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Gene Kelley

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GENE KELLEY, individually, and on behalf of other members of the general public similarly situated,

Plaintiff,

v.

CALIFORNIA PROTECTION AND INVESTIGATION SERVICES, INC., a California corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 24STCV31470
Assigned to: Hon. Laura Seigle

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY; MEMORANDUM OF POINTS AND AUTHORITIES

[*Declaration of Arash Sadat and Declaration of Gene Kelley file concurrently; (Proposed) Order lodged concurrently*]

Date: February 17, 2026
Time: 9:00 a.m.
Dept: 17

Complaint Filed: November 27, 2024
Trial Date: None Set

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

PLEASE TAKE NOTICE that on February 17, 2026 at 9:00 a.m., or as soon thereafter as the case may be heard, in Department 17 of the Complex Litigation Program of the Los Angeles Superior Court of the State of California, located at 312 N Spring St, Los Angeles, CA 90012, Plaintiff Gene Kelley ("Named Plaintiff" or "Plaintiff"), on behalf of himself and all others similarly situated and aggrieved, will and hereby does move for Preliminary Approval of the proposed Class Action Settlement and Representative Action Settlement in this case.

This Motion is unopposed and based on the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement"), which is attached to the concurrently filed Declaration of Arash Sadat as **Exhibit 1**. Plaintiff further moves for an Order that:

1. Certifies a class for settlement purposes only;

2. For purposes of settlement, designates Plaintiff Gene Kelley as the Class Representative, and Arash Sadat and Camron Dowlatshahi of the law firm of Mills Sadat Dowlat LLP as Class Counsel;

3. Confirms ILYM Group, Inc. as the Settlement Administrator;

4. Approves, as to form and content, the Class Notice attached as Exhibit A to the Settlement Agreement submitted in support of this Motion;

5. Approves the form and content of the proposed method of participation in the settlement, requesting exclusion from the settlement, or objecting to the settlement;

6. Grants preliminary approval of the Class Action and PAGA Settlement; and

7. Sets a Final Approval and Settlement Fairness Hearing on the first available date on or after March 23, 2026 to provide time for the notice process and preparation of and proper service of the Motion for Final Approval.

This Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the concurrently filed declarations of Gene Kelley and Arash Sadat, and exhibits attached thereto, argument of counsel and upon such other material contained in the file and pleadings of this action.

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Dated: December 16, 2025

MILLS SADAT DOWLAT LLP

By: ______________________
Arash Sadat

Attorneys for Plaintiff, Gene Kelley, on behalf of himself and all others similarly situated and aggrieved

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL AND PROCEDURAL BACKGROUND

On August 12, 2024, Plaintiff Gene Kelley ("Plaintiff" or "Mr. Kelley") sent a demand letter to his former employer California Protection and Investigation Services, Inc. ("Defendant" or "CPIS," and together with Plaintiff, the "Parties") requesting his personnel file and payroll records in furtherance of putative wage and hour claims, including for unpaid overtime, unpaid meal and rest break premiums, and related penalties.

On September 26, 2024, counsel for Mr. Kelley (hereinafter "Plaintiff's Counsel" or "Class Counsel") submitted to the Labor and Workforce Development Agency ("LWDA") a Private Attorneys General Act ("PAGA") notice pursuant to Labor Code section 2699.3. The notice included allegations against CPIS regarding failure to pay minimum wage, failure to pay overtime compensation, failure to provide meal and rest breaks, failure to pay premiums, inaccurate wage statements, and failure to reimburse business expenses. Plaintiff received no indication that the LWDA intended to investigate.

On November 27, 2024, Mr. Kelley filed in Los Angeles Superior Court a Class and Representative Action Complaint, Case No. 24STCV31470 (the "Action" or "Operative Complaint"), asserting the following causes of action: (1) failure to pay minimum wage; (2) failure to pay overtime compensation; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to indemnify necessary business expenses; (6) waiting time penalties; (7) failure to provide accurate wage statements; and (8) PAGA. The Action was filed on behalf of Mr. Kelley himself and other aggrieved, non-exempt California employees and former employees of CPIS seeking civil penalties and unpaid wages, where applicable.

After obtaining a Right-to-Sue notice from the Civil Rights Department ("CRD") on November 27, 2024, Mr. Kelley that same day filed a complaint against CPIS in Los Angeles County Superior Court, Case No. 24TRCV04023 (the "Individual Complaint"), asserting the following causes of action: (1) wrongful termination in violation of public policy; (2) violation of the California Family Rights Act ("CFRA"); and (3) retaliation in violation of the CFRA.

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Thereafter, Plaintiff's Counsel and Defense Counsel engaged in informal discovery regarding Plaintiff's claims. In order to facilitate a settlement of the Action, the Parties agreed to attend mediation.

On August 14, 2025, the Parties participated in an all-day mediation presided over by Tripper Ortman, a well-regarded mediator, who has mediated many wage and hour class actions. The Parties engaged in good faith, arm's-length negotiations concerning possible resolution of the Action and were able to reach a settlement at the conclusion of mediation.

The Parties have conducted significant investigation of the facts and law during the prosecution of this Action. Prior to mediation, Plaintiff's Counsel obtained, through informal discovery, meal and rest break policies as well as the estimated number of pay periods, workweeks, and employees from December 2020 to August 2025. In addition, Plaintiff's Counsel reviewed and analyzed a sampling of time and payroll records for putative class members and aggrieved employees, Defendant's statements of wage-and-hour policies provided to putative class members and aggrieved employees, including employee handbooks, among other things. Plaintiff's Counsel conducted a statistical analysis of the information and presented the information during mediation. Plaintiff's Counsel also investigated the law as applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the potential damages claimed by Plaintiff.

Defendant denied, and continues to deny, each of the allegations asserted in the litigation, has repeatedly asserted and continues to assert defenses to Plaintiff's claims and contentions, and expressly denied and continues to deny that it engaged in any wrongdoing or has any liability arising out of any of the facts or conduct alleged in the litigation. Nevertheless, the Parties tentatively agreed upon terms to settle the litigation on a class and representative basis after considering the sharply disputed factual and legal issues involved in this litigation, the risks associated with further prosecution, and the substantial benefits to be received pursuant to the compromise and settlement of the Action.

