Scott E. Wheeler (SBN 187998)
Justin A. Wheeler (SBN 342226)
THE WHEELER LAW FIRM, APC
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622

B. James Fitzpatrick (SBN: 129056)
Alison L. Baker (SBN: 193601)
FITZPATRICK & SWANSTON
555 S. Main Street
Salinas, CA 93901
Telephone: (831) 755-1311
Facsimile: (831) 755-1319

Larry W. Lee (SBN: 228175)
Max W. Gavron (SBN: 291697)
DIVERSITY LAW GROUP, P.C.
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

Attorneys for Plaintiffs,
Luis Corrales, Jennifer Galvan, and Bianca Espinoza,
individually, and on behalf of all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ

LUIS CORRALES, JENNIFER GALVAN, and BIANCA ESPINOZA, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

BELLOWS PLUMBING, HEATING & AIR, INC., a California corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 25CV04013

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

Date: November 30, 2026
Time: 8:30 a.m.
Dept.: 5

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 30, 2026, at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Syda Kosofsky Cogliati in Department 5 of the above-referenced Court, located at 701 Ocean Street, Santa Cruz, California, Plaintiffs Luis Corrales, Jennifer Galvan, and Bianca Espinoza (collectively "Plaintiffs") will seek an Order:

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

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

> All non-exempt, hourly individuals that worked for Defendant in California during the Settlement Class Period (February 10, 2021, through March 21, 2026).

(3) appointing Plaintiffs as Class Representatives, and the law firms of The Wheeler Law Firm APC, 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 Thousand Dollars ($400,000.00);

(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 Plaintiffs' 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 Defendant Bellows Plumbing, Heating & Air, Inc., 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, Alison L. Baker, Larry W. Lee, Max Gavron, Scott E. Wheeler, Plaintiff Luis Corrales, Plaintiff Jennifer Galvan, and Plaintiff Bianca Espinoza, and upon the oral arguments of counsel (should there be any) and on the complete records and file herein.

Dated: November 3, 2026

THE WHEELER LAW FIRM, APC
FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

By: /s/ B. James Fitzpatrick

Scott Ernest Wheeler
B. James Fitzpatrick
Larry W. Lee
Attorneys for Plaintiffs,
Luis Corrales, Jennifer Galvan, and Bianca Espinoza, individually, and on behalf of all others similarly situated

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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. Plaintiffs Luis Corrales, Jennifer Galvan, and Bianca Espinoza (collectively "Plaintiffs") allege that Defendant Bellows Plumbing, Heating & Air, Inc., ("Defendant") (1) failed to provide required meal periods in violation of Labor Code §§ 226.7, 510, 512, 1194, and 1197 and the applicable IWC Wage Orders; (2) failed to provide required rest periods in violation of Labor Code §§ 226.7 and 512 and the applicable IWC Wage Orders; (3) failed to provide required recovery periods in violation of Labor Code § 226.7 and California Code of Regulations, Title 8, Section 3395; (4) failed to pay overtime wages in violation of Labor Code §§ 510, 1194, and 1998 and the applicable IWC Wage Orders; (5) failed to pay minimum wages in violation of Labor Code § § 1194 and 1197 and the applicable IWC Wage Orders; (6) failed to timely pay wages in violation of Labor Code §§ 204 and 210; (7) failed to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; (8) failed to maintain required records in violation of Labor Code §§ 226 and 1174 and the applicable IWC Wage Orders; (9) failed to furnish accurate itemized wage statements in violation of Labor Code § 226 and the applicable IWC Wage Orders; (10) failed to indemnify necessary expenditures incurred in the discharge of duties in violation of Labor Code § 2802; and (11) unfair and unlawful business practices in violation of Business and Professions Code § 17200, *et seq*. Plaintiff brings class and PAGA claims based on these violations and those exhausted in the Parties' notices to the LWDA. 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 and Release of Claims ("Settlement," "Settlement Agreement," or "SAR"). Fitzpatrick Decl. ¶ 2, Ex. 1.

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 Hon. Brian Walsh (Ret.) 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 $400,000.00, which will be paid by Defendant and distributed to the Class on a **non-reversionary** basis (*See* SAR ¶ 16.);
- Estimated Class of 283 individuals (*Id*. ¶ 33.);
- Class Members do **not** need to submit claim forms to participate in the settlement (*Id*. ¶ 72);
- Plaintiffs' Service Award of up to $10,000.00 each (*Id*. ¶ 13.);
- Class Counsel's attorneys' fees of up to $133,333.34 (1/3 of the Gross Settlement Amount) and costs up to the amount of $20,000.00 (*Id*. ¶ 5.);
- Settlement Administration Costs of up to $7,750.00 (*Id*. ¶ 32; Fitzpatrick Decl. ¶ 34);
- PAGA penalties of $40,000.00, of which 65% or $26,000.00 will go to the LWDA, and 35% or $14,000.00 will be distributed to PAGA Members, defined as "all non-exempt, hourly individuals that worked for Defendant in California during the PAGA Period (November 13, 2023, through March 21, 2026"). (*Id*. ¶ 22);
- Net Settlement Amount of approximately $168,916.66 (*Id*. ¶ 19);
- Raw average of approximately **$596.88** to each Participating Class Member ($168,916.66 ÷ 283 Class Members).
- Net Workweek Value is **$8.49** ($168,916.66 ÷ 19,906 Workweeks); Gross Workweek Value is $20.09 ($400,000.00 ÷ 19,906 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 Plaintiffs and their 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 Plaintiffs could fail to establish liability, and/or that Plaintiffs 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 November 13, 2024, Plaintiff Jennifer Galvan filed a Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code §§ 2698, *Et Seq.* ("PAGA Complaint") in the action entitled *Jennifer Galvan v. Bellows Plumbing, Heating & Air, Inc., et al.*, Santa Cruz County Superior Court Case No. 25CV00480, thereby commencing a representative PAGA action against Defendant ("PAGA Action"). The PAGA Complaint alleges a single cause of action for civil penalties under PAGA based on the same California Labor Code violations alleged in the Class Action Complaint. Fitzpatrick Decl. ¶ 4.

