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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF SAN DIEGO**

9 JESSE ALMANZA, individually, and on behalf  
of all others similarly situated,

11 Plaintiff,

12 v.

13 PURE PROJECT, LLC., a California Limited  
14 Liability Company; JESSE PINE, an individual;  
15 MAT ROBAR, an individual; and DOES 1  
THROUGH 50, inclusive,

17 Defendants.

Case No.: 24CU012008C

[Assigned for All Purposes to the Honorable  
Michael T. Smyth, Dept. C-67]

**CLASS AND PAGA ACTION**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION AND PAGA  
SETTLEMENT**

[IMAGED FILE]

[Filed concurrently with Notice of Motion, the  
Declaration of Graham S.P. Hollis, and [Proposed]  
Order]

Date: July 11, 2025  
Time: 9:00 a.m.  
Dept: C-67  
Judge: Hon. Michael T. Smyth

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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Named Plaintiff and proposed Class Representative Jesse Almanza (“Plaintiff”) seeks preliminary approval of a wage and hour class and representative action settlement achieved on behalf of a Class of all current and former nonexempt employees of Pure Project, LLC, Jesse Pine, and Mat Robar (“Defendants”) who worked for Defendants in the state of California between July 11, 2023 and the date of Preliminary Approval of the Settlement. Defendants’ records indicate that there are approximately 66 Class Members.<sup>1</sup>

After engaging in substantial independent investigation, a full-day mediation before well-respected and highly experienced mediator Scott Markus, Esq., and hard-fought negotiations, the parties agreed to a non-reversionary gross settlement amount of \$235,000, exclusive of employer-side payroll taxes. The settlement is strongly supported by experienced counsel, who carefully considered the strength of the claims and Defendants’ potential defenses, as well as the expense, complexity, risks, and likely duration of continued litigation.

Subject to Court-approval, and after deductions for a payment to the Labor Workforce and Development Agency pursuant to the Private Attorneys General Act of 2004 (“PAGA”), settlement administration expenses, a Class Representative Payment to Plaintiff, and attorneys’ fees and costs to Class Counsel, the remaining amount will be distributed to participating Class Members as follows:

|                                 |                       |
|---------------------------------|-----------------------|
| Gross Settlement Amount         | \$235,000             |
| LWDA PAGA Payment               | \$6,500               |
| Administration Expenses Payment | \$7,750               |
| Class Representative Payment    | Up to \$2,500         |
| Class Counsel’s Fees            | Up to \$78,333.33     |
| Class Counsel’s Costs           | Up to \$9,500         |
| Net Settlement Amount           | At least \$130,416.67 |

Through this motion, Plaintiff respectfully requests that the Court enter an order: (1) provisionally certifying the proposed Class and Waiting Time Penalty Subclass under Code of Civil Procedure section

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<sup>1</sup> To the extent the terms used in this declaration are defined in the Joint Stipulation for Class Action and PAGA Settlement and Release (“Settlement Agreement”), the defined terms contained herein shall have the same meaning as set forth in the Settlement Agreement.

382 and California Rule of Court 3.769(c) for settlement purposes only; (2) preliminarily approving the Settlement; (3) approving as to form the Notice of Class Action Settlement and ordering that the Notice of Class Action Settlement be distributed to all Class Members; (4) appointing Plaintiff Jesse Almanza as the Class Representative; (5) appointing Phoenix Settlement Administrators as the Administrator; (6) appointing Graham Hollis APC as Class Counsel; and (7) setting this matter for a hearing on the issues of final approval of the proposed Settlement, approval of the Class Representative Payment, approval of Class Counsel’s fees and costs, and approval of the Administration Expenses Payment.

## II. PROCEDURAL AND FACTUAL BACKGROUND

### A. Plaintiff’s Claims And Relevant Background

Defendant Pure Project, LLC is a California limited liability company with its principal place of business in San Diego, California. (See <https://www.purebrewing.org/story/>.) The company was founded in 2015, and operates a craft brewery and five taprooms across San Diego County, including in Carlsbad, North Park, Miramar, Balboa Park, and Vista. (*Ibid.*) Defendants Jesse Pine and Mat Robar are the company’s co-founders. (*Ibid.*)

Plaintiff was employed by Defendants from June 22, 2020 to May 1, 2024. (Declaration of Graham S.P. Hollis [“Hollis Decl.”], ¶ 6.) Plaintiff held several nonexempt positions including “Beertender,” Shift Supervisor, and Assistant General Manager of the company’s North Park taproom. (*Ibid.*) Plaintiff contends that over the course of his employment, Defendants failed to pay him and other nonexempt employees all wages owed to them, including regular and overtime wages, failed to provide uninterrupted, off-duty meal and rest periods, failed to reimburse necessary business expenses, and failed to furnish accurate itemized wage statements. (*Id.*, ¶ 7.)

In December 2023, Class Counsel sent a records request to Defendants, seeking Plaintiff’s personnel file and timekeeping and payroll records. (Hollis Decl., ¶ 8.) The following month, Defendants’ counsel contacted Class Counsel to discuss the matter and determine what claims Plaintiff intended to assert. (*Ibid.*) Over the course of the following months, the parties discussed the possibility of attending early mediation in an effort to resolve the claims alleged. (*Ibid.*) Defendants’ counsel also advised Class Counsel, that Plaintiff and the vast majority of putative Class Members, had previously signed binding arbitration agreements. (*Ibid.*)

On July 11, 2024, Plaintiff provided written notice to the Labor and Workforce Development Agency and Defendants, notifying them of his intent to assert the rights granted to him under PAGA. (Hollis Decl., ¶ 9.) While waiting for the 65-day notice period to pass, the parties participated in a private, full-day mediation with Scott Markus, Esq. (*Ibid.*) With the mediator's assistance, the parties were eventually able to reach a settlement. (*Ibid.*) As further explained below, the Gross Settlement Amount will be funded over 48 monthly payments, with three separate distributions. (*Ibid.*)

On September 18, 2024, Plaintiff filed a class and representative action in this Court. (Hollis Decl., ¶ 10.) The operative Complaint asserts the following causes of action: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to indemnify all necessary expenditures; (4) failure to pay minimum, regular, and overtime wages; (5); failure to timely pay all wages due upon separation of employment; (6) failure to provide accurate itemized wage statements; (7) violation of Business & Professions Code § 17200 et seq.; and (8) civil penalties pursuant to PAGA. (*Ibid.*) Defendants filed their Answer on October 14, 2024, generally denying all liability and asserting various affirmative defenses. (*Ibid.*)

