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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JORGE PALATO, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

HYDRO-AIRE AEROSPACE CORP., a California corporation; and DOES 1 through 100,

Defendants.

Case No.: 24STCV19936

[*Case Assigned for all purposes to the Hon. Carolyn B. Kuhl, SSC-12*]

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: September 10, 2025
Time: 10:30 a.m.
Dept.: SSC-12

Action filed: August 7, 2024
Trial Date: None set

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on September 10, 2025 at 10:30 a.m. in Department SSC-12 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California, 90012, Plaintiff Jorge Palato ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:

> All current and former non-exempt employees who were employed by Defendant Hydro-Aire Aerospace Corp. in California during the Class Period.
>
> The "Class Period" means the period from August 7, 2020 to June 9, 2025.

3. Preliminary appointment of Plaintiff Jorge Palato as Class Representative;
4. Preliminary appointment of Scott M. Lidman, Milan Moore, and Tiara Gose-Hardy of Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a Service Payment to Plaintiff, Settlement Administration costs, civil penalties payable to the California Labor Workforce Development Agency, and attorneys' fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice which is the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, which is attached to the Settlement as Exhibit A, and an order that it be disseminated to the proposed Settlement Class Members as provided in the Settlement Agreement.

This Motion is based on this notice of motion, the memorandum of points and authorities, the declarations of Scott M. Lidman, Milan Moore, Tiara Gose-Hardy, Paul K. Haines, Plaintiff Jorge Palato, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: June 30, 2025

Respectfully submitted,
LIDMAN LAW, APC

By: Milan Moore
Milan Moore

Attorney for Plaintiff
JORGE PALATO

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jorge Palato ("Plaintiff") brought this class and representative action against Defendant Hydro-Aire Aerospace Corp. ("Defendant" or "Hydro-Aire") alleging various wage and hour and related violations. Plaintiff's primary allegations are that Defendant: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to indemnify all necessary business expenditures; (7) failed to pay all final wages owed upon termination; (8) engaged in unfair competition; and (9) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, class action settlement,[1] in which Defendant has agreed to pay Three Hundred Thirty-Five Thousand Dollars and Zero Cents ($335,000.00) on behalf of the following Settlement Class:

> All current and former non-exempt employees who were employed by Hydro-Aire in California during the Class Period.
>
> The Class Period is the period from August 7, 2020 to June 9, 2025.

Significantly, Settlement Class members do not need to file a claim to receive payment. All Settlement Class members will automatically receive a payment unless they affirmatively opt-out. After deducting (a) the Individual PAGA Payments, (b) the LWDA PAGA Payment, (c) the Class Representative Service Payment, (d) the Class Counsel Litigation Expenses Payment and Class Counsel Fees Payment, and (e) the Administration Expenses Payment, the remaining Net Settlement Amount ("NSA") of approximately $159,833.33 will be distributed to all Settlement Class members who do not opt-out of the Settlement. There are approximately 542 Settlement Class members, which means the average payment to each Settlement Class member is currently expected to be approximately **$294.89.** There are approximately 419 Aggrieved Employees, which means the average individual PAGA Amount

[1] The Class Action and PAGA Settlement Agreement ("Settlement") is attached to the Declaration of Milan Moore as Exhibit 2. The proposed Class Notice is attached to the Settlement as Exhibit A. All defined terms in this motion have the same definitions as used in the Settlement.

is $16.70.

This proposed Settlement is well-within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES

Defendant does business as a manufacturer of aircraft systems. Declaration of Milan Moore ("Moore Decl."), ¶ 7. Plaintiff, a non-exempt employee, began working for Defendant around the year 2007. *See* Declaration of Jorge Palato ("Palato Decl."), ¶ 2. During his employment, Plaintiff has worked as an Assembler and his responsibilities include, without limitation, assembling motors for airplane brakes. *Id*.

B. BRIEF PROCEDURAL HISTORY

On August 7, 2024, Plaintiff filed a putative class action against Defendant in this Court captioned *Jorge Palato v. Hydro-Aire Aerospace Corp.*, Case No. 24STCV19936. Moore Decl., ¶ 7. On August 7, 2024, Plaintiff submitted a letter to the California Labor & Workforce Development Agency ("LWDA") and Defendant advising of his intention of filing a PAGA claim based on the Labor Code violations alleged in his operative complaint. *Id*., at Exhibit 1. On October 14, 2024, Plaintiff filed a First Amended Class Action and Representative Complaint. *Id*. The primary allegations are that Defendant: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to indemnify all necessary business expenditures; (7) failed to pay all final wages owed upon termination; (8) engaged in unfair competition; and (9) is liable for civil penalties under the Private Attorneys General Act of 2004 ("PAGA"). *Id*.

