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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JESUS ROMERO, as an individual and on behalf of all others similarly situated, Plaintiff, vs. JMS INTERIORS, INC., a California corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: 24CU011474C *[Assigned for all purposes to Hon. Katherine A. Bacal, Dept. C-63]* **PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Date: February 6, 2026 Time: 1:30 p.m. Department: C-63 Action Filed: September 17, 2024 Trial Date: Not set.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 6, 2026, at 1:30 p.m., or as soon thereafter as the matter may be heard, before the Honorable Katherine A. Bacal, judge presiding, in Department C-63 of the above-referenced Court located at 1100 Union Street, San Diego, California 92101, Plaintiff Jesus Romero ("Plaintiff") will seek an Order: (1) approving the Class Action and PAGA Settlement ("Settlement Agreement") in this matter; (2) conditionally certifying the following Class for settlement purposes only: "all persons who worked for Defendant as non-exempt employees in the State of California at any time from September 17, 2023 through September 27, 2024"; (3) appointing Plaintiff Jesus Romero as the Class Representative, and Nick Rosenthal of The Law Office of Nick Rosenthal, APC as Class Counsel; (4) preliminarily approving the Settlement Agreement and the total Gross Fund Value in the amount of Ninety Nine Thousand Ninety Nine Dollars ($99,099.00); (5) finding on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement, Class Representative service payment, Class Counsel fees and costs, settlement administration fees, and allocation of payments to Class Members, that could ultimately be given final approval by this Court; (6) approving the Notice of Class Action Settlement to be sent to Class Members; (7) appointing Phoenix Settlement Administrators as the Settlement Administrator; and (8) setting the matter for a Final Fairness 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 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 of Class Action Settlement, the supporting Declarations of Nick Rosenthal, and Plaintiff Jesus Romero, on the complete records and file herein, and such argument as the Court may permit.

Dated: January 11, 2026

By: ______________________
Nick Rosenthal
Attorneys For Plaintiff Romero, on behalf of all others similarly situated and Aggrieved Employees

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I. INTRODUCTION

Plaintiff Jesus Romero ("Plaintiff") brings class and representative claims against Defendant JMS Interiors, Inc. ("Defendant") under the California Labor Code (Plaintiff and Defendant shall be jointly referred to as the "Parties"). Plaintiff alleges that Defendant had a policy and practice of issuing defective wage statements in violation of Labor Code §§ 226 and 2698, et seq., the Private Attorneys General Act ("PAGA"). Plaintiff now moves for preliminary approval of the proposed class and representative settlement after thorough investigation of the claims alleged, mediation and extended negotiations.

Prior to the settlement of this action, the Parties thoroughly investigated the facts relating to the claims alleged in the operative Complaint and engaged in a thorough study of the legal principles applicable to the claims asserted against Defendant. Defendant provided data related to the number of putative class members and wage statements issued to each class member. Thereafter, the Parties commenced settlement negotiations through a private mediator and were ultimately able to reach the current settlement after continued negotiations conducted post-mediation. Significantly, this entire amount is non-reversionary, such that no monies will revert to Defendant.

The Parties believe that this amount is fair, adequate, and reasonable, especially given the risks and uncertainty of class certification and the merits of this case.

Although Plaintiff and his counsel believe that they can prevail on class certification, as well as on the merits, Plaintiff and his counsel recognize the inherent risks in drawn-out litigation and the specific risks that a class might not be certified and/or that Plaintiff could fail to establish liability. Defendant denies the allegations in the operative Complaint and believes that it can prevail at trial. Based on their own independent investigation and evaluation, the Parties and their respective counsel are of the opinion that the settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Class and Defendant in light of all known circumstances and the expenses and risks inherent in litigation.

Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. PROCEDURAL HISTORY

Defendant JMS Interiors, Inc., is a construction company in San Diego County. Plaintiff Jesus Romero was employed by Defendant as a non-exempt, hourly employee from approximately August 2023 to May 2024. (Declaration of Jesus Romero ("Romero Decl."), ¶ 2.)

Plaintiff commenced this Action by filing a Complaint on September 17, 2024, alleging violations of Labor Code Sections 201-203, 226(a), 510, 1194, 1197 and Business & Professions Code Section 17200, et seq. against Defendant. (Class Action and PAGA Settlement Agreement (“SA”), ¶ 2.1.) On October 21, 2024, Plaintiff filed a First Amended Complaint adding a second cause of action against Defendant for violation of Labor Code § 2698, et seq., the Private Attorneys General Act (“PAGA”) predicated only the underlying alleged Labor Code violations. SA¶ 2.1. The FAC is the operative complaint in the Action (the “Operative Complaint.”)