### **B. Investigation And Evaluation Of The Claims**

Prior to filing the lawsuit, Class Counsel thoroughly investigated the facts and circumstances underlying the potential claims. (Hollis Decl., ¶ 11.) This required, among other things, numerous telephonic conferences with Plaintiff, requesting and analyzing Plaintiff's timekeeping and payroll records, interviewing other putative Class Members and conducting an investigation into the viability of class treatment of the potential claims, and researching of the applicable law. (*Ibid.*) After conducting their initial investigation, Class Counsel determined that Plaintiff's claims were well suited for class adjudication based on what appeared to be a common course of conduct affecting a similarly-situated group of employees. (*Ibid.*)

During Class Counsel's initial investigation and evaluation of the claims, Defendants' counsel raised an inability to pay defense. (Hollis Decl., ¶ 12.) The parties agreed that given the relatively small class size, the cost of litigating this case would likely quickly exceed the value of the claims. (*Ibid.*) As such, the parties agreed to participate in early mediation to explore the possibility of settling the claims before incurring excessive litigation costs. (*Ibid.*)

**C. Mediation And Settlement Efforts**

On August 27, 2024, the parties participated in a full-day mediation with Scott Markus, Esq., a well-respected and experienced mediator. (Hollis Decl., ¶ 16.) During mediation, the parties discussed all aspects of the case, including the relative strengths and weaknesses of Plaintiff’s claims, the risks and delays further litigation would present, the current state of the law as it related to Plaintiff’s claims, and Defendants’ current financial condition. (*Ibid.*) Defendants also provided Class Counsel with access to their financial records and made their accountant available for questioning. (*Ibid.*) Mr. Markus’ role in mediating this case was extremely helpful in managing the parties’ expectations and providing a useful and neutral analysis of the issues and risks both parties faced. (*Id.*, ¶ 17.) The parties ultimately agreed to settle the claims for a total of \$235,000.<sup>2</sup> (*Ibid.*) The Settlement includes all nonexempt employees who were employed between July 11, 2023 and the present (i.e., the PAGA Period), with the release going back to July 11, 2020 (i.e., the Class Period). (*Ibid.*; Settlement Agreement, §§ 1.4, 1.11.)

Class Counsel believes the Settlement is fair and reasonable, taking into consideration the strengths and weaknesses of the claims asserted, the amounts received in other wage and hour class actions, the risks inherent in complex litigation, and the defenses asserted, particularly as it relates to Defendants’ financial condition. (Hollis Decl., ¶ 20.) At all times, the parties’ negotiations were hard-fought and conducted at arm’s-length between attorneys who are highly experienced in wage and hour litigation, and the Settlement is evidence of the parties’ substantial efforts to reach a mutually agreeable compromise. (*Id.*, ¶ 18.)

**III. THE TERMS OF THE PROPOSED SETTLEMENT**

Subject to Court approval, and pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 et seq., the parties have agreed to settle the claims in the operative complaint

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<sup>2</sup> In addition to the Gross Settlement Amount, Defendants have agreed to separately settle Plaintiff’s individual claims pursuant to a separate confidential Individual Settlement Agreement. (Hollis Decl., ¶ 17, n.2.) The individual claims were not at issue in this action and exist independent and apart from the Class and PAGA claims at issue before the Court. (*Ibid.*; see *Kim v. Reins Int’l Cal., Inc.* (2020) 9 Cal.5th 73, 80 [the “[s]ettlement of individual claims does not strip an aggrieved employee of standing, as the state’s authorized representative, to pursue PAGA remedies” nor resolve the PAGA claims].) Upon the Court’s request, Plaintiff will make the individual settlement agreement available for in camera review. (*Ibid.*)

upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached as Exhibit 1 to the Declaration of Graham S.P. Hollis and is incorporated herein by reference in its entirety. The following is a summary of the principal terms of the Settlement Agreement:

**A. Class Definition**

The Class is defined as all current or former non-exempt employees of Defendants who worked for Defendants in the state of California between July 11, 2023 and the date of Preliminary Approval of the Settlement. (Settlement Agreement, § 1.4.) The Waiting Time Penalty Subclass is defined as all members of the Class whose employment with Defendants ended at any time between July 11, 2021 and the date of Preliminary Approval of the Settlement. (Settlement Agreement, § 1.46.)

In addition, the Settlement Agreement defines PAGA Employees as all current and former nonexempt employees of Defendants who worked in California at any time between July 11, 2023 and the date of Preliminary Approval of the Settlement. (Settlement Agreement, § 1.31.) As set forth below, any Class Member who opts out of the Settlement will nonetheless remain eligible for an Individual PAGA Payment and will be bound by the Release of PAGA Claims. (*Id.*, § 7.5.4.)

**B. The Gross Settlement Amount And Allocation Of Settlement Funds**

The non-reversionary Gross Settlement Amount is the \$235,000 that Defendants have agreed to pay to settle the claims asserted in the operative complaint. (Settlement Agreement, § 3.1.) In addition to payments to Class Members and PAGA Employees for their portion of the Net Settlement Amount, the Gross Settlement Amount includes: (1) Class Counsel's attorneys' fees of up to \$78,333.33 (one-third of the Gross Settlement Amount); (2) Class Counsel's costs of up to \$9,500; (3) an Administration Expenses Payment of up to \$7,750; (4) a Class Representative Payment to Plaintiff of up to \$2,500; and (5) payment to the LWDA in the amount of \$6,500 for its share of the PAGA Penalties. (*Id.*, §§ 3.2.1-3.2.5.) In addition, Defendants will separately pay the applicable employer-side payroll taxes owed on the wage portions of the Individual Class Payments. (*Id.*, § 3.1.)

Under the terms of the Settlement, the Gross Settlement Amount will be funded in 48 monthly payments, beginning no later than March 1, 2025. (Settlement Agreement, § 4.3.) Payments to Class Members, PAGA Employees, Class Counsel, the Administrator, and the LWDA will be made in three separate pro rata distributions. (*Id.*, §§ 4.4.1-4.4.2.) The first distribution from the Gross Settlement

Amount will be made within 10 days of the Administrator’s receipt of Defendants’ sixteenth installment payment, which anticipated to be on or about June 1, 2026. (*Id.*, § 4.4.2.) The second distribution will be made within 10 days of the Administrator’s receipt of Defendants’ thirty-second installment payment, which the parties anticipate will be on or about October 1, 2027. (*Ibid.*) The third and final disbursement will be made within 10 days of the Administrator’s receipt of Defendants’ forty-eighth and final payment, which is estimated to be on or about February 1, 2029. (*Ibid.*)

**C. Net Funds Available To Class Members**

After all Court-approved deductions from the Gross Settlement Amount, Class Counsel estimates that at least \$130,416.67 (the “Net Settlement Amount”) will be distributed to Class Members. (Hollis Decl., ¶ 25.) Under the terms of the Settlement, the Net Settlement Amount will be distributed on a pro rata basis based on the number of Workweeks a Class Member worked during the Class Period. (Settlement Agreement, § 3.2.5.) Members of the Waiting Time Penalty Subclass will be credited with an additional six Workweeks towards the calculation of their total workweeks worked. (*Id.*, § 1.46.) These additional Workweeks shall not be counted as workweeks for purposes of the Pro Rata Increase clause in Paragraph 8 for the Settlement Agreement. (*Id.*, § 8.) Class Counsel estimates that the average total payment for Class Members will be approximately \$1,976. (Hollis Decl., ¶ 25.) Class Members will be provided with notice of the Settlement and its terms, their estimated payment, their right to opt-out or object to the Settlement, and their right to appear at the fairness hearing. (Settlement Agreement, § 7.4.2, Ex. A.)

