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JOHN CLARKE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

JOHN CLARKE, an individual, on his own
behalf and on behalf of all others similarly
situated,

Plaintiffs,

vs.

PURPOSE DRIVEN TRANSPORT INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendant.

**CASE NO.: 30-2024-01421145-CU-OE-
CXC**

**NOTICE OF MOTION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL**

Judge: Hon. Melissa McCormick
Date: April 16, 2026
Time: 2:00 PM
Dept.: CX105

Complaint Filed: August 21, 2024
Trial Date: None Set

Reservation ID: 74796049

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1 **NOTICE IS HEREBY GIVEN** that, on April 16, 2026, at 2:00 PM in Department CX
2 105 of the Orange Superior Court before the Honorable Melissa McCormick, pursuant to
3 California Code of Civil Procedure §382, Plaintiff John Clarke (“Plaintiff”), on behalf of
4 himself and all others similarly situated, will and does hereby move this Court for entry of an
5 Order: 1. Preliminarily certifying the class for purposes of settlement only;
6 2. Preliminarily appointing Plaintiff as Class Representative for purposes of
7 settlement only;
8 3. Preliminarily appointing Kevin Lipeles, Esq., Thomas Schelly, Esq. and Jasmine
9 Badawi, Esq. of Lipeles Law Group, APC, as Class Counsel for purposes of settlement only;
10 4. Preliminarily approving the settlement as fair, adequate, and reasonable, based
11 upon the terms set forth in the Parties’ Class Action and PAGA Settlement Agreement and Class
12 Notice (“Settlement Agreement”), including payment by Purpose Driven Transport Inc.
13 (“Defendant”) of the Gross Settlement Amount of \$163,000.00;
14 5. Preliminarily approving the Class Representative Service Payment in the amount
15 of \$10,000 to Plaintiff in recognition of his service to the Settlement Class;
16 6. Preliminarily approving Plaintiff’s Counsel’s request for up to \$57,050.00 (35%) of
17 the Gross Settlement Amount as attorneys’ fees;
18 7. Preliminarily approving Plaintiff’s Counsel’s request for actual costs from the
19 Gross Settlement Amount in an amount up to \$12,000.00;
20 8. Appointing Phoenix Class Action Administration Solutions (“Phoenix”) as the
21 third-party Administrator for mailing notices and for claims administration, approving that a
22 maximum of \$5,750.00 be deducted from the Gross Settlement Amount for the costs of
23 administration, and approving that the fees and costs of the Administrator will be paid from the
24 Gross Settlement Amount; and
25 9. Approving the proposed Class Notice and ordering it be disseminated to the Class
26 as provided in the Settlement Agreement.

26 This motion is based upon this Notice of Motion and Motion; the Memorandum of Points
27 and Authorities in Support thereof; the declarations of Kevin Lipeles, Esq. and John Clarke in
28 Support thereof; the Settlement Agreement; the proposed Order; the other records, pleadings, and

1 papers filed in this action; and upon such other documentary and verbal evidence or argument as
2 may be presented to the Court at the hearing of this motion.

3
4 Dated: March 9, 2026

Respectfully submitted,

5 LIPELES LAW GROUP, APC

6
7
8 By:


Kevin Lipeles, Esq.

Thomas Lipeles, Esq.

Jasmine Badawi, Esq.

Attorneys for Plaintiff and the Settlement Class

1 **I. INTRODUCTION**

2 Plaintiff John Clarke (“Plaintiff”), on behalf of himself and the putative Settlement Class¹
3 requests that this Court preliminarily approve the Parties’ proposed Settlement Agreement,²
4 entered into by Plaintiff and Purpose Driven Transport Inc., (“Defendant”) in February 2026.
5 Defendant does not oppose Plaintiff’s instant Motion.³ The proposed Settlement Agreement
6 satisfies all of the criteria for preliminary settlement approval under California Code of Civil
7 Procedure §382, and falls well within the range of reasonableness. Accordingly, Plaintiff requests
8 that the Court grant preliminary approval of the proposed Settlement, approve the proposed notice
9 plan, and schedule a final approval hearing, all of which is described in detail below.

10 The Settlement Agreement seeks to fully release and discharge Defendant from the claims
11 brought against it in the above-captioned matter (the “Action”⁴) and all related penalties on the
12 date when Defendant fully funds the entire Gross Settlement Amount.⁵ In exchange, Defendant
13 will pay the Settlement Class up to \$163,000.00 (“Gross Settlement Amount”) with no reversion
14 to Defendant.

15 The Settlement Agreement and Notice distribution plan were the products of non-
16 collusive, arm’s-length negotiations by informed counsel and parties. The settlement is fair,
17 reasonable and adequate to all. Accordingly, Plaintiff seeks: (1) preliminary approval of the
18 Settlement Agreement; (2) provisional certification of the Settlement Class; (3) appointment of

19 _____
20 ¹ The proposed Settlement Class is defined as: all individuals whom Defendant classified as non-exempt employees
and who worked for Defendant in California at any time between August 21, 2020 through December 31, 2025.

21 ² The Settlement Agreement is attached as Exhibit A to the Declaration of Kevin Lipeles (“Lipeles Decl.”) filed
22 herewith. The proposed Class Notice is attached as Exhibit A to the Settlement Agreement.

23 ³ Defendant vigorously denies liability or wrongdoing with respect to its wage and hour policies and practices.
24 Defendant reserves its right to assert any and all defenses to the claims asserted by Plaintiff and the putative class.
25 Further, Defendant joins in this motion to preliminarily approve of the settlement of a lawsuit that was filed as a class
26 action, but specifically denies that a settlement was necessary as a result of any action or inaction by Defendant.
27 Defendant agrees to resolve the claims asserted by Plaintiff on a class basis to avoid incurring additional substantial
28 costs beyond those which have already been incurred as well as the delay and risks that would be presented by further
prosecution of the litigation. The proposed settlement includes a non-admissions clause and Defendant has at all times
maintained that its wage and hour policies and practices are fully lawful. Hence, Defendant does not join in the
substance of the representations made by Plaintiff in this motion and specifically denies the negative characterizations
of Defendant's conduct as well as Plaintiff's interpretation of certain legal authorities. Defendant, therefore, also
reserves its right to clarify any aspect of the motion that it believes needs to be addressed.

⁴ All capitalized terms have the same meaning as in the Settlement Agreement.

⁵ Settlement Agreement, ¶5.

1 Plaintiff as Class Representative; (4) appointment of Kevin Lipeles, Esq., Thomas Schelly, Esq.
2 and Jasmine Badawi, Esq. as Class Counsel; (5) approval of the Parties' proposed form and
3 method of notifying Class Members of the Settlement Agreement; (6) an order scheduling the
4 hearing date for Final Approval of the Class Settlement; and (7) entry of a preliminary approval
5 Order.

6 **II. FACTUAL SUMMARY**

7 **A. Claims**

8 Plaintiff alleges claims for failing to pay all wages due, daily overtime in excess of eight
9 hours per work day, minimum wages, sick leave wages and failing to authorize and permit meal
10 and rest breaks. Plaintiff further alleges that these Labor Code violations also resulted in Defendant
11 issuing inaccurate itemized wage statements to Class Members and failing to pay wages due upon
12 termination of employment to Class Members who are former employees. Additionally, Plaintiff
13 alleges a claim for failing to reimburse business expenses.

14 Plaintiff contends that the foregoing also violated Cal. Bus. & Prof. Code §17200, *et seq.*
15 Plaintiff also alleged that Defendant was liable for PAGA penalties pursuant to California Labor
16 Code §2699.

17 Defendant vigorously denies each of Plaintiff's allegations, and contends that it maintained
18 compliant wage and hour practices and policies.