Plaintiff will serve the instant Motion and proposed Settlement Agreement on the LWDA on the same date as he files this Motion and will submit a proof of service to the Court evidencing the submission. Moore Decl., ¶ 31.

III. DUNK/KULLAR ANALYSIS

Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g.*, *Hanlon*, *supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement agreement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

A. INVESTIGATION AND DISCOVERY

After agreeing to participate in private mediation, Defendant informally produced timekeeping and payroll data for the entire putative class, as well as its wage and hour policies and other relevant documents and information relevant to the claims alleged. Moore Decl, ¶ 8. After a detailed review of the time and payroll records for the putative class and other documents and policies produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id*. This informal discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could not be reached. *Id*.

B. ARMS-LENGTH NEGOTIATIONS

On April 10, 2025, after extensive research and analysis, a mediation was held with Steve Mehta, Esq., a well-respected wage and hour class action mediator. Moore Decl., ¶ 9. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id*. Ultimately, the parties agreed in principle on a class-wide resolution. *Id*. In the weeks that followed, the parties finalized the terms of settlement and executed the Class Action and PAGA Settlement Agreement ("Settlement"). *Id*.

C. THE EXPERIENCE AND VIEWS OF COUNSEL

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Moore Decl., ¶¶ 2-5; Declaration of Scott M. Lidman ("Lidman Decl."), ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8; Declaration of Tiara Gose-Hardy ("Gose-Hardy Decl."), ¶¶ 2-3. Class Counsel conducted an in-depth review of Defendant's policies and timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. Moore Decl., ¶ 8. The Settlement was also reached with the assistance of an experienced and respected wage and hour class action mediator. Moore Decl., ¶ 9. This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF CLAIMS

The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in the face of disputed claims. Plaintiff's analysis of the maximum and realistic expected recoveries for each of the theories of liability pled is set forth below:

<u>Defendant Failed to Pay for All Hours Worked</u>: Plaintiff alleges that he and Settlement Class Members were not fully compensated for all of their time worked. Moore Decl., ¶ 14. Specifically, Plaintiff alleges that from the beginning of the statutory limitations period in August 2020 through about June 2021, Defendant required Plaintiff and Settlement Class Members to undergo temperature checks prior to clocking in for shifts. *Id*. Plaintiff alleges Defendant required Plaintiff and Settlement Class Members to arrive 10 to 15 minutes early to stand in line for a temperature check and were instructed to clock in only after the temperature check. *Id*. As such, Plaintiff and Settlement Class Members worked hours in excess of their scheduled shifts but were routinely unpaid for all of their time worked. *Id*. Accordingly, Plaintiff's expert analyzed this issue and then calculated a total wage underpayment of approximately $269,995.00 (11,538 workweeks [Aug. 2020 through June 2021] x 5 days/workweek x .17 [10 mins/shift] x $27.53 avg. overtime rate). *Id*.

Defendant contends that it compensated Settlement Class Members for all of their time worked. Moore Decl., ¶ 15. Defendant also contends that employees did not spend any significant period of time waiting for temperature checks. *Id*. Defendant further asserts that it was complying with government requirements to conduct temperature checks and, being that it was to the benefit of the government instead of Defendant, Plaintiff and Settlement Class Members are not owed by Defendant. *Id*. In light of these defenses, Plaintiff discounted the maximum exposure by 55% for the risk of non-certification, and an additional 80% to account for Defendants' defenses on the merits, to arrive at an estimated exposure of $24,299.55. *Id*.

Defendant Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that he and Settlement Class members were not provided with all legally-compliant first meal periods beginning before the end of the fifth hour of work. Moore Decl., ¶ 16. Specifically, due to Defendant's policies and/or practices, Plaintiff alleges that the meal periods were either late or otherwise unlawful. *Id*. Based on Plaintiff's review of the time data produced in connection with mediation, Defendant's violation rate for first meal periods was approximately one percent or approximately 2,554 of the meal enabling shifts. *Id*. Therefore, Plaintiff calculated Defendant's maximum exposure on the alleged meal period violations at approximately $46,866.00 (2,554 meal periods x $18.35 avg. hourly rate). *Id*.