**D. Release**

Upon the Effective Date, each Participating Class Member shall fully and finally release and discharge the Released Parties from any and all claims, rights, demands, liabilities and causes of action of any nature or description, including any such claims, whether known or unknown, that were litigated in the Action against Defendant or could have been litigated based on the facts and circumstances alleged in the entire Action against Defendant, arising under the Operative Complaint, including but not limited to, all claims under the California Labor Code, Wage Orders, and related orders of the California Industrial Commission and Business and Professions Code section 17200, et seq., alleged in the Action or which could have been alleged based on the facts alleged in the Action, including all of the following claims for

1 relief: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure to Reimburse  
2 Necessary Business Expenses; (4) Failure to Pay Minimum, Regular and/or Overtime Wages; (5) Failure  
3 to Timely Pay All Wages Due Upon Separation of Employment; (6) Failure to Provide Accurate Itemized  
4 Wage Statements; and (7) Violation of Business & Professions Code section 17200 (the “Released  
5 Claims”). The claims released under this paragraph shall include, but not necessarily be limited to, claims  
6 for: meal period violations and failure to pay compensation in lieu thereof; rest break violations and failure  
7 to pay compensation in lieu thereof; failure to pay minimum wages, regular wages, overtime and double  
8 time wages; all theories related to unpaid wages (included by not limited to off-the-clock work, time  
9 shaving, time rounding, working through meal periods, regular rate claims, on-duty meal period  
10 violations, or any other claims giving rise to minimum and/or overtime violations); unpaid meal period  
11 penalties; unpaid rest period penalties; wage statement violations; failure to reimburse business expenses;  
12 failure to pay wages upon separation from employment; waiting time penalties; any penalties or wages  
13 owed or derivative of violations of the Unfair Competition Law, California Private Attorneys General Act,  
14 the Labor Code, including Labor Code § 2699 et seq., as well as any damages, restitution, disgorgement,  
15 civil penalties, statutory penalties, taxes, interest or attorneys’ fees or costs resulting therefrom.  
16 (Settlement Agreement, § 5.1.) The release and waiver, however, are conditioned on the full payment of  
17 the Gross Settlement Amount necessary to fund all payment obligations, and will only release such claims  
18 during the Class Period, i.e., through preliminary approval. (*Ibid.*)

19 In addition to the release given by each Participating Class Member and Aggrieved Employee, and  
20 in exchange for the proposed Class Representative Payment, Plaintiff will release any and all charges,  
21 complaints, claims, causes of action, demands, disputes, damages, business expenses, attorneys’ fees,  
22 costs, losses, and liabilities of any kind or nature whatsoever, known or unknown, suspected or  
23 unsuspected, asserted or unasserted, which Plaintiff, at any time had, claimed to have, or may have against  
24 the Released Parties, including waiving his rights under Civil Code section 1542. (Settlement Agreement,  
25 § 5.3.)

26 **E. Class Notice And Settlement Administration**

27 Subject to Court approval, the parties agreed to retain Phoenix Settlement Administrators as the  
28 third-party Settlement Administrator (“Administrator”), who will be responsible for mailing the Class

1 Notice to Class Members, handling inquiries from Class Members, determining Individual Class  
2 Payments and Individual PAGA Payments, maintaining the settlement funds in an appropriate account,  
3 distributing all Court-approved payments under the Settlement, handling all tax document preparation and  
4 reporting, issuing a final report on the disbursement of funds, and performing such other duties as the  
5 parties may direct. (Settlement Agreement, §§ 7.1-7.8.)

6 On a weekly basis, the Administrator will provide reports to Class Counsel and Defense Counsel  
7 with summary information updating them as to the number of validated and timely objections and requests  
8 for exclusion. (Settlement Agreement, § 7.8.3.) Not later than 10 days before the date by which Plaintiff  
9 is required to file his Motion for Final Approval of the Settlement, the Administrator will provide to Class  
10 Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence  
11 and compliance with all of its obligations under the Settlement. (*Id.*, § 7.8.6.)

12 The Class Notice will inform Class Members of their estimated Individual Class Payment, their  
13 estimated Individual PAGA Payment, and the number of workweeks and pay periods they worked during  
14 the Class Period and PAGA Period. (Settlement Agreement, § 7.4.2, Ex. A.) Class Members may  
15 challenge the number of workweeks and pay periods allocated to them in the Class Notice by contacting  
16 the Administrator no later than 60 days after being mailed the Class Notice. (*Id.*, § 7.6.) Challenges will  
17 be resolved without hearing by the Administrator, who will make a decision based on Defendants' records  
18 and any documents or other information presented by the Class Member making the challenge. (*Ibid.*)  
19 The Administrator's determination of each Class Member's allocation of pay periods worked shall be final  
20 and not appealable. (*Ibid.*) The Administrator shall promptly provide copies of all challenges to the  
21 calculation of pay periods worked to Defense Counsel and Class Counsel, along with the Administrator's  
22 determination of the challenges. (*Ibid.*)

#### 23 **F. Notice Process**

24 Class Members who wish to exclude themselves from the Settlement must send the Administrator,  
25 by mail or fax, a signed written Request for Exclusion not later than 60 calendar days after the  
26 Administrator mails the Class Notice (plus an additional 10 calendar days for Class Members whose Class  
27 Notice is re-mailed). (Settlement Agreement, § 7.5.1.) To be valid, a request for exclusion must be timely  
28 faxed or postmarked by the response deadline. (*Ibid.*) Every Class Member who does not submit a timely

1 and valid Request for Exclusion will be entitled to all benefits and bound by all terms and conditions of  
2 the Settlement. (*Id.*, § 7.5.3.) Any Class Member who submits a valid and timely request for exclusion  
3 will not receive an Individual Class Payment or have the right to object to the class action components of  
4 the Settlement, but will nonetheless be entitled to an Individual PAGA Payment and will be bound by the  
5 Release of PAGA Claims. (*Id.*, § 7.5.4.)