19 **B. Procedural History**

20 On August 21, 2024, Plaintiff John Clarke commenced this Action (Case No. 30-2024-
21 01421145-CU-OE-CXC) by filing a complaint alleging causes of action against Defendant for (1)
22 failure to pay all wages due (Cal. Lab. Code §§ 204, 210; IWC Wage Order No. 9); (2) failure to
23 pay overtime (Cal. Lab. Code §§ 510, 1198; IWC Wage Order No. 9); (3) failure to pay minimum
24 wages (Cal. Lab. Code §§ 1194, 1194.2, 1997. 1197.1, 1198; IWC Wage Order No. 9); (4) failure
25 to provide timely off-duty meal periods (Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 9);
26 (4) failure to provide timely off duty rest periods (Cal. Lab. Code §§ 226.7; IWC Wage Order No.
27 9); (6) failure to maintain records and provide accurate itemized wage statements (Cal. Lab. Code §
28 226); (7) failure to pay wages due upon termination (Cal. Lab. Code §§ 201–203); (8) failure to
reimburse business expenses (Cal. Lab. Code § 2802); (9) failure to pay all sick leave wages when

1 due (Cal. Lab. Code §246); (10) failure to allow inspection of employment records (Cal. Lab. Code
2 § 1198.5); and (11) unfair competition (Cal. Bus. & Prof. Code §§ 17200 et seq.).

3 On October 25, 2024, Plaintiff John Clarke filed a First Amended Complaint (“FAC”)
4 adding a claim for civil penalties pursuant to the Private Attorneys General Act (PAGA) (Cal.
5 Labor Code §§2699 *et seq.*). The FAC is the operative complaint in the Action.

6 **C. Marshalling of Evidence**

7 Through informal discovery, Plaintiff’s counsel has diligently pursued an investigation of
8 the putative Class Members’ claims, including: (1) extensive review and analysis of relevant
9 documents, including but not limited to documents relating to Defendant’s financial situation; (2)
10 review of relevant data regarding the size of the putative class; (3) detailed examination of data
11 related to Defendant’s PAGA exposure; and (4) research with respect to the applicable law and the
12 potential defenses thereto. Lipeles Decl., ¶8.

13 **1. Documents**

14 The parties engaged in informal discovery in preparation for a private mediation. Lipeles
15 Decl., ¶¶7-8. Defendant provided information concerning the total number of Class Members (76),
16 Plaintiff’s personnel file, Defendant’s 2025 bank statements, Defendant’s 2024 balance sheet,
17 Defendant’s 2025 Employee Handbook, Defendant’s IRS bills, Defendant’s 2024 Profit and Loss
18 Statement, Defendant’s 2023-2024 tax filings, spreadsheets relating to taxes owed, and
19 spreadsheets showing jobs during 2024-2025. *Id.* at ¶ 7.

20 **2. Data and Damages Model**

21 As part of informal discovery prior to mediation, Defendant culled its documents relating to
22 its wage and hour policies and practices. To estimate the potential class-wide damages exposure
23 associated with Plaintiff’s and the Class’s claims, Plaintiff’s counsel examined and analyzed the
24 above-described voluminous documents. From the data received from Defendant, Plaintiff
25 constructed a damages model based on Defendant’s exposure. Lipeles Decl., ¶14.
26
27
28

1 **a. Failure to Pay All Wages Due/Overtime/Minimum Wage Claims**⁶

2 Plaintiff assumed that Defendant's non-exempt, hourly employees' off the clock work was
3 15 minutes per shift. The average wage rate for all employees during the Class Period was \$17.00
4 per hour. Based on Plaintiff's modeling, the total number of estimated unpaid overtime hours in the
5 statutory period was 5,920 regular hours and 2,220 overtime hours. Thus, the total amount of
6 overtime potentially owed according to Plaintiff's model equaled \$138,380.00 as of the date of
7 mediation, December 9, 2025. $(5,920 * 17.00 + 2,220 * \$17.00)$. Lipeles Decl., ¶14A.

8 **b. Meal Break Claim**

9 Regarding meal break violations (shortened and/or late), Plaintiff assumed 30% of meal
10 breaks had violations. The average wage rate for all employees during the Class Period was \$17.00
11 per hour. Based on Plaintiff's modeling, the total number of meal break violations in the statutory
12 period was 8,880. Lipeles Decl., ¶14B. According to Plaintiff's damages model, Defendant's
13 exposure for violations relating to meal period violations, excluding interest, amounted to
14 approximately \$150,960.00 $(8,880 * \$17.00)$. *Id.*

15 Further, Plaintiff assumed that 10% of meal breaks were interrupted. The average wage rate
16 for all employees during the Class Period was \$17.00 per hour. Based on Plaintiff's modeling, the
17 total number of meal break interruptions was estimated to be 2,960. The total number of
18 interruptions were calculated as follows: $29,600$ (number of first meal breaks exactly 30-minutes
19 on shifts greater than 5 hours) $* 10\% = 2,960$ violations. Thus, the total estimated damages
20 exposure for interrupted meal breaks, excluding interest was \$50,320.00 $(2,960 * \$17.00)$. Lipeles
21 Decl., ¶14B. Based on Plaintiff's modeling, the total amount of estimated damages for both meal
22 break violations and interruptions is \$201,280.00. *Id.*

23 **c. Rest Break Claim**

24 Regarding rest break violations, Plaintiff assumed a 30% violation rate and one missed rest break
25 per shift greater than 3.5 hours. The average wage rate for all employees during the Class Period
26 was \$17.00 per hour. Based on Plaintiff's modeling, the total number of rest break violations in the
27 statutory period was 8,880. Lipeles Decl., ¶14C. According to Plaintiff's damages model,
28 Defendant's exposure for non-compliant rest periods, excluding interest, amounted to

⁶ Plaintiff's claims for failure to pay all wages due and minimum wages are subsumed within the overtime claim since all of the claims related to off the clock work.

1 approximately \$150,960.00 (8,880 * \$17.00). *Id.*

2 **d. Failure to Provide Accurate Wage Statements Claim**

3 Concerning the wage statement claim,⁷ the putative class was comprised of approximately
4 19 current employees during the one-year statutory period. There were 24 pay periods per year.
5 Based on Plaintiff's modeling, the value of Plaintiff's wage statement claim was \$44,650.00,
6 calculated as follows: Current employees (19, at the time of mediation) * \$2,350 (\$50.00 (initial
7 violation) + \$100 (subsequent violations)) = \$44,650.00. Lipeles Decl., ¶14D.

8
9 **e. Failure to Pay Wages on Termination Claim**

10 Concerning waiting time penalties, the putative class is comprised of approximately 114
11 former employees during the statutory period. Plaintiff assumed 30 days per employee at 8
12 average shift hours per day, \$17.00 average rate of pay and 30 former employees each year are in
13 the Section 203 subclass. Based on Plaintiff's modeling, the potential value of the waiting time
14 penalty claim⁸ for the Class Members who are former employees of Defendant is \$122,400,
15 calculated as follows: 30 employees * 8 average shift hours per day * \$17.00 * 30 days =
16 \$122,400.00. Lipeles Decl., ¶14E.

17 **f. Failure to Reimburse Business Expenses Claim**

18 Plaintiff assumed there was \$9.28⁹ of unreimbursed cell phone business expenses per week.
19 There were 7,400 Workweeks in the Class Period through December 9, 2025. According to
20 Plaintiff's damages model, Defendant's exposure for unreimbursed cell phone business expenses,
21 excluding interest, amounted to approximately \$68,672.00 (7,400 * \$9.28). Lipeles Decl., ¶14F.

22
23
24 ⁷ Labor Code §226(e) provides that an employee is entitled to recover \$50 for the initial pay period in which a violation
25 of Labor Code §226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of
26 costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally fails to
27 provide accurate itemized statements to the employee causing the employee to suffer injury. There are 24 pay periods
28 per year. The wage statement violation claim is derivative of Plaintiff's other claims and depends on the actual number
of violations found to exist.

