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and all similarly aggrieved employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

EDWARDO JACQUEZ, on behalf of himself and all similarly aggrieved employees,

Plaintiff,

v.

DANECO ELECTRIC INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No. 24CV003077

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

Date: November 20, 2026
Time: 8:30 a.m.
Dept.: 14

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 9, 2026, at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Ian A. Rivamonte in Department 14 of the above-referenced Court, located at 1200 Aguajito Road, Monterey, California, Plaintiff Edwardo Jacquez ("Plaintiff") will seek an Order:

(1) approving the Joint Stipulation of Class Action and PAGA Settlement ("Settlement" or "Settlement Agreement") in this matter;

(2) conditionally certifying the following Class for settlement purposes only:

> All current and former non-exempt employees of Defendant who worked in California at any time from October 7, 2020, through September 19, 2026.

(3) appointing Plaintiff as Class Representative, and the law firms Fitzpatrick & Swanston and Diversity Law Group, P.C., as Class Counsel;

(4) preliminarily approving the Settlement Agreement and the total Gross Settlement Amount in the amount of Four Hundred Forty-Five Thousand Dollars and 00/100 Cents ($445,000.00);

(5) finding on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement, including the amount of Plaintiff's service award, attorneys' fees and costs, settlement administration costs, and the allocation of payments to Class Members that could ultimately be given final approval by this Court;

(6) approving the Notice Packet to be sent to Class Members;

(7) appointing Phoenix Settlement Administrators as the Settlement Administrator; and

(8) setting the matter for a Final Approval hearing.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify a class for settlement purposes.

The basis for this Motion, filed without any opposition from Defendants Daneco Electric, Inc., and Dane Whitehead, is that the proposed settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity

of Class Members to participate in, opt-out of, or object to the settlement.

This Motion will be based on the attached Memorandum of Points and Authorities, the Settlement Agreement and the proposed Notice Packet, and the supporting Declarations of B. James Fitzpatrick, Sean S. Kaneshiro, Larry W. Lee, Simon L. Yang, Plaintiff Edwardo Jacquez, and upon the oral arguments of counsel (should there be any) and on the complete records and file herein.

Dated: October 20, 2026

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

By: /s/ B. James Fitzpatrick
B. James Fitzpatrick
Larry W. Lee
Attorneys for Plaintiff,
Edwardo Jacquez

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I. INTRODUCTION

This is a wage and hour class and representative Private Attorneys General Act ("PAGA") action seeking statutory and civil penalties under the California Labor Code. Plaintiff Edwardo Jacquez ("Plaintiff") alleges that Defendants Daneco Electric, Inc. and Dane Whitehead (collectively "Defendant) failed to pay all minimum and overtime wages, failed to provide proper off-duty meal and rest periods or pay premiums in lieu thereof, failed to reimburse business expenses, failed to provide accurate itemized wage statements, failed to timely pay all wages and upon separation of employment, and engaged in unfair business practices. Plaintiff brings class and PAGA claims based on these violations. The Parties have reached a proposed class and PAGA action settlement, the terms of which are reflected in the Parties' Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Settlement Agreement," or "SAR").

Prior to the settlement of this action, the Parties thoroughly investigated the facts relating to the class and PAGA claims alleged in the lawsuit and engaged in a thorough study of legal principles applicable to the claims asserted against Defendant. Through the exchange of informal discovery, Defendant provided necessary data pertaining to the number of putative class members and number of workweeks at issue, a sample of time and pay records of the putative class members, as well as information pertaining to Defendant's payroll policies and practices. Thereafter, the Parties attended a full day of mediation with Christopher Panetta, Esq., of Fenton & Keller. As a result, the Parties reached the current settlement of the class and PAGA claims. The following represents the key terms of the settlement:

- Gross Settlement Amount of $445,000.00, which will be paid by Defendant and distributed to the Class on a **non-reversionary** basis (*See* SAR ¶ 6);
- Estimated Class of 169 individuals (*Id*. ¶ 1.5);
- Class Members do **not** need to submit claim forms to participate in the settlement (*Id*. ¶ 5.3);
- Plaintiff's Service Award of up to $5,000.00 (*Id*. ¶ 5.1.2);
- Class Counsel's attorneys' fees of up to $148,333.33 (1/3 of the Gross Settlement Amount) (*Id*. ¶ 5.1.1);

- Actual litigation costs and expenses up to $25,000.00 (*Id*. ¶ 5.1.1);
- Settlement Administration Costs of up to $7,000.00 (*Id*. ¶ 5.1.3);
- PAGA penalties of $45,000.00, of which 65% or $29,250.00 will go to the LWDA, and 35% or $15,750.00 will be distributed to PAGA Members, defined as "all current and former non-exempt employees who worked for Defendants in the State of California at any time" from "July 17, 2023, through September 21, 2026". (*Id*. ¶¶ 1.17, 1.18, 5.1.4);
- Net Settlement Amount of at least approximately $214,666.67 (*Id*. ¶ 1.16);
- Raw average of approximately **$1,270.22** to each Participating Class Member ($214,666.67 ÷ 169 Class Members).
- Workweek Value is $14.70 ($214,666.67 ÷ 14,600 Workweeks).

