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

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

Plaintiff,

v.

NUVISION FEDERAL CREDIT UNION, a Business of Unknown Formation; and DOES 1 TO 50,

Defendants.

Case Number: 30-2024-01419434-CU-OE-CXC

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

Complaint Filed: August 19, 2024
FAC Filed: October 25, 2024
Trial Date: None Set

Hearing Date: July 27, 2026
Hearing Time: 1:30 p.m.
Dept.: CX103
Judge: Hon. David A. Hoffer

Reservation ID: 74888800

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 27, 2026, at 1:30 p.m., or as soon thereafter as the matter may be heard, in Department CX103 of the Orange County Superior Court for the State of California, located at the Civil Complex Center, 751 West Santa Ana Boulevard, Santa Ana, California 92701, before the Honorable David A. Hoffer, Plaintiff Eduardo Lozano ("Plaintiff"), on behalf of himself, the State of California, as a private attorney general, and on behalf of all others similarly situated, will and hereby does move this court for entry of an order:

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

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

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

4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the parties' *Class Action and PAGA Settlement Agreement and Release* (the "Settlement Agreement"), including payment by Defendant Nuvision Federal Credit Union ("Defendant") of the non-reversionary gross settlement amount of $675,000.00 ("Gross Settlement Amount");

5. Preliminarily approving payment of reasonable attorneys' fees from the Gross Settlement Amount in an amount not to exceed 35% of the Gross Settlement Amount (i.e., up to $236,250.00), plus necessary litigation costs not to exceed $25,000.00;

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

7. Preliminarily approving the allocation of $67,500.00 for penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, of which 65% (i.e., $43,875.00) shall be paid to the California Labor and Workforce Development Agency ("LWDA") from the Gross Settlement Amount, with the remaining 35% (i.e., $23,625.00) payable to the aggrieved employees;

8. Appointing Apex Class Action, LLC (the "Settlement Administrator") as the settlement administrator to handle the notice and administration process and preliminarily approving settlement administration costs estimated to be $7,490.02;

9. Approving the proposed class notice and ordering it be disseminated to the class members as provided in the Settlement Agreement;

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

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

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

13. Granting Plaintiff leave to file the overlength brief included with this motion given the complex nature of this action.

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

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

Dated: June 29, 2026

MELMED LAW GROUP P.C.

KYLE D. SMITH
Attorney for Plaintiff, the Putative Class, and the Aggrieved Employees

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I. INTRODUCTION

This motion seeks preliminary approval of a wage-and-hour class action settlement between Plaintiff Eduardo Lozano ("Plaintiff") and Defendant Nuvision Federal Credit Union ("Defendant") (collectively, the "Parties") for the Gross Settlement Amount of $675,000.00. A true and correct copy of the *Class Action and PAGA Settlement Agreement and Release* (the "Settlement Agreement") is attached as **Exhibit 1** to the concurrently filed *Declaration of Kyle D. Smith in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement* ("Declaration of Kyle D. Smith" or "Smith Decl."). The Settlement Agreement, in its entirety, is incorporated herein by reference.

Under the Settlement Agreement, the Gross Settlement Amount is to be distributed to approximately 238 individuals defined as: *all of Defendant's current and former non-exempt employees who have worked in California during the Class Period and who did not sign an arbitration agreement with Defendant.* The "Class Period" for these purposes is defined as the period from August 19, 2020, through October 20, 2025. These employees are referred to herein individually as the "Class Members" and collectively as the "Class." (Settlement Agreement, at pp. 2, 3.)

Plaintiff also represents a group of aggrieved employees on behalf of the State of California as a private attorney general pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698 through 2699.6 ("PAGA"). As of July 2, 2025, this group consisted of approximately 336 individuals. The "PAGA Employees" for these purposes, are defined as: *all of Defendant's current and former non-exempt employees who have worked in California during the PAGA Period. PAGA Employees shall include individuals who signed an arbitration agreement with Defendant.* The "PAGA Period" for these purposes is defined as the period from August 19, 2023, through October 20, 2025. (Settlement Agreement, at p. 5.)

The Settlement Agreement is a non-reversionary settlement, meaning that none of the Gross Settlement Amount will revert to Defendant. (Settlement Agreement, at p. 7.) Class Members are not required to submit a claim form to receive their settlement share. (Settlement Agreement, at p. 7.) Subject to court approval, the "Net Settlement Amount" of at least **$352,384.98**, will be distributed to

Class Members who do not request exclusion from the settlement and the PAGA Employees, less applicable taxes.

Gross Settlement Amount	**$675,000.00**
Attorneys' Fees	(up to $236,250.00)
Litigation Costs	(up to $25,000.00)
Settlement Administration Costs	(up to $7,490.02)
Service Award to Plaintiff	(up to $10,000.00)
PAGA Payment to LWDA	($43,875.00)
Net Settlement Amount	**$352,384.98**

Because the settlement is fair and reasonable, was negotiated at arm's length between counsel following extensive investigation and discovery, was reached after further conversations following participation in a full-day mediation, it should be preliminarily approved. (Smith Decl., ¶ 6.)

This settlement is an excellent result considering the number of Class Members affected. Because the Settlement is well within the zone of reasonableness, Plaintiff requests entry of an order: **(1)** preliminarily certifying the Settlement Class under California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769(c), for settlement purposes and preliminarily approving the settlement; **(2)** preliminarily appointing Plaintiff as class representative for purposes of settlement; **(3)** preliminarily appointing Plaintiff's counsel as class counsel for the purposes of settlement; **(4)** preliminarily approving the settlement as fair, adequate, and reasonable; **(5)** preliminarily approving the proposed deductions from the Gross Settlement Amount, including the proposed allocation of PAGA penalties, the attorneys' fees, litigation costs, service award to the named Plaintiff, and administration costs; **(6)** approving the proposed class notice attached as **Exhibit 2** to the concurrently-filed Declaration of Kyle D. Smith ("Class Notice"), to be distributed to Class Members pursuant to the Settlement Agreement; **(7)** appointing Apex Class Action, LLC to administer the settlement ("Settlement Administrator") and directing the Settlement Administrator to distribute the

Class Notice; and **(8)** scheduling a hearing for final approval after the completion of the settlement notice process.

II. BACKGROUND

A. THE PARTIES

Defendant Nuvision Federal Credit Union is a credit union that provides banking services such as offering checking and savings accounts, loans, mortgages, and credit cards. Defendant maintains several locations in California, including locations in Los Angeles County, Orange County, San Diego Area, and the Bay Area, each of which employed non-exempt workers during the Class Period and PAGA Period. (Smith Decl., ¶ 18.)

Plaintiff Eduardo Lozano worked for Defendant in California as a non-exempt live teller connect representative from approximately April 2023 to July 2024. Plaintiff alleges that Defendant's employees—including Plaintiff, the Class Members, and the PAGA Employees (collectively, the "Employees")—experienced various violations of California's wage-and-hour laws. (Smith Decl., ¶ 19.)