⁸ Under Labor Code 203(a), Plaintiff and the Class are entitled to one day's wages for each day he or she was not
timely paid, not to exceed 30 days' wages.

⁹ Cell phone reimbursement cost: <http://insights.samsung.com/2022/05/16/how-much-should-you-compensate-byod-employees-for-mobile-expenses-3/>

1 **g. Failure to Pay Sick Leave Wages Claim**

2 Plaintiff assumed that employees were denied 24 hours of sick leave over the course of their
3 employment. The average wage rate for all employees during the Class Period was \$17.00.
4 According to Plaintiff's damages model, Defendant's exposure for denied sick leave is \$31,008,
5 calculated as follows: $24 * \$17.00 * 76 \text{ Class Members} = \$31,008.00$. Lipeles Decl., ¶14G.

6 **h. Damages Model**

7 The Damages Model manifested the following conclusions concerning Defendant's
8 exposure, excluding interest:

9

<u>ALLEGATION</u>	<u>LIABILITY RISK</u>
Failure to Pay All Wages Due/Overtime/Minimum Wage Claims	\$138,380.00
Rest Break Claim	\$150,960.00
Meal Break Claim (including meal break violations and interruptions)	\$201,280.00
Failure to Issue Accurate Itemized Wage Statement Claim	\$44,650.00
Failure to Pay Wages on Termination Claim	\$122,400.00
Failure to Reimburse Business Expenses Claim	\$68,672.00
Failure to Pay Sick Leave Wages Claim	\$31,008.00
Total, excluding interest	\$757,350.00

21 Lipeles Decl., ¶14H.

22 The following chart shows the amount of PAGA penalties on the overtime/minimum wage
23 and failure to pay for all hours worked claims only since based on Labor Code 2699(h)(3)(i) PAGA
24 penalties cannot be stacked:

25

Number of Pay Periods in PAGA Period	925	
Number of Pay Periods in PAGA Period – Overtime/Minimum Wage/Failure to Pay for All Hours Worked	925	
PAGA Penalty for Overtime	\$92,500	\$100/\$100
Total PAGA penalties	\$92,500	

1 Since PAGA penalties cannot be stacked, the maximum recoverable PAGA penalties is
2 \$92,500.00. Lipeles Decl., ¶14H.

3 **D. Settlement Negotiations**

4 On December 9, 2025, the Parties virtually attended via Zoom an all-day mediation with
5 mediator Hon. Mitchel R. Goldberg (Ret.). Lipeles Decl., ¶16. Kevin Lipeles, Esq. and Jasmine
6 Badawi, Esq. of Lipeles Law Group, APC, attended on behalf of Plaintiff. Plaintiff also attended
7 the mediation remotely. Attorney Alexander M. Medina, Esq. of Medina McKelvey LLP, attended
8 on behalf of Defendant. *Id.*

9 After a full day of negotiations, the Parties agreed to settle for \$163,000.00 with no claims
10 process and **no reversion** to Defendant of any settlement monies remaining after all Settlement
11 Class Members are paid.¹⁰ Lipeles Decl., ¶¶18-19; Ex. A (Settlement Agreement), ¶3.1.

12 **E. Summary of Settlement Terms**

13 Under the terms of the Settlement Agreement, Defendant is discharged of all claims
14 asserted in the Action (“Released Class Claims”)¹¹ in exchange for paying the Gross Settlement
15 Amount (“GSA”) of \$163,000.00.¹² The following amounts will be subtracted, subject to court
16 approval: Plaintiff’s Class Representative Service Payment of up to \$10,000, attorneys’ fees up to
17 \$57,050.00, actual costs to Plaintiff’s Counsel in an amount up to \$12,000, PAGA Penalties of
18 \$10,000 (\$6,500 to the LWDA and \$3,500 to the Aggrieved Employees), and the Administration
19 Expenses Payment up to \$5,750.00. The employer’s portion of the payroll taxes attributed to the
20 wage portion of Individual Class Payments to Class Members will be paid by Defendant outside of
21 and in addition to the Gross Settlement Amount.¹³ The Net Settlement Amount (“NSA”) is the
22 remainder, *i.e.*, approximately \$71,700, which shall be available for distribution to Class Members
23 in its entirety.¹⁴

24 The estimated average share per class member is \$943.42.¹⁵ Settlement Class Members are
25

26 ¹⁰ The Parties continued to negotiate until their finalized Settlement Agreement was fully executed in February 2026.
27 Lipeles Decl., ¶19. Plaintiff is not able to calculate the estimated highest/lowest shares, and Plaintiff’s shares at this
28 time. Plaintiff will provide that information in their final approval papers. Lipeles Decl., ¶29.

¹¹ Settlement Agreement, ¶5.2.

¹² Settlement Agreement, ¶3.1.

¹³ Settlement Agreement, ¶3.1.

¹⁴ Settlement Agreement, ¶1.28.

¹⁵ \$71,700 (NSA)/76 (putative class members) = \$943.42 (average award per class member).

1 not required to submit a claim form in order to receive an Individual Class Payment.¹⁶

2 To calculate Individual Class Payments, the Administrator, using the Class Data, will
3 calculate the total workweeks for all Class Members. An Individual Class Payment shall be
4 calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by
5 all Participating Class Members during the Class Period and (b) multiplying the result by each
6 Participating Class Member's Workweeks.¹⁷

7 Because Aggrieved Employees cannot opt out of the PAGA claims, each Aggrieved
8 Employee, whether or not a Participating Class Member, shall also receive his or her Individual
9 PAGA Payment calculated by assigning a certain dollar value to each pay period the Aggrieved
10 Employee worked during the PAGA Period (or from August 21, 2023 through December 31, 2025).
11 The Administrator will calculate Individual PAGA Payments by (a) dividing the 35% share of the
12 PAGA Penalties (\$3,500.00) by the total number of PAGA Pay Periods worked by all Aggrieved
13 Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's
14 PAGA Pay Periods.¹⁸

15 For tax purposes, Individual Class Payments shall be allocated and treated as follows:
16 twenty percent (20%) of each Individual Class Payment will be allocated to settlement of wage
17 claims and subject to withholdings and taxes, and eighty percent (80%) will be allocated to interest
18 and penalties not subject to withholding. Each Individual PAGA Payment shall be treated as 100%
19 penalties.¹⁹

20 Individual Class Payment checks issued to Participating Class Members and PAGA
21 Employees shall remain valid and negotiable for one hundred and eighty (180) calendar days from
22 the date of issuance. In the event an Individual Class Payment check has not been cashed within
23 one hundred and eighty (180) days, all such checks shall be cancelled and funds associated with
24 such cancelled checks shall be remitted to the California State Controller's Office, Unclaimed
25 Property Division in the name of the Participating Class Member for whom the funds are
26

27
28

¹⁶ Settlement Agreement, ¶3.1.

¹⁷ Settlement Agreement, ¶3.2.4.

¹⁸ Settlement Agreement, ¶3.2.5.1.

¹⁹ Settlement Agreement, ¶¶3.2.4.1, 3.2.5.2.

designated.²⁰

F. Administration of Notice, Objections, and Claims

The actual costs of administration, estimated at up to \$5,750.00, will be deducted from the Gross Settlement Amount. Lipeles Decl., ¶19, Ex. A (Settlement Agreement ¶3.2.3. The Parties have agreed that Phoenix Class Action Administration Solutions (“Phoenix”) shall serve as the Administrator. Lipeles Decl., ¶42. Not later than twenty-one (21) days after the entry of the Preliminary Approval Order, Defendant will provide the Administrator with the Class Data. Within fourteen (14) calendar days after receiving the Class Data from Defendant, Phoenix will mail all Class Members the Class Notice. The Class Notice (Exhibit A to the Settlement Agreement) shall contain, *inter alia*, an estimate of the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Class Period Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. The Class Notice will be in English since all Class Members speak English. The Administrator shall use the Class Data to determine the dates of employment, calculate the number of Workweeks and PAGA Pay Periods and calculate the estimated Individual Class Payment and Individual PAGA Payment for each Settlement Class Member.