6 Class Members may send written objections to the Administrator by fax or mail. (Settlement  
7 Agreement, § 7.7.2.) Class Members may also appear in Court (or retain an attorney to appear on their  
8 behalf) to present verbal objections at the Final Approval Hearing. (*Ibid.*) A Class Member who elects to  
9 send a written objection to the Administrator must do so not later than 60 calendar days after the  
10 Administrator's mailing of the Class Notice (plus an additional 10 calendar days for Class Members whose  
11 Class Notice was re-mailed). (*Ibid.*) Non-Participating Class Members have no right to object to any of  
12 the class action components of the Settlement. (*Id.*, § 7.7.3.)

13 Upon completion of administration of the Settlement, the Administrator shall provide written  
14 certification of such completion to the Court, Class Counsel and Defense Counsel. (Settlement Agreement,  
15 § 7.8.6.) Any funds from payments to Class Members that are returned or have not been cashed within  
16 180 days after the first or second disbursement will revert back to the Net Settlement Amount for inclusion  
17 in the calculation of future disbursement payments to the Class. (*Id.*, § 4.4.5.) Class Members who do not  
18 cash their checks will not be included in future disbursements to the Class. (*Ibid.*) Any funds from  
19 payments to the Class that are returned or have not been cashed within 180 days of the third disbursement  
20 will be distributed to the parties' chosen *cy pres* beneficiary, Coastal Roots, a 501(c)(3) Nonprofit  
21 Organization in Encinitas, California, that provides environmental education programs for children and  
22 teens. (*Ibid.*) In executing the Settlement Agreement, the Parties and their Counsel represent that they  
23 have no interest or relationship, financial or otherwise, with the *cy pres* beneficiary. (*Ibid.*)

#### 24 **G. Tax Treatment Of Individual Payments**

25 Under the terms of the Settlement, 10-percent of each Class Member's Settlement Payment will  
26 be allocated to the settlement of wage claims, and will be subject to tax withholding and reported on an  
27 IRS Form W-2. (Settlement Agreement, § 3.2.5.) The remaining 90-percent of each Settlement Payment  
28 shall constitute interest and penalties, and each Class Member will be issued an IRS Form 1099 for such

payments. (*Ibid.*) PAGA Payments will be treated as penalties for tax purposes, and if applicable, the Administrator will issue each recipient an IRS Form 1099. (*Ibid.*)

#### IV. PROVISIONAL CERTIFICATION IS APPROPRIATE

Courts have generally found that class action suits are appropriate “when the question is one of a common or general interest . . . or when the parties are numerous, and it is impracticable to bring them all before the court.” (Code Civ. Proc. § 382; see *Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469-475.) In order to sustain a class action, two requirements must be met: (1) there must be an ascertainable class; and (2) there must be a “well-defined community of interest in the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow Cab. Co.* (1967) 67 Cal.2d 695, 704.)

To ensure efficient use of judicial resources, California law and policy favor the fullest and most flexible use of the class action device. (*Richmond, supra*, 29 Cal.3d at pp. 469-475.) Indeed, courts have acknowledged “the importance of class actions as a means to prevent a failure of justice in our judicial system” particularly where the rights of numerous “small claimants” are at issue. (See *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434-435, 445.) Any doubt as to the appropriateness of class treatment should be resolved in favor of certification. (*Richmond, supra*, 29 Cal.3d at pp. 473-475.)

##### A. There Is A Numerous And Ascertainable Class

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. (See Code Civ. Proc. § 382.) Whether a class is ascertainable is determined by examining the class definition, the size of the class and the reasonable means available for identifying members of the class. (See *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263, 1271.) Class members are “ascertainable” where they may be readily identified without unreasonable expense or time. (*Id.* at p. 1275 [citing *Hypolite v. Carleson* (1975) 52 Cal.App.3d 566, 578-579].)

Plaintiff contends, and Defendants do not dispute, that for settlement purposes only, there is a numerous and ascertainable class. (See Settlement Agreement, § 12.1.) Class Members are all current and former nonexempt employees of Defendants who worked in California at any time during the Class Period, other than those who timely opt-out. (*Id.*, §§ 1.9, 1.35.) Documents and information exchanged between the parties reflect a Class of approximately 66 Class Members. (Hollis Decl., ¶ 24.) The class is clearly ascertainable because Class Members have already been identified by reference to Defendants’ payroll

1 and personnel records. (*Ibid.*)

2 Because joinder of nearly 70 employees would be impracticable, and Class Members can readily  
3 be determined by Defendants' personnel records, there is a numerous and ascertainable class that is  
4 suitable for provisional certification.

5 **B. There Is A Well-Defined Community Of Interest**

6 As a general rule, a community of interest is established where (1) there are predominant common  
7 questions of law or fact; (2) the named plaintiff has "claims or defenses typical of the class"; and (3) the  
8 named plaintiff is able to adequately represent the class. (See *Dunk v. Ford Motor. Co.* (1996) 48  
9 Cal.App.4th 1794, 1806.)

10 **1. Common Questions Of Law And Fact Exist**

11 Whether a class action is the appropriate mechanism will depend largely upon "whether the  
12 common questions are sufficiently pervasive to permit adjudication in a class action rather than in a  
13 multiplicity of suits." (*Richmond, supra*, 29 Cal.3d at pp. 477-478.) In determining whether common  
14 questions of law and fact exist, courts generally look at the allegations in the complaint, as well as the  
15 declarations of class counsel. (*Id.* at p. 478.) The primary purpose of this inquiry is to ascertain whether  
16 the proposed class is sufficiently cohesive to warrant adjudication by representation. (See, e.g.,  
17 *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 612; *Lazar v. Hertz Corp.* (1983) 143  
18 Cal.App.3d 128, 138-139; *Hogya v. Superior Court* (1977) 75 Cal.App.3d 122, 142.) Simply because  
19 class members must prove their own damages does not mean that individual questions predominate.  
20 (*Clothesrigger, Inc., supra*, 191 Cal.App.3d at p. 617.)