Defendant counters that it has always provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of Defendant. Moore Decl., ¶ 17. Defendant also points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. *Id*.; See *Brinker*, *supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Defendant also contends individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id*. Accordingly, Plaintiff discounted the maximum exposure by 60% for the risk of non-certification, and an additional 45% to account for Defendant's defenses on the merits to arrive at an estimated exposure of $10,310.52. *Id*.

Defendant Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that he and Settlement Class members were also not authorized and permitted to take all required rest periods due to Defendant's rest period policies and practices that fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*. Moore Decl., ¶ 18. Specifically, Plaintiff alleges that he and the other non-exempt employees had to take rest breaks at designated areas and the time walking to and from such areas was part and parcel of their ten-minute breaks. *Id*. This meant that the employees were not authorized a full "net" ten minutes of break time. *Id*. Based on the data, 311,032 shifts worked were in excess of 3.5 hours. *Id*. Accordingly, Plaintiff calculated Defendant's maximum exposure for rest period violations at $5,707,437.00 (311,032 x $18.35 avg. hourly rate). *Id*.

Defendant contends it has always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Moore Decl., ¶ 19. Further, Defendant argues that the maximum exposure incorrectly assumes a 100% rest period violation rate and Plaintiff's rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id*. Accordingly, Plaintiff discounted the maximum exposure by 75% for the risk of non-certification, and an additional 70% to account for Defendant defenses on the merits to arrive at an estimated exposure of $428,057.78. *Id*.

<u>Defendant Failed to Reimburse Necessary Business Expenses:</u> Plaintiff alleges that Defendant failed to reimburse him and Settlement Class members for necessary business expenditures, including the use of their personal cellular phones for work activities, as required under Labor Code section 2802 and by *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137. Moore Decl., ¶ 20. Plaintiff contends that Defendant required its non-exempt employees to use their personal cellular phones for work-related purposes to communicate with supervisors, but Defendant did not reimburse the putative class members for the cell phones and/or the data usage. *Id*. Plaintiff estimates employees should have been reimbursed approximately $5.00 per workweek for reasonable cellular phone related expenses *Id.* Accordingly, Plaintiff calculates Defendant's maximum exposure for this claim at approximately $322,175.00 (66,543 workweeks x $5.00 per workweek). *Id*.

Defendant contends that it prohibits employees from using their cell phones while working. Defendant further contends it had previously reimbursed Plaintiff and the Settlement Class members for their use of their cellular phones for business purposes and required Plaintiff and the Settlement Class Members to sign written agreements stating that they would not answer phone calls from Defendant outside of business hours. Moore Decl., ¶ 21. Further, Defendant argues that any expenses incurred were minimal given the affordability of cellular usage plans. *Id*. Defendant also argues that this claim is not suitable for class treatment because it would require individualized determinations as to whether each employee used a personal cellular phone for business purposes and how often. *Id*. Accordingly, Plaintiff discounted the maximum exposure by 80% for the risk of non-certification, and an additional 45% to account for Defendant's defenses on the merits, to arrive at an estimated exposure of $36,598.65. *Id*.

Defendant Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that Defendant issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid minimum wages, overtime wages, and meal and rest period premium wages described above. Moore Decl., ¶ 22. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members did not include all hours worked and the rate at which they were being paid. *Id*. Plaintiff's data analysis reflected that there were approximately 15,458 wage statements issued during the relevant time period. *Id*. Therefore, Plaintiff calculated Defendant's maximum exposure for wage statement violations based on and applying $50 for the first violation and $100 for each subsequent violation, Defendant's exposure is $1,520,450.00 ([$50 x 507 initial violations] + [$100 x 14,951 subsequent violations]). *Id*.

Defendant argues that meal and rest period claims cannot support a claim for wage statement penalties. Moore Decl., ¶ 23. Defendant further argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. *Id*. As such, Plaintiff discounted the calculated exposure by 45% for a risk of non-certification and an additional 30% for a risk of being unsuccessful on the merits, to arrive at an estimated total of $585,373.25. *Id*.

Defendant is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Moore Decl., ¶ 24. Plaintiff calculated Defendant's maximum exposure at $1,545,800.00 (15,548 pay periods x $100 initial violation rate). *Id*.; *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision).