The Parties believe that the settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, adequate, and reasonable in light of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiff and his counsel are confident that they could prevail on class certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific risks that a class might not be certified, that Plaintiff could fail to establish liability, and/or that Plaintiff would be unable to prove damages in the amounts sought. Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. PROCEDURAL HISTORY

On July 17, 2024, Angel Mendoza provided written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendant Daneco of alleged Labor Code violations on behalf of himself and other current and former aggrieved employees pursuant to the Private Attorneys General Act of 2004 ("PAGA"). The notice alleged multiple wage-and-hour violations on behalf of Mr. Mendoza and all other aggrieved employees. On July 23, 2024, Mr. Mendoza filed the instant Action. Declaration of B. James Fitzpatrick "Fitzpatrick Decl." ¶ 3.

On September 17, 2024, Plaintiff Eduardo Jacquez ("Plaintiff") provided a second written notice to the LWDA and Daneco. Like Mr. Mendoza's earlier notice, Plaintiff's notice

alleged the same general categories of wage-and-hour violations, including failure to provide compliant rest periods in violation of Labor Code section 226.7; failure to maintain accurate records of all hours worked in violation of Labor Code section 1174, subdivision (d); failure to pay overtime wages in violation of Labor Code sections 510 and 1194; failure to reimburse necessary business expenses, including expenses associated with the required use of personal vehicles and cellular telephones, in violation of Labor Code section 2802; failure to provide accurate itemized wage statements in violation of Labor Code section 226; and failure to timely pay all wages during employment and upon separation from employment in violation of Labor Code sections 201, 202, 203, and 204. Fitzpatrick Decl. ¶ 4.

On October 7, 2024, Plaintiff filed a First Amended Complaint in the Mendoza Action, adding himself as a named plaintiff and putative class representative. On November 5, 2024, Plaintiff amended the complaint to name Dane A. Whitehead as a defendant in place of Doe 1. On November 26, 2024, Plaintiff filed a separate representative action pursuant to PAGA against Defendant in the San Benito County Superior Court, Case No. CU-24-00297 (the "PAGA Action"). Fitzpatrick Decl. ¶ 5.

On December 5, 2024, Mr. Mendoza was dismissed as a named plaintiff and putative class representative. Thereafter, on March 11, 2025, Plaintiff filed the operative Second Amended Complaint in the Mendoza Action. The Second Amended Complaint removed Mr. Mendoza as a plaintiff and left Mr. Jacquez as the sole named plaintiff and putative class representative. The Second Amended Complaint also asserted Mr. Jacquez's individual claims for retaliation and wrongful termination. Fitzpatrick Decl. ¶ 6.

During litigation of the action against Defendant, the Parties agreed to exchange information informally to evaluate their respective claims and defenses. Fitzpatrick Decl. ¶ 7. The Parties subsequently engaged in informal discovery for Plaintiff to assess the claims, as well as the maximum exposure of damages and penalties. Defendant provided Plaintiff's counsel with informal data and information pertaining to the putative class size and number of pay periods, a sample of time and pay records of the employees, and information concerning the extent of Defendant's wage and hour policies and practices. *Id.* ¶ 7.

On July 21, 2026, the Parties attended mediation with Christopher Panetta, Esq., of Fenton & Keller. Fitzpatrick Decl. ¶ 10.

After thorough investigation and evaluation of the facts and claims at issue, and arm's length negotiations facilitated by the mediator, the Parties reached a global settlement of the Action. Fitzpatrick Decl. ¶ 11.

A. The Operative Complaint

Plaintiff's class and PAGA claims as pled in the operative Complaint are predicated upon the following allegations. With respect to Plaintiff's failure to pay wages claims, Plaintiff contends that Defendant's timekeeping and payroll practices resulted in employees being undercompensated for hours they worked. Plaintiff's analysis of the available time and payroll data identified discrepancies between employees' recorded hours and the hours for which they were paid, reflecting alleged time shaving and rounding practices that disproportionately resulted in underpayment. Plaintiff contends that this practice resulted in employees performing work for which they were not fully compensated, including regular, overtime, and double-time work. Fitzpatrick Decl. ¶ 12.

With respect to the meal and rest period claim, Plaintiff contends that employees did not receive proper meal and rest breaks during their shifts. Defendant failed to pay premiums for missed, late, or interrupted breaks. To date, Plaintiff has yet to receive payment of all wages owed. Fitzpatrick Decl. ¶ 13.

With respect to the business reimbursement claim, Plaintiff contends that Defendant required employees to use their personal cellular telephones for work-related purposes without fully reimbursing them for the associated expenses. Plaintiff's analysis indicates that Defendant did not provide cellular telephone reimbursements until 2024, after which Defendant began providing reimbursements at amounts that Plaintiff contends remained insufficient. Fitzpatrick Decl. ¶ 14.

Plaintiff further contends that Defendant failed to properly calculate the regular rate of pay for employees who earned both regular wages and prevailing wages. Specifically, Plaintiff contends that Defendant failed to appropriately account for both rates when calculating

overtime compensation. Based on the information available at the time of Plaintiff's analysis, Plaintiff contends that this potential exposure may have increased during later periods of employment and intended to further investigate the issue through supplemental discovery and the deposition of Defendant's person most qualified if the matter did not resolve. Fitzpatrick Decl. ¶ 15.

With respect to the wage statement claims, Plaintiff contends that Defendant issued inaccurate itemized wage statements as a result of the alleged underlying wage and hour violations. Specifically, Plaintiff contends that Defendant's wage statements failed to accurately report all hours worked, all wages earned, and premium wages allegedly owed for missed, late, short, or interrupted meal and rest periods. Plaintiff further contends that the discrepancies identified between recorded and paid time resulted in wage statements that did not accurately identify the hours worked and wages earned by employees. Fitzpatrick Decl. ¶ 16.