Settlement Class Members will not be required to submit a claim form and shall automatically receive an Individual Class Payment unless they submit a valid Request for Exclusion.²¹ Plaintiff negotiated this term to eliminate any potential fear of retaliation from Class Members, for participating in the settlement.²² The proposed Class Notice is attached to the Settlement Agreement as Exhibit A.

The Class Notice informs each Settlement Class Member of his or her right to object to the settlement. Settlement Class Members who wish to object to the Settlement may send written objections to the Administrator, by fax, email, or mail no later than sixty (60) calendar days after the initial mailing of the Class Notice, or may appear in court (or hire an attorney to appear in court) to present verbal objections at the Final Approval Hearing.²³

²⁰ Settlement Agreement, ¶4.4.3

²¹ Settlement Agreement, ¶ 3.1.

²² Neither Plaintiff nor his counsel believe that Defendant will retaliate against Class Members for participating in the lawsuit. However, Plaintiff’s counsel has found the fear of retaliation to be a common, albeit often unfounded, fear among Class Members in virtually every case.

²³ Settlement Agreement, ¶7.7.2.

1 **G. Procedure for Requesting Exclusion or Opting Out of Settlement**

2 Class Members who wish to exclude themselves from the Settlement Agreement must sign
3 and mail a written Request for Exclusion opting out of the Settlement Class postmarked no later
4 than sixty (60) calendar days after the Class Notice is first mailed out.²⁴ Lipeles Decl., ¶19, Ex. A
5 (Settlement Agreement) at ¶ 7.5.1. All Class Members who do not submit a valid Request for
6 Exclusion shall be bound by all the terms of the Settlement Agreement and any Final Judgment
7 entered by the Court if the Court grants final approval of the settlement.

8 **H. Mailing of Individual Class Payments**

9 Settlement Class Members will automatically receive an Individual Class Payment unless
10 they submit a valid Request for Exclusion. Defendant shall fund the Gross Settlement Amount
11 (including any increase to the Gross Settlement Amount pursuant to the Escalator Clause), and also
12 fund the amounts necessary to fully pay Defendant's share of payroll taxes as follows:

- 13 a. Seventeen (17) installment payments of Five Thousand Dollars exactly (\$5,000.00)
14 per month, due by the Fifteenth (15th) of each month, starting on July 15, 2026. If
15 the judgment is not Final by July 1, 2026, then the first \$5,000.00 installment payment
16 shall be due on the Fifteenth (15th) day of the month after the month during which
17 the judgment becomes Final.
18 b. Thirteen (13) installment payments of Six Thousand Dollars exactly (\$6,000.00) per
19 month, due by the Fifteenth (15th) of each month, commencing after payment of the
20 Seventeenth (17th) monthly installment payment of \$5,000.00.
21 c. If the GSA increases pursuant to Paragraph 8 of the Settlement Agreement, then
22 Defendant shall pay, starting on the Fifteenth (15th) of the month after the month
23 during which the Thirteenth (13th) \$6,000.00 installment payment is made, a monthly
24 installment payment of no more than Six Thousand Dollars (\$6,000.00) per month
25 until the GSA is fully funded.
26 d. Defendant shall pay the full amount of the employer's taxes for the portion of the
27 Settlement allocated to the settlement of wage claims no later than the Fifteenth (15th)
28

²⁴ However, those Settlement Class Members who receive a re-mailed Class Notice shall have their response period extended fourteen (14) calendar days from the original response period. Settlement Agreement, ¶7.5.1.

1 of the month after the month during which the GSA is fully funded.

2 Should the due date for any payment fall on a holiday, weekend, or other date on which
3 Defendant's bank is closed, then the due date for the payment shall be advanced to the following
4 regular business day.²⁵

5 Within thirty (30) days after Defendant fully funds the Gross Settlement Amount, the
6 Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments,
7 the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees
8 Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service
9 Payment.²⁶

10 **III. CLASS ACTION SETTLEMENT APPROVAL PROCEDURE**

11 Any settlement of class litigation must be reviewed and approved by the presiding court.
12 Cal. R. Ct. 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial
13 court; and (2) a subsequent (final) review after the notice has been distributed to the Class
14 Members for their comments and/or objections. The Preliminary Approval Hearing and Final
15 Approval Hearing coincide with these two required steps. The present motion seeks preliminary
16 approval and the setting of a Final Approval Hearing.

17 The first step, preliminary approval, proceeds as follows:

18
19 When the parties to an action reach a monetary settlement, they will usually
20 prepare and execute a joint stipulation of settlement, which is submitted to the
21 court for preliminary approval. The stipulation should set forth the central terms
22 of the agreement, including but not limited to, the amount of the settlement, form
of payment, manner of determining the effective date of settlement and any recapture
clause.

23 Rubinstein, Conte & Newberg, *Newberg on Class Actions*, §§ 11.24-11.26 (4th Ed. 2002)
24 ("Newberg").

25 California courts favor settlement. *Stambaugh v. Superior Court (Pacific Gas and Electric*
26 *Company)*, 62 Cal. App. 3d 231, 236 (1976). Courts have broad powers to determine whether a

27 ²⁵ Settlement Agreement, ¶4.3.

28 ²⁶ Settlement Agreement, ¶ 4.4. Additionally, any portion of the Class Counsel Fees Payment and Class Counsel
Litigation Expenses Payment not awarded to Plaintiff's Counsel will be available for distribution to Settlement Class
Members as part of the NSA. Settlement Agreement, ¶ 3.2.2. Further, any portion of the Class Representative Service
Payment not awarded to the Class Representative will be available for distribution to Settlement Class Members as part
of the NSA. Settlement Agreement, ¶ 3.2.1.

1 proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court (County*
2 *of Marin)*, 89 Cal. App. 3d 434, 438 (1979).

3 Here, the Parties have executed and hereby submit the Settlement Agreement, which sets
4 forth all material terms. “Where the settlement terms are fair and reasonable, the settlement is
5 presumptively valid, subject only to objections that may be raised at a final hearing.” *Newberg*,
6 § 11.26. California courts have certified classes in cases similar to the present Class in which
7 Plaintiff’s Counsel was appointed Class Counsel.²⁷

8 The schedule setting forth a proposed sequence for the relevant dates and deadlines is
9 outlined in the Proposed Order filed herewith. Having appropriately presented the materials and
10 information necessary for preliminary approval, the Parties request that the Final Approval Hearing
11 be conducted as soon thereafter as the Court’s calendar may accommodate.

12 **IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

13 The law favors settlement, particularly in class actions and other complex cases where
14 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
15 *See Newberg* § 11:41 (and cases cited therein); *Class Plaintiff v. City of Seattle*, 955 F.2d 1268,
16 1276 (1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also Potter v.*
17 *Pac. Coast Lumber Co.*, 37 Cal. 2d 592, 602 (1951). In evaluating class action settlements, the
18 court has broad powers to determine whether a proposed settlement is fair under the circumstances
19 of the case. *Wershba v. Apple Computers, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *Mallick v.*
20 *Superior Court (County of Marin)*, 89 Cal. App. 3d 434, 438 (1979). The purpose of the
21 preliminary evaluation of class action settlements is to determine only whether the proposed
22 settlement is within the range of possible approval, also described as the “range of reasonableness,”
23 and thus whether notice to the class of the settlement’s terms and conditions and the scheduling of
24 a formal fairness hearing are worthwhile. *See Wershba*, 91 Cal. App. 4th at 234-235; *North County*
25 *Contractor’s Ass’n, Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-1090 (1994); *In re*
26 *Traffic Exec Ass’n*, 627 F.2d 631, 633-634 (2nd Cir. 1980); *Newberg*, § 11:25-26.