Defendant argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims will fail. Moore Decl., ¶ 25; *see Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc*. (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiff discounted the maximum exposure figure by 80% for a risk of being unsuccessful on the merits, and an additional 85% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of $46,374.00. *Id*.

E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately $1,131,013.75. Moore Decl., ¶ 26. The proposed settlement of $335,000.00 therefore represents approximately 29.6% of the reasonably forecasted recovery for the Settlement Class. *Id*. Preliminary approval is appropriate as the settlement will provide tangible monetary relief to Settlement Class members, and will still provide an average recovery to Settlement Class members of approximately ***$294.89***. *Id*.

The proposed settlement reflects approximately 29.6% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks and will provide tangible monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case is within the range of percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER LITIGATION

Although the parties engaged in informal discovery, the parties still had significant discovery to complete in formal litigation had the matter not settled. Moore Decl., ¶ 30. Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id*. Even if the classes sought to be certified by Plaintiff were in fact certified, the parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id*. This Settlement avoids those risks and the accompanying expense. Thus, this factor supports preliminary approval.

G. RISK OF MAINTAINING CLASS ACTION STATUS

Plaintiff had not yet filed his motion for class certification and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial.

IV. <u>CLASS CERTIFICATION FOR SETTLEMENT PURPOSES</u>

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322 requires trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable").

As explained below, the Settlement Class satisfies the criteria for certification of a settlement class because: (1) the Settlement Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims are typical of the claims of absent Settlement Class members; and (4) Plaintiff and his counsel will fairly and adequately represent

Settlement Class members' interest. *See* Cal. Civ. Proc. § 382.

A. NUMEROSITY IS SATISFIED.

Here, the proposed Settlement Class consists of approximately 542 members, and is therefore sufficiently numerous as to make joinder impracticable. *See* Moore Decl., ¶ 11; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous). Thus, numerosity is satisfied.

Further, a class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is ascertainable through Defendant's personnel files and employee records maintained in the regular course of business.

B. COMMONALITY IS SATISFIED.

The focus in a certification dispute is not the merits, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 327.

Here, Settlement Class Members' claims arise from Defendant's common, uniform policies and practices that applied to Settlement Class members during the class period. Moore Decl., ¶ 13. Specifically, Plaintiff alleged that Defendant's common and uniform policies and practices resulted in the following violations, involving common questions of law and fact: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide all meal periods; (4) failure to authorize and permit rest periods; (5) failure to provide accurate, itemized wage statements; (6) failure to indemnify all necessary business expenditures; (7) failure to pay all wages owed upon termination; (8) engagement in unfair competition; and (9) liability for civil penalties under PAGA. *Id.*; *See e.g.*, *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

C. TYPICALITY IS SATISFIED.

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action).

Here, Plaintiff's claims are typical of those held by the members of the proposed Settlement Class. First, Plaintiff was employed by Defendant during the Class Period as a non-exempt employee and was subject to Defendant's wage and hour policies at issue in this case. *See* Palato Decl., ¶ 2. Second, Plaintiff was allegedly injured by the same challenged policies that allegedly injured the Settlement Class as a whole. For example, Plaintiff asserts that he was not paid all minimum and/or overtime wages, was not provided all meal periods, was not authorized and permitted all rest periods, was not reimbursed necessary business expenses, and received inaccurate itemized wage statements, similar to those received by the Settlement Class members, and was not paid all of his wages owed upon his separation of employment. Palato Decl., ¶¶ 2-6, 12. Given that Defendant's policies and practices applied to all non-exempt employees, Settlement Class members possess a similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, because Plaintiff's claims and those of the Settlement Class all arise from the same conduct, typicality is satisfied.

D. ADEQUACY IS SATISFIED.

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007) Cal.App.4th 676, 697.

Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class he seeks to represent. Palato Decl., ¶ 13. Indeed, Plaintiff's interests are aligned with those of the Settlement Class members, as they all seek monetary relief under the same facts and legal theories. Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Further, Class Counsel also have extensive experience in wage and hour class action litigation and have vigorously litigated this case. *See* Moore Decl., ¶¶ 2-5; Lidman Decl., ¶¶2-8; Haines Decl., ¶¶ 2-8; Gose-Hardy Decl., ¶¶ 2-3.

V. SETTLEMENT AGREEMENT

A. THE BASICS

1. Class Definition and Release Period

The proposed Settlement Class is defined as "all current and former non-exempt employees who were employed by Hydro-Aire in California during the Class Period." Class Period means the period from August 7, 2020 to June 9, 2025. Moore Decl., ¶ 11.