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II. THE SETTLEMENT

Subject to court approval pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.679, *et seq.*, Plaintiff and Defendant have agreed to settle the Action by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached to the concurrently filed Declaration of Arash Sadat ("Sadat Decl.") as Exhibit 1. A summary of the terms of the settlement is as follows:

- Defendant will stipulate, for the purposes of this settlement only, to certification of a class defined as: persons who are employed or were previously employed by Defendant in California and classified as a non-exempt, hourly W-2 employee at any time from November 27, 2020 through October 13, 2025 (the "Class Period" and each individual in the class a "Class Member") (Sadat Decl., Exhibit 1, ¶¶ 1.5, 1.9, 1.13);
- Defendant shall pay a total of $560,000.00, which is referred to herein as the Gross Settlement Amount (*id.*, ¶ 1.22, 3.1);
- Defendant shall additionally be responsible for payment of the employer portion of payroll taxes due on the wage portion of each Individual Class Payment (*id.*, ¶ 3.1);
- 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 the Participating Class Member's Workweeks (*id.*, ¶ 3.3);
- The Administration Expenses, not to exceed $7,750.00, will be paid out of the Gross Settlement Amount (*id.*, ¶ 3.2.3);
- Class Counsel will apply for, and Defendant will not oppose, attorneys' fees of not more than one-third (1/3) of the Gross Settlement Amount, which fees are currently estimated to be $186,666.67, and Class Counsel Litigation Expenses of not more than $30,000.00, all of which will be paid out of the Gross Settlement Amount (*id.*, ¶ 3.2.2);
- Class Counsel will apply for, and Defendant will not oppose, an enhancement award (the "Class Representative Service Payment") of not more than $5,000.00 to Plaintiff, which will be paid out of the Gross Settlement Amount (*id.*, ¶ 3.2.1);

- All Participating Class Members will release CPIS and all other Released Parties from all claims that were alleged in or reasonably could have been alleged based on the facts occurring during the Class Period as stated in the PAGA Notice or the Operative Complaint. Except as set forth in Exhibit 1 at ¶ 6.3, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside of the Class Period (*id.*, ¶ 6.2);
- 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, expense reimbursement, interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS Forms 1099. Participating Class Members assume full responsibility and liability for any taxes owed on their Individual Class Payment (*id.*, ¶ 3.3.1);
- Defendant has agreed to pay $25,000.00 as PAGA Penalties, with sixty-five percent (65%) or $16,250.00 of which will be paid to the LWDA, and thirty-five percent (35%) or $8,750.00 of which will be allocated to the Individual PAGA Payments (*id.*, ¶ 3.2.4)—all of which shall be paid out of the Gross Settlement Amount; and
- Participating Class Members will have 180 days from the date of mailing of the check to cash their check. The face of each check shall prominently state the "void date." The Administrator will cancel all checks not cashed by the void date. (*id.*, ¶ 5.2.) For any check uncashed or cancelled after the void date, the Administrator shall transmit the funds represented by such checks to Legal Aid at Work, a Court-approved nonprofit organization or foundation consistent with California Code of Civil Procedure section 384, subdivision (b) ("Cy Pres Recipient"). (*id.*, ¶ 5.4.)

III. THE TWO-STEP APPROVAL PROCESS

Any settlement of class litigation must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review after notice has been distributed to the class members for their comment or objections. The Manual for Complex Litigation Second states at section 30.44:

> A two-step process is followed when considering class settlements ... if the proposed settlement appears to be the product of serious, informed, non collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representative or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement. (*Id.* at§ 10 (1985).)

Thus, the preliminary approval of the trial court is simply a conditional finding that the settlement appears to be within the range of the acceptable settlements. As class action Professor Herbert B. Newberg comments, "The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer or is presumptively valid subject only to any objections that may be raised at a final hearing." (4 Conte & Newberg, Newberg on Class Actions ["Newberg on Class Actions"], § 11.26 (4th Ed. 2002).)

The procedures for submission of a proposed settlement for preliminary approval is discussed at section 11.24 through 11.26 of Newberg on Class Actions. Newberg observes at section 11.24:

> 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.

The Settlement Agreement in this case is fair, reasonable, and in the best interest of the class.

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IV. THE PRESUMPTION OF FAIRNESS

A trial court has broad powers to determine whether a proposed settlement in a class action is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) A class action settlement is presumptively fair if it was reached through arm's-length negotiations between experienced counsel after extensive investigation, litigation, and discovery. (*Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California's public policy goal of favoring settlements. (*Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 ["public policy generally favors the compromise of complex class action litigation"].)

Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (Newberg on Class Actions, § 11.51; *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation* (N.D. Cal. May 17, 2017) No. 16-cv-00295, 2017 WL 2214655 (citing *United States v. Oregon* (9th Cir. 1990) 913 F.2d 576, 580).)[1]

Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. (*Hammon v. Barry* (D.D.C. 1990) 752 F.Supp. 1087, 1093 [citing Newberg on Class Actions, § 11.44, p. 457 and *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F.Supp. 471]; *In re Ikon Office Solutions, Inc. Securities Litigation* (E.D. Pa. 2002) 209 F.R.D. 94, 104 [citing *Sommers v. Abraham Lincoln Federal Savings & Loan Association* (E.D. Pa. 1978) 79 F.R.D. 571, 576].)

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in litigation for some period of time, appear to be competent, have experience with this type of

[1] This Motion occasionally cites federal case law and commentaries thereon which construe authority for conditional class certification and settlement approval in California courts. The California Supreme Court has authorized and urged California's trial courts to use federal resources for guidance in considering class issues. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-46.)

litigation, and have obtained substantial data from the opposing party. (*See* Newberg on Class Actions, § 11.47.) In this Action, the settlement was reached after extensive factual and legal research, informal discovery disputes, discussions between Class Counsel and the putative class member, preparation of damages analyses, and mediation with experienced employment class action mediator, Tripper Ortman.