27 The *Manual for Complex Litigation*, Fourth (Fed. Judicial Center 2004 (“*Manual*”),
28 § 21.632 characterizes the preliminary approval stage as an “initial evaluation” of the fairness of

²⁷ *See Lipeles Decl.*, ¶37.

1 the proposed settlement made by the court on the basis of written submissions and informal
2 presentation from the settling parties. To make a fairness determination, courts must consider
3 several factors, including “the strength of the Plaintiff’s case, the risk, expense and complexity and
4 likely duration of further litigation, the risk of maintaining class action status through trial, the
5 amount offered in settlement, the extent of the discovery completed and the stage of the
6 proceedings, [and] the experience and views of counsel. ...” *Dunk v. Ford Motor Co.*, 48 Cal. App.
7 4th 1794, 1801 (1996) “The list of factors is not exclusive and the court is free to engage in a
8 balancing and weighing of factors depending on the circumstances of each case.” *See Wershba*, 91
9 Cal. App. 4th at 245.

10 Furthermore, courts must give “proper deference to the private consensual agreement of the
11 parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement
12 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a
13 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
14 between, the negotiating parties, and that the settlement, taken as a whole, is fair reasonable and
15 adequate to all concerned.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1027 (9th Cir. 1998) (internal
16 quotes and citation omitted). Once the judge is satisfied with the results of the initial inquiry into
17 the fairness, reasonableness, and adequacy of the settlement, the court should direct that the Class
18 Members be given notice of a formal fairness hearing, at which arguments and evidence may be
19 presented in support of, and in opposition to, the settlement. *See Manual*, § 21.633.

20 **A. The Proposed Settlement Is Fair to the Class**

21 The terms of the settlement recognize the strength of the case. The proposed settlement is
22 reasonable, in light of the strength of Plaintiff’s case and the risks of litigation. *Clark v. American*
23 *Residential Services, LLC*, (2009), 175 Cal. App. 4th 785, 799. Under *Clark* “the trial court is
24 obliged, at a minimum, to determine whether a legitimate controversy exists on a legal point, if that
25 legal point significantly affects the valuation of the case for settlement purposes.” *Id.* at 803.
26 However, the trial court is not required to reach any ultimate legal or factual conclusions. *Id.* A
27 settlement is not judged against what might have been recovered had a plaintiff prevailed at trial,
28 nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.
Wershba, 91 Cal. App. 4th at 224 (holding that “[c]ompromise is inherent and necessary in the

1 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
2 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement
3 because the public interest may indeed be served by a voluntary settlement in which each side gives
4 ground in the interest of avoiding litigation”). Settlement agreements are realistically assessed.
5 *Stambaugh*, 62 Cal. App. 3d at 236; *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989) (“The
6 fact that a plaintiff might have received more if the case had been fully litigated is no reason not to
7 approve the settlement.”).

8 The Settlement Agreement in this case confers a substantial benefit on the Settlement Class.
9 Pursuant to the terms of the Settlement Agreement, Defendant will pay \$163,000 in exchange for a
10 full discharge of Plaintiff’s and Settlement Class Members’ Released Claims.²⁸ Once all the
11 adequate deductions have been made from the GSA, the amount available for distribution to
12 Plaintiff and the Settlement Class is approximately \$71,700.00.

13 Plaintiff has evaluated the strengths of the class claims, and assessed the range of potential
14 outcomes of the litigation. In addition to disputing the merits of Plaintiff’s claims, Defendant
15 would strongly challenge any request for class certification. Plaintiff believed that this case was
16 suitable for class certification. However, Plaintiff also realized that there is always a significant
17 risk associated with class certification proceedings. In light of the uncertainties of protracted
18 litigation, the GSA reflects an excellent recovery for the Class Members. Lipeles Decl., ¶25.

19 **1. Plaintiff Faced Significant Risk**

20 Pursuit of the Action through trial would impose significant risks on the outcome of
21 Plaintiff’s claims.

22 **a. Defendant’s Liability For Violation of California’s Failure to Pay All Wages**
23 **Due/Overtime/Mimimum Wage Claims Was Far From Certain.**

24 Defendant contended that pursuant to their written policies employees were not allowed to
25 engage in off the clock work. However, Plaintiff claims that Class Members were not paid
26 premium wages for overtime and were not paid for their off the clock work. Thus, not getting
27 certified was a risk which Plaintiff considered during the negotiations. Lipeles Decl., ¶21. Thus,
28 there was a high risk that the Court would deny certification of the failure to pay all wages

²⁸ Settlement Agreement ¶5.

1 due/overtime/minimum wage claims.

2 **b. Defendant's Liability For Failure to Afford Meal/Rest Breaks Was Fraught**
3 **With Risk.**

4 Plaintiff also claims that Class Members were not afforded meal/rest breaks. Defendant
5 adamantly contends that it implemented a policy for when nonexempt employees were to take
6 meal/rest breaks. Further, Defendant maintained that individual issues predominate. Defendant
7 argued that courts routinely decline to certify meal/rest break classes. *See, e.g., Wilson v. TE*
8 *Connectivity Networks, Inc.*, 2017 WL 1758048, *7 (N.D. Cal. Feb. 9, 2017 (denying certification
9 of break classes and noting “courts consistently [find that] individualized issues predominate in
10 meal and rest break claims”) (emphasis added); *Payton v. CSI Elec. Contractors, Inc.*, 27 Cal. App.
11 5th 832, 840-45 (2018) (affirming denial of rest break class due to individualized issues); *Ordonez*
12 *v. Radio Shack, Inc.*, 2013 WL 210223, *11-12 (N.D. Cal. Jan. 17, 2013) (denying certification of
13 rest break class: “Unlike a meal break class, rest breaks were not recorded in defendant’s
14 timekeeping system, and defendant was not required to record them under California law. As
15 such...plaintiff appears unable to offer any classwide method for proving when class members
16 were or were not authorized and permitted to take a rest break. Without such a classwide method
17 for demonstrating which class members, during which shifts, were not authorized and permitted to
18 take rest breaks..., individualized issues will likely predominate.”). Thus, there was a high risk that
19 the Court would deny certification of the meal/rest break claims. Lipeles Decl., ¶22.
20

21 **c. Plaintiff Faced Significant Challenges to Liability for Failure to Reimburse**
22 **Business Expenses and Sick Leave.**

23 Plaintiff claims that Class Members were not reimbursed for their personal cell phone use
24 for business. Defendant maintained that employees were not required to use their cell phones.
25 Thus, those expenses are not recoverable. However, Plaintiff contended that Defendant failed to
26 reimburse Plaintiff and Class Members. Thus, there was a significant risk that the Court would
27 deny the expense reimbursement claim. Lipeles Decl., ¶23.
28

Plaintiff contended that Defendant did not separately provide paid sick days. Defendant
maintained that it complied with sick leave laws. *Id.* at ¶23.

1 e. **Plaintiff's Potential PAGA Damages Were Far From Certain.**

2 Uncertainty relating to Plaintiff's potential PAGA damages played a role in the negotiation
3 considerations. Questions were raised about whether and to what extent a court may award such
4 penalties, especially in light of the caps on punitive damages by the both U.S. Supreme Court and
5 California Supreme Court. Thus, Defendant would argue that penalties greatly in excess of actual
6 damages would be confiscatory and possibly unconstitutional. Further, the actual amount of PAGA
7 penalties awarded by the Court is completely discretionary and penalties are not subject to stacking
8 under Labor Code § 2699(h)(3)(i), as amended.²⁹ As a result, Plaintiff considered that PAGA
9 penalties may not be awarded in amounts that are disproportionate to the actual amount of wages
10 owed. Lastly, since only 35% of any PAGA recovery reaches the PAGA claimants (with the
11 balance going to the state), the strength of Plaintiff's potential PAGA claims and the potentially
12 limited recovery was a factor considered during settlement negotiations. Here, the amount
13 allocated to PAGA penalties is fair, reasonable and adequate in view of PAGA's purposes to
14 remediate labor law violations and deter future ones in accordance with *Moniz v. Adecco USA, Inc.*
15 (2021) 72 Cal. App. 5th 56. Lipeles Decl., ¶24.