B. PROCEDURAL SUMMARY

On August 19, 2024, Plaintiff submitted a letter to the California Labor and Workforce Development Agency ("LWDA") to notify the LWDA, pursuant to PAGA, of Plaintiff's intent to seek civil penalties against Defendant for violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; and California Industrial Welfare Commission ("IWC") Wage Order 4-2001 (the "Applicable Wage Order"). (Cal. Code of Regs., tit. 8, § 11040; Smith Decl., ¶ 20.) The letter attached Plaintiff's original complaint, and incorporated the original complaint by reference, and thus sought penalties for claims identical to those alleged in the case. For the Court's reference, a copy of Plaintiff's letter to the LWDA is attached as **Exhibit 3** to the concurrently filed Declaration of Kyle D. Smith.

On August 19, 2024, Plaintiff commenced this action by filing a class action complaint alleging causes of action against Defendant for **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order; **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Order; **(4)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order; **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; and **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210) (Smith Decl., ¶ 21.)

On October 25, 2024, Plaintiff filed a first amended complaint alleging causes of action against Defendant for those described in the original Complaint and adding one cause of action for penalties based on the foregoing pursuant to PAGA. (Lab. Code, §§ 2698–2699.6.) The first amended complaint is the operative complaint in the action (the "Operative Complaint"). (Smith Decl., ¶ 22.)

Thereafter, the Parties agreed to attend a private mediation with Steven Mehta. (Smith Decl., ¶ 23.) Prior to the mediation, Plaintiff's counsel conducted significant informal discovery. (Smith Decl., ¶ 23.) Discovery, investigation, and prosecution has included, among other things, numerous telephonic conferences with Plaintiff; inspection and analysis of hundreds of pages of documents, including Defendant's relevant policies and employee handbook, and other information produced by Plaintiff and Defendant; analysis of work-related data from a sample of Class Members and PAGA Employees; an analysis of the legal positions taken by Defendant; investigation into the viability of class treatment of the claims asserted in the action; analysis of potential class-wide damages, including information sufficient to understand Defendant's potential defenses to Plaintiff's claims; research of the applicable law with respect to the claims asserted in the Operative Complaint and the potential defenses thereto; and assembling and analyzing of data for calculating damages. (Smith Decl., ¶ 23.)

Among other key pieces of information, Plaintiff's counsel requested in its informal discovery letter the wage statements and time records for a statistically significant sample size of Class Members during the Class Period. (Smith Decl., ¶ 24.) The Parties agreed on, and Defendant produced, a large volume of data which Plaintiff's counsel determined would provide a statistically significant sample size with a high-degree of confidence for Plaintiff's expert's statistical analysis. (Smith Decl., ¶ 24.) This sampling included payroll records and timesheets for the Class Members' shifts during the Class Period. (Smith Decl., ¶ 24.) From these records, Plaintiff's expert was able to carefully craft a damages model for each of the categories of alleged claims for which the data would reflect violations. (Smith Decl., ¶ 24.)

On July 1, 2025, the Parties participated in a full-day mediation with Steven Mehta who is a full-time mediator with extensive experience in California wage and hour class action lawsuits. (Smith Decl., ¶ 25.) The mediation negotiations were contentious and unsuccessful at first, however, the Parties continued settlement discussions and reached a settlement in principle. After further negotiation, the Parties executed the longform Settlement Agreement now before the Court for approval. (Smith Decl., ¶¶ 25-26.)

Plaintiff now seeks the Court's preliminary approval of the Settlement Agreement.

III. <u>SUMMARY OF THE CLAIMS, DEFENSES, AND EXPOSURE</u>

Plaintiff alleges several categories of wage and hour violations on behalf of the Employees. Most importantly, Plaintiff has alleged that Defendant required him to perform significant off-the-clock work resulting in underpayments of minimum and overtime wages and engaged in widespread meal and rest period violations, and failed to reimburse him for personal expenses that were necessary to perform his work duties. Defendant has persistently denied all liability of any kind associated with the claims and allegations, and further denied that the Employees are entitled to any relief. Defendant also denies that these allegations are appropriate for class or representative treatment for any purpose other than the settlement. Defendant maintains, among other things, that it has complied with California laws in all respects. (Smith Decl., ¶¶ 27-29.) These claims, defenses, and the potential damages are summarized in more detail below.

A. MINIMUM WAGE ALLEGATIONS

Employees are entitled to be paid at least the minimum wage for all hours worked. (Cal. Code Regs., tit. 8, § 11040, subd. 4(B); Lab. Code, § 1198.) An employer's failure to pay for any particular time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.) Labor Code sections 1194 and 1194.2 provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due, plus interest, attorneys' fees, and costs.

Here, Plaintiff reported that, on average, he worked about fifteen minutes per week off the clock because of Defendant's computer clock-in process. Specifically, at the start of their shift, Class Members had to start up Defendant's computers which would take at least 3–5 minutes. Thereafter, Defendant's software would send a verification code to the Class Members' personal phones to allow them to complete the log-in. Class Members were required to perform work while waiting for this process to be complete and only then were Class Members permitted to clock in. (Smith Decl., ¶ 30.)

Defendant argued that in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, the California Supreme Court made clear that the employer's knowledge of the work—not the mere allegation that unpaid work occurs—is determinative. Defendant alleged that it instructed employees to report all hours worked and to seek approval for overtime, placing responsibility on the employee to document time so that management may be alerted when additional work occurs. (Smith Decl., ¶ 31.) Notably, Defendant also informed Plaintiff that Defendant was involved in a recent settlement, *Fernandez v. Nuvision Federal Credit Union* (Orange Cnty. Sup. Ct., No. 30-2020-01161691-CU-OE-CXC), releasing Plaintiff's class action claims through October 31, 2021. (Smith Decl., ¶ 31.)

Based on the informal discovery produced and the allegations in the case and using an assumed 15 minutes of off-the-clock work per workweek, Defendant's potential exposure for unpaid minimum wages was approximately $143,402.44 (21,662 weeks × 0.25 hours at $26.48/hour). In light of the *Fernandez* settlement and the very real risk that the Court could agree with Defendant's good faith defenses, Plaintiff ascribed a 50% discount. Accordingly, Plaintiff estimated Defendant's realistic exposure for this claim to be approximately **$71,701.22**. (Smith Decl., ¶ 32.)

B. OVERTIME AND REGULAR RATE VIOLATIONS

Labor Code section 510 requires employers to pay overtime to employees at either one and one-half times their regular rate of pay or twice their regular rate of pay, depending on the number of hours worked (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.)

Here, Plaintiff further alleged that Defendant paid out additional nondiscretionary compensation without making adjustments to the Class Members' regular rate of pay. (Smith Decl., ¶ 33.) Therefore, Class Members only received overtime compensation based on their base hourly wage rather than their regular rate of pay. Defendant could have argued, however, that the additional payments at issue were discretionary in nature and therefore properly excluded from the regular rate, and that to the extent any payments were nondiscretionary, Defendant's existing overtime methodology already captured them. Plaintiff's expert estimated that Defendant's regular rate violations resulted in approximately **$13,135.00** in underpayment to the Class Members. (Smith Decl., ¶ 34.)

