENTS, UNCASHED CHECKS, AND TAX TREATMENT

Defendants will deposit the Gross Settlement Amount, plus the employer-side payroll taxes, with the Settlement Administrator in two equal installment payments: the first within 14 days of the "Effective Date," as that term is defined in the Settlement Agreement, and the second six months thereafter. (Settlement Agreement, at pp. 5–6, 18.) The Settlement Administrator will distribute the court-approved attorneys' fees and costs, the service award, the LWDA's share of the PAGA Payment, and the Individual Settlement Amounts no later than 14 days after the date on which the settlement is fully funded. (Settlement Agreement, at pp. 25–26.)

Class Members will have 180 days to cash their settlement checks, after which the Settlement Administrator shall remit any uncashed funds to the California State Controller for deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. (Settlement Agreement, at p. 26.) The Parties agree that this disposition results in no "unpaid residue" under Code of Civil Procedure section 384. (Settlement Agreement, at pp. 26–27.)

The Settlement Agreement provides that 20% of each Individual Settlement Amount shall constitute wages (IRS Form W-2) and 80% shall constitute penalties and interest (IRS Form 1099), and that all PAGA payments shall constitute penalties and interest (IRS Form 1099). (Settlement Agreement, at p. 16.)

V. THE CLASS SHOULD BE PRELIMINARILY CERTIFIED

A. THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CONSIDERATION IS APPROPRIATE

California Rules of Court, rule 3.769, subdivision (d), provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. Trial courts use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, and the Court's fairness review focuses on protecting the interests of the non-representative class members. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19; see also *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 633.) The Court's review still gives "undiluted, even heightened, attention" to the requirements that protect absent class members. (*Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620.)

B. THE PROPOSED CLASS IS NUMEROUS AND ASCERTAINABLE

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. (See Code Civ. Proc., § 382.) A proposed settlement class is ascertainable when it is defined "in terms of objective characteristics and common transactional facts" that make "the ultimate identification of class members possible when that identification becomes necessary." (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980.) Defendants have represented that the proposed Class consists of approximately 99 Class Members ascertained through Defendants' records. (Settlement Agreement, at p. 10.)

C. MEMBERS OF THE PROPOSED CLASS SHARE A WELL-DEFINED COMMUNITY OF INTEREST

1. Commonality and Predominance

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. (See *Arenas v. El Torito Restaurants, Inc.* (2010) 183 Cal.App.4th 723, 732.) Common questions here include whether Defendants subjected employees to unlawful wage-and-hour policies and/or practices, including paying a portion of wages in cash outside of payroll; whether these violations triggered derivative claims for penalties; and whether Defendants' violations were knowing or willful.

2. Typicality

Typicality focuses on whether other members of the proposed class have the same or similar injury, whether the action is based on conduct not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Plaintiff's claims are typical because he was subject to the policies and practices described above, which Defendants applied class-wide. (Declaration of Douglas Gamez in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Gamez Decl."), ¶ 4.)

3. Adequacy of Representation

A proposed class representative must establish that they will adequately represent the proposed class. (See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.) Plaintiff is adequate because he is a member of the Class, experienced the same wage-and-hour practices as the rest of the Class, has no interests adverse to the Class, and understands and accepts his duty to represent the best interests of the Class. (Gamez Decl., ¶ 5.)

Courts may consider counsel's experience in assessing adequacy. (See *Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162.) Plaintiff's counsel are experienced in wage-and-hour class actions, numerous state and federal courts have certified Mr. Smith as adequate and competent class counsel, and counsel have no interests

adverse to Plaintiff or the Class and have the financial resources to handle this case. (Smith Decl., ¶¶ 7, 10–16, 71.)

4. Superiority

Certification of the Class for settlement purposes is superior here because it resolves all claims at once and most of the claims are too small to litigate individually.

VI. PRELIMINARY APPROVAL SHOULD BE GRANTED

A. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, AND NON-COLLUSIVE NEGOTIATIONS

The Settlement Agreement was negotiated at arm's length between counsel using a professional and well-respected third-party neutral, supported by investigation and direct exchanges of information through informal discovery. (Smith Decl., ¶ 61.) Counsel for both parties were thoroughly familiar with the legal and factual questions at issue. (Smith Decl., ¶ 61.)

Counsel for the Parties spent months prior to the mediation developing the factual record for this case, engaging in informal discovery, and preparing mediation submissions, which ensured both sides were fully informed about the strengths and weaknesses of their respective positions. (Smith Decl., ¶ 64.)