Shortly after Plaintiff filed the operative complaint, the Parties agreed to attempt to resolve the matter. (Rosenthal Decl., ¶ 4). Defendant provided the necessary data for Plaintiff to evaluate the value of the case, after which a settlement was negotiated. In resolution of Plaintiff’s class and PAGA claims, the Parties entered into the Class Action and PAGA Settlement Agreement (“SA”), a true and correct copy of which is attached as **Exhibit A** to the Declaration of Nicholas Rosenthal. *Id*., Ex. A.

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." 4 Alba Conte & Herbert B. Newberg, *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"). 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 Class for the purposes of this settlement only. Settlement Agreement ¶ 12.1.

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A. Class Definition

The proposed class definition is: “all persons who worked for Defendant as non-exempt employees in the State of California at any time from August 19, 2023 through June 24, 2025”. SA, ¶ 1.5.

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 Newberg on Class Actions*, *supra*, § 11.47; *Nat’l Rural Telecomms. Coop*., 221 F.R.D. at 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, Plaintiff’s counsel has a great deal of experience in wage and hour class action litigation. Plaintiff’s counsel has been approved as class counsel in a number of wage and hour class actions and has extensive litigation experience. Rosenthal Decl. ¶¶ 17-18.

This settlement resolves only the alleged Labor Code Section 226 (a) claim and the PAGA claim based on violation of this Section. The remaining claims alleged in the operative complaint are no longer being pursued by Plaintiff, but without prejudice to any class member. Any class member who wishes to pursue them either individually or on a class basis may do so. Regarding the specifics of the alleged Labor Code Section 226(a) violation, it is very simple: Plaintiff contends that the wage statements issued by Defendant to its non-exempt employees failed to pay period start date, as required by Labor Code Section

226(a)(6). (Rosenthal Decl. ¶ 4.) Labor Code Section 226(a)(6) requires that wage statements list the "inclusive dates of the period for which the employee is being paid." In the instant case, the wage statements issued to the Class provided only the end date of the applicable pay period. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint, and denies any all liability for the causes of action alleged. (SA ¶ 2.1.)

Defendant has represented there are 225 putative class members who have received a total of 4,719 wage statements during the class period. Per Labor Code Section 226(e), the penalty for each first wage statement violation is $50 per employee per pay period and then $100 per employee per pay period, meaning the total statutory penalties amount to $460,650 (225 x $50 + 4,494 x $100). Theoretically, discretionary PAGA penalties of an additional $58,987 are also possible. PAGA allows for a discretionary $25 per pay period penalty for violations based on Labor Code § 226. However, under PAGA, a "pay period" is every two weeks, even if wage statements are issued weekly. Thus, 4719/2 x $25 equals $58,987. If fully awarded, this would mean a total class aggregate 100% award of his would mean a combined potential award of $519,637. (Rosenthal Decl. ¶ 5).

Risks in the case include that Plaintiff would need to prevail on class certification, and after prevailing on class certification would need to prevail on the merits. Defendant disputes that the wage statements issued to the putative class were in violation of the law. Specifically, Defendant argues that while the wage statements did not specify the pay period start date, they did state "Week Ending" prior to the pay period end date. Thus, Defendant argues that an employee would know that the pay period start date was just seven days prior to the listed pay period end date. (Rosenthal Decl. ¶ 6).

Other risks for Plaintiff include the risk of losing on appeal, and the possibility of law changing, and the time value of money, among other things. Litigating Plaintiff's claims through trial could last two more years if the proposed settlement is not approved, as a motion for class certification has not yet been filed. Further, there would be substantial additional costs to prepare for trial, including expert witness payment. Id.

Further, even if there were a finding of liability, the amount of PAGA penalties is at the discretion of the Court. *See e.g., Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties by 82%). In this particular instance, it is possible the Court could find that this would find the instant violation to be "technical" in nature and significantly reduce the amount of PAGA penalties. Id.

In sum, the proposed $99,099 settlement is an excellent result. It represents nearly 20% of the total possible award in this case were Plaintiff to prevail on every procedural turn, and obtain 100% for the alleged Labor Code violation, and also 100% of the PAGA penalties. This is a strong recovery for the class. (*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).

Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class Action Settlement ("Class Notice"), 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. SA, ¶ 7.5. Moreover, as set forth in the Class Notice, Class Members are advised of their right to attend the final approval hearing and object to any of the terms contained in the Settlement Agreement. SA, ¶ 7.7.