The settlement that has been reached, subject to this Court's approval, is the product of tremendous effort and a great deal of expense by the Parties and their counsel. It is, of course, a compromise figure. However, counsel for the Parties are satisfied that this figure is reasonable in light of the risks and expense of continued litigation.

V. NOTICE OF SETTLEMENT AGREEMENT AND APPOINTMENT OF SETTLEMENT ADMINISTRATOR

A notice of settlement of a class action "must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." Rules of Court, rule 3.769(f). Attached to the Declaration of Arash Sadat as Exhibit 1 is the Settlement Agreement between the Parties. Attached to the Settlement Agreement as Exhibit A is the proposed Notice of Proposed Settlement of Class Action and Hearing Date for Final Court Approval ("Class Notice") to be distributed to the class members in English. The proposed Class Notice satisfies these requirements.

The Parties respectfully request that this Court approve the above-referenced Class Notice and dissemination of the Class Notice to the Class Members, consistent with the manner and timing as set forth in the Settlement Agreement. The Parties have agreed to use ILYM Group, Inc., an experienced settlement administrator, to administer the settlement. The Parties have further agreed that the administration costs will be paid out of the Gross Settlement Amount. It is requested that the Court appoint ILYM Group, Inc. to serve as the Administrator. The Parties and their counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

VI. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON OBJECTIVE EVIDENCE

A. The Circumstances of the Settlement Support Preliminary Approval

A proposed settlement is presumed to be fair when the following factors are present: (1) it is reached through arm's-length negotiations; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk*, 48 Cal.App.4th at p. 1802.) As analyzed above, the first three elements are satisfied here.

The circumstances of the settlement support preliminary approval. The law favors the settlement of lawsuits, particularly in class actions and other complex cases. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ["Voluntary conciliation and settlement are the preferred means of dispute resolution."].) Here, the settlement resolves a putative class and representative action.

In determining whether the settlement is actually within the range of fairness, courts consider additional factors such as the strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status throughout trial, the amount offered in settlement, and the experience and views of counsel. (*Hanlon v. Chrysler Corp.* (1998) 150 F.3d 1011, 1026, *overruled on other grounds by Wal-Mart v. Dukes* (2011) 564 U.S. 338; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128; *Dunk*, 48 Cal.App.4th at p. 1794, 1800-1801; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) Furthermore, courts give "proper deference to the private consensual decision of the parties[.]" (*Hanlon*, 150 F.3d at p. 1027.)

Here, applying a *Dunk/Kullar* analysis, the settlement is fair and reasonable based on objective evidence. The settlement that has been reached, subject to this Court's approval, is the product of substantial effort by the Parties and their counsel. The settlement was reached after extensive factual and legal investigation and research, a review of pleadings, informal discovery, exchanges of documents and information, statistical analysis of timekeeping records, review of Defendant's employment policies, discussions with Plaintiff and other witnesses regarding

Defendant's wage practices, correspondence and negotiation between counsel, settlement discussions prior to mediation, a full day of mediation, review of evidence and rulings in similar actions litigated elsewhere in the state, and a review of similar cases in the same industry elsewhere in the country. The settlement amount is, of course, a compromise figure. It considered the risks related to class certification, liability, damages, and all the defenses asserted by Defendant.

Plaintiff asserts that the wage and hour claims and the claims for resulting penalties would be certified. On the other hand, Defendant argued that: Plaintiff cannot meet the requirements of class certification as it claims that any wage discrepancies are not the product of an overarching policy or practice that was uniformly applied; that compliant meal and rest periods were made available; that Defendant did not deter employees from taking meal and rest periods; and that Defendant's meal and rest period policies are/were compliant. Defendant further contends that class certification would not be warranted because individual liability issues predominate over any class allegations.

While Plaintiff believes in his chances of success in certifying the claims if permitted, Plaintiff recognized the potential risk, expense, and complexity posed by litigation on a class basis. Plaintiff's claims in this Action—claims that involve numerous Class Members during the Class Period working with Defendant—would require substantial preparation and discovery and ultimately would involve the deposition and presentation of numerous more witnesses (including Class Members and expert witnesses), as well as the consideration, preparation, and analysis of expert reports. Therefore, further class litigation, if permitted, would have carried with it significant expense incurred by each side (above and beyond the tens of thousands of dollars of expense already incurred).

Again, Plaintiff and Defendant have very strong, and opposing, positions on liability in this case. Defendant denies any wrongdoing of any kind associated with the claims alleged in the Action, and further denies that, for any purpose other than that of settling this lawsuit, the allegations in the Action are appropriate for class treatment. In light of the sharply contested legal and factual issues, the risks of continued litigation, and substantial benefits to Class Members under the settlement, the terms and conditions of this class settlement are fair and reasonable to all sides.

B. <u>The Settlement Amount Is Well Within the Range of Reasonableness</u>

To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar,* 168 Cal.App.4th at pp. 116, 133.) The Court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Ibid.*) In making this determination, courts require "a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 [internal citation omitted].) The settlement amount reached in this case provides significant recovery to participating Class Members, based on the circumstances, and easily falls within the range of reasonableness.

1. Missed Meal Breaks

The allegation that Defendant deprived Class Members of meal and rest periods and failed to pay premium pay for those missed meal and rest breaks, was the driving force of this litigation. CPIS contends, in defense, that each of the potential issues is individualized and there is no uniform pattern or practice of depriving employees of meal or rest breaks meriting class certification.

In anticipation of mediation, CPIS produced limited data in response to Mr. Kelley's pre-mediation request. CPIS confirmed that timekeeping practices during the relevant period transitioned from paper-based logs to an electronic system (Homebase) in approximately September 2021. Based on the limited production, CPIS provided preliminary workweek and pay period counts, as follows: 16,988 workweeks for the class period of December 2, 2020, to March 30, 2025 and 3,213 pay periods for the PAGA period of September 26, 2023, to August 1, 2025.

Due to the absence of complete paper time records and based on CPIS' own representation that the available electronic records do not span the entire class period, Mr. Kelly's expert statisticians reasonably extrapolated the missing portions of the class and PAGA periods using the provided data and the consistent violation pattern shown in Mr. Kelley's timecard. As such, and in light of the uniform scheduling, expectations, and operation structure across CPIS, Mr. Kelley assumed a 100 percent violation rate for all shifts reflected in the extrapolated data.

