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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ

WILLIAM ROSE and BRENDAN FITZGERALD, as individuals, and on behalf of all others similarly situated,

Plaintiffs,

vs.

SCARBOROUGH HOME CENTER; SCARBOROUGH TAHOE, INC.; SCARBOROUGH LUMBER AND BUILDING SUPPLY, INC., DBA ACE HARDWARE, a California corporation; and DOES 1 through 100, inclusive,

Defendants.

CASE NOS.: 24CV02298

NOTICE OF MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL

Judge: Hon. Syda Kosofsky Cogliati
Date: January 8, 2026
Time: 8:30 AM
Dept.: 5

Complaint Filed: August 13, 2024

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Cartt v. Superior Court, 50 Cal. App. 3d 960, (1975) 22, 23

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In re Baldwin-United Corp. 105 F.R.D. 475, 478 (S.D.N.Y. 1984) 16

In re S. Ohio Correctional Facility, 175 F.R.D. 270, (S.D. Ohio 1997) 21

I*n re Traffic Exec Ass'n*, 627 F.2d 631, (2nd Cir. 1980) 10

Ingram v. The Coca-Cola Co., 200 F.R.D. 685, (N.D. Ga. 2001) 21

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The *Manual for Complex Litigation*, Fourth (Fed. Judicial Center 2004, §21.632)..... 11, 20, 24

NOTICE IS HEREBY GIVEN that, on January 8, 2026 at 8:30 AM in Department 5 of the Santa Cruz Superior Court before the Honorable Syda Kosofsky Cogliati, pursuant to California Code of Civil Procedure §382, Plaintiffs William Rose and Brendan Fitzgerald (collectively "Plaintiffs"), on behalf of themselves and all others similarly situated, will and do hereby move this Court for entry of an Order:

1. Preliminarily certifying the class for purposes of settlement only;

2. Preliminarily appointing Plaintiffs as Class Representatives for purposes of settlement only;

3. Preliminarily appointing Kevin Lipeles, Esq. and Jasmine Badawi, Esq., of Lipeles Law Group, APC and Samuel A. Wong, Esq. Kashif Haque, Esq. and Jessica Campbell, Esq. of Aegis Law Firm, PC as Class Counsel for purposes of settlement only;

4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the parties' Amended Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement"), including payment by Scarborough Home Center, Scarborough Lumber and Building Supply, Inc. dba Ace Hardware and Scarborough Tahoe, Inc. (collectively "Defendants"), of the Gross Settlement Amount of $495,000.00;

5. Preliminarily approving an Incentive Award of $7,500 to each Plaintiff ($15,000 total) in recognition of their service to the Settlement Class;

6. Preliminarily approving Plaintiffs' Counsel's request for up to $173,250.00 (35%) of the Gross Settlement Amount as attorneys' fees;

7. Preliminarily approving Plaintiffs' Counsel's request for actual costs from the Gross Settlement Amount in an amount up to $33,500.00;

8. Appointing Phoenix Class Action Administration Solutions ("Phoenix") as the third-party Settlement Administrator for mailing notices and for claims administration, approving that a maximum of $11,000.00 be deducted from the Gross Settlement Amount for the costs of administration, and approving that the fees and costs of the Settlement Administrator will be paid from the Gross Settlement Amount; and

9. Approving the proposed Class Notice and ordering it be disseminated to the Class as provided in the Settlement Agreement.

This motion is based upon this Notice of Motion and Motion; the Memorandum of Points and Authorities in Support thereof; the declarations of Kevin Lipeles, Jessica Campbell, William Rose and Brendan Fitzgerald in Support thereof; the Settlement Agreement; the proposed Order; the other records, pleadings, and papers filed in this action; and upon such other documentary and verbal evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: December 16, 2025

Respectfully submitted,

LIPELES LAW GROUP, APC
AEGIS LAW FIRM, P.C.

By: _____
Kevin Lipeles, Esq.
Attorneys for Plaintiffs and the Settlement Class

I. INTRODUCTION

Plaintiffs William Rose and Brendan Fitzgerald (collectively "Plaintiffs"), on behalf of themselves and the putative Settlement Class[1] request that this Court preliminarily approve the parties' proposed Amended Settlement Agreement,[2] entered into by Plaintiffs and Scarborough Home Center, Scarborough Lumber and Building Supply, Inc. dba Ace Hardware and Scarborough Tahoe, Inc. (collectively "Defendants") in October and December 2025. Defendants have agreed to not oppose Plaintiffs' instant Motion solely to resolve the claims asserted by Plaintiffs on a class basis to avoid incurring additional substantial 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. Defendants vigorously deny liability or wrongdoing with respect to their wage and hour policies and practices. Defendants reserve their right to assert any and all defenses to the claims asserted by Plaintiffs and the putative class if the Settlement is not approved. Further, although Defendants are not filing an opposition to this Motion to preliminarily approve of the settlement of a lawsuit that was filed as a class action, Defendants specifically deny that a settlement was necessary as a result of any action or inaction by Defendants. The proposed settlement includes a non-admissions clause and Defendants have at all times maintained that their wage and hour policies and practices are fully lawful. Hence, Defendants do not join in the substance of the representations made by Plaintiffs in this Motion and specifically deny the negative characterizations of Defendants' conduct as well as Plaintiffs' interpretation of certain legal authorities. Defendants, therefore, also reserve their right to clarify any aspect of the motion that they believe needs to be addressed. The proposed Settlement Agreement satisfies all of the criteria for preliminary settlement approval under California Code of Civil Procedure §382, and falls well within the range of reasonableness. Accordingly, Plaintiffs request that the Court grant preliminary approval of the proposed Settlement, approve the proposed notice plan, and schedule a final approval hearing, all of which is described in detail below.