As a result of the alleged violations above, Plaintiff seeks damages and penalties under the California Labor Code, the California Business & Professions Code, and the PAGA, as well as attorneys' fees and costs. Fitzpatrick Decl. ¶ 17. Defendant has at all times denied Plaintiff's collective allegations and has asserted factual and legal defenses to the above claims, including that Defendant maintained procedures that comply with California law, that individualized issues predominate, and that trial on a class or representative basis would be unmanageable. *Id.* ¶ 17.

III. DISCUSSION

Any settlement of a class action lawsuit 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, Third* § 30.41 states:

> Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly

> preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice…be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.

(Fed. Jud. Ctr., 3rd ed. 1995).

Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, "[t]he 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." Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th ed. 2002).

The procedures for the parties' submission of a proposed settlement for preliminary approval by the court also are discussed in *4 Newberg on Class Actions*:

> 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 settlement, form of payment, manner of determining the effective date of settlement and any recapture clause.

Id. § 11.24.

Here, the Parties have reached such an agreement and have submitted to this Court, in connection with this Motion, a copy of the Settlement Agreement fully setting forth the agreement reached among the Parties. The Settlement Agreement sets forth all terms of the agreement reached by the Parties, which include, among other things, the method for calculating the Class Members' Individual Settlement Payments.

The parties also may, at the preliminary approval stage, request that the court provisionally approve certification of the class – conditional upon final approval of the settlement. "[P]re-certification settlements are routinely approved if found to be fair and

reasonable." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *accord Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was reached before any "adversary certification," the court was satisfied that it was "fair, adequate and reasonable"); *In re Baldwin-United Corp*., 105 F.R.D. 475, 478 (S.D.N.Y. 1984) ("many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals"). As further explained by Professor Newberg:

> The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal…may be set out in conditional orders granting tentative approval to the various items submitted to the court. Three basic rulings are often conditionally entered at this preliminary hearing. These conditional rulings may approve a temporary settlement class, the proposed settlement, and the class counsel's application for fees and expenses.

4 Newberg on Class Actions § 11.26.

In addition to such terms as class identification, settlement amount, and payment procedures, the Settlement Agreement reached among the Parties contains a provision pursuant to which the Parties stipulate to the Court's provisional certification of the Settlement Class for the purposes of this settlement only. SAR ¶ 2.7.

A. Proposed Class Definition

The current settlement is being settled on behalf of "all current and former non-exempt, hourly employees of Defendant who worked in California at any time from October 7, 2020, through September 19, 2026. SAR ¶¶ 1.5, 1.7. Defendant estimates that there are approximately 169 individuals that comprise the Class. SAR ¶ 1.5.

Pursuant to the Settlement Agreement, the Net Settlement Amount will be apportioned among the Class Members based on the total number of workweeks for each Class Member during the Class Period. As some Class Members received a portion of approximately $403,000 in remedial payments made by Defendant during the course of the litigation, number of workweeks for Class Members who did not receive any remedial payments shall be multiplied by five. SAR ¶ 5.3.2. Based on the data provided to Plaintiff, there are approximately 14,600 Workweeks worked in the Class Period by 169 Class Members. SAR ¶

1.5. If at the time of Preliminary Approval, the actual number of workweeks worked by the entire Class during the Class Period ("Actual Workweeks") exceeds the Estimated Workweeks by 110% (i.e., 16,060 workweeks), then Defendant will have the option to either (i) end the Class Period as of the date that 16,060 workweeks have been worked by Class Members or (ii) increase the Gross Settlement Amount by one percent (1%) for every percentage increase above 10%. SAR ¶ 5.1.

B. Settlement Terms and Evaluation

Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co*., 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig*., 560 F. Supp. 957, 962 (N.D. Ga. 1980). 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. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc*., 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig*., 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

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 informal discovery and negotiations for some period of time, appear to be competent, have experience with this type of litigation, and have exchanged substantial evidence from the opposing party. *See 4 Newberg on Class Actions*, *supra* § 11.47; *Nat'l Rural Telecomms. Coop*., 221 F.R.D. at p. 528 ("[s]o long as the integrity of the arm's length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement…[citations] and 'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation").

Here, both Plaintiff's and Defendant's counsel have a great deal of experience in wage and hour class action litigation. Plaintiff's counsel have been approved as class counsel in a

number of wage and hour class actions and have extensive litigation experience. Fitzpatrick Decl. ¶ 45; Kaneshiro Decl. ¶¶ 4-6; Lee Decl. ¶¶ 5-8; Yang Decl. ¶¶ 3-6;. Each side has apprised the other of their respective factual contentions, legal theories, and defenses, resulting in negotiations taking place between the Parties.

Prior to the mediation, Plaintiff engaged in informal discovery. Plaintiff was provided with data pertaining to putative class members during the relevant class period, as well as a sample of time and payroll records. Fitzpatrick Decl. ¶ 8. From this data, Plaintiff was able to investigate the claims asserted and conduct an exposure analysis that informed Plaintiff's position at the mediation. Fitzpatrick Decl. ¶ 9. Based on the data provided by Defendant, Plaintiff estimated Defendant's potential exposure as follows:

- Unpaid Wages: $477,299 based on a 68.9% violation rate derived from Defendant's sample timekeeping records.
- Meal Period Violations: $142,791 based on a 5.7% violation rate derived from Defendant's sample timekeeping records. Of 24,992 meal-period-eligible shifts in the sample, 1,468 reflected a missed or late meal period.
- Rest Period Violations: $127,697 based on a 5.7% violation rate reflected in the meal-period data.
- Unreimbursed Business Expenses: $75,144 based on an estimate of an under-reimbursed $5 per pay period for required personal cell phone use, and gas and mileage, for the approximately 14,600 pay periods worked by putative Class Members.
- Waiting Time Penalties: $587,925 based on approximately 84 former employees, 8.1 hours per day, an average hourly rate of $28.91, and the maximum 30-day penalty provided by Labor Code section 203.
- Wage Statement Penalties: $388,750 based on approximately 119 Class Members and 3,947 pay periods, applying the statutory penalties and individual $4,000 cap where appropriate.
- PAGA Penalties: $470,800 based on approximately 4,708 pay periods worked by approximately 119 aggrieved employees during the relevant PAGA period and a $100 penalty per pay period.