2. Aggrieved Employees and PAGA Period

The proposed Aggrieved Employees is defined as "all current and former non-exempt employees who were employed by Hydro-Aire in California during the PAGA Period." Moore Decl., ¶ 12. For purposes of this Settlement Agreement, the "PAGA Period" means the period of August 7, 2023 to June 9, 2025. *Id.*

B. RELEASE OF CLAIMS

1. Scope of Settlement Class Members' Release

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Defendant Hydro-Aire and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, parents, subsidiaries, or affiliates ("Released Parties") from all claims that were alleged, or reasonably could have been alleged based upon the facts alleged, in the Operative Complaint which occurred during the Class Period, including, any and all claims, actions and causes of action, arising during the Class Period, for: (1) Failure to Pay All Minimum Wages Owed (Labor Code §§ 1194, 1194.2, 1197); (2) Failure to Pay All Overtime Wages Owed (Labor Code §§ 204, 510, 558, 1194, 1198); (3) Failure to Provide Meal Periods (Labor Code §§ 226.7, 512, 558); (4) Failure to Authorize and Permit Rest Periods (Labor Code §§ 226.7, 516); (5) Failure to Provide Accurate, Itemized Wage Statements (Labor Code § 226, et seq.); (6) Failure to Indemnify All Necessary Business Expenditures (Labor Code § 2802); (7) Failure to Pay All Wages Owed Upon Termination (Labor Code §§ 201-203); and (8) Unfair Competition (Bus. & Prof. Code § 17200, et seq.), and those claims predicated on the same or similar facts and/or claims alleged in the Action by Plaintiff in or prior to the Action, including claims based on the regular rate of pay, and claims for interest, penalties, pursuant to the California Labor Code and California Industrial Welfare Commission, wages for violations of Labor Code Sections 201, 202, 203, 204, 218 *et seq*., 226 *et seq*., 226.7, 510, 512, 516, 558, 1174, 1194, 1194.2, 1197, 1198, 2698 *et seq*., 2802, and 2804, and applicable IWC Wage Orders, and California Code of Regulations, Title 8, section 11000 *et seq*. Settlement, ¶ 6.2.

2. Scope of PAGA Release

All Aggrieved Employees and the State of California and LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released parties from all PAGA claims pled or could have been pled based on the factual allegations contend in the Operative Complaint and PAGA Notices sent by Plaintiff that occurred during the PAGA Period, including PAGA claims for violations of California Labor Code sections 201, 202, 203, 204, 218 *et seq*., 226 *et seq*., 226.7, 510, 512, 516, 558, 1174, 1194, 1194.2, 1197, 1198, 2698 *et seq*., 2802, and 2804, and applicable IWC Wage Orders, and California Code of Regulations, Title 8, section 11000 *et seq*. Settlement, ¶ 6.3.

3. Releases Effective Date

The releases described are effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments. Settlement, ¶ 6.

C. MONETARY TERMS OF SETTLEMENT

1. Gross Settlement Amount and Timing of Payment

If the Court approves this Settlement, Defendant will pay a Gross Settlement Amount ("GSA") of $335,000.00. Moore Decl., ¶ 10, Exh. 2 (Settlement, ¶ 3.1). Significantly, this Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id*. Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id*.

Defendant shall fully fund the Gross Settlement Amount, including all amounts necessary to fully pay Defendant's share of payroll taxes, by transmitting such funds to the Administrator within 30 days after the Effective Date.[2] *See* Moore Decl., ¶ 10.

2. Deductions from Gross Settlement Amount

The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	**$335,000.00**
Minus Court-approved attorneys' fees (1/3 of GSA):	$111,666.67
Minus Court-approved, verified costs (up to $25,000.00):	$25,000.00
Minus Court-approved Class Representative Service Award:	$7,500.00
Minus Settlement Administration Costs:	$11,000.00
Minus PAGA civil penalties to LWDA and PAGA Employees:	$20,000.00
Net Settlement Amount ("NSA"):	**$159,833.33**

"Net Settlement Amount" ("NSA") means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: (a) the Individual PAGA Payments, (b) the LWDA PAGA Payment, (c) the Class Representative Service Payment, (d) the Class Counsel Fees Payment, (e) the Class Counsel Litigation Expenses Payment, and (f) the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. Settlement, ¶ 1.29. The Settlement requires Defendant to pay a NSA of at least $159,833.33 to all Settlement Class members who do not timely opt out. Moore Decl., ¶ 10 and Exh. 2.