[1] The proposed Settlement Class is defined as: all individuals whom Defendants classified as non-exempt employees and who worked for Defendants at any time from August 13, 2020 to September 2, 2025, or the date of preliminary approval of the settlement, whichever is earlier.

[2] The Settlement Agreement is attached as Exhibit A to the Declaration of Kevin Lipeles ("Lipeles Decl." filed herewith). The proposed Class Notice is attached as Exhibit A to the Settlement Agreement.

The Settlement Agreement seeks to fully release and discharge Defendants from the claims brought against them in the above-captioned matter (the "Action"[4]) and all related penalties. In exchange, Defendants will pay the Settlement Class up to $495,000.00 ("Gross Settlement Amount") with no reversion to Defendants.

The Settlement Agreement and Notice distribution plan were the products of non-collusive, arm's-length negotiations by informed counsel and parties. The settlement is fair, reasonable and adequate to all. Accordingly, Plaintiffs seek: (1) preliminary approval of the Settlement Agreement; (2) provisional certification of the Settlement Class; (3) appointment of Plaintiffs as Class Representative; (4) appointment of Kevin Lipeles, Esq., Jasmine Badawi, Esq., Jessica Campbell, Esq., Samuel A. Wong, Esq. and Kashif Haque, Esq. as Class Counsel; (5) approval of the parties' proposed form and method of notifying Class Members of the Settlement Agreement; (6) an order scheduling the hearing date for Final Approval of the Class Settlement; and (7) entry of a preliminary approval Order.

II. FACTUAL SUMMARY

A. Claims

Plaintiffs allege claims for failing to pay wages and failing to authorize and permit meal and rest breaks. Plaintiffs further allege that these alleged Labor Code violations also resulted in Defendants issuing inaccurate itemized wage statements to Class Members and failing to pay wages due upon termination of employment to Class Members who are former employees. Additionally, Plaintiffs allege claims for failing to reimburse business expenses, failing to provide a uniform maintenance allowance, failing to pay for all hours worked and failing to allow inspection of employment records.

Plaintiffs contend that the foregoing also violated Cal. Bus. & Prof. Code §17200, *et seq*. Plaintiffs also alleged that Defendants were liable for PAGA penalties pursuant to California Labor Code §2699.

Defendants vigorously deny each of Plaintiffs' allegations, and contend that they maintained compliant wage and hour practices and policies.

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

B. Procedural History

On August 13, 2024, Plaintiff William Rose filed his Original Class Action Complaint in the Superior Court of California, Santa Cruz County, on behalf of himself and others similarly situated for certain present and former employees of Defendant Scarborough Lumber and Building Supply, Inc. dba Ace Hardware for: (1) failure to pay minimum wages (Cal. Labor Code §§ 1194, 1197, 1197,1, 1198, 119)[6]; (2) failure to pay for meal periods not provided (Cal. Labor Code §226.7); (3) failure to pay for rest periods not provided (Cal. Labor Code §226.7); (4) failure to maintain records and provide accurate itemized wage statements (Cal. Labor Code §§ 226); (5) failure to pay wages on termination and/or resignation (Cal. Labor Code §§ 201-203); (6) failure to reimburse business expenses (Cal. Labor Code § 2802); (7) failure to provide a uniform maintenance allowance (Cal. Labor Code § 2802); (8) failure to pay for all hours worked (Cal. Labor Code § 204); (9) failure to allow inspection of employment records (Cal. Labor Code § 1198.5); and (10) unfair/unlawful business practices (Cal. Bus. and Prof. Code §§ 17200 et seq.)

On September 13, 2024, Plaintiff Fitzgerald commenced his action by filing a Complaint alleging causes of action against Defendant Scarborough Home Center for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Maintain and Provide Accurate Itemized Wage Statements; (6) Failure to Reimburse Business Expenses; (7) Failure to Provide Accurate Itemized Wage Statements; (8) Failure to Pay Wages Due Upon Separation of Employment; and (9) Unfair Competition.

On or about November 19, 2024, Plaintiff Fitzgerald added Scarborough Tahoe, Inc. as a Defendant.

On October 17, 2025, Plaintiff Rose filed his First Amended Class Action Complaint in the Santa Cruz Superior Court, adding a claim pursuant to the Private Attorney General Act of 2004, Cal. Lab. Code §§2699, *et seq*.

On or about July 9, 2025, Aegis Law Firm (representing Plaintiff Fitzgerald) and Lipeles

[6] Damages for failure to pay minimum wages are subsumed within the off the clock/overtime claims calculations. Further, Plaintiffs' Counsel investigated and ascertained that the following claims did not have any value: failure to provide a uniform maintenance allowance, failure to pay for all hours worked and failure to allow inspection of employment records.