Fitzpatrick Decl. ¶ 18.

While the total theoretical exposure of Plaintiff's class and PAGA claims based on the above amounts to as high as approximately $2,270,406, this analysis does not take into

account Defendant's arguments to liability and to class certification as further explained below. *Id*. ¶ 19.

On the merits, there are also significant risks presented if Plaintiff was to move forward with litigation. Defendant maintains that its written policies complied with California law, including policies requiring timely meal periods and authorizing rest periods. If Defendant successfully established these positions, they would present substantial risks to Plaintiff's ability to establish liability and obtain class certification. *Id*. ¶ 20.

With respect to the unpaid wage claims, Plaintiff contends that Defendant had a systematic pattern of "synthetic timekeeping" in which recorded hours, particularly overtime hours, were shaved or rounded away before payment, producing underpayment in the large majority of pay periods. Based on this sample, Plaintiff calculated Defendant's total potential exposure to the full Class of $477,299 based on a 68.9% violation rate. *Id*. ¶ 21.

With respect to meal and rest period claims, Plaintiff contends that Defendant's synthetic timekeeping records hide a pattern of noncompliant breaks. (*Id*. ¶ 22.) Nonetheless, of the 24,992 meal-period-eligible shifts in Defendant's sample, approximately 5.7% still reflected a missed or late meal period. Based on this sample, Plaintiff calculated Defendant's total potential exposure to the full Class at $142,791. Plaintiff applied the same violation rate to rest periods, which Defendant did not record, resulting in estimated exposure of $127,697. (*Id*. ¶ 22.) At mediation, Plaintiff contended that *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 74-78 supported a rebuttable presumption of meal period violations based on Defendant's records. Defendant, however, maintained that it had lawful written policies requiring timely meal periods, authorizing rest periods, and prohibiting off-the-clock work. Defendant relied on *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040, to argue that an employer need only provide employees the opportunity to take compliant breaks and is not required to police whether they do so. Defendant further contended that determining why individual employees missed or took late breaks would require individualized inquiries, creating a significant risk to both class certification and Plaintiff's ability to establish class-wide liability. *Id*. ¶ 22.

With respect to unreimbursed business expenses, Plaintiff contends that Defendant violated Labor Code section 2802 by failing to reimburse employees for necessary expenditures incurred for Defendant's benefit, including work-related use of personal cell phones, and mileage or vehicle expenses incurred performing work-related errands between Defendant's locations. (*Id*. ¶ 23.) At mediation, Plaintiff relied on *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144, which held that an employer must reimburse a reasonable portion of an employee's personal cell phone expenses when the phone is required for work. Defendant insufficiently reimbursed employees $5 per week at first and then $15 per month. (*Id*. ¶ 23.) For mediation purposes, Plaintiff estimated these underreimbursed expenses at $5 per weekly pay period, resulting in potential class-wide exposure of $75,144. Defendant disputed the claim, contending that employees were not required to use their personal cell phones because company phones were available at both locations and that Defendant supplied the tools and equipment necessary for employees to perform their duties. *Id*. ¶ 23.

With respect to waiting time penalties, Plaintiff contends that Defendant failed to pay all wages due to former employees upon separation, including unpaid meal and rest period premiums, unpaid wages, and other compensation. (*Id*. ¶ 24.) Plaintiff relies on *Naranjo v. Spectrum Security Services, Inc*. (2022) 13 Cal.5th 93, 117, which holds that missed-break premium pay constitutes wages that may support waiting time penalties under Labor Code section 203 when the statutory requirements are satisfied. (*Id*. ¶ 24.) Based on Defendant's data identifying approximately 84 former employees, Plaintiff calculated potential exposure of $587,925, assuming the maximum 30-day penalty, an average day of 8.1 hours, and an average hourly rate of $28.91. (*Id*. ¶ 24.) Defendant disputed this derivative claim based on its position that no underlying wages or premiums were owed and, therefore, no unpaid wages remained due at separation. Additionally, Plaintiff also faced a potential defense as to the willfulness required by section 203. *See, e.g. Naranjo, supra*, 13 Cal.5th at pp. 105-106. *Id*. ¶ 24.

With respect to wage statement penalties, Plaintiff contends that Defendant's failure to

pay and report meal and rest period premiums, overtime wages, and other compensation resulted in inaccurate wage statements in violation of Labor Code section 226. (*Id*. ¶ 25.) Plaintiff relied on *Naranjo, supra,* 13 Cal.5th at page 121, which recognizes that unpaid meal and rest period premiums constitute wages and that the failure to report such premiums may support wage statement liability. (*Id*. ¶ 25.) Based on approximately 119 Class Members and 3,947 pay periods, Plaintiff estimated potential statutory penalties of $388,750, applying the $50 initial and $100 subsequent-pay-period penalties and the $4,000 per-employee statutory cap. (*Id*. ¶ 25.) Defendant disputed the claim as derivative of the underlying wage-and-hour violations and maintains that no wages or premiums were improperly omitted. Moreover, section 226 penalties require a "knowing and intentional" violation. Defendant was thus entitled to a "good faith" defense on this claim. *See, e.g. Naranjo, supra*, 13 Cal.5th at pp. 103-104. (*Id*. at ¶ 25.)