Using the information and data provided by Defendant, an average (weighted) hourly wage of $23.43 during the class period, and assuming a 100 percent violation rate (which Defendant denies), the estimated damages for missed meal periods for shifts exceeding five hours, including interest, total $212,507. Additionally, during the same period, using the same average (weighted) hourly wage of $23.43, the estimated damages for missed meal periods for shifts exceeding six hours, including interest, total $193,008.

When applying a 100 percent violation rate (which Defendant denies) to the extrapolated shifts that are reflected in the pay data but not captured in the timekeeping data, the damages for missed meal periods for shifts over five hours, including interest, total $777,729. Lastly, under the same 100 percent violation rate assumption (which Defendant denies), the damages for missed meal periods for shifts over six hours, including interest, total $524,407.

2. Missed Rest Breaks

In Plaintiff's experience, the Class Members were routinely scheduled for shifts without any formal break structure or policy in place. CPIS did not provide formal rest periods for every four hours of work, and in many cases, Class Members worked long hours without any rest at all. Moreover, even when Class Members attempted to take breaks, they were often interrupted or required to remain available, rendering the break periods noncompliant.

CPIS contends that they have maintained throughout the Class Period compliant rest period policies; that compliant rest breaks always were made available to Class Members; and that individual issues predominate as to why rest periods were not taken (if not taken).

Based on Plaintiff's Counsel's analysis of payroll records and extrapolated data, and assuming a 100 percent violation rate for missed rest breaks (which Defendant denies), the estimated exposure for rest break premiums between December 2, 2020 to August 1, 2025, including interest, is $1,938,519 (based on 71,481 shifts and an average (weighted) hourly rate of

$23.43).

3. Recovery of Penalties

Plaintiff contends that he and Class Members would have been entitled to recover statutory penalties for CPIS's alleged failure to issue compliant wage statements under California Labor Code section 226, subdivision (e) and for CPIS's failure to issue all earned wages immediately upon termination or within 72 hours of resignation under California Labor Code sections 201, 202, and 203. Defendant denies these allegations. The statutory penalties are derivative of the wage and hour claims. As a result of Defendant's purported failure to provide compliant wage statements each pay period, each aggrieved employee could recover up to a maximum of $4,000.00 aggregate penalty pursuant to Labor Code section 226, subdivision (e), depending on the number of pay periods he or she was issued a non-compliant wage statement. As a result of CPIS' alleged failure to pay all earned wages immediately upon termination or within 72 hours of resignation (which Defendant denies), each former employee could recover up to a maximum of a 30-day penalty. These damages would total $1,915,167.

However, there are certain inherent risks associated with these claims. With respect to the wage statement claim, it commands a one-year statute of limitations period, which would significantly weigh on this claim. With respect to the waiting time penalty claim, Plaintiff anticipates that CPIS would argue that the Labor Code requires that there be a willful showing that the employer knew of its obligation and intentionally refused to act. (*Naranjo v. Spectrum Security Services* (2022) 13 Cal.5th 93, 126.)

4. PAGA Penalties

Plaintiff also alleged that Defendant's conduct created liability under PAGA, which Defendant denies. PAGA claims are extraordinarily difficult to evaluate because there are several obstacles to the actual award of the civil penalty. First, it is arguably unclear whether penalties continue to accrue until the court finds a violation to exist.

Second, Labor Code section 2699, subdivisions (e)(1) and (e)(2) give trial courts immense discretion to assess or lower the penalty amount. Indeed, several courts have exercised their broad discretion and have dramatically limited PAGA awards.

Third, defendants routinely argue that, when other statutory penalties have been imposed, additional penalties under PAGA are unjust (*e.g*., in cases where damages are already "in play" based on underlying wage violation claims, as we have here). (*See Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528 ["imposing the maximum [PAGA] penalty would be unjust, arbitrary, and oppressive . . ."]; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213, *disapproved on another ground in Cohen v. Superior Court* (2024) 102 Cal.App.5th 706, 720.)

The PAGA calculation herein for approximately 1,664 pay periods with at least one shift exceeding five hours that included an alleged short, late, or missed meal period could total $166,441. The PAGA calculation herein for approximately 1,614 pay periods with at least one shift exceeding six hours involving a short, late, or missed meal period could total $161,367. The likelihood of those sums ever being awarded is slim.

Additionally, there are 3,213 extrapolated pay periods with an alleged short or missing break period, totaling $321,300 in rest period penalties. Based on the extrapolated 3,213 pay periods and assuming a 100 percent violation rate (which Defendant denies), CPIS would be further liable for $803,250 in penalties for failing to furnish accurate wage statements. Moreover, 97 former employees are allegedly entitled to $9,716 total in waiting time penalties pursuant to Labor Code sections 201-203. Based on an extrapolated 505 employees, and assuming a 100 percent violation rate (which Defendant denies), CPIS could allegedly be liable for $105,000 in civil penalties for failure to maintain proper payroll records.

Despite this potential recovery, given that PAGA penalties would likely be deemed duplicative of other penalties awardable here, given the extreme "haircuts" many courts are giving to PAGA penalties and given the presence here of class-action allegations (the absence of which often being the reason so-called "Plan B" PAGA penalties are sought to begin with), PAGA penalties were discounted.

Nevertheless, the amount of PAGA civil penalties to be paid from the Gross Settlement Amount is fair to those affected (*see Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77) and is allocated at thirty-five percent (35%) to the aggrieved employees ($8,750.00) and sixty-five percent (65%) to LWDA ($16,250.00).

5. Gross Settlement Amount

Class Counsel obtained a Gross Settlement Amount of $560,000.00. This Gross Settlement Amount represents a significant recovery. Class Counsel considers this to be a fair, reasonable and adequate settlement for Class Members, when considering all issues and risks related to liability, the hurdles to class certification, and considering the case law regarding fair, reasonable, and adequate settlements. (*See, e.g.*, *Officers for Justice v. Civil Service Comm'n* (9th Cir. 1992) 688 F.2d 615, 628 ["It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not . . . render the settlement inadequate or unfair."])

VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Class Counsel seeks an attorneys' fees award of not more than one-third (1/3) of the Gross Settlement Amount, which fees are currently estimated to be $186,666.67, and Class Counsel Litigation Expenses of not more than $30,000.00. The requested fee falls well within the historical range of attorneys' fee awards under the common fund theory, which is generally from 25 to 50 percent. The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis. Indeed, this case was litigated with conflict between counsel, including whether penalties could be obtained for aggrieved employees in the form of unpaid wages, and the approximate number of class members and violations.

Moreover, when information was obtained through formal and informal means, extensive work was performed by Class Counsel, including the review of voluminous time and pay records and analyses regarding the certifiability and merits of each of Plaintiff's claims, the merits of those claims, and what damages would be recoverable. Additionally, thousands of dollars were expended, including in filing fees, for statisticians to analyze Defendant's data, and to attend mediation to try to resolve this Action.

The California Supreme Court has expressly recognized that the awarding of a percentage of the "common fund" created as a result of the settlement is an appropriate method for the calculation of an attorneys' fees award in a class action. (*Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503-504.) The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *see also Laffitte*, 1 Cal.5th at p. 489.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California Supreme Court stated that "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.*, p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*Id.*, p. 110.) The reasons for applying the common fund doctrine further include:

> . . . fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." (*Ibid.*)

The "lodestar method," which focuses on the amount of work done, is the alternative method for determining attorney fee awards. (*Lafitte*, 1 Cal.5th at p. 489.) Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re: Activision Securities Litigation* (N.D. Cal 1989) 723 F.Supp. 1373:

> This court is compelled to ask, 'Is this process necessary?' Under a cost-benefit analysis, the answer would be a resounding, 'No!' Not only do the Lindy Kerr Johnson analyses consume an undue amount of court time with little resulting advantage to anyone, but in fact, it may be to the detriment of the class members. They are forced to wait until the court has done a thorough, conscientious analysis of the attorneys' fee petition. Or, class members may suffer a further diminution of their fund when a special master is retained and paid from the fund. Most important, however, is the effect the process

> has on the litigation and the timing of settlement. Where attorneys must depend on a lodestar approach, there is little incentive to arrive at an early settlement."

(*Id*., p. 1375.) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Id.*, pp. 1378-79.)

This was reaffirmed in 2016 by the California Supreme Court. The California Supreme Court noted that "[c]urrently, all the circuit courts either mandate or allow their district courts to use the percentage method in common fund cases; none require sole use of the lodestar method." (*Lafitte*, 1 Cal.5th at p. 493 [citations omitted].) It further noted that "the Third Circuit itself holds that while both methods of calculating a fee may be used, the percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure." (*Ibid.* [citing *In re: Rite Aid Corp. Securities Litigation* (3rd Cir. 2005) 396 F.3d 294, 300].) And, as the California Supreme Court stated, "[m]ost state courts to consider the question in recent decades have also concluded the percentage method of calculating a fee award is either preferred or within the trial court's discretion in a common fund case." (*Lafitte*, 1 Cal.5th at p. 494.)

The California Supreme Court noted that even "[t]he American Law Institute has also endorsed the percentage method's use in common fund cases, with the lodestar method reserved mainly for awards under fee shifting statutes where the percentage method cannot be applied or would be unfair due to specific circumstances of the case. (*Ibid.* [citing ALI, Principles of the Law of Aggregate Litigation (2010) § 3.13].) It continued:

> Although many courts in common-fund cases permit use of either a percentage of-the-fund approach or a lodestar (number of hours multiplied by a reasonable hourly rate), most courts and commentators now believe that the percentage method is superior. Critics of the lodestar method note, for example, the difficulty in applying the method and cite the undesirable incentives created by that approach-i.e., a financial incentive to extend the litigation so that the attorneys can accrue additional hours (and thus, additional fees). Moreover, some courts and commentators have criticized the

> lodestar method because it gives counsel less of an incentive to maximize the recovery of the class.

(*Ibid.* [citing ALI, Principles of the Law of Aggregate Litigation (2010) § 3.13, com. b].)

"While the percentage method has been generally approved in common fund cases, courts have sought to ensure the percentage fee is reasonable . . . ." (*Id*., p. 495 [citations omitted].) Class Counsel's request for fees of approximately one-third (1/3) or approximately 33.33% of the Gross Settlement Amount is within the range of reasonableness. Notably, one-third of the common fund was the exact amount requested by class counsel in *Lafitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480. In that case, the trial court rejected the one-third common fund award and was reversed by the California Supreme Court, which determined that the trial court erred by not approving one-third of the common fund as class counsel's attorneys' fees award. (*Laffitte*, 1 Cal.5th at pp. 485-486, 506.)

This is also in line with attorney fee awards historically awarded in common fund cases. Indeed, historically, courts have awarded percentage fees in the range of 20 to 50 percent, depending on the circumstances of the case. (Newberg on Class Actions, § 14.03; *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1378.) According to Newberg on Class Actions, "No general rule can be articulated on what is a reasonable percentage of a common fund." Usually 50 percent of the fund is the upper limit on a reasonable fee award from a common fund in order to ensure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (Newberg on Class Actions, § 14.03.) Newberg on Class Actions further notes: "achievement of a substantial recovery with modest hours expended should not be penalized but should be rewarded for considerations of time saved by superior services performed." (*Id.*, § 14.01, p. 14-10:1411.)

Class Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with this class action on a pure contingency basis. The factual and legal issues posed in this case were evolving and difficult, particularly in light of the disputes between the Parties regarding discovery, violation rates, and other legal matters.

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Class Counsel has already expended significant hours on this matter, including through:

- the initial investigation of the matter, including extensive client interviews;
- seeking informal discovery from Defendant, including written policies, time records, and pay records;
- meeting and conferring regarding mediation, and negotiating with opposing counsel regarding the parameters thereof;
- analyzing written policies produced by Defendant;
- analyzing time and payroll records (in conjunction with Plaintiff) produced by Defendant;
- analyzing other documents (including purported meal and rest break policies) produced by Defendant;
- conducting witness interviews;
- preparing for and attending mediation;
- negotiating a Memorandum of Understanding;
- negotiating and finalizing a long form settlement agreement;
- preparing a draft class notice and obtaining bids for administration;
- filing a Class and Representative Action Complaint in this Action; and
- preparing this Motion for Preliminary Approval.