Law Group (representing Plaintiff Rose) entered into a Joint Prosecution and Attorney Fee Split Agreement. Lipeles Decl., ¶8.

On or about October 20, 2025, Plaintiffs filed a consolidated Second Amended Class Action and PAGA Complaint. Lipeles Decl., ¶9.

C. Marshalling of Evidence

Through informal discovery, Plaintiffs' counsel has diligently pursued an investigation of the putative Class Members' claims, including: (1) detailed examination and analysis of a 20% sampling of employees' pay periods; (2) review of relevant data regarding the size of the putative class; (3) detailed examination of data related to Defendants' PAGA exposure; and (4) research with respect to the applicable law and the potential defenses thereto. Lipeles Decl., ¶ 11.

1. Documents

The parties engaged in informal discovery in preparation for a private mediation. Lipeles Decl., ¶11. Defendants provided information concerning the total number of Class Members (estimated to be 549 as of the date of mediation), employee handbooks, various policies and procedures, Employee List containing all non-exempt employees, timecards and wage statements for all employees on the Employee List, analysis of a 20% sample of pay periods and meal period waivers. *Id*. Plaintiffs contend that Defendants' internal documents and computerized records showed that Defendants did not pay overtime, did not afford putative class members meal/rest breaks and did not reimburse business expenses. *Id.*

2. Data and Damages Model

As part of informal discovery prior to mediation, Defendants culled their documents relating to their wage and hour policies and practices. To estimate the class-wide damages associated with Plaintiffs' and the Class's claims, Plaintiffs' counsel examined and analyzed the above-described voluminous documents. Lipeles Decl., ¶11.

From the data received from Defendants, Plaintiffs constructed a damages model based on Defendants' exposure. Lipeles Decl., ¶16.

The Plaintiffs' Damages Model manifested the following conclusions concerning Defendants' exposure, excluding interest:

ALLEGATION	LIABILITY RISK
Off the Clock Work	$696,703.00
Overtime Wage Claim	$3,724.00
Sick Pay Claim	$3,033.00
Rest Break Claim	$3,216,372.00
Meal Break Claim	$1,210,305.00
Failure to Reimburse Business Expenses Claim ($10.00 of unreimbursed cell phone business expenses per pay period based on 23,324 bi-weekly pay periods)	$233,240.00
Total, excluding interest	**$7,593,270.00**

Lipeles Decl., ¶17.

The following table shows PAGA penalties from Plaintiffs' Damages Model, on the unpaid wages claim only since based on Labor Code 2699(h)(3)(i)PAGA penalties cannot be stacked:

Number of PAGA Pay Periods	8.105	
PAGA Penalty for Unpaid Wages (277 employees and all pay periods)	$810,500	$100/$100
Total PAGA penalties	**$810,500.00**	

Since PAGA penalties cannot be stacked, the maximum recoverable PAGA penalties is $810,500.00. *Id.*

The following chart shows Waiting Time and Wage Statement Penalties:

Failure to Issue Accurate Itemized Wage Statement Claim (313 employees from 3/19/23 to 5/20/2025)	$809,900.00	$50/$100
Waiting Time (343 terminated employees beginning 3/19/21)	$1,419,993	
Total Waiting Time and Wage Statement Penalties	**$2,229,893.00**	

D. Settlement Negotiations

On June 2, 2025, the parties virtually attended via Zoom an all-day mediation with mediator Paul Grossman, Esq. Lipeles Decl., ¶19. Kevin Lipeles, Esq., of Lipeles Law Group, APC, Jasmine Badawi, Esq. of Lipeles Law Group and Jamie Loos, Esq. and Samuel Wong, Esq. of Aegis Law Firm, PC attended on behalf of Plaintiffs. Stacy Henderson of Henderson Hatfield attended on behalf of Defendants. Plaintiffs also attended the mediation remotely. *Id.*

After a full day of negotiations, the parties agreed to settle for $495,000.00 with no claims process and **no reversion** to Defendants of any settlement monies remaining after all Settlement Class Members are paid.[11] Lipeles Decl., ¶¶18, 22; Exhibit A thereto (the parties' Settlement Agreement), §3.1.

E. Summary of Settlement Terms

Under the terms of the Settlement Agreement, Defendants are discharged of all claims asserted in the Action[12] in exchange for paying the Gross Settlement Amount of $495,000.00.[13] The following amounts will be subtracted, subject to court approval: Plaintiffs' Class Representative Service Payments of up to $7,500 each ($15,000 total), Class Counsel Fees Payment up to $173,250.00, Class Counsel Litigation Expenses Payment to Plaintiffs' Counsel in an amount up to $33,500, LWDA PAGA payment in the amount of $22,522.50, the Administration Costs up to $11,000.00. The employer's portion of the payroll taxes attributed to the wage portion of Individual Class Payments to Class Members will be paid by Defendants outside of and in addition to the Gross Settlement Amount.[14] The Net Settlement Amount ("NSA") is the remainder, *i.e.*, approximately $239,727.70, which shall be available for distribution to Class Members in its entirety.[15]