On February 10, 2025, Plaintiff Jennifer Galvan filed a class, representative, and individual action against defendants Bellows Plumbing, Heating & Air, Inc. and David Michael Murrow in the Superior Court of the State of California, County of Santa Cruz ("*Galvan* Action"). Ms. Galvan's complaint alleged class action claims for: (1) failure to provide meal periods or compensation in lieu thereof in violation of Labor Code §§ 226.7 and 512 and the applicable IWC Wage Orders; (2) failure to provide rest periods or compensation in lieu thereof in violation of Labor Code §§ 226.7 and 1198 and the applicable IWC Wage Orders; (3) failure to pay hourly and overtime wages in violation of Labor Code §§ 1194 and 1998 and the applicable IWC Wage Orders; (4) failure to comply with itemized employee wage statement requirements in violation of Labor Code §§ 226, 1174, and 1175 and the applicable IWC Wage Orders; (5) failure to pay all wages upon termination in violation of Labor Code §§ 201-203 and the applicable IWC Wage Orders; (6) failure to reimburse business expenses in violation of Labor Code § 2802; and (7) unfair business practices in violation of Business and Professions Code § 17200, *et seq*. and common law. Ms. Galvan's complaint also asserted a cause of action for violation of the PAGA, Labor Code § 2698, *et seq*., for penalties predicated on the underlying Labor Code violations. Finally, the complaint alleged individual claims for: (1) sexual harassment in violation of the FEHA; (2) sex discrimination in violation of the FEHA; (3) failure to investigate and prevent harassment and discrimination in violation of the FEHA; (4) intentional infliction of emotional distress; (5)

negligent infliction of emotional distress; (6) retaliation in violation of the FEHA; (7) retaliation in violation of Labor Code § 1102.5; and (8) wrongful termination in violation of public policy. Fitzpatrick Decl. ¶ 5.

On November 6, 2025, Plaintiff Luis Corrales lodged a notice with the Labor and Workforce Development Agency ("LWDA") by online submission and to Defendant by U.S. Certified Mail on November 6, 2025, pursuant to California Labor Code Section 2699.3, of the specific provisions of the California Labor Code alleged to have been violated by Defendant. The claims alleged in the PAGA Letter are based on the same California Labor Code violations alleged in the Actions outlined above, with the addition of the following causes of action: (1) Failure to Provide Recovery Period, pursuant to California Labor Code Section 226.7 and California Code of Regulations, Title 8, Section 3395; (2) Failure to Provide Sick Leave, pursuant to California Labor Code Sections 245 and 246; (3) Failure to Implement a Workplace Violence Prevention Policy, pursuant to California Labor Code Sections 6401.7 and 6401.9; and (4) Failure to Implement an Indoor Heat Prevention Policy. Furthermore, Plaintiff Luis Corrales' PAGA Claims are related to the cases entitled: *Jennifer Galvan v. Bellows Plumbing, Heating & Air, Inc., et al.*, Santa Cruz County Superior Court Case No. 25CV00480 and *Luis Corrales v. Bellows Plumbing, Heating & Air, Inc., et al.*, Santa Cruz County Superior Court Case No. 25CV04013, filed on December 15, 2025. Fitzpatrick Decl. ¶ 6.

On December 15, 2025, Plaintiff Luis Corrales filed a class action complaint against Defendant Bellows Plumbing, Heating & Air, Inc. in the Superior Court of the State of California, County of Santa Cruz ("*Corrales* Action"). Mr. Corrales' complaint alleged class action claims for: (1) failure to provide required meal periods in violation of Labor Code §§ 226.7, 510, 512, 1194, and 1197 and the applicable IWC Wage Orders; (2) failure to provide required rest periods in violation of Labor Code §§ 226.7 and 512 and the applicable IWC Wage Orders; (3) failure to provide required recovery periods in violation of Labor Code § 226.7 and California Code of Regulations, Title 8, Section 3395; (4) failure to pay overtime wages in violation of Labor Code §§ 510, 1194, and 1998 and the applicable IWC Wage

Orders; (5) failure to pay minimum wages in violation of Labor Code § § 1194 and 1197 and the applicable IWC Wage Orders; (6) failure to timely pay wages in violation of Labor Code §§ 204 and 210; (7) failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; (8) failure to maintain required records in violation of Labor Code §§ 226 and 1174 and the applicable IWC Wage Orders; (9) failure to furnish accurate itemized wage statements in violation of Labor Code § 226 and the applicable IWC Wage Orders; (10) failure to indemnify necessary expenditures incurred in the discharge of duties in violation of Labor Code § 2802; and (11) unfair and unlawful business practices in violation of Business and Professions Code § 17200, *et seq*. Fitzpatrick Decl. ¶ 7.