With respect to PAGA, Plaintiff contends that the same Labor Code violations underlying the class claims—including meal and rest period violations, unreimbursed business expenses, wage statement violations, and derivative waiting time violations—support civil penalties on behalf of Plaintiff and other aggrieved employees. (*Id*. ¶ 26.) Plaintiff also recognized uncertainty concerning whether PAGA penalties could be "stacked" by imposing a separate penalty for each distinct Labor Code violation occurring during the same pay period. (*Id*. ¶ 26.) Federal courts applying California law have recognized that multiple PAGA penalties potentially may be assessed for separate Labor Code violations within the same pay period. *Hernandez v. Towne Park, Ltd.* (C.D. Cal. 2012) 2012 WL 2373372, at *17 n.77 [recognizing federal decisions permitting PAGA penalties for separate types of Labor Code violations]; *Schiller v. David's Bridal, Inc.* (E.D. Cal. 2010) 2010 WL 2793650, at *6 [recognizing the possibility of PAGA penalties for each separate cause of action]. Other courts have similarly recognized stacking as a potential measure of maximum PAGA exposure while acknowledging uncertainty concerning whether such penalties ultimately would be imposed. *See, e.g., Hamilton v. Juul Labs, Inc.* (N.D. Cal. 2021) 2021 WL 5331451, at *9; *Snow v. United Parcel Service, Inc.* (C.D. Cal. 2020) 2020 WL 1638250, at *3. In addition, although

PAGA permits heightened penalties for subsequent violations, such penalties generally require prior notice to the employer by a court or the Labor Commissioner that its conduct violates the Labor Code, and there is no indication Defendant received such notice here. (*Bernstein v. Virgin America, Inc.* (9th Cir. 2021) 3 F.4th 1127, 1144; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209.) In light of the uncertainty concerning stacking and heightened penalties, Plaintiff conservatively elected not to stack penalties for the multiple Labor Code violations alleged in this action and applied only initial $100 penalties. Accordingly, based on Defendant's data identifying approximately 119 aggrieved employees who worked 4,708 pay periods, Plaintiff applied only the single $100 penalty per pay period, resulting in estimated maximum PAGA exposure of $470,800. (*Id*. ¶ 26.)

Defendant disputed the underlying violations and further contended that even if violations were established, the Court has discretion under Labor Code section 2699 to substantially reduce PAGA penalties where the resulting award would be unjust, arbitrary, oppressive, or confiscatory. (*Id*. ¶ 27.) Defendant further asserted that its good-faith efforts to comply with California wage-and-hour law and its corrective measures after learning of potential compliance issues are grounds for reducing any penalty award. (*Id*. ¶ 27.) Accordingly, the PAGA claim presented risks to establishing the predicate Labor Code violations and to the amount of penalties the Court ultimately would impose.

Based on the foregoing, Plaintiff estimates Defendant's potential exposure to all claims as follows:

Claim	**Potential Exposure**
Unpaid Wages and Overtime	$477,299
Meal Period Premiums	$142,791
Rest Period Premiums	$127,697
Unreimbursed Business Expenses	$75,144
Waiting Time Penalties	$587,925
Wage Statement Penalties	$388,750
PAGA Penalties	$470,800
Total Estimated Exposure	$2,270,406

Fitzpatrick Decl. ¶ 28.

With respect to Plaintiff's class claims, exclusive of PAGA penalties, Plaintiff

calculated Defendant's potential exposure at approximately $1,799,606 ($2,270,406 less $470,800 in estimated PAGA penalties). Fitzpatrick Decl. ¶ 29. Although Plaintiff believes in the merits of the alleged claims, he recognizes the substantial risks inherent in continued litigation and Defendant's asserted defenses. In particular, penalties, including waiting time and wage statement penalties, accounted for approximately $976,675 of the estimated class exposure, and Defendant's good-faith defenses, if successful, could prevent recovery of those damages. (*Id*. ¶ 29.) Defendant also asserted legal and factual defenses to the underlying wage-and-hour claims, including its facially compliant meal and rest period policies. Plaintiff further faced risks in establishing that the violations reflected uniform practices rather than isolated errors or, with respect to meal and rest periods, individual employee choice. Taking these risks into account, the Parties negotiated a $400,000 settlement of the class claims, representing approximately 22.2% of Defendant's estimated maximum class-wide exposure. (*Id*. ¶ 29.)

With respect to Plaintiff's claim under the PAGA, Plaintiff estimated that Defendant could face civil penalties of at least $470,800 (based on 4,708 pay periods at issue during the PAGA Period). Fitzpatrick Decl., ¶ 30. The $45,000 allocated to PAGA penalties thus represents approximately 9.6*% of Defendant's total potential PAGA exposure. This settlement amount took into account the substantial uncertainty associated with any ultimate PAGA award, including the need to prove the underlying claims and the Court's discretion to reduce civil penalties. (*Id*. ¶ 30.) Labor Code § 2699(e)(2) authorizes the Court to reduce an award where, based on the facts and circumstances of the particular case, the otherwise applicable penalty would be "unjust, arbitrary and oppressive, or confiscatory." The exercise of that discretion can result in a substantial reduction even where a plaintiff successfully establishes the underlying violations. As shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), for example, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id*. at p. 517. Upon review, the Court of Appeal found such reduction to be proper. *Id*. at p. 539. Thus,

even if Plaintiff ultimately prevailed, Defendant's correction of the challenged policies would support a finding that PAGA's purpose of promoting compliance with the Labor Code had been substantially fulfilled. Under these circumstances, there remains a meaningful possibility that the Court would exercise its statutory discretion to reduce the penalties and award only a fraction of the maximum amount otherwise available.