C. MEAL AND REST PERIOD ALLEGATIONS

Employers are required to provide their nonexempt employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of work. (Lab. Code, § 512, subd. (a).) Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a).)

Further, under Labor Code section 226.7 and the Applicable Wage Order, employers are required to provide their non-exempt employees with compensated, duty-free rest periods of not less than ten minutes for every major fraction of four hours worked. The California Supreme Court has held that, during required rest periods, "employers must relieve their employees of all duties and relinquish any control over how employees spend their break time." (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Labor Code section 226.7 provides that employers must pay their employees one additional hour of pay at the employee's regular rate for each workday that a "meal or rest or recovery period is not provided." (Lab. Code, § 226.7, subd. (c).)

Plaintiff alleged that Defendant failed to authorize or permit Plaintiff and the Class Members to take duty-free meal periods. Plaintiff further alleged that there were times when Class Members were extremely busy and would have to take a meal break late or would not be given a meal break at all. Specifically, Plaintiff's expert estimated that 27% of shifts between five and six hours were recorded without a first meal period. Additionally, Plaintiff's expert estimated that 89.6% of shifts between ten and twelve hours in length did not have a recorded second meal period. (Smith Decl., ¶ 35.)

Plaintiff further alleged that Defendant failed to authorize or permit Plaintiff and the Class Members to take duty-free rest periods of not less than ten minutes for every major fraction of four hours worked. Plaintiff alleged that he and the other Class Members routinely worked through their rest periods due, in part, to Defendant interrupting or shortening breaks. Plaintiff claimed there were times when Class Members were extremely busy and either would take a rest break late or would not be given a rest break at all. Additionally, the Class Members were not provided with meal or rest period premiums at their regular rate of pay. (Smith Decl., ¶ 36.)

Defendant argued that it promulgated a code-compliant meal and rest period policy that the Class Members were obligated to comply with. In *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, the California Supreme Court held an employer is required only to "provide" breaks, but is not required (and, in this context, simply cannot as a practical matter) to ensure that they are taken. Defendant encouraged employees to report missed breaks and pays meal or rest period premiums when circumstances required. Defendant contended that the individualized nature of why certain Class Members did not properly take their breaks undermine any showing of class-wide liability. (Smith Decl., ¶ 37.)

Based on the informal discovery produced and the allegations in the case, and assuming one violation per week, Plaintiff estimates that Defendant's alleged exposure for these *meal period* claims to be approximately $611,734.88 (21,662 weeks × 1 violation × $28.24/hour). Plaintiff then discounted this amount by 80% in consideration of the *Fernandez* settlement and the very real risks that this Court would agree with Defendant's good faith defenses. Plaintiff estimated Defendant's realistic exposure for this claim to be approximately **$122,346.98**. (Smith Decl., ¶ 38.)

Based on the informal discovery produced and the allegations in the case, and assuming one violation per week, Defendant's potential exposure for *rest period* claims was approximately $611,734.88 (21,662 weeks × 1 violation × $28.24/hour). (Smith Decl., ¶ 39.) However, Plaintiff ascribed an 80% discount due to the *Fernandez* settlement and the risks that this Court or a factfinder would agree with Defendant's strong defenses on this claim, as well as the difficulties of proof associated with the lack of documentary evidence supporting this claim (i.e., the violation rate is based on Plaintiff's testimony, making this claim difficult to prove), Plaintiff estimated Defendant's realistic exposure for this claim to be approximately **$122,346.98**. (Smith Decl., ¶ 39.)

D. DERIVATIVE WAGE STATEMENT ALLEGATIONS

Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement. Employers that knowingly and intentionally fail to provide their employees with accurate, itemized wage statements may be subject to penalties under Labor Code section 226, subdivision (e). Plaintiff alleged that, by virtue of the allegations that Defendant failed to properly pay the Class Members their wages as described above, Defendant had likewise failed to provide them with compliant wage statements reflecting their gross wages earned and their net wages earned. (Smith Decl., ¶ 40.)

Plaintiff alleged that, by virtue of the allegations that Defendant failed to properly pay the Employees their wages as described above, Defendant had likewise failed to provide the Employees with compliant wage statements reflecting their gross wages earned and their net wages earned. (Smith Decl., ¶ 40.) Specifically, Plaintiff alleged that Defendant's wage statements issued failed to indicate the correct amount of gross wages earned, total hours worked, or the applicable hourly rates (including overtime) in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code section 226, subdivision (a). (Smith Decl., ¶ 40.)

As with Plaintiff's other claims, Defendant argued that the Employees were fully compensated and that such violations were rare and nominal in value, if they occurred at all. Defendant thus concluded that Plaintiff could not claim wage statement penalties because there were no wage statement violations. (Smith Decl., ¶ 41.) Moreover, even if inaccuracies existed, Defendant asserted that Plaintiff cannot show any "knowing and intentional" violation, as required by Labor Code section 226, subdivision (e)(1), because Defendant was unaware of any issues and believed it was in compliance. (Smith Decl., ¶ 41.)

In terms of Defendant's exposure for this claim, Plaintiff calculated that approximately 238 Class Members worked a total of approximately 12,298 pay periods during the applicable statutory period for this claim. Thus, Plaintiff determined that Defendant's maximum exposure for this claim was $952,000. Plaintiff then ascribed a 90% discount based on *Fernandez* settlement and the very real risks that: **(1)** this Court might find that Defendant's alleged wage statement errors were not made knowingly and intentionally such that penalties would not be triggered, **(2)** this Court might find that Defendant's alleged wage statement errors caused little to no injury to the Class Members, and **(3)** this Court might find that there were no errors made on the wage statements. Plaintiff estimated Defendant's realistic exposure for this claim to be approximately **$95,200**. (Smith Decl., ¶ 42.)

E. DERIVATIVE UNTIMELY WAGES ALLEGATIONS

Labor Code section 204 expressly requires employers who pay employees on a weekly, biweekly, or semimonthly basis to pay all wages "not more than seven calendar days following the close of the payroll period." Labor Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a penalty of $100 for each initial violation, and $200 for each subsequent violation, plus 25% of the amount unlawfully withheld. (Lab. Code, § 210, subd. (a).) The penalty provided by Labor Code section 210 is "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article . . . ." (Lab. Code, § 210, subd. (a).)

Plaintiff alleged that, by virtue of the allegations that Defendant failed to properly pay the Employees their wages as described above, Defendant had likewise failed to regularly and consistently provide the Employees with wages earned within seven calendar days following the close of payroll in accordance with Labor Code section 204. As with Plaintiff's other claims, Defendant argued that the employees were fully compensated and that such violations were rare and nominal in value, if they occurred at all. (Smith Decl., ¶ 43.)