On February 19, 2026, The Parties participated in mediation with Hon. Brian Walsh (Ret.) ("Mediator"), a respected mediator of complex wage and hour actions, and with the assistance of the Mediator's evaluations, the Parties reached the settlement that is memorialized herein. The Parties' settlement discussions were conducted at arms' length, and the Settlement is the result of an informed and detailed analysis of Defendant's potential liability and exposure in relation to the costs and risks associated with continued litigation. Based on Class Counsel's investigation and evaluation, Class Counsel believes that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members, State of California, and PAGA Employees in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation and various defenses asserted by Defendant. Fitzpatrick Decl. ¶ 8.

As a condition of settlement, the Parties agreed to the filing of an amended complaint to consolidate the claims of the *Galvan* Action and *Corrales* Action and to seek settlement approval in the *Corrales* Action. Fitzpatrick Decl. ¶ 9.

On June 22, 2026, Plaintiffs filed a First Amended Complaint ("FAC") in the *Corrales* Action, which is the operative complaint ("Operative Complaint"). The Operative Complaint adds Jennifer Galvan and Bianca Espinoza as additional named plaintiffs and consolidates the

claims of the *Galvan* Action and *Corrales* Action with the exception of Galvan and Espinoza's individual non-wage and hour claims, which were preserved and subject to separate confidential settlement agreements. Specifically, the Operative Complaint alleges the following claims for: (1) failure to provide required meal periods in violation of Labor Code §§ 226.7, 510, 512, 1194, and 1197 and the applicable IWC Wage Orders; (2) failure to provide required rest periods in violation of Labor Code §§ 226.7 and 512 and the applicable IWC Wage Orders; (3) failure to provide required recovery periods in violation of Labor Code § 226.7 and California Code of Regulations, Title 8, Section 3395; (4) failure to pay overtime wages in violation of Labor Code §§ 510, 1194, and 1998 and the applicable IWC Wage Orders; (5) failure to pay minimum wages in violation of Labor Code § § 1194 and 1197 and the applicable IWC Wage Orders; (6) failure to timely pay wages in violation of Labor Code §§ 204 and 210; (7) failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; (8) failure to maintain required records in violation of Labor Code §§ 226 and 1174 and the applicable IWC Wage Orders; (9) failure to furnish accurate itemized wage statements in violation of Labor Code § 226 and the applicable IWC Wage Orders; (10) failure to indemnify necessary expenditures incurred in the discharge of duties in violation of Labor Code § 2802; (11) unfair and unlawful business practices in violation of Business and Professions Code § 17200, *et seq*.; and (12) violation of the PAGA, Labor Code § 2698, *et seq*. 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. *Id*. The Parties memorialized the terms of their settlement in the Joint Stipulation of Class Action and PAGA Settlement and Release. Fitzpatrick Decl. ¶ 11.

A. The Operative Complaint

Plaintiffs' class and PAGA claims as pled in the operative Complaint are predicated upon the following allegations. Fitzpatrick Decl. ¶ 12. With respect to the failure to pay wages claim, Plaintiffs contend that Defendant failed to properly calculate and pay all wages

owed to employees. Specifically, Plaintiffs contend that Defendant failed to include nondiscretionary compensation, including commissions and SPIFF wages, in employees' regular rates of pay for purposes of calculating overtime wages, meal and rest period premiums, and sick pay. Fitzpatrick Decl. ¶ 12.

With respect to the meal and rest period claims, Plaintiffs contend that Defendant failed to provide employees with timely, duty-free meal and rest periods, including second meal periods for shifts exceeding ten hours. Plaintiffs further contend that Defendant failed to pay all required meal and rest period premiums and, when premiums were paid, failed to calculate those premiums at the proper regular rate of pay. Fitzpatrick Decl. ¶ 13.

With respect to the business expense reimbursement claim, Plaintiffs contend that Defendant required employees to use their personal cellular phones for work-related purposes without reimbursement. For example, employees working in the field were required to use their personal cellular phones to access Defendant's Paylocity application to track their hours worked. Fitzpatrick Decl. ¶ 14.

With respect to the wage statement claims, Plaintiffs contend that Defendant issued inaccurate wage statements as a result of its failure to properly calculate and pay all wages and premiums owed, including overtime wages, sick pay, and meal and rest period premiums at the proper regular rate of pay. Plaintiffs further contend that Defendant is liable for derivative wage statement penalties arising from these underlying violations. Fitzpatrick Decl. ¶ 15.

Plaintiffs further contend that Defendant failed to timely pay all wages owed to former employees upon separation, including unpaid meal and rest period premiums, overtime wages, and sick pay, thereby giving rise to waiting time penalties. Fitzpatrick Decl. ¶ 16.