The average Estimated Amount per class member is $388.54.[16] Settlement Class Members are not required to submit a claim form in order to receive an Individual Class Payment.[17]

To calculate Individual Class Payments, the Settlement Administrator, using the Class Data, will calculate the total workweeks for all Participating Class Members. An Individual Class Payment will be calculated by (a) dividing the Net Settlement Amount 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.[18]

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[11] The parties continued to negotiate until their finalized Amended Settlement Agreement was fully executed in October and December 2025. Lipeles Decl., ¶22.
[12] Settlement Agreement, §5.
[13] Settlement Agreement, §3.1.
[14] Settlement Agreement, §3.1.
[15] Settlement Agreement, §1.29.
[16] Followng execution of the Settlmeent Agreement, Defendants determined that there is an estimated total of 617 putative Class Members during the Class Period. Accordingly, the average Estimated Amount per Class Member is computed as follows: $239,727.70 (NSA)/617 (putative class members) =$388.54 (average award per class member).
[17] Settlement Agreement, §3.1.
[18] Settlement Agreement, §3.2.4.

Because Aggrieved Employees cannot opt out of the PAGA claims, each Aggrieved Employee, whether or not a Participating Class Member, shall also receive his or her Individual PAGA Payment. The Settlement Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35% share of the PAGA Settlement Amount in the amount of $34,650 by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.[19]

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

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

F. Administration of Notice, Objections, and Claims

The actual costs of administration, estimated at up to $11,000.00, will be deducted from the Gross Settlement Amount (Settlement Agreement §3.2.3). The Parties have agreed that Phoenix Class Action Administration Solutions ("Phoenix") shall serve as the Settlement Administrator. Within twenty (20) days after the entry of the Preliminary Approval Order, Defendants will provide the Settlement Administrator with the Class Data.[22] Within fourteen (14) calendar days after receiving the Class Data from Defendants, Phoenix will mail all Class Members the Class Notice.[23]

[19] Settlement Agreement, §3.2.5.1.
[20] Settlement Agreement, §§ 3.2.4.1, 3.2.5.1.
[21] Settlement Agreement, §4.4.3.
[22] Settlement Agreement, § 4.2.
[23] Settlement Agreement, § 7.4.2.

The Class Notice (Exhibit A to the Settlement Agreement) shall contain, *inter alia*, the employee ending dates of employment, the number of workweeks during the Class Period/PAGA Period, and the estimated amount of his or her Individual Class Payment if he or she does not request to be excluded from the Settlement. The Settlement Administrator shall use the Class Data to determine the dates of employment, calculate the number of Workweeks and calculate the estimated Individual Class Payment/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.[24] Plaintiffs negotiated this term to eliminate any potential fear of retaliation from Class Members, for participating in the settlement.[25] 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 must object in writing, stating the grounds of objection, signed by the objecting Class Member or his or her attorney, along with all supporting papers, sent to the Administrator no later than sixty (60) calendar days after the initial mailing of the Class Notice.[26]

G. Procedure for Requesting Exclusion or Opting Out of Settlement

Class Members who wish to exclude themselves from the Settlement Agreement must sign and mail a written Request for Exclusion opting out of the Settlement Class postmarked no later than sixty (60) calendar days after the Class Notice is first mailed out.[27] (Settlement Agreement § 7.5). All Class Members who do not submit a valid Request for Exclusion shall be bound by all the terms of the Settlement Agreement and any Final Judgment entered by the Court if the Court grants final approval of the settlement.

H. Mailing of Individual Class Payments

Settlement Class Members will automatically receive an Individual Class Payment unless

[24] Settlement Agreement, §3.1.

[25] Neither Plaintiffs nor their counsel believe that Defendants will retaliate against Class Members for participating in the lawsuit. However, Plaintiffs' Counsel has found the fear of retaliation to be a common, albeit often unfounded, fear among Class Members in virtually every case.

[26] Settlement Agreement, § 7.7.

[27] 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.

they submit a valid Request for Exclusion. Within fifteen (15) calendar days of the Court's grant of final approval, Defendants shall transfer to the Administrator 50% of the Gross Settlement Amount (including any increase to the Gross Settlement Amount pursuant to the Escalator Clause) plus Defendants' share of employer-side payroll taxes.[28] The balance of 50% of the Gross Settlement Amount shall be transferred to the Administrator within one year of the Court's grant of final approval.[29] Distribution to Settlement Class Members shall be within thirty (30) calendar days of the Defendants' fully funding of the Gross Settlement Amount.[30] The Adminstrator will pay Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment within thirty (30) calendar days of Defendants' fully funding of the Gross Settlement Amount.[31] Additionally, within thirty (30) calendar days of Defendants' fully funding of the Gross Settlement Amount, the Administrator will pay the Class Representative Service Payments to the Named Plaintiffs.[32]

III. CLASS ACTION SETTLEMENT APPROVAL PROCEDURE

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

The first step, preliminary approval, proceeds as follows:

> When the parties to an action reach a monetary settlement, they will usually prepare and execute a joint stipulation of settlement, which is submitted to the court for preliminary approval. The stipulation should set forth the central terms 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.
>
> Rubinstein, Conte & Newberg, *Newberg on Class Actions*, §§ 11.24-11.26 (4th Ed. 2002)

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[28] Settlement Agreement, § 4.3.
[29] *Id.*
[30] Settlement Agreement, § 4.4.
[31] Settlement Agreement, § 4.4. Additionally, any portion of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment not awarded to Plaintiffs' Counsel will be available for distribution to Settlement Class Members as part of the NSA. *Id.*
[32] Settlement Agreement, §4.4. Additionally, any portion of the Class Representative Service Payments not awarded to the Class Representative will be available for distribution to Settlement Class Members as part of the NSA. *Id.*

("*Newberg*").

California courts favor settlement. *Stambaugh v. Superior Court* (*Pacific Gas and Electric Company*), 62 Cal. App. 3d 231, 236 (1976). Courts have broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court* (*County of Marin*), 89 Cal. App. 3d 434, 438 (1979).

Here, the parties have executed and hereby submit the Settlement Agreement, which sets forth all material terms. "Where the settlement terms are fair and reasonable, the settlement is presumptively valid, subject only to objections that may be raised at a final hearing." *Newberg*, § 11.26. California courts have certified classes in cases similar to the present Class in which Plaintiffs' Counsel was appointed Class Counsel.[33]

The schedule setting forth a proposed sequence for the relevant dates and deadlines is outlined in the Proposed Order filed herewith. Having appropriately presented the materials and information necessary for preliminary approval, the parties request that the Final Approval Hearing be conducted in or about May 2026, or as soon thereafter as the Court's calendar may accommodate.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See Newberg* § 11:41 (and cases cited therein); *Class Plaintiff v. City of Seattle*, 955 F.2d 1268, 1276 (1992); *Van Bronkhorst v. Safeco Corp*., 529 F.2d 943, 950 (9th Cir. 1976); *see also Potter v. Pac. Coast Lumber Co*., 37 Cal. 2d 592, 602 (1951). In evaluating class action settlements, the court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Wershba v. Apple Computers, Inc*., 91 Cal. App. 4th 224, 234-35 (2001); *Mallick v. Superior Court* (*County of Marin*), 89 Cal. App. 3d 434, 438 (1979). The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the range of possible approval, also described as the "range of reasonableness," and thus whether notice to the class of the settlement's terms and conditions and the scheduling of a formal fairness hearing are worthwhile. *See Wershba*, 91 Cal. App. 4th at 234-235; *North County*

[33] *See* Lipeles Decl., ¶39; Declaration of Jessica Campbell ("Campbell Decl."), ¶8.

Contractor's Ass'n, Inc. v. Touchstone Ins. Servs., 27 Cal. App. 4th 1085, 1089-1090 (1994); I*n re Traffic Exec Ass'n*, 627 F.2d 631, 633-634 (2nd Cir. 1980); *Newberg*, § 11:25-26.

The *Manual for Complex Litigation*, Fourth (Fed. Judicial Center 2004 ("*Manual*"), § 21.632 characterizes the preliminary approval stage as an "initial evaluation" of the fairness of the proposed settlement made by the court on the basis of written submissions and informal presentation from the settling parties. To make a fairness determination, courts must consider several factors, including "the strength of the Plaintiffs' case, the risk, expense and complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of the discovery completed and the stage of the proceedings, [and] the experience and views of counsel. ..." *Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794, 1801 (1996) "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *See Wershba*, 91 Cal. App. 4th at 245.

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

A. The Proposed Settlement Is Fair to the Class

The terms of the settlement recognize the strength of the case. The proposed settlement is reasonable, in light of the strength of Plaintiffs' case and the risks of litigation. *Clark v. American Residential Services, LLC,* (2009), 175 Cal. App. 4th 785, 799. Under *Clark* "the trial court is obliged, at a minimum, to determine whether a legitimate controversy exists on a legal point, if that legal point significantly affects the valuation of the case for settlement purposes." *Id.* at 803.

However, the trial court is not required to reach any ultimate legal or factual conclusions. *Id.* A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, 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 settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"). Settlement agreements are realistically assessed. *Stambaugh*, 62 Cal. App. 3d at 236; *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989) ("The fact that a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement.").

The Settlement Agreement in this case confers a substantial benefit on the Settlement Class. Pursuant to the terms of the Settlement Agreement, Defendants will pay $475,000 in exchange for a full discharge of Plaintiffs' and Settlement Class Members' releases of claims.[34] Once all the adequate deductions have been made from the Gross Settlement Amount, the amount available for distribution to Plaintiffs and the Settlement Class is approximately $239,727.50.

Plaintiffs have evaluated the strengths of the class claims, and assessed the range of potential outcomes of the litigation. In addition to disputing the merits of Plaintiffs' claims, Defendants would strongly challenge any request for class certification. Plaintiffs believed that this case was suitable for class certification. However, Plaintiffs also realized that there is always a significant risk associated with class certification proceedings. In light of the uncertainties of protracted litigation, the Gross Settlement Amount reflects an excellent recovery for the Class Members. Lipeles Decl., ¶27.