16 Where, as here, the settlement affords the Class Members prompt, substantial relief, while
17 avoiding legal and factual hurdles that otherwise may have prevented the Class from obtaining any
18 recovery at all, or at least after a very significant delay, the reasonableness of the settlement is
19 clear. Because the Settlement Agreement provides immediate and substantial relief, without the
20 attendant risks and delay of continued litigation, it warrants the Court's preliminary approval.

21 **B. The Proposed Settlement Is the Result of Arm's-Length Negotiation.**

22 Plaintiff's counsel conducted an extensive investigation, including reviewing voluminous
23 documentary evidence. The Parties negotiated in good faith and at arm's-length on several
24

25 ²⁹ In granting final approval of the class action settlement in *Stuart v. RadioShack*, 641 F. Supp. 2d 901 (N.D. Cal.
26 2009) Judge Chen noted the following:

27 Plaintiffs could arguably get more . . . because they are entitled to penalties under the PAGA, [but] it is not
28 clear that they could get a significant additional amount because the PAGA provides that,
 [i]n an action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or
 (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based
 on the facts and circumstances of the particular case, to do so otherwise would result in an award that is
 unjust, arbitrary and oppressive, or confiscatory.

occasions over several months before reaching an agreement. Thus, Class Counsel negotiated the proposed Settlement with ample knowledge of the strengths and weaknesses of this case, the amounts necessary to compensate Settlement Class Members for their damages, and the benefits of the proposed Settlement under the circumstances of this case. In addition, Class Counsel and Defense Counsel, are experienced class action litigation and employment attorneys, and have used their experience and expertise in fashioning a proposed Settlement that is acceptable to both parties. *See* Lipeles Decl., ¶¶37-38.

The settlement terms also indicate that the Settlement is fair to the Class. Defendant has legal and factual grounds for defending this action. Among other things, Defendant denies the allegations asserted in the Action and continues to assert defenses to such claims. Defendant further contends that at all relevant times they had valid wage and hour policies and that they properly paid Plaintiff and Class Members. Notwithstanding these arguments, the Settlement commits Defendant to pay a total of \$163,000.00, of which approximately \$71,700.00 will go to compensate the Settlement Class Members for their damages, which Class Counsel believes is a fair and adequate amount given the litigation risks and delays inherent in further litigation and appeals. *See* Lipeles Decl., ¶¶26-27, 36.

Accordingly, preliminary approval of the Settlement is appropriate, and Plaintiff requests that the Court order that the Class Notice be disseminated to the Class, and that a final approval hearing be scheduled.

C. Provisional Certification of the Settlement Class Under the Lesser Standard of Scrutiny for Settlement-Only Certification Is Appropriate.

“[P]re-certification settlements are routinely approved if found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App 4th 224, 240; *accord Dunk, supra*, 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,” the court was satisfied that it was “fair, adequate and reasonable.”); *see also, In re Baldwin-United Corp.* 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”).

The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal . . . may be set out in conditional orders granting tentative approval to the various items submitted to

1 the court. Three basic rulings are often conditionally entered at this preliminary
2 hearing. These conditional rulings may approve a temporary settlement class,
3 the proposed settlement, and the class counsel's application for fees and
4 expenses.

4 *Newberg on Class Actions*, at §11.26.

5 The standard for class certification in the settlement context is a significantly lower
6 threshold than in a contested proceeding or a trial context:

7 The two basic purposes for the Rule 23 certification requirements, as they
8 relate to questions of a nationwide class are: (1) to keep the lawsuit
9 manageable for trial; and (2) to protect the interests of the nonrepresentative
10 members. The first purpose is inapposite in the settlement context, and the
11 second, as it relates to commonality of issues, *only makes a difference if the*
12 *nonrepresentative class members would do much better by litigating on their*
13 *own or in their own jurisdiction.* The second category concerns are protected
14 by the trial court's fairness review of the settlement.

12 *Dunk*, 48 Cal. App. 4th at 1807, n. 19, (emphasis added). The reason for this is that no trial is
13 anticipated in the settlement context, so any case management issues inherent in determining if the
14 class should be certified need not be confronted. *Amchem Products, Inc. v. Windsor* 521 U.S. 591
15 (1987)

16 The very liberal standard expressed in *Dunk* is plainly satisfied here. The requirements for
17 class certification in the settlement context – ascertainability, numerosity, predominance of
18 common questions of law and fact, typicality, and adequacy – are all met. It certainly cannot be
19 said that the Settlement Class Members would do “much better by litigating on their own.” *Dunk*,
20 48 Cal. App. 4th at 1807, n. 19. The proposed Settlement Class should be conditionally certified as
21 requested.

23 **1. Numerosity and Ascertainability.**

24 Numerosity is met if a proposed class is so large that joinder of all members would be
25 impracticable. *See* Code Civ. Proc. § 382. No set number of class members is required to maintain a
26 class action. *Hebbard v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030. The California Supreme Court
27 has upheld a class of as few as ten members. *Bowles v. Super. Ct. (Nickel, Jr.)* (1955) 44 Cal.2d 574,
28 577-81. A proposed settlement class is ascertainable if the class members can be objectively
identified and given notice of the litigation without unreasonable time or expense. *Medraza v.*

1 *Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). Here, the settlement class consists of
2 76 current and former employees of Defendant in California from August 21, 2020 through
3 December 31, 2025, who have already been identified. Lipeles Decl., ¶7.

4 **2. Well-Defined Community of Interest.**

5 **a. Commonality.**

6 To justify certification, the class proponent must show that questions of law or fact common
7 to the class predominate over the questions affecting the individual members. *See Arenas v.*
8 *El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010). While the Parties dispute whether a class
9 would be appropriate if the litigation were to continue, they agree, for the purposes of this
10 settlement only, that the Class is subject to common compensation policies and challenges to those
11 policies that are certifiable for settlement purposes. *See e.g., Bluford*, 216 Cal. App. 4th at 872-73
12 (certifiable issues were raised by claim that the employer's per mile piece-rate system did not
13 compensate drivers for their statutory rest break time).
14

15 **b. Typicality.**

16 Typicality means merely that the class representative is similarly situated to the members of
17 the class, not that his claims are identical. *Classen v. Weller* 145 Cal. App. 3d 27, 45-46 (1983). It
18 suffices if the class representative's claims arise from the same event or course of conduct that
19 gives rise to the class claims, and are premised upon the same legal theories. *Id.* Here, for purposes
20 of settlement, the Parties agree that Plaintiff asserts claims regarding Defendant's wage and hour
21 compensation practices that are at the core of the action. Lipeles Decl., ¶5.
22

23 **c. Adequacy of representation.**

24 The proposed class representative must establish that he or she will adequately represent the
25 proposed class. *See Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009).
26 Adequacy may be established by the fact that counsel are experienced. *See Local Joint Exec. Bd.*
27 *of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001).
28 Here, Plaintiff alleges, and Defendant does not dispute for purposes of settlement, that Plaintiff and
the Class are represented by counsel with extensive experience in wage-and-hour litigation and that
Plaintiff is an adequate class representatives. Lipeles Decl., ¶¶32, 37-38.