Plaintiffs also alleged that Defendant failed to implement indoor and outdoor heat illness prevention policies, resulting in additional penalties under the PAGA. Fitzpatrick Decl. ¶ 17.

As a result of the alleged violations above, Plaintiffs seek unpaid wages and premiums, unreimbursed business expenses, statutory and civil penalties, including wage statement and waiting time penalties, PAGA penalties, attorneys' fees, costs, and all other relief available

under California law. Fitzpatrick Decl. ¶ 18.

Defendant has at all times denied Plaintiffs' 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. Fitzpatrick Decl. ¶ 19.

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* (4th ed. 2002) § 11.26.

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 ¶ 89. Defendant has reserved its right to contest class certification in the event that the settlement is not approved and litigation resumes.

A. Proposed Class Definition

The current settlement is being settled on behalf of "all non-exempt, hourly individuals that worked for Defendant in California during the Settlement Class Period." *See* SAR ¶ 33. The Class Period is defined as the period from February 10, 2021, through March 21, 2026. ("Class Period"). SAR ¶ 34. Defendant estimates that there are approximately 283 individuals that comprise the Class. SAR ¶ 33.

Pursuant to the Settlement Agreement, the Net Settlement Amount will be apportioned among the Class Members on a *pro rata* basis, based on the number of Workweeks worked by each Class Member during the Class Period, as compared to the total number of Workweeks worked by all Class Members during the Class Period. SAR ¶¶ 36, 56. Based on the data provided to Plaintiffs, there are approximately 19,906 Workweeks worked in the Class Period by 283 Class Members. SAR ¶ 50. 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 5%, then Defendant may elect one of two options: (1) the Gross Settlement Amount will be increased on a pro rata basis equal to the percentage increase in the number of Workweeks above the 5% threshold, i.e., a 6% increase in the number of Workweeks above 19,906 will result in a 1% increase in the Gross Settlement Amount; or (2) alternatively, Defendant may elect to close the Settlement Class Period so that it ends on the date that the Workweek count is less than 20,901 workweeks. SAR ¶ 50.

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 Plaintiffs' and Defendant's counsel have a great deal of experience in wage and hour class action litigation. Plaintiffs' counsel have been approved as class counsel in a number of wage and hour class actions and have extensive litigation experience. Fitzpatrick Decl. ¶ 35; Declaration of Alison L. Baker ("Baker Decl.") ¶¶ 7-9; Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 6-8; Declaration of Max Gavron ("Gavron Decl.") ¶¶ 4-9; Declaration of Scott E. Wheeler "(Wheeler Decl.) ¶¶ 4-17. 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 formal and 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. ¶ 20. From this data, Plaintiff was able to investigate the claims asserted and conduct an exposure analysis that informed Plaintiffs' position at the mediation. *Id*. Plaintiff analyzed the sample time and

payroll records and extrapolated. *Id.* Based on the data provided by Defendant, Plaintiff analyzed Defendant's potential exposure, as adjusted for risk, as follows:

- Meal/Rest Period Premiums: $719,086.20 (low end) to approximately $2.8 million (high end), based on approximately 91,896 shifts qualifying for a meal or rest period, a blended average hourly rate of $31.30, and estimated violation rates ranging from 25% to 100%.
- Recovery Period Premiums: $719,086.20 to approximately $2.8 million, using the same assumptions as the meal/rest period premium calculation.
- Underpaid Overtime and Sick Pay: Estimated to be in the mid to high five figures. Plaintiffs contend Defendant failed to include nondiscretionary compensation in the regular rate of pay used to calculate overtime and sick pay; however, as discussed below, the bulk of the exposure on these claims is associated with the waiting time and/or wage statement penalties that follow.
- Unreimbursed Business Expenses: $199,060.00, assuming $10 per workweek.
- Wage Statement Penalties: $573,400.00, based on 5,827 pay periods at $100 per pay period, less $50 for 186 employees. The calculation does not factor in the $4,000 cap, which could further reduce the exposure.
- Gross Waiting Time Penalties: $1,277,040.00, based on 170 former employees, 8 hours per day, 30 days, and an average hourly rate of $31.30.
  - (Subset of Gross) Sick Pay Theory Waiting Time Penalties: $262,920.00 35 former ees x 8 hours x 30 days x $31.30 per hour
  - (Subset of Gross) Overtime Regular Rate Theory Waiting Time Penalties: $22,536.00 3 former ees x 8 hours x 30
- PAGA Penalties: $582,700.00, based on $100 per pay period and assuming no stacking of penalties for different violations.
  - (Stacking) Failure to Implement Indoor and Outdoor Heat Illness Policy: $582,700.00 ($100.00 per pay period)
  - (Stacking) Workplace Violence Prevention Policy: $582,700.00 ($100.00 per pay period)

Fitzpatrick Decl. ¶ 21.

While the total theoretical exposure of Plaintiffs' class and PAGA claims based on the above amounts ranges between approximately $7.36 million on the high end and approximately $4.12 million on the lower end, this analysis does not take into account Defendant's arguments to liability and to class certification as further explained below. Fitzpatrick Decl. ¶ 22.