1. <u>Plaintiffs Faced Significant Risk</u>

Pursuit of the Action through trial would impose significant risks on the outcome of Plaintiffs' claims.

a. <u>Defendants' Liability For Violation of California's Unpaid Wage Claims Was Far From Certain.</u>

[34] Settlement Agreement §5.

Plaintiffs claim that Class Members were not paid premium wages for overtime and not paid all wages owed for off-the-clock work. Defendants contend that it is their policy and practice to pay all wages for all time worked. Thus, not getting certified was a risk which Plaintiffs considered during the negotiations. Lipeles Decl., ¶24. Moreover, there was a high risk that the Court would deny certification of the overtime claim.

b. Defendants' Liability For Failure to Afford Meal/ Rest Breaks Was Fraught With Risk.

Plaintiffs also claim that Class Members were not afforded meal/rest breaks. Defendants adamantly contend that they implemented a policy for when nonexempt employees were to take meal/rest breaks and that employees are required to document meal periods on their timecards. Defendants argued that they have no obligation to ensure that meal/rest breaks are taken. Additionally, Defendants contended that they advised their employees of their right and obligation to take rest breaks in their Employee Handbook, during training and in meetings.

Defendants' Expert Exposure Analysis, which analyzed data relating to 159,942 Work Shifts, revealed the following statistics:

- Short 1st Meal Periods – 7.9% of Work Shifts, with 82.5% of 1st meal periods lasting 25+ minutes in length;
- Late 1st Meal Periods – 28.9% of Work Shifts;
- 1st Meal Periods Not Taken – 3.7% of Work Shifts;
- Shifts Greater than 12 Hours – 2 actual Work Shifts (0.009%) during the Class Period were greater than 12 hours in length, and timecards did not show a recorded second meal period.

Thus, there was a high risk that the Court would deny certification of the meal/rest break claims. Lipeles Decl., ¶24.

c. Defendants Faced Significant Challenges to Liability for Failure to Reimburse Business Expense.

Plaintiffs claim that Class Members were not reimbursed for their business expenses such as uniforms, cell phone and mileage expenses. Defendants maintained that they do not require

employees to wear uniforms, that they provide all employees with company shirts, sweatshirt, hats, smocks, etc. at no cost, which employees may choose to wear if they wish to do so, and that their policies provide for expense reimbursement for cell phone and vehicle usage and that those reimbursements were documented on their wage statements. Thus, there was a significant risk that the Court would deny the expense reimbursement. Lipeles Decl., ¶24.

e. Plaintiffs' Potential PAGA Damages Were Far From Certain.

Uncertainty relating to Plaintiffs' potential PAGA damages played a role in the negotiation considerations. Questions were raised about whether and to what extent a court may award such penalties, especially in light of the caps on punitive damages by the both U.S. Supreme Court and California Supreme Court. Thus, Defendants would argue that penalties greatly in excess of actual damages would be confiscatory and possibly unconstitutional. Further, the actual amount of PAGA penalties awarded by the Court is completely discretionary and are not subject to stacking under Labor Code § 2699(h)(3)(i), as amended.[35] Further, Defendants contended that they cannot be subject to duplicative penalties for both the underlying violation and the derivative penalties for failure to pay wages on separation and inaccurate wage statements. Defendants maintained that any inadvertent errors were not the result of their intentional and knowing failure to comply with the Labor Code. As a result, Plaintiffs considered that PAGA penalties may not be awarded in amounts that are disproportionate to the actual amount of wages owed. Lastly, since only 35% of any PAGA recovery reaches the PAGA claimants (with the balance going to the state), the strength of Plaintiffs' potential PAGA claims and the potentially limited recovery was a factor considered during settlement negotiations. Lipeles Decl., ¶25.

Where, as here, the settlement affords the Class Members prompt, substantial relief, while avoiding legal and factual hurdles that otherwise may have prevented the Class from obtaining any

[35] In granting final approval of the class action settlement in *Stuart v. RadioShack*, Judge Chen noted the following:

> Plaintiffs could arguably get more . . . because they are entitled to penalties under the PAGA, [but] it is not 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.

recovery at all, or at least after a very significant delay, the reasonableness of the settlement is clear. Because the Settlement Agreement provides immediate and substantial relief, without the attendant risks and delay of continued litigation, it warrants the Court's preliminary approval.

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

Plaintiffs' counsel conducted an extensive investigation, including reviewing voluminous documentary evidence. The parties negotiated in good faith and at arm's-length on several occasions over many 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., ¶¶39-40; Campbell Decl., ¶¶ 6-17.

The settlement terms also indicate that the Settlement is fair to the Class. Defendants have legal and factual grounds for defending this action. Among other things, Defendants deny the allegations asserted in the Action and continue to assert defenses to such claims. Defendants further contend that at all relevant times they had valid wage and hour policies and that they properly paid Plaintiffs and Class members. Notwithstanding these arguments, the Settlement commits Defendants to pay a total of $495,000.00, of which approximately $239,727.50 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., ¶¶28-29; Campbell Decl., ¶ 18.