Moreover, further efforts will be necessary for preliminary and final approval. Based on Class Counsel's past experience in wage and hour class action litigation, Class Counsel is very likely to be called upon, after the Class Notice has been sent, to expend substantial amounts of additional time to help Class Members understand the terms of the proposed settlement, and to assist Class Members in the preparation and documentation of their claims.

It is also likely that, even after final approval of the settlement has been granted, Class Counsel will be called upon to expend additional amounts of time in the presentation and resolution of contests and disputes relating to Class Members' claims under the terms of the proposed settlement, as to the amounts of individual claims and perhaps other individual issues.

Finally, Class Counsel will have to work with the Settlement Administrator to submit a report to this Court regarding the distribution plan pursuant to Code of Civil Procedure section 384, along with a proposed amended judgment, which will require further time and cost.

Class Counsel's experience, qualifications, and reputation support the requested fee award. Courts commonly assess fees in light of the skill and experience of counsel, and here, Class Counsel possess extensive experience handling class and representative actions on behalf of employees. Class Counsel has served as lead counsel in numerous wage-and-hour class and PAGA actions in California state courts. Through this work, Class Counsel have developed significant familiarity with the complex and evolving legal issues unique to this area of law, making them well-equipped to prosecute claims on a representative basis.

Here, Class Counsel has also reasonably incurred $27,675 in litigation costs. Such costs were reasonably incurred because they were actually incurred and required to prosecute this Action. For example, they include, but are not limited to, the complaint filing fee, mediation fee, and expert witness fees. The complaint filing fee was required for Plaintiff to initiate this Action, and the mediation fee facilitated the Parties' settlement discussions, which ultimately led to the Agreement. The expert witness fees were paid to Plaintiff's statistician, who prepared the analysis that resulted in this settlement. The Parties have agreed to reimbursement of litigations costs not to exceed $30,000.00, and any un-awarded litigation costs shall be allocated to the Net Settlement Amount by the Administrator.

Thus, the Court should preliminarily approve the requested attorneys' fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case, the time expended, and the great risk undertaken by Class Counsel. The requested attorneys' fees will not be opposed by Defendant and are well within established guidelines.

VIII. <u>THE REQUESTED ENHANCEMENT AWARD TO THE NAMED PLAINTIFF AND CLASS REPRESENTATIVE IS REASONABLE</u>

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they incur in conferring a benefit on other members of the class. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399.) Plaintiff, who served as named plaintiff, is entitled to an enhancement award for his service as class representative, for answering extensive questions by Class Counsel, for being available by phone during mediation, and the risk in being the named plaintiff. Furthermore, Plaintiff will be providing Defendant a general release of all claims in exchange for the enhancement award.

Class Counsel can attest that Plaintiff devoted a great deal of time assisting counsel in this case, communicated with counsel frequently, and was a valuable participant in the strategy for and success of the mediation. Plaintiff risked intrusive discovery and the payment of employer costs. In the experience of Class Counsel, the typical enhancement award in wage and hour class actions ranges from approximately $10,000 to $40,000, although some awards are higher. (*See Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 [approving $50,000 participation award to a single class representative].) Here, Class Counsel seeks an enhancement of not more than $5,000.00 as a Class Representative Service Payment to Plaintiff for his service. Defendant does not oppose the requested enhancement to Plaintiff. The Declaration of Plaintiff Gene Kelley in support of the requested enhancement award is concurrently filed with this Motion.

IX. THE PROPOSED CLASS NOTICE IS ADEQUATE

Trial courts have wide discretion in fashioning an appropriate class notice. (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74.) "In regard to the contents of the notice, the notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members. . . . As a general rule, [the] class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251-52 [citation omitted].) Apart from case law, the California Rules of Court provide further guidance on the contents of a class notice. (Rules of Court, rule 3.766(d) and rule 3.769(f).)

Here, the proposed Class Notice approved by the Parties is attached as Exhibit A to the Settlement Agreement and meets all of the necessary criteria. The proposed Class Notice provides Class Members with an explanation of the case, how their individual settlement payments will be calculated, their option to participate in the Settlement, object to it, or exclude themselves along with the corresponding deadlines, their option to hire an attorney if they desire or appear without an attorney, the date of the final fairness hearing (which will be inserted in the materials once the date is set by the Court), and the binding effect of final approval for those individuals who do not exclude themselves from the Settlement. The proposed Class Notice also provides contact information for Class Counsel and the Settlement Administrator should Class Members have any questions. The proposed Class Notice meets all the requirements specified in the California Rules of Court, provides "sufficient information" about the Settlement and Class Member options, and therefore, merits Court approval.

X. THE PROPOSED CY PRES RECIPIENT IS APPROPRIATE

For any portion of the Net Settlement Sum or PAGA Payment allocated to Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their respective settlement checks within 180 days, the remaining amount shall be paid to Legal Aid at Work under the doctrine of *cy pres*. Utilizing a *cy pres* beneficiary is reasonable and appropriate in this case pursuant to California Code of Civil Procedure section 384m subdivision (b), to ensure any unclaimed funds are distributed to the fullest extent possible in a manner that furthers the purposes of this wage and hour class action and PAGA case.

The proposed *cy pres* beneficiary, Legal Aid at Work, is a nonprofit organization that partners with low-wage and marginalized workers in California to help them understand and assert their workplace rights through free legal clinics, individual representation, and policy advocacy. These services promote the same goals as this lawsuit, namely, ensuring that workers are paid properly and treated lawfully. The Parties, Class Counsel, and Defense Counsel have no financial or other relationship or any involvement in the governance or work of the proposed *cy pres* recipient, and the organization qualifies as an appropriate *cy pres* beneficiary under California law.