Most importantly, Defendant contends that arbitration agreements applicable to putative class members may limit the scope of the putative class and Defendant's potential class-wide exposure. Fitzpatrick Decl. ¶ 23. Plaintiffs maintain that there are substantial arguments against enforcement of those arbitration agreements, including that Defendant implemented the agreements during the pendency of this litigation without adequately informing putative class members of the pending action or the potential effect of the agreements on their rights. Nevertheless, the potential enforcement of the arbitration agreements presents a litigation risk that must be taken into account when evaluating the potential recovery in this action. *Id*. If Defendant were successful in this defense, the total exposure would be limited to the PAGA theories of liability thus drastically reducing the potential exposure. *Id.*

Defendant also has raised legal and factual defenses that present risks to Plaintiffs' prevailing on their theories of liability. Plaintiffs assert that Defendant failed to properly calculate the regular rate of pay by failing to include nondiscretionary compensation, including commissions and SPIFF wages, for purposes of calculating overtime wages, meal and rest period premiums, and sick pay. Fitzpatrick Decl. ¶ 24. However, Defendant maintained it properly calculated the regular rate of pay. *Id.*

On the meal period claim, Plaintiffs contend that Defendant maintained a uniform practice of failing to provide timely, duty-free meal periods. Plaintiffs' review of Defendant's time and pay data revealed noncompliant meal periods, including instances in which Defendant failed to provide a second meal period for shifts exceeding ten hours. Under *Donohue v. AMN Services, LLC*, 11 Cal. 5th 58 (2021), time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations. Defendant disputes Plaintiffs' allegations and contends that employees were provided legally compliant meal periods and that any inference from the time records would be rebutted. Defendant further contended that any proven meal period violations would be the result of individual employee choice and thus not capable of class resolution. Plaintiffs further contend that Defendant failed to pay all required meal period premiums and failed to calculate meal period premiums at the

proper regular rate of pay by failing to include nondiscretionary compensation.

On the rest period claim, Plaintiffs contend that Defendant failed to provide Plaintiffs and other non-exempt employees with legally compliant, duty-free rest periods and failed to pay all required rest period premiums. Defendant disputes Plaintiffs' allegations and contends that employees were provided legally compliant rest periods. Defendant further contends that whether an individual employee was denied a rest period presents individualized issues regarding whether rest periods were provided and taken.

Additionally, Defendant also argued that Plaintiffs cannot establish that Defendant "willfully" failed to pay wages at separation of employment, and thus Plaintiffs cannot recover waiting time penalties under Section 203. In *Naranjo v. Spectrum Security Services, Inc.*, 13 Cal.5th 93, 117 (2022), the court upheld an employer's good faith defense to the plaintiff's claim for waiting time penalties, pursuant to Labor Code § 203. The employer argued that it had a viable legal defense, which precluded the imposition of waiting time penalties because its acts were not "willful" within the meaning of the statute. *Naranjo* also permitted a good faith defense to rebut the plaintiff's claim for penalties, pursuant to Labor Code § 226. Should Defendant succeed on these arguments, class members would recover $0.00 for waiting time penalties under Labor Code § 203 and statutory penalties under Labor Code § 226.

In addition to the above defense, Plaintiffs' estimated Labor Code § 226(e) penalties would likely end up lower than estimated, as not every individual would have incurred violations on every pay period. Defendant also argued that the violation was not "knowing and intentional" and thus would not warrant Labor Section § 226(e) penalties. *See Harris v. Vector Mktg. Corp*., 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009) (granting summary judgment in favor of employer and finding its conduct was not "knowing and intentional"). Defendant argued that it was entitled to a "good faith" defense on this claim, too. *See, e.g. Naranjo, supra*, 13 Cal.5th at pp. 103-104. ("if an employer reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law").

With respect to the Labor Code § 2802 claim, Plaintiffs contend that Defendant required employees to use their personal cellular phones for work-related purposes without reimbursement. For example, Plaintiffs contend that employees working in the field were required to use their personal cellular phones to access Defendant's Paylocity application to track their hours worked. Defendant disputes Plaintiffs' allegations and liability for unreimbursed business expenses.

With respect to Plaintiff's claim under the PAGA, Plaintiff estimated that Defendant could face civil penalties of at least $582,700.00 (based on an estimated 5,827 pay periods at issue during the PAGA Period). Fitzpatrick Decl. ¶ 25. Defendant contended that the imposition of multiple penalties for separate violations during the same pay period is not permitted under the PAGA, and that only a single $100 penalty per pay period may be awarded. While Plaintiffs dispute this interpretation, some courts have exercised discretion under Labor Code § 2699(e)(2) to avoid stacking penalties for multiple violations within the same pay period. Plaintiffs' analysis is also based on the initial violation penalty amount, which does not account for the imposition of the increased subsequent violation penalty amount given authority indicating this increased penalty is only available where there is a prior citation for a Labor Code violation. *See Bernstein v. Virgin Am., Inc*. (9th Cir. 2021) 3 F.4th 1127, 1144 (holding no heightened penalty because the Labor Commissioner nor any court warned the defendant that it was subject to the Labor Code until the court handling the case at issue). Courts are also hesitant to award the subsequent amount where there has not been a prior violation of the Labor Code. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* 2009 WL 2448430, at *9 (S.D. Cal. Aug. 10, 2009) ("[u]nder California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"). Defendant argued that no such prior violation occurred here, warranting only the initial penalty, if any penalty at all. Moreover, in this case there is no indication that Defendant had received a prior notice or citation from the Labor Commissioner regarding the alleged

violations at issue. *Id*.