21 Common questions of law and fact exist among Class Members in this case. The operative  
22 complaint asserts causes of action for: (1) failure to provide meal periods; (2) failure to provide rest  
23 periods; (3) failure to reimburse all necessary expenditures; (4) failure to pay minimum, regular, and  
24 overtime wages; (5) failure to timely pay all wages due upon separation of employment; (6) failure to  
25 provide accurate itemized wage statements; (7) violation of Business & Professions Code § 17200 et seq.;  
26 and (8) civil penalties pursuant to PAGA. (Hollis Decl., ¶ 10.) Thus, at minimum, some of the common  
27 questions of law and fact that affect the Class are whether Class Members were provided compliant meal  
28 and rest periods; whether Defendants adequately compensated Class Members for all hours worked;

1 whether the wage statements provided to Class Members complied with California law; whether  
2 Defendants violated Labor Code section 2802 by requiring Class Members to use their personal cell  
3 phones for work purposes; and whether Defendants' policies and practices constitute unfair business  
4 practices for purposes of Business and Professions Code section 17200 et seq. (*Id.*, ¶¶ 67-68.)

5 Here, the required commonality element is satisfied because there are questions of law and fact  
6 common to Plaintiff and the Class, and those questions predominate over any such questions affecting  
7 only Plaintiff or individual Class Members.<sup>3</sup> As such, the underlying claims are sufficiently cohesive to  
8 warrant adjudication by representation. (See *Clothesrigger, Inc.*, *supra*, 191 Cal.App.3d at p. 612.)

## 9 2. Plaintiff's Claims Are Typical Of Class Members' Claims

10 The typicality requirement for purposes of class certification focuses on the typicality of the named  
11 plaintiff's claims as they relate to the defendant's policies and practices. (See *Medrazo v. Honda of North*  
12 *Hollywood* (2008) 166 Cal.App.4th 89, 99 [typicality met where plaintiff alleged that defendant subjected  
13 her to the same unlawful conduct that other putative class members were subjected to].) Indeed, the mere  
14 fact that a defendant may raise defenses against some members of the class does not negate the typicality  
15 of the plaintiff's claims. (*Ibid.*)

16 Here, Plaintiff's claims are typical of the claims of the Class. As detailed in the operative  
17 complaint, Class Members were all subject to the same policies and practices while working for  
18 Defendants, including the company's payroll, timekeeping, and meal and rest period policies. (Hollis  
19 Decl., ¶¶ 67-69.) As such, all sustained the same or similar damages resulting from Defendants' alleged  
20 violations of California wage-and-hour laws, including unpaid or underpaid wages, noncompliant meal  
21 and rest periods, and inaccurate wage statements. (*Ibid.*) Because each Class Member would be required  
22 to demonstrate the same elements in order to recover on their claims against Defendants, Class Members'  
23 interests are sufficiently aligned with Plaintiff's so as to meet the typicality requirement. (See *Medrazo*,  
24 *supra*, 166 Cal.App.4th at p. 99.)

25 ///

26 \_\_\_\_\_  
27 <sup>3</sup> Courts have also found that commonality may be satisfied when the Class is divided into subclasses.  
28 (Fed. R. Civ. P. 23(c)(5); see also, e.g., *Dilts v. Penske Logistics, LLC* (S.D. Cal. 2010) 267 F.R.D. 625,  
635-640 [finding, in an employment action, that commonality was satisfied within wage-forfeiture, meal-  
and-rest-period, reimbursement, and derivative-claims subclasses].)

### 3. Plaintiff And Class Counsel Have And Will Continue To Adequately Represent The Class

A class representative is an adequate representative of the class so long as his or her interests are not antagonistic or in conflict with the objectives that he or she purports to represent. (*Richmond, supra*, 29 Cal.3d at p. 470.) Additionally, Class Counsel “must be qualified, experienced and generally able to conduct the proposed litigation.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) Here, Plaintiff meets both of the requirements necessary to adequately represent the Class.

First, Plaintiff’s interests are not antagonistic to the interests of the Class. As previously explained, Plaintiff alleges that Class Members were all subject to the same unlawful policies and practices by Defendants, and thus suffered identical or similar harm. Consequently, Plaintiff seeks the same relief sought by every other member of the Class. (See *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 625-26 “[A] class representative must be part of the class and possess the same interest and suffer the same injury as the class members.”).) For more than a year and a half, Plaintiff has prosecuted this case on behalf of the other Class Members.<sup>4</sup> (Hollis Decl., ¶ 51.) He has spent numerous hours reviewing documents, meeting and corresponding with Class Counsel, answering questions regarding his experiences while working for Defendants, helping Class Counsel prepare a detailed mediation brief, and evaluating settlement options. (*Ibid.*)

In addition, Plaintiff has retained counsel with extensive experience prosecuting complex wage and hour class actions, who have worked diligently to obtain the Settlement on behalf of the Class. (Hollis Decl., ¶ 72, Ex. 3.) Class Counsel thoroughly investigated the claims raised in this action, the underlying case law, the merits of Defendants’ defenses, and meticulously reviewed the information and documents exchanged prior to attending mediation. (*Id.*, ¶¶ 11-15.) Thus, Class Counsel was sufficiently informed prior to engaging in settlement negotiations. (*Ibid.*) Moreover, the Settlement before the Court is the result of arm’s-length, non-collusive, and informed negotiations that were overseen by an experienced mediator, Scott Markus, Esq. (*Id.*, ¶¶ 16-18.) Over the course of this litigation, Plaintiff and Class Counsel have adequately represented the interests of the Class, and will continue to do so.

<sup>4</sup> Plaintiff will provide a declaration detailing the work he performed in bringing and prosecuting this case with his final approval motion.

**V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE**

**A. The Proposed Settlement Meets The Standards For Preliminary Approval**

California Rules of Court, rule 3.769, requires court approval for class action settlements. “Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” (Cal. R. Ct. 3.769(g).) Courts act within their discretion in approving settlements that are fair, non-collusive, and take into account “all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef Processors. Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.)

The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the range of reasonableness, and, therefore, whether notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple Computer. Inc.* (2001) 91 Cal.App.4th 224, 234-235; *Newberg on Class Actions* (4th Ed.) § 11:25.) Courts have broad powers to determine whether a proposed settlement is fair under the circumstances of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-235; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) In determining whether a settlement meets the standards for preliminary approval, 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 discovery completed and the stage of the proceedings, [and] the experience and views of counsel . . . .” (*Dunk, supra*, 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, supra*, 91 Cal.App.4th at 245.) Furthermore, courts must give “proper deference to the private consensual decision of the parties” because “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

At the preliminary approval stage, the Court need only determine that the settlement falls within

1 the “range of possible judicial approval,” so that notice to the class and the scheduling of the fairness  
2 hearing are worthwhile. (See *Newberg, supra*, § 11:25.) Indeed, the Court should grant preliminary  
3 approval if there are no “grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement]  
4 appears to fall within the range of possible approval.” (*Manual For Complex Litigation* (Third) § 30.41  
5 (1995); see *Dunk, supra*, 48 Cal.App.4th at p. 1802.) A “presumption of fairness exists where: (1) the  
6 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to  
7 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the  
8 percentage of objectors is small.” (*Dunk, supra*, 48 Cal.App.4th at p. 1802 [citing *Newberg* § 11:41].)