Based on the informal discovery produced and the allegations in the case, Plaintiff estimates that Defendant's alleged exposure for these claims to be approximately $2,435,800. Plaintiff then ascribed a 90% discount based on the *Fernandez* settlement and the very real risk that this Court might find that Defendant's alleged errors caused little to no injury to the Class Members. Plaintiff estimated Defendant's realistic exposure for this claim to be approximately **$243,580**. (Smith Decl., ¶ 44.)

F. WAITING TIME PENALTY ALLEGATIONS

Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty workdays. (See *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

Plaintiff alleged that Defendant paid Class Members their final wages an average of twelve days after their termination date. Additionally, Plaintiff argued that Defendant's alleged failure to pay full wages, such as for off-the-clock work, overtime, and applicable meal and rest period premiums, as described above, resulted in a portion of the wages earned by the Employees not being paid at the time of termination or within 72 hours of their resignation. Defendant further failed to pay those sums for 30 days thereafter as required by the Labor Code. (Smith Decl., ¶ 46.) Defendant countered that, because the underlying wage claims lack merit, no waiting time penalties can attach as a derivative claim, and further argued that any failure to pay was not willful (Smith Decl., ¶ 46.)

Plaintiff estimated 163 Employees terminated their employment during the waiting time date range. Thus, the maximum value of the waiting time penalty claim was therefore derived from the following formula: 163 employees × 30 days × 7.8 hours × average rate of pay of $26.48 per hour (or $1,010,000.16). However, after ascribing a 90% discount due to the very real risks that this Court would agree with Defendant's good faith defense and because the claim is derivative of the underlying claims which may also fail to be certified or win on the merits, Plaintiff estimated Defendant's realistic exposure for this claim to be approximately **$101,000.02**. (Smith Decl., ¶ 47.)

G. REIMBURSEMENT ALLEGATIONS

Labor Code section 2802 provides that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." The purpose of this section is to "prevent employers from passing along their operating expenses onto their employees." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.) The duty to reimburse extends to the use of equipment the employee may already own and would be required to pay for anyway. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144 [employer must reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone].)

Plaintiff alleged that he and other Class Members were required to communicate with Defendant via their cell phones and/or personal devices without reimbursement. (Smith Decl., ¶ 48.) Plaintiff also alleged that he and Class Members were required to use their personal cell phones to receive multi-factor authentication codes to log into business applications, including Outlook and the timekeeping software, but were never reimbursed for this expense. Defendant argued that this claim depends on individualized determinations regarding whether expenses were necessary, incurred for work purposes, and known to the employer. The absence of a uniform requirement compelling employees to incur particular expenses significantly weakens both liability and class certification. (Smith Decl., ¶ 48.)

Plaintiff estimated that Defendant's exposure for this claim was approximately $5.00 per workweek, totaling $108,310. In consideration of Defendant's good faith defense and the *Fernandez* settlement, Plaintiff ascribed a 60% discount, totaling approximately **$43,324**. (Smith Decl., ¶ 49.)

H. PAGA ALLEGATIONS

PAGA provides that the civil penalty for Defendant is $100 for each aggrieved employee per pay period, except for provisions where a civil penalty is specifically provided. (Lab. Code, § 2699, subd. (f).) "New PAGA" for cases filed on or after June 19, 2024, limits stacking of penalties for derivative claims that are "in addition to the civil penalty collected by that aggrieved employee for the underlying unpaid wage violation" and allows courts to reduce penalties where "the same conduct or omission resulted in multiple violations." (Lab. Code, § 2699, subd. (i).) These penalties must be allocated sixty-five percent (65%) to the LWDA and thirty-five percent (35%) to the affected employees. (Lab. Code, § 2699, subd. (m).)

Plaintiff alleged that, because of the violations described above, Defendant was liable for these penalties for each applicable pay period during the applicable PAGA Period. In ascertaining Defendant's exposure for this claim, Plaintiff considered that courts have refused to "stack" PAGA penalties, severely limiting the recoverable PAGA penalties. (See *Carrington v. Starbucks Corp.*

(2018) 30 Cal.App.5th 504, 529 [approving PAGA penalty reduction to $5 per pay period]; accord *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809.) Plaintiff also considered that, given the nature of the allegations and Defendant's efforts at good faith compliance with the Labor Code, there is a likelihood that a further reduction of the penalty to $5 per pay period as approved in *Carrington* would apply. (Smith Decl., ¶ 50; *Carrington v. Starbucks Corp.*, *supra*, 30 Cal.App.5th at p. 529.) Courts frequently use their discretion under Labor Code section 2699, subdivision (e)(2), to significantly reduce PAGA penalties where such penalties would be unjust, arbitrary and oppressive, or confiscatory.

Here, there were approximately 12,298 pay periods within the applicable PAGA Period. Plaintiff assumed arguendo for mediation purposes that all the PAGA pay periods are "initial," leading Defendant's alleged exposure for PAGA penalties to be $100 × 12,298 (or $1,229,800) per Labor Code violation. However, Plaintiff ascribed a 90% discount in consideration of Defendant's defenses and the very real risk of a court reducing the amount of awarded PAGA penalties. Plaintiff calculated that the Defendant's realistic exposure for this claim was **$122,980**. (Smith Decl., ¶ 51.)

IV. SUMMARY OF THE PROPOSED SETTLEMENT

Under the terms of the Settlement Agreement, Defendant will be released of all claims asserted in the Complaint in exchange for Defendant's agreement to pay a non-reversionary settlement Gross Settlement Amount of $675,000.00. (See generally, Settlement Agreement.)

A. REASONABLENESS OF THE GROSS SETTLEMENT AMOUNT

Plaintiff has applied appropriate discounts on the maximum settlement value as calculated above to come to Defendant's realistic exposure of $935,614.20. (Smith Decl., ¶ 52.) As explained above, the issues in this case were hotly contested—both legally and factually. (Smith Decl., ¶ 52.) While Plaintiff continues to believe in the merits of the case, Defendant argued that it fully complied with California's wage and hour laws, and thus faced minimal exposure, if any. (Smith Decl., ¶ 52.) Therefore, the Gross Settlement Amount of $675,000.00 is an excellent result and within the zone of reasonableness for all parties. (Smith Decl., ¶ 52.) If preliminary approval is granted, Plaintiff will have recovered **72.1%** of the estimated settlement value for the Class Members in this case—a fair compromise of the claims, by any measure. (Smith Decl., ¶ 52.)