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 One Million Five Hundred Thousand Dollars ($99,099.00) as the Gross Settlement Amount. SA, ¶ 1.23. Defendant will fund the Gross Settlement Amount within twenty-one (21) days of the Effective Date of the Settlement Agreement. *Id.* ¶ 4.3.

The Net Settlement Amount, calculated after deduction of attorneys' fees (up to $33,033.00), costs (up to $10,000.00), Class Representative Service Award (up to $10,000.00), payment of PAGA penalties to the LWDA ($6,5000.00), and Settlement Administration Costs (up to $8,000.00), is estimated to be approximately $31,566.00. The Settlement Administrator will allocate the Individual Settlement Payments by distributing the Net Settlement Amount to the Class on a pro-rata basis from two funds. The Net Settlement Amount will be split into a Class Amount and a PAGA Amount. The PAGA Amount will be 35% of the total amount allocated for the satisfaction of claims for civil penalties under the PAGA, which is currently estimated to total Three Thousand Five Hundred Dollars ($3,500.00). The Class Amount will be the remaining Net Settlement Amount after deduction of the PAGA Amount, currently estimated to be $28,066.00. SA ¶¶ 3.24-3.25. Thus the total amount allocated to the Class and Aggrieved Employees is currently estimated at $31,566.00. However, Plaintiff's counsel anticipates this number will increase, as their costs in this matter are currently significantly below $10,000.

Each Participating Class Member who does not opt-out of the Settlement will be awarded a portion of the Net Settlement Amount on a pro-rata basis, based upon the number of pay periods each respective Participating Class Member worked during the Covered Period. *Id.* ¶ 3.24. Each Non-Participating Class Member will receive only a pro rata portion of the PAGA Amount, based upon the number of pay periods worked during the Covered Period. *Id.* ¶ 3.25.

Based thereon, on a raw average, each Participating Class Member may potentially recover approximately $123.78. Rosenthal Decl. ¶ 13. The amount actually paid to each Participating Class Member may increase or decrease depending on the actual number of pay periods he or she worked during the Covered Period and/or the number of timely Requests for Exclusion received. *Id*. In this instance, the average class member only worked approximately 18 pay periods (i.e., 4.5 months) for Defendant during the class period. If a class member worked for Defendant for the entire class period, they will receive in excess of $350.

Finally, the terms of the settlement provide that uncashed checks (upon the expiration date) shall be distributed to the State Controller and held in the name of the individual employee. Settlement Agreement ¶ 4.4.3.

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

None of the settlement funds will revert to Defendant. SA, ¶ 3.1.

3. Scope of the Release of Class Members' Claims

As a condition of participating in this settlement, members of the Class shall waive and release "all claims for violation of Labor Code 226." SA, ¶ 5.2.

Settlement Aggrieved Employees, or Class Members who submit a valid Request for Exclusion, shall waive and release "all claims for PAGA penalties that were alleged based on violation of Labor Code Section 226." SA, ¶ 5.3.

4. Tax Treatment of Settlement Amounts

As Plaintiff's lawsuit only sought penalties, the Parties have agreed that the Individual Settlement Payments to Participating Class Members and Settlement Aggrieved Employees shall be classified 100% as civil and statutory penalties, for which an IRS Form 1099 will be distributed. SA, ¶ 3.2.4.1.

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. Thus, this substantially decreases the amount of burden each Class Member must bear in order to receive their settlement share. If a Class Member does not wish to take part in this settlement and be bound by the release, the Class Member must submit a Request for Exclusion. SA ¶ 7.5.1.

(A). Notice to Class Members

Within fifteen (15) of the preliminary approval of this settlement, Defendant will confidentially transmit to the Settlement Administrator a spreadsheet containing each Class Member's full name, last known home address, telephone, Social Security Number, number of Qualifying Pay Periods worked during the Covered Period, and any other data necessary for the Settlement Administrator to identify and/or contact the Class Members and Settlement Aggrieved Employees ("Class List"). SA ¶ 4.2. Upon receipt of the information and prior to mailing the Notice of Class Action Settlement ("Class Notice"), the Settlement Administrator shall perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. *Id*. ¶ 7.4.2. The Class Notice will be distributed in English and Spanish. (Rosenthal Decl., ¶ 20.) Within ten (10) business days of receipt of the Class List, the Settlement Administrator shall mail the Class Notice to all Class Members. *Id*. ¶ 7.4.3. The Settlement Administrator will re-mail the Class Notice to Class Members for whom the notice is returned with a forwarding address and perform a skip-trace or other search on Class Members and re-mailing for whom a Class Notice is returned as undeliverable. *Id*. ¶ 7.4.3.

As set forth in the Class Notice, Class Members will be allowed to opt out of the settlement by a certain deadline, or object to the settlement in writing or by appearing at the final approval hearing. SA, ¶ 7.5, 7.7.