9 As shown below, the proposed Settlement in this case falls well within the range of possible  
10 approval and there are no grounds to doubt its fairness.

11 **1. The Settlement Is The Result Of Serious, Informed, Non-Collusive**  
12 **Negotiations Overseen By An Experienced Mediator**

13 The proposed Settlement was reached as a result of arm’s-length negotiations facilitated by an  
14 experienced mediator following significant investigation of the facts and law during, and in preparation  
15 for, mediation. (Hollis Decl., ¶¶ 16-18.) The settlement negotiations have been, at all times, adversarial  
16 and non-collusive in nature. (*Ibid.*) While Plaintiff believes in the merits of his case, he also recognizes  
17 the inherent risks of litigation and understands the benefit of the Class receiving settlement funds  
18 immediately as opposed to delaying payment or risking an unfavorable decision on summary adjudication,  
19 motion for class certification, at trial or on appeal, all of which have the potential to eliminate any relief  
20 for Class Members. (*Id.*, ¶¶ 43-46.)

21 **2. The Extent Of The Information Provided Through Discovery And The Stage**  
22 **Of The Proceedings Support The Settlement**

23 There is a presumption that a proposed settlement is fair and reasonable when there has been  
24 sufficient investigation and discovery to permit counsel and the court to act intelligently, and counsel are  
25 experienced in similar litigation. (*Dunk, supra*, 48 Cal.App.4th at 1802.)

26 Here, the parties thoroughly investigated and evaluated the factual and legal strengths and  
27 weaknesses of this case before reaching the Settlement. (Hollis Decl., ¶¶ 11-14.) As described above,  
28 Class Counsel began conducting informal discovery well before the complaint was ever filed. (*Id.*, ¶ 8.)

1 The parties agreed to participate in early mediation to avoid the risk that litigation costs would quickly  
2 exceed the value of the case, given the small class size. (*Ibid.*) The Settlement was reached only after  
3 substantial investigation and research, thorough calculations and risk evaluation, and an evaluation of  
4 timekeeping and payroll data for the Class. (*Ibid.*) Counsel for the parties have investigated the law as  
5 applied to the facts regarding the claims asserted and potential defenses thereto. (*Ibid.*)

6 The proposed Settlement came only after the case was investigated by experienced counsel. (Hollis  
7 Decl., ¶ 15.) This litigation had undoubtedly reached the stage where the parties had a clear view of the  
8 strengths and weaknesses of their cases, sufficient to support the Settlement. (See *Boyd v. Bechtel Corp.*  
9 (N.D. Cal. 1979) 485 F.Supp. 610, 617.)

### 10 **3. Class Counsel Is Highly Experienced In Similar Litigation**

11 Experienced counsel, operating at arm's-length, have weighed the strengths of the case and  
12 examined all of the issues and risks of litigation and endorse the proposed settlement. The view of the  
13 attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve  
14 a settlement. (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* (9th Cir. 1981)  
15 661 F.2d 939.)

16 Throughout this litigation, Class Members have been represented by well-qualified counsel who  
17 have years of experience in wage and hour class action litigation. (Hollis Decl., ¶¶ 71-76.) Class Counsel  
18 has litigated hundreds of complex class and representative actions, the vast majority of which they served  
19 as plaintiffs' counsel. (*Ibid.*) In short, Class Counsel are experienced and qualified to evaluate the class  
20 claims, to evaluate the benefits of early settlement versus trial on a fully informed basis, and to evaluate  
21 the viability of the defenses asserted. (*Ibid.*) Counsel on both sides share the view – endorsed by an  
22 experienced mediator – that this is a fair and reasonable settlement in light of the complexities of the case,  
23 the state of the law and uncertainties of litigation and trial, and the benefit the Settlement confers on the  
24 Class. Given the risks inherent in litigation, in class certification proceedings, and in the defenses asserted,  
25 this Settlement is fair, adequate, and reasonable and in the best interests of the Class. (*Id.*, ¶ 77.)

### 26 **4. The Settlement Is Fair And Reasonable Based On The Strengths Of Plaintiff's** 27 **Case And The Risks And Costs Of Further Litigation**

28 Plaintiff and his counsel have concluded that it was reasonable to enter into the proposed

1 Settlement. (Hollis Decl., ¶¶ 43-44.) Defendants contested, and continue to contest, liability for the claims  
2 asserted in this action. (Settlement Agreement, § 12.1.) Although Defendants do not believe that Plaintiff  
3 would succeed on the merits of his claims, they nonetheless agreed to resolve this action through  
4 settlement to avoid the expense, delay, and uncertainty of protracted litigation. (*Ibid.*)

5 There are significant legal uncertainties associated with cases such as this, as they can be factually  
6 complex and require protracted litigation to resolve. (Hollis Decl., ¶¶ 48-49.) A settlement is not judged  
7 solely against what might have been recovered had the plaintiffs prevailed at trial, nor does the settlement  
8 have to provide 100 percent of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska*  
9 *Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242; *Wershba, supra*, 91 Cal.App.4th at pp. 246, 250; *Rebney*  
10 *v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139.) Instead, “[c]ompromise is inherent and  
11 necessary in the settlement process . . . even if the relief afforded by the proposed settlement is  
12 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class  
13 settlement because the public interest may indeed be served by a voluntary settlement in which each side  
14 gives ground in the interest of avoiding litigation.” (*Wershba, supra*, 91 Cal.App.4th at p. 250.)

15 Based on information obtained through informal discovery, Class Counsel were able to assess the  
16 strengths and weaknesses of the claims and the benefits of an early settlement. (Hollis Decl., ¶¶ 11-14.)  
17 As a result, Class Counsel believes that the Settlement before the Court represents a very favorable  
18 resolution for the Class. (*Id.*, ¶ 49.)

## 19 **5. The Proposed Settlement Is A Reasonable Compromise Of Claims**

### 20 a. The Settlement Provides Relief to Class Members in Light of the Significant 21 Risks and Expense of Further Litigation

22 To evaluate a settlement, the trial court must receive “basic information about the nature and  
23 magnitude of the claims in question and the basis for concluding that the consideration being paid for the  
24 release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker Retail, Inc.* (2008)  
25 168 Cal.App.4th 116, 133.) The record need not contain an explicit statement of the maximum theoretical  
26 recovery, but rather evidence sufficient to allow “an understanding of the amount that is in controversy  
27 and the realistic ranges of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los*  
28 *Angeles* (2010) 186 Cal.App.4th 399, 409 [citing *Kullar, supra*, 168 Cal.App.4th at p. 120].)