[2] **"Effective Date"** means the earliest date by which both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final and no longer appealable. "Final and no longer appealable," as used in the definition of Effective Date shall mean the later of: (a) the day after the last date by which a notice of appeal, writ, or other appellate proceeding to the applicable Court of Appeal of the order and judgment approving the Settlement Agreement may be timely filed (i.e., 61 days from notice of entry of judgment); (b) if an appeal, writ, or other appellate proceeding is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving the Settlement Agreement passes, and no further review is requested; or (c) if an appeal, writ, or other appellate proceeding is filed and the order approving the Settlement Agreement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving the Settlement Agreement is affirmed. Settlement 1.19.

3. Class Representative Service Award

"[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of $7,500.00 for his services to the Settlement Class. Moore Decl., ¶ 28 and Exh. 2 (Settlement, ¶ 3.2.1); Palato Decl., ¶¶ 8-14. As will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Moore Decl., ¶ 28; Palato Decl., ¶¶ 8-14; Settlement ¶ 6.1.1.

4. Attorneys' Fees and Costs

California courts recognize an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of one-third of the GSA is well within the range of reasonableness, and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

Here, Class Counsel will apply for an attorneys' fees award of one-third of the GSA, which is estimated to be $111,666.67, and up to $25,000.00 in verified costs reimbursement. *See* Settlement, ¶ 3.2.2; Moore Decl., ¶ 27. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id*. Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. *Id*. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, analyzing Settlement Class members' timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form settlement agreement, preparing this Motion, and otherwise litigating the case. *Id*. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the final approval papers and attending the Final Approval hearing. *Id*.

The request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement in light of the substantial risks, significant work undertaken, the extremely positive results obtained for the class, and the efficiency with which the Parties conducted the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar analysis.

5. <u>Payroll Taxes</u>

The Settlement provides that Defendant's payroll taxes shall be paid separately from, and in addition to, and the Gross Settlement Amount. Settlement ¶ 3.1. Defendant agrees to deposit it with the Settlement Administrator on the same date the Gross Settlement Amount is due.

6. <u>Payment Formula</u>

Individual Class Payments are 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. Settlement, ¶ 3.2.4.

Thus, the average Individual Settlement Payment is projected to be approximately **$294.89, which is exclusive of the PAGA Amount.** Moore Decl., ¶ 10. There are approximately 67,000 workweeks between August 7, 2020 and April 10, 2025, which means the net value per workweek is approximately $2.38 ($159,833.33 / 67,000 Workweeks). *Id*. Therefore, the lowest estimated individual payment for a Settlement Class Member is $4.76 ($2.38 x 2 Workweeks), and the highest estimated individual payment for a Settlement Class Member is $597.38 ($2.38 x 251 Workweeks). Id.

<u>PAGA Amount</u>: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties, Seven Thousand Dollars ($7,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees, and

(b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Settlement, ¶ 3.2.5.1. There are approximately 419 Aggrieved Employees and thus the average PAGA Penalties payment to Aggrieved Employees is **<u>$16.70</u>**. *Id*. The Aggrieved Employees collectively worked a total of approximately 15,000 Pay Periods between August 7, 2023 and April 10, 2025, making the net value per Pay Period $0.46 ($7,000 / 15,000 Pay Periods). The lowest estimated PAGA Penalties payment to an Aggrieved Employee is estimated to be $0.92, while the highest estimated PAGA Penalties payment to an Aggrieved Employee is estimated to be $43.70 ($0.46 x 95 Pay Periods). Moore Decl., ¶ 12. Each Aggrieved Employee assumes full responsibility and liability for any taxes owed on his or her Individual PAGA Payment. *Id*.

7. <u>Tax Allocation</u>

For purposes of calculating applicable taxes and withholdings, 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). Settlement, ¶ 3.2.4.1. The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. *Id*. The remaining 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). *Id*. The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. *Id.* Each Participating Class Member assumes full responsibility and liability for any employee taxes owed on his or her Individual Class Payment. *Id.*

8. <u>PAGA Penalty</u>

The parties have agreed to a PAGA award of $20,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 65% of the amount attributable to PAGA penalties – or $13,000.00. Settlement ¶ 3.2.5. The total amount allocated to PAGA represents approximately 43% of the estimated PAGA exposure discussed above of $46,374.00. In addition, the $20,000 represents 5.9% of the $335,000.00 Gross Settlement Amount and is above the zero to two percent range for PAGA claims approved by Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or $20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or $1,500); *Nordstrom Comm'n Cases*, 186 Cal. App. 4th

576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under which no money was allocated to the PAGA claims).