1 **D. An Award of Class Counsel’s Attorneys’ Fees, Expenses and Costs, and**
2 **Payments for the Class Representative’s Participation, Service and Risk**
3 **from the Settlement Fund Are Justified in this Case.**

4 The proposed Settlement provides that Plaintiff will request, and Defendant will not oppose,
5 an award of attorneys’ fees to Class Counsel in an amount not to exceed \$57,050 (35% of the
6 \$163,000 Gross Settlement Amount), and reimbursement of actual litigation costs not to exceed
7 \$12,000. The Settlement further provides for a Class Representative Service Award of \$10,000 to
8 the Named Plaintiff in recognition of his time, effort, and risk undertaken in prosecuting this action.
9 In addition, the Settlement provides for administration costs not to exceed \$5,750 to cover notice,
10 processing, and distribution expenses, and a \$10,000 allocation for civil penalties under the Private
11 Attorneys General Act (“PAGA”), of which 65% (\$6,500) will be paid to the Labor and Workforce
12 Development Agency and 35% (\$3,500) will be distributed to aggrieved employees pursuant to
13 Labor Code section 2699(i). Thus, the total maximum deductions from the \$163,000 Gross
14 Settlement Amount equal \$91,300. Plaintiff submits that the requested attorneys’ fees and litigation
15 costs are within the range commonly approved in comparable wage-and-hour class actions, and that
16 the service award, administration costs, and PAGA allocation are reasonable and appropriate under
17 the circumstances. The proposed Settlement provides that Plaintiff will request, and Defendant will
18 not oppose, an award to Class Counsel in an amount not to exceed \$57,050.00 in attorneys’ fees
19 (35% of the Gross Settlement Amount), actual costs up to \$12,000, a Class Representative Service
20 Payment of \$10,000 to the Named Plaintiff in recognition of his time, effort, and risk as a Class
21 Representative, PAGA penalty payment to the LWDA in the amount of \$6,500 and up to \$5,750
22 for the Administration Expenses Payment. The foregoing awards amount to \$91,300 and Plaintiff
23 therefore requests that the Court approve a total deduction of \$91,300.00 from the \$163,000.00
24 Gross Settlement Amount. Viewing the participation, service and risk payment as an additional
25 cost of litigation, in combination with the allocation for attorneys’ fees, expenses and costs, this
26 total deduction of \$91,300.00 is within the range of attorneys’ fees, expenses and costs awarded in
27 similar cases. *See* Lipeles Decl., at ¶28. The participation payment to Plaintiff is also justified as a
28 Class Representative Service Payment, which courts regularly award in class action litigation.

1 **1. The Proposed Attorneys’ Fees and Cost Reimbursement Requested Are**
2 **Reasonable, Fair and Appropriate Under the Common Fund Doctrine and Should**
3 **be Preliminarily Approved.**

4 Plaintiff seeks preliminary approval of his request for reasonable attorneys’ fees in an
5 amount up to \$57,050 and actual expenses and costs up to \$12,000.00.³⁰ As discussed in more
6 detail below, this fee award is reasonable under the common fund approach in determining
7 reasonable attorneys’ fees.

8 An attorneys’ fees award is justified where the legal action has produced its benefits by way
9 of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987). California
10 law provides that when a party is entitled to statutory fees, he must be compensated for all time
11 reasonably spent seeking to accomplish the desired litigation result. *See Serrano v. Unruh*, 32
12 Cal.3d 621, 624 (1982). Courts in and out of California have long recognized the equitable
13 “common fund” doctrine under which attorneys that create a common fund or benefit for a group of
14 persons may be awarded their fees and costs out of the fund. “[W]hen a number of persons are
15 entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the
16 benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be
17 awarded attorneys’ fees out of the fund.” *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977), *see also*
18 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] lawyer who recovers a common fund...
19 is entitled to reasonable attorneys’ fees from the fund as a whole”).

20 In addition to spreading the litigation costs among all beneficiaries, awards of common fund
21 fees are essential to furthering the important societal goal of attracting competent counsel to handle
22 these often complex contingency cases, “who will be more willing to undertake and diligently
23 prosecute proper litigation for the protection or recovery of the fund if assured that [they] will be
24 promptly and directly compensated should [their] efforts be successful.” *Melendres v. City of Los*
25 *Angeles*, 45 Cal. App. 3d 267, 273 (1975) (quoting *Estate of Stauffer*, 53 Cal.2d 124, 132 (1959).
26 In California, trial courts have inherent equitable power to award attorneys’ fees on a common fund
27

28 ³⁰ Prior to the expiration of the period of time allotted for class members to make objections to the settlement, Plaintiff
will file a motion and brief for fees and costs (to be heard at the same time as the Final Fairness Hearing) so that class
members will be able, if they elect to do so, to review the fees motion prior to making objections or filing a claim. The
motion and brief for fees and costs will include, *inter alia*, an itemized listing of all costs incurred in litigating this case.
See Lipeles Decl., ¶40.

1 basis when counsel's efforts "have resulted in the preservation or recovery of a certain or easily
2 calculable sum of money." *Serrano*, 20 Cal.3d 25 at 35; *see also Bank of America Nat'l Trust &*
3 *Sav. Ass'n v. Cory*, 164 Cal. App. 3d 66, 89 (1985); *Melendres*, 45 Cal. App. 3d 267, 277 (trial
4 courts' "broad discretion" in awarding common fund fees is well-established).

5 The traditional method for calculating a common fund fee is to award a percentage of the
6 total fund. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 900 and 916 (1984); *Six (6) Mexican Workers*
7 *v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Lealao v. Beneficial California,*
8 *Inc.*, 82 Cal. App. 4th 19, 26 (2000); *Melendres*, 45 Cal. App. 3d at 278. Indeed, California courts
9 have regularly approved payments of attorneys' fees amounting to 35% or more of the common
10 fund in similar class actions.

11 California state and federal courts have regularly approved payments of attorneys' fees
12 amounting to as much as 35% or more of the common fund in similar wage and hour class actions
13 alleging missed meal and/or rest periods. *See, e.g., Morales v. Southland Sod Farms Operations, Inc.*,
14 No. 56-2017-00496912, 2018 WL 6928228, *2 (Cal. Super. Oct. 10, 2018) (granting final approval in a
15 wage and hour action and awarding 35% in attorneys' fees); *Erickson v. Q.S.P., Inc.*, No. BC469830,
16 2013 WL 4369736, *5, (Cal. Super. July 9, 2013) (granting final approval in a wage and hour action
17 and finding that 35% in attorneys' fees was reasonable); *Cabrera v. Advantage Sale & Marketing, LLC*,
18 No. BC485259, 2013 WL 1182822, (Cal. Sup. Mar. 12, 2013) (granting final approval for failure to
19 afford meal/rest breaks and awarding 35% in attorneys' fees). Where, as here, the common fund is
20 relatively small, class action commentators have noted that courts typically award 30-50% of the
21 common fund as attorneys' fees. *See Newberg* at §14.6.

22 Finally, several other factors support the requested attorneys' fees. Plaintiff initiated this
23 action to pursue the claims alleged in the FAC on behalf of the proposed class. Although Plaintiff
24 believes the claims alleged in the FAC have merit, Defendant denies all allegations of wrongdoing
25 and liability. Plaintiff's Counsel handled this case on a contingency basis and the case involved
26 significant risks of non-payment of attorneys' fees and non-recovery of litigation expenses if class
27 certification was not granted and/or if Plaintiff's Counsel did not settle or prevail. For these
28 reasons, a costs award and common fund fee of 35% of the settlement fund (*i.e.*, a total of up to
\$69,050.00) is fair, reasonable and appropriate. Furthermore, because Plaintiff's requested

attorneys' fees of 35% of the common fund is reasonable and falls within the range of approved percentages in similar common fund class action cases, Plaintiff's request for fees of 35% of the common fund should be granted.

2. The Proposed Payment to the Class Representative for His Service to the Class Is Reasonable, Routinely Awarded, and Should be Preliminarily Approved.

The proposed payment of \$10,000 to the Named Plaintiff³¹ is intended to recognize the critical role he played in this case and the time, effort and risk undertaken in helping secure the result obtained on behalf of the Class. *See Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing class case); Manual §21.62 n. 973 (noting service awards are warranted).