Here, the Settlement results in a significant benefit to Class Members and the Gross Settlement Amount of \$235,000 is a good result by any measure. (Hollis Decl., ¶¶ 49, 77.) In reaching this Settlement, Class Counsel carefully considered the strength of the case versus the amount offered in settlement; the risk, expense, complexity, and likely duration of further litigation and maintaining class certification through trial; the present state of the law as it applies to wage and hour class actions; and the burdens of proof necessary to establish liability against Defendants. (*Id.*, ¶¶ 35-36, 48.)

Although Plaintiff maintains that all claims are meritorious and believes he would have prevailed had he taken his case to trial, he also acknowledges that Defendants would have legitimate defenses to liability, class certification, and manageability. (Hollis Decl., ¶ 45.) Such considerations would pose a substantial obstacle for Plaintiff to maintain his claims, had the parties not reached a settlement. (*Id.*, ¶¶ 44-46.) Moreover, given the relatively small class size, it is likely that the cost of litigation would have quickly surpassed the value of the claims asserted. (*Id.*, ¶ 12.)

Under the terms of the Settlement, each Class Member will be entitled to receive a pro rata portion of the Net Settlement Amount available for distribution based upon his or her respective number of workweeks and pay periods worked during the Class Period and PAGA Period. (Settlement Agreement, §§ 3.2.4., 3.2.5.) This means that Class Members who worked more pay periods during the Class Period will receive a larger portion of the Settlement. (Hollis Decl., ¶ 46.) All Class Members are therefore treated equitably and fairly, and no Class Member is granted improper preferential treatment, as distribution of the Net Settlement Amount takes into consideration the length of employment for each Class Member and the respective number of violations he or she presumably would have suffered during the Class Period. (*Ibid.*)

b. *The Amount Offered in Settlement Given the Estimated Value of the Claims  
Favors Preliminary Approval of the Settlement*

As set forth in the accompanying Declaration of Graham S.P. Hollis, Class Counsel estimated Defendants' maximum-possible exposure to be \$1,008,582.83,<sup>5</sup> with a maximum of \$697,492.83 being available to Class Members. (Hollis Decl., ¶ 23.) This estimate assumed that class certification would be

<sup>5</sup> This equates to \$529,982.83 for the class claims and \$478,600 for PAGA civil penalties. (Hollis Decl., ¶¶ 32-33.)

1 granted, and that Plaintiff would prevail on all claims at trial, as well as recover the full amount of the  
2 estimated damages and the maximum amount of civil penalties under PAGA. (*Ibid.*) It also assumes  
3 PAGA penalties can be stacked – a question unsettled by California courts. (*Ibid.*) Accordingly, the  
4 estimated value of the class claims is premised on a likely inflated “everything goes right” scenario. (*Ibid.*)

5 With approximately 66 Class Members holding various positions, class certification is by no  
6 means a certainty. (Hollis Decl., ¶ 24.) As such, for purposes of settlement, Class Counsel assumes a 50-  
7 percent discount on the merits to account for the possibility that Plaintiff will not prevail on all claims and  
8 the potential for a reduction in any PAGA penalties awarded. (*Ibid.*) Accordingly, Class Counsel believes  
9 a more realistic valuation of the claims in this case after incorporating discounts is \$504,291.42. (*Ibid.*)

10 While the \$235,000 Gross Settlement Amount represents a significant discount on Plaintiff’s  
11 estimate of Defendants’ potential exposure in this matter, the reduction represents an extremely reasonable  
12 compromise considering the substantial risks that Plaintiff and the other Class Members faced in this  
13 litigation. (Hollis Decl., ¶¶ 34-35.) As explained above, Defendants have legitimate defenses to class  
14 certification, manageability, and the merits of the underlying claims. (*Ibid.*) In negotiating the Settlement  
15 before the Court, Class Counsel considered the likelihood of obtaining and maintaining class certification  
16 of Plaintiff’s claims through trial, and obtaining 100-percent of the damages sought. (*Id.*, ¶ 35.) Moreover,  
17 Plaintiff considered the risk that the Court may deny class certification or reverse a favorable ruling on  
18 the merits on appeal – risks that are obviated by the Settlement. (*Ibid.*) In addition, continued litigation  
19 would likely be extremely expensive, reducing and substantially delaying any recovery by Class Members.  
20 (*Id.*, ¶ 36.) In contrast, the proposed Settlement will guarantee that Class Members receive timely relief  
21 and avoid the risk of an unfavorable judgment. (*Ibid.*)

22 Finally, as it relates to the imposition of any penalties under PAGA, there was a very real risk that  
23 the Court would exercise its discretion and reduce the award if it was determined to be unjust, arbitrary,  
24 or confiscatory. (Hollis Decl., ¶ 33.) This is particularly true because throughout the Class and PAGA  
25 Periods, Defendants maintained facially lawful written policies regarding many of the claims asserted.  
26 (*Id.*, ¶ 34.) Given the risk and uncertainty of further litigation, the proposed Settlement is an extremely  
27 fair and reasonable compromise of highly disputed claims.

28 ///

**B. The PAGA Settlement Should Be Approved**

Where a settlement includes a good faith amount for PAGA penalties and “there is no indication that this amount was the result of self-interest at the expense of other” class members, such amounts are generally considered reasonable. (*Hopson v. Hanesbrands, Inc.* (N.D. Cal. Apr. 3, 2009) 2009 WL 928133 at \*1, \*9.) Courts routinely approve settlements where only a small portion of the gross settlement amount is allocated to PAGA penalties. (See *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576 [approving a settlement where no portion was allocated to PAGA penalties; *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. Oct. 13, 2011) 2011 WL 4899942 at \*6 [approving a PAGA payment of 0.25%]; *McKenzie v. Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at \*5 [acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here, the parties negotiated a good faith settlement of PAGA Penalties in the amount of \$10,000, 65% of which (\$6,500) will be paid to the LWDA, with the remaining 35% (\$3,500) to be distributed to PAGA Employees. (Settlement Agreement, § 3.2.5.) The \$10,000 allocated to PAGA Penalties equates to approximately 4.25% of the Gross Settlement Amount, which is in line with amounts that are routinely approved by courts in this state. Therefore, the settlement of the claim for penalties under PAGA is reasonable because it was negotiated in good faith and was not the result of self-interest at the expense of any Class Member. (Hollis Decl., ¶ 33.)