(B). 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 plaintiffs 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 satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co*., 193 Cal. App. 3d 411, 421 (1987).

Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure violated the Labor Code by issuing defective wage statements. Romero Decl., ¶ 3. In other words, Plaintiff was subjected to the same policy and practice as other Class Members. Thus, Plaintiff's claims are typical to those of Class Members.

Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such issues been raised or presented. Romero Decl. ¶ 4. Plaintiff has taken all necessary steps to represent the interests of the Class, and by providing information and documents to Plaintiff's counsel. *Id*. ¶ 5. For such reasons, Plaintiff has adequately represented the Class Members and will continue to do so. Defendant denies that the claims are typical, but agrees to certification of the class for settlement purposes only.

2. Class Counsel Has Adequately Represented the Class and Has Experience with Wage and Hour Class Actions

From the inception of the case, Class Counsel has zealously represented the interests of the class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class Representative. Further, Class Counsel has been approved as class counsel on a number of prior cases, have litigated numerous other class action cases, and are competent to represent the Class. Rosenthal Decl. ¶¶ 17-18.

C. 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, he may require the passive beneficiaries to compensate those who created the fund. Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35; *Vincent*, 557 F.2d at 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, most recently, 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) ("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 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id*. at 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 505.

The Parties have agreed to a payment of a maximum of one-third of the Gross Settlement Amount (or $33,033.00) for payment to Class Counsel as attorneys' fees.[1] The Parties have agreed to a payment of the foregoing attorney's fees and, thus, this payment should be presumed to be fair.

Further, the Parties have agreed to reimbursement of Class Counsel's litigation costs in an amount up to $10,000.00. Class Counsel has expended costs at their own risk, for example, to file this instant action, effect service of process, and pay of other litigation-related costs. However, Class Counsel anticipates their total costs will be well under the $10,000 cap. (Rosenthal Decl., ¶ 11).

Based on the foregoing, the Court should preliminarily approve the attorneys' fees and costs being requested by the Parties.

2. Proposed Payment to the Class Representative

Class Representative Jesus Romero requests a service award of $10,000.00. Settlement Agreement ¶ 3.2.1. 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 Settlement Agreement. As part of his duties as Class Representative, Plaintiff provided invaluable information and documents that resulted in this settlement. Romero Decl. ¶ 5. 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 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.

Furthermore, given that future employers are much less likely to hire individuals who have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the future from other potential employers. Plaintiff took this risk upon himself and the whole Class benefited from these risks taken by Plaintiff. Class Members did not have to file individual lawsuits and bear the risks of

[1] Any fee award will be divided in the following manner: 33.33% to M Law Attorneys, APC; 40% to The Kick Law Firm, APC; and 26.67% to The Law Office of Nick Rosenthal, APC. Plaintiff has given written approval of this fee split. Rosenthal Decl., ¶ 11.

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.

3. Settlement Administration Costs

The Parties have agreed to a maximum payment of $8,000.00 to the Settlement Administrator, Phoenix Settlement Administrators, to send notices and to administer this settlement. Settlement Agreement ¶ 3.2.3. Phoenix Settlement Administrators is a well-recognized class action settlement administrator. The Parties believe that the administration fee is reasonable and should be approved.

D. Notice to the LWDA

Concurrently with this filing, Plaintiff submitted the Motion and settlement agreement to the LWDA. Rosenthal Decl. ¶ 19.

IV. 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 both 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 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 of Class Action Settlement, and set a date for a final approval hearing.

Dated: January 11, 2026 **THE LAW OFFICE OF NICK ROSENTHAL, APC**

By: ______________________
Nick Rosenthal
Attorneys for Plaintiff Jesus Romero, individually, and on behalf of others similarly situated and aggrieved

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. My business address is The Kick Law Firm, APC, 815 Moraga Drive, Los Angeles, CA 90049.

On the below executed date, I served the document(s) described as:

- **PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT;**
- **DECLARATION OF NICK ROSENTHAL IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL;**
- **PLAINTIFF'S DECLARATION IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL;**
- **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT,**

on the interested parties in this action by sending a true copy thereof to interested parties as follows:

MILLER JOHNSON LAW
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[✓] **By e-mail or electronic transmission.** Based on an agreement of the parties to accept service by e-mail transmission, I caused the documents to be sent from the email address alina@kicklawfirm.com to the person(s) at the address(es) listed above. The transmission was either reported as being sent, complete and without error, or I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful, to the addressees as stated below.

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

Executed on January 12, 2026.

/s/ Alina Muresan
Alina Muresan