The Parties recognize the risk, expense, and delay in continuing litigation with the class and PAGA claims, and believe the settlement to be fair, reasonable, and adequate. Fitzpatrick Decl. ¶ 33. Although Plaintiff believes in the merits of his Class and PAGA claims and that the proposed Class can be certified, the Settlement appropriately accounts for the substantial risks identified above, including Defendant's defenses to the underlying claims, the possibility that Plaintiff would not prevail on one or more claims or theories of liability, the risks associated with class certification, the Court's discretion to substantially reduce PAGA penalties, and the delay and uncertainty associated with trial and potential appeals. *Id*. ¶ 34. The risks to class certification are compounded by the California Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained class certification and subsequently prevailed at trial after eight years of litigation, but the judgment and the certification ruling were reversed by the California Supreme Court after an additional five years of litigation. The case was remanded to superior court where class certification was denied and plaintiffs' subsequent appeal also was denied.

Based on a review of all the information and their experience in class action litigation, Class Counsel believes this settlement to be fair, adequate, and reasonable. Fitzpatrick Decl. ¶ 35. In addition, Plaintiff's counsel was retained based upon a contingency fee arrangement wherein Plaintiff's counsel agreed to advance all costs and receive no fee unless a recovery was accomplished. *Id*. ¶ 36. Specifically, had Plaintiff failed to prevail in this case, counsel for Plaintiff would have spent a significant amount of time, money and other resources without any benefit or return. Had Plaintiff failed to prevail in the present case, Defendant would have been able to seek costs in connection with their defense of the case. Thus, the settlement for each Settlement Class Member is fair, reasonable, and adequate, given the inherent risks of

litigation, the costs of pursuing such an action, and benefit to the Class. The settlement is the result of extensive arm's length negotiations between the Parties and their counsel and was facilitated by an experienced and neutral mediator. *Id*. ¶ 36.

Numerous courts have held that gross settlements approximating between only 8 and 25% of the defendant's potential exposure are fair and reasonable. *See*, *e.g.*, *In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment"; noting that whether the settlement is fair and adequate depends on the "the difficulties in proving the case"); *Bellinghausen v. Tractor Supply Co*., No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc*., U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which obtained only 9.1% of projected damages, given the risks of continued litigation); *Villegas v. J.P. Morgan Chase & Co*., No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable).

Here, Plaintiff calculated Defendant's combined potential exposure on the class and PAGA claims at approximately $2,270,406. Against that potential exposure, the $445,000 non-reversionary Gross Settlement Amount represents approximately 19.6% of Plaintiff's estimated maximum recovery. Fitzpatrick Decl. ¶ 31. As discussed above, however, Plaintiff's maximum exposure calculation assumes that he would successfully establish the underlying violations, obtain and maintain class certification, overcome Defendant's defenses, recover substantial waiting time and wage statement penalties, and obtain PAGA penalties without a significant discretionary reduction. The Settlement eliminates these uncertainties and provides Class Members with an immediate monetary recovery without the expense, delay, and risk of

continued litigation, trial, and potential appeals. *Id*. ¶ 31. Accordingly, considering the strength of Plaintiff's claims together with the substantial litigation risks, the informed and arm's-length negotiations of experienced counsel, and the assistance of an experienced neutral mediator, the $445,000 Gross Settlement Amount is fair, reasonable, and within the range of possible approval. *Id*. ¶ 32.

Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class Action Settlement ("Notice Packet") attached to the Settlement Agreement at Exhibit 1, should any Class Member wish to pursue his or her own case for the claims being released herein, each Class Member has the right to submit a Request for Exclusion (*i.e*., opt-out) from the settlement, with the exception of the PAGA claims. *See* Notice Packet. Moreover, as set forth in the Notice Packet, Class Members are advised of their right to object to any of the terms contained in the Settlement Agreement and attend the final approval hearing.

1. Amount and Manner of Distribution of the Compensation to be Provided to Class Members Including the Amount, or an Estimate, of What Each Class Member Will Receive

The Settlement Agreement provides for $445,000.00 as the Gross Settlement Amount. SAR ¶¶ 5.1. The Net Settlement Amount, calculated after deduction of Class Counsel's attorneys' fees of up to $148,333.33, reimbursement of actual litigation costs and expenses of up to $25,000.00, a Class Representative Service Award to Plaintiff of up to $5,000.00, $45,000.00 in PAGA penalties, and Settlement Administration Costs of up to $7,000.00, is estimated to be approximately $214,666.67. SAR ¶¶ 5.1.1-5.1.4; Fitzpatrick Decl. ¶ 37. Participating Class Members are not required to submit claim forms and will receive a share of the Net Settlement Amount based on the number of Workweeks they worked during the Class Period and a multiple if they did not receive remedial payments made by Defendant during the course of the litigation. *See* SAR ¶ 5.3; Fitzpatrick Decl. ¶ 38.

Based on an estimated Class of 169 individuals, on a raw average, each Participating Class Member may recover approximately $1,270.22, on average ($214,666.67 ÷ 169 Class Members). Based on approximately 14,600 Workweeks, the estimated value of the Net Settlement Amount is approximately $14.70 per Workweek. The amount actually paid to each

Participating Class Member will increase or decrease depending on the number of qualifying Workweeks credited to that individual during the Class Period and whether they received remedial payments from Defendant during the course of the litigation. Fitzpatrick Decl. ¶ 39.