Accordingly, preliminary approval of the Settlement is appropriate, and Plaintiffs request that the Court order that 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 the court. Three basic rulings are often conditionally entered at this preliminary hearing. These conditional rulings may approve a temporary settlement class, the proposed settlement, and the class counsel's application for fees and expenses.

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

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

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

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

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

1. Numerosity and Ascertainability.

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Code Civ. Proc. § 382. No set number of class members is required to maintain a class action. *Hebbard v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030. The California Supreme Court has upheld a class of as few as ten members. *Bowles v. Super. Ct.* (*Nickel, Jr.*) (1955) 44 Cal.2d 574, 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. *Medrazo v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). Here, the settlement class consists of 583 current and former employees of Defendants in California from August 13, 2020 through September 2, 2025, who have already been identified. Lipeles Decl., ¶31.

2. Well-Defined Community of Interest.

a. 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 Rests., Inc*., 183 Cal. App. 4th 723, 732 (2010). While the parties dispute whether a class would be appropriate if the litigation were to continue, they agree, for the purposes of this settlement only, that the Class is subject to common compensation policies and challenges to those policies that are certifiable for settlement purposes. *See e.g., Bluford*, 216 Cal. App. 4th at 872-73 (certifiable issues were raised by claim that the employer's per mile piece-rate system did not compensate drivers for their statutory rest break time).

b. Typicality.

Typicality means merely that the class representative is similarly situated to the members of the class, not that his claims are identical. *Classen v. Weller* 145 Cal. App. 3d 27, 45-46 (1983). It suffices if the class representatives' claims arise from the same event or course of conduct that gives rise to the class claims, and are premised upon the same legal theories. *Id.* Here, for purposes of settlement, the parties agree that Plaintiffs assert claims regarding Defendants' wage and hour compensation practices that are at the core of the action. Lipeles Decl., ¶6.

c. Adequacy of representation.

The proposed class representative must establish that he or she will adequately represent the

proposed class. *See Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009). Adequacy may be established by the fact that counsel are experienced. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Here, Plaintiffs allege, and Defendants do not dispute for purposes of settlement, that Plaintiffs and the Class are represented by counsel with extensive experience in wage-and-hour litigation and that Plaintiffs are adequate class representatives. Lipeles Decl., ¶¶38-39; Campbell Decl., ¶¶ 6-17.

D. An Award of Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Payment for the Class Representative Service Payments from the Settlement Fund Are Justified in this Case.

The proposed Settlement provides that Plaintiffs will request, and Defendants will not oppose, an award to Class Counsel in an amount not to exceed $173,250.00 in attorneys' fees (35% of the Gross Settlement Amount), actual costs up to $33,500, Class Representative Service Payments of $7,500 to each of the Named Plaintiffs ($15.000 total) in recognition of their time, effort, and risk as Class Representatives, PAGA penalty payment to the LWDA in the amount of $22,522.50, and up to $11,000 in claims administration costs. The foregoing awards amount to $255,272.50 and Plaintiffs therefore requests that the Court approve a total deduction of $255,272.50 from the $495,000.00 Gross Settlement Amount. Viewing the participation, service and risk payment as an additional cost of litigation, in combination with the allocation for attorneys' fees, expenses and costs, this total deduction of $255,272.50 is within the range of attorneys' fees, expenses and costs awarded in similar cases. *See* Lipeles Decl., at ¶30. The participation payments to Plaintiffs are also justified as Class Representative Service Payments, which courts regularly award in class action litigation.

1. The Proposed Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment Requested Are Reasonable, Fair and Appropriate Under the Common Fund Doctrine and Should be Preliminarily Approved.

Plaintiffs seek preliminary approval of their request for reasonable attorneys' fees in an amount up to $173,250 and actual expenses and costs up to $33,500.00.[36] As discussed in more

[36] 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., ¶42.

detail below, this fee award is reasonable under the common fund approach in determining reasonable attorneys' fees.

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

In addition to spreading the litigation costs among all beneficiaries, awards of common fund fees are essential to furthering the important societal goal of attracting competent counsel to handle these often complex contingency cases, "who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if assured that [they] will be promptly and directly compensated should [their] efforts be successful." *Melendres v. City of Los Angeles*, 45 Cal. App. 3d 267, 273 (1975) (quoting *Estate of Stauffer*, 53 Cal.2d 124, 132 (1959). In California, trial courts have inherent equitable power to award attorneys' fees on a common fund basis when counsel's efforts "have resulted in the preservation or recovery of a certain or easily calculable sum of money." *Serrano*, 20 Cal.3d 25 at 35; *see also Bank of America Nat'l Trust & Sav. Ass'n v. Cory*, 164 Cal. App. 3d 66, 89 (1985); *Melendres,* 45 Cal. App. 3d 267, 277 (trial courts' "broad discretion" in awarding common fund fees is well-established).

The traditional method for calculating a common fund fee is to award a percentage of the total fund. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 900 and 916 (1984); *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Lealao v. Beneficial California, Inc.,* 82 Cal. App. 4th 19, 26 (2000); *Melendres,* 45 Cal. App. 3d at 278.