The Gross Settlement Amount in the Settlement Agreement was reached only after the case was thoroughly investigated by Plaintiff's counsel. (Smith Decl., ¶ 53.) As explained above, Plaintiff reviewed, among other key pieces of information, the records of a statistically significant sample size of the Class Members, which Plaintiff's counsel determined would provide a statistically significant sample size with a high-degree of confidence for Plaintiff's expert's statistical analysis. (Smith Decl., ¶ 53.) This sampling included payroll records and timesheets for the Class Members' shifts during the Class Period. (Smith Decl., ¶ 53.) Plaintiff's counsel also conducted a detailed examination of Defendant's employment handbook and relevant policies to inform Plaintiff's counsel's analysis of Defendant's potential exposure. (Smith Decl., ¶ 54.) From these records, Plaintiff's expert was able to carefully craft a damages model for each of the categories of alleged claims for which the data would reflect violations. (Smith Decl., ¶ 54.) In total, Plaintiff's counsel and Plaintiff's expert reviewed hundreds of pages of documents prior to agreeing to settle the case. (Smith Decl., ¶ 54.)

These documents, along with the other investigation and discovery described above, were sufficient to allow counsel to act intelligently in reaching the Settlement Agreement and determining that the Gross Settlement Amount was adequate. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Indeed, after a thorough review of all available evidence in the case, Plaintiff's counsel have concluded that the Gross Settlement Amount represents an excellent result for the Class. (Smith Decl., ¶ 55.)

B. SETTLEMENT CONSIDERATION AND ALLOCATION

The Gross Settlement Amount includes: **(1)** the fees and expenses of the Settlement Administrator, currently estimated to not exceed $7,490.02; **(2)** Plaintiff's counsel's attorney fees not to exceed 35% of the Gross Settlement Amount, i.e., $236,250.00; **(3)** litigation expenses and costs not to exceed $25,000.00; **(4)** a service award to the named Plaintiff of up to $10,000.00; and **(5)** payment to the LWDA of $43,875.00 for its 65% share of the settlement for civil penalties pursuant to PAGA. (Settlement Agreement, at p. 9.)

After all Court-approved deductions from the Gross Settlement Amount, the Net Settlement Amount, which consists of at least $352,384.98, will be distributed to all Class Members who do not request exclusion from the settlement and the PAGA Employees. (Settlement Agreement, at p. 9.)

Applicable employer-side payroll taxes will be paid by Defendant outside and separate from the Gross Settlement Amount. (Settlement Agreement, at p. 10.)

The Settlement Agreement contains two structural terms that bear on the Gross Settlement Amount. First, the $675,000.00 Gross Settlement Amount is based on Defendant's estimate of approximately 21,662 Workweeks worked during the Class Period; if the actual number of workweeks exceeds that estimate by more than ten percent, Defendant must either increase the Gross Settlement Amount proportionally for the excess workweeks or elect to cut off the Class Period so that the total does not exceed the ten-percent threshold, thereby preserving the per-workweek value of the settlement for the Class. (Settlement Agreement, at p. 20.) Second, if valid requests for exclusion exceed ten percent of the Class—measured by either the number of Class Members or their combined Workweeks—Defendant may, at its option, withdraw from the Settlement, in which event Defendant remains responsible for the settlement administration costs incurred to that point. (Settlement Agreement, at p. 20.) Neither term renders the settlement reversionary; the entire Gross Settlement Amount remains non-reversionary. (Settlement Agreement, at p. 7.)

C. THE RELEASE

Under the Settlement Agreement, the "Released Claims" are divided into two categories: **(1)** the released claims for the purposes of the class action portion of the Settlement Agreement, and **(2)** the released claims for the purposes of the PAGA portion of the Settlement Agreement. (Settlement Agreement, at pp. 13, 14.) The Released Claims for the purposes of the class action portion of the settlement agreement include all claims arising out of or related to the allegations set forth in the operative complaint. (Settlement Agreement, at p. 13.) The Released Claims for the purposes of the PAGA portion of the settlement agreement include all claims for civil penalties pursuant to PAGA that Plaintiff asserted in Plaintiff's PAGA notice to the LWDA and in the operative complaint. (Settlement Agreement, at pp. 13, 14.) A true and correct copy of Plaintiff's PAGA letter to the LWDA in this case is attached as **Exhibit 3** the concurrently filed Declaration of Kyle D. Smith. (Smith Decl., ¶ 20.) These releases will become effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes. (Settlement Agreement, at pp. 11, 12.) Consistent with the limits applicable to class settlements, only the named Plaintiff waives the protections of Civil Code section 1542; the absent Class Members do not. (Settlement Agreement, at p. 12.) The scope of each release is appropriately tethered to the operative complaint: the class release is limited to claims that were or reasonably could have been alleged based on the facts pleaded in the operative Complaint, the PAGA release is limited to the civil penalties alleged in Plaintiff's LWDA notice and the operative complaint, and both expressly preserve unrelated claims (such as claims for vested benefits, wrongful termination, and claims based on facts outside the Class Period). (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538 [class releases "must be appropriately tethered to the complaint's factual allegations."].)

D. SETTLEMENT ALLOCATION FORMULA

Individual payments to the Class Members from the class-portion of the settlement will be calculated and apportioned based on the number of weeks worked as an eligible Class Member in California by the participating Class Member during the Class Period (the "Individual Class Payments"). (Settlement Agreement, at p. 9.) Specific calculations of Individual Class Payments will be determined by: **(a)** dividing the Net Settlement Amount, less the $23,625.00 in individual PAGA payments distributed to the PAGA Employees, by the total number of workweeks worked by all participating Class Members during the Class Period and **(b)** multiplying the result by each participating Class Member's Workweeks. (Settlement Agreement, at p. 9.)

Individual payments to the PAGA Employees from the PAGA-portion of the settlement (i.e., the portion not being sent to the LWDA), will be calculated by **(a)** dividing the PAGA Employees' thirty-five percent (35%) share of the PAGA Payment (i.e., $23,625.00) by the total number of Pay Periods worked by all PAGA Employees during the PAGA Period and **(b)** multiplying the result by each PAGA Employee's Pay Periods. (Settlement Agreement, at pp. 9, 10.)

E. ESTIMATED PAYMENTS TO THE CLASS

Based on the current data available and the allocation formula described above, the Settlement Administrator will calculate each individual payment to participating Class Members (approximately 238) and PAGA Employees (approximately 336) from the approximately 21,662 workweeks and approximately 12,298 pay periods worked during the Class Period and PAGA Period. Plaintiff estimates that the average individual payment will be approximately **$1,048.76** ($352,384.98 net settlement amount ÷ 336 total employees), with an estimated highest payment of approximately \$4,208.04[1] and an estimated lowest payment of approximately \$1.92,[2] which equates to an estimated payment of approximately \$15.18 per class workweek and \$1.92 per PAGA pay period. (Smith Decl., ¶ 56.) Apart from the requested service award, Plaintiff estimates that his own individual payment will be approximately \$1,110.60, as he worked approximately 70 workweeks during the Class Period and approximately 25 biweekly pay periods during the PAGA Period. (Smith Decl., ¶ 57.)