Additionally, the Settlement allocates $45,000.00 to PAGA penalties, of which 65%, or $29,250.00, will be paid to the LWDA, and 35%, or $15,750.00, will be distributed to PAGA Members on a *pro rata* basis based on the number of pay periods worked during the PAGA Period. *See* SAR ¶ 5.3.1; Fitzpatrick Decl. ¶ 40. Based on the data provided by Defendant prior to mediation, there are an estimated 119 PAGA Members. Accordingly, on a raw average basis, each PAGA Member is estimated to receive approximately $132.35 ($15,750.00 ÷ 119 PAGA Members), with the actual payment varying according to the number of pay periods worked during the PAGA Period. Fitzpatrick Decl. ¶ 41.

Finally, pursuant to the Settlement Agreement, funds from settlement checks that remain uncashed after the applicable check-cashing period will be distributed to the designated *cy pres* beneficiary. *See* SAR ¶ 5.6. Plaintiff's counsel has no conflict of interest with the designated *cy pres* beneficiary. Fitzpatrick Decl. ¶ 42.

2. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Class Members or Might Revert to the Defendant

None of the settlement funds will revert to Defendant. SAR ¶ 5.1.

3. Scope of the Release of Class Members' Claims

As a condition of participating in this class action settlement, Class Members who do not submit a valid and timely Request for Exclusion ("Participating Class Members") will release the Released Parties from "any and all claims arising during the Class Period that were alleged in the operative complaint or that could have been alleged based on the factual allegations in the operative complaint. *See* SAR ¶ 6.1.

The "Released Parties" are defined by the Settlement Agreement to include "Defendants and any of their predecessors, successors, subsidiaries, and affiliates, and all of their owners, shareholders, members, officers, directors, successors and assigns, and any other persons acting by, through, under or in concert with any of them." *See* SAR ¶ 1.23.

In addition, regardless of their decision to participate in the class portion of the settlement, PAGA Members will release the Released Parties from "any and all claims for penalties under PAGA during the PAGA Period that were alleged in the Action." *See* SAR ¶ 6.2.

Given that the releases above are tailored to only claims pled or that could arise out of the facts alleged in the Action and Plaintiff's respective PAGA letters, that accrued during limited periods of time, the releases are appropriately tailored.

4. Tax Treatment of Settlement Amounts

The Parties have agreed that the settlement payments ("Individual Settlement Payments") to Participating Class Members from the Net Settlement Amount shall be allocated as follows: 10% wages, for which an IRS Form W-2 will issue and from which payroll taxes will be deducted, and 90% penalties and interest, for which an IRS Form 1099 will issue. SAR ¶ 5.3.2. Defendant will be liable for employer-side payroll taxes. SAR ¶ 1.13.

The Individual Settlement Payments to PAGA Members from the PAGA Penalties Fund will be deemed one hundred percent (100%) penalties and be accompanied by an IRS Form 1099. SAR ¶ 5.3.1.

5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations

As stated above, Class Members do not need to do anything should they wish to receive their share of the settlement funds. In other words, because this is not a claims-made settlement, Class Members will not be required to make a submission to participate in the settlement. Thus, this substantially decreases the burden each Class Member must bear in order to receive their Individual Settlement Payment. If a Class Member does not wish to take part in this settlement and be bound by the Released Class Claims, the Class Member must submit a Request for Exclusion. SAR ¶ 4.3. If twenty percent (10%) or more of the Class submit a timely and valid Request for Exclusion, Defendant will have the right, but not the obligation, to revoke and void this Settlement at their discretion. SAR ¶ 4.5.

C. Notice to Class Members

Should the Court grant the instant Motion, Defendant will provide the Settlement Administrator with a list containing each Class Member's full name, most recent mailing address, Social Security number, dates of employment, respective number of Workweeks worked during the Class Period and PAGA Period, and any other relevant information needed to calculate settlement payments ("Class List"). SAR ¶ 3.2. Defendant shall provide this information within seven calendar days of preliminary approval of this settlement. *Ibid*. Within seven calendar days of receipt of the Class List, the Settlement Administrator shall mail the Notice Packet to all Class Members. *Ibid*. Any notices returned to the Settlement Administrator as non-deliverable on or before the opt-out deadline shall be sent promptly via regular first-class U.S. mail to the forwarding address affixed thereto. SAR ¶ 3.3. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine the correct address using a skip trace or other search and perform a re-mailing. *Ibid*.

The Parties have agreed to the language of the Notice Packet. The Notice Packet describes the terms of the settlement and advises Class Members of their opportunity to opt out of the settlement or object to the settlement. Notice Packet; SAR ¶¶ 4.1-4.3. Class Members will have forty-five (45) calendar days from the initial mailing of the Notice Packet by the Settlement Administrator to opt out of the settlement or object to the settlement. SAR ¶ 4.1. Class Members can submit objections to the settlement in writing to the Settlement Administrator. SAR ¶ 4.2.

If Class Members need further information about the settlement and/or the lawsuit, Class Counsel's contact information and the Settlement Administrator's contact information are provided in the Notice Packet. *See* Notice Packet. Fitzpatrick Decl. ¶ 43.