Had a higher amount been allocated to the PAGA claim, the burden to pay civil penalties would have effectively shifted to the PAGA Employees, as it would reduce the amount that they ultimately receive under the Settlement. Although this burden shifting may achieve the enforcement objective of the PAGA statute, it would do so at the expense of the very employees the statute was designed to protect. The Settlement has been submitted to the LWDA as required under Labor Code section 2699(1)(2). (Hollis Decl., ¶ 4, Ex. 2.) Accordingly, the proposed \$10,000 allocation to PAGA Penalties strikes a balance between the interest of all parties, including the LWDA and the general public, by penalizing the employer and providing relief to the PAGA Employees. As such, Plaintiff respectfully requests that the Court approve the allocation of \$10,000 to PAGA Penalties.

**C. The Requested Class Representative Payment Is Fair And Reasonable**

Courts routinely approve class representative payments to compensate named plaintiffs for the

1 services they provide and the risks they incur during the course of class litigation. (See *Bell v. Farmers*  
2 *Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 [upholding service payments to plaintiffs for their efforts in  
3 bringing a class case]; *Manual for Complex Litigation* (Fourth) (2004) § 21.62 n. 971 [noting that service  
4 awards are warranted].) In approving such payments, California courts frequently approve awards of  
5 \$10,000 or more. (*In re Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-1395  
6 [upholding \$10,000 service award to each of four class representatives]; *West v. Circle K Stores, Inc.* (E.D.  
7 Cal. Oct. 19, 2006) 2006 U.S. Dist. LEXIS 76558, \*28 [“the court finds plaintiffs’ enhancement payments  
8 of \$ 15,000 each to be reasonable”]; *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) 2007 U.S. Dist.  
9 LEXIS 8476, \*52 [finding “requested payment of \$ 25,000 to each of the named plaintiffs is appropriate”  
10 in wage and hour settlement].) The factors courts use in determining the amount of an award include: (1)  
11 a comparison between the service awards and the range of monetary recovery available to the class; (2)  
12 time and effort put into the litigation; (3) whether the litigation will further the public policy underlying  
13 the statutory scheme; and (4) the risk of retaliation. (*Clark v. American Residential Services, LLC* (2009)  
14 175 Cal.App.4th 608, 804.)

15 By being the named class representative in this action, Plaintiff put his name on the public record  
16 at the risk of potential employers choosing not to hire him. (Hollis Decl., ¶ 52.) Plaintiff also ran the risk  
17 of being liable for Defendants’ attorneys’ fees and costs as a result of the fee shifting provisions of the  
18 Labor Code. (See, e.g., Labor Code § 218.5.) Although this case was resolved through early mediation,  
19 Plaintiff nonetheless spent a significant amount of time reviewing documents, communicating with  
20 counsel, assisting with the preparation of the complaint, and helping Class Counsel prepare for mediation.  
21 (Hollis Decl., ¶ 51.) As part of the proposed Settlement, Plaintiff also agreed to a general release of any  
22 and all claims to the furthest extent permitted by law. (*Id.*, ¶ 53; Settlement Agreement, § 5.3.) The  
23 proposed Class Representative Payment in the amount of \$2,500 to Plaintiff is fair and reasonable given  
24 the risk he took and the work he bore for the benefit of the Class. (Hollis Decl., ¶ 54.)

#### 25 **D. The Requested Attorneys’ Fees And Expenses Are Fair And Reasonable**

26 The California Supreme Court has unanimously held “that when class action litigation establishes  
27 a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards  
28 class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing

an appropriate percentage of the fund created.” (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503.) The Court further held that although trial courts have discretion to use a lodestar multiplier cross-check or to forego a lodestar multiplier cross-check if some other means to evaluate the reasonableness of a requested fee percentage exists, “the percentage method is a valuable tool that should not be denied our trial court.” (*Id.* at pp. 503-506.) California courts have awarded common fund fees calculated using a percentage-of-fund method that is not dependent on counsel’s lodestar amount. (Pearl, *California Attorney Fee Awards* (CEB 3d Ed. 2010) § 5.19 [citing *In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512]; *Bell, supra*, 115 Cal.App.4th at p. 726; *Apple Computer, Inc. v. Superior Ct.* (2005) 126 Cal.App.4th 1253, 1270.)

Here, the Settlement provides that Class Counsel may seek Attorneys’ Fees of up to \$78,333.33 (one-third of the Gross Settlement Amount), in addition to reimbursement for actual litigation expenses in an amount not to exceed \$9,500. (Settlement Agreement, § 3.2.2.) As demonstrated in the Declaration of Graham S.P. Hollis, Class Counsel performed a significant amount of work litigating this action, including performing extensive legal and factual research, which counsel used to measure the relative strengths and weaknesses of Plaintiff’s claims to better identify an appropriate range of settlement figures. (Hollis Decl., ¶¶ 11-14.) Class Counsel committed, and continues to commit, significant financial and staffing resources to this case, and undertook this action on a contingency basis, thereby bearing all the costs of this complex, risky, and time-consuming litigation. (*Id.*, ¶¶ 56, 59.) The requested Class Counsel Fees and Expenses Payments are fair and reasonable, and should be preliminarily approved.

## **V. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING**

The final step in the settlement approval process is a final approval hearing, at which time the Court may hear all evidence and arguments necessary to conclusively evaluate the proposed Settlement. Should the Court grant Plaintiff’s motion for preliminary approval, Plaintiff requests that a hearing on the issues of final approval of the Settlement, approval of the Class Representative Payment to Plaintiff, approval of Class Counsel’s Fees and Expenses, and approval of the Administration Expenses Payment be scheduled approximately 120 days after preliminary approval.

## **VI. CONCLUSION**

Plaintiff respectfully requests that this Court enter an Order: (1) provisionally certifying the

1 proposed Class and Waiting Time Penalty Subclass under Code of Civil Procedure section 382 and  
2 California Rule of Court 3.769(c) for settlement purposes only; (2) preliminarily approving the Settlement;  
3 (3) approving as to form the Notice of Class Action Settlement and ordering that the Notice of Class  
4 Action Settlement be distributed to all Class Members; (4) appointing Plaintiff Jesse Almanza as the Class  
5 Representative; (5) appointing Phoenix Settlement Administrators as the Administrator; (6) appointing  
6 Graham**Hollis** APC as Class Counsel; and (7) setting this matter for a hearing on the issues of final  
7 approval of the proposed Settlement, approval of the Class Representative Payment, approval of Class  
8 Counsel's fees and costs, and approval of the Administration Expenses Payment.

9 Respectfully Submitted,

10 Dated: June 13, 2025

11 By: \_\_\_\_\_

GRAHAM HOLLIS APC

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