In the event the Court does not approve of the proposed *cy pres* recipient, Class Counsel and Defendant's Counsel agree that any uncashed settlement checks shall instead be transmitted to the California State Controller's Office as unclaimed property in the name of the respective Class Member, in accordance with applicable law. The Parties are prepared to stipulate to this alternative procedure to ensure compliance with Code of Civil Procedure section 384 and to facilitate approval of the settlement.

XI. <u>CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES</u>

A. <u>The Class Should Be Preliminarily Certified</u>

In California, there are two certification prerequisites: (1) the existence of an "ascertainable class" and; (2) "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." (*Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th 639, 647.) In addition, as set forth above, California courts utilize the procedures prescribed by the Federal Rules of Civil Procedure in class actions filed in California. (*Schneider v. Vennard* (1986) 183 Cal.App.3d 1340, 1345-46; *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 695; *Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800.)

Indeed, to certify a class, the party advocating class treatment must demonstrate: (1) a numerous class; (2) predominant common questions of law or fact; (3) class representatives with claims or defenses typical of the class; and (4) class representatives who can adequately represent the class. (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, 1360 (citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Each criteria is satisfied here:

1. Numerosity – According to the California Supreme Court, a putative class is sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable, and thus, substantial benefits accrue both to litigants and the courts if the action proceeds as a class action. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) While no set number is required as a matter of law for the maintenance of a class action, the California Supreme Court has upheld a class size as low as ten (10) members. (*See Hendershot v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1222.)

While as few as ten (10) class members can be sufficiently numerous, Defendant identified far more (*i.e.*, 505) putative Class Members. This number exceeds the minimum number of individuals required to meet the numerosity requirement. In short, this number is sufficiently numerous to establish the numerosity requirement; in fact, it is nearly enough for numerosity to be *presumed* satisfied.

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2. Identifiable – Here, the class is identifiable because its definition is precise and comprised of objective criteria rendering the Class Members discernable. The objective criteria includes the nature of the position held by the Class Member (*i.e.*, non-exempt); the time period during which the Class Member held the position (*i.e.*, from November 27, 2020 through October 13, 2025); the state in which the Class Member worked (*i.e.*, California); and the employer of the Class Member (*i.e.*, Defendant). Such objective terms are sufficient for finding a class identifiable. (*See e.g., Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959-60.)

3. Commonality – California law also requires that "questions of law or fact common to the class [be] substantially similar and predominate over the questions affecting the individual members." (*In re Steroid Hormone Product Cases* (2010) 181 Cal.App.4th 145, 153.) Common issues predominate when they would be "the principal issues in any individual action, both in terms of time to be expended in their proof and of their importance." (*Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800,810; *see also Hatashi v. First American Home Buyers Protection Corp.* (2014) 223 Cal.App.4th 1454, 1462-1463.) Common questions need only be "sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of suits." (*Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800, 810.) Commonality is easily satisfied if there is one issue common to class members. (*Hanlon v. Chrysler Corp.* (9th Cir. 1988) 150 F.3d 1011, 1019.)

Here, common issues include, without limitation, whether Defendant violated applicable wage and hour laws, *i.e.*, failed to pay employees for all time under Defendant's control, or failed to provide uninterrupted meal and rest periods or compensation in lieu thereof. Because there are common issues, this requirement is satisfied for purposes of settlement.

4. Typicality – Typicality requires only that the named plaintiff's interests in the action be significantly similar to those of other class members. (*Williams*, 221 Cal.App.4th at 1360 (citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021).) A representative plaintiff's claims are typical if they arise from the same event, practice, or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theories. (*Miller v. Woods* (1983) 16 Cal.App.3d 862,874; *accord In re Broadwing, Inc. ERISA Litigation* (S.D. OH. 2006) 252 F.R.D. 369, 377 [citing *In re Am. Med.*

Sys. (6th Cir. 1996) 75 F.3d 1069, 1079) quot. Newberg on Class Actions, § 3-13 at 3-76].) Indeed, when the same underlying conduct affects the named plaintiff and the class sought to be represented, the typicality requirement is met irrespective of any varying fact patterns that may underlie individual claims. (*See Daniels v. Centennial Group, Inc.* (1993) 16 Cal.App.4th 467, 473.)

As the court in *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341 explained: "[I]t has never been the law in California that the class representative must have ***identical*** interests with the class members. The only requirements are that common questions of law and fact ***predominate*** and that the class representative be ***similarly*** situated." (*Id.* at 1347 [citations omitted, emphasis in original].)

In this case, Plaintiff's claims are precisely the same as those of the class he seeks to represent: like other members of the Class, he was employed by Defendant during the relevant time period as a non-exempt employee, and Plaintiff contends that Defendant's wage policies were uniformly applied to its non-exempt employees. Accordingly, Plaintiff's claims are typical of those of the Class Members.

5. Adequacy of Representation – To maintain a class action, the representative plaintiff must adequately protect the interests of the class. (*Williams*, 221 Cal.App.4th at 1360.) Adequacy of representation consists of two components. First, there must be no disabling conflicts of interest between the class representatives and the class. Second, the class representative must be represented by counsel who are competent and experienced in the kind of litigation to be undertaken. (*See McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450; *In re Juniper Networks, Inc. Securities Litigation* (N.D. Cal. 2009) 264 F.R.D. 584, 590.)

Both criteria are met in this instance:

i. *No Disabling Conflict of Interest Exists Between Class Representatives and the Class*

No conflicts, disabling or otherwise, exist between Plaintiff and Class Members because Plaintiff and Class Members have allegedly been damaged by the same purported conduct (*i.e.*, they were classified as non-exempt employees, not paid premium pay, etc.), and thus, Plaintiff has the incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery.

ii. *Class Counsel Are Experienced Attorneys, Especially in the Realm of Wage and Hour Cases*

Class Counsel are experienced employment litigation attorneys with a successful track record litigating wage-and-hour matters. They currently serve as lead counsel in multiple pending wage-and-hour class and representative actions across California jurisdictions, including several that have already obtained preliminary approval of class and PAGA settlements. After a thorough investigation and settlement discussions, the Parties arrived at terms that they viewed as in the best interest of both the Class Members and the Parties.