F. SELECTION OF THE SETTLEMENT ADMINISTRATOR

Plaintiff, through counsel, has obtained bids from several settlement administration companies for the settlement administration of this case. Of those, Apex Class Action, LLC presented the lowest qualified bid. Accordingly, Plaintiff propose to use Apex Class Action, LLC as the settlement administrator. (Smith Decl., ¶ 59; Settlement Agreement, at p. 15.) The settlement administrator will be responsible for processing the settlement payments and providing notice to the Class Members as outlined in the Settlement Agreement. (Settlement Agreement, at p. 15.)

G. NOTICE PROCEDURES

Within 21 days of the Court granting preliminary approval of the Settlement Agreement, Defendant shall provide the Settlement Administrator with an updated list of Class Members and PAGA Employees containing names, number of Class Period workweeks, number of PAGA Period pay periods, addresses, and social security numbers (the "Class Data"). (Settlement Agreement, at p. 10.)

Within 14 days of receiving the Class Data, the Settlement Administrator shall send the Class Notice by bulk first class mail, forwarding requested, to the Class Members at the addresses identified

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[1] Assumes an employee exists who: **(1)** worked the entirety of both the Class Period (approximately 270 weeks), **(2)** the entirety of the PAGA Period (approximately 57 biweekly pay periods), and **(3)** did not sign an arbitration agreement at any point.

[2] Assumes an employee exists who both: **(1)** signed an arbitration agreement and is thus not a member of the Class, and **(2)** only worked a single pay period during the PAGA Period.

through the process described above. (Settlement Agreement, at pp. 10, 11.) The Class Notice will be substantially the form as the one attached as **Exhibit 2** to the Declaration of Kyle D. Smith.

The Class Notice will inform each Class Member of his or her estimated share of the settlement, as well as an easily understood statement alerting the Class Members that, unless they elect to opt out of the Settlement Agreement, the Class Member is releasing and waiving all "Released Claims" (as that term is defined in the Settlement Agreement and explained in the Class Notice). (Smith Decl., Exh. 2.) The Class Notice will also inform the Class Members of their right to object to the Settlement Agreement. (Smith Decl., Exh. 2.) Any Class Member who wishes to object to the Class Settlement may submit a written objection to the Settlement Administrator no later than 45 days following the date on which the Settlement Administrator first mails the Class Notice to the Class Members ("Response Deadline"). (Settlement Agreement, at p. 18.) Alternatively, Class Members may also object to the Settlement Agreement by appearing at the final approval hearing, either on their own or through an attorney. (Settlement Agreement, at p. 19; Smith Decl., Exh. 2.)

Class Members who do not timely request exclusion from the Settlement Agreement will be deemed to be a participating Class Member without having to submit a claim form or take any other action. (Settlement Agreement, at p. 5.) To request exclusion from the Settlement Agreement, the Class Member must submit a written request for exclusion from the Settlement Agreement to the Settlement Administrator ("Request for Exclusion"), postmarked no later than the Response Deadline. (Settlement Agreement, at p. 6.)

Before mailing Class Notices, the Settlement Administrator will update Class Member addresses using the National Change of Address database. (Settlement Agreement, at p. 15.) If any Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall re-mail the Class Notice to the forwarding address affixed thereto, if one is provided. (Settlement Agreement, at p. 15.) If no forwarding address is provided, the Settlement Administrator will conduct an address search and remail the Class Notice to the most current address of that Class Member. (Settlement Agreement, at p. 16.) Class Members to whom the Class Notice is re-mailed are given an extension of up to 14 calendar days for disputes, objections, or to request exclusion. (Settlement Agreement, at p. 16.)

H. TIMING OF SETTLEMENT DISBURSEMENTS

Defendant will deposit the Gross Settlement Amount in a lump sum payment, plus the employer-side payroll taxes, with the Settlement Administrator within 14 days of the "Effective Date," as that term is defined in the Settlement Agreement. (Settlement Agreement, at p. 10.) At that time, the settlement will be fully funded. The Settlement Administrator will then distribute the Individual Settlement Payments within 14 days of the date the class settlement is funded. (Settlement Agreement, at p. 10.) The Settlement Agreement further provides that disbursement of Plaintiff's counsel's attorneys' fees, the litigation costs, and Plaintiff's service award shall not precede disbursement of the Individual Settlement Payments. (Settlement Agreement, at p. 10.)

I. *CY PRES* DISTRIBUTION

Class Members will have 180 days to cash their settlement checks. (Settlement Agreement, at p. 11.) If a Class Member fails to cash his/her check by the deadline, then the Settlement Administrator shall distribute such funds to the California State Controller for deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. (Settlement Agreement, at p. 11.)

Because all funds and interest under the Settlement Agreement are to be completely distributed to the class participants, or to the Unclaimed Property Fund in the name of the individual whose check was uncashed, the Parties agree that this disposition results in no "unpaid residue" or "unclaimed or abandoned class member funds" under Code of Civil Procedure Section 384. (Settlement Agreement, at p. 11.)

J. TAX TREATMENT

The Settlement Agreement provides that 20% of each individual settlement payment from the class-portion of the Settlement Agreement shall constitute wages (for which each participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining 80% shall constitute interest, reimbursement, and penalties (for which each participating Class Member will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at p. 9.)

With respect to the individual payments made under the PAGA-portion of the Settlement Agreement, all such payments shall be treated as payments owing for penalties and interest (for which each PAGA Employee will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at p. 10.)

Defendant will separately and additionally pay its share of employer payroll taxes on the sum allocated to wages. (Settlement Agreement, at p. 7.)

V. THE CLASS SHOULD BE PRELIMINARILY CERTIFIED

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

California Rules of Court, rule 3.769, subdivision (d), provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794., 1807, fn. 19.) Since no trial is anticipated in a class-based settlement, the case management issues inherent in determining if the class should be certified need not be confronted, and the Court's fairness review of the settlement focuses on protecting the interests of the non-representative class members. (*Ibid.*; see also *Officers for Justice v. Civil Service Com'n of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 633; *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620 [117 S.Ct. 2231, 2248] ["Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."].)

As discussed below, for settlement purposes only, the Parties ask this court to conditionally certify the Class, as defined above, under section 382 of the Code of Civil Procedure.

B. THE PROPOSED CLASS IS NUMEROUS AND ASCERTAINABLE

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. (See Code Civ. Proc., § 382.) A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. (See *Medrazo v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 101.) Defendant has represented that the proposed Class consists of approximately 238 Class Members ascertained through Defendant's records. As such, the numerosity requirement is met.

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

1. Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. (See *Arenas v. El Torito Restaurants, Inc.* (2010) 183 Cal.App.4th 723 [citing *Washington Mutual Bank, FA v. Superior Court* (2001) 24 Cal.4th 906, 913].) The commonality element is satisfied here because common legal and factual questions exist, such as **(a)** whether individuals working for Defendant were subject to unlawful wage-and-hour policies and/or practices under the California Labor Code; **(b)** whether these violations triggered derivative claims for penalties; and **(c)** whether Defendant's violations were knowing or willful.