"Courts routinely approve incentive payments to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (quoting *In re S. Ohio Correctional Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997) (approving \$303,000 payment to each class representative plaintiff in employment case settling before class certification); *Martens v. Smith Barney*, No. 96 Civ. 3779, 1998 W.L. 1661385, *4 (S.D.N.Y. 1998) and 181 F.R.D. 243, 262 (S.D.N.Y. 1998) (approving payments of up to \$163,000 for named plaintiffs, for a total of \$1.9 million in incentive payments for employment cases settling prior to class certification); *Roberts v. Texaco*, 979 F. Supp. 185 (S.D.N.Y. 1997) (approving incentive payments up to \$85,000 for named plaintiffs in employment case settling prior to class certification).

The factors courts use in determining the amount of incentive payments include (1) a comparison between the incentive payments and the range of monetary recovery available to the class; *see, e.g., Ingram*, 200 F.R.D. at 694; *Roberts v. Texaco, Inc.* 979 F. Supp. 185, 204 (S.D.N.Y. 1997); (2) time and effort put into the litigation; *see, e.g., Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (1995); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998); (3) whether the litigation will further the public policy underlying the statutory scheme; *see, e.g., Roberts*, 979 F. Supp. at 201; (4) risks of retaliation; *see Roberts*, 979 F. Supp. at 202; *Cook*, 142 F.3d 1004, at 1016; (5) compromise of unique individual claims; *see, e.g. Women's Comm. For*

³¹ Any portion of the Class Representative Class Representative Service Payment not awarded to Plaintiff will be made available for distribution to Settlement Class Members as part of the NSA. Settlement Agreement, ¶3.2.1.

1 *Equal Employment Opportunity v. Nat'l Broad. Co.*, 76 F.R.D. 173, 180 (S.D.N.Y. 1977); and (6)
2 risks of an adverse attorneys' fees award; *see, e.g., Rodriguez v. West Publishing*, 563 F.3d 948,
3 958 (9th Cir. 2009) ("Incentive payments are intended to compensate class representatives for work
4 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the
5 action, and, sometimes, to recognize their willingness to act as a private attorney general.").

6 These factors support the approval of the incentive payments requested here for the Class
7 Representatives. First, the Named Plaintiff spent time providing invaluable assistance to Class
8 Counsel and the Class in this case, including providing factual background for the Class
9 Complaint; providing and explaining documents corroborating his allegations to Class Counsel;
10 reviewing the complaints and other pleadings filed with the Court by Plaintiff and Defendant;
11 participating in multiple conference calls and phone calls to discuss litigation and settlement
12 strategy, and remotely attending the all-day mediation. *See Declaration of John Clarke* ("Clarke
13 Decl."), ¶6. The Named Plaintiff has been actively involved in this case, and has proven himself to
14 be invaluable resources of information throughout the settlement discussions. *Lipeles Decl.*, ¶32;
15 *Clarke Decl.* ¶6. Second, by bringing this action, the Named Plaintiff furthered the public policy
16 goal of encouraging compliance with the wage and hour provisions of the Labor Code. Finally, the
17 requested Class Representative Service Payment of \$10,000 to the Plaintiff falls well within the
18 range of incentive payments typically awarded to Class Representatives in such class actions.
19 *Lipeles Decl.*, ¶32; *see e.g., Ross v. US Bank Nat'l Ass'n*, No. C 07-02951 SI, 2010 WL 3833922,
20 at *2 (N.D. Cal. Sept. 29, 2010) (approving \$20,000 enhancement awards to each of four class
21 representatives in the wage and hour class action); *Garner v. State Farm Mut. Auto. Ins. Co.*, No.
22 CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) ("Numerous
23 courts in the Ninth Circuit and elsewhere have approved incentive payments of \$20,000 or more
24 where, as here, the class representative has demonstrated a strong commitment to the class").

25 Accordingly, the requested Class Representative Service Payment of \$10,000 to the Named
26 Plaintiff is fully deserved and justified and thus should be preliminarily approved.

27 **V. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

28 **A. The Proposed Notice of Class Action Settlement Satisfies Due Process.**

California statutory and case law vests the Court with broad discretion in fashioning an

appropriate notice program. *See Cal. Rules of Court* 1859(f); *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). The notice plan here entails mailing, and if necessary, re-mailing, the notice to all identified participating Settlement Class Members based on Defendant's employment records. Defendant will provide the last known addresses for all identified Class Members. Plaintiff has proposed the services of an experienced class action settlement administration firm, Phoenix, to implement the proposed Class Notice procedures. The Class Notice is consistent with class certification notices approved by numerous state and federal courts, and is, under the circumstances of this case, the best notice practicable. Such notice satisfies all due process requirements. *See Cartt*, 50 Cal. App. 3d at 966-975.

B. The Proposed Notice of Class Action Settlement is Accurate and Informative

The proposed Class Notice, attached as Exhibit A to the proposed Settlement Agreement, provides among other things: (1) information regarding the nature of the Action; (2) a summary of the substance of the settlement; (3) the Class definition; (4) the formulae for calculating Individual Class Payments and Individual PAGA Payments; (5) the dates the Settlement Class Member was employed by Defendant during the Class Period; (6) the number of workweeks/PAGA Pay Periods based on Defendant's business records; (7) instructions on how Settlement Class Members may submit a valid Request for Exclusion; (8) the procedure for objecting to the settlement; (9) the deadline by which Settlement Class Members must postmark an objection to the settlement; (10) notice that the Settlement Class Members will permanently forego their right to pursue any and all of their released claims against Defendant, unless they elect not to participate in the Action; and (11) notice that Settlement Class Members will automatically receive an Individual Class Payment unless they submit a valid request for exclusion.

The best practicable means of providing notice to all Class Members will be used. Notice will be mailed to all known and reasonably ascertainable Class Members, using Defendant's records. The information in those records will be updated prior to mailing, using the National Change of Address Database or its equivalent. If any Class Notices are returned as undeliverable, the Administrator will take appropriate steps, such as skip-tracing, to maximize the probability that the Class Notice will be received by all Class Members. Lipeles Decl., ¶19, Ex. A (Settlement

1 Agreement) ¶1.11.

2 The Class Notice also fulfills the requirement of neutrality in Class Notices. *See Newberg* §
3 8:39 at pp. 284, 285. The Class Notice summarizes the proceedings to date, the significant legal
4 developments since the date of the settlement, and the terms and conditions of the settlement, in a
5 coherent and informative manner. The Class Notice clearly states that the Settlement does not
6 constitute an admission of liability by Defendant and recognizes that the Court has not ruled on the
7 merits of the Action. The Class Notice also states that the final settlement approval decision has
8 yet to be made. Accordingly, the Class Notice complies with the standards of fairness,
9 completeness and neutrality required of a settlement notice disseminated under authority of the
10 Court. *Newberg* §8:21, §8:39; *Manual* § 21.312.

11 **VI. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED**

12 The last step in the settlement approval process is the formal final approval hearing, at
13 which the Court may hear all evidence and argument necessary to evaluate the proposed
14 Settlement. *See Cal. Rules of Court* 1859(b). At that hearing, proponents of the Settlement may
15 explain and describe its terms and conditions and offer argument in support of the Settlement
16 approval. Furthermore, members of the Settlement Class, or their counsel, may be heard in support
17 of or in opposition to the proposed Settlement. Class Counsel requests that the hearing be held as
18 soon as the Court's calendar may accommodate.

19 **VII. CONCLUSION**

20 For the reasons discussed above, Plaintiff requests that the Court enter an order of
21 preliminary approval of the class action settlement, approve the form of the proposed notice, and
22 approve the proposed schedule, including setting a date for a final approval hearing.

23
24 Dated: March 9, 2026

Respectfully submitted,

25
26 LIPELES LAW GROUP, APC

27 By: _____

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