Additionally, this analysis does not account for the possibility that the Court would reduce the PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline to award PAGA penalties where "if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), 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.

Although Plaintiffs believe in the merits of the alleged claims and maintain that there is no reason for reducing PAGA penalties, Plaintiffs are aware that Defendant has raised defenses to the claims and further with respect to the reduction of PAGA penalties and that those defenses could persuade the Court. Thus, even if Plaintiffs were to successfully prove their claims at trial, there is a possibility that the Court may only award a small percentage of PAGA penalties, as the Court has discretion to do so. The Gross Settlement Amount was premised with this risk in mind, associated with the possibility of the Court significantly reducing PAGA penalties. Fitzpatrick Decl. ¶ 26.

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. Although Plaintiffs believe that the Class can be certified, Plaintiffs also believe in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiffs involved in not prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the possibility of non-certification, and the potential for appeals. These risks on 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 plaintiff 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 plaintiff's subsequent appeal also was denied.

Indeed, numerous courts have held that gross settlements approximating between only 8 and 25% of the defendant's potential exposure are fair and reasonable. *See Lesevic v. Spectraforce Techs., Inc.*, 2021 WL 1599310, at *3 (N.D. Cal. Apr. 23, 2021) (noting wage and hour class fund of $600,000 that compensated for 7% of maximum potential recovery was reasonable); *Bellinghausen v. Tractor Supply Co*., No. 13-CV-02377-JSC, 2015 WL 1289342, at p.*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) (granting 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 p.*6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable); *Greko v. Diesel U.S.A., Inc*., No. 10-cv-02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24% was reasonable).

Here, based on the above, the total amount of class and PAGA penalties amount to between approximately **$4.12 million** and **$7.36 million**. Fitzpatrick Decl. ¶ 27. However, this maximum exposure likely overstates the realistic chances of recovery for the reasons detailed above. For example, if Defendant succeeded in enforcing the arbitration agreements, the total exposure would be closer to $500,000 for the PAGA claim alone if no stacking were permitted and without considering the Court's inherent authority to reduce PAGA damages. The Gross Settlement Amount is $400,000.00, which ranges between approximately **5-10%** of the class and PAGA penalties; if, however, the Court enforced the arbitration agreements then the settlement is a whopping **68%** of the potential recovery ($400,000 / $582,700 (PAGA Exposure)). Thus, the settlement was negotiated at arm's length and the settlement

percentage-to-recovery further supports that the settlement is fair and reasonable. *Id.*

Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class Action Settlement ("Notice Packet"), 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. SA¶ 73.

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 $400,000.00 as the Gross Settlement Amount. SAR ¶ 16. The Net Settlement Amount [calculated after deduction of attorneys' fees (up to $133,333.34 and costs up to $20,000.00, Service Award to each Plaintiff (up to $10,000.00 each, totaling $30,000.00), payment of PAGA penalties ($40,000.00), and settlement administration costs (up to $7,750.00)] is estimated to be approximately $168,916.66. SAR ¶¶ 5, 13, 22, 32; Fitzpatrick Decl. ¶ 28.

Through the mediation process, Defendant shared financial documents to support its contention that it required a payment plan to fund a settlement of this size. Accordingly, the Parties agreed that the Gross Settlement Amount would be funded by Defendant in two installments: $300,000 to be funded by February 19, 2027; and the remaining $100,000 and Defendant's share of payroll taxes by August 19, 2027. SAR ¶ 51.

Pursuant to the Settlement Agreement, the Net Settlement Amount will be apportioned among the Class Members on a *pro rata* basis, based on the number of Workweeks worked by each Class Member during the Class Period, as compared to the total number of Workweeks worked by all Class Members during the Class Period. SAR ¶¶ 19, 56; Fitzpatrick Decl. ¶ 29. Based thereon, on a raw average, each Class Member may recover approximately $596.88 ($168,916.66 ÷ 283 Class Members). Based on the number of Workweeks, the per Workweek value of the Net Settlement Amount is approximately $8.49 ($168,916.66 ÷ 19,906

Workweeks), whereas the per Workweek value of the Gross Settlement Amount is approximately $20.09 ($400,000.00 ÷ 19,906 Workweeks). Fitzpatrick Decl. ¶ 30. The amount actually paid to each Class Member will increase or decrease depending on the number of Workweeks he or she worked during the Class Period. *Id*.

Additionally, as part of the payment of PAGA penalties, 35% of the PAGA Penalties Fund, or $14,000.00, shall be paid to PAGA Members on a *pro rata* basis, based on the number of pay periods worked by each PAGA Member during the PAGA Period as compared to the total number of pay periods worked by all PAGA Members during the PAGA Period. Based thereon, on a raw average, each Aggrieved Employee may recover approximately $76.09 ($14000 ÷ 184 Aggrieved Employees). SAR ¶ 22; Fitzpatrick Decl. ¶ 31.