2. Typicality

Typicality focuses on: **(1)** whether other members of the proposed class have the same or similar injury to the named plaintiff(s), **(2)** whether the action is based on conduct which is not unique to the named plaintiff(s), and **(3)** whether other class members have been injured by the same course of conduct. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502; *Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375.) Here, Plaintiff's claims are typical of the Class Members because he was subject to Defendant's policies and practices described above in Plaintiff's analysis of the claims and defenses, which were consistently applied class-wide to all non-exempt employees. (Declaration of Eduardo Lozano in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Lozano Decl."), ¶ 4.)

3. Adequacy of Representation

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

Plaintiff also provided counsel with information that was crucial to initiating the action and preparing the mediation brief, discussed settlement strategy with counsel, and provided valuable information about the Class Members and their experiences working for Defendant. (Smith Decl., ¶ 76; Lozano Decl., ¶¶ 6-8.)

Adequacy may be established by the fact that counsel are experienced practitioners. (See *Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162.) Plaintiff is represented by counsel experienced in the litigation of wage and hour class actions, who have no interests adverse to Plaintiff or the Class, who vigorously prosecuted this action, and who have the financial resources to handle this case. (Smith Decl., ¶ 7.)

4. Superiority

Certification of the Class for settlement purposes is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. Class certification is also superior to litigation of numerous individual claims because most of the claims are too small to litigate individually.

5. Predominance

The common issues here, concerning the uniform deficiencies to Defendant's wage-and-hour policies and practices raise predominating factual and legal issues supporting certification of a settlement class. Plaintiff's claims arise from Defendant's common, company-wide policies and practices—including its electronic clock-in procedure, its meal- and rest-period practices, its wage-statement format, and its expense-reimbursement practices—that Plaintiff alleged were applied uniformly to the non-exempt workforce. Whether those common policies and practices violated the Labor Code can be resolved on a class-wide basis using Defendant's own records, and those common questions predominate over any individualized issues, particularly in the settlement context, where the Court need not confront the manageability concerns that attend a litigation class.

VI. PRELIMINARY APPROVAL SHOULD BE GRANTED

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

The Settlement Agreement was negotiated at arm's length between counsel using a professional and well-respected third-party neutral. (Smith Decl., ¶ 60.) Counsel for both parties were thoroughly familiar with the complex legal and factual questions at issue in this litigation. (Smith Decl., ¶ 60.) The Settlement Agreement is a product of intensive negotiations, supported by investigation and direct exchanges of information through informal discovery, during the course of settlement negotiations, including a full-day mediation. (Smith Decl., ¶ 60.)

Although Plaintiff and his counsel believed the class claims had merit and there was a possibility of certifying the class and claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial or on the damages awarded, and/or on an appeal that can take several more years to litigate. (Smith Decl., ¶ 61.) The resulting Settlement Agreement was based on calculations, risk assessment, and non-collusive negotiation. (Smith Decl., ¶ 62.) It takes the risks identified above and others into account in arriving at the non-reversionary Gross Settlement Amount. (Smith Decl., ¶ 62.)

B. THE DISCOVERY AND INVESTIGATIONS WERE EXTENSIVE

Counsel for the Parties spent months prior to the mediation developing the factual record for this case, engaging in informal discovery and exchanges of documents and information, and drafting detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and weaknesses of their respective positions at the mediation and during subsequent settlement negotiations. (Smith Decl., ¶ 63.) The Parties and their counsel attended a full-day mediation session before an experienced and well-respected mediator, which was contentious and unsuccessful at first. However, the Parties continued settlement discussions which resulted in the resolution of the case on a class and representative basis. (Smith Decl., ¶ 64.) Steven Mehta is a nationally recognized mediator of complex class actions and employment matters.

In addition, the parties are represented by skilled and experienced counsel with extensive backgrounds in complex litigation and experience litigating similar wage and hour class actions. (Smith

Decl., ¶ 65.) The Settlement Agreement was reached after extensive investigation and research, calculations and risk evaluation, substantial exchanges of documents, and Plaintiff's counsel's thorough factual investigation, which were sufficient to evaluate Defendant's defenses. (Smith Decl., ¶ 65.) The Settlement Agreement came only after the case was thoroughly investigated by Plaintiff's counsel. Plaintiff's counsel all agree that this settlement is fair, adequate, and reasonable, and in the best interests of Class Members. (Smith Decl., ¶ 66.)

C. THE RISKS INHERENT IN CONTINUED LITIGATION ARE GREAT

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court should also consider "[t]he strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, [and] the risk of maintaining class action status." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) As described above, Defendant had strong defenses to Plaintiff's claims, which created a real possibility that the claims might not be certified or might fail on the merits. (Smith Decl., ¶ 67.) Proceeding with litigation would impose a significant risk of no recovery as well as ongoing, substantial additional expenditures of time and resources. If settlement were not achieved, continued litigation of the claims would take a substantial amount time and possibly confer no benefit on Class Members. By contrast, the settlement will yield a prompt, certain, and substantial recovery for the Class Members, which also benefits the Parties and the Court. In considering these risks, the choice was overwhelmingly in favor of settlement. (Smith Decl., ¶ 68.)

D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS

The Settlement Agreement represents a fair compromise given the risks and uncertainties presented by continued litigation. Defendant asserted and would have continued to assert legal and factual grounds to defend against this action, including factual and legal defenses on the merits. Moreover, continued litigation would be costly, time-consuming, and uncertain. In contrast, the Settlement Agreement ensures timely relief and substantial recovery of the Defendant's realistic exposure. (Smith Decl., ¶ 69.)

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

Plaintiff's counsel are experienced in wage-and-hour class actions. (Smith Decl., ¶ 70.) Numerous state and federal courts have certified Plaintiff's counsel as adequate and competent class counsel in wage and hour class actions. (Smith Decl., ¶ 70.) Plaintiff's counsel devotes the vast majority of its law practice to plaintiff-side class and representative employment-law cases. (Smith Decl., ¶ 70.)

The Parties' counsel agree that this settlement is fair, adequate, and reasonable in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation. (Smith Decl., ¶ 71.) Given the risks inherent in litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of Class Members and should be preliminarily approved. (Smith Decl., ¶ 71.) The Settlement Agreement is also consistent with other settlements that received approval of the Courts. (Smith Decl., ¶ 71.)

Experienced counsel, operating at arm's length, have weighed the strengths and risks of the case, and endorse the proposed settlement. (Smith Decl., ¶ 72.) The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, aff'd (9th Cir. 1981) 661 F.2d 939 ["[T]he fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight."]; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 [court must take into account the experience and view of counsel].)

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

The proposed Class Notice—which the parties have already agreed to—should be approved, as it fully informs the Class Members of the nature of the lawsuit and each Class Member's rights under the terms of the Settlement Agreement and applicable law. (Settlement Agreement, Exh. 2.) The way the Class Notice is to be disseminated, as outlined above, will ensure that all of the Class Members will be properly notified of the proposed settlement.