D. Typicality and Adequacy of Representation

1. Class Representative's Claims are Typical of the Class

The commonality requirement is met when there are questions of law and fact common to the class. *See Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1019 (1998) ("The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of

salient facts couple with disparate legal remedies within the class"). Commonality requires only that some common legal or factual questions exist; the Plaintiff need not show that all issues in the litigation are identical. *See Richmond v. Dart Industries, Inc*., 29 Cal. 3d 462, 473 (1981). Defendant's conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer's conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the Defendant's policies and practices satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co*., 193 Cal. App. 3d 411, 421 (1987).

Plaintiff alleges that Defendant violated the Labor Code by failing to pay all minimum and overtime wages owed for all hours worked, failing to provide off-duty meal and rest breaks or pay meal and rest period premiums, failing to timely pay all wages when due and upon separation of employment, failing to reimburse business expenses, failing to provide accurate itemized wage statements, and engaging in unfair business practices. Declaration of Plaintiff Edwardo Jacquez ("Pltf Decl.") ¶¶ 3-8. As a result, Plaintiff alleges that he is owed unpaid wages and penalties for the above violations.

In other words, Plaintiff contends that he was subjected to the same policy and practice as other Class Members and that his claims are typical to those of the Settlement Class.

Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such issues been raised or presented. Pltf Decl. ¶ 9. Plaintiff has taken all necessary steps to represent the interests of the Settlement Class, and by providing information and documents to Plaintiff's counsel. Pltf Decl. ¶ 10. For such reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

2. Class Counsel Have Adequately Represented the Class and Have Experience with Wage and Hour Class Action

From the inception of the case, Class Counsel have zealously represented the interests of the Class. Class Counsel have engaged in significant investigation and meet and confer discussions with Defendant's counsel to obtain informal data and documents and to discuss the merits of the claims on behalf of the Class. Fitzpatrick Decl. ¶¶ 44; Kaneshiro Decl. ¶ 3; Lee

Decl. ¶¶ 2-3; Yang Decl. ¶ 2. The settlement was obtained for the benefit of the Class, as opposed to the individual Class Representative. Fitzpatrick Decl. ¶ 44; Lee Decl. ¶ 2; Yang Decl. ¶ 2.

E. Costs and Fees

1. Attorneys' Fees and Costs

California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc*., 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc*., 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

The common fund doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits, she may require the passive beneficiaries to compensate those who created the fund. Both California state and federal courts have embraced this doctrine. *Serrano v. Priest*, 20 Cal. 3d at p. 35; *Vincent*, 557 F.2d at p. 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995), 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." The reasons for applying the common fund doctrine 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.

Id.

Indeed, in 2016, the California Supreme Court has also now held that the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created").

The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund. *Laffitte*, 1 Cal. 5th at p. 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id*. at p. 487. As the Court held, only when the multiplier is "extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id*. at p. 505.

The Parties have agreed to a payment of a maximum of $148,333.33, or one-third of the Gross Settlement Amount for payment to Class Counsel as attorneys' fees. SAR ¶ 5.1.1. Further, the parties have agreed to reimbursement of Class Counsel's litigation expenses up to $25,000.00 for reimbursement of actual litigation costs, subject to Court approval. SAR ¶ 5.1.1.

Class Counsel have, at their own risk, expended costs to prosecute the Action, including filing the instant Action, effecting service of process, participating in mediation, and paying other litigation-related costs.

Based on the foregoing, the Court should preliminarily approve the attorney's fees and costs as requested by the Parties, subject to lodestar cross-check and review of the reimbursements sought.

2. Proposed Payment to the Class Representative

Class Representative Edwardo Jacquez requests an enhancement of $5,000.00. Pltf Decl. ¶ 13; SAR ¶ 5.1.2. The Class Representative met and conferred with Class Counsel on a number of occasions to discuss the case, provided documents and information to Class

Counsel, and reviewed the Stipulation of Settlement. Pltf Decl. ¶ 10. In addition to the invaluable services that he provided, Plaintiff also took a significant risk, both professionally and monetarily, in acting as the Class Representative and seeking benefits on behalf of the Settlement Class. Because the claims alleged by the Class Representative involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant, had he not prevailed in this action. Pltf Decl. ¶ 12.

Furthermore, Plaintiff believes that future employers are much less likely to hire individuals who have filed suit against their employer, particularly cases of this nature, so that Plaintiff may face prejudice in the future from other potential employers. Pltf Decl. ¶ 11. Plaintiff took this risk upon himself and the whole Settlement Class benefited from these risks taken by Plaintiff. Settlement Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a public lawsuit.

In addition, Plaintiff agreed to provide a broader release of claims and waiver of the protections of Civil Code § 1542, which is something that was not required of Class Members.

For these reasons, the Court should preliminarily approve Plaintiff's enhancement payment.

3. Settlement Administration Costs

The Parties have agreed to an estimated payment of $7,000.00 to the Settlement Administrator, Phoenix Settlement Administrators, to send notices and to administer this settlement. Phoenix Settlement Administrators is a well-recognized class action settlement administrator. The Parties believe that the administration fee is reasonable and should be approved. The estimated cost per Class Member is approximately $41.42 for distribution ($7,000.00 ÷ 169 Class Members).

IV. NOTICE TO THE LWDA

Concurrently with the filing of this motion, Plaintiff submitted the Settlement Agreement and supporting documents to the LWDA. Fitzpatrick Decl. ¶ 48.

V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL

Here, the proposed settlement is fair, adequate, and reasonable. It will result in substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arm's length negotiations conducted by counsel for the respective parties who are experienced in wage and hour class action litigation.

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the proposed Notice Packet, and set a date for a final approval hearing.

Dated: October 20, 2026

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

By: /s/ B. James Fitzpatrick

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