B. THE RISKS INHERENT IN CONTINUED LITIGATION ARE GREAT

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court should also consider "[t]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, [and] the risk of maintaining class action status through trial." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) As described above, Defendants had strong defenses to Plaintiff's claims, which create a real possibility that the claims might not be certified or might fail on the merits. (Smith Decl., ¶ 68.) By contrast, the settlement will yield a certain and substantial recovery for the Class Members. (Smith Decl., ¶ 69.)

C. PLAINTIFF'S COUNSEL ARE EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION

Experienced counsel, operating at arm's length, have weighed the strengths and risks of the case, and endorse the proposed settlement. (Smith Decl., ¶¶ 72–73.) Their view is entitled to significant

weight. (*Ellis v. Naval Air Rework Facility* (N.D.Cal. 1980) 87 F.R.D. 15, 18, affd. (9th Cir. 1981) 661 F.2d 939 ["[T]he fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight."]; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 [listing "the experience and views of counsel" among the relevant factors].)

D. THE CLASS NOTICE PLAN CONFORMS TO ALL APPLICABLE STATUTES AND RULES

The proposed Class Notice and Share Form—which the Parties have already agreed to—should be approved, as they fully inform the Class Members of the nature of the lawsuit and each Class Member's rights under the terms of the Settlement Agreement and applicable law. (Smith Decl., Exh. 2.)

The Court has wide discretion in approving the means of providing notice, so long as the class representative provides "meaningful notice in a form that 'should have a reasonable chance of reaching a substantial percentage of the class members.'" (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 861, quoting *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.)

The notice plan and the Class Notice satisfy rule 3.766 of the California Rules of Court, including the content requirements of subdivision (d), and due process. (Smith Decl., Exh. 2.) The 45-day deadline for Class Members to exclude themselves or challenge their workweeks is reasonable. (Settlement Agreement, at pp. 10, 20.)

VII. THE ATTORNEYS' FEE ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS FAIR

Plaintiff's counsel will request attorneys' fees of up to one-third of the Gross Settlement Amount (i.e., $166,666.67), plus reimbursement of litigation expenses and costs of up to $25,000.00, and Defendants have agreed not to object. (Settlement Agreement, at pp. 4, 17.) The California Supreme Court has approved the percentage method and affirmed a fee award of one-third of the common fund. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506.) Plaintiff's counsel will file a noticed motion for these fees and costs no later than 16 court days before the objection deadline, and the Court will hear that motion at the final approval hearing. The Court need not decide fees and costs at this time. (Smith Decl., ¶¶ 74–75.)

VIII. THE CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND APPROPRIATE

Plaintiff will request payment of a service award from the Gross Settlement Amount of up to $10,000.00 in addition to whatever payment he is otherwise entitled to receive as a Class Member. (Settlement Agreement, at p. 15.) The proposed service award is reasonable compensation given the time and effort that Plaintiff devoted to this case, the valuable assistance he provided to counsel, and the fact that he entered into a general release of claims that is broader than the release of the Class. (Smith Decl., ¶ 76; Settlement Agreement, at pp. 15, 30–31; Gamez Decl., ¶¶ 6–11.) Plaintiff provided invaluable assistance to Plaintiff's counsel and the Class Members in this case, including providing factual background for mediation and the Operative Complaint, reviewing the relevant documents, participating in phone calls with Plaintiff's counsel, gathering highly relevant documents, and reviewing the settlement documents. (Smith Decl., ¶ 77.) Plaintiff agreed to participate in this case with no guarantee of personal benefit. Further, Plaintiff agreed to undertake the financial risk of serving as a class representative and exposed himself to the risk of negative publicity by anyone who opposed this case. (Smith Decl., ¶ 77.)

Moreover, the requested service award for Plaintiff falls within the range of service payments typically awarded to class representatives in similar class actions. (See, e.g., *Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393–1395 [affirming approval of $10,000 incentive award to each of four class representatives]; *Bond v. Ferguson Enterprises, Inc.* (E.D.Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879, at *15 [approving $11,250.00 service award to each of the two class representatives in a meal break class action].)

IX. SUBMISSION TO THE LWDA

The Settlement Agreement and this motion are concurrently being submitted to the LWDA in accordance with Labor Code section 2699, subdivision (s)(2). (Smith Decl., ¶ 78.) The proof of electronic submission is attached as Exhibit 4 to the Declaration of Kyle D. Smith.

X. CONCLUSION

For these reasons, Plaintiff's motion for preliminary approval should be granted.

Dated: November 3, 2026

MELMED LAW GROUP P.C.



KYLE D. SMITH

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