The Court has wide discretion in approving the means of providing notice, so long as the class representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of class members." (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 860, quotation marks omitted.) Here, the Parties' notice plan is that notice of the Settlement Agreement will be disseminated directly to the class members by first class mail by the settlement administrator within 14 days of the date on which the Settlement Administrator receives the Class Data from Defendant. (Settlement Agreement, at p. 15.)

The notice plan and the Class Notice satisfy the requirements of rule 3.766 of the California Rules of Court and afford the Class Members with all due process protections required by the United States Constitution. Moreover, the contents of the Class Notice are in compliance with rule 3.766, subdivision (d), of the California Rules of Court, because the Class Notice includes, among other things: **(1)** a detailed explanation of the case, including the basic contentions or denials of the parties; **(2)** a statement that the court will exclude the member from the class if the member so requests by a specified date; **(3)** a procedure for the member to follow in requesting exclusion from the class; **(4)** a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and **(5)** a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. (Smith Decl., Exh. 2.) The 45-day deadline for Class Members to exclude themselves or challenge the number of workweeks worked during the Class Period is reasonable, as it provides Class Members with sufficient time to do so and, if they so choose, to seek independent legal advice in the interim. (Settlement Agreement, at p. 17.)

VII. THE PAGA ALLOCATION IS FAIR AND REASONABLE

Because this settlement resolves representative claims under the Labor Code Private Attorneys General Act, the Court must separately review and approve the PAGA component of the settlement. (Lab. Code, § 2699, subd. (s)(2) [the superior court "shall review and approve any settlement of any civil action filed pursuant to" PAGA].) In conducting that review, the court applies a standard analogous to the fairness review used for class action settlements, asking whether the PAGA settlement is fair and reasonable in light of PAGA's purpose of remediating present labor-law violations, deterring future violations, and maximizing enforcement of the Labor Code. (*Moniz v. Adecco USA, Inc.* (2021)

72 Cal.App.5th 56, 76–77, disapproved on other grounds by *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 708.)

The PAGA settlement readily satisfies that standard. As detailed above, Plaintiff determined that Defendant's PAGA exposure represented approximately 13.1% of Defendant's realistic exposure in this case ($122,980 PAGA exposure ÷ $935,614.20 total realistic exposure). In drafting the Settlement Agreement, the Parties allocated 10% of the *gross* settlement amount to PAGA. (Settlement Agreement, at p. 9.) This is a reasonable allocation that closely tracks the percentage of Defendant's total realistic exposure in this case when compared to its total PAGA exposure. It also results in approximately 12.45% of the *net* settlement amount being paid to the LWDA as a PAGA penalty ($43,875.00 ÷ $352,384.98). Thus, the $67,500.00 PAGA allocation represents a substantial and fair recovery for the aggrieved employees and the State of California. (*Moniz v. Adecco USA, Inc.*, *supra*, 72 Cal.App.5th at p. 77.)

The PAGA settlement also complies with PAGA's procedural requirements. Plaintiff has submitted this settlement to the LWDA concurrently with its filing with the Court, affording the agency notice and an opportunity to comment. (Lab. Code, § 2699, subd. (s)(2); Smith Decl., Exhs. 3–4.) Consistent with PAGA, no aggrieved employee may opt out of, or otherwise exclude himself or herself from, the PAGA portion of the settlement, and every aggrieved employee will be bound by the release of the released PAGA claims on entry of judgment—whether or not he or she cashes a settlement check. (Settlement Agreement, at pp. 5, 6, 13–14.) Finally, the Settlement Agreement provides that, following entry of judgment, the Court will retain jurisdiction over the Parties and the settlement to enforce its terms. (Code Civ. Proc., § 664.6; Settlement Agreement, at p. 21.)

VIII. <u>THE ATTORNEYS' FEE ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS FAIR</u>

In addition, at the time of final approval, Plaintiff's counsel will request attorneys' fees of up to 35% of the Gross Settlement Amount, (i.e., $236,250.00), plus reimbursement of litigation expenses and costs of up to $25,000.00. (Settlement Agreement, at p. 8.) As the California Supreme Court has made clear, 35% of the common fund is a reasonable percentage for a trial court to award as attorneys' fees in a class action where a common fund was generated as a result of the case. (See *Laffitte v. Robert*

Half Internat. Inc. (2016) 1 Cal.5th 480, 506 [finding no abuse of discretion where trial court approved a fee request of one-third of the common fund].) As part of the final approval motion, Plaintiff's counsel will request approval of the attorneys' fees and costs described in this motion and in the Settlement Agreement, which will be heard at the final approval hearing. Accordingly, the Court need not decide the fees and costs at this time, but only authorize the Class Notice to inform class members that counsel will seek fees and costs up to 35% of the Gross Settlement Amount in fees, plus actual litigation costs.

IX. THE CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND APPROPRIATE

Plaintiff will request payment of a service award from the Gross Settlement Amount of up to $10,000.00 in addition to whatever payment he is otherwise entitled to receive as a Class Member. (Settlement Agreement, at p. 8.) The proposed service award is reasonable compensation given the time and effort that Plaintiff devoted to this case and the valuable assistance he provided to counsel. (Smith Decl., ¶ 75; Settlement Agreement, at p. 8; Lozano Decl., ¶¶ 6–9.) Plaintiff provided invaluable assistance to Plaintiff's counsel and the Class Members in this case, including providing factual background for mediation and the operative complaint, reviewing the relevant documents, participating in phone calls with Plaintiff's counsel, gathering highly relevant documents, and reviewing the settlement documents. (Smith Decl., ¶ 76.) Plaintiff agreed to participate in this case with no guarantee of personal benefit. Further, Plaintiff agreed to undertake the financial risk of serving as a class representative and exposed himself to the risk of negative publicity by anyone who opposed this case. (Smith Decl., ¶ 76.)

Moreover, the requested service award for Plaintiff falls within the range of service payments typically awarded to class representatives in similar class actions. (See, e.g., *Bond v. Ferguson Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 [approving **$11,250.00** service award to each of the two class representatives in a meal break class action]; *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving service awards in the amount of **$10,000.00** each from a $300,000.00 settlement fund in a wage/hour class action]; *West v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 ["the court finds Plaintiff's enhancement payments of **$15,000.00** each to be reasonable."], emphasis added; *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal. Apr. 22,

2010) No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 ["Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of **$20,000** or more where, as here, the class representative has demonstrated a strong commitment to the class"], emphasis added.)

X. SUBMISSION TO THE LWDA

The Settlement Agreement and this motion are concurrently being submitted to the LWDA in accordance with Labor Code section 2699, subdivision (l)(2). (Smith Decl., ¶ 77.) The proof of electronic submission is attached as **Exhibit 4** to the Declaration of Kyle D. Smith.

XI. CONCLUSION

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

Dated: June 29, 2026

MELMED LAW GROUP P.C.

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