Finally, any Individual Settlement Payment Check and Individual PAGA Payment check will be valid and shall be negotiable until one hundred eighty (180) calendar days after mailing to Participating Class Members and Aggrieved Employees. Those funds represented by settlement checks returned as undeliverable and the funds which correspond with the settlement checks that are not negotiated within one hundred eighty (180) calendar days after mailing, shall be transmitted to the California Controller's Unclaimed Property Fund in the names of the Settlement Class Member and/or Aggrieved Employee to which the funds relate. SAR ¶ 59; Fitzpatrick Decl. ¶ 32.

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 ¶ 49.

3. Scope of the Release of Class Members' Claims

As a condition of participating in this class action settlement, Class Members who do not opt out of the settlement ("Participating Class Members") will provide a limited release of the following claims against the Released Parties. SAR ¶¶ 27-28. Participating Class Members will release the following claims:

> all claims, rights, demands, liabilities, and causes of action alleged or which could have reasonably been alleged based on the facts alleged in the operative complaints or PAGA Notices in the Actions, that accrued during the Settlement Class Period, including (1) failure

> to provide required meal periods in violation of Labor Code §§ 226.7, 510, 512, 1194, and 1197 and the applicable IWC Wage Orders; (2) failure to provide required rest periods in violation of Labor Code §§ 226.7 and 512 and the applicable IWC Wage Orders; (3) failure to provide required recovery periods in violation of Labor Code § 226.7 and California Code of Regulations, Title 8, Section 3395; (4) failure to pay overtime wages in violation of Labor Code §§ 510, 1194, and 1998 and the applicable IWC Wage Orders; (5) failure to pay minimum wages in violation of Labor Code § § 1194 and 1197 and the applicable IWC Wage Orders; (6) failure to timely pay wages in violation of Labor Code §§ 204 and 210; (7) failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; (8) failure to maintain required records in violation of Labor Code §§ 226 and 1174 and the applicable IWC Wage Orders; (9) failure to furnish accurate itemized wage statements in violation of Labor Code § 226 and the applicable IWC Wage Orders; (10) failure to indemnify necessary expenditures incurred in the discharge of duties in violation of Labor Code § 2802; and (11) unfair and unlawful business practices in violation of Business and Professions Code § 17200, et seq. The Released Class Claims do not include any individual or non-wage and hour claims of Jennifer Galvan and Bianca Espinoza, which are hereby expressly excluded. ("Released Class Claims").

See SAR ¶ 27.

In addition, regardless of their decision to participate in the class portion of the settlement, PAGA Members will release the following claims:

> all claims for PAGA civil penalties that are alleged or reasonably could have been alleged arising from any of the factual allegations in the Actions that accrued during the PAGA Period, including all claims for attorneys' fees and costs related thereto, for Defendant's alleged failure to provide compliant meal periods and rest periods, and associated premium payments, timely pay wages during employment and upon termination, failure to provide compliant wage statements, failure to pay minimum, overtime, and straight time wages, failure to maintain complete and accurate payroll records, failure to provide recovery period, failure to provide sick leave, failure to implement a workplace violence prevention policy, failure to implement an indoor heat prevention policy, and reimburse necessary business related expenses. ("Released PAGA Claims").

See SAR ¶ 28.

Given that the releases above are tailored to only claims pled or that could arise out of the facts alleged in the Action and Plaintiffs' 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: eighty-five percent (85%) as interest, statutory penalties, and non-wage damages and shall be reported on an IRS Form 1099; and fifteen percent (15%) as wages and shall be reported on an IRS Form W-2. SAR ¶ 57. Defendant will be liable for employer-side payroll taxes. SAR ¶ 57.

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 ¶ 58.

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. SAR ¶ 53. 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 ¶ 73.

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, last known mailing address, last known telephone number (if available), Social Security Number, the number of workweeks he or she worked during the Settlement Class Period, and the number of pay periods he or she worked during the PAGA Period ("Class List"). SAR ¶ 6. Defendant shall provide this information within twenty-one (21) calendar days of preliminary approval of this settlement. SAR ¶ 68. Upon receipt of the information and prior to mailing the Notice Packet, 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. SAR ¶ 70. Within ten (10) calendar days of receipt of the Class List, the Settlement Administrator shall mail the Notice Packet to all Class Members. SAR ¶ 70. 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 ¶ 71. 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. SAR ¶ 71.

The Parties have agreed to the language of the Notice Packet. The Notice Packet will describe the terms of the settlement and advise Class Members of their opportunity to opt out of the settlement, object to the settlement, and/or dispute the number of Workweeks credited to them. SAR ¶ 71. 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, object to the settlement, and/or submit a dispute regarding the number of Workweeks. SA ¶¶ 73, 79. Class Members who receive a re-mailed Notice Packet shall have their Response Deadlines extended fifteen (15) calendar days from the original Response Deadline. *Id*.