Plaintiff's goals have been realized via redress for the employees whose wage and hour rights were violated. While Defendant denies liability, it has nonetheless agreed to settle the matter to avoid any potential expense. Should the Court refuse to grant preliminary approval of this Settlement, many of the Class Members may be denied any recourse for Defendant's alleged violations.

6. Superiority of Class Action – Also relevant to the Court's certification decision is whether a class action is the superior method of adjudication. (*Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) In that vein, "[t]his state has a public policy which encourages the use of the class action device." (*ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 299 [citing *Sav-On Drug Stores, Inc. v. Sup. Ct.* (2004) 34 Cal.4th 319, 240].) Indeed, "with respect to the superiority of the class action mechanism . . . courts regularly certify class actions to resolve wage and hour claims." (*Id*., p. 300.) "In this arena the class action mechanism allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation." (*Ibid*.) Moreover, the issues slated for contest are primarily common issues involving common evidence. It would not be efficient or fair to relegate these complaints to multiple trials." (*Ibid.* [citing *Bufil v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1208]; *see also Brinker Restaurant*

Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1034.)

> Indeed, as the California Supreme Court elaborated in *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 'a theory of liability that an employer has a uniform policy and that that policy measured against wage order requirements, allegedly violates the law - is by its nature a common question entirely suited for class treatment. [Citation.] In the general case to prematurely resolve such disputes, conclude a uniform policy complies with the law, and thereafter reject class certification ... places defendants in jeopardy of multiple class actions, with one after another dismissed until one trial court concludes there is some basis for liability and in that case approves class certification. [Citation.] It is far better from a fairness perspective to determine class certification independent of threshold questions disposing of the merits, and thus permit defendants who prevail on those merits, equally with those who lose on the merits, to obtain the preclusive benefits of such victories against an entire class and not just a named plaintiff.

(*ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 300 [quoting *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1034].)

The *ABM Industries Overtime Cases* Court further noted that:

> California courts consider 'pattern and practice evidence, statistical evidence, sampling evidence, expert testimony, and other indicators of a defendant's centralized practices in order to evaluate whether common behavior towards similarly situated plaintiffs make class certification appropriate. [Citation.] Other relevant factors include 'whether the class approach would serve to deter and redress alleged wrongdoing.' [Citation.] Moreover, in the wage and hour context, ' [w]e have recognized that retaining one's employment while bringing formal legal action against one's employer is not 'a viable option for many employees,' 'and thus a class action may be appropriate as a current employee who individually sues his or her employer is at greater risk of retaliation.' [Citations.] And ... our high court noted that class actions may be particularly useful for immigrant workers with limited English language skills, as illegal employer conduct might otherwise escape their attention.'

(*ABM Industries Overtime Cases*, 19 Cal.App.5th at p. 300 [citations omitted].)

The California Supreme Court has also noted that where few individual suits are brought by putative class members, it indicates that they have little interest in personally controlling their claims. (*Dynamex Operations West, Inc. v. Sup. Ct.* (2018) 4 Cal.5th 903, 924.) The Court should also consider that "consolidating all the claims before a single court would be desirable because it would allow for consistent rulings with respect to all the class members' claims." (*Id.*)

This wage and hour class action is no exception and meets all the criteria to establish that it is a superior vehicle for resolution of the issues it seeks to resolve. First, it pertains to purported uniform practices, including Defendant allegedly: not paying its non-exempt employees for all time under Defendant's control, not making meal and rest breaks available to non-exempt employees, not paying meal and rest break premiums for missed meal and rest breaks, which allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation, and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation. It is also brought by a former employee who is not at as great a risk of retaliation as current employees, who are less likely to seek such redress for themselves.

In addition, Plaintiff is not aware of any other action against Defendant brought on an individual basis for redress, which signals that putative Class Members have little interest in personally controlling their claims. Further, a class action would eradicate the concern of inconsistent rulings regarding the wage and hour issues brought as part of this class action.

Thus, the class action meets all criteria for certification. Importantly, a lesser standard of scrutiny applies when evaluating these criteria for settlement purposes. (*Dunk*, 48 Cal.App.4th at p. 1807 n.19 [there is a "lesser standard of scrutiny for settlement cases" (citations omitted)].) Accordingly, the Class meets all criteria for certification and should be certified for purposes of effectuating this settlement. (*Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 664, 654 ["[i]f the statutory criteria are satisfied, a trial court is under a duty to certify the class and is vested with no discretion to deny certification based upon other considerations"].)

XII. CONCLUSION

The proposed Class and PAGA Settlement is fair, adequate, and reasonable. It will result in substantial payments to Class Members and Aggrieved Employees. It is non-collusive and it was achieved as the result of informed, extensive, and arm's-length negotiations conducted by counsel for respective Parties, who are experienced in wage and hour class action litigation.

For the foregoing reasons, the Parties respectfully request that the Court grant preliminary approval of the proposed settlement as set forth in the attached Settlement Agreement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice submitted herewith, and set a date for the final approval hearing.

Dated: December 16, 2025

MILLS SADAT DOWLAT LLP

By: ______________________________
Arash Sadat

Attorneys for Plaintiff, Gene Kelley,
on behalf of himself and all others similarly
situated and aggrieved

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 333 South Hope Street, 40th Floor, Los Angeles, CA 90071. I made service at the direction of a member of the Bar of this Court.

On December 16, 2025, I served the foregoing document(s) described as **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY; MEMORANDUM OF POINTS AND AUTHORITIES** on the person(s) below, as follows:

AARON H. COLE aaron.cole@ogletree.com OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C. 400 South Hope Street, Suite 1200 Los Angeles, CA 90071	Attorneys for Defendant California Protection and Investigation Services, Inc.
BRIANA LABRIOLA briana.labriola@ogletree.com OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C. Park Tower, Fifteenth Floor 695 Town Center Drive Costa Mesa, CA 92626	

☑ **(BY E-MAIL OR ELECTRONIC TRANSMISSION)** Pursuant to Cal. Code of Civ. Proc. § 1010.6(e), I transmitted the document(s) electronically to the person(s) at the e-mail address(es) listed above. The transmission was reported as complete and without error.

Executed December 16, 2025 at Los Angeles, California

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Isabella Fiorentino