VI. NOTICE ADMINISTRATION

A. QUALIFICATIONS AND EXPERIENCE OF ADMINISTRATOR

Phoenix Settlement Administrators ("PSA") has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, property damage, employment discrimination, employment wage and hour, product liability, insurance and consumer issues. Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed concurrently herewith ("Lawrence Decl.").

PSA's fees and expenses are estimated not to exceed $11,000.00. *See* Lawrence Decl., ¶ 14, Exh. F. This request is reasonable in light of the proposed class size of approximately 542 Settlement Class members and the costs and expenses associated with administering the notices and distributing the awards. Additionally, PSA will translate the Class Notice and will mail the Class Notices to Settlement Class Members in both English and Spanish.

B. CLASS DATA FROM DEFENDANT

Within 30 days after the Order granting Preliminary Approval is entered and served, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. Settlement, ¶ 4.2.

C. CLASS DATA UPDATED PRIOR TO INITIAL MAILING

Before mailing Class Notices, the Administrator shall update the Class Members' addresses using the National Change of Address database. Settlement, ¶ 8.1.

D. DEADLINE FOR INITIAL ISSUANCE OF NOTICE TO CLASS MEMBERS

Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice, with Spanish translation, substantially in the form attached to the Agreement as **Exhibit A**. The Class Notice shall prominently estimate (1) the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class

Member, and (2) the number of Workweeks and/or PAGA Pay Periods used to calculate these amounts. Settlement, ¶ 8.4.2.

E. NOTICE COMPLIES WITH CAL. RULES OF COURT, RULE 3.766(D)

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims, basic contentions and denials of the parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class member, provides them the opportunity to contest their total workweeks included in the notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Moore Decl., Exh. 2 (Settlement, Exh. A). The proposed Class Notice will also notify Settlement Class members of the final approval hearing date and provides Settlement Class members the contact information for Class Counsel, and advises Settlement Class members that they may enter an appearance through counsel if they wish to. This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

F. PROCESSING OF PAYMENTS

Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Settlement, ¶ 4.4. Disbursement of the Class Counsel Fee Award, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. *Id*.

G. UNDELIVERABLE CLASS NOTICES

No later than seven (7) days after the Administrator's receipt of any Class Notice returned by the USPS as undeliverable, the Administrator shall re-mail the Class Notice, via first-class USPS mail, using any forwarding address provided by the USPS. Settlement, ¶ 4.4.2. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. *Id*.

VII. RESPONSES TO NOTICE

A. REQUESTS FOR EXCLUSION

Class Members who wish to exclude themselves from (or opt-out of) the Settlement's release of class action claims must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion no later than the Response Deadline – *i.e.*, 45 days after the Administrator mails the Class Notice (plus an additional 14 days for any Class Member whose Class Notice is re-mailed). Settlement, ¶¶ 1.44, 8.4.4. A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's choice to be excluded from the Settlement and includes the Class Member's name, address, and email address or telephone number. Settlement, ¶ 8.5.2. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. *Id*.

B. RE-MAILED NOTICES

The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notices are returned by the USPS a second time. Settlement, ¶ 8.4.3.

C. OBJECTION PROCEDURES

Participating Class Members may send written objections to the Administrator by fax, email, or mail. Settlement, ¶ 8.7.3. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. *Id*. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline – *i.e.* 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed after having been returned as undeliverable). *Id*.

VIII. CY PRES DISTRIBUTION

For any Participating Class Member whose Individual Class Payment check is uncashed and cancelled after the void date of 180 days, and for any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the Controller's Unclaimed Property Fund, in the name of the Participating Class Member and/or Aggrieved Employee, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). Settlement ¶ 4.4.3. As all settlement funds will be distributed to the Settlement Class members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

IX. CONCLUSION

This Court should set a hearing for final approval of the Settlement on a date appropriately scheduled to follow the deadline by which Settlement Class members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

Therefore, for the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

Dated: June 30, 2025

Respectfully submitted,
LIDMAN LAW, APC

By: Milan Moore
Milan Moore

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