For disputes regarding the calculation of the number of Workweeks, Class Members may produce evidence to the Settlement Administrator. The Parties will work in good faith to resolve the dispute, and if the Parties are unable to come to a resolution, then the Settlement Administrator shall examine all evidence submitted and make a decision, which will be final. SAR ¶ 60. The Notice Packet provides for instructions to Class Members on how to submit a Workweek dispute.

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. The Class Notice will be provided to Class Members in English and Spanish. SAR ¶ 70.

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 7here, 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).

Plaintiffs allege 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 Luis Corrales ("Corrales Decl.") ¶¶ 3-4; Plaintiff Jennifer Galvan ("Galvan Decl.) ¶¶ 3-7; Plaintiff Bianca Espinoza ("Espinoza Decl.") ¶¶ 3-6. As a result, Plaintiffs allege that they are owed unpaid wages and penalties for the above violations.

In other words, Plaintiffs contend that they were subjected to the same policy and practice as other Class Members and that their claims are typical to those of the Settlement Class.

Moreover, Plaintiffs do not have any interests adverse to the Class, nor have any such issues been raised or presented. Corrales Decl. ¶ 29; Galvan Decl. ¶ 8; Espinoza Decl. ¶ 7. Plaintiffs have taken all necessary steps to represent the interests of the Settlement Class, and by providing information and documents to Class Counsel. For such reasons, Plaintiffs have 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. ¶ 3; Baker Decl. ¶ 2; Lee Decl. ¶¶ 2-5; Gavron Decl. ¶ 3; Wheeler Decl. ¶ 3. The settlement was obtained for the benefit of the Class, as opposed to the individual Class Representative. Fitzpatrick Decl. ¶ 3; Baker Decl. ¶ 2; Lee Decl. ¶ 2; Gavron Decl. ¶ 2; Wheeler Decl. ¶ 3.

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.

Here, the Parties have agreed to payment of attorneys' fees of one-third of the Gross Settlement Amount, equal to $133,333.34, and costs up to $20,000.00 for reimbursement of actual litigation costs, subject to Court approval. SAR ¶ 5. The Parties have agreed to a payment of the foregoing attorneys' fees and, thus, this payment should be presumed to be fair. Fitzpatrick Decl. ¶ 33; Lee Decl. ¶ 4; Gavron Decl. ¶ 2; Wheeler Decl. ¶ 3.

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.

2. Proposed Payment to the Class Representatives

Plaintiffs and Class Representatives request a modest enhancement of $10,000.00. SAR ¶ 13. The Class Representatives 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 pleadings and the Settlement Agreement. As part of their duties as Class Representatives, Plaintiffs provided invaluable information, evidence, and documents that resulted in this settlement. Fitzpatrick Decl. ¶ 34; Corrales Decl. ¶¶ 6-24; Galvan Decl. ¶ 9; Espinoza Decl. ¶ 8.

In addition to the invaluable services that they provided, Plaintiffs also took a significant risk, both professionally and monetarily, in acting as Class Representatives and seeking benefits on behalf of the Class. Because the claims alleged by the Class Representatives involved the payment of costs to the prevailing party, Plaintiffs could have possibly faced paying the costs of Defendant, had he not prevailed in this action.

Plaintiffs devoted substantial time and effort in connection with the litigation of this action. Corrales Decl. ¶ 23; Galvan Decl. ¶ 9; Espinoza Decl. ¶ 8. For example, Plaintiffs met with their attorneys to discuss the facts supporting the theories of liability in this action and apprised their attorneys of their understanding of Defendant's policies and practices. Plaintiffs also provided documents to their attorneys to evaluate the claims in the case, including, but not limited to, payroll and employment documents, and wage statements received throughout their employment with Defendant. Plaintiffs also conferred with their attorneys regarding the terms of the proposed settlement, reviewed the proposed settlement agreement, and assisted in reviewing, drafting, and revising their declarations in support of the Motion for Preliminary Approval. Corrales Decl. ¶¶ 6-24; Galvan Decl. ¶¶ 8-13; Espinoza Decl. ¶¶ 7-12. For these reasons and those articulated in his Motion, the Court should preliminarily approve the enhancement payment.

3. Settlement Administration Costs

The Parties have agreed to an estimated payment of $7,750.00 to the Settlement Administrator, Phoenix Settlement Administrators, to send notices and to administer this settlement. SAR ¶ 31. Phoenix is a well-recognized class action settlement administrator. The

Parties believe that the administration fee is reasonable and should be approved. Based on the bid provided by the proposed administrator, the estimated cost per class member for administration is approximately $27.39 ($7,750.00/ 283 class members), which is reasonable based on the experience of class counsel. Fitzpatrick Decl. ¶ 35.

IV. NOTICE TO THE LWDA

Plaintiffs submitted the Settlement Agreement and supporting documents to the LWDA. Fitzpatrick Decl. ¶ 38; Ex. 2.

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, Plaintiffs respectfully request 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: November 3, 2026

THE WHEELER LAW FIRM, APC
FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

By: /s/ B. James Fitzpatrick

Scott Ernest Wheeler
B. James Fitzpatrick
Larry W. Lee
Attorneys for Plaintiffs,
Luis Corrales, Jennifer Galvan, and Bianca Espinoza, individually, and on behalf of all others similarly situated