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

Finally, several other factors support the requested attorneys' fees. Plaintiffs and their counsel brought this class action to prevent Defendants from continuing to commit the alleged violations of California law regarding wage and hour violations alleged in the Operative Complaint. Plaintiffs' Counsel handled this case on a contingency basis and the case involved significant risks of non-payment of attorneys' fees and non-recovery of litigation expenses if class certification was not granted and/or if Plaintiffs' Counsel did not settle or prevail. For these reasons, a costs award and common fund fee of 35% of the settlement fund (*i.e.*, a total of up to $206,750.00) is fair, reasonable and appropriate. Furthermore, because Plaintiffs 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, Plaintiffs' request for fees of 35% of the common fund should be granted.

2. The Proposed PaymentS to the Class Representatives for Their Service to the Class Are Reasonable, Routinely Awarded, and Should be Preliminarily Approved.

The proposed payments of $7,500 to each of the Named Plaintiffs[37] ($15,000 total) are intended to recognize the critical role they 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.*

[37] Any portion of the Class Representative Service Payments not awarded to Plaintiffs will be made available for distribution to Settlement Class Members as part of the NSA. Settlement Agreement, §3.2.1.

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 awards 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 $150,000 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 awards 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 Equal Employment Opportunity v. Nat'l Broad. Co*., 76 F.R.D. 173, 180 (S.D.N.Y. 1977); and (6) risks of an adverse attorneys' fees award; *see, e.g., Rodriguez v. West Publishing*, 563 F.3d 948, 958 (9th Cir. 2009) ("Incentive awards are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.").

These factors support the approval of the incentive payments requested here for the Class Representatives. First, the requested payment of $7,500 to each of the Named Plaintiffs ($15,000 total) constitutes only 3.0% of the Gross Settlement Amount. Second, the Named Plaintiffs spent time providing invaluable assistance to Class Counsel and the Class in this case, including

providing factual background for the Class Complaint; providing and explaining documents corroborating their allegations to Class Counsel; reviewing the complaints and other pleadings filed with the Court by Plaintiffs and Defendants; participating in multiple conference calls and phone calls to discuss litigation and settlement strategy, and remotely attending the all-day mediation. *See* Declaration of William Rose ("Rose Decl."), ¶¶6-11; Declaration of Brendan Fitzgerald ("Fitzgerald Decl."), ¶6. The Named Plaintiffs have been actively involved in this case, and have proven themselves to be invaluable resources of information throughout the settlement discussions. Lipeles Decl., ¶34; Rose Decl., ¶¶6-11; Fitzgerald Decl., ¶6. Third, by bringing this action, the Named Plaintiffs furthered the public policy goal of encouraging compliance with the wage and hour provisions of the Labor Code. Finally, the requested Class Representative Service Payments of $7,500 to each of the Plaintiffs fall well within the range of incentive payments typically awarded to Class Representatives in such class actions. Lipeles Decl., ¶34; *see e.g., Ross v. US Bank Nat'l Ass'n*, No. C 07–02951 SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving $20,000 enhancement awards to each of four class representatives in the wage and hour class action); *Garner v. State Farm Mut. Auto. Ins. Co*., No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) ("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").

Accordingly, the requested Class Representative Service Payments of $7,500 to each of the Named Plaintiffs ($15,000 total) are fully deserved and justified and thus should be preliminarily approved.

V. THE PROPOSED CLASS NOTICE IS APPROPRIATE

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 Defendants' employment records. Defendants will provide the last known addresses for all identified Class Members. Plaintiffs have 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 Defendants during the Class Period; (6) the number of Class Period Workweeks/PAGA Period Pay Periods based on Defendants' 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 Defendants, 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 in both English and Spanish will be mailed to all known and reasonably ascertainable Class Members, using Defendants' 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 Settlement Administrator will take appropriate steps, such as skip-tracing, to maximize the probability that the Class Notice will be received by all Class Members. (Settlement Agreement §4.4.2).

The Class Notice also fulfills the requirement of neutrality in Class Notices. *See Newberg* § 8:39 at pp. 284, 285. The Class Notice summarizes the proceedings to date, the significant legal developments since the date of the settlement, and the terms and conditions of the settlement, in a coherent and informative manner. The Class Notice clearly states that the Settlement does not

constitute an admission of liability by Defendants and recognizes that the Court has not ruled on the merits of the Action. The Class Notice also states that the final settlement approval decision has yet to be made. Accordingly, the Class Notice complies with the standards of fairness, completeness and neutrality required of a settlement notice disseminated under authority of the Court. *Newberg* §8:21, §8:39; *Manual* § 21.312.

VI. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

The last step in the settlement approval process is the formal final approval hearing, at which the Court may hear all evidence and argument necessary to evaluate the proposed Settlement. *See Cal. Rules of Court* 1859(b). At that hearing, proponents of the Settlement may explain and describe its terms and conditions and offer argument in support of the Settlement approval. Furthermore, members of the Settlement Class, or their counsel, may be heard in support of or in opposition to the proposed Settlement. Class Counsel requests that the hearing be held in May 2026.

VII. CONCLUSION

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

Dated: December 16, 2025

Respectfully submitted,

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By: _____
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